

# THIRD SUPPLEMENT TO THE GIBRALTAR GAZETTE

No. 4788 GIBRALTAR Wednesday 2nd December 2020

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B. 30/20

## COMPETITION BILL 2020

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# THIRD SUPPLEMENT TO THE GIBRALTAR GAZETTE

No. 4788 GIBRALTAR Wednesday 2nd December 2020

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B. 30/20

## BILL

FOR

**AN ACT** to make provision about competition and the abuse of a dominant position, and to make provision in relation to mergers to establish the Gibraltar Competition and Markets Authority and to provide it with powers of investigation and other functions.

**ENACTED** by the Legislature of Gibraltar.

### **Title and commencement.**

1.(1) This Act may be cited as the Competition Act 2020.

(2) This Act comes into operation on the day appointed by the Minister by notice in the Gazette and different days may be appointed for different provisions and for different purposes.

## **PART I COMPETITION**

### **CHAPTER 1 AGREEMENTS**

#### **Interpretation of Part 1.**

2.(1) In this Part-

“agreement” is to be read with section 3(5) and (6);

“block exemption” has the meaning given in section 5(4);

“block exemption order” has the meaning given in section 5(2);

“the Chapter 1 prohibition” has the meaning given in section 3(7);

“the Chapter 2 prohibition” has the meaning given in section 10(4);

- “class member” has the meaning given in section 50(8)(a);
- “collective proceedings” has the meaning given in section 50(1);
- “collective proceedings order” means an order made by the Supreme Court authorising the continuance of collective proceedings;
- “the court”, except in sections 58, 64 and 65 and Schedule 5, means the Judicial Committee of the Privy Council;
- “document” includes information recorded in any form;
- “the GCMA” means the Gibraltar Competition and Markets Authority;
- “information” includes estimates and forecasts;
- “infringement decision”, except in section 56, has the meaning given in section 49(6);
- “injunction” includes an interim injunction;
- “investigating officer” has the meaning given in section 16(1);
- “investigation” means an investigation under section 12;
- “officer”, in relation to a body corporate, includes a director, manager or secretary;
- “opt-in collective proceedings” has the meaning given in section 50(10);
- “opt-out collective proceedings” has the meaning given in section 50(11);
- “person”, in addition to the meaning given by the Interpretation and General Clauses Act, includes any undertaking;
- “premises” includes any land or means of transport;
- “prescribed” means prescribed by regulations made by the Minister;
- “regulator” has the meaning given by section 62;
- “representative” means a person who is authorised by a collective proceedings order to bring collective proceedings;
- “represented person” means a class member who-
- (a) has opted in to opt-in collective proceedings,



(b) was domiciled in Gibraltar at the time specified for the purposes of determining domicile (see section 50(11)(b)(i)) and has not opted out of opt-out collective proceedings, or

(c) has opted in to opt-out collective proceedings;

“retained block exemption regulation” has the meaning given in section 8(8);

“retained exemption has the meaning given in section 8(2);

“working day” means a day which is not a Saturday, a Sunday or a day which is a public holiday or a bank holiday under the Interpretation and General Clauses Act or the Banking and Financial Dealings Act.

(2) Sections 24, 25, 28 and 29 of the Civil Jurisdiction and Judgments Act 1993 apply for the purpose of determining whether a person is regarded as “domiciled in Gibraltar” for the purposes of this Part.

(3) The fact that to a limited extent the Chapter 1 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.

(4) 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.

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

### *The prohibition*

#### **Agreements etc. preventing, restricting or distorting competition.**

3.(1) Subject to section 4, agreements between undertakings, decisions by associations of undertakings or concerted practices which-

(a) may affect trade within Gibraltar, and

(b) have as their object or effect the prevention, restriction or distortion of competition within Gibraltar,

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 Gibraltar.

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

### *Excluded agreements*

#### **Excluded agreements.**

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

- (a) Schedule 1 (mergers);
- (b) Schedule 2 (general exclusions).

(2) The Minister may at any time by order amend Schedule 1, with respect to the Chapter 1 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 Minister may at any time by order amend Schedule 2, with respect to the Chapter 1 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 or 2 of Schedule 2.

(4) The power under subsection (3) to provide for an additional exclusion may be exercised only if it appears to the Minister 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 2 or Part V to VIII.

(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 2 also gives the Minister power to exclude agreements from the Chapter 1 prohibition in certain circumstances.

### *Exemptions*

#### **Block exemptions.**

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

(2) The Minister 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 1 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 GCMA may, by notice in writing, cancel the block exemption in respect of the agreement;
  - (c) that if the GCMA 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 1 prohibition as a result of section 7; and
  - “specified” means specified in a block exemption order.

**Block exemptions: procedure.**

- 6.(1) Before making a recommendation under section 5(1), the GCMA 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 Minister proposes to give effect to such a recommendation subject to modifications, he must inform the GCMA of the proposed modifications and take into account any comments made by the GCMA.
- (3) If, in the opinion of the GCMA, it is appropriate to vary or revoke a block exemption order it may make a recommendation to that effect to the Minister.

(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 Minister must-

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

(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.

### **Exempt agreements.**

7.(1) An agreement is exempt from the Chapter 1 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 1 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.

### **Retained exemptions.**

8.(1) An agreement is exempt from the Chapter 1 prohibition if it falls within a category of agreements specified as exempt in a retained block exemption regulation.

(2) An exemption from the Chapter 1 prohibition under this section is referred to in this Part as a retained exemption.

(3) A retained exemption ceases to have effect-

- (a) if the relevant retained block exemption regulation ceases to have effect; or
- (b) on being cancelled by virtue of subsection (4) or (6).

(4) In such circumstances and manner as may be specified in rules made under section 66 the GCMA May-

- (a) impose conditions or obligations subject to which a retained 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 in respect of an agreement.

(5) In such circumstances as may be specified in rules made under section 60, 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.

(6) Breach of a condition imposed by the GCMA has the effect of cancelling the exemption.

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

(8) In this Part, “retained block exemption regulation” means the following regulations as amended from time to time-

- (a) Council Regulation (EC) 169/2009 applying rules of competition to transport by rail, road and inland waterway;
- (b) Commission Regulation (EC) 906/2009 on the application of Article 81(3) of the Treaty to certain categories of agreements, decisions and concerted practices between liner shipping companies (consortia);
- (c) Commission Regulation (EU) 330/2010 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to categories of vertical agreements and concerted practices;
- (d) Commission Regulation (EU) 461/2010 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to categories of vertical agreements and concerted practices in the motor vehicle sector;

- (e) Commission Regulation (EU) 1217/2010 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to certain categories of research and development agreements;
- (f) Commission Regulation (EU) 1218/2010 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to certain categories of specialisation agreements;
- (g) Commission Regulation (EU) 316/2014 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to categories of technology transfer agreements.

**Power to vary etc. retained block exemption regulations.**

9.(1) The Minister may by regulations vary or revoke a retained block exemption regulation.

(2) In exercising the power under subsection (1), the Minister must have regard to the conditions specified in section 7(1) for exemption from the Chapter 1 prohibition.

(3) If, in the opinion of the GCMA, it is appropriate to vary or revoke a retained block exemption regulation, the GCMA may make a recommendation to that effect to the Minister.

(4) Before making a recommendation under subsection (3), the GCMA 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.

(5) Before exercising the power to vary or revoke a retained block exemption regulation (in a case where there has been no recommendation under subsection (3)), the Minister must-

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

**CHAPTER 2  
ABUSE OF DOMINANT POSITION**

*The prohibition*

**Abuse of dominant position.**

10.(1) Subject to section 11, 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 Gibraltar.

(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 Gibraltar.

(4) The prohibition imposed by subsection (1) is referred to in this Act as “the Chapter 2 prohibition”.

#### *Excluded cases*

#### **Excluded cases.**

11.(1) The Chapter 2 prohibition does not apply in any of the cases in which it is excluded by or as a result of-

- (a) Schedule 1 (mergers); or
- (b) Schedule 2 (general exclusions).

(2) The Minister may at any time by order amend Schedule 1, with respect to the Chapter 2 prohibition, by-

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

(3) Schedule 2 also gives the Minister power to provide that the Chapter 2 prohibition is not to apply in certain circumstances.



**CHAPTER 3**  
**INVESTIGATION AND ENFORCEMENT**

*Investigations*

**Power of GCMA to investigate.**

12.(1) In any of the following cases, the GCMA 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 Gibraltar; and
- (b) has as its object or effect the prevention, restriction or distortion of competition within Gibraltar.

(3) The second case is where there are reasonable grounds for suspecting that the Chapter 2 prohibition 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 within Gibraltar; and
- (b) had as its object or effect the prevention, restriction or distortion of competition within Gibraltar.

(5) Subsection (2) does not permit an investigation to be conducted in relation to an agreement if the GCMA-

- (a) considers that the agreement is exempt from the Chapter 1 prohibition as a result of a block exemption or a retained 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.

(6) Subsection (4) does not permit an investigation to be conducted in relation to any agreement if the GCMA considers that, at the time in question, the agreement was exempt from the Chapter 1 prohibition as a result of a block exemption or a retained exemption.

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

**Power of GCMA to publish notice of investigation.**

13.(1) Where the GCMA decides to conduct an investigation it may publish a notice which may, in particular-

- (a) state its decision to do so;
- (b) indicate which of subsections (2) to (4) of section 12 the investigation falls under;
- (c) summarise the matter being investigated;
- (d) identify any undertaking whose activities are being investigated as part of the investigation;
- (e) identify the market which is or was affected by the matter being investigated.

(2) Section 63 does not apply to a notice under subsection (1) to the extent that it includes information other than information mentioned in that subsection.

(3) Subsection (4) applies if-

- (a) the GCMA has published a notice under subsection (1) which identifies an undertaking whose activities are being investigated, and
- (b) the GCMA subsequently decides (without making a decision within the meaning given by section 22(2)) to terminate the investigation of the activities of the undertaking so identified.

(4) The GCMA must publish a notice stating that the activities of the undertaking in question are no longer being investigated.

**Investigations: powers to require documents and information.**

14.(1) For the purposes of an investigation, the GCMA 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 45 and 46.

- (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 GCMA 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.

**Investigations: power to ask questions.**

15.(1) For the purposes of an investigation, the GCMA may give notice to an individual who has a connection with a relevant undertaking requiring the individual to answer questions with respect to any matter relevant to the investigation-

- (a) at a place specified in the notice, and
  - (b) either at a time so specified or on receipt of the notice.
- (2) The GCMA must give a copy of the notice under subsection (1) to each relevant undertaking with which the individual has a current connection at the time the notice is given to the individual.
- (3) The GCMA must take such steps as are reasonable in all the circumstances to comply with the requirement under subsection (2) before the time at which the individual is required to answer questions.

(4) Where the GCMA does not comply with the requirement under subsection (2) before the time mentioned in subsection (3), it must comply with that requirement as soon as practicable after that time.

(5) A notice under subsection (1) must be in writing and must indicate-

- (a) the subject matter and purpose of the investigation; and
- (b) the nature of the offence created by section 46.

(6) For the purposes of this section-

- (a) an individual has a connection with an undertaking if he or she is or was-
  - (i) concerned in the management or control of the undertaking, or
  - (ii) employed by, or otherwise working for, the undertaking, and
- (b) an individual has a current connection with an undertaking if, at the time in question, he or she is so concerned, is so employed or is so otherwise working.

(7) In this section, a “relevant undertaking” means an undertaking whose activities are being investigated as part of the investigation in question.

**Power to enter business premises without a warrant.**

16.(1) Any officer of the GCMA who is authorised in writing by the GCMA 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 44 to 46.

(3) Subsection (2) does not apply-

- (a) if the GCMA 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 12; or
  - (ii) an undertaking the conduct of which it is investigating under section 12; 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.

**Power to enter business premises under a warrant.**

17.(1) On an application made to it by the GCMA, the court may issue a warrant if it 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 14 or 16, 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 GCMA has power under section 14 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 16 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 GCMA, and any other of the GCMA’s officers whom the GCMA 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 of 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 court 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) An application for a warrant under this section must be made in accordance with rules of court.

(10) In subsection (9) “rules of court” include the Practice Direction – Application for a warrant under the Competition Act 1998 with such necessary modifications as the circumstances of Gibraltar require and subject to the following-

- (a) a reference in that Practice Direction to the United Kingdom’s Competition Act 1998 is deemed to be a reference to Parts I and II of this Act; and
- (b) a reference to the Office of Fair Trading is deemed to be a reference to the GCMA.

(11) In this section “business premises” has the same meaning as in section 16.

**Power to enter domestic premises under a warrant.**

18.(1) On an application made to it by the GCMA, the court may issue a warrant if it 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 14; 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 GCMA has power under section 14 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 GCMA, and any other of its officers whom the GCMA 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 court 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) An application for a warrant under this section must be made in accordance with rules of court.

(10) 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;

“rules of court” has the meaning given in section 17.

**Entry of premises under warrant: supplementary.**

19.(1) A warrant issued under section 17 or 18 must indicate-

- (a) the subject matter and purpose of the investigation;
- (b) the nature of the offences created by sections 44 to 46.

(2) The powers conferred by section 17 or 18 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.

**Privileged communications.**

20.(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 Supreme Court would be protected from disclosure on grounds of legal professional privilege.

### **Use of statements in prosecution.**

21.(1) A statement made by a person in response to a requirement imposed by virtue of any of sections 14, 16 to 18 and 41 may not be used in evidence against him on a prosecution for an offence under section 261 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.

(2) A statement by an individual in response to a requirement imposed by virtue of section 15 (a “section 15 statement”) may only be used in evidence against the individual-

- (a) on a prosecution for an offence under section 46; or
- (b) on a prosecution for some other offence in a case falling within subsection (3).

(3) A prosecution falls within this subsection if, in the proceedings-

- (a) in giving evidence, the individual makes a statement inconsistent with the section 15 statement; and
- (b) evidence relating to the section 15 statement is adduced, or a question relating to it is asked, by or on behalf of the individual.

(4) A section 15 statement may not be used in evidence against an undertaking with which the individual who gave the statement has a connection on a prosecution for an offence unless the prosecution is for an offence under section 46.

(5) For the purposes of subsection (4), an individual has a connection with an undertaking if he or she is or was-

- (a) concerned in the management or control of the undertaking; or
- (b) employed by, or otherwise working for, the undertaking.

**Decisions following an investigation.**

22.(1) If as a result of an investigation the GCMA proposes to make a decision, the GCMA 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 23 and 24 “decision” means a decision of the GCMA-

- (a) that the Chapter 1 prohibition has been infringed; or
- (b) that the Chapter 2 prohibition has been infringed.

**Commitments.**

23.(1) Subsection (2) applies in a case where the GCMA has begun an investigation under section 12 but has not made a decision (within the meaning given by section 22(2)).

(2) For the purposes of addressing the competition concerns it has identified, the GCMA 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 GCMA 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) come into force when accepted; and
- (b) may be released by the GCMA 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 3 shall have effect with respect to procedural requirements for the acceptance, variation and release of commitments under this section.

**Effect of commitments under section 23.**

24.(1) Subsection (2) applies if the GCMA has accepted commitments under section 23 (and has not released them).

(2) In such a case, the GCMA must not-

- (a) continue the investigation;
- (b) make a decision (within the meaning of section 22(2)); or
- (c) give a direction under section 32,

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 GCMA 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 GCMA 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 GCMA makes a decision or gives a direction the commitments are to be treated as released from the date of that decision or direction.

**Review of commitments.**

25.(1) Where the GCMA is reviewing or has reviewed the effectiveness of commitments accepted under section 23 it must, if requested to do so by the Minister, prepare a report of its findings.

(2) The GCMA must-

(a) give any report prepared by it under subsection (1) to the Minister; and

(b) publish the report.

**Guidance.**

26.(1) The GCMA must prepare and publish guidance as to the circumstances in which it may be appropriate to accept commitments under section 23.

