
STATUTORY INSTRUMENTS

1992 No. 1115

MONOPOLIES AND MERGERS

**The Merger Situation (Medicopharma NV and
AAH Holdings plc) (Interim Provision) Order 1992**

<i>Made</i>	- - - -	<i>7th May 1992</i>
<i>Laid before Parliament</i>		<i>7th May 1992</i>
<i>Coming into force</i>		
<i>Except article 5</i>		<i>7th May 1992</i>
<i>Article 5</i>		<i>14th May 1992</i>

Whereas the Secretary of State, in the circumstances specified in subsection (1) of section 73 of the Fair Trading Act 1973⁽¹⁾, has under consideration the making of an order under that section exercising powers specified in Schedule 8 to that Act for the purpose of remedying or preventing the adverse effects specified in a report of the Monopolies and Mergers Commission entitled “AAH Holdings plc/Medicopharma NV— a report on the merger situation”⁽²⁾;

And whereas, in the opinion of the Secretary of State, the doing of the things specified in articles 3 and 5 of this Order might impede the operation of the order which he has under consideration as aforesaid:

Now, therefore, the Secretary of State, in exercise of the powers conferred on him by section 89(2) and (3)(a) and (b) of the said Act⁽³⁾, and also of the powers conferred on him by sections 74(1)(a) and (b) and 134(2) of the said Act, and with a view to achieving the purpose for which the powers specified in paragraph 14 of Schedule 8 to the said Act are proposed to be exercised by the order which he has under consideration as aforesaid, hereby makes the following Order:

1.—(1) This Order may be cited as the Merger Situation (Medicopharma NV and AAH Holdings plc) (Interim Provision) Order 1992.

(2) The provisions of this Order, other than article 5, shall come into force forthwith.

(3) Article 5 of this Order shall come into force on 14th May 1992.

(1) 1973 c. 41.

(2) Cm. 1950.

(3) Section 89(2) was amended by the Companies Act 1989 (c. 40), section 153 and Schedule 20, paragraph 15(2).

(4) The Merger Reference (Medicopharma NV and AAH Holdings plc) Order 1991⁽⁴⁾ and the Merger Reference (Medicopharma NV and AAH Holdings plc) (Amendment) Order 1991⁽⁵⁾ are hereby revoked.

2. In this Order—

- (a) “AAH” means AAH Holdings plc and any subsidiary of that company;
- (b) “Medicopharma” means Medicopharma NV and any subsidiary of that company;
- (c) “the territory” means the regions of Grampian and Highland;

and for the purposes of subparagraphs (a) and (b) above, “subsidiary” has the same meaning as in section 736 of the Companies Act 1985⁽⁶⁾.

3.—(1) Subject to paragraph (2) below, AAH shall not solicit custom from any person to whom Medicopharma had regularly in the territory supplied goods in the ordinary course of trade during a period all or part of which fell on or after 3rd May 1991, or from any body corporate which is a member of a group of interconnected bodies corporate another member of which is such a person.

(2) Paragraph (1) above shall not apply where—

- (a) goods had been supplied as specified therein both by Medicopharma and by another person, and
- (b) the custom being, or to be, solicited is the custom enjoyed or formerly enjoyed by that other person.

4. AAH shall, except to the extent that it is unable to do so by reason of anything done before 11.00am on 22nd November 1991, maintain all assets acquired by it before 23rd November 1991 which were at any time on or after 3rd November 1991 previously the property of Medicopharma and which were at the time of the acquisition situated in the territory, other than assets acquired with a view to resale in the ordinary course of trade, in such a way that they suffer no unavoidable diminution in value and that they would be capable of disposal separately from any other assets of AAH to a person not associated with it within the meaning of section 77(4) of the Fair Trading Act 1973.

5.—(1) AAH shall not supply goods to any person or body corporate mentioned in article 3(1) above upon terms which are more favourable to the acquirer than terms upon which AAH, in the ordinary course of business, most commonly supplies in Scotland identical goods to other persons in similar circumstances.

(2) For the purposes of this article—

- (a) terms are more favourable if in any respect they are more favourable to the acquirer of the goods in question than the terms with which they are being compared, and
- (b) circumstances are similar if there is no reason for contractual terms to differ other than the desire of AAH to secure or retain the custom of the acquirer for whom they are more favourable.

(4) S.I.1991/2648, amended by S.I. 1991/2702.

(5) S.I. 1991/2702.

(6) 1985 c. 6, as substituted by section 144(1) of the Companies Act 1989 (c. 40).

7th May 1992

N. Hamilton
Parliamentary Under Secretary of State,
Department of Trade and Industry

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order—

- (a) prohibits AAH Holdings plc and its subsidiaries from soliciting custom from former customers in Grampian and Highland regions of Medicopharma NV or its subsidiaries, except where both Medicopharma (or a subsidiary) and another person had supplied the customer and the custom being solicited is that enjoyed by that other person;
- (b) requires them to maintain the value of the assets of Medicopharma or its subsidiaries in Grampian and Highland which they have already acquired and to keep them separate so that they can be disposed of; and
- (c) prohibits them from supplying goods to the former customers mentioned in (a) above upon terms more favourable than the terms upon which they supply goods to other customers in Scotland.

The Order is made with a view to achieving the purpose of an order which the Secretary of State has under consideration for remedying or preventing the adverse effects specified in the report of the Monopolies and Mergers Commission entitled “AAH Holdings plc/Medicopharma NV— a report on the merger situation” (Cm. 1950, obtainable from Her Majesty’s Stationery Office).

The Merger Reference (Medicopharma NV and AAH Holdings plc) Order 1991 and the Merger Reference (Medicopharma NV and AAH Holdings plc) (Amendment) Order 1991 are revoked. The effect of those Orders, limited to Grampian and Highland, is reproduced in articles 3 and 4 of this Order.