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SCHEDULES

SCHEDULE 8 **U.K.**

Section 86(4)

PROVISION THAT MAY BE CONTAINED IN CERTAIN ENFORCEMENT ORDERS

Modifications etc. (not altering text)

- C1** Sch. 8: power to make orders conferred (20.6.2003) by 1988 c. 48, s. 144(1A) (as substituted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 18(2)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)
- C2** Sch. 8: power to make orders conferred (20.6.2003) by 1988 c. 48, s. 238(1A) (as substituted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 18(4)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)
- C3** Sch. 8: power to make orders conferred (20.6.2003) by 1988 c. 48, Sch. 2A para. 17(1A) (as substituted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 18(5)(a)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)
- C4** Sch. 8 applied (with modifications) (20.6.2003) by The Enterprise Act 2002 (Protection of Legitimate Interests) Order 2003 (S.I. 2003/1592, **art. 15**, **Sch. 3 para. 2(1)(a)(2)**) (as amended (29.12.2003) by S.I. 2003/3180, **art. 2**, Sch. para. 10(16))

Textual Amendments applied to the whole legislation

- F1** Act: for the words "solicitor of the Supreme Court of Northern Ireland" wherever they occur there is substituted (prosp.) the words "solicitor of the Court of Judicature of Northern Ireland" by virtue of Constitutional Reform Act 2005 (c. 4), ss. 59, 148(1), **Sch. 11 para. 5** [Editorial Note: this amendment will be carried through into the text of the Act at the same time as any other effects on the Act for the year in which the relevant commencement order (or first such order) is made]

Introductory

- 1 This Schedule applies in relation to such orders, and to such extent, as is provided by this Part and Part 4 and any other enactment; and references in this Schedule to an order shall be construed accordingly.

General restrictions on conduct

- 2 (1) An order may—
 - (a) prohibit the making or performance of an agreement;
 - (b) require any party to an agreement to terminate the agreement.
- (2) An order made by virtue of sub-paragraph (1) shall not—
 - (a) prohibit the making or performance of; or
 - (b) require any person to terminate,
an agreement so far as, if made, the agreement would relate, or (as the case may be) so far as the agreement relates, to the terms and conditions of employment of any workers or to the physical conditions in which any workers are required to work.

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- 3 (1) An order may prohibit the withholding from any person of—
- (a) any goods or services;
 - (b) any orders for any such goods or services.
- (2) References in sub-paragraph (1) to withholding include references to—
- (a) agreeing or threatening to withhold; and
 - (b) procuring others to withhold or to agree or threaten to withhold.
- 4 An order may prohibit requiring as a condition of the supply of goods or services to any person—
- (a) the buying of any goods;
 - (b) the making of any payment in respect of services other than the goods or services supplied;
 - (c) the doing of any other such matter or the refraining from doing anything mentioned in paragraph (a) or (b) or any other such matter.
- 5 An order may prohibit—
- (a) discrimination between persons in the prices charged for goods or services;
 - (b) anything which the relevant authority considers to be such discrimination;
 - (c) procuring others to do anything which is such discrimination or which the relevant authority considers to be such discrimination.
- 6 An order may prohibit—
- (a) giving, or agreeing to give in other ways, any preference in respect of the supply of goods or services or in respect of the giving of orders for goods or services;
 - (b) giving, or agreeing to give in other ways, anything which the relevant authority considers to be a preference in respect of the supply of goods or services or in respect of the giving of orders for goods or services;
 - (c) procuring others to do anything mentioned in paragraph (a) or (b).
- 7 An order may prohibit—
- (a) charging, for goods or services supplied, prices differing from those in any published list or notification;
 - (b) doing anything which the relevant authority considers to be charging such prices.
- 8 (1) An order may regulate the prices to be charged for any goods or services.
- (2) No order shall be made by virtue of sub-paragraph (1) unless the relevant report in relation to the matter concerned identifies the prices charged for the goods or services as requiring remedial action.
- (3) In this paragraph “the relevant report” means the report of the Commission which is required by the enactment concerned before an order can be made under this Schedule.
- 9 An order may prohibit the exercise of any right to vote exercisable by virtue of the holding of any shares, stock or securities.

