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STATUTORY INSTRUMENTS

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**2020 No. 1343**

**The Competition (Amendment etc.) (EU Exit) Regulations 2020**

**PART 7**

Amendment of Part 7 of the 2019 Regulations: saving and transitional provision

**CHAPTER 1**

Competition Act 1998

**Amendment of Part 2 of Schedule 4: Exemptions from the Chapter 1 prohibition**

**35.**—(1) Part 2 of Schedule 4 to the 2019 Regulations is amended as follows.

(2) In paragraphs 2 and 3, for each reference to “exit day” substitute “IP completion day”.

**Amendment of Part 3 of Schedule 4: CMA investigations under Part 1 of the 1998 Act**

**36.**—(1) Part 3 of Schedule 4 to the 2019 Regulations is amended as follows.

(2) In paragraphs 5 and 6, for each reference to “exit day” substitute “IP completion day”.

(3) In paragraph 7—

(a) in sub-paragraphs (1) and (2), for each reference to “exit day” substitute “IP completion day”;

(b) in sub-paragraph (3)(b), before “with” insert “except in relation to cases in which the European Commission has continued competence after IP completion day in accordance with Article 92 of the EU withdrawal agreement,”;

(c) in sub-paragraph (4)(a), for “exit day” substitute “IP completion day”;

(d) in sub-paragraphs (4)(b)(i) to (iv)—

(i) for each reference to “sub-paragraph” substitute “paragraph”;

(ii) for “exit day”, substitute “IP completion day” in each place it appears;

(e) in sub-paragraph (6), for “paragraphs 2 to 9 and 11 to 15” substitute “paragraphs 2 to 9 and 12 to 15”;

(f) after sub-paragraph (6) insert—

“(6A) The Communications Act 2003 applies without the modifications made by paragraph 11 of Schedule 1 to these Regulations, except for the modifications made by sub-paragraphs (3) to (7) of that paragraph.”.

(4) After paragraph 7, insert—

**“Appropriate level of a penalty**

**7A.**—(1) This paragraph applies where—

- (a) before IP completion day, a penalty or a fine has been imposed by the European Commission, or a court or other body in another Member State, in respect of an agreement or conduct; or
  - (b) on or after IP completion day, a penalty or fine has been imposed by the European Commission in respect of an agreement or conduct in relation to which it has continued competence in accordance with Article 92 of the EU withdrawal agreement.
- (2) The CMA, the Tribunal or the appropriate court must take that penalty or fine into account when setting the amount of penalty under Part 1 of the 1998 Act in relation to that agreement or conduct.
- (3) In sub-paragraph (2), “the appropriate court” means—
- (a) in relation to England and Wales, the Court of Appeal;
  - (b) in relation to Scotland, the Court of Session;
  - (c) in relation to Northern Ireland, the Court of Appeal in Northern Ireland;
  - (d) the Supreme Court.”.
- (5) For the heading before paragraph 8, substitute “Cases subject to relevant separation agreement law”.
- (6) For paragraph 8, substitute—
- “8.—(1) In this paragraph and paragraphs 8A and 8B—
- “Regulation 1/2003” means Council Regulation (EC) No 1/2003 of 16th December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty as it has effect from time to time for the purposes of relevant separation agreement law; and
- “relevant decision” means—
- a decision adopted by the European Commission pursuant to article 7(1) of Regulation 1/2003; or
- a decision adopted by the European Commission pursuant to article 9(1) of Regulation 1/2003.
- (2) This paragraph applies where before IP completion day—
- (a) under article 11(6) of Regulation 1/2003, the CMA was relieved of competence to apply one or both of articles 101 (in relation to an agreement) or 102 (in relation to conduct), by the European Commission initiating proceedings in relation to that agreement or conduct;
  - (b) the European Commission had made a relevant decision; and
  - (c) the relevant decision has not been annulled in full or in part by the European Court insofar as it related to—
    - (i) the finding of an infringement or making of any directions in a decision adopted pursuant to article 7(1) of Regulation 1/2003; or
    - (ii) commitments accepted under a decision adopted pursuant to article 9(1) of Regulation 1/2003.
- (3) On and after IP completion day the CMA must not—
- (a) accept a commitment under section 31A of the 1998 Act in relation to the agreement or conduct to which the relevant decision relates;

- (b) give a direction under section 32 of the 1998 Act in relation to the agreement to which the relevant decision relates; or
- (c) give a direction under section 33 of the 1998 Act in relation to the conduct to which the relevant decision relates;

which conflicts with any remedial directions given or commitments made binding by the relevant decision.