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

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

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

(5) The GCMA may, after consulting the Minister, choose how it publishes its guidance.

(6) If the GCMA 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 23, the GCMA must have regard to the guidance for the time being in force under this section.

**Enforcement of commitments.**

27.(1) If a person from whom the GCMA has accepted commitments fails without reasonable excuse to adhere to the commitments (and has not been released from them), the GCMA 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.

**Power for Minister to impose time-limits on investigations etc.**

28.(1) The Minister may by order impose time-limits in relation to-

- (a) the conduct by the GCMA of investigations or investigations of a description specified in the order;
- (b) the making by the GCMA of decisions (within the meaning given by section 22(2)) as a result of investigations or investigations of such a description.

(2) Before making an order under subsection (1), the Minister must consult the GCMA and such other persons as the Minister considers appropriate.

*Enforcement*

**Directions in relation to agreements.**

29.(1) If the GCMA has made a decision that an agreement infringes the Chapter 1 prohibition 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) 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.

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

**Directions in relation to conduct.**

30.(1) If the GCMA has made a decision that conduct infringes the Chapter 2 prohibition 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) 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.
- (3) A direction under this section must be given in writing.

**Enforcement of directions.**

31.(1) If a person fails, without reasonable excuse, to comply with a direction under section 29 or 30, the GCMA 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.

**Interim measures.**

32.(1) Subject to subsection (8), this section applies if the GCMA has begun an investigation under section 12 and not completed it (but only applies so long as the GCMA has power under section 12 to conduct that investigation).

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

- (a) of preventing significant 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 GCMA 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 GCMA 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 29 or (as appropriate) section 30, or
- (b) commitments accepted under section 23,

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

(6) In the cases mentioned in section 12(2) and (6), sections 29(3) and 31 also apply to directions given under this section.

(7) In the cases mentioned in section 12(4), sections 30(3) and 31 also apply to directions given under this section.

(8) In the case of an investigation conducted by virtue of section 12(2) or (6), this section does not apply if a person has produced evidence to the GCMA 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 1 prohibition as a result of section 7(1); and in this subsection “the basic infringement conclusion” is the conclusion that there is an agreement which-

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

### **Penalties.**

33.(1) On making a decision that an agreement has infringed the Chapter 1 prohibition, the GCMA may require an undertaking which is a party to the agreement to pay the GCMA a penalty in respect of the infringement.

(2) On making a decision that conduct has infringed the Chapter 2 prohibition, the GCMA may require the undertaking concerned to pay the GCMA a penalty in respect of the infringement.

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

(4) Subsection (1) is subject to section 36 and does not apply in relation to a decision that an agreement has infringed the Chapter 1 prohibition if the GCMA 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 37 and does not apply in relation to a decision that conduct has infringed the Chapter 2 prohibition if the GCMA 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 47.

(8) In fixing a penalty under this section the GCMA must have regard to-

- (a) the seriousness of the infringement concerned; and
- (b) the desirability of deterring both the undertaking on whom the penalty is imposed and others from-
  - (i) entering into agreements which infringe the Chapter 1 prohibition, or
  - (ii) engaging in conduct which infringes the Chapter 2 prohibition.

(9) No penalty fixed by the GCMA 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 Minister).

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

### **Recovery of penalties.**

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

(2) In this section-

“penalty notice” means a notice given under section 33; and

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

### **The appropriate level of a penalty.**

35.(1) The GCMA must prepare and publish guidance as to the appropriate amount of any penalty under this Part in respect of an infringement of the Chapter 1 prohibition or the Chapter 2 prohibition.

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

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

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

(5) The GCMA may, after consulting the Minister, choose how it publishes its guidance.

(6) If the GCMA 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 in respect of an infringement of a kind mentioned in subsection (1), the GCMA must have regard to the guidance for the time being in force under this section.

### **Limited immunity in relation to the Chapter 1 prohibition.**

36.(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 33(1) so far as that provision relates to decisions about infringement of the Chapter 1 prohibition; but the GCMA may withdraw that immunity under subsection (4).

(4) If the GCMA 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 1 prohibition.

(5) The GCMA 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 GCMA 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 1 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.

### **Limited immunity in relation to the Chapter 2 prohibition.**

37.(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 33(2), so far as that provision relates to decisions about infringement of the Chapter 2 prohibition, if his conduct is conduct of minor significance; but the GCMA may withdraw that immunity under subsection (4).

(4) If the GCMA 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 2 prohibition.

(5) The GCMA 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 GCMA 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 2 prohibition.

*Transferred EU anti-trust commitments and  
transferred EU anti-trust directions*

**Interpretation.**

38.(1) In this section and in sections 39 and 41 “transferred EU anti-trust commitments” means EU anti-trust commitments-

- (a) which are the subject of an Article 95(2) commitments transfer decision (and, where those commitments are modified by, or as contemplated by, that decision, or by a later Article 95(2) commitments transfer decision, means those commitments as so modified), and
- (b) which have not been wholly waived or substituted by the European Commission.

(2) In this section-

“Article 95(2) commitments transfer decision” means an instrument issued by the European Commission in accordance with Article 95(2) of the EU withdrawal agreement transferring responsibility for the monitoring and enforcement of EU anti-trust commitments to the GCMA;

“EU anti-trust commitments” means commitments contained, pursuant to Article 9(1) of Regulation 1/2003, in a decision adopted by the European Commission under that Regulation.

(3) In this section and in sections 40 and 41 a “transferred EU anti-trust direction” means an EU anti-trust direction-

- (a) which is the subject of an Article 95(2) direction transfer decision (and, where that direction is modified by that decision, or as contemplated by that decision, or by a later Article 95(2) direction transfer decision, means that direction as so modified) and
- (b) which has not been revoked by the European Commission.

(4) In this section-

“Article 95(2) direction transfer decision” means an instrument issued by the European Commission in accordance with Article 95(2) of the EU withdrawal agreement transferring responsibility for the monitoring and enforcement of an EU anti-trust direction to the GCMA;

“EU anti-trust direction” means a direction given pursuant to Article 7(1) of Regulation 1/2003 in a decision adopted by the European Commission under that Regulation;

“Regulation 1/2003” means Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty.

(5) So far as the context permits or requires, transferred EU anti-trust commitments and transferred EU anti-trust directions are to be treated for the purposes of this section and sections 39 to 41 as if-

- (a) any reference to the area of the European Union or of the European Economic Area included Gibraltar;
- (b) any reference to the internal market included Gibraltar;
- (c) any reference to a member State included Gibraltar;
- (d) any reference to a party to the EEA agreement included Gibraltar.

(6) Subsection (5) is subject to any different provision made by the Article 95(2) commitments transfer decision or Article 95(2) direction transfer decision in question.

**Transferred EU anti-trust commitments.**

39.(1) The GCMA has the function of monitoring compliance with transferred EU anti-trust commitments.

(2) If a person who is bound by transferred EU anti-trust commitments fails, without reasonable excuse, to adhere to those commitments, the GCMA may apply to the court for an order-

- (a) requiring the defaulter to make good the default within a time specified in the order; or
- (b) if any of the transferred EU anti-trust 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.

(3) An order of the court under subsection (2) 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.

(4) In this section, “transferred EU anti-trust commitments” has the meaning given by section 38(1).

**Transferred EU anti-trust directions**

40.(1) The GCMA has the function of monitoring compliance with transferred EU anti-trust directions.

(2) If a person fails, without reasonable excuse, to comply with a transferred EU anti-trust direction, the GCMA may apply to the court for an order-

- (a) requiring the defaulter to make good the default within a time specified in the order; or
- (b) if the transferred EU anti-trust 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.

(3) An order of the court under subsection (2) 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.

(4) In this section, “transferred EU anti-trust direction” has the meaning given by section 38(3).

**Information relating to transferred EU anti-trust commitments and transferred EU anti-trust directions.**

41.(1) The GCMA may require a person who is bound by transferred EU anti-trust commitments, or who has previously been bound by the same EU anti-trust commitments, (whether before or after an Article 95(2) commitments transfer decision was made), to produce to the GCMA a specified document, or to provide the GCMA with specified information, for the purposes of assisting the GCMA-

- (a) to monitor compliance with those transferred EU anti-trust commitments, or
- (b) to decide whether to make an application under section 39(2) in respect of those transferred EU anti-trust commitments.

(2) The GCMA may require a person who is bound by a transferred EU anti-trust direction, or who has previously been bound by the same EU anti-trust direction (whether before or after an Article 95(2) direction transfer decision was made), to produce to the GCMA a specified document, or to provide the GCMA with specified information, for the purposes of assisting the GCMA-

- (a) to monitor compliance with that transferred EU anti-trust direction, or
- (b) to decide whether to make an application under section 40(2) in respect of that transferred EU anti-trust direction.

(3) The powers conferred by subsections (1) and (2) are to be exercised by a notice in writing which indicates the subject matter and purpose of the demand (including identifying the transferred EU anti-trust commitments or transferred EU anti-trust direction in question).

(4) The GCMA 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.

(5) 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 that person, or any person who is a present or past officer of, or is or was at any time employed by, that person, to provide an explanation of the document;
- (b) if the document is not produced, to require that person to state, to the best of their knowledge and belief, where it is.

(6) In this section-

“specified” means-

- (a) specified, or described, in the notice under subsection (3), or
- (b) falling within a category which is specified, or described, in that notice;

“transferred EU anti-trust commitments” has the meaning given by section 38(1);

“transferred EU anti-trust direction” has the meaning given by section 38(3).

#### *Civil sanctions*

#### **Penalties: failure to comply with requirements.**

42.(1) Where the GCMA considers that a person has, without reasonable excuse, failed to comply with a requirement imposed on the person under section 14, 15, 16, 17, 18, or 41, it may impose a penalty of such amount as it considers appropriate.

(2) The amount may be-

- (a) a fixed amount;
- (b) an amount calculated by reference to a daily rate; or
- (c) a combination of a fixed amount and an amount calculated by reference to a daily rate.

(3) A penalty imposed under subsection (1) must not-

- (a) in the case of a fixed amount, exceed such amount as the Minister may by order specify;

- (b) in the case of an amount calculated by reference to a daily rate, exceed such amount per day as the Minister may so specify;
  - (c) in the case of a fixed amount and an amount calculated by reference to a daily rate, exceed such fixed amount and such amount per day as the Minister may so specify.
- (4) The fixed amount specified for the purposes of subsection (3)(a) or (c) may not exceed £30,000.
- (5) The amount per day specified for the purposes of subsection (3)(b) or (c) may not exceed £15,000.
- (6) In imposing a penalty by reference to a daily rate-
- (a) no account is to be taken of any days before the service of the notice under section 174 (as applied by subsection (9)) on the person concerned, and
  - (b) unless the GCMA determines an earlier date (whether before or after the penalty is imposed), the amount payable ceases to accumulate at the beginning of the earliest of the days mentioned in subsection (7).
- (7) The days are-
- (a) the day on which the requirement concerned is satisfied;
  - (b) the day on which the GCMA makes a decision (within the meaning given by section 22(2)) or terminates the investigation in question without making such a decision;
  - (c) if the Minister has made an order under section 28(1)(b) imposing a time-limit on the making of such a decision, the latest day on which such a decision may be made as a result of the investigation in question.
- (8) Before making an order under subsection (3), the Minister must consult the GCMA and such other persons as the Minister considers appropriate.
- (9) Sections 174 to 177 (supplementary provisions about penalties) apply in relation to a penalty imposed under subsection (1) as they apply in relation to a penalty imposed under section 170(1).

**Statement of policy on penalties.**

43.(1) The GCMA must prepare and publish a statement of policy in relation to the use of its powers under section 42.

(2) The GCMA must, in particular, include a statement about the considerations relevant to the determination of the nature and amount of any penalty imposed under section 42.

(3) The GCMA may revise its statement of policy and, where it does so, it must publish the revised statement.

(4) The GCMA must consult such persons as it considers appropriate when preparing or revising its statement of policy.

(5) If the proposed statement of policy or revision relates to a matter in respect of which a regulator exercises concurrent jurisdiction, those consulted must include that regulator.

(6) In deciding whether and, if so, how to proceed under section 42, the GCMA must have regard to the statement of policy which was most recently published under this section at the time when the failure concerned occurred.

### *Offences*

#### **Offences.**

44.(1) A person is guilty of an offence if he intentionally obstructs an officer acting in the exercise of his powers under section 16.

(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 a fine.

(3) A person who intentionally obstructs an officer in the exercise of his powers under a warrant issued under section 17 or 18 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.

#### **Destroying or falsifying documents.**

45.(1) A person is guilty of an offence if, having been required to produce a document under section 14, 16, 17 or 18-

- (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.

**False or misleading information.**

46.(1) If information is provided by a person to the GCMA in connection with any function of the GCMA 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 GCMA 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 4  
APPEALS AND PROCEEDINGS AND SETTLEMENTS RELATING TO  
INFRINGEMENTS OF COMPETITION LAW**

**Appealable decisions.**

47.(1) Any party to an agreement in respect of which the GCMA has made a decision may appeal to the Supreme Court against, or with respect to, the decision.

(2) Any person in respect of whose conduct the GCMA has made a decision may appeal to the Supreme Court against, or with respect to, the decision.

(3) In this section “decision” means a decision of the GCMA-

- (a) as to whether the Chapter 1 prohibition has been infringed;
- (b) as to whether the Chapter 2 prohibition has been infringed;
- (c) cancelling a block or retained exemption;
- (d) releasing commitments pursuant to a request made under section 23(4)(b)(i);
- (e) releasing commitments under section 23(4)(b)(ii);
- (f) as to the imposition of any penalty under section 33 or as to the amount of any such penalty,

and includes a direction under section 29, 30 or 32 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) Schedule 4 makes further provision about appeals.

### **Third party appeals.**

48.(1) A person who does not fall within section 47(1) or (2) may appeal to the Supreme Court with respect to-

- (a) a decision falling within paragraphs (a) to (f) of section 47(3);
- (b) a decision falling within paragraph (d) of section 47(3);
- (c) a decision of the GCMA to accept or release commitments under section 23, or to accept a variation of such commitments other than a variation which is not material in any respect;
- (d) a decision of the GCMA to make directions under section 32;
- (e) a decision of the GCMA not to make directions under section 32; or
- (f) such other decision of the GCMA under this Part as may be prescribed.

(2) A person may make an appeal under subsection (1) only if the Supreme Court 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.

*Claims for loss or damage*

**Claims for damages etc.**

49.(1) A person may make a claim to which this section applies in proceedings before the Supreme Court, subject to the provisions of this Act.

(2) This section applies to a claim of a kind specified in subsection (3) which a person who has suffered loss or damage may make in civil proceedings brought in Gibraltar in respect of an infringement decision or an alleged infringement of-

- (a) the Chapter 1 prohibition; or
- (b) the Chapter 2 prohibition.

(3) The claims are-

- (a) a claim for damages;
- (b) any other claim for a sum of money;
- (c) a claim for an injunction.

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

(5) The right to make a claim in proceedings under this section does not affect the right to bring any other proceedings in respect of the claim.

(6) In this Part (except in section 56) “infringement decision” means-

- (a) a decision of the GCMA that the Chapter 1 prohibition or the Chapter 2 prohibition has been infringed; or
- (b) a decision of the court on an appeal from a decision of the GCMA that the Chapter 1 prohibition or the Chapter 2 prohibition has been infringed.

**Collective proceedings.**

50.(1) Subject to the provisions of this Act, proceedings may be brought before the Supreme Court combining two or more claims to which section 49 applies (“collective proceedings”).

(2) Collective proceedings must be commenced by a person who proposes to be the representative in those proceedings.

(3) The following points apply in relation to claims in collective proceedings-

- (a) it is not a requirement that all of the claims should be against all of the defendants to the proceedings,
- (b) the proceedings may combine claims which have been made in proceedings under section 49 and claims which have not; and
- (c) a claim which has been made in proceedings under section 49 may be continued in collective proceedings only with the consent of the person who made that claim.