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General obligations to be performed

- 10 (1) An order may require a person to supply goods or services or to do anything which the relevant authority considers appropriate to facilitate the provision of goods or services.
- (2) An order may require a person who is supplying, or is to supply, goods or services to supply such goods or services to a particular standard or in a particular manner or to do anything which the relevant authority considers appropriate to facilitate the provision of such goods or services to that standard or in that manner.
- 11 An order may require any activities to be carried on separately from any other activities.

Acquisitions and divisions

- 12 (1) An order may prohibit or restrict—
- (a) the acquisition by any person of the whole or part of the undertaking or assets of another person's business;
 - (b) the doing of anything which will or may result in two or more bodies corporate becoming interconnected bodies corporate.
- (2) An order may require that if—
- (a) an acquisition of the kind mentioned in sub-paragraph (1)(a) is made; or
 - (b) anything is done which results in two or more bodies corporate becoming interconnected bodies corporate;
- the persons concerned or any of them shall observe any prohibitions or restrictions imposed by or under the order.
- (3) This paragraph shall also apply to any result consisting in two or more enterprises ceasing to be distinct enterprises (other than any result consisting in two or more bodies corporate becoming interconnected bodies corporate).
- 13 (1) An order may provide for—
- (a) the division of any business (whether by the sale of any part of the undertaking or assets or otherwise);
 - (b) the division of any group of interconnected bodies corporate.
- (2) For the purposes of sub-paragraph (1)(a) all the activities carried on by way of business by any one person or by any two or more interconnected bodies corporate may be treated as a single business.
- (3) An order made by virtue of this paragraph may contain such provision as the relevant authority considers appropriate to effect or take account of the division, including, in particular, provision as to—
- (a) the transfer or creation of property, rights, liabilities or obligations;
 - (b) the number of persons to whom the property, rights, liabilities or obligations are to be transferred or in whom they are to be vested;
 - (c) the time within which the property, rights, liabilities or obligations are to be transferred or vested;
 - (d) the adjustment of contracts (whether by discharge or reduction of any liability or obligation or otherwise);
 - (e) the creation, allotment, surrender or cancellation of any shares, stock or securities;

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- (f) the formation or winding up of any company or other body of persons corporate or unincorporate;
 - (g) the amendment of the memorandum and articles or other instruments regulating any such company or other body of persons;
 - (h) the extent to which, and the circumstances in which, provisions of the order affecting a company or other body of persons corporate or unincorporate in its share capital, constitution or other matters may be altered by the company or other body of persons concerned;
 - (i) the registration of the order under any enactment by a company or other body of persons corporate or unincorporate which is affected by it as mentioned in paragraph (h);
 - (j) the continuation, with any necessary change of parties, of any legal proceedings;
 - (k) the approval by the relevant authority or another person of anything required by virtue of the order to be done or of any person to whom anything is to be transferred, or in whom anything is to be vested, by virtue of the order; or
 - (l) the appointment of trustees or other persons to do anything on behalf of another person which is required of that person by virtue of the order or to monitor the doing by that person of any such thing.
- 14 The references in paragraph 13 to the division of a business as mentioned in subparagraph (1)(a) of that paragraph shall, in the case of an order under section 75, 83, 84, 160 or 161, or an order under paragraph 5, 10 or 11 of Schedule 7, be construed as including references to the separation, by the sale of any part of any undertaking or assets concerned or other means, of enterprises which are under common control (within the meaning of section 26) otherwise than by reason of their being enterprises of interconnected bodies corporate.

Supply and publication of information

- 15 (1) An order may require a person supplying goods or services to publish a list of prices or otherwise notify prices.
- (2) An order made by virtue of this paragraph may also require or prohibit the publication or other notification of further information.
- 16 An order may prohibit any person from notifying (whether by publication or otherwise) to persons supplying goods or services prices recommended or suggested as appropriate to be charged by those persons for those goods or services.
- 17 (1) An order may require a person supplying goods or services to publish—
- (a) accounting information in relation to the supply of the goods or services;
 - (b) information in relation to the quantities of goods or services supplied;
 - (c) information in relation to the geographical areas in which they are supplied.
- (2) In subparagraph (1) “accounting information”, in relation to a supply of goods or services, means information as to—
- (a) the costs of the supply, including fixed costs and overheads;
 - (b) the manner in which fixed costs and overheads are calculated and apportioned for accounting purposes of the supplier; and
 - (c) the income attributable to the supply.

