*Draft Regulations laid before Parliament under section 2(2) of the European Communities Act 1972 and section 209 of the Enterprise Act 2002, for approval by resolution of each House of Parliament.*

DRAFT STATUTORY INSTRUMENTS

# 2004 No.

# COMPETITION

## The Competition Act 1998 and Other Enactments (Amendment) Regulations 2004

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| *Made - - - -* | *2004* |
| *Coming into force* | |
| *For the purposes of regulation 4 as it gives effect to paragraphs 50(a) and 54(8) of Schedule 1–* | *1st May 2007* |
| *For all other purposes –* | *1st May 2004* |

Whereas on 31st March 2004 the Secretary of State laid a draft of these Regulations before Parliament;

And whereas the said draft as so laid has been approved by resolution of each House of Parliament:

Now, therefore, the Secretary of State being a Minister designated for the purposes of section 2(2) of the European Communities Act 1972(**1**) in relation to measures giving effect to the European Community's rules on competition applying to undertakings(**2**), in exercise of the powers conferred on her by the said section 2(2) and by section 209 of the Enterprise Act 2003(**3**), hereby makes the following Regulations:

**Citation and commencement**

**1.** These Regulations may be cited as the Competition Act 1998 and other enactments (Amendment) Regulations 2004 and shall come into force—

(a) for the purposes of regulation 4 as it gives effect to paragraphs 50(a) and 54(8) of Schedule 1, on 1st May 2007; and

(**1**) 1972 c. 68.
(**2**) S.I.1973/1889.
(**3**) 2002 c. 40.

(b) for all other purposes, on 1st May 2004.

### Interpretation

**2.** In these Regulations—

"the 1998 Act" means the Competition Act 1998(**4**);

"the appointed day" means the 1st May 2004;

"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(**5**);

"the OFT" means the Office of Fair Trading; and

"the Treaty" means the treaty establishing the European Community.

### Designation of national competition authorities

**3.**—(1) Subject to paragraphs (2) and (3) below, the following persons are hereby designated as national competition authorities pursuant to Article 35 of the EC Competition Regulation—

(a) the OFT; and

(b) any regulator mentioned in section 54(1) of the 1998 Act.

(2) The OFT is designated as a national competition authority for the purposes of exercising all of the powers and functions of a competition authority of a Member State under Chapters I, II, IV, V, VIII and IX of the EC Competition Regulation.

(3) Any person mentioned in paragraph (1)(b) above is designated as a national competition authority for the purposes of exercising all of the powers and functions of a competition authority of a Member State under Chapters I, II, IV, VIII and IX of the EC Competition Regulation.

### Amendments to the Competition Act 1998

**4.** The amendments to the 1998 Act specified in Schedule 1 to these Regulations shall have effect.

### Amendments to other enactments

**5.** The amendments to other enactments specified in Schedule 2 to these Regulations shall have effect.

### Savings and consequential provision

**6.**—(1) Paragraph (2) applies if an individual exemption from the prohibition imposed by section 2(1) of the 1998 Act has been granted before the appointed day and has not expired or been cancelled before that day.

(2) The repeals made by these Regulations do not affect that exemption (or a condition or an obligation relating to it); but this does not allow the OFT, on or after the appointed day, to extend that exemption under section 4(6) of the 1998 Act.

(3) Section 5 of the 1998 Act, despite its repeal by these Regulations, shall continue in effect while any individual exemption has effect.

(4) In this regulation "individual exemption" means an exemption granted under section 4 of the 1998 Act (including one granted by virtue of paragraph 3(2)(c) of Schedule 8 to that Act).

(**4**) 1998 c. 41.
(**5**) OJ L 001, 04.1.03, p.1-25.

**7.**—(1) Paragraph (2) applies if, before the appointed day, the European Commission adopted a decision pursuant to Article 81(3) of the Treaty in relation to an agreement and that decision has not expired or been revoked.

(2) Section 10 of the 1998 Act has effect in relation to the agreement without the amendment made by paragraph 7(2) of Schedule 1.

(3) Section 2(5) of the 1998 Act applies to this regulation as it applies to Part 1 of that Act.