(4) Collective proceedings may be continued only if the court makes a collective proceedings order.

(5) The court may make a collective proceedings order only-

- (a) if it considers that the person who brought the proceedings is a person who, if the order were made, the court could authorise to act as the representative in those proceedings in accordance with subsection (8); and
- (b) in respect of claims which are eligible for inclusion in collective proceedings.

(6) Claims are eligible for inclusion in collective proceedings only if the court considers that they raise the same, similar or related issues of fact or law and are suitable to be brought in collective proceedings.

(7) A collective proceedings order must include the following matters-

- (a) authorisation of the person who brought the proceedings to act as the representative in those proceedings;
- (b) description of a class of persons whose claims are eligible for inclusion in the proceedings; and
- (c) specification of the proceedings as opt-in collective proceedings or opt-out collective proceedings (see subsections (10) and (11)).

(8) The court may authorise a person to act as the representative in collective proceedings-

- (a) whether or not that person is a person falling within the class of persons described in the collective proceedings order for those proceedings (a “class member”); but
- (b) only if the court considers that it is just and reasonable for that person to act as a representative in those proceedings.

(9) The court may vary or revoke a collective proceedings order at any time.

(10) “Opt-in collective proceedings” are collective proceedings which are brought on behalf of each class member who opts in by notifying the representative, in a manner and by a time specified, that the claim should be included in the collective proceedings.

(11) “Opt-out collective proceedings” are collective proceedings which are brought on behalf of each class member except-

- (a) any class member who opts out by notifying the representative, in a manner and by a time specified, that the claim should not be included in the collective proceedings; and
- (b) any class member who-
  - (i) is not domiciled in Gibraltar at a time specified, and
  - (ii) does not, in a manner and by a time specified, opt in by notifying the representative that the claim should be included in the collective proceedings.

(12) Where the court gives a judgment or makes an order in collective proceedings, the judgment or order is binding on all represented persons, except as otherwise specified.

(13) The right to make a claim in collective proceedings does not affect the right to bring any other proceedings in respect of the claim.

(14) In this section and in section 51, “specified” means specified in a direction made by the court.

#### **Collective proceedings: damages and costs.**

51.(1) The Supreme Court may make an award of damages in collective proceedings without undertaking an assessment of the amount of damages recoverable in respect of the claim of each represented person.



(2) Where the court makes an award of damages in opt-out collective proceedings, the court must make an order providing for the damages to be paid on behalf of the represented persons to-

- (a) the representative; or
- (b) such person other than a represented person as the court thinks fit.

(3) Where the court makes an award of damages in opt-in collective proceedings, the court may make an order as described in subsection (2).

(4) Subject to subsection (5), where the court makes an award of damages in opt-out collective proceedings, any damages not claimed by the represented persons within a specified period must be paid to the consolidated fund.

(5) In a case within subsection (4) the court may order that all or part of any damages not claimed by the represented persons within a specified period is instead to be paid to the representative in respect of all or part of the costs or expenses incurred by the representative in connection with the proceedings.

(6) In this section “damages” (except in the term “exemplary damages”) includes any sum of money which may be awarded by the court in collective proceedings (other than costs or expenses).

*Further provision about claims in respect of loss or damage*

**Further provision about claims in respect of loss or damage.**

52. Schedule 5 makes further provision about claims in respect of loss or damage.

*Further appeals*

**Further appeals.**

53.(1) An appeal lies to the Court of Appeal-

- (a) from a decision of the Supreme Court as to the amount of a penalty under section 33; and
- (b) on a point of law arising from any other decision of the Supreme Court on an appeal under section 47 or 48.

(2) An appeal lies to the Court of Appeal on a point of law arising from a decision of the Supreme Court in proceedings under section 49 or in collective proceedings-

- (a) as to the award of damages or other sum (other than a decision on costs or expenses); or
- (b) as to the grant of an injunction.

(3) An appeal lies to the Court of Appeal from a decision of the Supreme Court in proceedings under section 49 or in collective proceedings as to the amount of an award of damages or other sum (other than the amount of costs or expenses).

(4) An appeal under subsection (2) arising from a decision in respect of a stand-alone claim may include consideration of a point of law arising from a finding of the Supreme Court as to an infringement of a prohibition listed in section 49(2).

(5) In subsection (4) “a stand-alone claim” is a claim-

- (a) in respect of an alleged infringement of a prohibition listed in section 49(2), and
- (b) made in proceedings under section 49 or included in collective proceedings.

(6) An appeal under this section-

- (a) except as provided by subsection (7), may be brought by a party to the proceedings before the Supreme Court or by a person who has a sufficient interest in the matter; and
- (b) requires the permission of the Court of Appeal.

(7) An appeal from a decision of the Supreme Court in respect of a claim included in collective proceedings may be brought only by the representative in those proceedings or by a defendant to that claim.

*Settlements relating to infringements of competition law*

**Collective settlements: where a collective proceedings order has been made.**

54.(1) The Supreme Court may, in accordance with this section, make an order approving the settlement of claims in collective proceedings (a “collective settlement”) where-

- (a) a collective proceedings order has been made in respect of the claims, and
- (b) the court has specified that the proceedings are opt-out collective proceedings.

(2) An application for approval of a proposed collective settlement must be made to the Supreme Court by the representative and the defendant in the collective proceedings.

(3) The representative and the defendant must provide agreed details of the claims to be settled by the proposed collective settlement and the proposed terms of that settlement.

(4) Where there is more than one defendant in the collective proceedings, “defendant” in subsections (2) and (3) means such of the defendants as wish to be bound by the proposed collective settlement.

(5) The Supreme Court may make an order approving a proposed collective settlement only if satisfied that its terms are just and reasonable.

(6) On the date on which the Supreme Court approves a collective settlement-

- (a) if the period within which persons may opt out of or (in the case of persons not domiciled in Gibraltar) opt in to the collective proceedings has expired, subsections (8) and (10) apply so as to determine the persons bound by the settlement;
- (b) if that period has not yet expired, subsections (9) and (10) apply so as to determine the persons bound by the settlement.

(7) If the period within which persons may opt out of the collective proceedings expires on a different date from the period within which persons not domiciled in Gibraltar may opt in to the collective proceedings, the references in subsection (6) to the expiry of a period are to the expiry of whichever of those periods expires later.

(8) Where this subsection applies, a collective settlement approved by the Supreme Court is binding on all persons falling within the class of persons described in the collective proceedings order who-

- (a) were domiciled in Gibraltar at the time specified for the purposes of determining domicile in relation to the collective proceedings (see section 50(11)(b)(i)) and did not opt out of those proceedings, or
- (b) opted in to the collective proceedings.

(9) Where this subsection applies, a collective settlement approved by the Supreme Court is binding on all persons falling within the class of persons described in the collective proceedings order.

(10) But a collective settlement is not binding on a person who-

- (a) opts out by notifying the representative, in a manner and by a time specified, that the claim should not be included in the collective settlement, or

- (b) is not domiciled in Gibraltar at a time specified, and does not, in a manner and by a time specified, opt in by notifying the representative that the claim should be included in the collective settlement.

(11) This section does not affect a person's right to offer to settle opt-in collective proceedings.

(12) In this section and in section 55, "specified" means specified in a direction made by the court.

**Collective settlements: where a collective proceedings order has not been made.**

55.(1) The Supreme Court may, in accordance with this section, make an order approving the settlement of claims (a "collective settlement") where-

- (a) a collective proceedings order has not been made in respect of the claims, but
- (b) if collective proceedings were brought, the claims could be made at the commencement of the proceedings (disregarding any limitation or prescriptive period applicable to a claim in collective proceedings).

(2) An application for approval of a proposed collective settlement must be made to the Supreme Court by-

- (a) a person who proposes to be the settlement representative in relation to the collective settlement, and
- (b) the person who, if collective proceedings were brought in respect of the claims, would be a defendant in those proceedings (or, where more than one person would be a defendant in those proceedings, such of those persons as wish to be bound by the proposed collective settlement).

(3) The persons applying to the Supreme Court under subsection (2) must provide agreed details of the claims to be settled by the proposed collective settlement and the proposed terms of that settlement.

(4) The court may make an order approving a proposed collective settlement (see subsection (8)) only if it first makes a collective settlement order.

(5) The court may make a collective settlement order only-

- (a) if it considers that the person described in subsection (2)(a) is a person who, if the order were made, the court could authorise to act as the settlement representative in relation to the collective settlement in accordance with subsection (7), and

- (b) in respect of claims which, if collective proceedings were brought, would be eligible for inclusion in the proceedings (see section 50(6)).
- (6) A collective settlement order must include the following matters-
- (a) authorisation of the person described in subsection (2)(a) to act as the settlement representative in relation to the collective settlement, and
  - (b) description of a class of persons whose claims fall within subsection (5)(b).
- (7) The court may authorise a person to act as the settlement representative in relation to a collective settlement-
- (a) whether or not that person is a person falling within the class of persons described in the collective settlement order for that settlement, but
  - (b) only if the court considers that it is just and reasonable for that person to act as the settlement representative in relation to that settlement.
- (8) Where the court has made a collective settlement order, it may make an order approving a proposed collective settlement only if satisfied that its terms are just and reasonable.
- (9) A collective settlement approved by the court is binding on all persons falling within the class of persons described in the collective settlement order.
- (10) But a collective settlement is not binding on a person who-
- (a) opts out by notifying the settlement representative, in a manner and by a time specified, that the claim should not be included in the collective settlement, or
  - (b) is not domiciled in Gibraltar at a time specified, and does not, in a manner and by a time specified, opt in by notifying the settlement representative that the claim should be included in the collective settlement.
- (11) In this section, “settlement representative” means a person who is authorised by a collective settlement order to act in relation to a collective settlement.

#### **Approval of redress schemes by the GCMA.**

56.(1) A person may apply to the GCMA for approval of a redress scheme.

(2) The GCMA may consider an application before the infringement decision to which the redress scheme relates has been made, but may approve the scheme only-

- (a) after that decision has been made, or

- (b) in the case of a decision of the GCMA, at the same time as that decision is made.
- (3) In deciding whether to approve a redress scheme, the GCMA may take into account the amount or value of compensation offered under the scheme.
- (4) The GCMA may approve a redress scheme under subsection (2)(b) subject to a condition or conditions requiring the provision of further information about the operation of the scheme (including about the amount or value of compensation to be offered under the scheme or how this will be determined).
- (5) If the GCMA approves a redress scheme subject to such a condition, it may-
  - (a) approve the scheme subject to other conditions;
  - (b) withdraw approval from the scheme if any conditions imposed under subsection (4) or paragraph (a) are not met;
  - (c) approve a redress scheme as a replacement for the original scheme (but may not approve that scheme subject to conditions).
- (6) An approved scheme may not be varied by the GCMA or the compensating party.
- (7) But, where the GCMA approves a redress scheme subject to a condition of the kind mentioned in subsection (4), subsection (6) does not prevent further information provided in accordance with the condition from forming part of the terms of the scheme.
- (8) The Minister may make regulations relating to the approval of redress schemes, and the regulations may in particular-
  - (a) make provision as to the procedure governing an application for approval of a redress scheme, including the information to be provided with the application;
  - (b) provide that the GCMA may approve a redress scheme only if it has been devised according to a process specified in the regulations;
  - (c) provide that the GCMA may approve a redress scheme only if it is in a form, or contains terms, specified in the regulations (which may include terms requiring a settlement agreement under the scheme to be in a form, or contain terms, specified in the regulations);
  - (d) provide that the GCMA may approve a redress scheme only if (so far as the GCMA can judge from facts known to it) the scheme is intended to be administered in a manner specified in the regulations;

- (e) describe factors which the GCMA may or must take into account, or may not take into account, in deciding whether to approve a redress scheme.
- (9) The GCMA must publish guidance with regard to-
- (a) applications for approval of redress schemes,
  - (b) the approval of redress schemes, and
  - (c) the enforcement of approved schemes, and in particular as to the criteria which the GCMA intends to adopt in deciding whether to bring proceedings under section 58(4).
- (10) Guidance under subsection (9) must be approved by the Minister before it is published.
- (11) In this section and sections 57 and 58-
- “approved scheme” means a redress scheme approved by the GCMA,
  - “compensating party” means a person offering compensation under an approved scheme,
  - “infringement decision” means a decision of the GCMA that the Chapter 1 prohibition or the Chapter 2 prohibition has been infringed; and
  - “redress scheme” means a scheme under which a person offers compensation in consequence of an infringement decision made in respect of that person.
- (12) For the purposes of this section and section 58, “compensation”-
- (a) may be monetary or non-monetary, and
  - (b) may be offered to persons who have not suffered a loss as a result of the infringement decision to which the redress scheme relates.

**Redress schemes: recovery of costs.**

57.(1) The GCMA may require a person making an application for approval of a redress scheme to pay some or all of the GCMA’s reasonable costs relating to the application.

- (2) A requirement to pay costs is imposed by giving that person written notice specifying-
- (a) the amount to be paid,
  - (b) how that amount has been calculated, and

(c) by when that amount must be paid.

(3) A person required to pay costs under this section may appeal to the court against the amount.

(4) Where costs required to be paid under this section relate to an approved scheme, the GCMA may withdraw approval from that scheme if the costs have not been paid by the date specified in accordance with subsection (2)(c).

(5) Costs required to be paid under this section are recoverable by the GCMA as a debt.

### **Enforcement of approved schemes.**

58.(1) A compensating party is under a duty to comply with the terms of an approved scheme (“the duty”).

(2) The duty is owed to any person entitled to compensation under the terms of the approved scheme.

(3) Where such a person suffers loss or damage as a result of a breach of the duty, the person may bring civil proceedings before the court for damages, an injunction or any other appropriate relief or remedy.

(4) Where the GCMA considers that the compensating party is in breach of the duty, the GCMA may bring civil proceedings before the Supreme Court for an injunction or any other appropriate relief or remedy.

(5) Subsection (4) is without prejudice to any right that a person has to bring proceedings under subsection (3).

(6) In any proceedings brought under subsection (3) or (4), it is a defence for the compensating party to show that it took all reasonable steps to comply with the duty.

(7) Where the GCMA considers that it is no longer appropriate for the compensating party to be subject to the duty, the GCMA may give notice in writing to that party stating that it is released from the duty.

(8) Where a person has entered into a settlement agreement with the compensating party, that agreement remains enforceable notwithstanding the release of the compensating party under subsection (7) from the duty.

## **CHAPTER 5 MISCELLANEOUS**

### *Vertical agreements and land agreements*



**Vertical agreements and land agreements.**

59.(1) The Minister 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 GCMA 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) In this section-

- “land agreement” and “vertical agreement” have such meaning as may be prescribed; and
- “prescribed” means prescribed by an order.

*GCMA's rules, guidance and fees*

**Rules.**

60.(1) The GCMA 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 6 makes further provisions about rules made under this section but is not to be taken as restricting the GCMA's powers under this section.

(3) If the GCMA 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 GCMA is to come into operation until it has been approved by an order made by the Minister.

(6) The Minister may approve any rule made by the GCMA-

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

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

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

(9) The Minister may, after consulting the GCMA, by order vary or revoke any rules made under this section.

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

(11) Until such time as rules are made under this section, the GCMA may rely on the rules established by the Competition and Markets Authority of the United Kingdom with such modifications as to nomenclature etc. as the circumstances of Gibraltar require and for such purposes such rules are deemed to have been made under this Act.

**Advice and information.**

61.(1) The GCMA must prepare and publish general advice and information about-

- (a) the application of the Chapter 1 prohibition and the Chapter 2 prohibition, and
- (b) the enforcement of those prohibitions.

(2) The GCMA 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 GCMA 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 GCMA may take into account in considering whether, and if so how, to exercise a power conferred on it by Chapter 1, 2 or 3.

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

(6) If the GCMA 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 it may exercise functions under this Part, a regulator must consult-

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

### *Regulators*

#### **Regulators.**

62.(1) In this Part “regulator” means a person or body designated by order by the Minister as a regulator for the purposes of this Part.

