

NB. This version of the Competition Act 1998, incorporating amendments made by the *Competition Act 1998 and other enactments (Amendment) Regulations 2004*, has been prepared for illustrative purposes only in order to aid Parliamentary consideration of the Regulations. It has no formal status and should not be relied upon for any other purpose.

Competition Act 1998 (incorporating proposed amendments)

An Act to make provision about competition and the abuse of a dominant position in the market; to confer powers in relation to investigations conducted in connection with Article 81 or 82 of the treaty establishing the European Community; to amend the Fair Trading Act 1973 in relation to information which may be required in connection with investigations under that Act; to make provision with respect to the meaning of “supply of services” in the Fair Trading Act 1973; and for connected purposes.

[9th November 1998]

PART I COMPETITION

CHAPTER I AGREEMENTS

Introduction

1 Enactments replaced

The following shall cease to have effect—

- (a) the Restrictive Practices Court Act 1976 (c 33),
- (b) the Restrictive Trade Practices Act 1976 (c 34),
- (c) the Resale Prices Act 1976 (c 53), and
- (d) the Restrictive Trade Practices Act 1977 (c 19).

The prohibition

2 Agreements etc preventing, restricting or distorting competition

(1) Subject to section 3, agreements between undertakings, decisions by associations of undertakings or concerted practices which—

- (a) may affect trade within the United Kingdom, and
- (b) have as their object or effect the prevention, restriction or distortion of competition within the United Kingdom

are prohibited unless they are exempt in accordance with the provisions of this Part.

(2) Subsection (1) applies, in particular, to agreements, decisions or practices which—

- (a) directly or indirectly fix purchase or selling prices or any other trading conditions;
- (b) limit or control production, markets, technical development or investment;
- (c) share markets or sources of supply;
- (d) apply dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;
- (e) make the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

(3) Subsection (1) applies only if the agreement, decision or practice is, or is intended to be, implemented in the United Kingdom.

(4) Any agreement or decision which is prohibited by subsection (1) is void.

(5) A provision of this Part 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).

(6) Subsection (5) does not apply where the context otherwise requires.

(7) In this section “the United Kingdom” means, in relation to an agreement which operates or is intended to operate only in a part of the United Kingdom, that part.

(8) The prohibition imposed by subsection (1) is referred to in this Act as “the Chapter I prohibition”.

Excluded agreements

3 Excluded agreements

(1) The Chapter I prohibition does not apply in any of the cases in which it is excluded by or as a result of—

- (a) Schedule 1 (mergers and concentrations);
- (b) Schedule 2 (competition scrutiny under other enactments);
- (c) Schedule 3 (planning obligations and other general exclusions).

(2) The Secretary of State may at any time by order amend Schedule 1, with respect to the Chapter I prohibition, by—

- (a) providing for one or more additional exclusions; or
- (b) amending or removing any provision (whether or not it has been added by an order under this subsection).

(3) The Secretary of State may at any time by order amend Schedule 3, with respect to the Chapter I prohibition, by—

- (a) providing for one or more additional exclusions; or
- (b) amending or removing any provision—
 - (i) added by an order under this subsection; or
 - (ii) included in paragraph 1, 2, 8 or 9 of Schedule 3.

(4) The power under subsection (3) to provide for an additional exclusion may be exercised only if it appears to the Secretary of State that agreements which fall within the additional exclusion—

- (a) do not in general have an adverse effect on competition, or
- (b) are, in general, best considered under Chapter II or the Enterprise Act 2002.

(5) An order under subsection (2)(a) or (3)(a) may include provision (similar to that made with respect to any other exclusion provided by the relevant Schedule) for the exclusion concerned to cease to apply to a particular agreement.

(6) Schedule 3 also gives the Secretary of State power to exclude agreements from the Chapter I prohibition in certain circumstances.

Exemptions

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6 Block exemptions

(1) If agreements which fall within a particular category of agreement are, in the opinion of the OFT, likely to be exempt agreements, the OFT may recommend that the Secretary of State make an order specifying that category for the purposes of this section.

(2) The Secretary of State may make an order (“a block exemption order”) giving effect to such a recommendation—

- (a) in the form in which the recommendation is made; or
- (b) subject to such modifications as he considers appropriate.

(3) An agreement which falls within a category specified in a block exemption order is exempt from the Chapter I prohibition.

(4) An exemption under this section is referred to in this Part as a block exemption.

(5) A block exemption order may impose conditions or obligations subject to which a block exemption is to have effect.

(6) A block exemption order may provide—

- (a) that breach of a condition imposed by the order has the effect of cancelling the block exemption in respect of an agreement;
- (b) that if there is a failure to comply with an obligation imposed by the order, the OFT may, by notice in writing, cancel the block exemption in respect of the agreement;
- (c) that if the OFT considers that a particular agreement is not an exempt agreement, it may cancel the block exemption in respect of that agreement.

(7) A block exemption order may provide that the order is to cease to have effect at the end of a specified period.

(8) In this section—
“exempt agreement” means an agreement which is exempt from the Chapter I prohibition as a result of section 9; and
“specified” means specified in a block exemption order.

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8 Block exemptions: procedure

- (1) Before making a recommendation under section 6(1), the OFT must—
- (a) publish details of its proposed recommendation in such a way as it thinks most suitable for bringing it to the attention of those likely to be affected; and
 - (b) consider any representations about it which are made to it.

(2) If the Secretary of State proposes to give effect to such a recommendation subject to modifications, he must inform the OFT of the proposed modifications and take into account any comments made by the OFT.

(3) If, in the opinion of the OFT, it is appropriate to vary or revoke a block exemption order it may make a recommendation to that effect to the Secretary of State.

(4) Subsection (1) also applies to any proposed recommendation under subsection (3).

(5) Before exercising his power to vary or revoke a block exemption order (in a case where there has been no recommendation under subsection (3)), the Secretary of State must—

- (a) inform the OFT of the proposed variation or revocation; and
- (b) take into account any comments made by the OFT.

(6) A block exemption order may provide for a block exemption to have effect from a date earlier than that on which the order is made.

9 Exempt agreements

- (1) An agreement is exempt from the Chapter I prohibition if it—
 - (a) contributes to—
 - (i) improving production or distribution, or
 - (ii) promoting technical or economic progress,while allowing consumers a fair share of the resulting benefit; and
 - (b) does not—
 - (i) impose on the undertakings concerned restrictions which are not indispensable to the attainment of those objectives; or
 - (ii) afford the undertakings concerned the possibility of eliminating competition in respect of a substantial part of the products in question.

(2) In any proceedings in which it is alleged that the Chapter I prohibition is being or has been infringed by an agreement, any undertaking or association of undertakings claiming the benefit of subsection (1) shall bear the burden of proving that the conditions of that subsection are satisfied.

10 Parallel exemptions

- (1) An agreement is exempt from the Chapter I prohibition if it is exempt from the Community prohibition—
 - (a) by virtue of a Regulation, or
 - (b) because of a decision of the Commission under Article 10 of the EC Competition Regulation.

(2) An agreement is exempt from the Chapter I prohibition if it does not affect trade between Member States but otherwise falls within a category of agreement which is exempt from the Community prohibition by virtue of a Regulation.

(3) An exemption from the Chapter I prohibition under this section is referred to in this Part as a parallel exemption.

- (4) A parallel exemption—
 - (a) takes effect on the date on which the relevant exemption from the Community prohibition takes effect or, in the case of a parallel exemption under subsection (2), would take effect if the agreement in question affected trade between Member States; and
 - (b) ceases to have effect—
 - (i) if the relevant exemption from the Community prohibition ceases to have effect; or
 - (ii) on being cancelled by virtue of subsection (5) or (7).

(5) In such circumstances and manner as may be specified in rules made under section 51, the OFT may—

- (a) impose conditions or obligations subject to which a parallel exemption is to have effect;
- (b) vary or remove any such condition or obligation;
- (c) impose one or more additional conditions or obligations;

(d) cancel the exemption.

(6) In such circumstances as may be specified in rules made under section 51, the date from which cancellation of an exemption is to take effect may be earlier than the date on which notice of cancellation is given.

(7) Breach of a condition imposed by the OFT has the effect of cancelling the exemption.

(8) In exercising its powers under this section, the OFT may require any person who is a party to the agreement in question to give it such information as it may require.

(9) For the purpose of this section references to an agreement being exempt from the Community prohibition are to be read as including references to the prohibition being inapplicable to the agreement by virtue of a Regulation other than the EC Competition Regulation or a decision by the Commission.

(10) In this section—
“the Community prohibition” means the prohibition contained in—

(a) Article 81(1);

(b) any corresponding provision replacing, or otherwise derived from, that provision;

(c) such other Regulation as the Secretary of State may by order specify; and
“Regulation” means a Regulation adopted by the Commission or by the Council.

(11) This section has effect in relation to the prohibition contained in paragraph 1 of Article 53 of the EEA Agreement (and the EFTA Surveillance Authority) as it has effect in relation to the Community prohibition (and the Commission) subject to any modifications which the Secretary of State may by order prescribe.

11 Exemption for certain other agreements

(1) The fact that a ruling may be given by virtue of Article 84 of the Treaty on the question whether or not agreements of a particular kind are prohibited by Article 81(1) does not prevent such agreements from being subject to the Chapter I prohibition.

(2) But the Secretary of State may by regulations make such provision as he considers appropriate for the purpose of granting an exemption from the Chapter I prohibition, in prescribed circumstances, in respect of such agreements.

(3) An exemption from the Chapter I prohibition by virtue of regulations under this section is referred to in this Part as a section 11 exemption.

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CHAPTER II ABUSE OF DOMINANT POSITION

Introduction

17 Enactments replaced

Sections 2 to 10 of the Competition Act 1980 (control of anti-competitive practices) shall cease to have effect.

The prohibition

18 Abuse of dominant position

(1) Subject to section 19, any conduct on the part of one or more undertakings which amounts to the abuse of a dominant position in a market is prohibited if it may affect trade within the United Kingdom.

- (2) Conduct may, in particular, constitute such an abuse if it consists in—
- (a) directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions;
 - (b) limiting production, markets or technical development to the prejudice of consumers;
 - (c) applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;
 - (d) making the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of the contracts.

(3) In this section—
“dominant position” means a dominant position within the United Kingdom; and
“the United Kingdom” means the United Kingdom or any part of it.

(4) The prohibition imposed by subsection (1) is referred to in this Act as “the Chapter II prohibition”.

Excluded cases

19 Excluded cases

(1) The Chapter II prohibition does not apply in any of the cases in which it is excluded by or as a result of—

- (a) Schedule 1 (mergers and concentrations); or
- (b) Schedule 3 (general exclusions).

(2) The Secretary of State may at any time by order amend Schedule 1, with respect to the Chapter II prohibition, by—

- (a) providing for one or more additional exclusions; or
- (b) amending or removing any provision (whether or not it has been added by an order under this subsection).

(3) The Secretary of State may at any time by order amend paragraph 8 of Schedule 3 with respect to the Chapter II prohibition.

(4) Schedule 3 also gives the Secretary of State power to provide that the Chapter II prohibition is not to apply in certain circumstances.

Notification

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CHAPTER III
INVESTIGATION AND ENFORCEMENT

Investigations

25 Power of OFT to investigate

(1) In any of the following cases, the OFT may conduct an investigation.

(2) The first case is where there are reasonable grounds for suspecting that there is an agreement which—

- (a) may affect trade within the United Kingdom; and
- (b) has as its object or effect the prevention, restriction or distortion of competition within the United Kingdom.

(3) The second case is where there are reasonable grounds for suspecting that there is an agreement—

- (a) which may affect trade between Member States; and
- (b) which has as its object or effect the prevention, restriction or distortion of competition within the Community.

(4) The third case is where there are reasonable grounds for suspecting that the Chapter II prohibition has been infringed.

(5) The fourth case is where there are reasonable grounds for suspecting that the prohibition in Article 82 has been infringed.

(6) The fifth case is where there are reasonable grounds for suspecting that, at some time in the past, there was an agreement which at that time—

- (a) may have affected trade within the United Kingdom; and
- (b) had as its object or effect the prevention, restriction or distortion of competition within the United Kingdom.

(7) The sixth case is where there are reasonable grounds for suspecting that, at some time in the past, there was an agreement which at that time—

- (a) may have affected trade between Member States; and
- (b) had as its object or effect the prevention, restriction or distortion of competition within the Community.

(8) Subsection (2) does not permit an investigation to be conducted in relation to an agreement if the OFT—

- (a) considers that the agreement is exempt from the Chapter I prohibition as a result of a block exemption or a parallel exemption; and
- (b) does not have reasonable grounds for suspecting that the circumstances may be such that it could exercise its power to cancel the exemption.

(9) Subsection (3) does not permit an investigation to be conducted if the OFT—

- (a) considers that the agreement is an agreement to which the prohibition in Article 81(1) is inapplicable by virtue of a regulation of the Commission (“the relevant regulation”); and
- (b) does not have reasonable grounds for suspecting that the conditions set out in Article 29(2) of the EC Competition Regulation for the withdrawal of the benefit of the relevant regulation may be satisfied in respect of that agreement.

(10) Subsection (6) does not permit an investigation to be conducted in relation to any agreement if the OFT considers that, at the time in question, the agreement was

exempt from the Chapter I prohibition as a result of a block exemption or a parallel exemption.

(11) Subsection (7) does not permit an investigation to be conducted in relation to any agreement if the OFT considers that, at the time in question, the agreement was an agreement to which the prohibition in Article 81(1) was inapplicable by virtue of a regulation of the Commission.

(12) It is immaterial for the purposes of subsection (6) or (7) whether the agreement in question remains in existence.

26 Powers when conducting investigations

(1) For the purposes of an investigation, the OFT may require any person to produce to it a specified document, or to provide it with specified information, which it considers relates to any matter relevant to the investigation.

(2) The power conferred by subsection (1) is to be exercised by a notice in writing.

- (3) A notice under subsection (2) must indicate—
- (a) the subject matter and purpose of the investigation; and
 - (b) the nature of the offences created by sections 42 to 44.

- (4) In subsection (1) “specified” means—
- (a) specified, or described, in the notice; or
 - (b) falling within a category which is specified, or described, in the notice.

- (5) The OFT may also specify in the notice—
- (a) the time and place at which any document is to be produced or any information is to be provided;
 - (b) the manner and form in which it is to be produced or provided.

(6) The power under this section to require a person to produce a document includes power—

- (a) if the document is produced—
 - (i) to take copies of it or extracts from it;
 - (ii) to require him, or any person who is a present or past officer of his, or is or was at any time employed by him, to provide an explanation of the document;
- (b) if the document is not produced, to require him to state, to the best of his knowledge and belief, where it is.

27 Power to enter business premises without a warrant

(1) Any officer of the OFT who is authorised in writing by the OFT to do so (“an investigating officer”) may enter any business premises in connection with an investigation.

(2) No investigating officer is to enter any premises in the exercise of his powers under this section unless he has given to the occupier of the premises a written notice which—

- (a) gives at least two working days' notice of the intended entry;
- (b) indicates the subject matter and purpose of the investigation; and
- (c) indicates the nature of the offences created by sections 42 to 44.

(3) Subsection (2) does not apply—

- (a) if the OFT has a reasonable suspicion that the premises are, or have been, occupied by—
 - (i) a party to an agreement which it is investigating under section 25; or
 - (ii) an undertaking the conduct of which it is investigating under section 25; or
- (b) if the investigating officer has taken all such steps as are reasonably practicable to give notice but has not been able to do so.

(4) In a case falling within subsection (3), the power of entry conferred by subsection (1) is to be exercised by the investigating officer on production of—

- (a) evidence of his authorisation; and
- (b) a document containing the information referred to in subsection (2)(b) and (c).

(5) An investigating officer entering any premises under this section may—

- (a) take with him such equipment as appears to him to be necessary;
- (b) require any person on the premises—
 - (i) to produce any document which he considers relates to any matter relevant to the investigation; and
 - (ii) if the document is produced, to provide an explanation of it;
- (c) require any person to state, to the best of his knowledge and belief, where any such document is to be found;
- (d) take copies of, or extracts from, any document which is produced;
- (e) require any information which is stored in any electronic form and is accessible from the premises and which the investigating officer considers relates to any matter relevant to the investigation, to be produced in a form—
 - (i) in which it can be taken away, and
 - (ii) in which it is visible and legible or from which it can readily be produced in a visible and legible form.
- (f) take any steps which appear to be necessary for the purpose of preserving or preventing interference with any document which he considers relates to any matter relevant to the investigation.

(6) In this section—

“business premises” means premises (or any part of premises) not used as a dwelling.

28 Power to enter business premises under a warrant

(1) On an application made by the OFT to the court in accordance with rules of court, a judge may issue a warrant if he is satisfied that—

- (a) there are reasonable grounds for suspecting that there are on any business premises documents—
 - (i) the production of which has been required under section 26 or 27; and
 - (ii) which have not been produced as required;
- (b) there are reasonable grounds for suspecting that—
 - (i) there are on any business premises documents which the OFT has power under section 26 to require to be produced; and
 - (ii) if the documents were required to be produced, they would not be produced but would be concealed, removed, tampered with or destroyed; or
- (c) an investigating officer has attempted to enter premises in the exercise of his powers under section 27 but has been unable to do so and that there are reasonable grounds for suspecting that there are on the premises documents the production of which could have been required under that section.

(2) A warrant under this section shall authorise a named officer of the OFT, and any other of the OFT's officers whom the OFT has authorised in writing to accompany the named officer—

- (a) to enter the premises specified in the warrant, using such force as is reasonably necessary for the purpose;
- (b) to search the premises and take copies of, or extracts from, any document appearing to be of a kind in respect of which the application under subsection (1) was granted (“the relevant kind”);
- (c) to take possession of any documents appearing to be of the relevant kind if—
 - (i) such action appears to be necessary for preserving the documents or preventing interference with them; or
 - (ii) it is not reasonably practicable to take copies of the documents on the premises;
- (d) to take any other steps which appear to be necessary for the purpose mentioned in paragraph (c) (i);
- (e) to require any person to provide an explanation of any document appearing to be of the relevant kind or to state, to the best of his knowledge and belief, where it may be found;
- (f) to require any information which is stored in any electronic form and is accessible from the premises and which the named officer considers relates to any matter relevant to the investigation, to be produced in a form—
 - (i) in which it can be taken away, and
 - (ii) in which it is visible and legible or from which it can readily be produced in a visible and legible form.

(3) If, in the case of a warrant under subsection (1)(b), the judge is satisfied that it is reasonable to suspect that there are also on the premises other documents relating to the investigation concerned, the warrant shall also authorise action mentioned in subsection (2) to be taken in relation to any such document.

(3A) A warrant under this section may authorise persons specified in the warrant to accompany the named officer who is executing it.

(4) Any person entering premises by virtue of a warrant under this section may take with him such equipment as appears to him to be necessary.

(5) On leaving any premises which he has entered by virtue of a warrant under this section, the named officer must, if the premises are unoccupied or the occupier is temporarily absent, leave them as effectively secured as he found them.

(6) A warrant under this section continues in force until the end of the period of one month beginning with the day on which it is issued.

(7) Any document of which possession is taken under subsection (2)(c) may be retained for a period of three months.

(8) In this section “business premises” has the same meaning as in section 27.

28A Power to enter domestic premises under a warrant

(1) On an application made by the OFT to the court in accordance with rules of court, a judge may issue a warrant if he is satisfied that—

- (a) there are reasonable grounds for suspecting that there are on any domestic premises documents—
 - (i) the production of which has been required under section 26; and
 - (ii) which have not been produced as required; or
- (b) there are reasonable grounds for suspecting that—
 - (i) there are on any domestic premises documents which the OFT has power under section 26 to require to be produced; and
 - (ii) if the documents were required to be produced, they would not be produced but would be concealed, removed, tampered with or destroyed.

(2) A warrant under this section shall authorise a named officer of the OFT, and any other of its officers whom the OFT has authorised in writing to accompany the named officer—

- (a) to enter the premises specified in the warrant, using such force as is reasonably necessary for the purpose;
- (b) to search the premises and take copies of, or extracts from, any document appearing to be of a kind in respect of which the application under subsection (1) was granted (“the relevant kind”);
- (c) to take possession of any documents appearing to be of the relevant kind if—
 - (i) such action appears to be necessary for preserving the documents or preventing interference with them; or
 - (ii) it is not reasonably practicable to take copies of the documents on the premises;
- (d) to take any other steps which appear to be necessary for the purpose mentioned in paragraph (c)(i);

- (e) to require any person to provide an explanation of any document appearing to be of the relevant kind or to state, to the best of his knowledge and belief, where it may be found;
- (f) to require any information which is stored in any electronic form and is accessible from the premises and which the named officer considers relates to any matter relevant to the investigation, to be produced in a form—
 - (i) in which it can be taken away, and
 - (ii) in which it is visible and legible or from which it can readily be produced in a visible and legible form.

(3) If, in the case of a warrant under subsection (1)(b), the judge is satisfied that it is reasonable to suspect that there are also on the premises other documents relating to the investigation concerned, the warrant shall also authorise action mentioned in subsection (2) to be taken in relation to any such document.

(4) A warrant under this section may authorise persons specified in the warrant to accompany the named officer who is executing it.

(5) Any person entering premises by virtue of a warrant under this section may take with him such equipment as appears to him to be necessary.

(6) On leaving any premises which he has entered by virtue of a warrant under this section, the named officer must, if the premises are unoccupied or the occupier is temporarily absent, leave them as effectively secured as he found them.

(7) A warrant under this section continues in force until the end of the period of one month beginning with the day on which it is issued.

(8) Any document of which possession is taken under subsection (2)(c) may be retained for a period of three months.

(9) In this section, “domestic premises” means premises (or any part of premises) that are used as a dwelling and are—

- (a) premises also used in connection with the affairs of an undertaking or association of undertakings; or
- (b) premises where documents relating to the affairs of an undertaking or association of undertakings are kept.

29 Entry of premises under warrant: supplementary

(1) A warrant issued under section 28 or 28A must indicate—

- (a) the subject matter and purpose of the investigation;
- (b) the nature of the offences created by sections 42 to 44.

(2) The powers conferred by section 28 or 28A are to be exercised on production of a warrant issued under that section.

(3) If there is no one at the premises when the named officer proposes to execute such a warrant he must, before executing it—

- (a) take such steps as are reasonable in all the circumstances to inform the occupier of the intended entry; and
- (b) if the occupier is informed, afford him or his legal or other representative a reasonable opportunity to be present when the warrant is executed.

(4) If the named officer is unable to inform the occupier of the intended entry he must, when executing the warrant, leave a copy of it in a prominent place on the premises.

(5) In this section—
“named officer” means the officer named in the warrant; and
“occupier”, in relation to any premises, means a person whom the named officer reasonably believes is the occupier of those premises.

30 Privileged communications

(1) A person shall not be required, under any provision of this Part, to produce or disclose a privileged communication.

(2) “Privileged communication” means a communication—
(a) between a professional legal adviser and his client, or
(b) made in connection with, or in contemplation of, legal proceedings and for the purposes of those proceedings,
which in proceedings in the High Court would be protected from disclosure on grounds of legal professional privilege.

(3) In the application of this section to Scotland—
(a) references to the High Court are to be read as references to the Court of Session; and
(b) the reference to legal professional privilege is to be read as a reference to confidentiality of communications.

30A Use of statements in prosecution

A statement made by a person in response to a requirement imposed by virtue of any of sections 26 to 28A may not be used in evidence against him on a prosecution for an offence under section 188 of the Enterprise Act 2002 unless, in the proceedings—

- (a) in giving evidence, he makes a statement inconsistent with it, and
- (b) evidence relating to it is adduced, or a question relating to it is asked, by him or on his behalf.

31 Decisions following an investigation

(1) If as a result of an investigation the OFT proposes to make a decision, the OFT must—

- (a) give written notice to the person (or persons) likely to be affected by the proposed decision; and

- (b) give that person (or those persons) an opportunity to make representations.

(2) For the purposes of this section and sections 31A and 31B “decision” means a decision of the OFT—

- (a) that the Chapter I prohibition has been infringed;
- (b) that the Chapter II prohibition has been infringed;
- (c) that the prohibition in Article 81(1) has been infringed; or
- (d) that the prohibition in Article 82 has been infringed.

31A Commitments

(1) Subsection (2) applies in a case where the OFT has begun an investigation under section 25 but has not made a decision (within the meaning given by section 31(2)).

(2) For the purposes of addressing the competition concerns it has identified, the OFT may accept from such person (or persons) concerned as it considers appropriate commitments to take such action (or refrain from taking such action) as it considers appropriate.

(3) At any time when commitments are in force the OFT may accept from the person (or persons) who gave the commitments—

- (a) a variation of them if it is satisfied that the commitments as varied will address its current competition concerns;
- (b) commitments in substitution for them if it is satisfied that the new commitments will address its current competition concerns.

(4) Commitments under this section—

- (a) shall come into force when accepted; and
- (b) may be released by the OFT where—
 - (i) it is requested to do so by the person (or persons) who gave the commitments; or
 - (ii) it has reasonable grounds for believing that the competition concerns referred to in subsection (2) or (3) no longer arise.

(5) The provisions of Schedule 6A to this Act shall have effect with respect to procedural requirements for the acceptance, variation and release of commitments under this section.

31B Effect of commitments under section 31A

(1) Subsection (2) applies if the OFT has accepted commitments under section 31A (and has not released them).

(2) In such a case, the OFT shall not—

- (a) continue the investigation,
- (b) make a decision (within the meaning of section 31(2)), or
- (c) give a direction under section 35,

in relation to the agreement or conduct which was the subject of the investigation (but this subsection is subject to subsections (3) and (4)).

(3) Nothing in subsection (2) prevents the OFT from taking any action in relation to competition concerns which are not addressed by commitments accepted by it.

(4) Subsection (2) also does not prevent the OFT from continuing the investigation, making a decision, or giving a direction where—

- (a) it has reasonable grounds for believing that there has been a material change of circumstances since the commitments were accepted;
- (b) it has reasonable grounds for suspecting that a person has failed to adhere to one or more of the terms of the commitments; or
- (c) it has reasonable grounds for suspecting that information which led it to accept the commitments was incomplete, false or misleading in a material particular.

(5) If, pursuant to subsection (4), the OFT makes a decision or gives a direction the commitments are to be treated as released from the date of that decision or direction.

31C Review of commitments

(1) Where the OFT is reviewing or has reviewed the effectiveness of commitments accepted under section 31A it must, if requested to do so by the Secretary of State, prepare a report of its findings.

(2) The OFT must—

- (a) give any report prepared by it under subsection (1) to the Secretary of State; and
- (b) publish the report.

31D Guidance

(1) The OFT must prepare and publish guidance as to the circumstances in which it may be appropriate to accept commitments under section 31A.

(2) The OFT may at any time alter the guidance.

(3) If the guidance is altered, the OFT must publish it as altered.

(4) No guidance is to be published under this section without the approval of the Secretary of State.

(5) The OFT may, after consulting the Secretary of State, choose how it publishes its guidance.

(6) If the OFT is preparing or altering guidance under this section it must consult such persons as it considers appropriate.

(7) If the proposed guidance or alteration relates to a matter in respect of which a regulator exercises concurrent jurisdiction, those consulted must include that regulator.

(8) When exercising its discretion to accept commitments under section 31A, the OFT must have regard to the guidance for the time being in force under this section.

31E Enforcement of commitments

(1) If a person from whom the OFT has accepted commitments fails without reasonable excuse to adhere to the commitments (and has not been released from them), the OFT may apply to the court for an order—

- (a) requiring the defaulter to make good his default within a time specified in the order; or
- (b) if the commitments relate to anything to be done in the management or administration of an undertaking, requiring the undertaking or any of its officers to do it.

(2) An order of the court under subsection (1) may provide for all the costs of, or incidental to, the application for the order to be borne by—

- (a) the person in default; or
- (b) any officer of an undertaking who is responsible for the default.

(3) In the application of subsection (2) to Scotland, the reference to “costs” is to be read as a reference to “expenses”.

Enforcement

32 Directions in relation to agreements

(1) If the OFT has made a decision that an agreement infringes the Chapter I prohibition or that it infringes the prohibition in Article 81(1), it may give to such person or persons as it considers appropriate such directions as it considers appropriate to bring the infringement to an end.

(2) . . .

