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Changes to legislation: There are currently no known outstanding effects for the Digital Markets, Competition and Consumers Act 2024, Schedule 8. (See end of Document for details)

SCHEDULES

PROSPECTIVE

SCHEDULE 8

Section 137

ACCEPTANCE OF UNDERTAKINGS AT ANY STAGE OF A MARKET STUDY OR INVESTIGATION

- 1 Part 4 of EA 2002 (market studies and market investigations) is amended as follows.

Commencement Information

- I1** Sch. 8 para. 1 not in force at Royal Assent, see [s. 339\(1\)](#)

- 2 (1) Section 131B (market studies and the making of decisions to refer: time-limits) is amended as follows.
- (2) In subsection (4), in paragraph (b), after “proposes to take” insert “, or has taken,”.
- (3) In subsection (5), in paragraph (a), for “section 154 instead of” substitute “[section 154A](#) instead of, or in addition to,”.

Commencement Information

- I2** Sch. 8 para. 2 not in force at Royal Assent, see [s. 339\(1\)](#)

- 3 (1) Section 133A (functions to be exercised by CMA groups) is amended as follows.
- (2) In subsection (1), after paragraph (b) insert—
- “(ba) [section 154A](#), so far as relating to undertakings in lieu of a report;”.
- (3) In subsection (2), before paragraph (a) insert—
- “(za) [section 154A](#), so far as relating to undertakings in lieu of a report;”.

Commencement Information

- I3** Sch. 8 para. 3 not in force at Royal Assent, see [s. 339\(1\)](#)

- 4 In section 136 (investigations and reports on market investigation references), in subsection (2), after paragraph (a) insert—
- “(aa) any decision of the CMA under [section 154A](#) to accept an undertaking partially in lieu of a report;”.

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Commencement Information

I4 Sch. 8 para. 4 not in force at Royal Assent, see [s. 339\(1\)](#)

- 5 (1) Section 139 (public interest intervention by the Secretary of State) is amended as follows.
- (2) In subsection (1A), in paragraph (a), for “under section 154” substitute “fully in lieu of a reference under [section 154A](#)”.
- (3) In subsection (1B), in paragraph (a), for “under section 154” substitute “fully in lieu of a reference under [section 154A](#)”.
- (4) In subsection (2), in paragraph (a), in sub-paragraph (i), for “undertaking under section 154 instead of making a reference under section 131” substitute “undertaking in lieu of a reference under [section 154A](#)”.
- (5) In subsection (4C), for “154” substitute “154A”.

Commencement Information

I5 Sch. 8 para. 5 not in force at Royal Assent, see [s. 339\(1\)](#)

- 6 (1) Section 140 (intervention notices under section 139(1)) is amended as follows.
- (2) In subsection (5), in paragraph (za), for “under section 154” to the end substitute “fully in lieu of a reference under [section 154A](#)”.
- (3) In subsection (6A), for “154” substitute “154A”.

Commencement Information

I6 Sch. 8 para. 6 not in force at Royal Assent, see [s. 339\(1\)](#)

- 7 In section 150 (power of veto of Secretary of State), in subsection (A1) for “under section 154” substitute “in lieu of a reference under [section 154A](#)”.

Commencement Information

I7 Sch. 8 para. 7 not in force at Royal Assent, see [s. 339\(1\)](#)

- 8 For section 154 (and the italic heading immediately before it) substitute—

“Undertakings in lieu

154A Undertakings fully or partially in lieu of references or reports

- (1) This section applies where—
- (a) no market study notice has been published under section 130A but the CMA considers that it has the power to make a market investigation reference under section 131 and (subject to taking action under this section) intends to make such a reference,

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- (b) a market study notice has been published under section 130A but no market investigation reference has been made under section 131, or
 - (c) a market investigation reference has been made under section 131 or 132 but no report under section 136 has been published.
- (2) The CMA may accept, from such persons as it considers appropriate, undertakings to take such action as it considers appropriate for the purposes of remedying, mitigating or preventing (to any extent)—
 - (a) any adverse effect on competition concerned, or
 - (b) any detrimental effect on customers so far as—
 - (i) it has resulted from the adverse effect on competition, or
 - (ii) it may be expected to result from the adverse effect on competition.
- (3) An undertaking under this section is known as—
 - (a) an “undertaking in lieu of a reference” where it is accepted in circumstances where this section applies by virtue of [subsection \(1\)\(a\)](#) or [\(b\)](#);
 - (b) an “undertaking in lieu of a report” where it is accepted in circumstances where this section applies by virtue of [subsection \(1\)\(c\)](#).
- (4) The CMA may accept—
 - (a) undertakings in lieu of a reference either—
 - (i) instead of making a reference under section 131 (in which case the undertakings are known as “undertakings fully in lieu of a reference”), or
 - (ii) in addition to making a reference under that section (in which case the undertakings are known as “undertakings partially in lieu of a reference”);
 - (b) undertakings in lieu of a report either—
 - (i) instead of publishing a report under section 136 (in which case the undertakings are known as “undertakings fully in lieu of a report”), or
 - (ii) in addition to publishing a report under that section (in which case the undertakings are known as “undertakings partially in lieu of a report”).
- (5) In accepting undertakings fully in lieu of a reference or undertakings fully in lieu of a report, the CMA must, in particular, have regard to the need to achieve as comprehensive a solution as is reasonable and practicable to—
 - (a) the adverse effect on competition concerned, and
 - (b) any detrimental effects on customers so far as resulting from the adverse effect on competition.
- (6) In accepting an undertaking under this section, the CMA may, in particular, have regard to the effect of any action on any relevant customer benefits of the feature or features of the market or markets concerned.
- (7) Where no detrimental effect on customers has yet resulted from an adverse effect on competition, the CMA may not accept an undertaking under this

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section to remedy, mitigate or prevent a detrimental effect on customers so far as it may be expected to result from that adverse effect on competition unless the adverse effect on competition is also being remedied, mitigated or prevented (whether or not by the same undertaking).