(2) The Minister may make regulations for the purpose of coordinating 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.

(3) 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 exercise, 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 GCMA 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 in 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.
- (4) Provision made by virtue of subsection (3)(c) may-
- (a) prescribe circumstances in which the GCMA may decide that, in a particular case, it is to exercise Part 1 functions in respect of the case rather than a regulator;
  - (b) provide for questions to be referred to and determined by the Minister or by such other person as may be prescribed.
- (5) Where the regulations make provision as mentioned in subsection (4)(a), they must-
- (a) include provision requiring the GCMA to consult the regulator concerned before making a decision that the GCMA is to exercise Part 1 functions in respect of a particular case, and
  - (b) provide that, in a case where a regulator has given notice under section 22(1) that it proposes to make a decision (within the meaning given by section 22(2)), the GCMA may only decide that it is to exercise Part 1 functions in respect of the case rather than the regulator if the regulator consents.

(6) The Minister may by regulations make provision requiring arrangements to be made for the sharing of information between competent persons in connection with concurrent cases.

(7) For the purposes of subsection (6), “a concurrent case” is a case in respect of which-

- (a) the GCMA considers that Part 1 functions are, or (but for provision made under subsection (3)(e)) would be, exercisable by both it and any regulator;
- (b) any regulator considers that Part 1 functions are, or (but for provision made under subsection (3)(e)) would be, exercisable by it.

(8) “Competent person” means the GCMA or any of the regulators.

*Confidentiality and immunity from defamation*

**Defamation.**

63. 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 GCMA in the exercise of any of its functions under this Part.

*Findings of fact by GCMA*

**Findings of fact by GCMA.**

64.(1) Unless the Supreme Court directs otherwise a GCMA’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 in respect of the finding has expired and the relevant party has not brought such an appeal under section 47 or 48; or
- (b) the decision of the court on such an appeal has confirmed the finding.

(2) In this section-

“a GCMA’s finding” means a finding of fact made by the GCMA in the course of conducting an investigation;

“Part 1 proceedings” means proceedings brought otherwise than by the GCMA—

- (a) in respect of an infringement decision;
- (b) in respect of an alleged infringement of the Chapter 1 prohibition or of the Chapter 2 prohibition; or

“relevant party” means-

- (a) in relation to the Chapter 1 prohibition, a party to the agreement which has been found to have infringed the prohibition or is alleged to have infringed the prohibition (as the case may be); and
- (b) in relation to the Chapter 2 prohibition or the prohibition in, the undertaking whose conduct has been found to have infringed the prohibition or is alleged to have infringed the prohibition (as the case may be).

(3) Rules of court may make provision in respect of assistance to be given by the GCMA to the court in Part I proceedings.

#### *Findings of infringements*

#### **Infringement decisions.**

65.(1) This section applies to a claim in respect of an infringement decision which is brought in proceedings before the court.

(2) The court is bound by the infringement decision once it has become final.

(3) An infringement decision specified in section 49(6)(a) or (b) becomes final-

- (a) when the time for appealing against that decision 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.

(4) This section applies to the extent that the court would not otherwise be bound by the infringement decision in question.

#### *Governing principles*

#### **Certain principles etc. to be considered or applied from IP completion day.**

66.(1) This section applies when one of the following persons determines a question arising under this Part in relation to competition within Gibraltar-

- (a) a court;
- (b) the GCMA;
- (c) a person acting on behalf of the GCMA in connection with a matter arising under this Part.

(2) The person must act (so far as is compatible with the provisions of this Part) with a view to securing that there is no inconsistency between-

- (a) the principles that it applies, and the decision that it reaches, in determining the question, and
- (b) the principles laid down by the Treaty on the Functioning of the European Union and the European Court before IP completion day, and any relevant decision made by that Court before IP completion day, so far as applicable immediately before IP completion day in determining any corresponding question arising in EU law,

subject to subsections (4) to (6).

(3) The person must, in addition, have regard to any relevant decision or statement of the European Commission made before IP completion day and not withdrawn.

(4) Subsection (2) does not require the person to secure that there is no inconsistency with a principle or decision referred to in subsection (2)(b) so far as the principle or decision is excluded from the law of Gibraltar on or after IP completion day.

(5) Subsection (2) does not apply so far as the person is bound by a principle laid down by, or a decision of a court in Gibraltar that requires the person to act otherwise.

(6) Subsection (2) does not apply if the person thinks that it is appropriate to act otherwise in the light of one or more of the following-

- (a) differences between the provisions of this Part under consideration and the corresponding provisions of EU law as those provisions of EU law had effect immediately before IP completion day;
- (b) differences between markets in Gibraltar and markets in the European Union;
- (c) developments in forms of economic activity since the time when the principle or decision referred to in subsection (2)(b) was laid down or made;
- (d) generally accepted principles of competition analysis or the generally accepted application of such principles;

- (e) a principle laid down, or decision made, by the European Court on or after IP completion day;
- (f) the particular circumstances under consideration.

(7) In subsection (2)(b), the reference to principles laid down before IP completion day is a reference to such principles as they have effect in EU law immediately before IP completion day, disregarding the effect of principles laid down, and decisions made, by the European Court on or after IP completion day.

(8) In this section, references to a decision of the European Court or the European Commission include a decision as to-

- (a) the interpretation of a provision of EU law;
- (b) the civil liability of an undertaking for harm caused by its infringement of EU law

(9) In this section “European Court” means the Court of Justice of the European Union and includes the General Court.

## PART II SUPPLEMENTAL AND TRANSITIONAL

### **Offences by bodies corporate etc.**

67.(1) This section applies to an offence under any of sections 44 to 46.

- (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.



**Crown application.**

68.(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) If an investigation is conducted under section 12 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 16 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) sections 17 and 18 do not apply

(4) In any case in which consent is required under subsection (3), the person who is the appropriate person in relation to that case is to be determined in accordance with regulations made by the Minister.

(5) In subsection (3) “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.

(6) If the Minister certifies that it appears to him to be in the interests of the security of Gibraltar that the powers of entry-

- (a) conferred by section 16, or
- (b) that may be conferred by a warrant under section 17 or 18,

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.

(7) The Minister may only issue a certificate under subsection (6) with the Governor’s approval.

**PART III  
INFORMATION AND SUPER COMPLAINTS**

**Acquisition of information etc.**

69.(1) The GCMA has the function of obtaining, compiling and keeping under review information about matters relating to the carrying out of its functions.

(2) That function is to be carried out with a view to (among other things) ensuring that the GCMA has sufficient information to take informed decisions and to carry out its other functions effectively.

(3) In carrying out that function the GCMA may carry out, commission or support (financially or otherwise) research.

**Provision of information etc. to the public.**

70.(1) The GCMA has the function of-

- (a) making the public aware of the ways in which competition may benefit consumers in, and the economy of, Gibraltar; and
- (b) giving information or advice in respect of matters relating to any of its functions to the public.

(2) In carrying out those functions the GCMA may-

- (a) publish educational materials or carry out other educational activities; or
- (b) support (financially or otherwise) the carrying out by others of such activities or the provision by others of information or advice.

**Provision of information and advice to Ministers etc.**

71.(1) The GCMA has the function of-

- (a) making proposals, or
- (b) giving other information or advice,

on matters relating to any of its functions to any Minister or other public authority (including proposals, information or advice as to any aspect of the law or a proposed change in the law).

(2) The GCMA may, in particular, carry out the function under subsection (1)(a) by making a proposal in the form of a recommendation to a Minister about the potential effect of a

proposal for legislation on competition within any market or markets in Gibraltar for goods or services.

(3) The GCMA must publish such a recommendation in such manner as the GCMA considers appropriate for bringing the subject matter of the recommendation to the attention of those likely to be affected by it.

(4) A Minister may request the GCMA to make proposals or give other information or advice on any matter relating to any of its functions; and the GCMA shall, so far as is reasonably practicable and consistent with its other functions, comply with the request.

(5) In this section “market in Gibraltar” includes, so far as it operates in Gibraltar, any market which operates there and in another country or territory or in a part of another country or territory.

### **Exclusion of public consumer advice scheme.**

72. The GCMA may not under this Part support a public consumer advice scheme, where that support of a scheme consists of providing, or securing the provision of, an arrangement for giving advice without charge to individual consumers on matters personal to them.

### *Miscellaneous*

### **Super-complaints to GCMA.**

73.(1) A complaint under this section shall be known as a super-complaint.

(2) A super-complaint to the GCMA may be made by any of the persons specified in subsection (4) in accordance with the provisions of this section, if, in the opinion of such person, any feature, or combination of features, of a market in Gibraltar for goods or services is or appears to be harming the interests of consumers.

(3) For the purposes of this section a feature of a market in Gibraltar for goods or services shall be construed in like manner as for the purposes of section 191(2).

(4) The persons who may make a complaint to the GCMA under subsection (1) are—

- (a) the Minister;
- (b) a Designated Consumer Body; or
- (c) the Chamber of Commerce, the Gibraltar Federation of Small Businesses or any other trade or professional association or representative body that is recognised by the Minister as representing the collective interests of a sector of trade or other commercial activity.

(5) The GCMA must, within 30 days after the day on which it receives the super-complaint, acknowledge receipt of the complaint to the person who made it.

(6) The GCMA must, within 120 days after the day on which it receives all information relating to the super-complaint, produce a response stating how it proposes to deal with the complaint, and in particular—

(a) whether it has decided to take any action, or to take no action, in response to the complaint; and

(b) if it has decided to take action, what action it proposed to take.

(7) The GCMA's response under subsection (6) must state the GCMA's reasons for its proposals.

(8) The Minister may by order amend subsection (6) by substituting any period for the period being specified in the order.

## **PART IV MERGERS**

### **CHAPTER 1 DUTY TO MAKE REFERENCES**

#### *Duty to make references: completed mergers*

#### **Duty to make references in relation to completed mergers.**

74.(1) The GCMA shall, subject to subsections (2) and (3), make a reference to its chair for the constitution of a group under Schedule 11 if the GCMA believes that it is or may be the case that—

- (a) a relevant merger situation has been created; and
- (b) the creation of that situation has resulted, or may be expected to result, in a substantial lessening of competition within any market or markets in Gibraltar for goods or services.

(2) The GCMA may decide not to make a reference under this section if it believes that—

- (a) the market concerned is not, or the markets concerned are not, of sufficient importance to justify the making of a reference; or

- (b) any relevant customer benefits in relation to the creation of the relevant merger situation concerned outweigh the substantial lessening of competition concerned and any adverse effects of the substantial lessening of competition concerned.

(3) No reference shall be made under this section if-

- (a) the period within which the GCMA is required by section 87 to decide whether the duty to make the reference applies has expired without such a decision having been made;
- (b) the making of the reference is prevented by section 131(1) or paragraph 3 of Schedule 7;
- (c) the GCMA is considering whether to accept undertakings under section 128 instead of making such a reference;
- (d) the relevant merger situation concerned is being, or has been, dealt with in connection with a reference made under section 85; or
- (e) a notice under section 100(2) is in force in relation to the matter or the matter to which such a notice relates has been finally determined under Chapter 2 otherwise than in circumstances in which a notice is then given to the GCMA under section 115(1).

(4) A reference under this section shall, in particular, specify-

- (a) the enactment under which it is made; and
- (b) the date on which it is made.

(5) The references in this section to the creation of a relevant merger situation shall be construed in accordance with section 75, the reference in subsection (2) of this section to relevant customer benefits shall be construed in accordance with section 83 and the reference in subsection (3) of this section to a matter to which a notice under section 100(2) relates being finally determined under Chapter 2 shall be construed in accordance with section 101(4) and (5).

(6) In this Part “market in Gibraltar” includes, so far as it operates in Gibraltar, any market which operates there and in another country or territory or in a part of another country or territory and references to a market for goods or services include references to a market for goods and services.

(7) In this Part “the decision-making authority” means-

- (a) in the case of a reference or possible reference under this section or section 85, the GCMA; and
- (b) in the case of a notice or possible notice under section 100(2) or 118(2) or a reference or possible reference under section 103 or 121, the GCMA or (as the case may be) the Minister.

**Relevant merger situations.**

75.(1) For the purposes of this Part, a relevant merger situation has been created if-

- (a) two or more enterprises have ceased to be distinct enterprises at a time or in circumstances falling within section 77; and
- (b) the value of the turnover in Gibraltar of the enterprise being taken over exceeds-
  - (i) £1 million, if in the course of the enterprises ceasing to be distinct, a person or group of persons has brought a relevant enterprise (see section 76) under the ownership or control of the person or group; or
  - (ii) £25 million, in any other case.

(2) For the purposes of this Part, a relevant merger situation has also been created if-

- (a) two or more enterprises have ceased to be distinct enterprises at a time or in circumstances falling within section 77; and
- (b) the share of supply test is met.

(3) The share of supply test is met if-

- (a) as a result of the enterprises ceasing to be distinct enterprises, one or both of the conditions mentioned in subsections (4) and (5) below prevails or prevails to a greater extent; or
- (b) in the course of the enterprises ceasing to be distinct a person or group of persons has brought a relevant enterprise under the ownership or control of the person or group and one or both of the conditions mentioned in subsections (6) and (7) below was satisfied in relation to the relevant enterprise before it ceased to be a distinct enterprise.

(4) The condition mentioned in this subsection is that, in relation to the supply of goods of any description, at least two-thirds of all the goods of that description which are supplied in Gibraltar-

- (a) are supplied by one and the same person or are supplied to one and the same person; or
- (b) are supplied by the persons by whom the enterprises concerned are carried on, or are supplied to those persons.

(5) The condition mentioned in this subsection is that, in relation to the supply of services of any description, the supply of services of that description in Gibraltar is to the extent of at least two-thirds-

- (a) supply by one and the same person, or supply for one and the same person; or
- (b) supply by the persons by whom the enterprises concerned are carried on, or supply for those persons.

(6) The condition mentioned in this subsection is that, in relation to the supply of goods of any description-

- (a) at least two-thirds of all goods of that description which were supplied in Gibraltar were supplied by or to the person or persons by whom the enterprise was carried on, and
- (b) that supply was made in connection with activities of the enterprise by virtue of which it was a relevant enterprise.

(7) The condition mentioned in this subsection is that, in relation to the supply of services of any description-

- (a) the supply of services of that description in Gibraltar was to the extent of at least two-thirds of all the services of that description, supply by or for the person or persons by whom the enterprise is carried on, and
- (b) that supply was made in connection with activities of the enterprise by virtue of which it was a relevant enterprise.

(8) For the purpose of deciding whether the proportion of two-thirds mentioned in subsection (4), (5), (6) or (7) is fulfilled with respect to goods or (as the case may be) services of any description, the decision-making authority shall apply such criterion (whether value, cost, price, quantity, capacity, number of workers employed or some other criterion, of whatever nature), or such combination of criteria, as the decision-making authority considers appropriate.

(9) References in subsections (4), (5), (6) and (7) to the supply of goods or (as the case may be) services shall, in relation to goods or services of any description which are the subject of

different forms of supply, be construed in whichever of the following ways the decision-making authority considers appropriate-

- (a) as references to any of those forms of supply taken separately;
- (b) as references to all those forms of supply taken together; or
- (c) as references to any of those forms of supply taken in groups.

(10) For the purposes of subsection (9) the decision-making authority may treat goods or services as being the subject of different forms of supply whenever-

- (a) the transactions concerned differ as to their nature, their parties, their terms or their surrounding circumstances; and
- (b) the difference is one which, in the opinion of the decision-making authority, ought for the purposes of that subsection to be treated as a material difference.

(11) The criteria for deciding when goods or services can be treated, for the purposes of this section, as goods or services of a separate description shall be such as in any particular case the decision-making authority considers appropriate in the circumstances of that case.