**8A.**—(1) This paragraph applies where on and after IP completion day the European Commission has continued competence in relation to an investigation into an agreement, decision, concerted practice or abuse of a dominant position under Regulation 1/2003 in accordance with article 92 of the EU withdrawal agreement.

(2) While the Commission’s investigation is ongoing, the CMA must not open or re-open any investigation by virtue of section 25(2), (4) or (6) of the 1998 Act into the competition concerns with which the Commission’s investigation is concerned.

(3) Nothing in sub-paragraph (2) prevents the CMA from opening an investigation by virtue of section 25(2), (4) or (6) into competition concerns relating to an agreement, decision, concerted practice or abuse of a dominant position insofar as those concerns relate to the effects arising from the agreement, decision, concerted practice or abuse of a dominant position on and after IP completion day.

**8B.**—(1) This paragraph applies where on and after IP completion day the European Commission has continued competence in relation to an investigation under regulation 1/2003 in accordance with article 92 of the EU withdrawal agreement and—

- (a) the European Commission has made a relevant decision;
- (b) the relevant decision has not been annulled in full or in part by the European Court insofar as it related to—
  - (i) the finding of an infringement or making of any directions in a decision adopted pursuant to article 7(1) of Regulation 1/2003; or
  - (ii) commitments accepted under a decision adopted pursuant to article 9(1) of Regulation 1/2003.

(2) On and after IP completion day the CMA must not—

- (a) accept a commitment under section 31A of the 1998 Act in relation to the agreement or conduct to which the relevant decision relates;
- (b) give a direction under section 32 of the 1998 Act in relation to the agreement to which the relevant decision relates; or
- (c) give a direction under section 33 of the 1998 Act in relation to the conduct to which the relevant decision relates;

which conflicts with any directions given or commitments made binding by the relevant decision.”.

#### **Amendment of Part 4 of Schedule 4: Inspections and investigations under Parts 2 and 2A of the 1998 Act**

**37.**—(1) Part 4 of Schedule 4 to the 2019 Regulations is amended as follows.

(2) Before paragraph 9, insert—

“**8C.**—(1) This paragraph applies where, on or after IP completion day, the European Commission has ordered an Article 20 inspection, an Article 21 inspection, or an Article

22(2) inspection (as defined in section 61 of the 1998 Act) in relation to a case in which it has continued competence in accordance with Article 92 of the EU withdrawal agreement.

(2) Despite its repeal by these Regulations, Part 2 of the 1998 Act continues to have effect on and after IP completion day.

(3) Part 4 of the 1998 Act has effect—

- (a) as if, in subsection 72(1)(1), after “sections 42 to 44” there were inserted “or 65”;
- (b) without the modifications made by regulations 26(3) and (4) of these Regulations;
- (c) as if section 73(8)(b)(2) read “that may be conferred by a warrant under section 28, 28A, 62, 62A or 63”;
- (d) without the modification made by regulation 27 of these Regulations.

(4) The Schedule to the Competition Act 1998 (Competition and Markets Authority’s Rules) Order 2014(3) has effect—

(a) as if, in rule 2, paragraph (1) read—

“These Regulations apply when the CMA takes investigation or enforcement action under the Act in relation to the Chapter I prohibition or the Chapter II prohibition, or investigation action under Part 2 of the Act in relation to the prohibition in Article 101(1) or Article 102”;

(b) without the modifications made by paragraph 4(4) of Schedule 2 to these Regulations.”.

(3) In paragraph 9—

- (a) for “On and after exit day” substitute “On and after IP completion day”;
- (b) at the start of sub-paragraph (a), insert “except in relation to cases in which the European Commission has continued competence in accordance with Article 92 of the EU withdrawal agreement,”.

(4) In paragraph 10, for “exit day” substitute “IP completion day, except where the warrant relates to a case in which the European Commission has continued competence in accordance with article 92 of the EU withdrawal agreement”.

(5) In paragraphs 11 and 12, for each reference to “exit day” substitute “IP completion day”.

