STATUTORY INSTRUMENTS

2017 No. 385

COMPETITION

The Claims in respect of Loss or Damage arising from Competition Infringements (Competition Act 1998 and Other Enactments (Amendment)) Regulations 2017

Made - - - - 8th March 2017

Coming into force in accordance with regulation 1(2)

The Secretary of State is a Minister designated(**1**) for the purposes of section 2(2) of the European Communities Act 1972(**2**) in relation to measures giving effect to the European Union's rules on competition applying to undertakings.

The Secretary of State, in exercise of the power conferred by section 2(2) of that Act and section 209 of the Enterprise Act 2002(**3**), makes the following Regulations.

In accordance with paragraph 2 of Schedule 2 to the European Communities Act 1972(**4**) and section 209(7) of the Enterprise Act 2002, a draft of these Regulations was laid before Parliament and approved by a resolution of each House of Parliament.

Citation and commencement

1.—(1) These Regulations may be cited as the Claims in respect of Loss or Damage arising from Competition Infringements (Competition Act 1998 and Other Enactments (Amendment)) Regulations 2017.

(2) These Regulations come into force on the day after the day on which they are made.

Amendments to the Competition Act 1998

2. Schedule 1 to these Regulations contains amendments of the Competition Act 1998 making provision about claims in respect of loss or damage arising from infringements of competition law.

3. Schedule 2 to these Regulations contains minor and consequential amendments.

(**1**) S.I. 1973/1889, to which there are amendments not relevant to these Regulations.
(**2**) 1972 c. 68. Section 2(2) was amended by section 27 of the Legislative and Regulatory Reform Act 2006 (c. 51) and section 3 of, and Part 1 of the Schedule to, the European Union (Amendment) Act 2008 (c. 7).
(**3**) 2002 c. 40. Section 209 was amended by S.I. 2011/1043 and S.I. 2012/1809.
(**4**) Paragraph 2 of Schedule 2 was amended by section 27 of the Legislative and Regulatory Reform Act 2006 (c. 51).

Margot James
Minister for Small Business, Consumers and Corporate Responsibility
Department for Business, Energy and Industrial Strategy

8th March 2017

SCHEDULE 1 Regulation 2

CLAIMS IN RESPECT OF LOSS OR DAMAGE ARISING FROM INFRINGEMENTS OF COMPETITION LAW

1. Chapter 4 of Part 1 of the Competition Act 1998 (appeals, proceedings before the Competition Appeal Tribunal and settlements relating to infringements of competition law) is amended as follows.

2. For the Chapter heading(**5**) substitute "Appeals before the Tribunal(**6**) and proceedings and settlements relating to infringements of competition law".

3. After section 47E(**7**) insert—

"Further provision about claims in respect of loss or damage before a court or the Tribunal

Further provision about claims in respect of loss or damage before a court or the Tribunal

47F. Schedule 8A makes further provision about claims in respect of loss or damage before a court or the Tribunal."

4. After Schedule 8 insert—

"SCHEDULE 8A Section 47F

FURTHER PROVISION ABOUT CLAIMS IN RESPECT OF LOSS OR DAMAGE BEFORE A COURT OR THE TRIBUNAL

PART 1

INTERPRETATION

1. This Part of this Schedule contains definitions and other provisions about interpretation which apply for the purposes of this Schedule.

Competition law etc

2.—(1) "Competition law" means—

(a) the Chapter I prohibition(**8**),

(b) the Chapter II prohibition,

(c) the prohibition in Article 101(1), and

(d) the prohibition in Article 102.

(2) "Competition claim" means a claim in respect of loss or damage arising from an infringement of competition law (whatever the legal basis of the claim) which is made by or on behalf of—

(a) the person who suffered the loss or damage, or

(**5**) The heading was substituted by Consumer Rights Act 2015 c. 15Sch. 8(1) para.2.
(**6**) "the Tribunal" is defined in section 59(1) of the Competition Act 1998 (c. 41), as amended by the Enterprise Act 2002 (c. 40) Schedule 5, paragraph 6(b).
(**7**) Section 47E was inserted by the Consumer Rights Act 2015 (c. 15), Schedule 8(1), paragraph 8(1).
(**8**) "the Chapter I prohibition", "the Chapter II prohibition", "Article 101(1)" and "Article 102" are all defined in section 59 of the Competition Act 1998. Relevant amendments were made to section 59 by S.I. 2012/1809.

(b) a person who has acquired that person's right to make the claim (whether by operation of law or otherwise).

(3) "Competition damages claim" means a competition claim to the extent that it is a claim for damages.

(4) "Competition proceedings" means proceedings before a court or the Tribunal to the extent that they relate to a competition claim.