(12) For the purposes of this Chapter, the question whether a relevant merger situation has been created shall be determined as at-

- (a) in the case of a reference which is treated as having been made under section 74 by virtue of section 93(2), such time as the GCMA may determine; and
- (b) in any other case, immediately before the time when the reference has been, or is to be, made.

(13) Subsections (2) to (4) of section 79 apply for the purposes of this section as they apply for the purposes of that section.

### **Relevant enterprises.**

76.(1) In section 75 “relevant enterprise” means an enterprise the activities of which consist in or include-

- (a) developing or producing restricted goods;
- (b) holding information (including but not limited to information comprised in software and documents such as blueprints, manuals, diagrams and designs) that-



- (i) is capable of use in connection with the development or production of restricted goods; and
  - (ii) is responsible for achieving or exceeding the performance levels, characteristics or functions of the restricted goods that are specified in the relevant export control legislation;
- (c) owning, creating or supplying intellectual property relating to the functional capability of-
  - (i) computer processing units;
  - (ii) the instruction set architecture for such units;
  - (iii) computer code that provides low level control for such units;
- (d) designing, maintaining or providing support for the secure provisioning or management of-
  - (i) roots of trust of computer processing units;
  - (ii) computer code that provides low level control for such units;
- (e) research into-
  - (i) quantum computing or simulation;
  - (ii) quantum imaging, sensing, timing or navigation;
  - (iii) quantum communications; or
  - (iv) quantum resistant cryptography;
- (f) developing or producing anything designed for use in-
  - (i) quantum computing or simulation;
  - (ii) quantum imaging, sensing, timing or navigation;
  - (iii) quantum communications; or
  - (iv) quantum resistant cryptography;
- (g) supplying services employing-

- (i) quantum computing or simulation;
- (ii) quantum imaging, sensing, timing or navigation;
- (iii) quantum communications; or
- (iv) quantum resistant cryptography.

(2) In this section-

“intellectual property” means-

- (a) any patent, trade mark, registered design, copyright or design right,
- (b) any right under the law of a country or territory outside Gibraltar corresponding to, or similar to, a right within paragraph (a), or
- (c) any information or technique not protected by a right within paragraph (a) or
- (d) but having industrial, commercial or other economic value;

“quantum communications”-

- (a) means the transmission of information, utilising the properties of quantum mechanics, in particular superposition or entanglement, and
- (b) includes the establishment of cryptographic keys and the generation of true random numbers using a quantum physical process;

“quantum computing or simulation” means the study, simulation or realisation of systems that utilise certain properties of quantum mechanics, in particular superposition or entanglement, to process information, run algorithms or perform operations on data;

“quantum imaging” means utilising certain properties of quantum mechanics, in particular superposition or entanglement, to create images of objects with a resolution or other imaging criteria that is beyond what is possible in non-quantum optics;

“quantum navigation” means utilising certain properties of quantum mechanics, including measurements of suspensions of atoms or ions, to establish the location or movement of objects with a resolution or sensitivity that is beyond what is possible in non-quantum devices or systems;

“quantum resistant cryptography” means methods of securing information or data being transmitted or stored, including by non-quantum means, with a view to resisting attack by a quantum computer;

“quantum sensing” means utilising certain properties of quantum mechanics, including measurements of suspensions of atoms or ions, to determine a property or rate of change in the property of an object, or the effect of an object on a measurable quantity, with a resolution or sensitivity that is beyond what is possible in non-quantum devices or systems; "quantum timing" means utilising certain properties of quantum mechanics, including measurements of suspensions of atoms or ions, to provide a timing signal with a resolution or sensitivity that is beyond what is possible in non-quantum devices or systems;

“relevant export control legislation” means-

- (a) Part 1 of the Sanctions Act 2019 where the trade restriction arises from the application of an international sanction; or
- (b) Part 2 of the Sanctions Act 2019 where the trade restriction arises from the imposition of a domestic sanction.

“restricted goods” means goods, software or information the export or transfer of which is controlled by virtue of their being specified in the relevant export control legislation but excluding any goods, software or information which are controlled only to the extent that they are prohibited from being exported or transferred to one country only;

“roots of trust”-

- (a) means hardware, firmware, or software components that are inherently trusted to perform critical security functions, and
- (b) includes cryptographic key material bound to a device that can identify the device or verify a digital signature to authenticate a remote entity.

### **Time-limits and prior notice.**

77.(1) For the purposes of section 75 two or more enterprises have ceased to be distinct enterprises at a time or in circumstances falling within this section if-

- (a) the two or more enterprises ceased to be distinct enterprises before the day on which the reference relating to them is to be made and did so not more than four months before that day; or
- (b) notice of material facts about the arrangements or transactions under or in consequence of which the enterprises have ceased to be distinct enterprises has not been given in accordance with subsection (2).

(2) Notice of material facts is given in accordance with this subsection if-

- (a) it is given to the GCMA prior to the entering into of the arrangements or transactions concerned or the facts are made public prior to the entering into of those arrangements or transactions; or
- (b) it is given to the GCMA, or the facts are made public, more than four months before the day on which the reference is to be made.

(3) In this section-

“made public” means so publicised as to be generally known or readily ascertainable; and  
“notice” includes notice which is not in writing.

**Extension of time-limits.**

78.(1) The GCMA and the persons carrying on the enterprises which have or may have ceased to be distinct enterprises may agree to extend by no more than 20 days the four month period mentioned in section 77(1)(a) or (2)(b).

(2) The GCMA may by notice to the persons carrying on the enterprises which have or may have ceased to be distinct enterprises extend the four month period mentioned in section 77(1)(a) or (2)(b) if it considers that any of those persons has failed (with or without a reasonable excuse) to comply with any requirement of a notice under section 168.

(3) An extension under subsection (2) shall come into force when notice of the extension is given and end-

- (a) when the person concerned provides the information or documents to the satisfaction of the GCMA or (as the case may be) appears as a witness in accordance with the requirements of the GCMA; or
- (b) if earlier, the GCMA cancels the extension.

(4) The GCMA may by notice to the persons carrying on the enterprises which have or may have ceased to be distinct enterprises extend the four month period mentioned in section 77(1)(a) or (2)(b) if it is seeking undertakings from any of those persons under section 128.

(5) An extension under subsection (4) shall be for the period beginning with the receipt of the notice under that subsection and ending with the earliest of the following events-

- (a) the giving of the undertakings concerned;
- (b) the expiry of the period of 10 days beginning with the first day after the receipt by the GCMA of a notice from the person who has been given a notice under

subsection (4) and from whom the undertakings are being sought stating that he does not intend to give the undertakings; or

(c) the cancellation by the GCMA of the extension.

(6) Subject to subsections (7) and (8), where the four month period mentioned in section 77(1)(a) or (2)(b) is extended or further extended by virtue of this section in relation to a particular case, any reference to that period in section 77 or the preceding provisions of this section shall have effect in relation to that case as if it were a reference to a period equivalent to the aggregate of the period being extended and the period of the extension (whether or not those periods overlap in time).

(7) Subsection (8) applies where-

- (a) the four month period mentioned in section 77(1)(a) or (2)(b) is further extended;
- (b) the further extension and at least one previous extension is made under one or more of subsections (2), (4) and (6); and
- (c) the same days or fractions of days are included in or comprise the further extension and are included in or comprise at least one such previous extension.

(8) In calculating the period of the further extension, any days or fractions of days of the kind mentioned in subsection (7)(c) shall be disregarded.

(9) No more than one extension is possible under subsection (1).

#### **Enterprises ceasing to be distinct enterprises.**

79.(1) For the purposes of this Part any two enterprises cease to be distinct enterprises if they are brought under common ownership or common control (whether or not the business to which either of them formerly belonged continues to be carried on under the same or different ownership or control).

(2) Enterprises shall, in particular, be treated as being under common control if they are-

- (a) enterprises of interconnected bodies corporate;
- (b) enterprises carried on by two or more bodies corporate of which one and the same person or group of persons has control; or
- (c) an enterprise carried on by a body corporate and an enterprise carried on by a person or group of persons having control of that body corporate.

(3) A person or group of persons able, directly or indirectly, to control or materially to influence the policy of a body corporate, or the policy of any person in carrying on an enterprise but without having a controlling interest in that body corporate or in that enterprise, may, for the purposes of subsections (1) and (2), be treated as having control of it.

(4) For the purposes of subsection (1), in so far as it relates to bringing two or more enterprises under common control, a person or group of persons may be treated as bringing an enterprise under his or their control if-

- (a) being already able to control or materially to influence the policy of the person carrying on the enterprise, that person or group of persons acquires a controlling interest in the enterprise or, in the case of an enterprise carried on by a body corporate, acquires a controlling interest in that body corporate; or
- (b) being already able materially to influence the policy of the person carrying on the enterprise, that person or group of persons becomes able to control that policy.

**Time when enterprises cease to be distinct.**

80.(1) Subsection (2) applies in relation to any arrangements or transaction-

- (a) not having immediate effect or having immediate effect only in part; but
- (b) under or in consequence of which any two enterprises cease to be distinct enterprises.

(2) The time when the parties to any such arrangements or transaction become bound to such extent as will result, on effect being given to their obligations, in the enterprises ceasing to be distinct enterprises shall be taken to be the time at which the two enterprises cease to be distinct enterprises.

(3) In accordance with subsections (1) and (2) (but without prejudice to the generality of those subsections) for the purpose of determining the time at which any two enterprises cease to be distinct enterprises no account shall be taken of any option or other conditional right until the option is exercised or the condition is satisfied.

(4) Subsections (1) to (3) are subject to subsections (5) to (8) and section 82.

(5) The decision-making authority may, for the purposes of a reference, treat successive events to which this subsection applies as having occurred simultaneously on the date on which the latest of them occurred.

(6) Subsection (5) applies to successive events-

- (a) which occur within a period of two years under or in consequence of the same arrangements or transaction, or successive arrangements or transactions between the same parties or interests; and
- (b) by virtue of each of which, under or in consequence of the arrangements or the transaction or transactions concerned, any enterprises cease as between themselves to be distinct enterprises.

(7) The decision-making authority may, for the purposes of subsections (5) and (6), treat such arrangements or transactions as the decision-making authority considers appropriate as arrangements or transactions between the same interests.

(8) In deciding whether it is appropriate to treat arrangements or transactions as arrangements or transactions between the same interests the decision-making authority shall, in particular, have regard to the persons substantially concerned in the arrangements or transactions concerned.

**Turnover test.**

81.(1) For the purposes of section 75 the value of the turnover in Gibraltar of the enterprise being taken over shall be determined by taking the total value of the turnover in Gibraltar of the enterprises which cease to be distinct enterprises and deducting-

- (a) the turnover in Gibraltar of any enterprise which continues to be carried on under the same ownership and control; or
- (b) if no enterprise continues to be carried on under the same ownership and control, the turnover in Gibraltar which, of all the turnovers concerned, is the turnover of the highest value.

(2) For the purposes of this Part (other than section 183(4)(c)) the turnover in Gibraltar of an enterprise shall be determined in accordance with such provisions as may be specified in an order made by the Minister.

(3) An order under subsection (2) may, in particular, make provision as to-

- (a) the amounts which are, or which are not, to be treated as comprising an enterprise's turnover;
- (b) the date or dates by reference to which an enterprise's turnover is to be determined;
- (c) the connection with Gibraltar by virtue of which an enterprise's turnover is turnover in Gibraltar.

(4) An order under subsection (2) may, in particular, make provision enabling the decision-making authority to determine matters of a description specified in the order (including any of the matters mentioned in paragraphs (a) to (c) of subsection (3)).

(5) The GCMA shall-

- (a) keep under review the sum for the time being mentioned in section 75(1)(b); and
- (b) from time to time advise the Minister as to whether the sum is still appropriate.

(6) The Minister may by order amend section 75(1)(b) so as to alter the sum for the time being mentioned there.

### **Obtaining control by stages.**

82.(1) Where an enterprise is brought under the control of a person or group of persons in the course of two or more transactions (in this section a “series of transactions”) to which subsection (2) applies, those transactions may, if the decision-making authority considers it appropriate, be treated for the purposes of a reference as having occurred simultaneously on the date on which the latest of them occurred.

(2) This subsection applies to-

- (a) any transaction which-
  - (i) enables that person or group of persons directly or indirectly to control or materially to influence the policy of any person carrying on the enterprise;
  - (ii) enables that person or group of persons to do so to a greater degree; or
  - (iii) is a step (whether direct or indirect) towards enabling that person or group of persons to do so; and
- (b) any transaction by virtue of which that person or group of persons acquires a controlling interest in the enterprise or, where the enterprise is carried on by a body corporate, in that body corporate.

(3) Where a series of transactions includes a transaction falling within subsection (2)(b), any transaction occurring after the occurrence of that transaction is to be disregarded for the purposes of subsection (1).

(4) Where the period within which a series of transactions occurs exceeds two years, the transactions that may be treated as mentioned in subsection (1) are any of those transactions that occur within a period of two years.



(5) Sections 79(2) to (4) and 187(1), (2) and (4) to (6) shall apply for the purposes of this section to determine-

- (a) whether an enterprise is brought under the control of a person or group of persons; and
- (b) whether a transaction is one to which subsection (2) applies;

as they apply for the purposes of section 79 to determine whether enterprises are brought under common control.

(6) In determining for the purposes of this section the time at which any transaction occurs, no account shall be taken of any option or other conditional right until the option is exercised or the condition is satisfied.

**Relevant customer benefits.**

83.(1) For the purposes of this Part a benefit is a relevant customer benefit if-

- (a) it is a benefit to relevant customers in the form of-
  - (i) lower prices, higher quality or greater choice of goods or services in any market in Gibraltar (whether or not the market or markets in which the substantial lessening of competition concerned has, or may have, occurred or (as the case may be) may occur); or
  - (ii) greater innovation in relation to such goods or services; and
- (b) the decision-making authority believes-
  - (i) in the case of a reference or possible reference under section 74 or 103(2), as mentioned in subsection (2); and
  - (ii) in the case of a reference or possible reference under section 85 or 103(4), as mentioned in subsection (3).

(2) The belief, in the case of a reference or possible reference under section 74 or section 103(2), is that-

- (a) the benefit has accrued as a result of the creation of the relevant merger situation concerned or may be expected to accrue within a reasonable period as a result of the creation of that situation; and
- (b) the benefit was, or is, unlikely to accrue without the creation of that situation or a similar lessening of competition

(3) The belief, in the case of a reference or possible reference under section 85 or 103(4), is that-

- (a) the benefit may be expected to accrue within a reasonable period as a result of the creation of the relevant merger situation concerned; and
- (b) the benefit is unlikely to accrue without the creation of that situation or a similar lessening of competition.

(4) In subsection (1) “relevant customers” means-

- (a) customers of any person carrying on an enterprise which, in the creation of the relevant merger situation concerned, has ceased to be, or (as the case may be) will cease to be, a distinct enterprise;
- (b) customers of such customers; and
- (c) any other customers in a chain of customers beginning with the customers mentioned in paragraph (a);

and in this subsection “customers” includes future customers.

#### **Supplementary provision for purposes of section 78.**

84. In determining for the purposes of section 78(1) or (5)(b) above any period which is expressed in the enactment concerned as a period of days or number of days no account shall be taken of-

- (a) Saturday, Sunday, Good Friday and Christmas Day; and
- (b) any day which is a bank holiday or public holiday.

#### *Duty to make references: anticipated mergers*

#### **Duty to make references in relation to anticipated mergers.**

85.(1) The GCMA shall, subject to subsections (2) and (3), make a reference to its chair for the constitution of a group under Schedule 11 if the GCMA believes that it is or may be the case that-

- (a) arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation; and
- (b) the creation of that situation may be expected to result in a substantial lessening of competition within any market or markets in Gibraltar for goods or services.