- (8) An undertaking under this section—
- (a) comes into force when accepted;
 - (b) may be varied or superseded by another undertaking;
 - (c) may be released by the CMA.
- (9) The CMA must, as soon as reasonably practicable, consider any representations received by it in relation to varying or releasing an undertaking under this section.
- (10) This section is subject to sections 150 and 155.”

Commencement Information

I8 Sch. 8 para. 8 not in force at Royal Assent, see [s. 339\(1\)](#)

- 9 (1) Section 155 (undertakings in lieu: procedural requirements) is amended as follows.
- (2) In subsection (1), for “154” substitute “154A”.
- (3) For subsection (3) substitute—
- “(3A) The matters to be included in a notice under subsection (1) by virtue of subsection (2) include, in particular, the adverse effect on competition, and any detrimental effect on customers so far as resulting from the adverse effect on competition, which the CMA has identified.”
- (4) In subsection (10), for “154” substitute “154A”.

Commencement Information

I9 Sch. 8 para. 9 not in force at Royal Assent, see [s. 339\(1\)](#)

- 10 (1) Section 156 (effect of undertakings under section 154) is amended as follows.
- (2) In the heading, for “under section 154” substitute “in lieu”;
- (3) In subsection (A1)—
- (a) in paragraph (a), for “154” substitute “154A”;
 - (b) in paragraph (b)—
 - (i) for “the” in the first place it occurs substitute “any”;
 - (ii) for “the same as the” substitute “a”.
- (4) In subsection (1)—
- (a) in paragraph (a), for “under section 154” substitute “in lieu of a reference under [section 154A](#)”;
 - (b) omit the “and” after paragraph (a);
 - (c) after paragraph (a) insert—

“(ab) any feature or combination of features to which the undertaking or group of undertakings relates is a feature or

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combination of features to which the reference would relate;
and”.

(5) In subsection (3), in the words before paragraph (a), for “154” substitute “154A”.

(6) After subsection (3) insert—

“(4) Where the CMA has, under [section 154A](#), accepted an undertaking, or group of undertakings, in lieu of a report the CMA is not required by virtue of section 134 to make the decisions referred to in subsections (1) and (1A) of that section in relation to a feature, or features, to which the undertaking, or group of undertakings, relate.

(5) Accordingly, a report under section 136 is not required, and the duty under section 138 does not arise, if the CMA accepts an undertaking fully in lieu of a report.

(6) Instead, where the CMA accepts an undertaking fully in lieu of a report the CMA must prepare and publish a report containing—

- (a) the CMA’s decision to accept the undertaking,
- (b) the reasons for the decision, and
- (c) such information as the CMA considers appropriate for facilitating a proper understanding of the decision and its reasons for the decision.

(7) For provision equivalent to [subsection \(6\)](#) in the case where the CMA accepts an undertaking partially in lieu of a report, see section 136(2)(aa).”

Commencement Information

I10 Sch. 8 para. 10 not in force at Royal Assent, see [s. 339\(1\)](#)

11 After section 156 insert—

“Interim undertakings and orders”.

Commencement Information

I11 Sch. 8 para. 11 not in force at Royal Assent, see [s. 339\(1\)](#)

12 After section 158 insert—

“Final undertakings and orders”.

Commencement Information

I12 Sch. 8 para. 12 not in force at Royal Assent, see [s. 339\(1\)](#)

13 (1) Section 162 (duty of CMA to monitor the carrying out of undertakings and orders: Part 4) is amended as follows.

(2) In subsection (4), in paragraphs (a) and (b), for “154” substitute “154A”.

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- (3) In subsection (8), in the definition of “enforcement undertaking”, for “154” substitute “154A”.

Commencement Information

I13 Sch. 8 para. 13 not in force at Royal Assent, see [s. 339\(1\)](#)

- 14 In section 169(6) (certain duties of relevant authorities to consult: Part 4), in paragraph (a)(ia) of the definition of “relevant decision”, for “under section 154” to the end substitute “in lieu of a reference under [section 154A](#)”.

Commencement Information

I14 Sch. 8 para. 14 not in force at Royal Assent, see [s. 339\(1\)](#)

- 15 (1) Section 174C (section 174B: supplementary provision) is amended as follows.
- (2) In subsection (3), in paragraph (b), for “under section 154 instead of making such a reference” substitute “fully in lieu of a reference under [section 154A](#)”.
- (3) In subsection (5), for “154” substitute “154A”.

Commencement Information

I15 Sch. 8 para. 15 not in force at Royal Assent, see [s. 339\(1\)](#)

- 16 In section 183 (interpretation: Part 4), in subsection (3), in paragraph (a)—
- (a) omit the “or” at the end of sub-paragraph (iii);
- (b) after that sub-paragraph insert—
- “(iiia) the CMA has accepted an undertaking fully in lieu of a report under [section 154A](#); or”.

Commencement Information

I16 Sch. 8 para. 16 not in force at Royal Assent, see [s. 339\(1\)](#)

- 17 In Schedule 4 to the Enterprise and Regulatory Reform Act 2013 (the CMA), in Part 2 (the CMA Board), in paragraph 29 (delegation), in sub-paragraph (2)(e), for “under section 154” substitute “in lieu of a reference under [section 154A](#)”.

Commencement Information

I17 Sch. 8 para. 17 not in force at Royal Assent, see [s. 339\(1\)](#)

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