(5) Where the context requires, references to an infringement of competition law and to loss or damage (however expressed) include an alleged infringement and alleged loss or damage.

Competition authority etc

3.—(1) "Competition authority" means—

(a) the CMA(**9**),

(b) a regulator(**10**), so far as it exercises functions under Part 1 of this Act concurrently with the CMA,

(c) the Commission(**11**), and

(d) a member State competition authority.

(2) A "member State competition authority" means an authority designated by a member State other than the United Kingdom, under Article 35 of the EC Competition Regulation(**12**), as being responsible for the application of Article 101 and Article 102 of the Treaty(**13**).

(3) "Investigation materials", in relation to a competition authority, means—

(a) information prepared by a person (other than a competition authority) for the purpose of an investigation by the competition authority into an infringement of competition law;

(b) information sent by the competition authority, during the course of such an investigation, to an undertaking which is the subject of the investigation;

(c) a settlement submission which has been withdrawn.

(4) Subsections (3) and (4) of section 58A(**14**) apply for the purposes of determining when a decision of the CMA, a regulator or the Commission becomes "final".

(5) A decision of a member State competition authority becomes "final"—

(a) when the time for appealing against it expires without an appeal having been brought, or

(b) where an appeal has been brought against the decision, when—

(i) the appeal and any further appeal in relation to the decision has been decided or has otherwise ended, and

(ii) the time for appealing against the result of the appeal or further appeal has expired without another appeal having been brought.

(6) Where the law of a member State other than the United Kingdom requires or enables a member State competition authority to bring proceedings before a court of the member State in

(**9**) The CMA is defined in section 59 of the Competition Act 1998 (c. 41), as amended by Enterprise and Regulatory Reform Act 2013 (c. 24) Schedule 5(1), paragraph 38(2)(a).
(**10**) "regulator" is defined in section 54(1) of the Competition Act 1998.
(**11**) "the Commission" is defined in section 59(1) of the Competition Act 1998 as amended by the Enterprise and Regulatory Reform Act 2013 (c. 24) Schedule 5(3), paragraph 221.
(**12**) "the EC Competition Regulation" is defined in section 59(1) of the Competition Act 1998 as inserted by S.I. 2004/1261, Schedule 1, paragraph 35(2)(d).
(**13**) "The Treaty" is defined in section 59(1) of the Competition Act 1998 (c. 41) as amended by S.I. 2012/1809, Schedule 1, paragraph 1.
(**14**) Section 58A was substituted by the Consumer Rights Act 2015 (c. 15), Schedule 8(1), paragraph 14(1).

relation to an infringement of Article 101(1) or Article 102, rather than making a decision itself in relation to the infringement—

(a) references to an investigation by a competition authority into an infringement of competition law include such proceedings brought by the member State competition authority;

(b) references to a competition authority closing an investigation include the termination of such proceedings by the member State competition authority or by another person, except where the competition authority's investigation of the infringement continues after the proceedings terminate;

(c) references to a decision of a competition authority include a decision of a court in such proceedings;

(d) sub-paragraph (5) applies in relation to a decision of a court in such proceedings as it applies in relation to a decision of a member State competition authority.

Cartels

4.—(1) "Cartel" means an agreement or concerted practice between two or more competitors aimed at—

(a) co-ordinating their competitive behaviour in a market, or

(b) otherwise influencing competition in a market,

through practices such as (but not limited to) those listed in sub-paragraph (2).

(2) Those practices are—

(a) fixing or co-ordinating purchase or selling prices or other trading conditions, including in relation to intellectual property rights,

(b) allocating production or sales quotas, and

(c) sharing markets and customers, including bid-rigging, restrictions of imports or exports or anti-competitive actions against other competitors.

(3) "Cartel leniency programme" means a programme operated by a competition authority under which—

(a) an undertaking that has participated in a cartel may provide the competition authority with information about the cartel and the undertaking's involvement in it, and

(b) if it does so voluntarily and independently of the other cartel members, the competition authority may give the undertaking immunity from, or a reduction in, a financial penalty which would otherwise be payable by the undertaking for its participation in the cartel.

(4) "Cartel leniency statement" means a set of information provided, orally or in writing, to a competition authority by or on behalf of a person which—

(a) consists of information about a cartel and the person's role in relation to the cartel,

(b) is provided voluntarily, and

(c) is provided specifically for the purposes of the competition authority's cartel leniency programme,

excluding any pre-existing information.

(5) For the purposes of sub-paragraph (4)—

(a) "pre-existing information" means information that exists irrespective of a competition authority's investigations, and

(b) the fact that information is in a competition authority's file does not prevent it from being pre-existing information.