- (2) The GCMA may decide not to make a reference under this section if it believes that-
- (a) the market concerned is not, or the markets concerned are not, of sufficient importance to justify the making of a reference;
  - (b) the arrangements concerned are not sufficiently far advanced, or are not sufficiently likely to proceed, to justify the making of a reference; or
  - (c) any relevant customer benefits in relation to the creation of the relevant merger situation concerned outweigh the substantial lessening of competition concerned and any adverse effects of the substantial lessening of competition concerned.
- (3) No reference shall be made under this section if-
- (a) the period within which the GCMA is required by section 87 to decide whether the duty to make the reference applies has expired without such a decision having been made;
  - (b) the making of the reference is prevented by section 131(1) or paragraph 3 of Schedule 7;
  - (c) the GCMA is considering whether to accept undertakings under section 128 instead of making such a reference;
  - (d) the arrangements concerned are being, or have been, dealt with in connection with a reference made under section 74;
  - (e) a notice under section 100(2) is in force in relation to the matter or the matter to which such a notice relates has been finally determined under Chapter 2 otherwise than in circumstances in which a notice is then given to the GCMA under section 115(1);
- (4) A reference under this section shall, in particular, specify-
- (a) the enactment under which it is made; and
  - (b) the date on which it is made.

**Supplementary provision in relation to anticipated mergers.**

86.(1) The Minister may by order make such provision as he considers appropriate about the operation of sections 80 and 82 in relation to-

- (a) references under this Part which relate to arrangements which are in progress or in contemplation; or
  - (b) notices under section 100(2) or 118(2) which relate to such arrangements.
- (2) An order under subsection (1) may, in particular-
- (a) provide for sections 80(5) to (8) and 82 to apply with modifications in relation to such references or notices or in relation to particular descriptions of such references or notices;
  - (b) enable particular descriptions of events, arrangements or transactions which have already occurred-
    - (i) to be taken into account for the purposes of deciding whether to make such references or such references of a particular description or whether to give such notices or such notices of a particular description;
    - (ii) to be dealt with under such references or such references of a particular description or under such notices or such notices of a particular description.
- Supplementary provision: time-limits for decisions about references*

**Time-limits for decisions about references.**

87.(1) In carrying out its function of deciding whether to make a reference under section 74 or 85, the GCMA shall, within the initial period-

- (a) decide whether the duty to make a reference under the section applies (taking account of the power under section 74(2) or (as the case may be) 85(2) and the operation of section 77(3) or (as the case may be) 85(3)); and
- (b) inform the persons carrying on the enterprises concerned by notice of the decision and of the reasons for it

(2) Nothing in this section prevents the GCMA from making a reference under section 74 or 85 in the event that-

- (a) it decides that the duty to make a reference does not apply because it is considering whether to accept undertakings under section 128; but
- (b) no such undertakings are offered or accepted.

(3) In this section-

“the initial period” means (subject to any extension under section 88) the period of 40 working days beginning with-

- (a) where the GCMA is carrying out its function in consequence of the giving of a merger notice under section 157, the first working day after the day on which the GCMA gives notice under section 157(3) to the person who gave the merger notice, and
- (b) in any other case, the first working day after the day on which the GCMA informs the persons carrying on the enterprises concerned by notice that it has sufficient information to enable it to begin an investigation for the purposes of deciding whether to make a reference;

“working day” means any day which is not-

- (a) a Saturday, a Sunday, Good Friday or Christmas Day, or
- (b) a day which is a bank or public holiday.

(4) For the purposes of paragraph (a) in the definition of “initial period” in subsection (3), the GCMA is carrying out its function in consequence of the giving of a merger notice under section 157 if it is considering whether to make a reference under section 74 or 85 in relation to-

- (a) arrangements of which notice is given in the merger notice or arrangements which do not differ from them in any material respect, or
- (b) the creation of any relevant merger situation which is, or may be, created in consequence of carrying such arrangements into effect.

**Extension of time-limits.**

88.(1) The GCMA may extend the initial period mentioned in section 87(1) if it considers that a relevant person has failed (with or without a reasonable excuse) to comply with any requirement of a notice under section 168 in relation to the case in question.

(2) In subsection (1), “relevant person” means-

- (a) any person carrying on any of the enterprises concerned;
- (b) any person who (whether alone or as a member of a group) owns or has control of any such person; or

(c) any officer, employee or agent of any person mentioned in paragraph (a) or (b).

(3) For the purposes of subsection (2), a person or group of persons able, directly or indirectly, to control or materially to influence the policy of a body of persons corporate or unincorporate, but without having a controlling interest in that body of persons, may be treated as having control of it.

(4) Where an intervention notice is in force in relation to the matter concerned, the GCMA may extend the initial period by no more than 20 working days.

(5) An extension under subsection (1) or (4) comes into force when published under section 166.

(6) An extension under subsection (1) continues in force until-

(a) the person concerned provides the information or documents to the satisfaction of the GCMA or (as the case may be) appears as a witness in accordance with the requirements of the GCMA; or

(b) the GCMA publishes its decision to cancel the extension.

(7) In this section, “working day” has the same meaning as in section 87.

**Sections 87 and 88: supplementary.**

89.(1) An extension of the period mentioned in section 87(1) may be made under each of subsections (1) or (4) of section 88.

(2) No more than one extension is possible under section 88(4).

(3) Where a period is extended or further extended under section 88(1) or (4), the period as extended or (as the case may be) further extended shall, subject to subsections (4) and (5), be calculated by taking the period being extended and adding to it the period of the extension (whether or not those periods overlap in time).

(4) Subsection (5) applies where-

(a) the period mentioned in section 87(1) is further extended;

(b) the further extension and at least one previous extension is made under one or more of subsections (1); and

(c) the same days or fractions of days are included in or comprise the further extension and are included in or comprise at least one such previous extension.

(5) In calculating the period of the further extension, any days or fractions of days of the kind mentioned in subsection (4)(c) are to be disregarded.

(6) The Minister may by order do either or both of the following—

- (a) amend section 87 so as to alter the period of 40 working days mentioned in subsection (3) of that section or any period for the time being mentioned in that subsection in substitution for that period;
- (b) amend section 88 so as to alter the period of 20 working days mentioned in subsection (4) of that section or any period for the time being mentioned in that subsection in substitution for that period.

(7) But no alteration may be made by virtue of subsection (6) which results in—

- (a) the period for the time being mentioned in section 87(3) exceeding 40 working days;  
or
- (b) the period for the time being mentioned in section 88 (4) exceeding 20 working days.

(8) Before making an order under subsection (6), the Minister shall consult the GCMA and such other persons as the Minister considers appropriate.

(9) In this section, “working day” has the same meaning as in section 87.

#### *Determination of references*

#### **Functions to be exercised by GCMA groups.**

90.(1) Where a reference is made to the chair of the GCMA under section 74 or 85 for the constitution of a group under Schedule 11, the functions of the GCMA under or by virtue of the following provisions of this Part in relation to the matter concerned are to be carried out on behalf of the GCMA by the group so constituted—

- (a) sections 91 to 99, except for sections 91(6), 92(5) and 93(6);
- (b) where a reference is treated by virtue of section 93(2) as having been made under section 74, section 75(12)(a);
- (c) section 133, as it applies in relation to orders under section 140, and sections 134, 135 and 137 to 141;
- (d) section 144, so far as relating to an enforcement order made on behalf of the GCMA by the group;

- (e) sections 149(4), 151 and 152, so far as relating to an enforcement undertaking or enforcement order made on behalf of the GCMA by the group;
  - (f) section 163, so far as relating to a decision mentioned in paragraph (a)(iii) of the definition of relevant decision in subsection (6) of that section;
  - (g) section 166, so far as relating to anything done on behalf of the GCMA by the group;
  - (h) section 168, where the permitted purpose in question relates to a function that (by virtue of this section) is being or is to be carried out on behalf of the GCMA by the group;
  - (i) sections 170 to 177, so far as relating to a notice given under section 168 on behalf of the GCMA by the group;
  - (j) section 182(5)(b), so far as relating to a decision of the group;
  - (k) Schedule 10, so far as relating to an enforcement undertaking or enforcement order which the group is considering accepting or making, or which the group has accepted or made, on behalf of the GCMA.
- (2) The functions of the GCMA under section 154(4) in relation to the matter concerned may be carried out on behalf of the GCMA by the group.
- (3) Nothing in subsection (1) prevents the GCMA Board from exercising a function of the GCMA under or by virtue of the following provisions of this Part where the group constituted as mentioned in subsection (1) has ceased to exist-
- (a) section 133 and Schedule 10, so far as relating to the making of an order under section 133 in relation to an order under section 140;
  - (b) section 140 and Schedule 10, so far as relating to the making of an order under section 140;
  - (c) sections 133 (as it applies in relation to an order under section 140), 137 to 141 and Schedule 10, so far as relating to the variation, supersession or release of enforcement undertakings or the variation or revocation of enforcement orders;
  - (d) section 144;
  - (e) sections 149(4) and 151.



**Questions to be decided in relation to completed mergers.**

91.(1) Subject to subsections (6) and (7) and section 187(3), the GCMA shall, on a reference under section 74, decide the following questions-

- (a) whether a relevant merger situation has been created; and
- (b) if so, whether the creation of that situation has resulted, or may be expected to result, in a substantial lessening of competition within any market or markets in Gibraltar for goods or services.

(2) For the purposes of this Part there is an anti-competitive outcome if-

- (a) a relevant merger situation has been created and the creation of that situation has resulted, or may be expected to result, in a substantial lessening of competition within any market or markets in Gibraltar for goods or services; or
- (b) arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation and the creation of that situation may be expected to result in a substantial lessening of competition within any market or markets in Gibraltar for goods or services.

(3) The GCMA shall, if it has decided on a reference under section 74 that there is an anti-competitive outcome (within the meaning given by subsection (2)(a)), decide the following additional questions-

- (a) whether action should be taken by it under section 97(2) for the purpose of remedying, mitigating or preventing the substantial lessening of competition concerned or any adverse effect which has resulted from, or may be expected to result from, the substantial lessening of competition;
- (b) whether it should recommend the taking of action by others for the purpose of remedying, mitigating or preventing the substantial lessening of competition concerned or any adverse effect which has resulted from, or may be expected to result from, the substantial lessening of competition; and
- (c) in either case, if action should be taken, what action should be taken and what is to be remedied, mitigated or prevented.

(4) In deciding the questions mentioned in subsection (3) the GCMA shall, in particular, have regard to the need to achieve as comprehensive a solution as is reasonable and practicable to the substantial lessening of competition and any adverse effects resulting from it.

(5) In deciding the questions mentioned in subsection (3) the GCMA may, in particular, have regard to the effect of any action on any relevant customer benefits in relation to the creation of the relevant merger situation concerned.

(6) In relation to the question whether a relevant merger situation has been created, a reference under section 74 may be framed so as to require the GCMA to exclude from consideration-

- (a) subsection (1) of section 75;
- (b) subsection (2) of that section; or
- (c) one of those subsections if the GCMA finds that the other is satisfied.

**Questions to be decided in relation to anticipated mergers.**

92.(1) Subject to subsections (5) and (6) and section 187(3), the GCMA shall, on a reference under section 85, decide the following questions-

- (a) whether arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation; and
- (b) if so, whether the creation of that situation may be expected to result in a substantial lessening of competition within any market or markets in Gibraltar for goods or services.

(2) The GCMA shall, if it has decided on a reference under section 85 that there is an anti-competitive outcome (within the meaning given by section 91(2)(b)), decide the following additional questions-

- (a) whether action should be taken by it under section 97(2) for the purpose of remedying, mitigating or preventing the substantial lessening of competition concerned or any adverse effect which may be expected to result from the substantial lessening of competition;
- (b) whether it should recommend the taking of action by others for the purpose of remedying, mitigating or preventing the substantial lessening of competition concerned or any adverse effect which may be expected to result from the substantial lessening of competition; and
- (c) in either case, if action should be taken, what action should be taken and what is to be remedied, mitigated or prevented.

(3) In deciding the questions mentioned in subsection (2) the GCMA shall, in particular, have regard to the need to achieve as comprehensive a solution as is reasonable and practicable to the substantial lessening of competition and any adverse effects resulting from it.

(4) In deciding the questions mentioned in subsection (2) the GCMA may, in particular, have regard to the effect of any action on any relevant customer benefits in relation to the creation of the relevant merger situation concerned.

(5) In relation to the question whether a relevant merger situation will be created, a reference under section 85 may be framed so as to require the GCMA to exclude from consideration-

- (a) subsection (1) of section 75;
- (b) subsection (2) of that section; or
- (c) one of those subsections if the GCMA finds that the other is satisfied.

**Cancellation and variation of references under section 74 or 85.**

93.(1) The GCMA shall cancel a reference under section 85 if it considers that the proposal to make arrangements of the kind mentioned in the reference has been abandoned.

(2) The GCMA may, if it considers that doing so is justified by the facts (including events occurring on or after the making of the reference concerned), treat a reference made under section 74 or 85 as if it had been made under section 85 or (as the case may be) 74; and, in such cases, references in this Part to references under those sections shall, so far as may be necessary, be construed accordingly.

(3) Where, by virtue of subsection (2), the GCMA treats a reference made under section 74 or 85 as if it had been made under section 85 or (as the case may be) 74, sections 134 to 138 shall, in particular, apply as if the reference had been made under section 85 or (as the case may be) 74 instead of under section 74 or 85.

(4) Subsection (5) applies in relation to any undertaking accepted under section 137, or any order made under section 138, which is in force immediately before the GCMA, by virtue of subsection (2), treats a reference made under section 74 or 85 as if it had been made under section 85 or (as the case may be) 74.

(5) The undertaking or order shall, so far as applicable, continue in force as if-

- (a) in the case of an undertaking or order which relates to a reference made under section 74, accepted or made in relation to a reference made under section 85; and
- (b) in the case of an undertaking or order which relates to a reference made under section 85, accepted or made in relation to a reference made under section 74;

and the undertaking or order concerned may be varied, superseded, released or revoked accordingly.

(6) The GCMA may at any time vary a reference under section 74 or 85.

(7) No variation by the GCMA under this section shall be capable of altering the period permitted by section 95 within which the report of the GCMA under section 94 is to be prepared and published.

#### **Investigations and reports on references under section 74 or 85.**

94.(1) The GCMA shall prepare and publish a report on a reference under section 74 or 85 within the period permitted by section 95.

(2) The report shall, in particular, contain-

- (a) the decisions of the GCMA on the questions which it is required to answer by virtue of section 91 or (as the case may be) 92;
- (b) its reasons for its decisions; and
- (c) such information as the GCMA considers appropriate for facilitating a proper understanding of those questions and of its reasons for its decisions.

(3) The GCMA shall carry out such investigations as it considers appropriate for the purposes of preparing a report under this section.

#### **Time-limits for investigations and reports.**

95.(1) The GCMA shall prepare and publish its report under section 94 within the period of 24 weeks beginning with the date of the reference concerned.

(2) The GCMA may extend, by no more than 8 weeks, the period within which a report under section 94 is to be prepared and published if it considers that there are special reasons why the report cannot be prepared and published within that period.

(3) The GCMA may extend the period within which a report under section 94 is to be prepared and published if it considers that a relevant person has failed (whether with or without a reasonable excuse) to comply with any requirement of a notice under section 168.

(4) In this section “relevant person” means-

- (a) any person carrying on any of the enterprises concerned;

(b) any person who (whether alone or as a member of a group) owns or has control of any such person; or

(c) any officer, employee or agent of any person mentioned in paragraph (a) or (b).

(5) For the purposes of subsection (4) a person or group of persons able, directly or indirectly, to control or materially to influence the policy of a body of persons corporate or unincorporate, but without having a controlling interest in that body of persons, may be treated as having control of it.

(6) An extension under subsection (2) or (3) shall come into force when published under section 166.

(7) An extension under subsection (3) shall continue in force until-

(a) the person concerned provides the information or documents to the satisfaction of the GCMA or (as the case may be) appears as a witness in accordance with the requirements of the GCMA; or

(b) the GCMA publishes its decision to cancel the extension.