(3) A direction under this section may, in particular, include provision—

- (a) requiring the parties to the agreement to modify the agreement; or
- (b) requiring them to terminate the agreement.

(4) A direction under this section must be given in writing.

33 Directions in relation to conduct

(1) If the OFT has made a decision that conduct infringes the Chapter II prohibition or that it infringes the prohibition in Article 82, it may give to such person or persons as it considers appropriate such directions as it considers appropriate to bring the infringement to an end.

(2) . . .

(3) A direction under this section may, in particular, include provision—
(a) requiring the person concerned to modify the conduct in question; or
(b) requiring him to cease that conduct.

(4) A direction under this section must be given in writing.

34 Enforcement of directions

(1) If a person fails, without reasonable excuse, to comply with a direction under section 32 or 33, the OFT may apply to the court for an order—

- (a) requiring the defaulter to make good his default within a time specified in the order; or
- (b) if the direction related to anything to be done in the management or administration of an undertaking, requiring the undertaking or any of its officers to do it.

(2) An order of the court under subsection (1) may provide for all of the costs of, or incidental to, the application for the order to be borne by—

- (a) the person in default; or
- (b) any officer of an undertaking who is responsible for the default.

(3) In the application of subsection (2) to Scotland, the reference to “costs” is to be read as a reference to “expenses”.

35 Interim measures

(1) Subject to subsections (8) and (9), this section applies if the OFT has begun an investigation under section 25 and not completed it (but only applies so long as the OFT has power under section 25 to conduct that investigation).

(2) If the OFT considers that it is necessary for it to act under this section as a matter of urgency for the purpose—

- (a) of preventing serious, irreparable damage to a particular person or category of person, or
- (b) of protecting the public interest,

it may give such directions as it considers appropriate for that purpose.

(3) Before giving a direction under this section, the OFT must—

- (a) give written notice to the person (or persons) to whom it proposes to give the direction; and
- (b) give that person (or each of them) an opportunity to make representations.

(4) A notice under subsection (3) must indicate the nature of the direction which the OFT is proposing to give and its reasons for wishing to give it.

(5) A direction given under this section may if the circumstances permit be replaced by—

- (a) a direction under section 32 or (as appropriate) section 33, or
- (b) commitments accepted under section 31A,

but, subject to that, has effect while this section applies.

(6) In the cases mentioned in section 25(2), (3), (6) and (7), sections 32(3) and 34 also apply to directions given under this section.

(7) In the cases mentioned in section 25(4) and (5), sections 33(3) and 34 also apply to directions given under this section.

(8) In the case of an investigation conducted by virtue of section 25(2) or (6), this section does not apply if a person has produced evidence to the OFT in connection with the investigation that satisfies it on the balance of probabilities that, in the event of it reaching the basic infringement conclusion, it would also reach the conclusion that the suspected agreement is exempt from the Chapter I prohibition as a result of section 9(1); and in this subsection “the basic infringement conclusion” is the conclusion that there is an agreement which—

- (a) may affect trade within the United Kingdom, and
- (b) has as its object or effect the prevention, restriction or distortion of competition within the United Kingdom.

(9) In the case of an investigation conducted by virtue of section 25(3) or (7), this section does not apply if a person has produced evidence to the OFT in connection with the investigation that satisfies it on the balance of probabilities that, in the event of it reaching the basic infringement conclusion, it would also reach the conclusion that the suspected agreement is an agreement to which the prohibition in Article 81(1) is inapplicable because the agreement satisfies the conditions in Article 81(3); and in this subsection “the basic infringement conclusion” is the conclusion that there is an agreement which—

- (a) may affect trade between Member States, and
- (b) has as its object or effect the prevention, restriction or distortion of competition within the Community.

36 Penalties

(1) On making a decision that an agreement has infringed the Chapter I prohibition or that it has infringed the prohibition in Article 81(1), the OFT may require an undertaking which is a party to the agreement to pay the OFT a penalty in respect of the infringement.

(2) On making a decision that conduct has infringed the Chapter II prohibition or that it has infringed the prohibition in Article 82, the OFT may require the undertaking concerned to pay the OFT a penalty in respect of the infringement.

(3) The OFT may impose a penalty on an undertaking under subsection (1) or (2) only if the OFT is satisfied that the infringement has been committed intentionally or negligently by the undertaking.

(4) Subsection (1) is subject to section 39 and does not apply in relation to a decision that an agreement has infringed the Chapter I prohibition if the OFT is satisfied that the undertaking acted on the reasonable assumption that that section gave it immunity in respect of the agreement.

(5) Subsection (2) is subject to section 40 and does not apply in relation to a decision that conduct has infringed the Chapter II prohibition if the OFT is satisfied that the undertaking acted on the reasonable assumption that that section gave it immunity in respect of the conduct.

(6) Notice of a penalty under this section must—

- (a) be in writing; and
- (b) specify the date before which the penalty is required to be paid.

(7) The date specified must not be earlier than the end of the period within which an appeal against the notice may be brought under section 46.

(8) No penalty fixed by the OFT under this section may exceed 10% of the turnover of the undertaking (determined in accordance with such provisions as may be specified in an order made by the Secretary of State).

(9) Any sums received by the OFT under this section are to be paid into the Consolidated Fund.

37 Recovery of penalties

(1) If the specified date in a penalty notice has passed and—

- (a) the period during which an appeal against the imposition, or amount, of the penalty may be made has expired without an appeal having been made, or
- (b) such an appeal has been made and determined,

the OFT may recover from the undertaking, as a civil debt due to the OFT, any amount payable under the penalty notice which remains outstanding.

(2) In this section—

“penalty notice” means a notice given under section 36; and

“specified date” means the date specified in the penalty notice.

38 The appropriate level of a penalty

(1) The OFT must prepare and publish guidance as to the appropriate amount of any penalty under this Part.

(1A) The guidance must include provision about the circumstances in which, in determining a penalty under this Part, the OFT may take into account effects in another Member State of the agreement or conduct concerned.

(2) The OFT may at any time alter the guidance.

(3) If the guidance is altered, the OFT must publish it as altered.

(4) No guidance is to be published under this section without the approval of the Secretary of State.

(5) The OFT may, after consulting the Secretary of State, choose how it publishes its guidance.

(6) If the OFT is preparing or altering guidance under this section it must consult such persons as it considers appropriate.

(7) If the proposed guidance or alteration relates to a matter in respect of which a regulator exercises concurrent jurisdiction, those consulted must include that regulator.

(8) When setting the amount of a penalty under this Part, the OFT must have regard to the guidance for the time being in force under this section.

(9) If a penalty or a fine has been imposed by the Commission, or by a court or other body in another Member State, in respect of an agreement or conduct, the OFT, an appeal tribunal or the appropriate court must take that penalty or fine into account when setting the amount of a penalty under this Part in relation to that agreement or conduct.

(10) In subsection (9) “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 House of Lords.

39 Limited immunity in relation to the Chapter I prohibition

(1) In this section “small agreement” means an agreement—

(a) which falls within a category prescribed for the purposes of this section; but

(b) is not a price fixing agreement.

(2) The criteria by reference to which a category of agreement is prescribed may, in particular, include—

(a) the combined turnover of the parties to the agreement (determined in accordance with prescribed provisions);

(b) the share of the market affected by the agreement (determined in that way).

(3) A party to a small agreement is immune from the effect of section 36(1) so far as that provision relates to decisions about infringement of the Chapter I prohibition; but the OFT may withdraw that immunity under subsection (4).

(4) If the OFT has investigated a small agreement, it may make a decision withdrawing the immunity given by subsection (3) if, as a result of its investigation, it considers that the agreement is likely to infringe the Chapter I prohibition.

(5) The OFT must give each of the parties in respect of which immunity is withdrawn written notice of its decision to withdraw the immunity.

(6) A decision under subsection (4) takes effect on such date (“the withdrawal date”) as may be specified in the decision.

(7) The withdrawal date must be a date after the date on which the decision is made.

(8) In determining the withdrawal date, the OFT must have regard to the amount of time which the parties are likely to require in order to secure that there is no further infringement of the Chapter I prohibition with respect to the agreement.

(9) In subsection (1) “price fixing agreement” means an agreement which has as its object or effect, or one of its objects or effects, restricting the freedom of a party to the agreement to determine the price to be charged (otherwise than as between that party and another party to the agreement) for the product, service or other matter to which the agreement relates.

40 Limited immunity in relation to the Chapter II prohibition

(1) In this section “conduct of minor significance” means conduct which falls within a category prescribed for the purposes of this section.

(2) The criteria by reference to which a category is prescribed may, in particular, include—

- (a) the turnover of the person whose conduct it is (determined in accordance with prescribed provisions);
- (b) the share of the market affected by the conduct (determined in that way).

(3) A person is immune from the effect of section 36(2), so far as that provision relates to decisions about infringement of the Chapter II prohibition, if his conduct is conduct of minor significance; but the OFT may withdraw that immunity under subsection (4).

(4) If the OFT has investigated conduct of minor significance, it may make a decision withdrawing the immunity given by subsection (3) if, as a result of its investigation, it considers that the conduct is likely to infringe the Chapter II prohibition.

(5) The OFT must give the person, or persons, whose immunity has been withdrawn written notice of its decision to withdraw the immunity.

(6) A decision under subsection (4) takes effect on such date (“the withdrawal date”) as may be specified in the decision.

(7) The withdrawal date must be a date after the date on which the decision is made.

(8) In determining the withdrawal date, the OFT must have regard to the amount of time which the person or persons affected are likely to require in order to secure that there is no further infringement of the Chapter II prohibition.

41 ...

Offences

42 Offences

(1) A person is guilty of an offence if he fails to comply with a requirement imposed on him under section 26, 27, 28 or 28A.

(2) If a person is charged with an offence under subsection (1) in respect of a requirement to produce a document, it is a defence for him to prove—

- (a) that the document was not in his possession or under his control; and
- (b) that it was not reasonably practicable for him to comply with the requirement.

(3) If a person is charged with an offence under subsection (1) in respect of a requirement—

- (a) to provide information,
- (b) to provide an explanation of a document, or
- (c) to state where a document is to be found,

it is a defence for him to prove that he had a reasonable excuse for failing to comply with the requirement.

(4) Failure to comply with a requirement imposed under section 26 or 27 is not an offence if the person imposing the requirement has failed to act in accordance with that section.

(5) A person is guilty of an offence if he intentionally obstructs an officer acting in the exercise of his powers under section 27.

(6) A person guilty of an offence under subsection (1) or (5) is liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum;
- (b) on conviction on indictment, to a fine.

- (7) A person who intentionally obstructs an officer in the exercise of his powers under a warrant issued under section 28 or 28A is guilty of an offence and liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum;
 - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.

43 Destroying or falsifying documents

- (1) A person is guilty of an offence if, having been required to produce a document under section 26, 27, 28 or 28A —
- (a) he intentionally or recklessly destroys or otherwise disposes of it, falsifies it or conceals it, or
 - (b) he causes or permits its destruction, disposal, falsification or concealment.
- (2) A person guilty of an offence under subsection (1) is liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum;
 - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.

44 False or misleading information

- (1) If information is provided by a person to the OFT in connection with any function of the OFT under this Part, that person is guilty of an offence if—
- (a) the information is false or misleading in a material particular, and
 - (b) he knows that it is or is reckless as to whether it is.
- (2) A person who—
- (a) provides any information to another person, knowing the information to be false or misleading in a material particular, or
 - (b) recklessly provides any information to another person which is false or misleading in a material particular,
- knowing that the information is to be used for the purpose of providing information to the OFT in connection with any of its functions under this Part, is guilty of an offence.
- (3) A person guilty of an offence under this section is liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum;
 - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.

CHAPTER IV THE COMPETITION COMMISSION AND APPEALS

The Commission

45 The Competition Commission

- (1) There is to be a body corporate known as the Competition Commission.
- (2) The Commission is to have such functions as are conferred on it by or as a result of this Act.
- (3) The Monopolies and Mergers Commission is dissolved and its functions are transferred to the Competition Commission.
- (4) In any enactment, instrument or other document, any reference to the Monopolies and Mergers Commission which has continuing effect is to be read as a reference to the Competition Commission.
- (5) The Secretary of State may by order make such consequential, supplemental and incidental provision as he considers appropriate in connection with—
 - (a) the dissolution of the Monopolies and Mergers Commission; and
 - (b) the transfer of functions effected by subsection (3).
- (6) An order made under subsection (5) may, in particular, include provision—
 - (a) for the transfer of property, rights, obligations and liabilities and the continuation of proceedings, investigations and other matters; or
 - (b) amending any enactment which makes provision with respect to the Monopolies and Mergers Commission or any of its functions.
- (7) Schedules 7 and 7A make further provision about the Competition Commission.
- (8) The Secretary of State may by order make such modifications in Part 2 of Schedule 7 and in Schedule 7A (performance of the Competition Commission's general functions) as he considers appropriate for improving the performance by the Competition Commission of its functions.

Appeals

46 Appealable decisions

- (1) Any party to an agreement in respect of which the OFT has made a decision may appeal to the Tribunal against, or with respect to, the decision.
- (2) Any person in respect of whose conduct the OFT has made a decision may appeal to the Tribunal against, or with respect to, the decision.
- (3) In this section “decision” means a decision of the OFT—
 - (a) as to whether the Chapter I prohibition has been infringed,
 - (b) as to whether the prohibition in Article 81(1) has been infringed,
 - (c) as to whether the Chapter II prohibition has been infringed,
 - (d) as to whether the prohibition in Article 82 has been infringed,
 - (e) cancelling a block or parallel exemption,

- (f) withdrawing the benefit of a regulation of the Commission pursuant to Article 29(2) of the EC Competition Regulation,
 - (g) not releasing commitments pursuant to a request made under section 31A(4)(b)(i),
 - (h) releasing commitments under section 31A(4)(b)(ii),
 - (i) as to the imposition of any penalty under section 36 or as to the amount of any such penalty,
- and includes a direction under section 32, 33 or 35 and such other decisions under this Part as may be prescribed.

(4) Except in the case of an appeal against the imposition, or the amount, of a penalty, the making of an appeal under this section does not suspend the effect of the decision to which the appeal relates.

(5) Part I of Schedule 8 makes further provision about appeals.

47 Third party appeals

(1) A person who does not fall within section 46(1) or (2) may appeal to the Tribunal with respect to—

- (a) a decision falling within paragraphs (a) to (f) of section 46(3);
- (b) a decision falling within paragraph (g) of section 46(3);
- (c) a decision of the OFT to accept or release commitments under section 31A, or to accept a variation of such commitments other than a variation which is not material in any respect;
- (d) a decision of the OFT to make directions under section 35;
- (e) a decision of the OFT not to make directions under section 35; or
- (f) such other decision of the OFT under this Part as may be prescribed.

(2) A person may make an appeal under subsection (1) only if the Tribunal considers that he has a sufficient interest in the decision with respect to which the appeal is made, or that he represents persons who have such an interest.

(3) The making of an appeal under this section does not suspend the effect of the decision to which the appeal relates.

47A Monetary claims before Tribunal

(1) This section applies to—

- (a) any claim for damages, or 3
- (b) any other claim for a sum of money,

which a person who has suffered loss or damage as a result of the infringement of a relevant prohibition may make in civil proceedings brought in any part of the United Kingdom.

(2) In this section “relevant prohibition” means any of the following—

- (a) the Chapter I prohibition;
- (b) the Chapter II prohibition;

- (c) the prohibition in Article 81(1) of the Treaty;
- (d) the prohibition in Article 82 of the Treaty;
- (e) the prohibition in Article 65(1) of the Treaty establishing the European Coal and Steel Community;
- (f) the prohibition in Article 66(7) of that Treaty.

(3) For the purpose of identifying claims which may be made in civil proceedings, any limitation rules that would apply in such proceedings are to be disregarded.

(4) A claim to which this section applies may (subject to the provisions of this Act and Tribunal rules) be made in proceedings brought before the Tribunal.

- (5) But no claim may be made in such proceedings—
- (a) until a decision mentioned in subsection (6) has established that the relevant prohibition in question has been infringed; and
 - (b) otherwise than with the permission of the Tribunal, during any period specified in subsection (7) or (8) which relates to that decision.

(6) The decisions which may be relied on for the purposes of proceedings under this section are—

- (a) a decision of the OFT that the Chapter I prohibition or the Chapter II prohibition has been infringed;
- (b) a decision of the OFT that the prohibition in Article 81(1) or Article 82 of the Treaty has been infringed;
- (c) a decision of the Tribunal (on an appeal from a decision of the OFT) that the Chapter I prohibition, the Chapter II prohibition or the prohibition in Article 81(1) or Article 82 of the Treaty has been infringed;
- (d) a decision of the European Commission that the prohibition in Article 81(1) or Article 82 of the Treaty has been infringed; or
- (e) a decision of the European Commission that the prohibition in Article 65(1) of the Treaty establishing the European Coal and Steel Community has been infringed, or a finding made by the European Commission under Article 66(7) of that Treaty.

(7) The periods during which proceedings in respect of a claim made in reliance on a decision mentioned in subsection (6)(a), (b) or (c) may not be brought without permission are—

- (a) in the case of a decision of the OFT, the period during which an appeal may be made to the Tribunal under section 46, section 47 or the EC Competition Law (Articles 84 and 85) Enforcement Regulations 2001 (SI 2001/2916);
- (b) in the case of a decision of the OFT which is the subject of an appeal mentioned in paragraph (a), the period following the decision of the Tribunal on the appeal during which a further appeal may be made under section 49 or under those Regulations;
- (c) in the case of a decision of the Tribunal mentioned in subsection (6)(c), the period during which a further appeal may be made under section 49 or under those Regulations;
- (d) in the case of any decision which is the subject of a further appeal, the period during which an appeal may be made to the House of Lords from a decision on the further appeal;

and, where any appeal mentioned in paragraph (a), (b), (c) or (d) is made, the period specified in that paragraph includes the period before the appeal is determined.

(8) The periods during which proceedings in respect of a claim made in reliance on a decision or finding of the European Commission may not be brought without permission are—

- (a) the period during which proceedings against the decision or finding may be instituted in the European Court; and
- (b) if any such proceedings are instituted, the period before those proceedings are determined.

(9) In determining a claim to which this section applies the Tribunal is bound by any decision mentioned in subsection (6) which establishes that the prohibition in question has been infringed.

(10) The right to make a claim to which this section applies in proceedings before the Tribunal does not affect the right to bring any other proceedings in respect of the claim.

47B Claims brought on behalf of consumers

(1) A specified body may (subject to the provisions of this Act and Tribunal rules) bring proceedings before the Tribunal which comprise consumer claims made or continued on behalf of at least two individuals.

(2) In this section “consumer claim” means a claim to which section 47A applies which an individual has in respect of an infringement affecting (directly or indirectly) goods or services to which subsection (7) applies.

- (3) A consumer claim may be included in proceedings under this section if it is—
- (a) a claim made in the proceedings on behalf of the individual concerned by the specified body; or
 - (b) a claim made by the individual concerned under section 47A which is continued in the proceedings on his behalf by the specified body;
- and such a claim may only be made or continued in the proceedings with the consent of the individual concerned.

(4) The consumer claims included in proceedings under this section must all relate to the same infringement.

(5) The provisions of section 47A(5) to (10) apply to a consumer claim included in proceedings under this section as they apply to a claim made in proceedings under that section.

(6) Any damages or other sum (not being costs or expenses) awarded in respect of a consumer claim included in proceedings under this section must be awarded to the individual concerned; but the Tribunal may, with the consent of the specified body and the individual, order that the sum awarded must be paid to the specified body (acting on behalf of the individual).

- (7) This subsection applies to goods or services which—
- (a) the individual received, or sought to receive, otherwise than in the course of a business carried on by him (notwithstanding that he received or sought to receive them with a view to carrying on a business); and
 - (b) were, or would have been, supplied to the individual (in the case of goods whether by way of sale or otherwise) in the course of a business carried on by the person who supplied or would have supplied them.
- (8) A business includes—
- (a) a professional practice;
 - (b) any other undertaking carried on for gain or reward;
 - (c) any undertaking in the course of which goods or services are supplied otherwise than free of charge.
- (9) “Specified” means specified in an order made by the Secretary of State, in accordance with criteria to be published by the Secretary of State for the purposes of this section.
- (10) An application by a body to be specified in an order under this section is to be made in a form approved by the Secretary of State for the purpose.

48 ...

49 Further appeals

- (1) An appeal lies to the appropriate court—
- (a) from a decision of the Tribunal as to the amount of a penalty under section 36;
 - (b) from a decision of the Tribunal as to the award of damages or other sum in respect of a claim made in proceedings under section 47A or included in proceedings under section 47B (other than a decision on costs or expenses) or as to the amount of any such damages or other sum; and
 - (c) on a point of law arising from any other decision of the Tribunal on an appeal under section 46 or 47.
- (2) An appeal under this section—
- (a) may be brought by a party to the proceedings before the Tribunal or by a person who has a sufficient interest in the matter; and
 - (b) requires the permission of the Tribunal or the appropriate court.
- (3) In this section “the appropriate court” means the Court of Appeal or, in the case of an appeal from Tribunal proceedings in Scotland, the Court of Session.

CHAPTER V
MISCELLANEOUS

Vertical agreements and land agreements

50 Vertical agreements and land agreements

(1) The Secretary of State may by order provide for any provision of this Part to apply in relation to—

- (a) vertical agreements, or
- (b) land agreements,

with such modifications as may be prescribed.

(2) An order may, in particular, provide for exclusions or exemptions, or otherwise provide for prescribed provisions not to apply, in relation to—

- (a) vertical agreements, or land agreements, in general; or
- (b) vertical agreements, or land agreements, of any prescribed description.

(3) An order may empower the OFT to give directions to the effect that in prescribed circumstances an exclusion, exemption or modification is not to apply (or is to apply in a particular way) in relation to an individual agreement.

(4) Subsections (2) and (3) are not to be read as limiting the powers conferred by section 71.

(5) In this section—
“land agreement” and “vertical agreement” have such meaning as may be prescribed;
and
“prescribed” means prescribed by an order.

OFT's rules, guidance and fees

51 Rules

(1) The OFT may make such rules about procedural and other matters in connection with the carrying into effect of the provisions of this Part as it considers appropriate.

(2) Schedule 9 makes further provision about rules made under this section but is not to be taken as restricting the OFT's powers under this section.

(3) If the OFT is preparing rules under this section it must consult such persons as it considers appropriate.

(4) If the proposed rules relate to a matter in respect of which a regulator exercises concurrent jurisdiction, those consulted must include that regulator.

(5) No rule made by the OFT is to come into operation until it has been approved by an order made by the Secretary of State.

(6) The Secretary of State may approve any rule made by the OFT—

- (a) in the form in which it is submitted; or
- (b) subject to such modifications as he considers appropriate.

(7) If the Secretary of State proposes to approve a rule subject to modifications he must inform the OFT of the proposed modifications and take into account any comments made by the OFT.

(8) Subsections (5) to (7) apply also to any alteration of the rules made by the OFT.

(9) The Secretary of State may, after consulting the OFT, by order vary or revoke any rules made under this section.

(10) If the Secretary of State considers that rules should be made under this section with respect to a particular matter he may direct the OFT to exercise its powers under this section and make rules about that matter.

52 Advice and information

(1) As soon as is reasonably practicable after the passing of this Act, the Director must prepare and publish general advice and information about—

- (a) the application of the Chapter I prohibition and the Chapter II prohibition, and
- (b) the enforcement of those prohibitions.

(1A) As soon as is reasonably practicable after 1st May 2004, the OFT must prepare and publish general advice and information about—

- (a) the application of the prohibitions in Article 81(1) and Article 82; and
- (b) the enforcement by it of those prohibitions.

(2) The OFT may at any time publish revised, or new, advice or information.

(3) Advice and information published under this section must be prepared with a view to—

- (a) explaining provisions of this Part to persons who are likely to be affected by them; and
- (b) indicating how the OFT expects such provisions to operate.

(4) Advice (or information) published by virtue of subsection (3)(b) may include advice (or information) about the factors which the OFT may take into account in considering whether, and if so how, to exercise a power conferred on it by Chapter I, II or III.

(5) Any advice or information published by the OFT under this section is to be published in such form and in such manner as it considers appropriate.

(6) If the OFT is preparing any advice or information under this section it must consult such persons as it considers appropriate.

(7) If the proposed advice or information relates to a matter in respect of which a regulator exercises concurrent jurisdiction, those consulted must include that regulator.

(8) In preparing any advice or information under this section about a matter in respect of which he may exercise functions under this Part, a regulator must consult—

- (a) the OFT;
- (b) the other regulators; and
- (c) such other persons as he considers appropriate.

53 ...

Regulators

54 Regulators

(1) In this Part “regulator” means—

- (a) the Office of Communications;
- (b) the Gas and Electricity Markets Authority;
- (c) the Director General of Electricity Supply for Northern Ireland;
- (d) the Director General of Water Services;
- (e) the Office of Rail Regulation;
- (f) the Director General of Gas for Northern Ireland; and
- (g) the Civil Aviation Authority.

(2) Parts II and III of Schedule 10 provide for functions of the OFT under this Part to be exercisable concurrently by regulators.

(3) Parts IV and V of Schedule 10 make minor and consequential amendments in connection with the regulators’ competition functions.

(4) The Secretary of State may make regulations for the purpose of co-ordinating the performance of functions under this Part (“Part I functions”) which are exercisable concurrently by two or more competent persons as a result of any enactment (including any subordinate legislation) whenever passed or made.

(5) The regulations may, in particular, make provision—

- (a) as to the procedure to be followed by competent persons when determining who is to exercise Part I functions in a particular case;
- (b) as to the steps which must be taken before a competent person exercises, in a particular case, such Part I functions as may be prescribed;
- (c) as to the procedure for determining, in a particular case, questions arising as to which competent person is to exercise Part I functions in respect of the case;
- (d) for Part I functions in a particular case to be exercised jointly—
 - (i) by the OFT and one or more regulators, or
 - (ii) by two or more regulators,and as to the procedure to be followed in such cases;

- (e) as to the circumstances in which the exercise by a competent person of such Part I functions as may be prescribed is to preclude the exercise of such functions by another such person;
- (f) for cases in respect of which Part I functions are being, or have been, exercised by a competent person to be transferred to another such person;
- (g) for the person (“A”) exercising Part I functions in a particular case—
 - (i) to appoint another competent person (“B”) to exercise Part I functions on A’s behalf in relation to the case; or
 - (ii) to appoint officers of B (with B’s consent) to act as officers of A in relation to the case;
- (h) for notification as to who is exercising Part I functions in respect of a particular case.

(6) Provision made by virtue of subsection (5)(c) may provide for questions to be referred to and determined by the Secretary of State or by such other person as may be prescribed.

(7) “Competent person” means the OFT or any of the regulators.

- (8) In this section, “subordinate legislation” has the same meaning as in section 21(1) of the Interpretation Act 1978 (c 30) and includes an instrument made under—
- (a) any Act of the Scottish Parliament;
 - (b) Northern Ireland legislation.

Confidentiality and immunity from defamation

55 ...

56 ...

57 Defamation

For the purposes of the law relating to defamation, absolute privilege attaches to any advice, guidance, notice or direction given, or decision made, by the OFT in the exercise of any of its functions under this Part.

Findings of fact by OFT

58 Findings of fact by OFT

- (1) Unless the court directs otherwise, an OFT’s finding which is relevant to an issue arising in Part I proceedings is binding on the parties if—
- (a) the time for bringing an appeal under section 46 or 47 in respect of the finding has expired and the relevant party has not brought such an appeal; or
 - (b) the decision of the Tribunal on such an appeal has confirmed the finding.

- (2) In this section—
“an OFT’s finding” means a finding of fact made by the OFT in the course of conducting an investigation;
“Part 1 proceedings” means proceedings brought otherwise than by the OFT—
- (a) in respect of an alleged infringement of the Chapter I prohibition or of the Chapter II prohibition; or
 - (b) in respect of an alleged infringement of the prohibitions in Article 81(1) or Article 82;
- “relevant party” means—
- (a) in relation to the Chapter I prohibition or the prohibition in Article 81(1), a party to the agreement which is alleged to have infringed the prohibition; and
 - (b) in relation to the Chapter II prohibition or the prohibition in Article 82, the undertaking whose conduct is alleged to have infringed the prohibition.
- (3) Rules of court may make provision in respect of assistance to be given by the OFT to the court in Part I proceedings.