#### **Amendment of Part 5 of Schedule 4: Redress schemes further to European Commission decisions**

**38.**—(1) Part 5 of Schedule 4 to the 2019 Regulations is amended as follows.

(2) In paragraph 13—

(a) for sub-paragraph (1), substitute—

“(1) This paragraph applies where—

- (a) before IP completion day, the European Commission has made a decision that the prohibition in Article 101(1) or Article 102 has been infringed; or
- (b) the European Commission has made a decision that the prohibition in Article 101(1) or Article 102 has been infringed after IP completion day in a case in which it had continued competence in accordance with article 92 of the EU withdrawal agreement.”;

(b) in sub-paragraph (2), for “exit day” substitute “IP completion day”.

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(1) Section 72(1) was amended by [S.I. 2004/1261](#).

(2) Section 73(8) was amended by [S.I. 2004/1261](#).

(3) [S.I. 2014/458](#).

## **Amendment of Part 6: Court and tribunal proceedings relating to competition**

**39.**—(1) Part 6 of Schedule 4 to the 2019 Regulations is amended as follows.

(2) At the start of Part 6, after the Part heading insert—

### **“Interpretation**

**13A.** In this Part of this Schedule—

“domestic competition infringement” means an infringement or alleged infringement of the Chapter I prohibition or the Chapter II prohibition (in each case as defined in section 59 of the 1998 Act);

“EU competition infringement” means an infringement or alleged infringement of—

- (a) the prohibition in Article 101(1) of the Treaty on the Functioning of the European Union,
- (b) the prohibition in Article 102 of that Treaty,
- (c) the prohibition in Article 53 of the European Economic Area Agreement, or
- (d) the prohibition in Article 54 of that Agreement.”.

(3) In the heading before paragraph 14, for “pre-exit day” substitute “pre-IP completion day”.

(4) In paragraph 14—

- (a) omit sub-paragraph (1);
- (b) for each reference to “exit day” substitute “IP completion day”.

(5) In paragraph 15—

- (a) the existing text becomes sub-paragraph (1) of that paragraph;
- (b) after sub-paragraph (1) insert—

“(2) Sub-paragraph (1) continues to apply if the claim (or defence to a claim) includes a claim (or defence to a claim) in respect of loss or damage arising from a domestic competition infringement that occurred before IP completion day including if that domestic competition infringement continues on or after IP completion day.”.

(6) In paragraph 16, for each reference to “exit day” substitute “IP completion day”.

(7) In the heading before paragraph 17, for “pre-exit day” substitute “pre-IP completion day”.

(8) In paragraph 17—

- (a) omit sub-paragraph (1);
- (b) for sub-paragraph (2) substitute—

“(2) This paragraph applies to a claim (or defence to a claim)—

- (a) which is in respect of loss or damage arising from a domestic competition infringement that occurred before IP completion day including if that infringement continues on or after IP completion day;
- (b) which is not included in a claim (or defence to a claim) described in paragraph 14(2).”;

(c) after sub-paragraph (2) insert—

“(3) On and after IP completion day, in relation to proceedings before a court or tribunal relating to a claim (or defence to a claim) to which this paragraph applies, the enactments mentioned in paragraphs 7(3) to (8) have effect as described there.”.

**Insertion of Part 6A: Concentrations subject to EU controls in accordance with the EU withdrawal agreement**

- 40.**—(1) Schedule 4 to the 2019 Regulations is amended as follows.  
(2) After paragraph 17, insert—

**“PART 6A**

**Concentrations subject to EU Controls in  
accordance with the EU withdrawal agreement**

**17A.**—(1) On and after IP completion day, to the extent to which an agreement (either on its own or when taken together with another agreement) gives rise to, or would if carried out give rise to, a concentration, the prohibition in section 2 of the 1998 Act does not apply to the agreement if the European Commission has exclusive jurisdiction in the matter in accordance with Article 92 of the EU withdrawal agreement.

(2) On and after IP completion day, to the extent to which conduct (either on its own or when taken together with other conduct) gives rise to, or would if pursued give rise to, a concentration, the prohibition in section 18 of the 1998 Act does not apply to the conduct if the European Commission has exclusive jurisdiction in the matter in accordance with Article 92 of the EU withdrawal agreement.

(3) In this paragraph, “concentration” means a concentration with a Community dimension within the meaning of Articles 1 and 3 of Council Regulation (EC) No 139/2004 of 20th January 2004.”.