(8) In the case of a report on a reference under section 85, the GCMA may provide that a specified period of no more than 3 weeks is to be disregarded for the purposes of any time-limit for the preparation and publication of the report which applies by virtue of this section if-

(a) a relevant person has so requested before the end of the period of 3 weeks beginning with the date of the reference concerned; and

(b) the GCMA reasonably believes that the arrangements in question might be abandoned.

(9) If the GCMA exercises the power under subsection (8), the GCMA shall publish a notice to that effect.

(10) References in this Part to the date of a reference shall be construed as references to the date specified in the reference as the date on which it is made.

(11) This section is subject to section 96.

**Section 95: supplementary.**

96.(1) A period extended under subsection (2) of section 95 may also be extended under subsection of that section and a period extended under subsection (3) of that section may also be extended under subsection (2) of that section.

(2) No more than one extension is possible under section 95(2).

(3) Where a period within which a report under section 94 is to be prepared and published is extended or further extended under section 95(2) or (3), the period as extended or (as the case may be) further extended shall, subject to subsections (4) and (5), be calculated by taking the period being extended and adding to it the period of the extension (whether or not those periods overlap in time).

(4) Subsection (5) applies where-

- (a) the period within which the report under section 94 is to be prepared and published is further extended;
- (b) the further extension and at least one previous extension is made under section 95(3); and
- (c) the same days or fractions of days are included in or comprise the further extension and are included in or comprise at least one such previous extension.

(5) In calculating the period of the further extension, any days or fractions of days of the kind mentioned in subsection (4)(c) shall be disregarded.

(6) The Minister may by order amend section 95 so as to alter any one or more of the following periods-

- (a) the period of 24 weeks mentioned in subsection (1) of that section or any period for the time being mentioned in that subsection in substitution for that period;
- (b) the period of 8 weeks mentioned in subsection (2) of that section or any period for the time being mentioned in that subsection in substitution for that period.

(7) No alteration shall be made by virtue of subsection (6) which results in the period for the time being mentioned in subsection (1) of section 95 exceeding 24 weeks or the period for the time being mentioned in subsection (2) of that section exceeding 8 weeks.

(8) An order under subsection (6) shall not affect any period of time within which the GCMA is under a duty to prepare and publish its report under section 94 in relation to a reference under section 74 or 85 if the GCMA is already under that duty in relation to that reference when the order is made.

(9) Before making an order under subsection (6) the Minister shall consult the GCMA and such other persons as he considers appropriate.

(10) The Minister may make regulations for the purposes of section 95(7).

(11) The regulations may, in particular-

- (a) provide for the time at which information or documents are to be treated as provided (including the time at which they are to be treated as provided to the satisfaction of the GCMA for the purposes of section 95(7));
- (b) provide for the time at which a person is to be treated as appearing as a witness (including the time at which he is to be treated as appearing as a witness in accordance with the requirements of the GCMA for the purposes of section 95(7));
- (c) provide for the persons carrying on the enterprises which have or may have ceased to be, or may cease to be, distinct enterprises to be informed, in circumstances in which section 95(7) applies, of the fact that-
  - (i) the GCMA is satisfied as to the provision of the information or documents required by it; or
  - (ii) the person concerned has appeared as a witness in accordance with the requirements of the GCMA;
- (d) provide for the persons carrying on the enterprises which have or may have ceased to be, or may cease to be, distinct enterprises to be informed, in circumstances in which section 95(7) applies, of the time at which the GCMA is to be treated as satisfied as mentioned in paragraph (c)(i) above or the person concerned is to be treated as having appeared as mentioned in paragraph (c)(ii) above.

**Duty to remedy effects of completed or anticipated mergers.**

97.(1) Subsection (2) applies where a report of the GCMA has been prepared and published under section 94 within the period permitted by section 95 and contains the decision that there is an anti-competitive outcome.

(2) The GCMA shall take such action under section 139 or 141 as it considers to be reasonable and practicable-

- (a) to remedy, mitigate or prevent the substantial lessening of competition concerned; and
- (b) to remedy, mitigate or prevent any adverse effects which have resulted from, or may be expected to result from, the substantial lessening of competition.

(3) The decision of the GCMA under subsection (2) shall be consistent with its decisions as included in its report by virtue of section 91(3) or (as the case may be) 92(2) unless there has been a material change of circumstances since the preparation of the report or the GCMA otherwise has a special reason for deciding differently.

(4) In making a decision under subsection (2), the GCMA shall, in particular, have regard to the need to achieve as comprehensive a solution as is reasonable and practicable to the substantial lessening of competition and any adverse effects resulting from it.

(5) In making a decision under subsection (2), the GCMA may, in particular, have regard to the effect of any action on any relevant customer benefits in relation to the creation of the relevant merger situation concerned.

**A Time-limit for discharging duty under section 97.**

98.(1) The GCMA shall discharge its duty under section 97(2) within the period of 12 weeks beginning with the date on which it publishes the report concerned under section 94.

(2) The GCMA may extend, by no more than 6 weeks, the period within which its duty under section 97(2) shall be discharged if it considers that there are special reasons for doing so.

(3) The GCMA may extend the period within which its duty under section 97(2) shall be discharged if it considers that a relevant person has failed (whether with or without reasonable excuse) to comply with any requirement of a notice under section 168 which is given in relation to the reference.

(4) In subsection (3), “relevant person” means-

- (a) any person carrying on any of the enterprises concerned;
- (b) any person who (whether alone or as a member of a group) owns or has control of any such person; or
- (c) any officer, employee or agent of any person mentioned in paragraph (a) or (b).

(5) For the purposes of subsection (4), a person or group of persons able, directly or indirectly, to control or materially to influence the policy of a body of persons corporate or unincorporate, but without having a controlling interest in that body of persons, may be treated as having control of it.

(6) An extension under subsection (2) or (3) comes into force when published under section 166.

(7) An extension under subsection (3) continues in force until-

- (a) the person concerned provides the information or documents to the satisfaction of the GCMA or (as the case may be) appears as a witness in accordance with the requirements of the GCMA; or



- (b) the GCMA publishes its decision to cancel the extension.

**Section 98: supplementary.**

99.(1) A period extended under section 98(2) may also be extended under section 98(3), and a period extended under section 98(3) may also be extended under section 98(2).

- (2) No more than one extension is possible under section 98(2).

(3) Where a period is extended or further extended under section 98(2) or (3), the period as extended or (as the case may be) further extended is, subject to subsections (4) and (5), to be calculated by taking the period being extended and adding to it the period of the extension (whether or not those periods overlap in time).

- (4) Subsection (5) applies where-

- (a) the period within which the GCMA must discharge its duty under section 97(2) is further extended;
- (b) the further extension and at least one previous extension is made under section 98(3); and
- (c) the same days or fractions of days are included in or comprise the further extension and are included in or comprise at least one such previous extension.

(5) In calculating the period of the further extension, any days or fractions of days of the kind mentioned in subsection (4)(c) are to be disregarded.

(6) The Minister may by order amend section 98 so as to alter either or both of the following periods-

- (a) the period of 12 weeks mentioned in subsection (1) of that section or any period for the time being mentioned in that subsection in substitution for that period;
- (b) the period of 6 weeks mentioned in subsection (2) of that section or any period for the time being mentioned in that subsection in substitution for that period.

(7) But no alteration may be made by virtue of subsection (6) which results in-

- (a) the period for the time being mentioned in section 98(1) exceeding 12 weeks; or
- (b) the period for the time being mentioned in section 98(2) exceeding 6 weeks.

(8) Before making an order under subsection (6) the Minister shall consult the GCMA and such other persons as the Minister considers appropriate.

**CHAPTER 2**  
**PUBLIC INTEREST CASES**

*Power to make references*

**Intervention by Minister in certain public interest cases.**

100.(1) Subsection (2) applies where-

- (a) the Minister has reasonable grounds for suspecting that it is or may be the case that a relevant merger situation has been created or that arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation;
- (b) no reference under section 74 or 85 has been made in relation to the relevant merger situation concerned;
- (c) no decision has been made not to make such a reference (other than a decision made by virtue of subsection (2)(b) of section 85 or a decision to accept undertakings under section 128 instead of making such a reference); and
- (d) no reference is prevented from being made under section 74 or 85 by virtue of section 74(3)(a) or (b) or (as the case may be) 85(3)(a) or (b).

(2) The Minister may give a notice to the GCMA (in this Part “an intervention notice”) if he believes that it is or may be the case that one or more than one public interest consideration is relevant to a consideration of the relevant merger situation concerned.

(3) For the purposes of this Part a public interest consideration is a consideration which, at the time of the giving of the intervention notice concerned, is specified in section 117 or is not so specified but, in the opinion of the Minister, ought to be so specified.

(4) No more than one intervention notice shall be given under subsection (2) in relation to the same relevant merger situation.

(5) For the purposes of deciding whether a relevant merger situation has been created or whether arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation, sections 75 to 83 (read together with section 86) shall apply for the purposes of this Chapter as they do for the purposes of Chapter 1 but subject to subsection (6).

(6) In their application by virtue of subsection (5) sections 75 to 83 shall have effect as if-

- (a) for paragraph (a) of section 75(12) there were substituted-

- “(a) in relation to the giving of an intervention notice, the time when the notice is given;
- (aa) in relation to the making of a report by the GCMA under section 102, the time of the making of the report;
- (ab) in the case of a reference which is treated as having been made under section 103(2) or (3) by virtue of section 108(1), such time as the GCMA may determine; and”;
- (b) the references to the GCMA in section 78(1) to (3) included references to the Minister;
- (c) the references to the GCMA in section 78(4) and (5) were references to the Minister;
- (d) the reference in section 78(4) to section 128 were a reference to paragraph 2 of Schedule 7;
- (e) after section 78(5) there were inserted-
  - “(5A) The Minister may by notice to the persons carrying on the enterprises which have or may have ceased to be distinct enterprises extend the four month period mentioned in section 77(1)(a) or (2)(b) if, by virtue of section 104(5) or paragraph 2(6) of Schedule 7, he decides to delay a decision as to whether to make a reference under section 103.
  - (5B) An extension under subsection (5A) shall be for the period of the delay.”;
- (f) in section 78(7)(b) for “and (4)” there were substituted “, (4) and (5A)”;
- (g) the reference in section 78(9) to one extension were a reference to one extension by the GCMA and one extension by the Minister;
- (h) the powers to extend time-limits under section 78 as applied by subsection (5) above were not exercisable by the GCMA or the Minister before the giving of an intervention notice but the existing time-limits by virtue of section 77 (as so applied) in relation to possible references under section 74 or 85 were applicable for the purposes of the giving of that notice;
- (i) the existing time-limits by virtue of section 77 (as so applied) in relation to possible references under section 74 or 85 (except for extensions under section 78(4)) remained applicable on and after the giving of an intervention notice as if any extensions were made under section 78 as applied by subsection (5) above but

subject to further alteration by the GCMA or the Minister under section 78 as so applied;

- (j) in the case of the giving of intervention notices, the references in sections 75 to 83 to the making of a reference or a reference were, so far as necessary, references to the giving of an intervention notice or an intervention notice.

(7) Where the Minister has given an intervention notice mentioning a public interest consideration which, at that time, is not finalised, he shall, as soon as practicable, take such action as is within his power to ensure that it is finalised.

(8) For the purposes of this Part a public interest consideration is finalised if-

- (a) it is specified in section 117 otherwise than by virtue of an order under subsection (3) of that section; or
- (b) it is specified in that section by virtue of an order under subsection (3) of that section and the order providing for it to be so specified has been laid before, and approved by Parliament.

#### **Intervention notices under section 100.**

101.(1) An intervention notice shall state-

- (a) the relevant merger situation concerned;
- (b) the public interest consideration or considerations which are, or may be, relevant to a consideration of the relevant merger situation concerned; and
- (c) where any public interest consideration concerned is not finalised, the proposed timetable for finalising it.

(2) Where the Minister believes that it is or may be the case that two or more public interest considerations are relevant to a consideration of the relevant merger situation concerned, he may decide not to mention in the intervention notice such of those considerations as he considers appropriate.

(3) An intervention notice shall come into force when it is given and shall cease to be in force when the matter to which it relates is finally determined under this Chapter.

(4) For the purposes of this Part, a matter to which an intervention notice relates is finally determined under this Chapter if-

- (a) the time within which the GCMA is to report to the Minister under section 102 has expired and no such report has been made;

- (b) the Minister decides to accept an undertaking or group of undertakings under paragraph 2 of Schedule 7 instead of making a reference under section 103;
  - (c) the Minister otherwise decides not to make a reference under that section;
  - (d) the GCMA cancels such a reference under section 107(1) or 112(1);
  - (e) the time within which the GCMA is to prepare a report under section 109 and give it to the Minister has expired and no such report has been prepared and given to the Minister;
  - (f) the time within which the Minister is to make and publish a decision under section 113(2) has expired and no such decision has been made and published;
  - (g) the Minister decides under section 113(2) to make no finding at all in the matter;
  - (h) the Minister otherwise decides under section 113(2) not to make an adverse public interest finding;
  - (i) the Minister decides under section 113(2) to make an adverse public interest finding but decides neither to accept an undertaking under paragraph 8 of Schedule 7 nor to make an order under paragraph 10 of that Schedule; or
  - (j) the Minister decides under section 113(2) to make an adverse public interest finding and accepts an undertaking under paragraph 8 of Schedule 7 or makes an order under paragraph 10 of that Schedule.
- (5) For the purposes of this Part the time when a matter to which an intervention notice relates is finally determined under this Chapter is-
- (a) in a case falling within subsection (4)(a), (e) or (f), the expiry of the time concerned;
  - (b) in a case falling within subsection (4)(b), the acceptance of the undertaking or group of undertakings concerned;
  - (c) in a case falling within subsection (4)(c), (d), (g) or (h), the making of the decision concerned;
  - (d) in a case falling within subsection (4)(i), the making of the decision neither to accept an undertaking under paragraph 8 of Schedule 7 nor to make an order under paragraph 10 of that Schedule; and

- (e) in a case falling within subsection (4)(j), the acceptance of the undertaking concerned or (as the case may be) the making of the order concerned.

### **Investigation and report by GCMA.**

102.(1) Subsection (2) applies where the Minister has given an intervention notice in relation to a relevant merger situation.

(2) The GCMA shall, within such period as the Minister may require, give a report to the Minister in relation to the case.

(3) The report shall contain-

- (a) advice from the GCMA on the considerations relevant to the making of a reference under section 74 or 85 which are also relevant to the Minister's decision as to whether to make a reference under section 103; and
- (b) a summary of any representations about the case which have been received by the GCMA and which relate to any public interest consideration mentioned in the intervention notice concerned and which is or may be relevant to the Minister's decision as to whether to make a reference under section 103.

(4) The report shall, in particular, include decisions as to whether the GCMA believes that it is, or may be, the case that-

- (a) a relevant merger situation has been created or arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation;
- (b) the creation of that situation has resulted, or may be expected to result, in a substantial lessening of competition within any market or markets in Gibraltar for goods or services;
- (c) the market or markets concerned would not be of sufficient importance to justify the making of a reference under section 74 or 85;
- (d) in the case of arrangements which are in progress or in contemplation, the arrangements are not sufficiently far advanced, or not sufficiently likely to proceed, to justify the making of such a reference;
- (e) any relevant customer benefits in relation to the creation of the relevant merger situation concerned outweigh the substantial lessening of competition and any adverse effects of the substantial lessening of competition; or

- (f) it would be appropriate to deal with the matter (disregarding any public interest considerations mentioned in the intervention notice concerned) by way of undertakings under paragraph 2 of Schedule 7.

(5) If the GCMA believes that it is or may be the case that it would be appropriate to deal with the matter (disregarding any public interest considerations mentioned in the intervention notice concerned) by way of undertakings under paragraph 2 of Schedule 7, the report shall contain descriptions of the undertakings which the GCMA believes are, or may be, appropriate.

