

Transitional Arrangements: Guidance on the CMA's proposed approach - Part 2

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1 INTRODUCTION

- 1.1 This guidance explains the transitional arrangements that it is proposed will apply to the continuation by the Competition and Markets Authority (CMA) of certain investigations and work being undertaken by the Office of Fair Trading (OFT) or the Competition Commission (CC) as at 1 April 2014 (the Effective Date, being the date on which responsibility for undertaking such work and investigations transfers to the CMA).
- 1.2 These transitional arrangements were consulted on as part of the consultation on certain CMA guidance documents which ran between 17 September and 11 November 2013. The responses received were supportive of the proposed arrangements so the proposals set out in this document are substantively unchanged from those which were consulted on.
- 1.3 The transitional arrangements described will, as necessary, be effected through secondary legislation. The Department for Business, Innovation and Skills (BIS) intends to make that relevant secondary legislation so that it comes into force on 1 April 2014.¹ This document reflects the approach which BIS is taking to the relevant secondary legislation but remains subject to possible change until that legislation has completed the legislative processes.
- 1.4 In the case of any future conflict between such secondary legislation and this document, the secondary legislation shall prevail.
- 1.5 This guidance covers transitional arrangements related to the exercise by the CMA of its:
- investigation procedures and rules in Competition Act 1998 cases
 - concurrent application to regulated industries
 - consumer protection
 - prosecutorial discretion to institute proceedings for the amended cartel offence against any individual.

¹ BIS will also be commencing the competition provisions in the Enterprise and Regulatory Reform Act 2013 (the ERRA13), together with detailed transitional and consequential provision, to take effect on 1 April 2014. These transitional arrangements are not covered in this Guidance.

- 1.6 Each chapter of this guidance should be read in conjunction with the relevant CMA published guidance documents on its approach to each of the powers and functions listed above.²
- 1.7 Unless otherwise stated or defined in this document, defined terms used in the chapters below have the meaning given to them in the guidance document referred to in that chapter.
- 1.8 The guidance documents referred to in the chapters below were published by the CMA in March 2014.
- 1.9 *Transitional Arrangements: Guidance on the CMA's proposed approach – Part 1* (CMA14) was published in January 2014, alongside the CMA's publication of the guidance documents covering those functions.
- 1.10 This guidance is not a definitive statement of, or a substitute for, the law itself and should not be relied upon as an alternative to seeking appropriate legal advice.

² The relevant guidance documents are referred to, as appropriate, in each chapter below, and are available at www.gov.uk/cma.

2 COMPETITION ACT 1998 INVESTIGATIONS

- 2.1 This chapter provides guidance on the transitional arrangements that apply to CA98 investigation procedures and rules that are ongoing as at the Effective Date. It should be read in conjunction with *Competition Act 1998: Guidance on the CMA's investigation procedures in Competition Act 1998 cases* (CMA8)³ (the CA98 Guidance).
- 2.2 The changes introduced by the ERRA13, as they affect investigations under the CA98 and as outlined in the CA98 guidance, will apply to all ongoing and future cases from the Effective Date. Such changes include the CMA's new compulsory interview powers – as provided for by section 26A of the CA98 – and the revised threshold for the imposition of interim measures under section 35 of the CA98.
- 2.3 From the Effective Date the following will also apply to all ongoing (and future) CA98 cases:
- the procedural rules set out in the CMA CA98 Rules, and
 - the CMA's approach to investigation procedures as set out in the CA98 Guidance.
- 2.4 Additionally, subject to certain exceptions⁴, the CMA's powers to impose administrative penalties under section 40A of the CA98⁵ will apply to CA98 investigations that are ongoing as at (or which commence on or after) the Effective Date, but only where the relevant investigatory requirements (namely requirements to provide information or documents or certain other requirements in CA98 investigations) have been imposed after that date.

³ Available at www.gov.uk/cma.

⁴ For further details see the CA98 Guidance, available at www.gov.uk/cma.

⁵ For further details see *Administrative Penalties: Statement of Policy on the CMA's approach* (CMA4), available at www.gov.uk/cma.

3 REGULATED INDUSTRIES

- 3.1 This chapter provides guidance on the main transitional arrangements associated with the changes to the regulated industries regimes made by the ERA13. It should be read in conjunction with *Regulated industries: Guidance on concurrent application of competition law to regulated industries* (CMA10) (the Regulated Industries Guidance).
- 3.2 To provide clarity and certainty to affected parties the approach outlined in the Regulated Industries Guidance will take effect from 1 April 2014.
- 3.3 The changes introduced by the ERA13, as they affect the concurrency regime under the CA98 and EA02 and as outlined in the Regulated Industries Guidance, will apply to all ongoing and future cases from 1 April 2014.

4 CONSUMER

- 4.1 This chapter provides guidance on the transitional arrangements that apply to the consumer sector. It should be read in conjunction with *CMA's approach to use of its consumer powers* (CMA7).
- 4.2 The CMA will continue with any relevant OFT consumer investigations and enforcement action ongoing as at 1 April 2014 as if it is the OFT.
- 4.3 The CMA and TSS will be able to take follow up action to enforce any undertakings given to the OFT or any Orders obtained by the OFT, when it is appropriate to do so.

5 CARTELS

- 5.1 This chapter should be read in conjunction with *Cartel Offence Prosecution Guidance* (CMA9) (the Cartels Guidance).
- 5.2 The amendments to the criminal cartel offence under the ERR13 will apply to agreements made on or after 1 April 2014 and which relate to arrangements made or to be made on or after that date. The unamended criminal cartel offence under EA02 will still apply to agreements made before 1 April 2014 or which relate to arrangements made or to be made before that date.