Findings of infringements

58A Findings of infringements

- (1) This section applies to proceedings before the court in which damages or any other sum of money is claimed in respect of an infringement of—
- (a) the Chapter I prohibition;
 - (b) the Chapter II prohibition;
 - (c) the prohibition in Article 81(1) of the Treaty;
 - (d) the prohibition in Article 82 of the Treaty.
- (2) In such proceedings, the court is bound by a decision mentioned in subsection (3) once any period specified in subsection (4) which relates to the decision has elapsed.
- (3) The decisions are—
- (a) a decision of the OFT that the Chapter I prohibition or the Chapter II prohibition has been infringed;
 - (b) a decision of the OFT that the prohibition in Article 81(1) or Article 82 of the Treaty has been infringed;
 - (c) a decision of the Tribunal (on an appeal from a decision of the OFT) that the Chapter I prohibition or the Chapter II prohibition has been infringed, or that the prohibition in Article 81(1) or Article 82 of the Treaty has been infringed.
- (4) The periods mentioned in subsection (2) are—
- (a) in the case of a decision of the OFT, the period during which an appeal may be made to the Tribunal under section 46 or 47 or the EC Competition Law (Articles 84 and 85) Enforcement Regulations 2001 (SI 2001/2916);

- (b) in the case of a decision of the Tribunal mentioned in subsection (3)(c), the period during which a further appeal may be made under section 49 or under those Regulations;
 - (c) in the case of any decision which is the subject of a further appeal, the period during which an appeal may be made to the House of Lords from a decision on the further appeal;
- and, where any appeal mentioned in paragraph (a), (b) or (c) is made, the period specified in that paragraph includes the period before the appeal is determined.

Interpretation and governing principles

59 Interpretation of Part I

- (1) In this Part—
- “agreement” is to be read with section 2(5) and (6);
 - “Article 81(1)” means Article 81 of the Treaty;
 - “Article 81(3)” means Article 81(3) of the Treaty;
 - “Article 82” means Article 82 of the Treaty;
 - “block exemption” has the meaning given in section 6(4);
 - “block exemption order” has the meaning given in section 6(2);
 - “the Chapter I prohibition” has the meaning given in section 2(8);
 - “the Chapter II prohibition” has the meaning given in section 18(4);
 - “the Commission” (except in relation to the Competition Commission) means the European Commission;
 - “the Council” means the Council of the European Union;
 - “the court”, except in sections 58, 58A and 60 and the expression “European Court”, means—
 - (a) in England and Wales, the High Court;
 - (b) in Scotland, the Court of Session; and
 - (c) in Northern Ireland, the High Court;
 - “document” includes information recorded in any form;
 - “the EEA Agreement” means the Agreement on the European Economic Area signed at Oporto on 2nd May 1992 as it has effect for the time being;
 - “the European Court” means the Court of Justice of the European Communities and includes the Court of First Instance;
 - “the EC Competition Regulation” 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;
 - “information” includes estimates and forecasts;
 - “investigating officer” has the meaning given in section 27(1);
 - “investigation” means an investigation under section 25;
 - “Minister of the Crown” has the same meaning as in the Ministers of the Crown Act 1975;
 - “OFCOM” means the Office of Communications;
 - “officer”, in relation to a body corporate, includes a director, manager or secretary and, in relation to a partnership in Scotland, includes a partner;
 - “the OFT” means the Office of Fair Trading;
 - “parallel exemption” has the meaning given in section 10(3);

“person”, in addition to the meaning given by the Interpretation Act 1978, includes any undertaking;

“premises” includes any land or means of transport;

“prescribed” means prescribed by regulations made by the Secretary of State;

“regulator” has the meaning given by section 54;

“section 11 exemption” has the meaning given in section 11(3); and

“the Treaty” means the treaty establishing the European Community;

“the Tribunal” means the Competition Appeal Tribunal;

“Tribunal rules” means rules under section 15 of the Enterprise Act 2002;

“working day” means a day which is not—

(a) Saturday,

(b) Sunday,

(c) Christmas Day,

(d) Good Friday, or

(e) a day which is a bank holiday under the Banking and Financial Dealings Act 1971 (c.80) in any part of the United Kingdom.

(2) The fact that to a limited extent the Chapter I prohibition does not apply to an agreement, because of an exclusion provided by or under this Part or any other enactment, does not require those provisions of the agreement to which the exclusion relates to be disregarded when considering whether the agreement infringes the prohibition for other reasons.

(3) For the purposes of this Part, the power to require information, in relation to information recorded otherwise than in a legible form, includes power to require a copy of it in a legible form.

(4) Any power conferred on the OFT by this Part to require information includes power to require any document which it believes may contain that information.

60 Principles to be applied in determining questions

(1) The purpose of this section is to ensure that so far as is possible (having regard to any relevant differences between the provisions concerned), questions arising under this Part in relation to competition within the United Kingdom are dealt with in a manner which is consistent with the treatment of corresponding questions arising in Community law in relation to competition within the Community.

(2) At any time when the court determines a question arising under this Part, it must act (so far as is compatible with the provisions of this Part and whether or not it would otherwise be required to do so) with a view to securing that there is no inconsistency between—

(a) the principles applied, and decision reached, by the court in determining that question; and

(b) the principles laid down by the Treaty and the European Court, and any relevant decision of that Court, as applicable at that time in determining any corresponding question arising in Community law.

(3) The court must, in addition, have regard to any relevant decision or statement of the Commission.

(4) Subsections (2) and (3) also apply to—

(a) the OFT; and

(b) any person acting on behalf of the OFT, in connection with any matter arising under this Part.

(5) In subsections (2) and (3), “court” means any court or tribunal.

(6) In subsections (2)(b) and (3), “decision” includes a decision as to—

(a) the interpretation of any provision of Community law;

(b) the civil liability of an undertaking for harm caused by its infringement of Community law.

PART 2 INSPECTIONS UNDER ARTICLES 20, 21 AND 22(2)

61 Interpretation of Part 2

In this Part—

“Article 20 inspection” means an inspection ordered by a decision of the Commission under Article 20(4) of the EC Competition Regulation which is not an Article 22(2) inspection;

“Article 21 inspection” means an inspection ordered by a decision of the Commission under Article 21 of the EC Competition Regulation;

“Article 22(2) inspection” means an inspection requested by the Commission under Article 22(2) of the EC Competition Regulation;

“books and records” includes books and records stored on any medium;

“the Commission” means the European Commission;

“the EC Competition Regulation” 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;

“the OFT” means the Office of Fair Trading;

“premises” includes any land or means of transport;

“the Treaty” means the treaty establishing the European Community.

62 Power to enter business premises under a warrant: Article 20 inspections

(1) A judge of the High Court shall issue a warrant if satisfied, on an application made to the High Court in accordance with rules of court by the OFT, that—

(a) the Commission has ordered an Article 20 inspection;

(b) the Article 20 inspection is being, or is likely to be, obstructed; and

(c) the measures that would be authorised by the warrant are neither arbitrary nor excessive having regard to the subject matter of the Article 20 inspection.

(2) An Article 20 inspection is being obstructed if—

- (a) a Commission official exercising his power in accordance with Article 20(3) of the EC Competition Regulation, has attempted to enter any business premises but has been unable to do so; and
 - (b) there are reasonable grounds for suspecting that there are on any business premises books or records which the Commission official has power to examine.
- (3) An Article 20 inspection is also being obstructed if there are reasonable grounds for suspecting that there are on any business premises books or records—
- (a) the production of which has been required by a Commission official exercising his power in accordance with Article 20(3) of the EC Competition Regulation; and
 - (b) which have not been produced as required.
- (4) An Article 20 inspection is likely to be obstructed if—
- (a) . . .
 - (b) there are reasonable grounds for suspecting that there are on any business premises books or records which a Commission official has power to examine; and
 - (c) there are also reasonable grounds for suspecting that, if the Commission official attempted to exercise his power to examine any of the books or records, they would not be produced but would be concealed, removed, tampered with or destroyed.
- (5) A warrant under this section shall authorise a named officer of the OFT and any other OFT officer, or Commission official, accompanying the named officer—
- (a) to enter any business premises specified in the warrant using such force as is reasonably necessary for the purpose;
 - (b) to search for books and records which a Commission official has power to examine, using such force as is reasonably necessary for the purpose;
 - (c) to take or obtain copies of or extracts from such books and records; and
 - (d) to seal the premises, any part of the premises or any books or records which a Commission official has power to seal, for the period and to the extent necessary for the inspection.
- (5A) A warrant under this section may authorise persons specified in the warrant to accompany the named officer who is executing it.
- (6) Any person entering any premises by virtue of a warrant under this section may take with him such equipment as appears to him to be necessary.
- (7) On leaving any premises entered by virtue of the warrant the named officer must, if the premises are unoccupied or the occupier is temporarily absent, leave them as effectively secured as he found them.
- (8) A warrant under this section continues in force until the end of the period of one month beginning with the day on which it is issued.
- (9) In the application of this section to Scotland, references to the High Court are to be read as references to the Court of Session.

(10) In this section—
“business premises” means any premises of an undertaking or association of undertakings which a Commission official has under Article 20 of the EC Competition Regulation power to enter in the course of the Article 20 inspection;
“Commission official” means any of the persons authorised by the Commission to conduct the Article 20 inspection; and
“OFT officer” means any officer of the OFT whom the OFT has authorised in writing to accompany the named officer.

(11) In subsection (10), the reference in the definition of “business premises” to Article 20 of the EC Competition Regulation does not include a reference to that Article as applied by Article 21 of that Regulation.

62A Power to enter non-business premises under a warrant: Article 21 inspections

(1) A judge of the High Court shall issue a warrant if satisfied, on an application made to the High Court in accordance with the rules of court by the OFT, that—

- (a) the Commission has ordered an Article 21 inspection; and
- (b) the measures that would be authorised by the warrant are neither arbitrary nor excessive having regard in particular to the matters mentioned in subsection (2).

(2) Those matters are—

- (a) the seriousness of the suspected infringement of Article 81(1) or 82 of the Treaty;
- (b) the importance of the evidence sought;
- (c) the involvement of the undertaking or association of undertakings concerned; and
- (d) whether it is reasonably likely that business books and records relating to the subject matter of the Article 21 inspection are kept on the non-business premises that would be specified in the warrant.

(3) A warrant under this section shall authorise a named officer of the OFT and any other OFT officer, or Commission official, accompanying the named officer to enter any non-business premises specified in the warrant.

(4) A warrant under this section may authorise a named officer of the OFT and any other OFT officer, or Commission official, accompanying the named officer to search for books or records which a Commission official has power to examine.

(5) A warrant under this section may authorise a named officer of the OFT and any other OFT officer, or Commission official, accompanying the named officer to take or obtain copies of books or records of which a Commission official has power to take or obtain copies.

(6) A warrant granted under this section may authorise the use, for either or both of the purposes mentioned in subsections (3) and (4), of such force as is reasonably necessary.

(7) A warrant under this section may authorise persons specified in the warrant to accompany the named officer who is executing it.

(8) Any person entering any premises by virtue of a warrant under this section may take with him such equipment as appears to him to be necessary.

(9) On leaving any premises entered by virtue of a warrant the named officer must, if the premises are unoccupied or the occupier is temporarily absent, leave them as effectively secured as he found them.

(10) A warrant under this section continues in force until the end of the period of one month beginning with the day on which it is issued.

(11) In the application of this section to Scotland, references to the High Court are to be read as references to the Court of Session.

(12) In this section—
“non-business premises” means any premises to which a decision of the Commission ordering the Article 21 inspection relates;
“Commission official” means any of the persons authorised by the Commission to conduct the Article 21 inspection; and
“OFT officer” means any officer of the OFT whom the OFT has authorised in writing to accompany the named officer.

62B Powers when conducting an Article 22(2) inspection

(1) For the purposes of an Article 22(2) inspection, an authorised officer of the OFT has the powers specified in Article 20(2) of the EC Competition Regulation.

(2) For the purposes of this section and section 63—
“authorised officer of the OFT” means any officer of the OFT to whom an authorisation has been given; and
“authorisation” means an authorisation given in writing by the OFT for the purposes of the Article 22(2) inspection which—
(i) identifies the officer;
(ii) indicates the subject matter and purpose of the inspection; and
(iii) draws attention to any penalties which a person may incur under the EC Competition Regulation in connection with the inspection.

63 Power to enter business premises under a warrant: Article 22(2) inspections

(1) A judge of the High Court shall issue a warrant if satisfied, on an application made to the High Court in accordance with rules of court by the OFT, that—

- (a) the Commission has requested the OFT to conduct an Article 22(2) inspection which the Commission has ordered by a decision under Article 20(4) of the EC Competition Regulation;
 - (b) the Article 22(2) inspection is being, or is likely to be, obstructed; and
 - (c) the measures that would be authorised by the warrant are neither arbitrary nor excessive having regard to the subject matter of the Article 22(2) inspection.
- (2) An Article 22(2) inspection is being obstructed if—
- (a) an authorised officer of the OFT has attempted to enter any business premises but has been unable to do so;
 - (b) the officer has produced his authorisation to the undertaking, or association of undertakings, concerned; and
 - (c) there are reasonable grounds for suspecting that there are on any business premises books or records which the officer has power to examine.
- (3) An Article 22(2) inspection is also being obstructed if—
- (a) there are reasonable grounds for suspecting that there are on any business premises books or records which an authorised officer of the OFT has power to examine;
 - (b) the officer has produced his authorisation to the undertaking, or association of undertakings, and has required production of the books or records; and
 - (c) the books and records have not been produced as required.
- (4) An Article 22(2) inspection is likely to be obstructed if—
- (a) there are reasonable grounds for suspecting that there are on any business premises books or records which an authorised officer of the OFT has power to examine; and
 - (b) there are also reasonable grounds for suspecting that, if the officer attempted to exercise his power to examine any of the books or records, they would not be produced but would be concealed, removed, tampered with or destroyed.
- (5) A warrant under this section shall authorise a named authorised officer of the OFT and any other authorised officer of the OFT, or Commission official, accompanying the named authorised officer—
- (a) to enter any business premises specified in the warrant using such force as is reasonably necessary for the purpose;
 - (b) to search for books and records which an authorised officer of the OFT has power to examine, using such force as is reasonably necessary for the purpose;
 - (c) to take or obtain copies of or extracts from such books and records; and
 - (d) to seal the premises, any part of the premises or any books or records which an authorised officer of the OFT has power to seal, for the period and to the extent necessary for the inspection.
- (5A) A warrant under this section may authorise persons specified in the warrant to accompany the named authorised officer who is executing it.
- (6) Any person entering any premises by virtue of a warrant under this section may take with him such equipment as appears to him to be necessary.

(7) On leaving any premises which he has entered by virtue of the warrant the named authorised officer must, if the premises are unoccupied or the occupier is temporarily absent, leave them as effectively secured as he found them.

(8) A warrant under this section continues in force until the end of the period of one month beginning with the day on which it is issued.

(9) In the application of this section to Scotland, references to the High Court are to be read as references to the Court of Session.

(10) In this section—
“business premises” means any premises of an undertaking or association of undertakings which an authorised officer of the OFT has power to enter in the course of the Article 22(2) inspection;
“Commission official” means any person authorised by the Commission to assist with the Article 22(2) inspection.

64 Entry of premises under sections 62, 62A and 63: supplementary

(1) A warrant issued under section 62, 62A or 63 must indicate—

- (a) the subject matter and purpose of the inspection;
- (b) the nature of the offence created by section 65.

(2) The powers conferred by section 62, 62A or 63 are to be exercised on production of a warrant issued under that section.

(3) If there is no one at the premises when the named officer proposes to execute such a warrant he must, before executing it—

- (a) take such steps as are reasonable in all the circumstances to inform the occupier of the intended entry; and
- (b) if the occupier is informed, afford him or his legal or other representative a reasonable opportunity to be present when the warrant is executed.

(4) If the named officer is unable to inform the occupier of the intended entry he must, when executing the warrant, leave a copy of it in a prominent place on the premises.

(5) In this section—
“named officer” means—

- (a) for the purposes of a warrant issued under section 62 or 62A, the officer named in the warrant; and
- (b) for the purposes of a warrant issued under section 63, the authorised officer named in the warrant; and

“occupier”, in relation to any premises, means a person whom the named officer reasonably believes is the occupier of those premises.

65 Offences

(1) A person is guilty of an offence if he intentionally obstructs any person in the exercise of his powers under a warrant issued under section 62, 62A or 63.

- (2) A person guilty of an offence under subsection (1) is liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum;
 - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.

65A Privileged communications: Article 22(2) inspections

(1) A person shall not be required, by virtue of any provision of section 62B or 63, to produce or disclose a privileged communication.

- (2) “Privileged communication” means a communication—
- (a) between a professional legal adviser and his client, or
 - (b) made in connection with, or in contemplation of, legal proceedings and for the purposes of those proceedings,

which in proceedings in the High Court would be protected from disclosure on grounds of legal professional privilege.

- (3) In the application of this section to Scotland—
- (a) the reference to the High Court is to be read as a reference to the Court of Session; and
 - (b) the reference to legal professional privilege is to be read as a reference to confidentiality of communications.

65B Use of statements in prosecution: Article 22(2) inspections

A statement made by a person in response to a requirement imposed by virtue of section 62B or 63 may not be used in evidence against him on a prosecution for an offence under section 188 of the Enterprise Act 2002 unless, in the proceedings—

- (a) in giving evidence, he makes a statement inconsistent with it, and
- (b) evidence relating to it is adduced, or a question relating to it is asked, by him or on his behalf.

PART 2A ARTICLE 22(1) INVESTIGATIONS

65C Interpretation of Part 2A

- (1) In this Part—
- “Article 22(1) investigation” means an investigation conducted by the OFT on behalf and for the account of a competition authority of another Member State pursuant to Article 22(1) of the EC Competition Regulation;
- “the Commission” means the European Commission;

“competition authority of another Member State” means a competition authority designated as such under Article 35 of the EC Competition Regulation by a Member State other than the United Kingdom;

“the EC Competition Regulation” 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; and

“investigating officer” has the meaning given in section 65F(1).

(2) In this Part, the following expressions have the same meanings as in Part 1—

“Article 81(1)”;

“Article 82”;

“the court”;

“document”;

“information”;

“officer”;

“the OFT”;

“person”;

“premises”

“the Treaty”; and

“working day”.

(3) For the purposes of this Part, the power to require information, in relation to information recorded otherwise than in a legible form, includes power to require a copy of it in a legible form.

(4) Any power conferred on the OFT by this Part to require information includes power to require any document which it believes may contain that information.

65D Power to conduct an Article 22(1) investigation

(1) In any of the following cases, the OFT may conduct an Article 22(1) investigation.

(2) The first case is where there are reasonable grounds for suspecting that there is an agreement which—

(a) may affect trade between Member States; and

(b) has as its object or effect the prevention, restriction or distortion of competition within the Community.

(3) The second case is where there are reasonable grounds for suspecting that the prohibition in Article 82 has been infringed.

(4) The third case is where there are reasonable grounds for suspecting that, at some time in the past, there was an agreement which at that time—

(a) may have affected trade between Member States; and

(b) had as its object or effect the prevention, restriction or distortion of competition within the Community.

(5) It is immaterial for the purposes of subsection (4) whether the agreement in question remains in existence.

(6) A provision of this Part 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.

65E Powers when conducting Article 22(1) investigations

(1) For the purposes of an Article 22(1) investigation, the OFT may require any person to produce to it a specified document, or to provide it with specified information, which it considers relates to any matter relevant to the investigation.

(2) The power conferred by subsection (1) is to be exercised by a notice in writing.

(3) A notice under subsection (2) must indicate—

- (a) the subject matter and purpose of the Article 22(1) investigation; and
- (b) the nature of the offences created by sections 65L to 65N.

(4) In subsection (1) “specified” means—

- (a) specified, or described, in the notice; or
- (b) falling within a category which is specified, or described, in the notice.

(5) The OFT may also specify in the notice—

- (a) the time and place at which any document is to be produced or any information is to be provided;
- (b) the manner and form in which it is to be produced or provided.

(6) The power under this section to require a person to produce a document includes power—

- (a) if the document is produced—
 - (i) to take copies of it or extracts from it;
 - (ii) to require him, or any person who is a present or past officer of his, or is or was at any time employed by him, to provide an explanation of the document;
- (b) if the document is not produced, to require him to state, to the best of his knowledge and belief, where it is.

65F Power to enter business premises without a warrant

(1) Any officer of the OFT who is authorised in writing by the OFT to do so (“an investigating officer”) may enter any business premises in connection with an Article 22(1) investigation.

(2) No investigating officer is to enter any premises in the exercise of his powers under this section unless he has given to the occupier of the premises a written notice which—

- (a) gives at least two working days’ notice of the intended entry;

- (b) indicates the subject matter and purpose of the Article 22(1) investigation; and
 - (c) indicates the nature of the offences created by sections 65L to 65N.
- (3) Subsection (2) does not apply—
- (a) if the OFT has a reasonable suspicion that the premises are, or have been, occupied by—
 - (i) a party to an agreement which it is investigating under section 65D; or
 - (ii) an undertaking the conduct of which it is investigating under section 65D; or
 - (b) if the investigating officer has taken all such steps as are reasonably practicable to give notice but has not been able to do so.
- (4) In a case falling within subsection (3), the power of entry conferred by subsection (1) is to be exercised by the investigating officer on production of—
- (a) evidence of his authorisation; and
 - (b) a document containing the information referred to in subsection (2)(b) and (c).
- (5) An investigating officer entering any premises under this section may—
- (a) take with him such equipment as appears to him to be necessary;
 - (b) require any person on the premises—
 - (i) to produce any document which he considers relates to any matter relevant to the investigation; and
 - (ii) if the document is produced, to provide an explanation of it;
 - (c) require any person to state, to the best of his knowledge and belief, where any such document is to be found;
 - (d) take copies of, or extracts from, any document which is produced;
 - (e) require any information which is stored in any electronic form and is accessible from the premises and which the investigating officer considers relates to any matter relevant to the investigation, to be produced in a form—
 - (i) in which it can be taken away, and
 - (ii) in which it is visible and legible or from which it can readily be produced in a visible and legible form;
 - (f) take any steps which appear to be necessary for the purpose of preserving or preventing interference with any document which he considers relates to any matter relevant to the investigation.
- (6) In this section—
 “business premises” means premises (or any part of premises) not used as a dwelling.

65G Power to enter business premises under a warrant

- (1) On an application made by the OFT to the court in accordance with rules of court, a judge may issue a warrant if he is satisfied that—
- (a) there are reasonable grounds for suspecting that there are on any business premises documents—

- (i) the production of which has been required under section 65E or 65F; and
- (ii) which have not been produced as required;
- (b) there are reasonable grounds for suspecting that—
 - (i) there are on any business premises documents which the OFT has power under section 65E to require to be produced; and
 - (ii) if the documents were required to be produced, they would not be produced but would be concealed, removed, tampered with or destroyed; or
- (c) an investigating officer has attempted to enter premises in the exercise of his powers under section 65F but has been unable to do so and that there are reasonable grounds for suspecting that there are on the premises documents the production of which could have been required under that section.

(2) A warrant under this section shall authorise a named officer of the OFT and any other of its officers whom the OFT has authorised in writing to accompany the named officer—

- (a) to enter the premises specified in the warrant, using such force as is reasonably necessary for the purpose;
- (b) to search the premises and take copies of, or extracts from, any document appearing to be of a kind in respect of which the application under subsection (1) was granted (“the relevant kind”);
- (c) to take possession of any documents appearing to be of the relevant kind if—
 - (i) such action appears to be necessary for preserving the documents or preventing interference with them; or
 - (ii) it is not reasonably practicable to take copies of the documents on the premises;
- (d) to take any other steps which appear to be necessary for the purpose mentioned in paragraph (c)(i);
- (e) to require any person to provide an explanation of any document appearing to be of the relevant kind or to state, to the best of his knowledge and belief, where it may be found;
- (f) to require any information which is stored in any electronic form and is accessible from the premises and which the named officer considers relates to any matter relevant to the Article 22(1) investigation, to be produced in a form—
 - (i) in which it can be taken away, and
 - (ii) in which it is visible and legible or from which it can readily be produced in a visible and legible form.

(3) If, in the case of a warrant under subsection (1)(b), the judge is satisfied that it is reasonable to suspect that there are also on the premises other documents relating to the Article 22(1) investigation concerned, the warrant shall also authorise action mentioned in subsection (2) to be taken in relation to any such document.

(4) A warrant under this section may authorise persons specified in the warrant to accompany the named officer who is executing it.

(5) Any person entering premises by virtue of a warrant under this section may take with him such equipment as appears to him to be necessary.

(6) On leaving any premises which he has entered by virtue of a warrant under this section, the named officer must, if the premises are unoccupied or the occupier is temporarily absent, leave them as effectively secured as he found them.

(7) A warrant under this section continues in force until the end of the period of one month beginning with the day on which it is issued.

(8) Any document of which possession is taken under subsection (2)(c) may be retained for a period of three months.

(9) In this section “business premises” has the same meaning as in section 65F.

65H Power to enter domestic premises under a warrant

(1) On an application made by the OFT to the court in accordance with rules of court, a judge may issue a warrant if he is satisfied that—

- (a) there are reasonable grounds for suspecting that there are on any domestic premises documents—
 - (i) the production of which has been required under section 65E; and
 - (ii) which have not been produced as required; or
- (b) there are reasonable grounds for suspecting that—
 - (i) there are on any domestic premises documents which the OFT has power under section 65E to require to be produced; and
 - (ii) if the documents were required to be produced, they would not be produced but would be concealed, removed, tampered with or destroyed.

(2) A warrant under this section shall authorise a named officer of the OFT, and any other of its officers whom the OFT has authorised in writing to accompany the named officer—

- (a) to enter the premises specified in the warrant, using such force as is reasonably necessary for the purpose;
- (b) to search the premises and take copies of, or extracts from, any document appearing to be of a kind in respect of which the application under subsection (1) was granted (“the relevant kind”);
- (c) to take possession of any documents appearing to be of the relevant kind if—
 - (i) such action appears to be necessary for preserving the documents or preventing interference with them; or
 - (ii) it is not reasonably practicable to take copies of the documents on the premises;
- (d) to take any other steps which appear to be necessary for the purpose mentioned in paragraph (c)(i);
- (e) to require any person to provide an explanation of any document appearing to be of the relevant kind or to state, to the best of his knowledge or belief, where it may be found;

- (f) to require any information which is stored in any electronic form and is accessible from the premises and which the named officer considers relates to any matter relevant to the investigation, to be produced in a form—
 - (i) in which it can be taken away; and
 - (ii) in which it is visible and legible or from which it can readily be produced in a visible and legible form.

(3) If, in the case of a warrant under subsection (1)(b), the judge is satisfied that it is reasonable to suspect that there are also on the premises other documents relating to the investigation concerned, the warrant shall also authorise action mentioned in subsection (2) to be taken in relation to any such document.

(4) A warrant under this section may authorise persons specified in the warrant to accompany the named officer who is executing it.

(5) Any person entering premises by virtue of a warrant under this section may take with him such equipment as appears to him to be necessary.

(6) On leaving any premises which he has entered by virtue of a warrant under this section, the named officer must, if the premises are unoccupied or the occupier is temporarily absent, leave them as effectively secured as he found them.

(7) A warrant under this section continues in force until the end of the period of one month beginning with the day on which it is issued.

(8) Any document of which possession is taken under subsection (2)(c) may be retained for a period of three months.

(9) In this section, “domestic premises” means premises (or any part of premises) that are used as a dwelling and are—

- (a) premises also used in connection with the affairs of an undertaking or association of undertakings; or
- (b) premises where documents relating to the affairs of an undertaking or association of undertakings are kept.

65I Entry of premises under a warrant: supplementary

(1) A warrant issued under section 65G or 65H must indicate—

- (a) the subject matter of the Article 22(1) investigation;
- (b) the nature of the offences created by sections 65L to 65N.

(2) The powers conferred by section 65G or 65H are to be exercised on production of a warrant issued under that section.

(3) If there is no one at the premises when the named officer proposes to execute such a warrant he must, before executing it—

- (a) take such steps as are reasonable in all the circumstances to inform the occupier of the intended entry; and

- (b) if the occupier is informed, afford him or his legal or other representative a reasonable opportunity to be present when the warrant is executed.

