

2020 No. 369

COMPETITION

The Competition Act 1998 (Groceries) (Coronavirus) (Public Policy Exclusion) Order 2020

Made - - - - at 1.00 p.m. on 27th March 2020

Laid before Parliament at 2.30 p.m. on 27th March 2020

Coming into force in accordance with article 1

The Secretary of State, in exercise of the powers conferred by section 71(3) of and paragraph 7(1), (2) and (3) of Schedule 3 to the Competition Act 1998^(a), makes the following Order.

The Secretary of State is satisfied that there are exceptional and compelling reasons of public policy why the prohibition contained in Chapter I of the Competition Act 1998 ought not to apply to, or ought to be deemed never to have applied in relation to, agreements of the descriptions specified in this Order.

Citation and commencement

1. This Order may be cited as the Competition Act 1998 (Groceries) (Coronavirus) (Public Policy Exclusion) Order 2020 and comes into force on the day after the day on which it is laid before Parliament.

Interpretation

2. In this Order—

“consumer” means an individual who is, or seeks to be, supplied with groceries by a retailer;

“coronavirus” means severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2);

“critical worker” means a worker in any part of the United Kingdom in a critical sector listed in the document titled “Guidance for schools, childcare providers, colleges, local authorities in England on maintaining educational provision” published by the Cabinet Office and the Department for Education on 19th March 2020^(b);

“groceries-chain supplier” means a retailer or a supplier;

“groceries” means food (other than that sold for consumption in a store), pharmaceuticals (other than prescription-only medicines), pet food, drinks (alcoholic and non-alcoholic, other than that sold for consumption in a store), cleaning products, toiletries and household goods, but excludes petrol, clothing, DIY products, financial services, newspapers, magazines, greeting cards, CDs, DVDs, videos and audio tapes, toys, plants, flowers, perfumes,

(a) 1998 c. 41.

(b) <https://www.gov.uk/government/publications/coronavirus-covid-19-maintaining-educational-provision/guidance-for-schools-colleges-and-local-authorities-on-maintaining-educational-provision>.

cosmetics, electrical appliances, kitchen hardware, gardening equipment, books, tobacco and tobacco products;

“logistics service provider” means any person carrying on (or actively seeking to carry on) a business providing a service to a groceries-chain supplier in relation to delivery, storage or maintenance;

“qualifying activities” has the meaning given in article 3 for groceries-chain suppliers and has the meaning given in article 4 for logistics service providers;

“prescription-only medicine” means any prescription only medicine within the meaning of regulation 5(3) of the Human Medicines Regulations 2012(a);

“retailer” means any person carrying on (or actively seeking to carry on) a business in any part of the United Kingdom for the supply of groceries to consumers;

“supplier” means any person carrying on (or actively seeking to carry on) a business in the supply of groceries either directly or indirectly to any retailer for resale in any part of the United Kingdom, and includes any such person established anywhere in the world;

“the groceries supply disruption period” means the period commencing on 1st March 2020 and ending on the date specified in the notice published by the Secretary of State in accordance with article 7(1) as the date on which the groceries supply disruption period is to end.

Qualifying activities by groceries-chain suppliers

3.—(1) For the purposes of this Order a qualifying activity by a groceries-chain supplier is any activity specified in paragraph (2) insofar as it—

- (a) is for the purposes referred to in article 5(2)(a); and
- (b) does not involve the sharing between groceries-chain suppliers of any information regarding costs or pricing.

(2) The activities specified in this paragraph are—

- (a) coordination on limiting purchases by consumers of particular groceries during the groceries supply disruption period;
- (b) sharing of labour or facilities or coordination of the deployment of labour from other industries into the groceries-chain supplier workforce during the groceries supply disruption period;
- (c) coordination on the range of groceries to be or being supplied by suppliers or retailers during the groceries supply disruption period, which may include simplifying the supply chain and product specifications;
- (d) sharing information on the day to day stock position and shortages of groceries within any part of the United Kingdom during the groceries supply disruption period;
- (e) sharing information on services provided by logistics service providers during the groceries supply disruption period;
- (f) coordination on assistance for particular groups of consumers, including critical workers, the most clinically vulnerable and socially isolated groups, such as prioritising deliveries or opening stores at specific times to these groups or otherwise providing assistance to them during the groceries supply disruption period;
- (g) coordination as regards the temporary closure of stores or opening hours of stores during the groceries supply disruption period; and
- (h) coordination on supplying groceries to consumers in areas of the United Kingdom that are particularly vulnerable to shortages of groceries during the groceries supply disruption period.

(a) S.I. 2012/1916

Qualifying activities by logistics service providers

4.—(1) For the purposes of this Order a qualifying activity by a logistics service provider is any activity specified in paragraph (2) insofar as it—

- (a) is for the purposes referred to in article 6(2)(a); and
- (b) does not involve the sharing between logistics service providers of any information regarding costs or pricing.