**8.**—(1) This regulation applies where, before the appointed day, the OFT has made a decision falling within paragraph (c), (d) or (e) of section 46(3), or has made a decision falling within paragraph (f) of section 46(3) in relation to an individual exemption.

(2) This regulation also applies where, on or after the appointed day, the OFT (by virtue of regulation 6) makes under section 5 of the 1998 Act a decision falling within paragraph (d)(i) or (ii) or (f) of section 46(3).

(3) Where this regulation applies—

(a) sections 46 and 47 of and Schedule 8 to the 1998 Act shall have effect in relation to the decision in question without the amendments made by these Regulations; and

(b) on an appeal in respect of that decision, the powers under paragraph 3(2) of Schedule 8 to that Act are not affected by the repeal by these Regulations of section 4 or 5 of this Act; but this does not allow the Competition Appeal Tribunal, on or after the appointed day, to extend the individual exemption.

(4) In this regulation—

(a) references to section 46(3) are to section 46(3) of the 1998 Act as that subsection had effect before the appointed day; and

(b) "individual exemption" has the same meaning as in regulation 6.

**9.**—(1) Paragraph (2) applies if—

(a) an agreement has been notified before the appointed day to the OFT under section 13 or 14 of the 1998 Act and, on the appointed day, the OFT has not determined the application made in respect of the agreement, or

(b) an agreement has been notified before the appointed day to the European Commission for a decision as to whether an exemption will be granted under Article 81(3) of the Treaty with respect to the agreement and, on the appointed day, the European Commission has not determined the matter.

(2) No penalty may be imposed under Part 1 of the 1998 Act in respect of any infringement of the Chapter I prohibition by the agreement which occurred during the period beginning with the date on which notification was given and ending with the appointed day.

**10.** Where section 5 of the 1998 Act continues to have effect by virtue of regulation 6, paragraph 6 of Schedule 9 to that Act shall continue to have effect despite its repeal by these Regulations.

Parliamentary Under Secretary of State for,
Employment Relations, Competition and
Consumers
2004 Department of Trade and Industry

## SCHEDULE 1

Regulation 4

### Amendments to the Competition Act 1998

**1.** In the long title of the 1998 Act, for "Article 85 or 86" there is substituted "Article 81 or 82".

**2.** Section 4 (individual exemptions) shall cease to have effect.

**3.** Section 5 (cancellation etc. of individual exemptions) shall cease to have effect.

**4.**—(1) Section 6 (block exemptions) is amended as follows.

(2) In subsection (1), for the words "agreements to which section 9 applies" there is substituted "exempt agreements".

(3) In subsection (6)(c), for the words "one to which section 9 applies" there is substituted "an exempt agreement".

(4) For subsection (8) there is substituted—

"(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.".

**5.** Section 7 (block exemptions: opposition) shall cease to have effect.

**6.**—(1) Section 9 (the criteria for individual and block exemptions) is renumbered as subsection (1) of that section.

(2) In that provision, for the words "This section applies to any agreement which" there is substituted "An agreement is exempt from the Chapter I prohibition if it".

(3) In paragraph (a) of that provision, for the word "but" there is substituted "and".

(4) After that provision there is inserted—

"(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.".

(5) In the sidenote to section 9, for the words "The criteria for individual and block exemptions" there is substituted "Exempt agreements".

**7.**—(1) Section 10 (parallel exemptions) is amended as follows.

(2) In subsection (1), for paragraphs (b) and (c) there is substituted—

"or

(b) because of a decision of the Commission under Article 10 of the EC Competition Regulation.".

(3) In subsection (9), after the word "Regulation" there is inserted "other than the EC Competition Regulation".

(4) In subsection (10), in the definition of "the Community prohibition" for paragraph (a) there is substituted "(a) Article 81(1);".

**8.**—(1) Section 11 (exemption for certain other agreements) is amended as follows.

(2) In subsection (1)—

(a) for the words "Article 88" there is substituted "Article 84";

(b) for the words "Article 85" there is substituted "Article 81(1)".

**9.** Sections 12 to 16 and 20 to 24 (which concern notifications) shall cease to have effect.

**10.** For Section 25 (OFT's power to investigate) there is substituted—

"**Power of OFT to investigate**

**25.**—(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 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.

(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.