(4) If the named officer is unable to inform the occupier of the intended entry he must, when executing the warrant, leave a copy of it in a prominent place on the premises.

(5) In this section—
“named officer” means the officer named in the warrant; and
“occupier”, in relation to any premises, means a person whom the named officer reasonably believes is the occupier of those premises.

65J Privileged communications

(1) A person shall not be required, under any provision of this Part, to produce or disclose a privileged communication.

(2) “Privileged communication” means a communication—
(a) between a professional legal adviser and his client, or
(b) made in connection with, or in contemplation of, legal proceedings and for the purposes of those proceedings,
which in proceedings in the High Court would be protected from disclosure on grounds of legal professional privilege.

(3) In the application of this section to Scotland—
(a) the reference to the High Court is to be read as a reference to the Court of Session; and
(b) the reference to legal professional privilege is to be read as a reference to confidentiality of communications.

65K Use of statements in prosecution

A statement made by a person in response to a requirement imposed by virtue of any of sections 65E to 65H may not be used in evidence against him on a prosecution for an offence under section 188 of the Enterprise Act 2002 unless, in the proceedings—

- (a) in giving evidence, he makes a statement inconsistent with it, and
- (b) evidence relating to it is adduced, or a question relating to it is asked, by him or on his behalf.

65L Offences

(1) A person is guilty of an offence if he fails to comply with a requirement imposed on him under section 65E, 65F, 65G or 65H.

(2) If a person is charged with an offence under subsection (1) in respect of a requirement to produce a document, it is a defence for him to prove—

- (a) that the document was not in his possession or under his control; and

(b) that it was not reasonably practicable for him to comply with the requirement.

(3) If a person is charged with an offence under subsection (1) in respect of a requirement—

- (a) to provide information,
- (b) to provide an explanation of a document, or
- (c) to state where a document is to be found,

it is a defence for him to prove that he had a reasonable excuse for failing to comply with the requirement.

(4) Failure to comply with a requirement imposed under section 65E or 65F is not an offence if the person imposing the requirement has failed to act in accordance with that section.

(5) A person is guilty of an offence if he intentionally obstructs an officer acting in the exercise of his powers under section 65F.

(6) A person guilty of an offence under subsection (1) or (5) is liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum;
- (b) on conviction on indictment, to a fine.

(7) A person who intentionally obstructs an officer in the exercise of his powers under a warrant issued under section 65G or 65H is guilty of an offence and liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum;
- (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.

65M Destroying or falsifying documents

(1) A person is guilty of an offence if, having been required to produce a document under section 65E, 65F, 65G or 65H—

- (a) he intentionally or recklessly destroys or otherwise disposes of it, falsifies it or conceals it, or
- (b) he causes or permits its destruction, disposal, falsification or concealment.

(2) A person guilty of an offence under subsection (1) is liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum;
- (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.

65N False or misleading information

(1) If information is provided by a person to the OFT in connection with any function of the OFT under this Part, that person is guilty of an offence if—

- (a) the information is false or misleading in a material particular; and
- (b) he knows that it is or is reckless as to whether it is.

- (2) A person who—
- (a) provides any information to another person, knowing the information to be false or misleading in a material particular, or
 - (b) recklessly provides any information to another person which is false or misleading in a material particular,
- knowing that the information is to be used for the purpose of providing information to the OFT in connection with any of its functions under this Part, is guilty of an offence.
- (3) A person guilty of an offence under this section is liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum;
 - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.

PART III MONOPOLIES

66 ...

67 ...

68 Services relating to use of land

In section 137 of the Fair Trading Act 1973, after subsection (3) insert—

- “(3A) The Secretary of State may by order made by statutory instrument—
- (a) provide that “the supply of services” in the provisions of this Act is to include, or to cease to include, any activity specified in the order which consists in, or in making arrangements in connection with, permitting the use of land; and
 - (b) for that purpose, amend or repeal any of paragraphs (c), (d), (e) or (g) of subsection (3) above.

(3B) No order under subsection (3A) above is to be made unless a draft of the order has been laid before Parliament and approved by a resolution of each House of Parliament.

(3C) The provisions of Schedule 9 to this Act apply in the case of a draft of any such order as they apply in the case of a draft of an order to which section 91(1) above applies.”

69 Reports: monopoly references

In section 83 of the Fair Trading Act 1973—

- (a) in subsection (1), omit “Subject to subsection (1A) below”; and
- (b) omit subsection (1A) (reports on monopoly references to be transmitted to certain persons at least twenty-four hours before laying before Parliament).

PART IV
SUPPLEMENTAL AND TRANSITIONAL

70 Contracts as to patented products etc

Sections 44 and 45 of the Patents Act 1977 shall cease to have effect.

71 Regulations, orders and rules

(1) Any power to make regulations or orders which is conferred by this Act is exercisable by statutory instrument.

(2) The power to make rules which is conferred by section 48 is exercisable by statutory instrument.

(3) Any statutory instrument made under this Act may—

- (a) contain such incidental, supplemental, consequential and transitional provision as the Secretary of State considers appropriate; and
- (b) make different provision for different cases.

(4) No order is to be made under—

- (a) section 3,
- (b) section 19,
- (c) section 36(8),
- (ca) section 45(8),
- (d) section 50, or
- (e) paragraph 6(3) of Schedule 4,

unless a draft of the order has been laid before Parliament and approved by a resolution of each House.

(5) Any statutory instrument made under this Act, apart from one made—

- (a) under any of the provisions mentioned in subsection (4), or
- (b) under section 76(3),

shall be subject to annulment by a resolution of either House of Parliament.

72 Offences by bodies corporate etc

(1) This section applies to an offence under any of sections 42 to 44, 65 or 65L to 65N.

(2) If an offence committed by a body corporate is proved—

- (a) to have been committed with the consent or connivance of an officer, or
- (b) to be attributable to any neglect on his part,

the officer as well as the body corporate is guilty of the offence and liable to be proceeded against and punished accordingly.

(3) In subsection (2) “officer”, in relation to a body corporate, means a director, manager, secretary or other similar officer of the body, or a person purporting to act in any such capacity.

(4) If the affairs of a body corporate are managed by its members, subsection (2) applies in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

(5) If an offence committed by a partnership in Scotland is proved—
(a) to have been committed with the consent or connivance of a partner, or
(b) to be attributable to any neglect on his part,
the partner as well as the partnership is guilty of the offence and liable to be proceeded against and punished accordingly.

(6) In subsection (5) “partner” includes a person purporting to act as a partner.

73 Crown application

(1) Any provision made by or under this Act binds the Crown except that—
(a) the Crown is not criminally liable as a result of any such provision;
(b) the Crown is not liable for any penalty under any such provision; and
(c) nothing in this Act affects Her Majesty in her private capacity.

(2) Subsection (1)(a) does not affect the application of any provision of this Act in relation to persons in the public service of the Crown.

(3) Subsection (1)(c) is to be interpreted as if section 38(3) of the Crown Proceedings Act 1947 (interpretation of references in that Act to Her Majesty in her private capacity) were contained in this Act.

(4) If an investigation is conducted under section 25 or 65D in respect of an agreement where none of the parties is the Crown or a person in the public service of the Crown, or in respect of conduct otherwise than by the Crown or such a person—

(a) the power conferred by section 27 or (as the case may be) section 65F may not be exercised in relation to land which is occupied by a government department, or otherwise for purposes of the Crown, without the written consent of the appropriate person; and

(b) none of sections 28, 28A, 65G and 65H applies in relation to land so occupied.

(5) In any case in which consent is required under subsection (4), the person who is the appropriate person in relation to that case is to be determined in accordance with regulations made by the Secretary of State.

(6) Sections 62, 62A and 63 do not apply in relation to land which is occupied by a government department, or otherwise for purposes of the Crown, unless the matter being investigated is an agreement to which the Crown or a person in the service of the Crown is a party, or conduct by the Crown or such a person.

(6A) In subsections (4) and (6) “agreement” includes a suspected agreement and is to be read as applying equally to, or in relation to, a decision by an association of undertakings or a concerted practice; and “conduct” includes suspected conduct.

(7) . . .

(8) If the Secretary of State certifies that it appears to him to be in the interests of national security that the powers of entry—

- (a) conferred by section 27 or 65F, or
- (b) that may be conferred by a warrant under section 28, 28A, 62, 62A, 63, 65G or 65H,

should not be exercisable in relation to premises held or used by or on behalf of the Crown and which are specified in the certificate, those powers are not exercisable in relation to those premises.

(9) Any amendment, repeal or revocation made by this Act binds the Crown to the extent that the enactment amended, repealed or revoked binds the Crown.

74 Amendments, transitional provisions, savings and repeals

(1) The minor and consequential amendments set out in Schedule 12 are to have effect.

(2) The transitional provisions and savings set out in Schedule 13 are to have effect.

(3) The enactments set out in Schedule 14 are repealed.

75 Consequential and supplementary provision

(1) The Secretary of State may by order make such incidental, consequential, transitional or supplemental provision as he thinks necessary or expedient for the general purposes, or any particular purpose, of this Act or in consequence of any of its provisions or for giving full effect to it.

(2) An order under subsection (1) may, in particular, make provision—

- (a) for enabling any person by whom any powers will become exercisable, on a date specified by or under this Act, by virtue of any provision made by or under this Act to take before that date any steps which are necessary as a preliminary to the exercise of those powers;
- (b) for making savings, or additional savings, from the effect of any repeal made by or under this Act.

(3) Amendments made under this section shall be in addition, and without prejudice, to those made by or under any other provision of this Act.

(4) No other provision of this Act restricts the powers conferred by this section.

75A Rules in relation to Part 2 and Part 2A

(1) The OFT may make such rules about procedural and other matters in connection with the carrying into effect of the provisions of Parts 2 and 2A as it considers appropriate.

(2) If the OFT is preparing rules under this section it must consult such persons as it considers appropriate.

(3) No rule made by the OFT is to come into operation until it has been approved by an order made by the Secretary of State.

(4) The Secretary of State may approve any rule made by the OFT—

- (a) in the form in which it is submitted; or
- (b) subject to such modifications as he considers appropriate.

(5) If the Secretary of State proposes to approve a rule subject to modifications he must inform the OFT of the proposed modifications and take into account any comments made by the OFT.

(6) Subsections (3) to (5) apply also to any alteration of the rules made by the OFT.

(7) The Secretary of State may, after consulting the OFT, by order vary or revoke any rules made under this section.

(8) If the Secretary of State considers that rules should be made under this section with respect to a particular matter he may direct the OFT to exercise its powers under this section and make rules about that matter.

76 Short title, commencement and extent

(1) This Act may be cited as the Competition Act 1998.

(2) Sections 71 and 75 and this section and paragraphs 1 to 7 and 35 of Schedule 13 come into force on the passing of this Act.

(3) The other provisions of this Act come into force on such day as the Secretary of State may by order appoint; and different days may be appointed for different purposes.

(4) This Act extends to Northern Ireland.

SCHEDULE 1
EXCLUSIONS: MERGERS AND CONCENTRATIONS

Sections 3(1)(a) and 19(1)(a)

PART I
MERGERS

1 Enterprises ceasing to be distinct: the Chapter I prohibition

(1) To the extent to which an agreement (either on its own or when taken together with another agreement) results, or if carried out would result, in any two enterprises ceasing to be distinct enterprises for the purposes of Part 3 of the Enterprise Act 2002 (“the 2002 Act”), the Chapter I prohibition does not apply to the agreement.

(2) The exclusion provided by sub-paragraph (1) extends to any provision directly related and necessary to the implementation of the merger provisions.

(3) . . .

(4) Section 26 of the 2002 Act applies for the purposes of this paragraph as if—
(a) in subsection (3) (circumstances in which a person or group of persons may be treated as having control of an enterprise), and
(b) in subsection (4) (circumstances in which a person or group of persons may be treated as bringing an enterprise under their control),
for “may” there were substituted “must”.

2 Enterprises ceasing to be distinct: the Chapter II prohibition

(1) To the extent to which conduct (either on its own or when taken together with other conduct)—

- (a) results in any two enterprises ceasing to be distinct enterprises for the purposes of Part 3 of the 2002 Act), or
- (b) is directly related and necessary to the attainment of the result mentioned in paragraph (a),

the Chapter II prohibition does not apply to that conduct.

(2) Section 26 of the 2002 Act applies for the purposes of this paragraph as it applies for the purposes of paragraph 1.

3 Transfer of a newspaper or of newspaper assets

(1) The Chapter I prohibition does not apply to an agreement to the extent to which it constitutes, or would if carried out constitute, a transfer of a newspaper or of newspaper assets for the purposes of section 57 of the 1973 Act.

(2) The Chapter II prohibition does not apply to conduct (either on its own or when taken together with other conduct) to the extent to which—

- (a) it constitutes such a transfer, or
- (b) it is directly related and necessary to the implementation of the transfer.

(3) The exclusion provided by sub-paragraph (1) extends to any provision directly related and necessary to the implementation of the transfer.

4 Withdrawal of the paragraph 1 exclusion

(1) The exclusion provided by paragraph 1 does not apply to a particular agreement if the OFT gives a direction under this paragraph to that effect.

(2) If the OFT is considering whether to give a direction under this paragraph, it may by notice in writing require any party to the agreement in question to give the OFT such information in connection with the agreement as it may require.

(3) The OFT may give a direction under this paragraph only as provided in sub-paragraph (4) or (5).

(4) If at the end of such period as may be specified in rules under section 51 a person has failed, without reasonable excuse, to comply with a requirement imposed under sub-paragraph (2), the OFT may give a direction under this paragraph.

(5) The OFT may also give a direction under this paragraph if—

- (a) it considers that the agreement will, if not excluded, infringe the Chapter I prohibition; and
- (b) the agreement is not a protected agreement.

(6) . . .

(7) A direction under this paragraph—

- (a) must be in writing;
- (b) may be made so as to have effect from a date specified in the direction (which may not be earlier than the date on which it is given).

5 Protected agreements

An agreement is a protected agreement for the purposes of paragraph 4 if—

- (a) the OFT or (as the case may be) the Secretary of State has published its or his decision not to make a reference to the Competition Commission under section 22, 33, 45 or 62 of the 2002 Act in connection with the agreement;
- (b) the OFT or (as the case may be) the Secretary of State has made a reference to the Competition Commission under section 22, 33, 45 or 62 of the 2002 Act in connection with the agreement and the Commission has found that the agreement has given rise to, or would if carried out give rise to, a relevant merger situation or (as the case may be) a special merger situation;
- (c) the agreement does not fall within paragraph (a) or (b) but has given rise to, or would if carried out give rise to, enterprises to which it relates being regarded under section 26 of the 2002 Act as ceasing to be distinct

- enterprises (otherwise than as the result of subsection (3) or (4)(b) of that section); or
- (d) the OFT has made a reference to the Competition Commission under section 32 of the Water Industry Act 1991 in connection with the agreement and the Commission has found that the agreement has given rise to, or would if carried out give rise to, a merger of any two or more water enterprises of the kind to which that section applies.

PART II CONCENTRATIONS SUBJECT TO EC CONTROLS

6

(1) 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 Chapter I prohibition does not apply to the agreement if the Merger Regulation gives the Commission exclusive jurisdiction in the matter.

(2) 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 Chapter II prohibition does not apply to the conduct if the Merger Regulation gives the Commission exclusive jurisdiction in the matter.

(3) In this paragraph—
“concentration” means a concentration with a Community dimension within the meaning of Articles 1 and 3 of the Merger Regulation; and
“Merger Regulation” means Council Regulation (EEC) No 4064/89 of 21st December 1989 on the control of concentrations between undertakings as amended by Council Regulation (EC) No 1310/97 of 30th June 1997.

SCHEDULE 2
EXCLUSIONS: OTHER COMPETITION SCRUTINY

Section 3(1)(b)

PART I
FINANCIAL SERVICES

1 The Financial Services Act 1986 (c 60)

(1) The Financial Services Act 1986 is amended as follows.

(2) For section 125 (effect of the Restrictive Trade Practices Act 1976), substitute—

“125 The Competition Act 1998: Chapter I prohibition

(1) The Chapter I prohibition does not apply to an agreement for the constitution of—

- (a) a recognised self-regulating organisation,
- (b) a recognised investment exchange, or
- (c) a recognised clearing house,

to the extent to which the agreement relates to the regulating provisions of the body concerned.

(2) Subject to subsection (3) below, the Chapter I prohibition does not apply to an agreement for the constitution of—

- (a) a self-regulating organisation,
- (b) an investment exchange, or
- (c) a clearing house,

to the extent to which the agreement relates to the regulating provisions of the body concerned.

(3) The exclusion provided by subsection (2) above applies only if—

- (a) the body has applied for a recognition order in accordance with the provisions of this Act; and
- (b) the application has not been determined.

(4) The Chapter I prohibition does not apply to a decision made by—

- (a) a recognised self-regulating organisation,
- (b) a recognised investment exchange, or
- (c) a recognised clearing house,

to the extent to which the decision relates to any of that body’s regulating provisions or specified practices.

(5) The Chapter I prohibition does not apply to the specified practices of—

- (a) a recognised self-regulating organisation, a recognised investment exchange or a recognised clearing house; or
- (b) a person who is subject to—

- (i) the rules of one of those bodies, or
- (ii) the statements of principle, rules, regulations or codes of practice made by a designated agency in the exercise of functions transferred to it by a delegation order.

(6) The Chapter I prohibition does not apply to any agreement the parties to which consist of or include—

- (a) a recognised self-regulating organisation, a recognised investment exchange or a recognised clearing house; or
- (b) a person who is subject to—
 - (i) the rules of one of those bodies, or
 - (ii) the statements of principle, rules, regulations or codes of practice made by a designated agency in the exercise of functions transferred to it by a delegation order,

to the extent to which the agreement consists of provisions the inclusion of which is required or contemplated by any of the body's regulating provisions or specified practices or by the statements of principle, rules, regulations or codes of practice of the agency.

(7) The Chapter I prohibition does not apply to—

- (a) any clearing arrangements; or
- (b) any agreement between a recognised investment exchange and a recognised clearing house, to the extent to which the agreement consists of provisions the inclusion of which in the agreement is required or contemplated by any clearing arrangements.

(8) If the recognition order in respect of a body of the kind mentioned in subsection (1)(a), (b) or (c) above is revoked, subsections (1) and (4) to (7) above are to have effect as if that body had continued to be recognised until the end of the period of six months beginning with the day on which the revocation took effect.

(9) In this section—

“the Chapter I prohibition” means the prohibition imposed by section 2(1) of the Competition Act 1998;

“regulating provisions” means—

- (a) in relation to a self-regulating organisation, any rules made, or guidance issued, by the organisation;
- (b) in relation to an investment exchange, any rules made, or guidance issued, by the exchange;
- (c) in relation to a clearing house, any rules made, or guidance issued, by the clearing house;

“specified practices” means—

- (a) in the case of a recognised self-regulating organisation, the practices mentioned in section 119(2)(a)(ii) and (iii) above (read with section 119(5) and (6)(a));
- (b) in the case of a recognised investment exchange, the practices mentioned in section 119(2)(b)(ii) and (iii) above (read with section 119(5) and (6)(b));

(c) in the case of a recognised clearing house, the practices mentioned in section 119(2)(c)(ii) and (iii) above (read with section 119(5) and (6)(b));

(d) in the case of a person who is subject to the statements of principle, rules, regulations or codes of practice issued or made by a designated agency in the exercise of functions transferred to it by a delegation order, the practices mentioned in section 121(2)(c) above (read with section 121(4));

and expressions used in this section which are also used in Part I of the Competition Act 1998 are to be interpreted in the same way as for the purposes of that Part of that Act.”

(3) Omit section 126 (certain practices not to constitute anti-competitive practices for the purposes of the Competition Act 1980).

(4) For section 127 (modification of statutory provisions in relation to recognised professional bodies), substitute—

“127 Application of Competition Act 1998 in relation to recognised professional bodies: Chapter I prohibition

(1) This section applies to—

- (a) any agreement for the constitution of a recognised professional body to the extent to which it relates to the rules or guidance of that body relating to the carrying on of investment business by persons certified by it (“investment business rules”); and
- (b) any other agreement, the parties to which consist of or include—
 - (i) a recognised professional body,
 - (ii) a person certified by such a body, or
 - (iii) a member of such a body,

and which contains a provision required or contemplated by that body’s investment business rules.

(2) If it appears to the Treasury, in relation to some or all of the provisions of an agreement to which this section applies—

- (a) that the provisions in question do not have, and are not intended or likely to have, to any significant extent the effect of restricting, distorting or preventing competition; or
- (b) that the effect of restricting, distorting or preventing competition which the provisions in question do have, or are intended or are likely to have, is not greater than is necessary for the protection of investors,

the Treasury may make a declaration to that effect.

(3) If the Treasury make a declaration under this section, the Chapter I prohibition does not apply to the agreement to the extent to which the agreement consists of provisions to which the declaration relates.

(4) If the Treasury are satisfied that there has been a material change of circumstances, they may—

- (a) revoke a declaration made under this section, if they consider that the grounds on which it was made no longer exist;
 - (b) vary such a declaration, if they consider that there are grounds for making a different declaration; or
 - (c) make a declaration even though they have notified the Director of their intention not to do so.
- (5) If the Treasury make, vary or revoke a declaration under this section they must notify the Director of their decision.
- (6) If the Director proposes to exercise any Chapter III powers in respect of any provisions of an agreement to which this section applies, he must—
- (a) notify the Treasury of his intention to do so; and
 - (b) give the Treasury particulars of the agreement and such other information—
 - (i) as he considers will assist the Treasury to decide whether to exercise their powers under this section; or
 - (ii) as the Treasury may request.
- (7) The Director may not exercise his Chapter III powers in respect of any provisions of an agreement to which this section applies, unless the Treasury—
- (a) have notified him that they have not made a declaration in respect of those provisions under this section and that they do not intend to make such a declaration; or
 - (b) have revoked a declaration under this section and a period of six months beginning with the date on which the revocation took effect has expired.
- (8) A declaration under this section ceases to have effect if the agreement to which it relates ceases to be one to which this section applies.
- (9) In this section—
“the Chapter I prohibition” means the prohibition imposed by section 2(1) of the Competition Act 1998,
“Chapter III powers” means the powers given to the Director by Chapter III of Part I of that Act so far as they relate to the Chapter I prohibition, and
expressions used in this section which are also used in Part I of the Competition Act 1998 are to be interpreted in the same way as for the purposes of that Part of that Act.
- (10) In this section references to an agreement are to be read as applying equally to, or in relation to, a decision or concerted practice.
- (11) In the application of this section to decisions and concerted practices, references to provisions of an agreement are to be read as references to elements of a decision or concerted practice.”

PART II
COMPANIES

...

PART III
BROADCASTING

4 The Broadcasting Act 1990 (c 42)

(1) The Broadcasting Act 1990 is amended as follows.

(2) In section 194A (which modifies the Restrictive Trade Practices Act 1976 in its application to agreements relating to Channel 3 news provision), for subsections (2) to (6), substitute—

“(2) If, having sought the advice of the Director, it appears to the Secretary of State, in relation to some or all of the provisions of a relevant agreement, that the conditions mentioned in subsection (3) are satisfied, he may make a declaration to that effect.

(3) The conditions are that—

- (a) the provisions in question do not have, and are not intended or likely to have, to any significant extent the effect of restricting, distorting or preventing competition; or
- (b) the effect of restricting, distorting or preventing competition which the provisions in question do have or are intended or are likely to have, is not greater than is necessary—
 - (i) in the case of a relevant agreement falling within subsection (1)(a), for securing the appointment by holders of regional Channel 3 licences of a single body corporate to be the appointed news provider for the purposes of section 31(2), or
 - (ii) in the case of a relevant agreement falling within subsection (1)(b), for compliance by them with conditions included in their licences by virtue of section 31(1) and (2).

(4) If the Secretary of State makes a declaration under this section, the Chapter I prohibition does not apply to the agreement to the extent to which the agreement consists of provisions to which the declaration relates.

(5) If the Secretary of State is satisfied that there has been a material change of circumstances, he may—

- (a) revoke a declaration made under this section, if he considers that the grounds on which it was made no longer exist;
- (b) vary such a declaration, if he considers that there are grounds for making a different declaration; or
- (c) make a declaration, even though he has notified the Director of his intention not to do so.

(6) If the Secretary of State makes, varies or revokes a declaration under this section, he must notify the Director of his decision.

(7) The Director may not exercise any Chapter III powers in respect of a relevant agreement, unless—

(a) he has notified the Secretary of State of his intention to do so; and

(b) the Secretary of State—

(i) has notified the Director that he has not made a declaration in respect of the agreement, or provisions of the agreement, under this section and that he does not intend to make such a declaration; or

(ii) has revoked a declaration under this section and a period of six months beginning with the date on which the revocation took effect has expired.

(8) If the Director proposes to exercise any Chapter III powers in respect of a relevant agreement, he must give the Secretary of State particulars of the agreement and such other information—

(a) as he considers will assist the Secretary of State to decide whether to exercise his powers under this section; or

(b) as the Secretary of State may request.

(9) In this section—

“the Chapter I prohibition” means the prohibition imposed by section 2(1) of the Competition Act 1998;

“Chapter III powers” means the powers given to the Director by Chapter III of Part I of that Act so far as they relate to the Chapter I prohibition;

“Director” means the Director General of Fair Trading;

“regional Channel 3 licence” has the same meaning as in Part I;

and expressions used in this section which are also used in Part I of the Competition Act 1998 are to be interpreted in the same way as for the purposes of that Part of that Act.

(10) In this section references to an agreement are to be read as applying equally to, or in relation to, a decision or concerted practice.

(11) In the application of this section to decisions and concerted practices, references to provisions of an agreement are to be read as references to elements of a decision or concerted practice.”

5 Networking arrangements under the Broadcasting Act 1990 (c 42)

(1) The Chapter I prohibition does not apply in respect of any networking arrangements to the extent that they—

(a) have been approved for the purposes of licence conditions imposed under section 291 of the Communications Act 2003; or

(b) are arrangements that have been considered under Schedule 4 to the Broadcasting Act 1990 and fall to be treated as so approved;

nor does that prohibition apply in respect of things done with a view to arrangements being entered into or approved to the extent that those things have effect for purposes that are directly related to, and necessary for compliance with, conditions so imposed.

(2) OFCOM must publish a list of the networking arrangements which in their opinion are excluded from the Chapter I prohibition by virtue of sub-paragraph (1).

(3) OFCOM must—

- (a) consult the Director before publishing the list, and
- (b) publish the list in such a way as they think most suitable for bringing it to the attention of persons who, in their opinion, would be affected by, or likely to have an interest in, it.

(4) In this paragraph “networking arrangements” has the same meaning as in Part 3 of the Communications Act 2003.

SCHEDULE 3
GENERAL EXCLUSIONS

Sections 3(1)(c) and 19(1)(b)

1 Planning obligations

- (1) The Chapter I prohibition does not apply to an agreement—
 - (a) to the extent to which it is a planning obligation;
 - (b) which is made under section 75 (agreements regulating development or use of land) or 246 (agreements relating to Crown land) of the Town and Country Planning (Scotland) Act 1997; or
 - (c) which is made under Article 40 of the Planning (Northern Ireland) Order 1991.
- (2) In sub-paragraph (1)(a), “planning obligation” means—
 - (a) a planning obligation for the purposes of section 106 of the Town and Country Planning Act 1990; or
 - (b) a planning obligation for the purposes of section 299A of that Act.

2 ...

3 EEA Regulated Markets

(1) The Chapter I prohibition does not apply to an agreement for the constitution of an EEA regulated market to the extent to which the agreement relates to any of the rules made, or guidance issued, by that market.

(2) The Chapter I prohibition does not apply to a decision made by an EEA regulated market, to the extent to which the decision relates to any of the market’s regulating provisions.

- (3) The Chapter I prohibition does not apply to—
 - (a) any practices of an EEA regulated market; or
 - (b) any practices which are trading practices in relation to an EEA regulated market.

(4) The Chapter I prohibition does not apply to an agreement the parties to which are or include—

- (a) an EEA regulated market, or
- (b) a person who is subject to the rules of that market,

to the extent to which the agreement consists of provisions the inclusion of which is required or contemplated by the regulating provisions of that market.