(2) The activities specified in this paragraph are—

- (a) sharing information on labour availability during the groceries supply disruption period;
- (b) sharing of labour or facilities or coordination of the deployment of labour during the groceries supply disruption period;
- (c) sharing information on storage capacity, including ambient, chilled and frozen warehouse capacity for groceries during the groceries supply disruption period;
- (d) sharing information on storage or warehouse services which are intended or available for groceries during the groceries supply disruption period; and
- (e) sharing information on delivery vehicle capacity and the size, type or destination of delivery vehicles during the groceries supply disruption period.

Exclusion from the Chapter I prohibition in relation to groceries-chain suppliers

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

- (a) is between two or more groceries-chain suppliers;
- (b) relates to a qualifying activity listed in article 3;
- (c) is notified to the Secretary of State in accordance with article 8; 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 prevent or mitigate disruption to the supply of groceries to consumers in any part of the United Kingdom caused by a reason relating to coronavirus; 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 set out in article 3 in a market for the provision of groceries to consumers in any part of the United Kingdom affected by a disruption caused by a reason relating to 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 in the period beginning on 1st March 2020 and ending the day before the day on which this Order comes into force.

Exclusion from the Chapter I prohibition in relation to logistics service providers

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

- (a) is between two or more logistics service providers;
- (b) relates to a qualifying activity listed in article 4;
- (c) is notified to the Secretary of State in accordance with article 8(1); and

(a) 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).

(d) meets the conditions set out in paragraph (2).

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

- (a) the purpose of the agreement is to prevent or mitigate disruption to the supply of groceries to consumers in any part of the United Kingdom caused by a reason relating to coronavirus; 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 set out in article 4 in a market for the provision of groceries to consumers in any part of the United Kingdom affected by a disruption caused by a reason relating to coronavirus.

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

End of groceries supply disruption period

7.—(1) If the Secretary of State considers that there is no longer a significant disruption or a threat of significant disruption to the supply of groceries to consumers in the United Kingdom caused by a reason relating to coronavirus, the Secretary of State must publish a notice to that effect specifying the date on which the groceries supply disruption period is to end.

(2) The date specified in the notice given under paragraph (1) must not be less than 28 days after the date on which the notice is published.

(3) A notice under paragraph (1) is to be published in such a manner as the Secretary of State considers appropriate.

Notification to the Secretary of State

8.—(1) An agreement is notified to the Secretary of State in accordance with this paragraph if the following details of the agreement are given to the Secretary of State in writing within 14 days of the relevant date—

- (a) the names of the undertakings which are parties to the agreement;
- (b) a description of the nature of the agreement;
- (c) the date the agreement was made; and
- (d) the groceries to which it relates.

(2) In this article the “relevant date”, in relation to an agreement, means—

- (a) in case of an agreement implemented before the coming into force of this Order, the date this Order comes into force;
- (b) in any other case, the date on which the agreement is made.

Register of agreements

9.—(1) The Secretary of State must compile and maintain a register of agreements notified under this Order.

(2) The register must be kept in such form as the Secretary of State considers appropriate.

(3) The Secretary of State must publish the register when it is first compiled and each time it is revised.

Paul Scully
Parliamentary Under Secretary of State
Department for Business, Energy and Industrial Strategy

At 1.00 p.m. on 27th March 2020

EXPLANATORY NOTE

(This note is not part of the Order)

This Order excludes from the Chapter I prohibition in the Competition Act 1998 agreements between groceries chain suppliers and agreements between logistic service providers, intended to address the effects or likely effects of coronavirus on the supply of groceries to consumers in the United Kingdom. The Chapter I prohibition precludes agreements between undertakings, decisions by associations of undertakings or concerted practices which may affect trade within the United Kingdom and which have as their object or effect the prevention, restriction or distortion of competition within the United Kingdom. Where there are exceptional and compelling reasons of public policy for doing so, the Secretary of State may exclude an agreement or an agreement of a particular description from the Chapter I prohibition.

Article 3 of the Order specifies the activities to which an agreement between groceries-chain suppliers must relate in order to qualify for an exclusion, and article 5 sets out other requirements which such an agreement must meet in order to qualify for exclusion.

Article 4 of the Order specifies the activities to which an agreement between logistics service providers must relate in order to qualify for an exclusion, and article 6 sets out other requirements which such an agreement must meet in order to qualify for exclusion.

Article 7 requires the Secretary of State to publish a notice if the Secretary of State considers that there is no longer a significant disruption or a threat of significant disruption to the supply of groceries to consumers in the United Kingdom as a result of coronavirus. The notice must specify the date on which the period during which the exclusions under this Order apply, is to end.

Articles 8 and 9 provide for agreements to be notified to the Secretary of State and for a register of the agreements to be compiled and published by the Secretary of State.

No impact assessment has been prepared for this Order.

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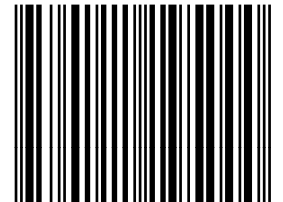
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