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- 18 An order made by virtue of paragraph 15 or 17 may provide for the manner in which information is to be published or otherwise notified.
- 19 An order may—
- (a) require any person to supply information to the relevant authority;
 - (b) where the OFT is not the relevant authority, require any person to supply information to the OFT;
 - (c) provide for the publication, by the person who has received information by virtue of paragraph (a) or (b), of that information.

National security

- 20 (1) An order may make such provision as the person making the order considers to be appropriate in the interests of national security (within the meaning of section 58(1)).
- (2) Such provision may, in particular, include provision requiring a person to do, or not to do, particular things.

VALID FROM 29/12/2003

Newspaper mergers

- [^{F1}20A(1) This paragraph applies in relation to any order—
- (a) which is to be made following the giving of—
 - (i) an intervention notice which mentions a newspaper public interest consideration;
 - (ii) an intervention notice which mentions any other media public interest consideration in relation to a relevant merger situation in which one of the enterprises ceasing to be distinct is a newspaper enterprise;
 - (iii) a special intervention notice which mentions a consideration specified in section 58(2A) or (2B); or
 - (iv) a special intervention notice which, in relation to a special merger situation in which one of the enterprises ceasing to be distinct is a newspaper enterprise, mentions a consideration specified in section 58(2C); and
 - (b) to which the consideration concerned is still relevant.
- (2) The order may make such provision as the person making the order considers to be appropriate in all circumstances of the case.
- (3) Such provision may, in particular, include provision requiring a person to do, or not to do, particular things.
- (4) Provision made by virtue of this paragraph may, in particular, include provision—
- (a) altering the constitution of a body corporate (whether in connection with the appointment of directors, the establishment of an editorial board or otherwise);
 - (b) requiring the agreement of the relevant authority or another person before the taking of particular action (including the appointment or dismissal of an editor, journalists or directors or acting as a shadow director);
 - (c) attaching conditions to the operation of a newspaper;

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(d) prohibiting consultation or co-operation between subsidiaries.

(5) In this paragraph “newspaper public interest consideration” means a media public interest consideration other than one which is such a consideration—

(a) by virtue of section 58(2C); or

(b) by virtue of having been, in the opinion of the Secretary of State, concerned with broadcasting and a consideration that ought to have been specified in section 58.

(6) This paragraph is without prejudice to the operation of the other paragraphs of this Schedule in relation to the order concerned.]

Textual Amendments

F1 Sch. 8 para. 20A inserted (29.12.2003) by **Communications Act 2003 (c. 21), ss. 387, 411(2)(3)** (with transitional provisions in Sch. 18); S.I. 2003/3142, **art. 3(1)**, Sch. (subject to arts. 3(3), 11)

Supplementary

- 21 (1) An order, as well as making provision in relation to all cases to which it may extend, may make provision in relation to—
- (a) those cases subject to specified exceptions; or
 - (b) any particular case or class of case.
- (2) An order may, in relation to the cases in relation to which it applies, make the full provision which may be made by it or any less provision (whether by way of exception or otherwise).
- (3) An order may make provision for matters to be determined under the order.
- (4) An order may—
- (a) make different provision for different cases or classes of case or different purposes;
 - (b) make such transitional, transitory or saving provision as the person making it considers appropriate.
- 22 (1) An order which may prohibit the doing of anything (or the refraining from doing anything) may in particular by virtue of paragraph 21(2) prohibit the doing of that thing (or the refraining from doing of it) except to such extent and in such circumstances as may be provided by or under the order.
- (2) Any such order may, in particular, prohibit the doing of that thing (or the refraining from doing of it)—
- (a) without the agreement of the relevant authority or another person; or
 - (b) by or in relation to a person who has not been approved by the relevant authority or another person.

Interpretation

- 23 References in this Schedule to the notification of prices or other information are not limited to the notification in writing of prices or other information.
- 24 In this Schedule “the relevant authority” means—

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- (a) in the case of an order to be made by the OFT, the OFT;
- (b) in the case of an order to be made by the Commission, the Commission; and
- (c) in the case of an order to be made by the Secretary of State, the Secretary of State.

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