(5) In this paragraph—
“EEA regulated market” is a market which—

- (a) is listed by an EEA State other than the United Kingdom pursuant to article 16 of Council Directive No 93/22/EEC of 10th May 1993 on investment services in the securities field; and
- (b) operates without any requirement that a person dealing on the market should have a physical presence in the EEA State from which any trading facilities are provided or on any trading floor that the market may have;

“EEA State” means a State which is a contracting party to the EEA Agreement;

“regulating provisions”, in relation to an EEA regulated market, means—

- (a) rules made, or guidance issued, by that market,
- (b) practices of that market, or
- (c) practices which, in relation to that market, are trading practices;

“trading practices”, in relation to an EEA regulated market, means practices of persons who are subject to the rules made by that market, and—

- (a) which relate to business in respect of which those persons are subject to the rules of that market, and which are required or contemplated by those rules or by guidance issued by that market; or
- (b) which are otherwise attributable to the conduct of that market as such.

4 Services of general economic interest etc

Neither the Chapter I prohibition nor the Chapter II prohibition applies to an undertaking entrusted with the operation of services of general economic interest or having the character of a revenue-producing monopoly in so far as the prohibition would obstruct the performance, in law or in fact, of the particular tasks assigned to that undertaking.

5 Compliance with legal requirements

(1) The Chapter I prohibition does not apply to an agreement to the extent to which it is made in order to comply with a legal requirement.

(2) The Chapter II prohibition does not apply to conduct to the extent to which it is engaged in an order to comply with a legal requirement.

(3) In this paragraph “legal requirement” means a requirement—

- (a) imposed by or under any enactment in force in the United Kingdom;
- (b) imposed by or under the Treaty or the EEA Agreement and having legal effect in the United Kingdom without further enactment; or
- (c) imposed by or under the law in force in another Member State and having legal effect in the United Kingdom.

6 Avoidance of conflict with international obligations

(1) If the Secretary of State is satisfied that, in order to avoid a conflict between provisions of this Part and an international obligation of the United Kingdom, it would be appropriate for the Chapter I prohibition not to apply to—

- (a) a particular agreement, or

(b) any agreement of a particular description, he may by order exclude the agreement, or agreements of that description, from the Chapter I prohibition.

(2) An order under sub-paragraph (1) may make provision for the exclusion of the agreement or agreements to which the order applies, or of such of them as may be specified, only in specified circumstances.

(3) An order under sub-paragraph (1) may also provide that the Chapter I prohibition is to be deemed never to have applied in relation to the agreement or agreements, or in relation to such of them as may be specified.

(4) If the Secretary of State is satisfied that, in order to avoid a conflict between provisions of this Part and an international obligation of the United Kingdom, it would be appropriate for the Chapter II prohibition not to apply in particular circumstances, he may by order provide for it not to apply in such circumstances as may be specified.

(5) An order under sub-paragraph (4) may provide that the Chapter II prohibition is to be deemed never to have applied in relation to specified conduct.

(6) An international arrangement relating to civil aviation and designated by an order made by the Secretary of State is to be treated as an international obligation for the purposes of this paragraph.

(7) In this paragraph and paragraph 7 “specified” means specified in the order.

7 Public policy

(1) If the Secretary of State is satisfied that there are exceptional and compelling reasons of public policy why the Chapter I prohibition ought not to apply to—

- (a) a particular agreement, or
- (b) any agreement of a particular description,

he may by order exclude the agreement, or agreements of that description, from the Chapter I prohibition.

(2) An order under sub-paragraph (1) may make provision for the exclusion of the agreement or agreements to which the order applies, or of such of them as may be specified, only in specified circumstances.

(3) An order under sub-paragraph (1) may also provide that the Chapter I prohibition is to be deemed never to have applied in relation to the agreement or agreements, or in relation to such of them as may be specified.

(4) If the Secretary of State is satisfied that there are exceptional and compelling reasons of public policy why the Chapter II prohibition ought not to apply in particular circumstances, he may by order provide for it not to apply in such circumstances as may be specified.

(5) An order under sub-paragraph (4) may provide that the Chapter II prohibition is to be deemed never to have applied in relation to specified conduct.

8 Coal and steel

(1) The Chapter I prohibition does not apply to an agreement which relates to a coal or steel product to the extent to which the ECSC Treaty gives the Commission exclusive jurisdiction in the matter.

(2) Sub-paragraph (1) ceases to have effect on the date on which the ECSC Treaty expires (“the expiry date”).

(3) The Chapter II prohibition does not apply to conduct which relates to a coal or steel product to the extent to which the ECSC Treaty gives the Commission exclusive jurisdiction in the matter.

(4) Sub-paragraph (3) ceases to have effect on the expiry date.

(5) In this paragraph—
“coal or steel product” means any product of a kind listed in Annex I to the ECSC Treaty; and
“ECSC Treaty” means the Treaty establishing the European Coal and Steel Community.

9 Agricultural products

(1) The Chapter I prohibition does not apply to an agreement to the extent to which it relates to production of or trade in an agricultural product and—

- (a) forms an integral part of a national market organisation;
- (b) is necessary for the attainment of the objectives set out in Article 33 of the Treaty; or
- (c) is an agreement of farmers or farmers’ associations (or associations of such associations) belonging to a single member State which concerns—
 - (i) the production or sale of agricultural products, or
 - (ii) the use of joint facilities for the storage, treatment or processing of agricultural products,

and under which there is no obligation to charge identical prices.

(2) If the Commission determines that an agreement does not fulfil the conditions specified by the provision for agricultural products for exclusion from Article 81(1), the exclusion provided by this paragraph (“the agriculture exclusion”) is to be treated as ceasing to apply to the agreement on the date of the decision.

(3) The agriculture exclusion does not apply to a particular agreement if the OFT gives a direction under this paragraph to that effect.

(4) If the OFT is considering whether to give a direction under this paragraph, it may by notice in writing require any party to the agreement in question to give the OFT such information in connection with the agreement as it may require.

(5) The OFT may give a direction under this paragraph only as provided in sub-paragraph (6) or (7).

(6) If at the end of such period as may be specified in rules under section 51 a person has failed, without reasonable excuse, to comply with a requirement imposed under sub-paragraph (4), the OFT may give a direction under this paragraph.

(7) The OFT may also give a direction under this paragraph if it considers that an agreement (whether or not it considers that it infringes the Chapter I prohibition) is likely, or is intended, substantially and unjustifiably to prevent, restrict or distort competition in relation to an agricultural product.

(8) A direction under this paragraph—

(a) must be in writing;

(b) may be made so as to have effect from a date specified in the direction (which may not be earlier than the date on which it is given).

(9) In this paragraph—

“agricultural product” means any product of a kind listed in Annex I to the Treaty;
and

“provision for agricultural products” means Council Regulation (EEC) No 26/62 of 4th April 1962 applying certain rules of competition to production of and trade in agricultural products.

SCHEDULE 4

...

SCHEDULE 5

...

SCHEDULE 6

...

SCHEDULE 6A
COMMITMENTS

Section 31A

PART 1
PROCEDURAL REQUIREMENTS FOR THE ACCEPTANCE AND VARIATION
OF COMMITMENTS

1

Paragraph 2 applies where the OFT proposes to—

- (a) accept any commitments under section 31A; or
- (b) accept any variation of such commitments other than a variation which is not material in any respect.

2

- (1) Before accepting the commitments or variation, the OFT must—
 - (a) give notice under this paragraph; and
 - (b) consider any representations made in accordance with the notice and not withdrawn.
- (2) A notice under this paragraph must state—
 - (a) that the OFT proposes to accept the commitments or variation;
 - (b) the purpose of the commitments or variation and the way in which the commitments or variation would meet the OFT's competition concerns;
 - (c) any other facts which the OFT considers are relevant to the acceptance or variation of the commitments; and
 - (d) the period within which representations may be made in relation to the proposed commitments or variation.
- (3) The period stated for the purposes of sub-paragraph (2)(d) must be at least 11 working days starting with the date the notice is given or, if that date is not a working day, with the date of the first working day after that date.

3

- (1) The OFT must not accept the commitments or variation of which notice has been given under paragraph 2(1) with modifications unless it—
 - (a) gives notice under this paragraph of the proposed modifications; and
 - (b) considers any representations made in accordance with the notice and not withdrawn.
- (2) A notice under this paragraph must state—
 - (a) the proposed modifications;
 - (b) the reasons for them; and
 - (c) the period within which representations may be made in relation to the proposed modifications.

(3) The period stated for the purposes of sub-paragraph (2)(c) must be at least 6 working days starting with the date the notice is given or, if that date is not a working day, with the date of the first working day after that date.

4

If, after giving notice under paragraph 2 or 3 the OFT decides—

- (a) not to accept the commitments or variation concerned, and
- (b) not to proceed by virtue of paragraph 5 or 6,

the OFT must give notice that it has so decided.

5

The requirements of paragraph 3 shall not apply if the OFT—

- (a) has already given notice under paragraph 2 but not under paragraph 3; and
- (b) considers that the modifications which are now being proposed are not material in any respect.

6

The requirements of paragraph 3 shall not apply if the OFT—

- (a) has already given notices under paragraphs 2 and 3; and
- (b) considers that the further modifications which are now being proposed are not material in any respect or do not differ in any material respect from the modifications in relation to which notice was last given under paragraph 3.

7

As soon as practicable after accepting commitments or a variation under section 31A the OFT must publish the commitments or the variation in such manner as the OFT considers appropriate.

8

A notice under paragraph 2 or 3 shall be given by—

- (a) sending a copy of the notice to such person or persons as the OFT considers appropriate for the purpose of bringing the matter to which it relates to the attention of those likely to be affected by it; or
- (b) publishing the notice in such manner as the OFT considers appropriate for the purpose of bringing the matter to which it relates to the attention of those likely to be affected by it.

PROCEDURAL REQUIREMENTS FOR THE RELEASE OF COMMITMENTS

10

Paragraph 11 applies where the OFT proposes to release any commitments under section 31A.

11

- (1) Before releasing the commitments, the OFT must—
 - (a) give notice under this paragraph;
 - (b) send a copy of the notice to the person (or persons) who gave the commitments; and
 - (c) consider any representations made in accordance with the notice and not withdrawn.
- (2) A notice under this paragraph must state—
 - (a) the fact that a release is proposed;
 - (b) the reasons for it; and
 - (c) the period within which representations may be made in relation to the proposed release.
- (3) The period stated for the purposes of sub-paragraph (2)(c) must be at least 11 working days starting with the date the notice is given or, if that date is not a working day, with the date of the first working day after that date.

12

If after giving notice under paragraph 11 the OFT decides not to proceed with the release, it must—

- (a) give notice that it has so decided; and
- (b) send a copy of the notice to the person (or persons) who gave the commitments.

13

As soon as practicable after releasing the commitments, the OFT must—

- (a) publish the release in such manner as it considers appropriate; and
- (b) send a copy of the release to the person (or persons) who gave the commitments.

14

A notice under paragraph 11 or 12 shall be given by—

- (a) sending a copy of the notice to such other person or persons as the OFT considers appropriate for the purpose of bringing the matter to which it relates to the attention of those likely to be affected by it; or

publishing the notice in such manner as the OFT considers appropriate for the purpose of bringing the matter to which it relates to the attention of those likely to be affected by it.

SCHEDULE 7
THE COMPETITION COMMISSION

Section 45(7)

PART I
GENERAL

1 Interpretation

In this Schedule—

“the 1973 Act” means the Fair Trading Act 1973;

“Chairman” means the chairman of the Commission;

“the Commission” means the Competition Commission;

“Council” has the meaning given in paragraph 5;

“general functions” means any functions of the Commission other than functions—

(a) . . .

(b) which are to be discharged by the Council;

“member” means a member of the Commission;

“newspaper merger reference” means a newspaper merger reference under section 45 of the Enterprise Act 2002 which specifies a newspaper public interest consideration (within the meaning of paragraph 20A of Schedule 8 to that Act) or a reference under section 62 of that Act which specifies a consideration specified in section 58(2A) or (2B) of that Act;

“newspaper panel member” means a member of the panel maintained under paragraph 22;

“reporting panel member” means a member appointed under paragraph 2(1)(b);

“secretary” means the secretary of the Commission appointed under paragraph 9; and

“specialist panel member” means a member appointed under any of the provisions mentioned in paragraph 2(1)(d).

2 Membership of the Commission

(1) The Commission is to consist of—

(a) . . .

(b) members appointed by the Secretary of State to form a panel for the purposes of the Commission’s general functions;

(c) the members of the panel maintained under paragraph 22;

(d) members appointed by the Secretary of State under or by virtue of—

(i) section 12(4) or 14(8) of the Water Industry Act 1991;

(ii) section 104 of the Utilities Act 2000;

(iii) section 194(1) of the Communications Act 2003;

(iv) Article 15(9) of the Electricity (Northern Ireland) Order 1992;

(e) one or more members appointed by the Secretary of State to serve on the Council.

(1A) A person may not be, at the same time, a member of the Commission and a member of the Tribunal.

(2) A person who is appointed as a member of a kind mentioned in one of paragraphs (aa) to (c) of sub-paragraph (3) may also be appointed as a member of either or both of the other kinds mentioned in those paragraphs.

(3) The kinds of member are—

- (a) . . .
- (aa) a newspaper panel member;
- (b) a reporting panel member;
- (c) a specialist panel member.

(4) . . .

(5) The validity of the Commission's proceedings is not affected by a defect in the appointment of a member.

3 Chairman and deputy chairmen

(1) The Commission is to have a chairman appointed by the Secretary of State from among the reporting panel members.

(2) The Secretary of State may appoint one or more of the reporting panel members to act as deputy chairman.

(3) The Chairman, and any deputy chairman, may resign that office at any time by notice in writing addressed to the Secretary of State.

(4) If the Chairman (or a deputy chairman) ceases to be a member he also ceases to be Chairman (or a deputy chairman).

(5) If the Chairman is absent or otherwise unable to act, or there is no chairman, any of his functions may be performed—

- (a) if there is one deputy chairman, by him;
- (b) if there is more than one—
 - (i) by the deputy chairman designated by the Secretary of State; or
 - (ii) if no such designation has been made, by the deputy chairman designated by the deputy chairmen;
- (c) if there is no deputy chairman able to act—
 - (i) by the member designated by the Secretary of State; or
 - (ii) if no such designation has been made, by the member designated by the Commission.

4 . . .

5 The Council

(1) The Commission is to have a . . . board to be known as the Competition Commission Council (but referred to in this Schedule as “the Council”).

(2) The Council is to consist of—

- (a) the Chairman and any deputy chairmen of the Commission;
- (b) . . .
- (bb) the member or members appointed under paragraph 2(1)(e);
- (c) such other members as the Secretary of State may appoint; and
- (d) the secretary.

(3) In exercising its functions under paragraphs 3 and 7 to 12, the Commission is to act through the Council.

(3A) Without prejudice to the question whether any other functions of the Commission are to be so discharged, the functions of the Commission under sections 106, 116, and 171 of the Enterprise Act 2002 (and under section 116 as applied for the purposes of references under Part 4 of that Act by section 176 of that Act) are to be discharged by the Council.

(4) The Council may determine its own procedure including, in particular, its quorum.

(5) The Chairman (and any person acting as Chairman) is to have a casting vote on any question being decided by the Council.

6 Term of office

(1) Subject to the provisions of this Schedule, each member is to hold and vacate office in accordance with the terms of his appointment.

(2) A person is not to be appointed as a member for more than five years at a time eight years (but this does not prevent a re-appointment for the purpose only of continuing to act as a member of a group selected under paragraph 15 before the end of his term of office).

(3) Any member may at any time resign by notice in writing addressed to the Secretary of State.

(4) The Secretary of State may remove a member on the ground of incapacity or misbehaviour.

(5) No person is to be prevented from being appointed as a member merely because he has previously been a member.

7 Expenses, remuneration and pensions

(1) The Secretary of State shall pay to the Commission such sums as he considers appropriate to enable it to perform its functions.

(2) The Commission may pay, or make provision for paying, to or in respect of each member such salaries or other remuneration and such pensions, allowances, fees, expenses or gratuities as the Secretary of State may determine.

(3) If a person ceases to be a member otherwise than on the expiry of his term of office and it appears to the Secretary of State that there are special circumstances which make it right for him to receive compensation, the Commission may make a payment to him of such amount as the Secretary of State may determine.

(4) ...

7A

The Commission may publish advice and information in relation to any matter connected with the exercise of its functions.

8 The Commission's powers

Subject to the provisions of this Schedule, the Commission has power to do anything (except borrow money)—

- (a) calculated to facilitate the discharge of its functions; or
- (b) incidental or conducive to the discharge of its functions.

9 Staff

(1) The Commission is to have a secretary, appointed by the Secretary of State on such terms and conditions of service as he considers appropriate.

(2) ...

(3) Before appointing a person to be secretary, the Secretary of State must consult the Chairman.

(4) Subject to obtaining the approval of the Secretary of State as to numbers and terms and conditions of service the Commission may appoint such staff as it thinks appropriate.

10 ...

11 Application of seal and proof of instruments

(1) The application of the seal of the Commission must be authenticated by the signature of the secretary or of some other person authorised for the purpose.

(2) Sub-paragraph (1) does not apply in relation to any document which is or is to be signed in accordance with the law of Scotland.

(3) A document purporting to be duly executed under the seal of the Commission—

- (a) is to be received in evidence; and
- (b) is to be taken to have been so executed unless the contrary is proved.

12 Accounts

(1) The Commission must—

- (a) keep proper accounts and proper records in relation to its accounts;
- (b) prepare a statement of accounts in respect of each of its financial years; and
- (c) send copies of the statement to the Secretary of State and to the Comptroller and Auditor General before the end of the month of August next following the financial year to which the statement relates.

(2) The statement of accounts must comply with any directions given by the Secretary of State with the approval of the Treasury as to—

- (a) the information to be contained in it,
- (b) the manner in which the information contained in it is to be presented, or
- (c) the methods and principles according to which the statement is to be prepared,

and must contain such additional information as the Secretary of State may with the approval of the Treasury require to be provided for informing Parliament.

(3) The Comptroller and Auditor General must—

- (a) examine, certify and report on each statement received by him as a result of this paragraph; and
- (b) lay copies of each statement and of his report before each House of Parliament.

(4) In this paragraph “financial year” means the period beginning with the date on which the Commission is established and ending with March 31st next, and each successive period of twelve months.

12A Annual reports

(1) The Commission shall make to the Secretary of State a report for each financial year on its activities during the year.

(2) The annual report must be made before the end of August next following the financial year to which it relates.

(3) The Secretary of State shall lay a copy of the annual report before Parliament and arrange for the report to be published.

13 Status

(1) The Commission is not to be regarded as the servant or agent of the Crown or as enjoying any status, privilege or immunity of the Crown.

(2) The Commission's property is not to be regarded as property of, or held on behalf of, the Crown.

PART II PERFORMANCE OF THE COMMISSION'S GENERAL FUNCTIONS

14 Interpretation

In this Part of this Schedule "group" means a group selected under paragraph 15.

15 Discharge of certain functions by groups

(1) Except where sub-paragraph (7) or (8) gives the Chairman power to act on his own, any general function of the Commission must be performed through a group selected for the purpose by the Chairman.

(2) The group must consist of at least three persons one of whom may be the Chairman.

(3) In selecting the members of the group, the Chairman must comply with any requirement as to its constitution imposed by any enactment applying to specialist panel members.

(4) If the functions to be performed through the group relate to a newspaper merger reference, the group must, subject to sub-paragraph (5), consist of such reporting panel members as the Chairman may select.

(5) The Chairman must select one or more newspaper panel members to be members of the group dealing with functions relating to a newspaper merger reference and, if he selects at least three such members, the group may consist entirely of those members.

(6) Subject to sub-paragraphs (2) to (5), a group must consist of reporting panel members or specialist panel members selected by the Chairman.

(7) While a group is being constituted to perform a particular general function of the Commission, the Chairman may—

- (a) take such steps (falling within that general function) as he considers appropriate to facilitate the work of the group when it has been constituted; . . .
- (b) . . .

(8) The Chairman may exercise the power conferred by section 37(1), 48(1) or 64(1) of the Enterprise Act 2002 while a group is being constituted to perform a

relevant general function of the Commission or, when it has been so constituted, before it has held its first meeting.

16 Chairmen of groups

The Chairman must appoint one of the members of a group to act as the chairman of the group.

17 Replacement of member of group

(1) If, during the proceedings of a group—

- (a) a member of the group ceases to be a member of the Commission,
- (b) the Chairman is satisfied that a member of the group will be unable for a substantial period to perform his duties as a member of the group, or
- (c) it appears to the Chairman that because of a particular interest of a member of the group it is inappropriate for him to remain in the group,

the Chairman may appoint a replacement.

(2) The Chairman may also at any time appoint any reporting panel member to be an additional member of a group.

18 Attendance of other members

(1) At the invitation of the chairman of a group, any reporting panel member who is not a member of the group may attend meetings or otherwise take part in the proceedings of the group.

(2) But any person attending in response to such an invitation may not—

- (a) vote in any proceedings of the group; or
- (b) have a statement of his dissent from a conclusion of the group included in a report made by them.

(3) Nothing in sub-paragraph (1) is to be taken to prevent a group, or a member of a group, from consulting any member of the Commission with respect to any matter or question with which the group is concerned.

19 Procedure

(1) Subject to any special or general directions given by the Secretary of State, each group may determine its own procedure.

(2) Each group may, in particular, determine its quorum and determine—

- (a) the extent, if any, to which persons interested or claiming to be interested in the subject-matter of the reference are allowed—
 - (i) to be present or to be heard, either by themselves or by their representatives;
 - (ii) to cross-examine witnesses; or

- (iii) otherwise to take part; and
- (b) the extent, if any, to which sittings of the group are to be held in public.

(3) In determining its procedure a group must have regard to any guidance issued by the Chairman.

(4) Before issuing any guidance for the purposes of this paragraph the Chairman must consult the members of the Commission.

(5) This paragraph does not apply to groups for which rules must be made under paragraph 19A.

19A

(1) The Chairman must make rules of procedure in relation to merger reference groups, market reference groups and special reference groups.

(2) Schedule 7A makes further provision about rules made under this paragraph but is not to be taken as restricting the Chairman's powers under this paragraph.

(3) The Chairman must publish rules made under this paragraph in such manner as he considers appropriate for the purpose of bringing them to the attention of those likely to be affected by them.

(4) The Chairman must consult the members of the Commission and such other persons as he considers appropriate before making rules under this paragraph.

(5) Rules under this paragraph may—

- (a) make different provision for different cases or different purposes;
- (b) be varied or revoked by subsequent rules made under this paragraph.

(6) Subject to rules made under this paragraph, each merger reference group, market reference group and special reference group may determine its own procedure.

(7) In determining how to proceed in accordance with rules made under this paragraph and in determining its procedure under sub-paragraph (6), a group must have regard to any guidance issued by the Chairman.

(8) Before issuing any guidance for the purposes of this paragraph the Chairman shall consult the members of the Commission and such other persons as he considers appropriate.

(9) In this paragraph and in Schedule 7A—

“market reference group” means any group constituted in connection with a reference under section 131 or 132 of the Enterprise Act 2002 (including that section as it has effect by virtue of another enactment);

“merger reference group” means any group constituted in connection with a reference under section 32 of the Water Industry Act 1991 (c 56) or section 22, 33, 45 or 62 of the Enterprise Act 2002; and

“special reference group” means any group constituted in connection with a reference or (in the case of the Financial Services and Markets Act 2000 (c 8)) an investigation under—

- (a) section 11 of the Competition Act 1980 (c 21);
- (b) . . .
- (c) section 43 of the Airports Act 1986 (c 31);
- (d) section 24 or 41E of the Gas Act 1986 (c 44);
- (e) section 12 or 56C of the Electricity Act 1989 (c 29);
- (f) . . .
- (g) section 12 or 14 of the Water Industry Act 1991 (c 56);
- (h) article 15 of the Electricity (Northern Ireland) Order 1992 (SI 1992/231 (NI 1));
- (i) section 13 of, or Schedule 4A to, the Railways Act 1993 (c 43);
- (j) article 34 of the Airports (Northern Ireland) Order 1994 (SI 1994/426 (NI 1));
- (k) article 15 of the Gas (Northern Ireland) Order 1996 (SI 1996/275 (NI 2));
- (l) section 15 of the Postal Services Act 2000 (c 26);
- (m) section 162 or 306 of the Financial Services and Markets Act 2000 (c 8);
- (n) section 12 of the Transport Act 2000 (c 38); or
- (o) section 193 of the Communications Act 2003.

20 Effect of exercise of functions by group

(1) Subject to sub-paragraphs (2) to (9), anything done by or in relation to a group in, or in connection with, the performance of functions to be performed by the group is to have the same effect as if done by or in relation to the Commission.

(2) For the purposes of Part 3 of the Enterprise Act 2002 (mergers) any decision of a group under section 35(1) or 36(1) of that Act (questions to be decided on non-public interest merger references) that there is an anti-competitive outcome is to be treated as a decision under that section that there is not an anti-competitive outcome if the decision is not that of at least two-thirds of the members of the group.

(3) For the purposes of Part 3 of the Act of 2002, if the decision is not that of at least two-thirds of the members of the group—

- (a) any decision of a group under section 47 of that Act (questions to be decided on public interest merger references) that a relevant merger situation has been created is to be treated as a decision under that section that no such situation has been created;
- (b) any decision of a group under section 47 of that Act that the creation of a relevant merger situation has resulted, or may be expected to result, in a substantial lessening of competition within any market or markets in the United Kingdom for goods or services is to be treated as a decision under that section that the creation of that situation has not resulted, or may be expected not to result, in such a substantial lessening of competition;
- (c) any decision of a group under section 47 of that Act that arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation is to be treated as a decision under

that section that no such arrangements are in progress or in contemplation;
and

- (d) any decision of a group under section 47 of that Act that the creation of such a situation as is mentioned in paragraph (c) may be expected to result in a substantial lessening of competition within any market or markets in the United Kingdom for goods or services is to be treated as a decision under that section that the creation of that situation may be expected not to result in such a substantial lessening of competition.

(4) For the purposes of Part 3 of the Act of 2002, if the decision is not that of at least two-thirds of the members of the group—

- (a) any decision of a group under section 63 of that Act (questions to be decided on special public interest merger references) that a special merger situation has been created is to be treated as a decision under that section that no such situation has been created; and
- (b) any decision of a group under section 63 of that Act that arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a special merger situation is to be treated as a decision under that section that no such arrangements are in progress or in contemplation.

(5) For the purposes of Part 4 of the Act of 2002 (market investigations), if the decision is not that of at least two-thirds of the members of the group, any decision of a group under section 134 or 141 (questions to be decided on market investigation references) that a feature, or combination of features, of a relevant market prevents, restricts or distorts competition in connection with the supply or acquisition of any goods or services in the United Kingdom or a part of the United Kingdom is to be treated as a decision that the feature or (as the case may be) combination of features does not prevent, restrict or distort such competition.

(6) Accordingly, for the purposes of Part 4 of the Act of 2002, a group is to be treated as having decided under section 134 or 141 that there is no adverse effect on competition if—

- (a) one or more than one decision of the group is to be treated as mentioned in sub-paragraph (5); and
- (b) there is no other relevant decision of the group.

(7) In sub-paragraph (6) “relevant decision” means a decision which is not to be treated as mentioned in sub-paragraph (5) and which is that a feature, or combination of features, of a relevant market prevents, restricts or distorts competition in connection with the supply or acquisition of any goods or services in the United Kingdom or a part of the United Kingdom.

(8) Expressions used in sub-paragraphs (2) to (7) shall be construed in accordance with Part 3 or (as the case may be) 4 of the Act of 2002.

(9) Sub-paragraph (1) is also subject to specific provision made by or under other enactments about decisions which are not decisions of at least two-thirds of the members of a group.

21 Casting votes

The chairman of a group is to have a casting vote on any question to be decided by the group.

22 Newspaper merger references

There are to be members of the Commission appointed by the Secretary of State to form a panel of persons available for selection as members of a group constituted in connection with a newspaper merger reference.

PART III

...

PART IV MISCELLANEOUS

28 Disqualification of members for House of Commons

In Part II of Schedule 1 to the House of Commons Disqualification Act 1975 (bodies of which all members are disqualified) insert at the appropriate place—
“The Competition Commission”.

