
STATUTORY INSTRUMENTS

2020 No. 368

The Competition Act 1998 (Health Services for Patients in England) (Coronavirus) (Public Policy Exclusion) Order 2020

Exclusion from the Chapter I prohibition

4.—(1) The prohibition contained in Chapter I of the Competition Act 1998 does not apply to an agreement⁽¹⁾ which—

- (a) is between—
 - (i) the Board and one or more independent providers or an association of independent providers;
 - (ii) one or more NHS bodies (other than the Board) and one or more independent providers; or
 - (iii) two or more independent providers;
- (b) relates to a qualifying activity;
- (c) is notified to the Secretary of State in accordance with article 6(1); and
- (d) meets the conditions set out in paragraph (2).

(2) The conditions referred to in paragraph (1)(d) are that—

- (a) the purpose of the agreement is to assist the NHS in addressing the effects or likely effects of coronavirus on the provision of health services to patients in England; and
- (b) the agreement does not have as its object or effect the prevention, restriction or distortion of competition within the United Kingdom, except in relation to qualifying activities in a market for the provision of health services to patients in England that is affected by coronavirus.

(3) The prohibition contained in Chapter I of the Competition Act 1998 is to be deemed never to have applied in relation to an agreement of the kind referred to in paragraph (1) which was made during the period beginning on 1st March 2020 and ending on the day before the day on which this Order comes into force.

(1) Under section 59 of the Competition Act 1998 (interpretation) references in Part 1 of that Act to “agreement” are to be read with section 2(5) and (6) of the Act which provide that, unless the context otherwise requires, a provision of Part 1 of the Act which is expressed to apply to, or in relation to, an agreement is to be read as applying equally to, or in relation to, a decision by an association of undertakings or a concerted practice (but with any necessary modifications).