29 Disqualification of members for Northern Ireland Assembly

In Part II of Schedule 1 to the Northern Ireland Assembly Disqualification Act 1975 (bodies of which all members are disqualified) insert at the appropriate place—
“The Competition Commission”.

PART V TRANSITIONAL PROVISIONS

30 Interpretation

In this Part of this Schedule—
“commencement date” means the date on which section 45 comes into force; and
“MMC” means the Monopolies and Mergers Commission.

31 Chairman

(1) The person who is Chairman of the MMC immediately before the commencement date is on that date to become both a member of the Commission and its chairman as if he had been duly appointed under paragraphs 2(1)(b) and 3.

(2) He is to hold office as Chairman of the Commission for the remainder of the period for which he was appointed as Chairman of the MMC and on the terms on which he was so appointed.

32 Deputy chairmen

The persons who are deputy chairmen of the MMC immediately before the commencement date are on that date to become deputy chairmen of the Commission as if they had been duly appointed under paragraph 3(2).

33 Reporting panel members

(1) The persons who are members of the MMC immediately before the commencement date are on that date to become members of the Commission as if they had been duly appointed under paragraph 2(1)(b).

(2) Each of them is to hold office as a member for the remainder of the period for which he was appointed as a member of the MMC and on the terms on which he was so appointed.

34 Specialist panel members

(1) The persons who are members of the MMC immediately before the commencement date by virtue of appointments made under any of the enactments mentioned in paragraph 2(1)(d) are on that date to become members of the Commission as if they had been duly appointed to the Commission under the enactment in question.

(2) Each of them is to hold office as a member for such period and on such terms as the Secretary of State may determine.

35 Secretary

The person who is the secretary of the MMC immediately before the commencement date is on that date to become the secretary of the Commission as if duly appointed under paragraph 9, on the same terms and conditions.

36 Council

(1) The members who become deputy chairmen of the Commission under paragraph 32 are also to become members of the Council as if they had been duly appointed under paragraph 5(2)(c).

(2) Each of them is to hold office as a member of the Council for such period as the Secretary of State determines.

SCHEDULE 7A
THE COMPETITION COMMISSION: PROCEDURAL RULES FOR MERGERS
AND MARKET REFERENCES ETC

Section 45(7)

1

In this Schedule—

“market investigation” means an investigation carried out by a market reference group in connection with a reference under section 131 or 132 of the Enterprise Act 2002 (including that section as it has effect by virtue of another enactment);

“market reference group” has the meaning given by paragraph 19A(9) of Schedule 7 to this Act;

“merger investigation” means an investigation carried out by a merger reference group in connection with a reference under section 32 of the Water Industry Act 1991 (c 56) or section 22, 33, 45 or 62 of the Act of 2002;

“merger reference group” has the meaning given by paragraph 19A(9) of Schedule 7 to this Act;

“relevant group” means a market reference group, merger reference group or special reference group;

“special investigation” means an investigation carried out by a special reference group—

(a) in connection with a reference under a provision mentioned in any of paragraphs (a) to (l), (n) and (o) of the definition of “special reference group” in paragraph 19A(9) of Schedule 7 to this Act; or

(b) under a provision mentioned in paragraph (m) of that definition; and

“special reference group” has the meaning given by paragraph 19A(9) of Schedule 7 to this Act.

2

Rules may make provision—

(a) for particular stages of a merger investigation, a market investigation or a special investigation to be dealt with in accordance with a timetable and for the revision of that timetable;

(b) as to the documents and information which must be given to a relevant group in connection with a merger investigation, a market investigation or a special investigation;

(c) as to the documents or information which a relevant group must give to other persons in connection with such an investigation.

3

Rules made by virtue of paragraph 2(a) and (b) may, in particular, enable or require a relevant group to disregard documents or information given after a particular date.

4

Rules made by virtue of paragraph 2(c) may, in particular, make provision for the notification or publication of, and for consultation about, provisional findings of a relevant group.

5

Rules may make provision as to the quorum of relevant groups.

6

Rules may make provision—

- (a) as to the extent (if any) to which persons interested or claiming to be interested in a matter under consideration which is specified or described in the rules are allowed—
 - (i) to be (either by themselves or by their representatives) present before a relevant group or heard by that group;
 - (ii) to cross-examine witnesses; or
 - (iii) otherwise to take part;
- (b) as to the extent (if any) to which sittings of a relevant group are to be held in public; and
- (c) generally in connection with any matters permitted by rules made under paragraph (a) or (b) (including, in particular, provision for a record of any hearings).

7

Rules may make provision for—

- (a) the notification or publication of information in relation to merger investigations, market investigations or special investigations;
- (b) consultation about such investigations.

SCHEDULE 8
APPEALS

Sections 46(5) and 48(4)

PART I
GENERAL

1 ...

2 **General procedure**

(1) An appeal to the Tribunal under section 46 or 47 must be made by sending a notice of appeal to it within the specified period.

(2) The notice of appeal must set out the grounds of appeal in sufficient detail to indicate—

- (a) under which provision of this Act the appeal is brought;
- (b) to what extent (if any) the appellant contends that the decision against, or with respect to which, the appeal is brought was based on an error of fact or was wrong in law; and
- (c) to what extent (if any) the appellant is appealing against the OFT's exercise of its discretion in making the disputed decision.

(3) The Tribunal may give an appellant leave to amend the grounds of appeal identified in the notice of appeal.

(4) In this paragraph references to the Tribunal are to the Tribunal as constituted (in accordance with section 14 of the Enterprise Act 2002) for the purposes of the proceedings in question.

(5) Nothing in this paragraph restricts the power under section 15 of the Enterprise Act 2002 (Tribunal rules) to make provision as to the manner of instituting proceedings before the Tribunal.

3 **Decisions of the Tribunal**

(A1) This paragraph applies to any appeal under section 46 or 47 other than—

- (a) an appeal under section 46 against, or with respect to, a decision of the kind specified in subsection (3)(g) or (h) of that section, and
- (b) an appeal under section 47(1)(b) or (c).

(1) The Tribunal must determine the appeal on the merits by reference to the grounds of appeal set out in the notice of appeal.

(2) The Tribunal may confirm or set aside the decision which is the subject of the appeal, or any part of it, and may—

- (a) remit the matter to the OFT,

- (b) impose or revoke, or vary the amount of, a penalty,
- (c) . . .
- (d) give such directions, or take such other steps, as the OFT could itself have given or taken, or
- (e) make any other decision which the OFT could itself have made.

(3) Any decision of the Tribunal on an appeal has the same effect, and may be enforced in the same manner, as a decision of the OFT.

(4) If the Tribunal confirms the decision which is the subject of the appeal it may nevertheless set aside any finding of fact on which the decision was based.

3A

- (1) This paragraph applies to—
 - (a) any appeal under section 46 against, or with respect to, a decision of the kind specified in subsection (3)(g) or (h) of that section, and
 - (b) any appeal under section 47(1)(b) or (c).

(2) The Tribunal must, by reference to the grounds of appeal set out in the notice of appeal, determine the appeal by applying the same principles as would be applied by a court on an application for judicial review.

- (3) The Tribunal may—
 - (a) dismiss the appeal or quash the whole or part of the decision to which it relates; and
 - (b) where it quashes the whole or part of that decision, remit the matter back to the OFT with a direction to reconsider and make a new decision in accordance with the ruling of the Tribunal.

4 . . .

PART II

. . .

SCHEDULE 9
OFT'S RULES

Section 51(2)

1 General

In this Schedule “rules” means rules made by the OFT under section 51.

2 ...

3 ...

4 ...

5 Decisions

- (1) Rules may make provision as to—
 - (a) the form and manner in which notice of any decision is to be given;
 - (b) the person or persons to whom the notice is to be given;
 - (c) the manner in which the OFT is to publish a decision;
 - (d) the procedure to be followed if—
 - (i) the OFT takes further action with respect to an agreement after having decided that it does not infringe the Chapter I prohibition;
 - (ii) the OFT takes further action with respect to an agreement after having decided that it does not infringe the prohibition in Article 81(1);
 - (iii) the OFT takes further action with respect to conduct after having decided that it does not infringe the Chapter II prohibition; or
 - (iv) the OFT takes further action with respect to conduct after having decided that it does not infringe the prohibition in Article 82.

- (2) In this paragraph “decision” means a decision of the OFT—
 - (a) as to whether or not an agreement has infringed the Chapter I prohibition;
 - (b) as to whether or not an agreement has infringed the prohibition in Article 81(1);
 - (c) as to whether or not conduct has infringed the Chapter II prohibition; or
 - (d) as to whether or not conduct has infringed the prohibition in Article 82.

6 ...

7 ...

8 Block exemptions

Rules may make provision as to—

- (a) the procedure to be followed by the OFT if it cancels a block exemption;
- (b) the procedure to be followed by the OFT if it withdraws the benefit of a regulation of the Commission pursuant to Article 29(2) of the EC Competition Regulation.

9 Parallel exemptions

Rules may make provision as to—

- (a) the circumstances in which the OFT may—
 - (i) impose conditions or obligations in relation to a parallel exemption,
 - (ii) vary or remove any such conditions or obligations,
 - (iii) impose additional conditions or obligations, or
 - (iv) cancel the exemption;
- (b) as to the procedure to be followed by the OFT if it is acting under section 10(5);
- (c) the form and manner in which notice of a decision to take any of the steps in sub-paragraph (a) is to be given;
- (d) the circumstances in which an exemption may be cancelled with retrospective effect.

10 Section 11 exemptions

Rules may, with respect to any exemption provided by regulations made under section 11, make provision similar to that made with respect to parallel exemptions by section 10 or by rules under paragraph 9.

11 Directions withdrawing exclusions

Rules may make provision as to the factors which the OFT may take into account when it is determining the date on which a direction given under paragraph 4(1) of Schedule 1 or paragraph 9(3) of Schedule 3 is to have effect.

12 Disclosure of information

(1) Rules may make provision as to the circumstances in which the OFT is to be required, before disclosing information given to it by a third party in connection with the exercise of any of the OFT's functions under Part I, to give notice, and an opportunity to make representations, to the third party.

(2) In relation to the agreement (or conduct) concerned, "third party" means a person who is not a party to the agreement (or who has not engaged in the conduct).

13 Applications under section 47

Rules may make provision as to—

- (a) the period within which an application under section 47(1) must be made;
- (b) the procedure to be followed by the OFT in dealing with the application;
- (c) the person or persons to whom notice of the OFT's response to the application is to be given.

14 Enforcement

Rules may make provision as to the procedure to be followed when the OFT takes action under any of sections 32 to 40 with respect to the enforcement of the provisions of this Part.

SCHEDULE 10
REGULATORS

Sections 54 and 66(5)

PART I

...

PART II
THE PROHIBITIONS

2 ...

3 **Gas**

(1) In consequence of the repeal by this Act of provisions of the Competition Act 1980, the functions transferred by subsection (3) of section 36A of the Gas Act 1986 (functions with respect to competition) are no longer exercisable by the Director General of Gas Supply.

(2) Accordingly, that Act is amended as follows.

(3) ...

(4) Section 36A is amended as follows.

(5) For subsection (3) substitute—

“(3) The Director shall be entitled to exercise, concurrently with the Director General of Fair Trading, the functions of that Director under the provisions of Part I of the Competition Act 1998 (other than sections 38(1) to (6) and 51), so far as relating to—

(a) agreements, decisions or concerted practices of the kind mentioned in section 2(1) of that Act, or

(b) conduct of the kind mentioned in section 18(1) of that Act, which relate to the carrying on of activities to which this subsection applies.

(3A) So far as necessary for the purposes of, or in connection with, the provisions of subsection (3) above, references in Part I of the Competition Act 1998 to the Director General of Fair Trading are to be read as including a reference to the Director (except in sections 38(1) to (6), 51, 52(6) and (8) and 54 of that Act and in any other provision of that Act where the context otherwise requires).”

(6) ...

(7) In subsection (6), omit “or (3)”.

- (8) In subsection (7), for paragraph (b) substitute—
- “(b) Part I of the Competition Act 1998 (other than sections 38(1) to (6) and 51),”.
- (9) ...
- (10) ...
- (11) ...

4 Electricity

(1) In consequence of the repeal by this Act of provisions of the Competition Act 1980, the functions transferred by subsection (3) of section 43 of the Electricity Act 1989 (functions with respect to competition) are no longer exercisable by the Director General of Electricity Supply.

- (2) Accordingly, that Act is amended as follows.
- (3) ...
- (4) Section 43 is amended as follows.
- (5) For subsection (3) substitute—

“(3) The Director shall be entitled to exercise, concurrently with the Director General of Fair Trading, the functions of that Director under the provisions of Part I of the Competition Act 1998 (other than sections 38(1) to (6) and 51), so far as relating to—

- (a) agreements, decisions or concerted practices of the kind mentioned in section 2(1) of that Act, or
- (b) conduct of the kind mentioned in section 18(1) of that Act,
- which relate to commercial activities connected with the generation, transmission or supply of electricity.

(3A) So far as necessary for the purposes of, or in connection with, the provisions of subsection (3) above, references in Part I of the Competition Act 1998 to the Director General of Fair Trading are to be read as including a reference to the Director (except in sections 38(1) to (6), 51, 52(6) and (8) and 54 of that Act and in any other provision of that Act where the context otherwise requires).”

- (6) ...
- (7) In subsection (5), omit “or (3)”.
- (8) In subsection (6), for paragraph (b) substitute—

“(b) Part I of the Competition Act 1998 (other than sections 38(1) to (6) and 51),”.

(9) . . .

5 Water

(1) In consequence of the repeal by this Act of provisions of the Competition Act 1980, the functions exercisable by virtue of subsection (3) of section 31 of the Water Industry Act 1991 (functions of Director with respect to competition) are no longer exercisable by the Director General of Water Services.

(2) Accordingly, that Act is amended as follows.

(3) In section 2 (general duties with respect to water industry), in subsection (6)(a), at the beginning, insert “subject to subsection (6A) below”.

(4) In section 2, after subsection (6), insert—

“(6A) Subsections (2) to (4) above do not apply in relation to anything done by the Director in the exercise of functions assigned to him by section 31(3) below (“Competition Act functions”).

(6B) The Director may nevertheless, when exercising any Competition Act function, have regard to any matter in respect of which a duty is imposed by any of subsections (2) to (4) above, if it is a matter to which the Director General of Fair Trading could have regard when exercising that function.”

(5) Section 31 is amended as follows.

(6) For subsection (3) substitute—

“(3) The Director shall be entitled to exercise, concurrently with the Director General of Fair Trading, the functions of that Director under the provisions of Part I of the Competition Act 1998 (other than sections 38(1) to (6) and 51), so far as relating to—

(a) agreements, decisions or concerted practices of the kind mentioned in section 2(1) of that Act, or

(b) conduct of the kind mentioned in section 18(1) of that Act, which relate to commercial activities connected with the supply of water or securing a supply of water or with the provision or securing of sewerage services.”

(7) . . .

(8) After subsection (4), insert—

“(4A) So far as necessary for the purposes of, or in connection with, the provisions of subsection (3) above, references in Part I of the Competition Act 1998 to the Director General of Fair Trading are to be read as including a reference to the Director (except in sections 38(1) to (6), 51, 52(6) and (8) and 54 of that Act and in any other provision of that Act where the context otherwise requires).”

(9) ...

(10) ...

(11) In subsection (7), omit “or (3)”.

(12) In subsection (8), for paragraph (b) substitute—

“(b) Part I of the Competition Act 1998 (other than sections 38(1) to (6) and 51),”.

(13) ...

6 Railways

(1) In consequence of the repeal by this Act of provisions of the Competition Act 1980, the functions transferred by subsection (3) of section 67 of the Railways Act 1993 (respective functions of the Regulator and the Director etc) are no longer exercisable by the Rail Regulator the Office of Rail Regulation.

(2) Accordingly, that Act is amended as follows.

(3) In section 4 (general duties of the Secretary of State and the Regulator), after subsection (7), insert—

“(7A) Subsections (1) to (6) above do not apply in relation to anything done by the Regulator in the exercise of functions assigned to him by section 67(3) below (“Competition Act functions”).

(7B) The Regulator may nevertheless, when exercising any Competition Act function, have regard to any matter in respect of which a duty is imposed by any of subsections (1) to (6) above, if it is a matter to which the Director General of Fair Trading could have regard when exercising that function.”

(4) Section 67 is amended as follows.

(5) For subsection (3) substitute—

“(3) The Regulator shall be entitled to exercise, concurrently with the Director, the functions of the Director under the provisions of Part I of

the Competition Act 1998 (other than sections 38(1) to (6) and 51), so far as relating to—

- (a) agreements, decisions or concerted practices of the kind mentioned in section 2(1) of that Act, or
- (b) conduct of the kind mentioned in section 18(1) of that Act, which relate to the supply of railway services.

(3A) So far as necessary for the purposes of, or in connection with, the provisions of subsection (3) above, references in Part I of the Competition Act 1998 to the Director are to be read as including a reference to the Regulator (except in sections 38(1) to (6), 51, 52(6) and (8) and 54 of that Act and in any other provision of that Act where the context otherwise requires).”

(6) . . .

(7) In subsection (6)(a), omit “or (3)”.

(8) In subsection (8), for paragraph (b) substitute—

“(b) Part I of the Competition Act 1998 (other than sections 38(1) to (6) and 51),”.

(9) . . .

PART III THE PROHIBITIONS: NORTHERN IRELAND

7 Electricity

(1) In consequence of the repeal by this Act of provisions of the Competition Act 1980, the functions transferred by paragraph (3) of Article 46 of the Electricity (Northern Ireland) Order 1992 (functions with respect to competition) are no longer exercisable by the Director General of Electricity Supply for Northern Ireland.

(2) Accordingly, that Order is amended as follows.

(3) . . .

(4) Article 46 is amended as follows.

(5) For paragraph (3) substitute—

“(3) The Director shall be entitled to exercise, concurrently with the Director General of Fair Trading, the functions of that Director under the provisions of Part I of the Competition Act 1998 (other than sections 38(1) to (6) and 51), so far as relating to—

- (a) agreements, decisions or concerted practices of the kind mentioned in section 2(1) of that Act, or

(b) conduct of the kind mentioned in section 18(1) of that Act, which relate to commercial activities connected with the generation, transmission or supply of electricity.

(3A) So far as necessary for the purposes of, or in connection with, the provisions of paragraph (3), references in Part I of the Competition Act 1998 to the Director General of Fair Trading are to be read as including a reference to the Director (except in sections 38(1) to (6), 51, 52(6) and (8) and 54 of that Act and in any other provision of that Act where the context otherwise requires).”

(6) ...

(7) In paragraph (5), omit “or (3)”.

(8) In paragraph (6), for sub-paragraph (b) substitute—

“(b) Part I of the Competition Act 1998 (other than sections 38(1) to (6) and 51),”.

(9) ...

8 Gas

(1) In consequence of the repeal by this Act of provisions of the Competition Act 1980, the functions transferred by paragraph (3) of Article 23 of the Gas (Northern Ireland) Order 1996 (functions with respect to competition) are no longer exercisable by the Director General of Gas for Northern Ireland.

(2) Accordingly, that Order is amended as follows.

(3) ...

(4) Article 23 is amended as follows.

(5) For paragraph (3) substitute—

“(3) The Director shall be entitled to exercise, concurrently with the Director General of Fair Trading, the functions of that Director under the provisions of Part I of the Competition Act 1998 (other than sections 38(1) to (6) and 51), so far as relating to—

(a) agreements, decisions or concerted practices of the kind mentioned in section 2(1) of that Act, or

(b) conduct of the kind mentioned in section 18(1) of that Act, connected with the conveyance, storage or supply of gas.

(3A) So far as necessary for the purposes of, or in connection with, the provisions of paragraph (3), references in Part I of the Competition Act 1998 to the Director General of Fair Trading are to be read as

including a reference to the Director (except in sections 38(1) to (6), 51, 52(6) and (8) and 54 of that Act and in any other provision of that Act where the context otherwise requires).”

(6) ...

(7) In paragraph (5), omit “or (3)”.

(8) In paragraph (6), for sub-paragraph (b) substitute—

“(b) Part I of the Competition Act 1998 (other than sections 38(1) to (6) and 51),”.

(9) ...

(10) ...

(11) ...

PART IV UTILITIES: MINOR AND CONSEQUENTIAL AMENDMENTS

9 The Telecommunications Act 1984 (c 12)

(1) The Telecommunications Act 1984 is amended as follows.

(2) ...

(3) ...

(4) ...

(5) ...

(6) ...

(7) In section 101(3) (general restrictions on disclosure of information)—

(a) omit paragraphs (d) and (e) (which refer to the Restrictive Trade Practices Act 1976 and the Resale Prices Act 1976);

(b) after paragraph (m), insert—
“(n) the Competition Act 1998”.

(8) At the end of section 101, insert—

“(6) Information obtained by the Director in the exercise of functions which are exercisable concurrently with the Director General of Fair Trading under Part I of the Competition Act 1998 is subject to sections 55 and 56 of that Act (disclosure) and not to subsections (1) to (5) of this section.”

10 The Gas Act 1986 (c 44)

- (1) The Gas Act 1986 is amended as follows.
- (2) . . .
- (3) In section 25, omit subsection (2) (which falls with the repeal of the Restrictive Trade Practices Act 1976).
- (4) . . .
- (5) In section 28 (orders for securing compliance with certain provisions), in subsection (5), after paragraph (aa), omit “or” and after paragraph (b), insert “or (c) that the most appropriate way of proceeding is under the Competition Act 1998.”
- (6) In section 42(3) (general restrictions on disclosure of information)—
 - (a) omit paragraphs (e) and (f) (which refer to the Restrictive Trade Practices Act 1976 and the Resale Prices Act 1976);
 - (b) after paragraph (n), insert—

“(o) the Competition Act 1998”.
- (7) At the end of section 42, insert—

“(7) Information obtained by the Director in the exercise of functions which are exercisable concurrently with the Director General of Fair Trading under Part I of the Competition Act 1998 is subject to sections 55 and 56 of that Act (disclosure) and not to subsections (1) to (6) of this section.”

11 The Water Act 1989 (c 15)

In section 174(3) of the Water Act 1989 (general restrictions on disclosure of information)—

- (a) omit paragraphs (d) and (e) (which refer to the Restrictive Trade Practices Act 1976 and the Resale Prices Act 1976);
- (b) after paragraph (l), insert—

“(ll) the Competition Act 1998”.

12 The Electricity Act 1989 (c 29)

- (1) The Electricity Act 1989 is amended as follows.
- (2) In section 12 (modification references to Competition Commission), for subsections (8) and (9) substitute—

“(8) The provisions mentioned in subsection (8A) are to apply in relation to references under this section as if—

- (a) the functions of the Competition Commission in relation to those references were functions under the 1973 Act;
- (b) the expression “merger reference” included a reference under this section;
- (c) in section 70 of the 1973 Act—
 - (i) references to the Secretary of State were references to the Director, and
 - (ii) the reference to three months were a reference to six months.

(8A) The provisions are—

- (a) sections 70 (time limit for report on merger) and 85 (attendance of witnesses and production of documents) of the 1973 Act;
- (b) Part II of Schedule 7 to the Competition Act 1998 (performance of the Competition Commission’s general functions); and
- (c) section 24 of the 1980 Act (modification of provisions about performance of such functions).

(9) For the purposes of references under this section, the Secretary of State is to appoint not less than eight members of the Competition Commission.

(9A) In selecting a group to perform the Commission’s functions in relation to any such reference, the chairman of the Commission must select up to three of the members appointed under subsection (9) to be members of the group.”

(3) In section 13, omit subsection (2) (which falls with the repeal of the Restrictive Trade Practices Act 1976).

(4) . . .

(5) In section 25 (orders for securing compliance), in subsection (5), after paragraph (b), omit “or” and after paragraph (c), insert “or (d) that the most appropriate way of proceeding is under the Competition Act 1998.”

(6) . . .

(7) In section 57(3) (general restrictions on disclosure of information)—

- (a) omit paragraphs (d) and (e) (which refer to the Restrictive Trade Practices Act 1976 and the Resale Prices Act 1976);
- (b) after paragraph (no), insert—

“(nop) the Competition Act 1998”.

(8) At the end of section 57, insert—

“(7) Information obtained by the Director in the exercise of functions which are exercisable concurrently with the Director General of Fair Trading under Part I of the Competition Act 1998 is subject to sections

55 and 56 of that Act (disclosure) and not to subsections (1) to (6) of this section.”

13 The Water Industry Act 1991 (c 56)

(1) The Water Industry Act 1991 is amended as follows.

(2) In section 12(5) (determinations under conditions of appointment)—

- (a) after “this Act”, insert “or”;
- (b) omit “or the 1980 Act”.

(3) In section 14 (modification references to Competition Commission), for subsections (7) and (8) substitute—

“(7) The provisions mentioned in subsection (7A) are to apply in relation to references under this section as if—

- (a) the functions of the Competition Commission in relation to those references were functions under the 1973 Act;
- (b) the expression “merger reference” included a reference under this section;
- (c) in section 70 of the 1973 Act—
 - (i) references to the Secretary of State were references to the Director, and
 - (ii) the reference to three months were a reference to six months.

(7A) The provisions are—

- (a) sections 70 (time limit for report on merger) and 85 (attendance of witnesses and production of documents) of the 1973 Act;
- (b) Part II of Schedule 7 to the Competition Act 1998 (performance of the Competition Commission’s general functions); and
- (c) section 24 of the 1980 Act (modification of provisions about performance of such functions).

(8) For the purposes of references under this section, the Secretary of State is to appoint not less than eight members of the Competition Commission.

(8A) In selecting a group to perform the Commission’s functions in relation to any such reference, the chairman of the Commission must select one or more of the members appointed under subsection (8) to be members of the group.”

(4) In section 15, omit subsection (2) (which falls with the repeal of the Restrictive Trade Practices Act 1976).

(5) In section 17 (modification by order under other enactments)—

- (a) in subsection (1), omit paragraph (b) and the “or” immediately before it;
- (b) in subsection (2)—

- (i) after paragraph (a), insert “or”;
 - (ii) omit paragraph (c) and the “or” immediately before it;
- (c) in subsection (4), omit “or the 1980 Act”.

(6) In section 19 (exceptions to duty to enforce), after subsection (1), insert—

“(1A) The Director shall not be required to make an enforcement order, or to confirm a provisional enforcement order, if he is satisfied that the most appropriate way of proceeding is under the Competition Act 1998.”

(7) In section 19(3), after “subsection (1) above”, insert “or, in the case of the Director, is satisfied as mentioned in subsection (1A) above,”.

(8) . . .

(9) After section 206(9) (restriction on disclosure of information), insert—

“(9A) Information obtained by the Director in the exercise of functions which are exercisable concurrently with the Director General of Fair Trading under Part I of the Competition Act 1998 is subject to sections 55 and 56 of that Act (disclosure) and not to subsections (1) to (9) of this section.”

(10) In Schedule 15 (disclosure of information), in Part II (enactments in respect of which disclosure may be made)—

- (a) omit the entries relating to the Restrictive Trade Practices Act 1976 and the Resale Prices Act 1976;
- (b) after the entry relating to the Railways Act 1993, insert the entry—
“The Competition Act 1998”.

14 The Water Resources Act 1991 (c 57)

In Schedule 24 to the Water Resources Act 1991 (disclosure of information), in Part II (enactments in respect of which disclosure may be made)—

- (a) omit the entries relating to the Restrictive Trade Practices Act 1976 and the Resale Prices Act 1976;
- (b) after the entry relating to the Coal Industry Act 1994, insert the entry—
“The Competition Act 1998”.

15 The Railways Act 1993 (c 43)

(1) The Railways Act 1993 is amended as follows.

(2) . . .

(3) In section 14, omit subsection (2) (which falls with the repeal of the Restrictive Trade Practices Act 1976).

- (4) . . .
- (5) In section 22, after subsection (6), insert—
- “(6A) Neither the Director General of Fair Trading nor the Regulator may exercise, in respect of an access agreement, the powers given by section 32 (enforcement directions) or section 35(2) (interim directions) of the Competition Act 1998.
- (6B) Subsection (6A) does not apply to the exercise of the powers given by section 35(2) in respect of conduct—
- (a) which is connected with an access agreement; and
- (b) in respect of which section 35(1)(b) of that Act applies.”
- (6) In section 55 (orders for securing compliance), after subsection (5), insert—
- “(5A) The Regulator shall not make a final order, or make or confirm a provisional order, in relation to a licence holder or person under closure restrictions if he is satisfied that the most appropriate way of proceeding is under the Competition Act 1998.”
- (7) In section 55—
- (a) . . .
- (b) in subsection (11), for “subsection (10)” substitute “subsections (5A) and (10)”.
- (8) Omit section 131 (modification of Restrictive Trade Practices Act 1976).
- (9) In section 145(3) (general restrictions on disclosure of information)—
- (a) omit paragraphs (d) and (e) (which refer to the Restrictive Trade Practices Act 1976 and the Resale Prices Act 1976);
- (b) after paragraph (q), insert—
- “(qq) the Competition Act 1998.”
- (10) After section 145(6), insert—
- “(6A) Information obtained by the Regulator in the exercise of functions which are exercisable concurrently with the Director General of Fair Trading under Part I of the Competition Act 1998 is subject to sections 55 and 56 of that Act (disclosure) and not to subsections (1) to (6) of this section.”

16 The Channel Tunnel Rail Link Act 1996 (c 61)

- (1) The Channel Tunnel Rail Link Act 1996 is amended as follows.
- (2) In section 21 (duties as to exercise of regulatory functions), in subsection (6), at the end of the paragraph about regulatory functions, insert—

“other than any functions assigned to him by virtue of section 67(3) of that Act (“Competition Act functions”).

(7) The Regulator may, when exercising any Competition Act function, have regard to any matter to which he would have regard if—
(a) he were under the duty imposed by subsection (1) or (2) above in relation to that function; and
(b) the matter is one to which the Director General of Fair Trading could have regard if he were exercising that function.”

(3) In section 22 (restriction of functions in relation to competition etc), for subsection (3) substitute—

“(3) The Rail Regulator shall not be entitled to exercise any functions assigned to him by section 67(3) of the Railways Act 1993 (by virtue of which he exercises concurrently with the Director General of Fair Trading certain functions under Part I of the Competition Act 1998 so far as relating to matters connected with the supply of railway services) in relation to—
(a) any agreements, decisions or concerted practices of the kind mentioned in section 2(1) of that Act that have been entered into or taken by, or
(b) any conduct of the kind mentioned in section 18(1) of that Act that has been engaged in by,
a rail link undertaker in connection with the supply of railway services, so far as relating to the rail link.”

PART V

MINOR AND CONSEQUENTIAL AMENDMENTS: NORTHERN IRELAND

17 The Electricity (Northern Ireland) Order 1992

(1) The Electricity (Northern Ireland) Order 1992 is amended as follows.

(2) In Article 15 (modification references to Competition Commission), for paragraphs (8) and (9) substitute—

“(8) The provisions mentioned in paragraph (8A) are to apply in relation to references under this Article as if—
(a) the functions of the Competition Commission in relation to those references were functions under the 1973 Act;
(b) “merger reference” included a reference under this Article;
(c) in section 70 of the 1973 Act—
(i) references to the Secretary of State were references to the Director, and
(ii) the reference to three months were a reference to six months.

(8A) The provisions are—

- (a) sections 70 (time limit for report on merger) and 85 (attendance of witnesses and production of documents) of the 1973 Act;
- (b) Part II of Schedule 7 to the Competition Act 1998 (performance of the Competition Commission's general functions); and
- (c) section 24 of the 1980 Act (modification of provisions about performance of such functions).

(9) The Secretary of State may appoint members of the Competition Commission for the purposes of references under this Article.

(9A) In selecting a group to perform the Commission's functions in relation to any such reference, the chairman of the Commission must select up to three of the members appointed under paragraph (9) to be members of the group."

(3) In Article 16, omit paragraph (2) (which falls with the repeal of the Restrictive Trade Practices Act 1976).

- (4) In Article 18 (modification by order under other statutory provisions)—
- (a) in paragraph (1), omit sub-paragraph (b) and the "or" immediately before it;
 - (b) in paragraph (2)—
 - (i) after sub-paragraph (a), insert "or";
 - (ii) omit sub-paragraph (c) and the "or" immediately before it;
 - (c) in paragraph (3), omit "or the 1980 Act".

(5) ...

(6) ...

(7) ...

(8) ...

(9) In Schedule 12, omit paragraph 16 (which amends the Restrictive Trade Practices Act 1976).

18 The Gas (Northern Ireland) Order 1996

(1) The Gas (Northern Ireland) Order 1996 is amended as follows.

(2) ...

(3) In Article 16, omit paragraph (2) (which falls with the repeal of the Restrictive Trade Practices Act 1976).

- (4) In Article 18 (modification by order under other statutory provisions)—
- (a) in paragraph (1), omit sub-paragraph (b) and the "or" immediately before it;
 - (b) in paragraph (3)—
 - (i) after sub-paragraph (a), insert "or";

- (ii) omit sub-paragraph (c) and the “or” immediately before it;
- (c) in paragraph (5), omit “or the 1980 Act”.

(5) ...

(6) ...

(7) ...

SCHEDULE 11

...

SCHEDULE 12
MINOR AND CONSEQUENTIAL AMENDMENTS

Section 74(1)

1 The Fair Trading Act 1973 (c 41)

- (1) The Fair Trading Act 1973 is amended as follows.
- (2) Omit section 4 and Schedule 3 (which make provision in respect of the Monopolies and Mergers Commission).
- (3) Omit—
 - (a) section 10(2),
 - (b) section 54(5),
 - (c) section 78(3),
 - (d) paragraph 3(1) and (2) of Schedule 8,(which fall with the repeal of the Restrictive Trade Practices Act 1976).
- (4) ...
- (5) ...
- (6) ...
- (7) ...
- (8) Omit section 45 (power of the Director to require information about complex monopoly situations).
- (9) ...
- (10) ...
- (11) ...
- (12) ...
- (13) ...
- (14) ...
- (15) In section 135(1) (financial provisions)—
 - (a) in the words before paragraph (a) and in paragraph (b), omit “or the Commission”; and
 - (b) omit paragraph (a).

2 The Energy Act 1976 (c 76)

In the Energy Act 1976, omit section 5 (temporary relief from restrictive practices law in relation to certain agreements connected with petroleum).

3 The Estate Agents Act 1979 (c 38)

In section 10(3) of the Estate Agents Act 1979 (restriction on disclosure of information), in paragraph (a)—

(a) omit “or the Restrictive Trade Practices Act 1976”; and

(b) after “the Coal Industry Act 1994”, insert “or the Competition Act 1998”.

4 The Competition Act 1980 (c 21)

(1) The Competition Act 1980 is amended as follows.

(2) In section 11(8) (public bodies and other persons referred to the Commission), omit paragraph (b) and the “and” immediately before it.

(3) ...

(4) ...

(5) In section 15 (special provisions for agricultural schemes) omit subsections (2)(b), (3) and (4).

(6) In section 16 (reports), omit subsection (3).

(7) In section 17 (publication etc of reports)—

(a) in subsections (1) and (3) to (5), omit “8(1)”; and

(b) in subsection (2), omit “8(1) or”; and

(c) in subsection (6), for “sections 9, 10 or” substitute “section”.

(8) In section 19(3) (restriction on disclosure of information), omit paragraphs (d) and (e).

(9) ...

(10) ...

(11) Omit section 22 (which amends the Fair Trading Act 1973).

(12) ...

(13) Omit sections 25 to 30 (amendments of the Restrictive Trade Practices Act 1976).

- (14) In section 31 (orders and regulations)—
(a) omit subsection (2); and
(b) in subsection (3), omit “10”.

- (15) In section 33 (short title etc)—
(a) . . .
(b) omit subsections (3) and (4).

5 Magistrates’ Courts (Northern Ireland) Order 1981 (SI 1981/1675 (NI 26))

In Schedule 6 to the Magistrates’ Courts (Northern Ireland) Order 1981, omit paragraphs 42 and 43 (which amend the Restrictive Trade Practices Act 1976).

6 Agricultural Marketing (Northern Ireland) Order 1982 (SI 1982/1080 (NI 12))

- In Schedule 8 to the Agricultural Marketing (Northern Ireland) Order 1982—
(a) omit the entry relating to paragraph 16(2) of Schedule 3 to the Fair Trading Act 1973; and
(b) in the entry relating to the Competition Act 1980—
(i) for “sections” substitute “section”;
(ii) omit “and 15(3)”.

7 . . .

8 The Financial Services Act 1986 (c 60)

- In Schedule 11 to the Financial Services Act 1986, in paragraph 12—
(a) in sub-paragraph (1), omit “126”;
(b) omit sub-paragraph (2).

9 The Companies Consolidation (Consequential Provisions) (Northern Ireland) Order 1986 (SI 1986/1035 (NI 9))

In Part II of Schedule 1 to the Companies Consolidation (Consequential Provisions)(Northern Ireland) Order 1986, omit the entries relating to the Restrictive Trade Practices Act 1976 and the Resale Prices Act 1976.

10 . . .

11 . . .

12 The Road Traffic (Consequential Provisions) Act 1988 (c 54)

In Schedule 3 to the Road Traffic (Consequential Provisions) Act 1988 (consequential amendments), omit paragraph 19.

13 The Companies Act 1989 (c 40)

In Schedule 20 to the Companies Act 1989 (amendments about mergers and related matters), omit paragraphs 21 to 24.

14 ...

15 The Tribunals and Inquiries Act 1992 (c 53)

In Schedule 1 to the Tribunals and Inquiries Act 1992 (tribunals under the supervision of the Council on Tribunals), after paragraph 9, insert—
“Competition 9A An appeal tribunal established under section 48 of the Competition Act 1998.”

16 ...

17 ...

18 The Coal Industry Act 1994 (c 21)

In section 59(4) of the Coal Industry Act 1994 (information to be kept confidential by the Coal Authority)—

- (a) omit paragraphs (e) and (f); and
- (b) after paragraph (m), insert—

“(n) the Competition Act 1998.”

19 The Deregulation and Contracting Out Act 1994 (c 40)

(1) The Deregulation and Contracting Out Act 1994 is amended as follows.

(2) Omit—

- (a) section 10 (restrictive trade practices: non-notifiable agreements); and
- (b) section 11 (registration of commercially sensitive information).

(3) In section 12 (anti-competitive practices: competition references), omit subsections (1) to (6).

(4) In Schedule 4, omit paragraph 1.

(5) In Schedule 11 (miscellaneous deregulatory provisions: consequential amendments), in paragraph 4, omit sub-paragraphs (3) to (7).

20 ...

21 The Broadcasting Act 1996 (c 55)

In section 77 of the Broadcasting Act 1996 (which modifies the Restrictive Trade Practices Act 1976 in its application to agreements relating to Channel 3 news provision), omit subsection (2).

SCHEDULE 13
TRANSITIONAL PROVISIONS AND SAVINGS

Section 74(2)

PART I
GENERAL

1 Interpretation

(1) In this Schedule—
“RPA” means the Resale Prices Act 1976;
“RTPA” means the Restrictive Trade Practices Act 1976;
“continuing proceedings” has the meaning given by paragraph 15;
“the Court” means the Restrictive Practices Court;
“Director” means the Director General of Fair Trading;
“document” includes information recorded in any form;
“enactment date” means the date on which this Act is passed;
“information” includes estimates and forecasts;
“interim period” means the period beginning on the enactment date and ending immediately before the starting date;
“prescribed” means prescribed by an order made by the Secretary of State;
“regulator” means any person mentioned in paragraphs (a) to (g) of paragraph 1 of Schedule 10 and the Civil Aviation Authority;
“starting date” means the date on which section 2 comes into force;
“transitional period” means the transitional period provided for in Chapters III and IV of Part IV of this Schedule.

(2) Sections 30, 44, 51, 53, 55, 56, 57 and 59(3) and (4) and paragraph 12 of Schedule 9 (“the applied provisions”) apply for the purposes of this Schedule as they apply for the purposes of Part I of this Act.

(3) Section 2(5) applies for the purposes of any provisions of this Schedule which are concerned with the operation of the Chapter I prohibition as it applies for the purposes of Part I of this Act.

(4) In relation to any of the matters in respect of which a regulator may exercise powers as a result of paragraph 35(1), the applied provisions are to have effect as if references to the Director included references to the regulator.

(5) The fact that to a limited extent the Chapter I prohibition does not apply to an agreement, because a transitional period is provided by virtue of this Schedule, does not require those provisions of the agreement in respect of which there is a transitional period to be disregarded when considering whether the agreement infringes the prohibition for other reasons.

2 General power to make transitional provision and savings

(1) Nothing in this Schedule affects the power of the Secretary of State under section 75 to make transitional provisions or savings.

(2) An order under that section may modify any provision made by this Schedule.

3 Advice and information

(1) The Director may publish advice and information explaining provisions of this Schedule to persons who are likely to be affected by them.

(2) Any advice or information published by the Director under this paragraph is to be published in such form and manner as he considers appropriate.

PART II DURING THE INTERIM PERIOD

4 Block exemptions

(1) The Secretary of State may, at any time during the interim period, make one or more orders for the purpose of providing block exemptions which are effective on the starting date.

(2) An order under this paragraph has effect as if properly made under section 6.

5 Certain agreements to be non-notifiable agreements

An agreement which—

(a) is made during the interim period, and

(b) satisfies the conditions set out in paragraphs (a), (c) and (d) of section 27A(1) of the RTPA,

is to be treated as a non-notifiable agreement for the purposes of RTPA.

6 Application of RTPA during the interim period

In relation to agreements made during the interim period—

(a) the Director is no longer under the duty to take proceedings imposed by section 1(2)(c) of the RTPA but may continue to do so;

(b) section 21 of that Act has effect as if subsections (1) and (2) were omitted; and

(c) section 35(1) of that Act has effect as if the words “or within such further time as the Director may, upon application made within that time, allow” were omitted.

7 Guidance

(1) Sub-paragraphs (2) to (4) apply in relation to agreements made during the interim period.

(2) An application may be made to the Director in anticipation of the coming into force of section 13 in accordance with directions given by the Director and such an application is to have effect on and after the starting date as if properly made under section 13.

- (3) The Director may, in response to such an application—
- (a) give guidance in anticipation of the coming into force of section 2; or
 - (b) on and after the starting date, give guidance under section 15 as if the application had been properly made under section 13.

(4) Any guidance so given is to have effect on and after the starting date as if properly given under section 15.

PART III ON THE STARTING DATE

8 Applications which fall

(1) Proceedings in respect of an application which is made to the Court under any of the provisions mentioned in sub-paragraph (2), but which is not determined before the starting date, cease on that date.

- (2) The provisions are—
- (a) sections 2(2), 35(3), 37(1) and 40(1) of the RTPA and paragraph 5 of Schedule 4 to that Act;
 - (b) section 4(1) of the RTPA so far as the application relates to an order under section 2(2) of that Act; and
 - (c) section 25(2) of the RPA.

(3) The power of the Court to make an order for costs in relation to any proceedings is not affected by anything in this paragraph or by the repeals made by section 1.

9 Orders and approvals which fall

(1) An order in force immediately before the starting date under—

- (a) section 2(2), 29(1), 30(1), 33(4), 35(3) or 37(1) of the RTPA; or
- (b) section 25(2) of the RPA,

ceases to have effect on that date.

(2) An approval in force immediately before the starting date under section 32 of the RTPA ceases to have effect on that date.

PART IV

ON AND AFTER THE STARTING DATE

CHAPTER I GENERAL

10 Duty of Director to maintain register etc

(1) This paragraph applies even though the relevant provisions of the RTPA are repealed by this Act.

(2) The Director is to continue on and after the starting date to be under the duty imposed by section 1(2)(a) of the RTPA to maintain a register in respect of agreements—

- (a) particulars of which are, on the starting date, entered or filed on the register;
- (b) which fall within sub-paragraph (4);
- (c) which immediately before the starting date are the subject of proceedings under the RTPA which do not cease on that date by virtue of this Schedule; or
- (d) in relation to which a court gives directions to the Director after the starting date in the course of proceedings in which a question arises as to whether an agreement was, before that date—
 - (i) one to which the RTPA applied;
 - (ii) subject to registration under that Act;
 - (iii) a non-notifiable agreement for the purposes of that Act.

(3) The Director is to continue on and after the starting date to be under the duties imposed by section 1(2)(a) and (b) of the RTPA of compiling a register of agreements and entering or filing certain particulars in the register, but only in respect of agreements of a kind referred to in paragraph (b), (c) or (d) of sub-paragraph (2).

(4) An agreement falls within this sub-paragraph if—

- (a) it is subject to registration under the RTPA but—
 - (i) is not a non-notifiable agreement within the meaning of section 27A of the RTPA, or
 - (ii) is not one to which paragraph 5 applies;
- (b) particulars of the agreement have been provided to the Director before the starting date; and
- (c) as at the starting date no entry or filing has been made in the register in respect of the agreement.

(5) Sections 23 and 27 of the RTPA are to apply after the starting date in respect of the register subject to such modifications, if any, as may be prescribed.

(6) In sub-paragraph (2)(d) “court” means—

- (a) the High Court;
- (b) the Court of Appeal;
- (c) the Court of Session;
- (d) the High Court or Court of Appeal in Northern Ireland; or
- (e) the House of Lords.

11 RTPA section 3 applications

(1) Even though section 3 of the RTPA is repealed by this Act, its provisions (and so far as necessary that Act) are to continue to apply, with such modifications (if any) as may be prescribed—

- (a) in relation to a continuing application under that section; or
- (b) so as to allow an application to be made under that section on or after the starting date in respect of a continuing application under section 1(3) of the RTPA.

(2) “Continuing application” means an application made, but not determined, before the starting date.

12 RTPA section 26 applications

(1) Even though section 26 of the RTPA is repealed by this Act, its provisions (and so far as necessary that Act) are to continue to apply, with such modifications (if any) as may be prescribed, in relation to an application which is made under that section, but not determined, before the starting date.

(2) If an application under section 26 is determined on or after the starting date, this Schedule has effect in relation to the agreement concerned as if the application had been determined immediately before that date.

13 Right to bring civil proceedings

(1) Even though section 35 of the RTPA is repealed by this Act, its provisions (and so far as necessary that Act) are to continue to apply in respect of a person who, immediately before the starting date, has a right by virtue of section 27ZA or 35(2) of that Act to bring civil proceedings in respect of an agreement (but only so far as that right relates to any period before the starting date or, where there are continuing proceedings, the determination of the proceedings).

(2) Even though section 25 of the RPA is repealed by this Act, the provisions of that section (and so far as necessary that Act) are to continue to apply in respect of a person who, immediately before the starting date, has a right by virtue of subsection (3) of that section to bring civil proceedings (but only so far as that right relates to any period before the starting date or, where there are continuing proceedings, the determination of the proceedings).

CHAPTER II CONTINUING PROCEEDINGS

14 The general rule

(1) The Chapter I prohibition does not apply to an agreement at any time when the agreement is the subject of continuing proceedings under the RTPA.

(2) The Chapter I prohibition does not apply to an agreement relating to goods which are the subject of continuing proceedings under section 16 or 17 of the RPA to the extent to which the agreement consists of exempt provisions.

(3) In sub-paragraph (2) “exempt provisions” means those provisions of the agreement which would, disregarding section 14 of the RPA, be—

- (a) void as a result of section 9(1) of the RPA; or
- (b) unlawful as a result of section 9(2) or II of the RPA.

(4) If the Chapter I prohibition does not apply to an agreement because of this paragraph, the provisions of, or made under, the RTPA or the RPA are to continue to have effect in relation to the agreement.

(5) The repeals made by section 1 do not affect—

- (a) continuing proceedings; or
- (b) proceedings of the kind referred to in paragraph 11 or 12 of this Schedule which are continuing after the starting date.

15 Meaning of “continuing proceedings”

(1) For the purposes of this Schedule “continuing proceedings” means proceedings in respect of an application made to the Court under the RTPA or the RPA, but not determined, before the starting date.

(2) But proceedings under section 3 or 26 of the RTPA to which paragraph 11 or 12 applies are not continuing proceedings.

(3) The question whether (for the purposes of Part III, or this Part, of this Schedule) an application has been determined is to be decided in accordance with sub-paragraphs (4) and (5).

(4) If an appeal against the decision on the application is brought, the application is not determined until—

- (a) the appeal is disposed of or withdrawn; or
- (b) if as a result of the appeal the case is referred back to the Court—
 - (i) the expiry of the period within which an appeal (“the further appeal”) in respect of the Court’s decision on that reference could have been brought had this Act not been passed; or
 - (ii) if later, the date on which the further appeal is disposed of or withdrawn.

(5) Otherwise, the application is not determined until the expiry of the period within which any party to the application would have been able to bring an appeal against the decision on the application had this Act not been passed.

16 RTPA section 4 proceedings

Proceedings on an application for an order under section 4 of the RTPA are also continuing proceedings if—

- (a) leave to make the application is applied for before the starting date but the proceedings in respect of that application for leave are not determined before that date; or
- (b) leave to make an application for an order under that section is granted before the starting date but the application itself is not made before that date.

17 RPA section 16 or 17 proceedings

Proceedings on an application for an order under section 16 or 17 of the RPA are also continuing proceedings if—

- (a) leave to make the application is applied for before the starting date but the proceedings in respect of that application for leave are not determined before that date; or
- (b) leave to make an application for an order under section 16 or 17 of the RPA is granted before the starting date, but the application itself is not made before that date.

18 Continuing proceedings which are discontinued

(1) On an application made jointly to the Court by all the parties to any continuing proceedings, the Court must, if it is satisfied that the parties wish it to do so, discontinue the proceedings.

(2) If, on an application under sub-paragraph (1) or for any other reason, the Court orders the proceedings to be discontinued, this Schedule has effect (subject to paragraphs 21 and 22) from the date on which the proceedings are discontinued as if they had never been instituted.

CHAPTER III THE TRANSITIONAL PERIOD

19 The general rule

(1) Except where this Chapter or Chapter IV provides otherwise, there is a transitional period, beginning on the starting date and lasting for one year, for any agreement made before the starting date.

(2) The Chapter I prohibition does not apply to an agreement to the extent to which there is a transitional period for the agreement.

(3) The Secretary of State may by regulations provide for sections 13 to 16 and Schedule 5 to apply with such modifications (if any) as may be specified in the

regulations, in respect of applications to the Director about agreements for which there is a transitional period.

20 Cases for which there is no transitional period

(1) There is no transitional period for an agreement to the extent to which, immediately before the starting date, it is—

- (a) void under section 2(1) or 35(1)(a) of the RTPA;
- (b) the subject of an order under section 2(2) or 35(3) of the RTPA; or
- (c) unlawful under section 1, 2 or 11 of the RPA or void under section 9 of that Act.

(2) There is no transitional period for an agreement to the extent to which, before the starting date, a person has acted unlawfully for the purposes of section 27ZA(2) or (3) of the RTPA in respect of the agreement.

(3) There is no transitional period for an agreement to which paragraph 25(4) applies.

(4) There is no transitional period for—

- (a) an agreement in respect of which there are continuing proceedings, or
- (b) an agreement relating to goods in respect of which there are continuing proceedings,

to the extent to which the agreement is, when the proceedings are determined, void or unlawful.

21 Continuing proceedings under the RTPA

In the case of an agreement which is the subject of continuing proceedings under the RTPA, the transitional period begins—

- (a) if the proceedings are discontinued, on the date of discontinuance;
- (b) otherwise, when the proceedings are determined.

22 Continuing proceedings under the RPA

(1) In the case of an agreement relating to goods which are the subject of continuing proceedings under the RPA, the transitional period for the exempt provisions of the agreement begins—

- (a) if the proceedings are discontinued, on the date of discontinuance;
- (b) otherwise, when the proceedings are determined.

(2) In sub-paragraph (1) “exempt provisions” has the meaning given by paragraph 14(3).

23 Provisions not contrary to public interest

(1) To the extent to which an agreement contains provisions which, immediately before the starting date, are provisions which the Court has found not to be contrary to the public interest, the transitional period lasts for five years.

(2) Sub-paragraph (1) is subject to paragraph 20(4).

(3) To the extent to which an agreement which on the starting date is the subject of continuing proceedings is, when the proceedings are determined, found by the Court not to be contrary to the public interest, the transitional period lasts for five years.

24 Goods

(1) In the case of an agreement relating to goods which, immediately before the starting date, are exempt under section 14 of the RPA, there is a transitional period for the agreement to the extent to which it consists of exempt provisions.

(2) Sub-paragraph (1) is subject to paragraph 20(4).

(3) In the case of an agreement relating to goods—

- (a) which on the starting date are the subject of continuing proceedings, and
- (b) which, when the proceedings are determined, are found to be exempt under section 14 of the RPA,

there is a transitional period for the agreement, to the extent to which it consists of exempt provisions.

(4) In each case, the transitional period lasts for five years.

(5) In sub-paragraphs (1) and (3) “exempt provisions” means those provisions of the agreement which would, disregarding section 14 of the RPA, be—

- (a) void as a result of section 9(1) of the RPA; or
- (b) unlawful as a result of section 9(2) or 11 of the RPA.

25 Transitional period for certain agreements

(1) This paragraph applies to agreements—

- (a) which are subject to registration under the RTPA but which—
 - (i) are not non-notifiable agreements within the meaning of section 27A of the RTPA, or
 - (ii) are not agreements to which paragraph 5 applies; and
- (b) in respect of which the time for furnishing relevant particulars as required by or under the RTPA expires on or after the starting date.

(2) “Relevant particulars” means—

- (a) particulars which are required to be furnished by virtue of section 24 of the RTPA; or
- (b) particulars of any variation of an agreement which are required to be furnished by virtue of sections 24 and 27 of the RTPA.

(3) There is a transitional period of one year for an agreement to which this paragraph applies if—

- (a) relevant particulars are furnished before the starting date; and
- (b) no person has acted unlawfully (for the purposes of section 27ZA(2) or (3) of the RTPA) in respect of the agreement.

(4) If relevant particulars are not furnished by the starting date, section 35(1)(a) of the RTPA does not apply in relation to the agreement (unless sub-paragraph (5) applies).

(5) This sub-paragraph applies if a person falling within section 27ZA(2) or (3) of the RTPA has acted unlawfully for the purposes of those subsections in respect of the agreement.

26 Special cases

(1) In the case of an agreement in respect of which—

- (a) a direction under section 127(2) of the Financial Services Act 1986 (“the 1986 Act”) is in force immediately before the starting date, or
- (b) a direction under section 194A(3) of the Broadcasting Act 1990 (“the 1990 Act”) is in force immediately before the starting date,

the transitional period lasts for five years.

(2) To the extent to which an agreement is the subject of a declaration—

- (a) made by the Treasury under section 127(3) of the 1986 Act, and
- (b) in force immediately before the starting date,

the transitional period lasts for five years.

(3) Sub-paragraphs (1) and (2) do not affect the power of—

- (a) the Treasury to make a declaration under section 127(2) of the 1986 Act (as amended by Schedule 2 to this Act),
- (b) the Secretary of State to make a declaration under section 194A of the 1990 Act (as amended by Schedule 2 to this Act),

in respect of an agreement for which there is a transitional period.

CHAPTER IV THE UTILITIES

27 General

In this Chapter “the relevant period” means the period beginning with the starting date and ending immediately before the fifth anniversary of that date.

28 Electricity

(1) For an agreement to which, immediately before the starting date, the RTPA does not apply by virtue of a section 100 order, there is a transitional period—

- (a) beginning on the starting date; and
- (b) ending at the end of the relevant period.

(2) For an agreement which is made at any time after the starting date and to which, had the RTPA not been repealed, that Act would not at the time at which the agreement is made have applied by virtue of a section 100 order, there is a transitional period—

- (a) beginning on the date on which the agreement is made; and
- (b) ending at the end of the relevant period.

(3) For an agreement (whether made before or after the starting date) which, during the relevant period, is varied at any time in such a way that it becomes an agreement which, had the RTPA not been repealed, would at that time have been one to which that Act did not apply by virtue of a section 100 order, there is a transitional period—

- (a) beginning on the date on which the variation is made; and
- (b) ending at the end of the relevant period.

(4) If an agreement for which there is a transitional period as a result of sub-paragraph (1), (2) or (3) is varied during the relevant period, the transitional period for the agreement continues if, had the RTPA not been repealed, the agreement would have continued to be one to which that Act did not apply by virtue of a section 100 order.

(5) But if an agreement for which there is a transitional period as a result of sub-paragraph (1), (2) or (3) ceases to be one to which, had it not been repealed, the RTPA would not have applied by virtue of a section 100 order, the transitional period ends on the date on which the agreement so ceases.

(6) Sub-paragraph (3) is subject to paragraph 20.

(7) In this paragraph and paragraph 29—
“section 100 order” means an order made under section 100 of the Electricity Act 1989; and
expressions which are also used in Part I of the Electricity Act 1989 have the same meaning as in that Part.

29 Electricity: power to make transitional orders

(1) There is a transitional period for an agreement (whether made before or after the starting date) relating to the generation, transmission or supply of electricity which—

- (a) is specified, or is of a description specified, in an order (“a transitional order”) made by the Secretary of State (whether before or after the making of the agreement but before the end of the relevant period); and
- (b) satisfies such conditions as may be specified in the order.

(2) A transitional order may make provision as to when the transitional period in respect of such an agreement is to start or to be deemed to have started.

(3) The transitional period for such an agreement ends at the end of the relevant period.

(4) But if the agreement—

(a) ceases to be one to which a transitional order applies, or

(b) ceases to satisfy one or more of the conditions specified in the transitional order,

the transitional period ends on the date on which the agreement so ceases.

(5) Before making a transitional order, the Secretary of State must consult the Gas and Electricity Markets Authority and the Director.

(6) The conditions specified in a transitional order may include conditions which refer any matter to the Secretary of State for determination after such consultation as may be so specified.

(7) In the application of this paragraph to Northern Ireland, the reference in subparagraph (5) to the Gas and Electricity Markets Authority is to be read as a reference to the Director General of Electricity Supply for Northern Ireland.

30 Gas

(1) For an agreement to which, immediately before the starting date, the RTPA does not apply by virtue of section 62 or a section 62 order, there is a transitional period—

(a) beginning on the starting date; and

(b) ending at the end of the relevant period.

(2) For an agreement which is made at any time after the starting date and to which, had the RTPA not been repealed, that Act would not at the time at which the agreement is made have applied by virtue of section 62 or a section 62 order, there is a transitional period—

(a) beginning on the date on which the agreement is made; and

(b) ending at the end of the relevant period.

(3) For an agreement (whether made before or after the starting date) which, during the relevant period, is varied at any time in such a way that it becomes an agreement which, had the RTPA not been repealed, would at that time have been one to which that Act did not apply by virtue of section 62 or a section 62 order, there is a transitional period—

(a) beginning on the date on which the variation is made; and

(b) ending at the end of the relevant period.

(4) If an agreement for which there is a transitional period as a result of subparagraph (1), (2) or (3) is varied during the relevant period, the transitional period for

the agreement continues if, had the RTPA not been repealed, the agreement would have continued to be one to which that Act did not apply by virtue of section 62 or a section 62 order.

(5) But if an agreement for which there is a transitional period as a result of sub-paragraph (1), (2) or (3) ceases to be one to which, had it not been repealed, the RTPA would not have applied by virtue of section 62 or a section 62 order, the transitional period ends on the date on which the agreement so ceases.

(6) Sub-paragraph (3) also applies in relation to a modification which is treated as an agreement made on or after 28th November 1985 by virtue of section 62(4).

(7) Sub-paragraph (3) is subject to paragraph 20.

(8) In this paragraph and paragraph 31—
“section 62” means section 62 of the Gas Act 1986;
“section 62 order” means an order made under section 62.

31 Gas: power to make transitional orders

(1) There is a transitional period for an agreement of a description falling within section 62(2)(a) and (b) or section 62(2A)(a) and (b) which—

- (a) is specified, or is of a description specified, in an order (“a transitional order”) made by the Secretary of State (whether before or after the making of the agreement but before the end of the relevant period); and
- (b) satisfies such conditions as may be specified in the order.

(2) A transitional order may make provision as to when the transitional period in respect of such an agreement is to start or to be deemed to have started.

(3) The transitional period for such an agreement ends at the end of the relevant period.

(4) But if the agreement—

- (a) ceases to be one to which a transitional order applies, or
- (b) ceases to satisfy one or more of the conditions specified in the transitional order,

the transitional period ends on the date when the agreement so ceases.

(5) Before making a transitional order, the Secretary of State must consult the Gas and Electricity Markets Authority and the Director.

(6) The conditions specified in a transitional order may include—

- (a) conditions which are to be satisfied in relation to a time before the coming into force of this paragraph;
- (b) conditions which refer any matter (which may be the general question whether the Chapter I prohibition should apply to a particular agreement) to the Secretary of State, the Director or the Gas and Electricity Markets Authority for determination after such consultation as may be so specified.

32 Gas: Northern Ireland

(1) For an agreement to which, immediately before the starting date, the RTPA does not apply by virtue of an Article 41 order, there is a transitional period—

- (a) beginning on the starting date; and
- (b) ending at the end of the relevant period.

(2) For an agreement which is made at any time after the starting date and to which, had the RTPA not been repealed, that Act would not at the time at which the agreement is made have applied by virtue of an Article 41 order, there is a transitional period—

- (a) beginning on the date on which the agreement is made; and
- (b) ending at the end of the relevant period.

(3) For an agreement (whether made before or after the starting date) which, during the relevant period, is varied at any time in such a way that it becomes an agreement which, had the RTPA not been repealed, would at that time have been one to which that Act did not apply by virtue of an Article 41 order, there is a transitional period—

- (a) beginning on the date on which the variation is made; and
- (b) ending at the end of the relevant period.

(4) If an agreement for which there is a transitional period as a result of sub-paragraph (1), (2) or (3) is varied during the relevant period, the transitional period for the agreement continues if, had the RTPA not been repealed, the agreement would have continued to be one to which that Act did not apply by virtue of an Article 41 order.

(5) But if an agreement for which there is a transitional period as a result of sub-paragraph (1), (2) or (3) ceases to be one to which, had it not been repealed, the RTPA would not have applied by virtue of an Article 41 order, the transitional period ends on the date on which the agreement so ceases.

(6) Sub-paragraph (3) is subject to paragraph 20.

(7) In this paragraph and paragraph 33—
“Article 41 order” means an order under Article 41 of the Gas (Northern Ireland) Order 1996;
“Department” means the Department of Economic Development.

33 Gas: Northern Ireland — power to make transitional orders

(1) There is a transitional period for an agreement of a description falling within Article 41(1) which—

- (a) is specified, or is of a description specified, in an order (“a transitional order”) made by the Department (whether before or after the making of the agreement but before the end of the relevant period); and

- (b) satisfies such conditions as may be specified in the order.
- (2) A transitional order may make provision as to when the transitional period in respect of such an agreement is to start or to be deemed to have started.
- (3) The transitional period for such an agreement ends at the end of the relevant period.
- (4) But if the agreement—
 - (a) ceases to be one to which a transitional order applies, or
 - (b) ceases to satisfy one or more of the conditions specified in the transitional order,
 the transitional period ends on the date when the agreement so ceases.
- (5) Before making a transitional order, the Department must consult the Director General of Gas for Northern Ireland and the Director.
- (6) The conditions specified in a transitional order may include conditions which refer any matter (which may be the general question whether the Chapter I prohibition should apply to a particular agreement) to the Department for determination after such consultation as may be so specified.

34 Railways

- (1) In this paragraph—
 - “section 131” means section 131 of the Railways Act 1993 (“the 1993 Act”);
 - “section 131 agreement” means an agreement—
 - (a) to which the RTPA does not apply immediately before the starting date by virtue of section 131(1); or
 - (b) in respect of which a direction under section 131(3) is in force immediately before that date;
 - “non-exempt agreement” means an agreement relating to the provision of railway services (whether made before or after the starting date) which is not a section 131 agreement; and
 - “railway services” has the meaning given by section 82 of the 1993 Act.
- (2) For a section 131 agreement there is a transitional period of five years.
- (3) There is a transitional period for a non-exempt agreement to the extent to which the agreement is at any time before the end of the relevant period required or approved—
 - (a) by the Secretary of State or the Rail Regulator the Office of Rail Regulation in pursuance of any function assigned or transferred to him under or by virtue of any provision of the 1993 Act;
 - (b) by or under any agreement the making of which is required or approved by the Secretary of State or the Rail Regulator the Office of Rail Regulation in the exercise of any such function; or
 - (c) by or under a licence granted under Part I of the 1993 Act.

- (4) The transitional period conferred by sub-paragraph (3)—
 - (a) is to be taken to have begun on the starting date; and
 - (b) ends at the end of the relevant period.
- (5) Sub-paragraph (3) is subject to paragraph 20.
- (6) Any variation of a section 131 agreement on or after the starting date is to be treated, for the purposes of this paragraph, as a separate non-exempt agreement.

35 The regulators

(1) Subject to sub-paragraph (3), each of the regulators may exercise, in respect of sectoral matters and concurrently with the Director, the functions of the Director under paragraph 3, 7, 19(3), 36, 37, 38 or 39.

- (2) In sub-paragraph (1) “sectoral matters” means—
 - (a) . . .
 - (b) in the case of the Gas and Electricity Markets Authority, the matters referred to in section 36A(3) and (4) of the Gas Act 1986;
 - (c) in the case of the Gas and Electricity Markets Authority, the matters referred to in section 43(3) of the Electricity Act 1989;
 - (d) in the case of the Director General of Electricity Supply for Northern Ireland, the matters referred to in Article 46(3) of the Electricity (Northern Ireland) Order 1992;
 - (e) in the case of the Director General of Water Services, the matters referred to in section 31(3) of the Water Industry Act 1991;
 - (f) in the case of the Rail Regulator the Office of Rail Regulation, the matters referred to in section 67(3) of the Railways Act 1993;
 - (g) in the case of the Director General of Gas for Northern Ireland, the matters referred to in Article 23(3) of the Gas (Northern Ireland) Order 1996;
 - (h) in the case of the Civil Aviation Authority, the supply of air traffic services within the meaning given by section 98 of the Transport Act 2000.

(3) The power to give directions in paragraph 7(2) is exercisable by the Director only but if the Director is preparing directions which relate to a matter in respect of which a regulator exercises concurrent jurisdiction, he must consult that regulator.

(4) Consultations conducted by the Director before the enactment date, with a view to preparing directions which have effect on or after that date, are to be taken to satisfy sub-paragraph (3).

(5) References to enactments in sub-paragraph (2) are to the enactments as amended by or under this Act.

CHAPTER V EXTENDING THE TRANSITIONAL PERIOD

(1) A party to an agreement for which there is a transitional period may apply to the Director, not less than three months before the end of the period, for the period to be extended.

(2) The Director may (on his own initiative or on an application under sub-paragraph (1))—

- (a) extend a one-year transitional period by not more than twelve months;
- (b) extend a transitional period of any period other than one year by not more than six months.

(3) An application under sub-paragraph (1) must—

- (a) be in such form as may be specified; and
- (b) include such documents and information as may be specified.

(4) If the Director extends the transitional period under this paragraph, he must give notice in such form, and to such persons, as may be specified.

(5) The Director may not extend a transitional period more than once.

(6) In this paragraph—

“person” has the same meaning as in Part I; and

“specified” means specified in rules made by the Director under section 51.

CHAPTER VI TERMINATING THE TRANSITIONAL PERIOD

37 General

(1) Subject to sub-paragraph (2), the Director may by a direction in writing terminate the transitional period for an agreement, but only in accordance with paragraph 38.

(2) The Director may not terminate the transitional period, nor exercise any of the powers in paragraph 38, in respect of an agreement which is excluded from the Chapter I prohibition by virtue of any of the provisions of Part I of this Act other than paragraph 1 of Schedule 1 or paragraph 2 or 9 of Schedule 3 or the Competition Act 1998 (Land and Vertical Agreements Exclusion) Order 2000.

38 Circumstances in which the Director may terminate the transitional period

(1) If the Director is considering whether to give a direction under paragraph 37 (“a direction”), he may in writing require any party to the agreement concerned to give him such information in connection with that agreement as he may require.

(2) If at the end of such period as may be specified in rules made under section 51, a person has failed, without reasonable excuse, to comply with a requirement imposed under sub-paragraph (1), the Director may give a direction.

(3) The Director may also give a direction if he considers—
(a) that the agreement would, but for the transitional period or a relevant exclusion, infringe the Chapter I prohibition; and
(b) that he would not be likely to grant the agreement an unconditional individual exemption.

(4) For the purposes of sub-paragraph (3) an individual exemption is unconditional if no conditions or obligations are imposed in respect of it under section 4(3)(a).

(5) In this paragraph—
“person” has the same meaning as in Part I;
“relevant exclusion” means an exclusion under paragraph 1 of Schedule 1 or paragraph 2 or 9 of Schedule 3 or the Competition Act 1998 (Land and Vertical Agreements Exclusion) Order 2000.

39 Procedural requirements on giving a paragraph 37 direction

(1) The Director must specify in a direction under paragraph 37 (“a direction”) the date on which it is to have effect (which must not be less than 28 days after the direction is given).

(2) Copies of the direction must be given to—
(a) each of the parties concerned, and
(b) the Secretary of State,
not less than 28 days before the date on which the direction is to have effect.

(3) In relation to an agreement to which a direction applies, the transitional period (if it has not already ended) ends on the date specified in the direction unless, before that date, the direction is revoked by the Director or the Secretary of State.

(4) If a direction is revoked, the Director may give a further direction in respect of the same agreement only if he is satisfied that there has been a material change of circumstance since the revocation.

(5) If, as a result of paragraph 24(1) or (3), there is a transitional period in respect of provisions of an agreement relating to goods—
(a) which immediately before the starting date are exempt under section 14 of the RPA, or
(b) which, when continuing proceedings are determined, are found to be exempt under section 14 of the RPA,
the period is not affected by paragraph 37 or 38.

PART V

THE FAIR TRADING ACT 1973

40 References to the Monopolies and Mergers Commission

(1) If, on the date on which the repeal by this Act of a provision mentioned in sub-paragraph (2) comes into force, the Monopolies and Mergers Commission has not completed a reference which was made to it before that date, continued consideration of the reference may include consideration of a question which could not have been considered if the provision had not been repealed.

(2) The provisions are—

- (a) sections 10(2), 54(5) and 78(3) and paragraph 3(1) and (2) of Schedule 8 to the Fair Trading Act 1973 (c 41);
- (b) section 11(8)(b) of the Competition Act 1980 (c 21);
- (c) section 14(2) of the Telecommunications Act 1984 (c 12);
- (d) section 45(3) of the Airports Act 1986 (c 31);
- (e) section 25(2) of the Gas Act 1986 (c 44);
- (f) section 13(2) of the Electricity Act 1989 (c 29);
- (g) section 15(2) of the Water Industry Act 1991 (c 56);
- (h) article 16(2) of the Electricity (Northern Ireland) Order 1992;
- (i) section 14(2) of the Railways Act 1993 (c 43);
- (j) article 36(3) of the Airports (Northern Ireland) Order 1994;
- (k) article 16(2) of the Gas (Northern Ireland) Order 1996.

41 Orders under Schedule 8

(1) In this paragraph—

“the 1973 Act” means the Fair Trading Act 1973;

“agreement” means an agreement entered into before the date on which the repeal of the limiting provisions comes into force;

“the order” means an order under section 56 or 73 of the 1973 Act;

“the limiting provisions” means sub-paragraph (1) or (2) of paragraph 3 of Schedule 8 to the 1973 Act (limit on power to make orders under paragraph 1 or 2 of that Schedule) and includes any provision of the order included because of either of those sub-paragraphs; and

“transitional period” means the period which—

- (a) begins on the day on which the repeal of the limiting provisions comes into force; and
- (b) ends on the first anniversary of the starting date.

(2) Sub-paragraph (3) applies to any agreement to the extent to which it would have been unlawful (in accordance with the provisions of the order) but for the limiting provisions.

(3) As from the end of the transitional period, the order is to have effect in relation to the agreement as if the limiting provisions had never had effect.

42 Part III of the Act

(1) The repeals made by section 1 do not affect any proceedings in respect of an application which is made to the Court under Part III of the Fair Trading Act 1973, but is not determined, before the starting date.

(2) The question whether (for the purposes of sub-paragraph (1)) an application has been determined is to be decided in accordance with sub-paragraphs (3) and (4).

(3) If an appeal against the decision on the application is brought, the application is not determined until—

- (a) the appeal is disposed of or withdrawn; or
- (b) if as a result of the appeal the case is referred back to the Court—
 - (i) the expiry of the period within which an appeal (“the further appeal”) in respect of the Court’s decision on that reference could have been brought had this Act not been passed; or
 - (ii) if later, the date on which the further appeal is disposed of or withdrawn.

(4) Otherwise, the application is not determined until the expiry of the period within which any party to the application would have been able to bring an appeal against the decision on the application had this Act not been passed.

(5) Any amendment made by Schedule 12 to this Act which substitutes references to a relevant Court for references to the Court is not to affect proceedings of the kind referred to in sub-paragraph (1).

PART VI THE COMPETITION ACT 1980

43 Undertakings

(1) Subject to sub-paragraph (2), an undertaking accepted by the Director under section 4 or 9 of the Competition Act 1980 ceases to have effect on the coming into force of the repeal by this Act of that section.

(2) If the undertaking relates to an agreement which on the starting date is the subject of continuing proceedings, the undertaking continues to have effect for the purposes of section 29 of the Competition Act 1980 until the proceedings are determined.

44 Application of sections 25 and 26

The repeals made by section 1 do not affect—

- (a) the operation of section 25 of the Competition Act 1980 in relation to an application under section 1(3) of the RTPA which is made before the starting date;
- (b) an application under section 26 of the Competition Act 1980 which is made before the starting date.

PART VII
MISCELLANEOUS

45 Disclosure of information

(1) Section 55 of this Act applies in relation to information which, immediately before the starting date, is subject to section 41 of the RTPA as it applies in relation to information obtained under or as a result of Part I.

(2) But section 55 does not apply to any disclosure of information of the kind referred to in sub-paragraph (1) if the disclosure is made—

- (a) for the purpose of facilitating the performance of functions of a designated person under the Control of Misleading Advertisements Regulations 1988; or
- (b) for the purposes of any proceedings before the Court or of any other legal proceedings under the RTPA or the Fair Trading Act 1973 or the Control of Misleading Advertisements Regulations 1988.

(3) Section 56 applies in relation to information of the kind referred to in sub-paragraph (1) if particulars containing the information have been entered or filed on the special section of the register maintained by the Director under, or as a result of, section 27 of the RTPA or paragraph 10 of this Schedule.

(4) Section 55 has effect, in relation to the matters as to which section 41(2) of the RTPA had effect, as if it contained a provision similar to section 41(2).

46 The Court

If it appears to the Lord Chancellor that a person who ceases to be a non-judicial member of the Court as a result of this Act should receive compensation for loss of office, he may pay to him out of moneys provided by Parliament such sum as he may with the approval of the Treasury determine.

SCHEDULE 14
REPEALS AND REVOCATIONS

Section 74(3)

PART I
REPEALS

Chapter	Short title	Extent of repeal
1973 c 41.	The Fair Trading Act 1973.	<p>Section 4.</p> <p>Section 10(2).</p> <p>Section 45.</p> <p>Section 54(5).</p> <p>Section 78(3).</p> <p>In section 81(1), in the words before paragraph (a), from “and the Commission” to “of this Act”;</p> <p>in paragraph (b), “or the Commission, as the case may be” and “or of the Commission”;</p> <p>in subsection (2), “or the Commission” and “or of the Commission” and in subsection (3), from “and, in the case,” to “85 of this Act”, and “or the Commission, as the case may be,”.</p> <p>In section 83, in subsection (1) “Subject to subsection (1A) below” and subsection (1A).</p> <p>In section 135(1), in the words before paragraph (a) and in paragraph (b), “or the Commission”, and paragraph (a).</p> <p>Schedule 3.</p> <p>In Schedule 8, paragraph 3(1) and (2).</p>
1976 c 33.	The Restrictive Practices Court Act 1976.	The whole Act.
1976 c 34.	The Restrictive Trade Practices Act 1976.	The whole Act.
1976 c 53.	The Resale Prices Act 1976.	The whole Act.
1976 c 76.	The Energy Act 1976.	Section 5.
1977 c 19.	The Restrictive Trade Practices Act 1977.	The whole Act.

1977 c 37.	The Patents Act 1977.	Sections 44 and 45.
1979 c 38.	The Estate Agents Act 1979.	In section 10(3), “or the Restrictive Trade Practices Act 1976.”
1980 c 21.	The Competition Act 1980.	Sections 2 to 10. In section 11(8), paragraph (b) and the “and” immediately before it. In section 13(1), from “but the giving” to the end. In section 15, subsections (2)(b), (3) and (4). Section 16(3). In section 17, “8(1)” in subsections (1) and (3) to (5) and in subsection (2) “8(1) or”. In section 19(3), paragraph (d). In section 19(5)(a), “or in anything published under section 4(2)(a) above”. Section 22. Sections 25 to 30. In section 31, subsection (2) and “10” in subsection (3). Section 33(3) and (4).
1984 c 12.	The Telecommunications Act 1984.	Section 14(2). In section 16(5), the “or” immediately after paragraph (a). In section 50(4), paragraph (c) and the “and” immediately after it. In section 50(5), “or (3)”. In section 50(7), “or the 1980 Act”. In section 95(1), “or section 10(2)(a) of the 1980 Act”. In section 95(2), paragraph (c) and the “or” immediately before it. In section 95(3), “or the 1980 Act”. In section 101(3), paragraphs (d) and (e).
1986 c 31.	The Airports Act 1986.	Section 45(3). In section 54(1), “or section 10(2)(a) of the 1980 Act”. In section 54(3), paragraph (c) and the “or” immediately before it.

		In section 54(4), “or the 1980 Act”.
		In section 56(a)(ii), “or the 1980 Act”.
1986 c 44.	The Gas Act 1986.	Section 25(2). In section 27(1), “or section 10(2)(a) of the Competition Act 1980”. In section 27(3)(a), from “or” to “competition reference”. In section 27(6), “or the said Act of 1980”. In section 28(5), the “or” immediately after paragraph (aa). In section 36A(5), paragraph (d) and the “and” immediately before it. In section 36A(6), “or (3)”. In section 36A(8), “or under the 1980 Act”. In section 36A(9), “or the 1980 Act”. In section 42(3), paragraphs (e) and (f).
1986 c 60.	The Financial Services Act 1986.	Section 126.
1987 c 43.	The Consumer Protection Act 1987.	In section 38(3), paragraphs (e) and (f).
1987 c 53.	The Channel Tunnel Act 1987.	In section 33(2), paragraph (c) and the “and” immediately before it. In section 33(5), paragraphs (b) and (c).
1988 c 54.	The Road Traffic (Consequential Provisions) Act 1988.	In Schedule 3, paragraph 19.
1989 c 15.	The Water Act 1989.	In section 174(3), paragraphs (d) and (e).
1989 c 29.	The Electricity Act 1989.	Section 13(2). In section 15(1), paragraph (b) and the “or” immediately before it. In section 15(2), paragraph (c) and the “or” immediately before it. In section 15(3), “or the 1980 Act”. In section 25(5), the “or” immediately after paragraph (b). In section 43(4), paragraph (c) and the “and” immediately after it. In section 43(5), “or (3)”.

		In section 43(7), “or the 1980 Act”. In section 57(3), paragraphs (d) and (e).
1989 c 40.	The Companies Act 1989.	In Schedule 20, paragraphs 21 to 24.
1990 c 42.	The Broadcasting Act 1990.	In section 193(2), paragraph (c) and the “and” immediately before it. In section 193(4), “or the Competition Act 1980”.
1991 c 56.	The Water Industry Act 1991.	In section 12(5), “or the 1980 Act”. Section 15(2). In section 17(1), paragraph (b) and the “or” immediately before it. In section 17(2), paragraph (c) and the “or” immediately before it. In section 17(4), “or the 1980 Act”. In section 31(4), paragraph (c) and the “and” immediately before it. In section 31(5), “or in subsection (3) above”. In section 31(6), “or in subsection (3) above”. In section 31(7), “or (3)”. In section 31(9), “or the 1980 Act”. In Part II of Schedule 15, the entries relating to the Restrictive Trade Practices Act 1976 and the Resale Prices Act 1976.
1991 c 57.	The Water Resources Act 1991.	In Part II of Schedule 24, the entries relating to the Restrictive Trade Practices Act 1976 and the Resale Prices Act 1976.
1993 c 21.	The Osteopaths Act 1993.	In section 33(4), paragraph (b) and the “or” immediately before it. In section 33(5), “or section 10 of the Act of 1980”.
1993 c 43.	The Railways Act 1993.	Section 14(2). In section 16(1), paragraph (b) and the “or” immediately before it. In section 16(2), paragraph (c) and the “or” immediately before it. In section 16(5), “or the 1980 Act”. In section 67(4), paragraph (c) and the “and” immediately after it. In section 67(6)(a), “or (3)”.

		In section 67(9), “or under the 1980 Act”.
		Section 131.
		In section 145(3), paragraphs (d) and (e).
1994 c 17.	The Chiropractors Act 1994.	In section 33(4), paragraph (b) and the “or” immediately before it.
		In section 33(5), “or section 10 of the Act of 1980”.
1994 c 21.	The Coal Industry Act 1994.	In section 59(4), paragraphs (e) and (f).
1994 c 40.	The Deregulation and Contracting Out Act 1994.	Sections 10 and 11.
		In section 12, subsections (1) to (6).
		In Schedule 4, paragraph 1.
		In Schedule 11, in paragraph 4, subparagraphs (3) to (6).
1996 c 55.	The Broadcasting Act 1996.	Section 77(2).

PART II REVOCATIONS

Reference	Title	Extent of revocation
SI 1981/1675 (NI 26).	The Magistrates’ Courts (Northern Ireland) Order 1981.	In Schedule 6, paragraphs 42 and 43.
SI 1982/1080 (NI 12).	The Agricultural Marketing (Northern Ireland) Order 1982.	In Schedule 8, the entry relating to paragraph 16(2) of Schedule 3 to the Fair Trading Act 1973 and in the entry relating to the Competition Act 1980, “and 15(3)”.
SI 1986/1035 (NI 9).	The Companies Consolidation (Consequential Provisions) (Northern Ireland) Order 1986.	In Part II of Schedule 1, the entries relating to the Restrictive Trade Practices Act 1976 and the Resale Prices Act 1976.
SI 1992/231 (NI 1).	The Electricity (Northern Ireland) Order 1992.	Article 16(2).
		In Article 18—
		(a) in paragraph (1), subparagraph (b) and the “or”

SI 1994/426 (NI 1). The Airports (Northern Ireland) Order 1994.

immediately before it;

(b) in paragraph (2), sub-paragraph (c) and the “or” immediately before it;

(c) in paragraph (3) “or the 1980 Act”.

In Article 28(5), the “or” immediately after sub-paragraph (b).

In Article 46—

(a) in paragraph (4), sub-paragraph (c) and the “and” immediately after it;

(b) in paragraph (5), “or (3)”;

(c) in paragraph (7), “or the 1980 Act”.

Article 61(3)(f) and (g).

In Schedule 12, paragraph 16.

Article 36(3).

In Article 45—

(a) in paragraph (1), “or section 10(2)(a) of the 1980 Act”;

(b) in paragraph (3), sub-paragraph (c) and the “or” immediately before it;

(c) in paragraph (4), “or the 1980 Act”.

In Article 47(a)(ii), “or the 1980 Act”.

In Schedule 9, paragraph 5.

SI 1996/275 (NI 2). The Gas (Northern Ireland) Order 1996.

Article 16(2).

In Article 18—

(a) in paragraph (1), sub-paragraph (b) and the “or” immediately before it;

(b) in paragraph (3), sub-paragraph (c) and the “or” immediately before it;

(c) in paragraph (5), “or the 1980 Act”.

In Article 19(5), the “or” immediately after sub-paragraph (b).

In Article 23—

(a) in paragraph (4), subparagraph (d) and the “and” immediately before it;

(b) in paragraph (5), “or (3)”;

(c) in paragraph (7), “or under the 1980 Act”;

(d) in paragraph (8), “or the 1980 Act”.

Article 44(4)(f) and (g).