(6) The report may, in particular, include advice and recommendations on any public interest consideration mentioned in the intervention notice concerned and which is or may be relevant to the Minister's decision as to whether to make a reference under section 103.

(7) The GCMA shall carry out such investigations as it considers appropriate for the purposes of producing a report under this section.

**Power of Minister to refer matter to GCMA.**

103.(1) Subsections (2) to (5) apply where the Minister-

- (a) has given an intervention notice in relation to a relevant merger situation; and
- (b) has received a report of the GCMA under section 102 in relation to the matter.

(2) The Minister may make a reference to the chair of the GCMA for the constitution of a group under Schedule 11 if he believes that it is or may be the case that-

- (a) a relevant merger situation has been created;
- (b) the creation of that situation has resulted, or may be expected to result, in a substantial lessening of competition within any market or markets in Gibraltar for goods or services;
- (c) one or more than one public interest consideration mentioned in the intervention notice is relevant to a consideration of the relevant merger situation concerned; and
- (d) taking account only of the substantial lessening of competition and the relevant public interest consideration or considerations concerned, the creation of that situation operates or may be expected to operate against the public interest.

(3) The Minister may make a reference to the chair of the GCMA for the constitution of a group under Schedule 11 if he believes that it is or may be the case that-

- (a) a relevant merger situation has been created;

- (b) the creation of that situation has not resulted, and may be expected not to result, in a substantial lessening of competition within any market or markets in Gibraltar for goods or services;
- (c) one or more than one public interest consideration mentioned in the intervention notice is relevant to a consideration of the relevant merger situation concerned; and
- (d) taking account only of the relevant public interest consideration or considerations concerned, the creation of that situation operates or may be expected to operate against the public interest.

(4) The Minister may make a reference to the chair of the GCMA for the constitution of a group Schedule 11 if he believes that it is or may be the case that-

- (a) arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation;
- (b) the creation of that situation may be expected to result in a substantial lessening of competition within any market or markets in Gibraltar for goods or services;
- (c) one or more than one public interest consideration mentioned in the intervention notice is relevant to a consideration of the relevant merger situation concerned; and
- (d) taking account only of the substantial lessening of competition and the relevant public interest consideration or considerations concerned, the creation of the relevant merger situation may be expected to operate against the public interest.

(5) The Minister may make a reference to the chair of the GCMA for the constitution of a group under Schedule 11 if he believes that it is or may be the case that-

- (a) arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation;
- (b) the creation of that situation may be expected not to result in a substantial lessening of competition within any market or markets in Gibraltar for goods or services;
- (c) one or more than one public interest consideration mentioned in the intervention notice is relevant to a consideration of the relevant merger situation concerned; and
- (d) taking account only of the relevant public interest consideration or considerations concerned, the creation of the relevant merger situation may be expected to operate against the public interest.



(6) For the purposes of this Chapter any anti-competitive outcome shall be treated as being adverse to the public interest unless it is justified by one or more than one public interest consideration which is relevant.

(7) This section is subject to section 104.

**References under section 103: supplementary.**

104.(1) No reference shall be made under section 103 if the making of the reference is prevented by section 131(1) or paragraph 3 of Schedule 7.

(2) The Minister, in deciding whether to make a reference under section 103, shall accept the decisions of the GCMA included in its report by virtue of subsection (4) of section 102 and any descriptions of undertakings as mentioned in subsection (5) of that section.

(3) Where the decision to make a reference under section 103 is made at any time on or after the end of the period of 24 weeks beginning with the giving of the intervention notice concerned, the Minister shall, in deciding whether to make such a reference, disregard any public interest consideration which is mentioned in the intervention notice but which has not been finalised before the end of that period.

(4) Subject to subsection (5), where the decision to make a reference under section 103(2) or (4) is made at any time before the end of the period of 24 weeks beginning with the giving of the intervention notice concerned, the Minister shall, in deciding whether to make such a reference, disregard any public interest consideration which is mentioned in the intervention notice but which has not been finalised if its effect would be to prevent, or to help to prevent, an anti-competitive outcome from being adverse to the public interest.

(5) The Minister may, if he believes that there is a realistic prospect of the public interest consideration mentioned in subsection (4) being finalised within the period of 24 weeks beginning with the giving of the intervention notice concerned, delay deciding whether to make the reference concerned until the public interest consideration is finalised or, if earlier, the period expires.

(6) A reference under section 103 shall, in particular, specify-

- (a) the subsection of that section under which it is made;
- (b) the date on which it is made; and
- (c) the public interest consideration or considerations mentioned in the intervention notice concerned which the Minister is not under a duty to disregard by virtue of subsection (3) above and which he believes are or may be relevant to a consideration of the relevant merger situation concerned.

*Reports on references*

**Functions to be exercised by GCMA groups.**

105. Where a reference is made to the chair of the GCMA under section 103 for the constitution of a group under Schedule 11, the functions of the GCMA under or by virtue of the following provisions of this Part in relation to the matter concerned are to be carried out on behalf of the GCMA by the group so constituted-

- (a) sections 106 to 112;
- (b) where a reference is treated by virtue of section 108(1) as having been made under section 103(2) or (3), section 75(12)(ab) (as it has effect by virtue of section 100(6));
- (c) sections 163, so far as relating to any decision mentioned in paragraph (a)(iii) of the definition of relevant decision in subsection (6) of that section;
- (d) section 166, so far as relating to anything done on behalf of the GCMA by the group;
- (e) section 168, where the permitted purpose relates to a function that (by virtue of this section) is being or is to be carried out on behalf of the GCMA by the group;
- (f) sections 170 to 177, so far as relating to a notice given under section 168 on behalf of the GCMA by the group;
- (g) section 180(4);
- (h) section 182(5)(b), so far as relating to a decision of the group.

**Questions to be decided on references under section 103.**

106.(1) The GCMA shall, on a reference under section 103(2) or (3), decide whether a relevant merger situation has been created.

(2) If the GCMA decides that such a situation has been created, it shall, on a reference under section 103(2), decide the following additional questions-

- (a) whether the creation of that situation has resulted, or may be expected to result, in a substantial lessening of competition within any market or markets in Gibraltar for goods or services; and

- (b) whether, taking account only of any substantial lessening of competition and the admissible public interest consideration or considerations concerned, the creation of that situation operates or may be expected to operate against the public interest.

(3) If the GCMA decides that a relevant merger situation has been created, it shall, on a reference under section 103(3), decide whether, taking account only of the admissible public interest consideration or considerations concerned, the creation of that situation operates or may be expected to operate against the public interest.

(4) The GCMA shall, on a reference under section 103(4) or (5), decide whether arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation.

(5) If the GCMA decides that such arrangements are in progress or in contemplation, it shall, on a reference under section 103(4), decide the following additional questions-

- (a) whether the creation of that situation may be expected to result in a substantial lessening of competition within any market or markets in Gibraltar for goods or services; and
- (b) whether, taking account only of any substantial lessening of competition and the admissible public interest consideration or considerations concerned, the creation of that situation may be expected to operate against the public interest.

(6) If the GCMA decides that arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation, it shall, on a reference under section 103(5), decide whether, taking account only of the admissible public interest consideration or considerations concerned, the creation of that situation may be expected to operate against the public interest.

(7) The GCMA shall, if it has decided on a reference under section 103 that the creation of a relevant merger situation operates or may be expected to operate against the public interest, decide the following additional questions-

- (a) whether action should be taken by the Minister under section 114 for the purpose of remedying, mitigating or preventing any of the effects adverse to the public interest which have resulted from, or may be expected to result from, the creation of the relevant merger situation;
- (b) whether the GCMA should recommend the taking of other action by the Minister or action by persons other than itself and the Minister for the purpose of remedying, mitigating or preventing any of the effects adverse to the public interest which have resulted from, or may be expected to result from, the creation of the relevant merger situation; and

- (c) in either case, if action should be taken, what action should be taken and what is to be remedied, mitigated or prevented.

(8) Where the GCMA has decided by virtue of subsection (2)(a) or (5)(a) that there is or will be a substantial lessening of competition within any market or markets in Gibraltar for goods or services, it shall also decide separately the following questions (on the assumption that it is proceeding as mentioned in section 115(6))-

- (a) whether action should be taken by it under section 97 for the purpose of remedying, mitigating or preventing the substantial lessening of competition concerned or any adverse effect which has resulted from, or may be expected to result from, the substantial lessening of competition;
- (b) whether the GCMA should recommend the taking of action by other persons for the purpose of remedying, mitigating or preventing the substantial lessening of competition concerned or any adverse effect which has resulted from, or may be expected to result from, the substantial lessening of competition; and
- (c) in either case, if action should be taken, what action should be taken and what is to be remedied, mitigated or prevented.

(9) In deciding the questions mentioned in subsections (7) and (8) the GCMA shall, in particular, have regard to the need to achieve as comprehensive a solution as is reasonable and practicable to-

- (a) the adverse effects to the public interest; or
- (b) (as the case may be) the substantial lessening of competition and any adverse effects resulting from it.

(10) In deciding the questions mentioned in subsections (7) and (8) in a case where it has decided by virtue of subsection (2)(a) or (5)(a) that there is or will be a substantial lessening of competition, the GCMA may, in particular, have regard to the effect of any action on any relevant customer benefits in relation to the creation of the relevant merger situation concerned.

(11) In this section “admissible public interest consideration” means any public interest consideration which is specified in the reference under section 103 and which the GCMA is not under a duty to disregard.

#### **Cases where references or certain questions need not be decided.**

107.(1) The GCMA shall cancel a reference under section 103(4) or (5) if it considers that the proposal to make arrangements of the kind mentioned in that reference has been abandoned.

(2) In relation to the question whether a relevant merger situation has been created or the question whether a relevant merger situation will be created, a reference under section 103 may be framed so as to require the GCMA to exclude from consideration-

- (a) subsection (1) of section 75;
- (b) subsection (2) of that section; or
- (c) one of those subsections if the GCMA finds that the other is satisfied.

**Variation of references under section 103.**

108.(1) The GCMA may, if it considers that doing so is justified by the facts (including events occurring on or after the making of the reference concerned), treat-

- (a) a reference made under subsection (2) or (3) of section 103 as if it had been made under subsection (4) or (as the case may be) (5) of that section; or
- (b) a reference made under subsection (4) or (5) of section 103 as if it had been made under subsection (2) or (as the case may be) (3) of that section;

and, in such cases, references in this Part to references under those enactments shall, so far as may be necessary, be construed accordingly.

(2) Where, by virtue of subsection (1), the GCMA treats a reference made under subsection (2) or (3) of section 103 as if it had been made under subsection (4) or (as the case may be) (5) of that section, paragraphs 1, 6 and 7 of Schedule 7 shall, in particular, apply as if the reference had been made under subsection (4) or (as the case may be) (5) of that section instead of under subsection (2) or (3) of that section.

(3) Where, by virtue of subsection (1), the GCMA treats a reference made under subsection (4) or (5) of section 103 as if it had been made under subsection (2) or (as the case may be) (3) of that section, paragraphs 1, 6 and 7 of Schedule 7 shall, in particular, apply as if the reference had been made under subsection (2) or (as the case may be) (3) of that section instead of under subsection (4) or (5) of that section.

(4) Subsection (5) applies in relation to any order made under paragraph 1 of Schedule 7, which is in force immediately before the GCMA, by virtue of subsection (1), treats a reference as mentioned in subsection (1).

(5) The order shall, so far as applicable, continue in force as if-

- (a) in the case of an order which relates to a reference under subsection (2) or (3) of section 103 made in relation to a reference made under subsection (4) or (as the case may be) (5) of that section; and

- (b) in the case of an order which relates to a reference made under subsection (4) or (5) of that section made in relation to a reference made under subsection (2) or (as the case may be) (3) of that section;

and the order concerned may be varied or revoked accordingly.

- (6) The Minister may at any time vary a reference under section 103.
- (7) The Minister shall consult the GCMA before varying any such reference.
- (8) Subsection (7) shall not apply if the GCMA has requested the variation concerned.
- (9) No variation by the Minister under this section shall be capable of altering the public interest consideration or considerations specified in the reference or the period permitted by section 110 within which the report of the GCMA under section 109 is to be prepared and given to the Minister.

### **Investigations and reports on references under section 103.**

109.(1) The GCMA shall prepare a report on a reference under section 103 and give it to the Minister within the period permitted by section 110.

- (2) The report shall, in particular, contain-
  - (a) the decisions of the GCMA on the questions which it is required to answer by virtue of section 106;
  - (b) its reasons for its decisions; and
  - (c) such information as the GCMA considers appropriate for facilitating a proper understanding of those questions and of its reasons for its decisions.

(3) The GCMA shall carry out such investigations as it considers appropriate for the purpose of producing a report under this section.

### **Time-limits for investigations and reports by GCMA.**

110.(1) The GCMA shall prepare its report under section 109 and give it to the Minister under that section within the period of 24 weeks beginning with the date of the reference concerned.

(2) The GCMA may extend, by no more than 8 weeks, the period within which a report under section 109 is to be prepared and given to the Minister if it considers that there are special reasons why the report cannot be prepared and given to the Minister within that period.

(3) The GCMA may extend the period within which a report under section 109 is to be prepared and given to the Minister if it considers that a relevant person has failed (whether with or without a reasonable excuse) to comply with any requirement of a notice under section 168.

(4) In subsection (3) “relevant person” means-

- (a) any person carrying on any of the enterprises concerned;
- (b) any person who (whether alone or as a member of a group) owns or has control of any such person; or
- (c) any officer, employee or agent of any person mentioned in paragraph (a) or (b).

(5) For the purposes of subsection (4) a person or group of persons able, directly or indirectly, to control or materially to influence the policy of a body of persons corporate or unincorporate, but without having a controlling interest in that body of persons, may be treated as having control of it.

(6) An extension under subsection (2) or (3) shall come into force when published under section 166.

(7) An extension under subsection (3) shall continue in force until-

- (a) the person concerned provides the information or documents to the satisfaction of the GCMA or (as the case may be) appears as a witness in accordance with the requirements of the GCMA; or
- (b) the GCMA publishes its decision to cancel the extension.

(8) This section is subject to sections 111 and 112.

### **Section 110: supplementary.**

111.(1) A period extended under subsection (3) of section 110 may also be extended under subsection (4) of that section and a period extended under subsection (4) of that section may also be extended under subsection (3) of that section.

(2) No more than one extension is possible under section 110(2).

(3) Where a period within which a report under section 109 is to be prepared and given to the Minister is extended or further extended under section 110(2) or (3), the period as extended or (as the case may be) further extended shall, subject to subsections (4) and (5), be calculated by taking the period being extended and adding to it the period of the extension (whether or not those periods overlap in time).

(4) Subsection (5) applies where-

- (a) the period within which the report under section 109 is to be prepared and given to the Minister is further extended;
- (b) the further extension and at least one previous extension is made under section 110(3); and
- (c) the same days or fractions of days are included in or comprise the further extension and are included in or comprise at least one such previous extension.

(5) In calculating the period of the further extension, any days or fractions of days of the kind mentioned in subsection (4)(c) shall be disregarded.

(6) The Minister may by order amend section 110 so as to alter any one or more of the following periods-

- (a) the period of 24 weeks mentioned in subsection (1) of that section or any period for the time being mentioned in that subsection in substitution for that period;
- (b) the period of 8 weeks mentioned in subsection (2) of that section or any period for the time being mentioned in that subsection in substitution for that period.

(7) No alteration shall be made by virtue of subsection (8) which results in the period for the time being mentioned in subsection (1) of section 110 exceeding 24 weeks or the period for the time being mentioned in subsection (2) of that section exceeding 8 weeks.

(8) An order under subsection (6) shall not affect any period of time within which the GCMA is under a duty to prepare and give to the Minister its report under section 109 in relation to a reference under section 103 if the GCMA is already under that duty in relation to that reference when the order is made.

(9) Before making an order under subsection (6) the Minister shall consult the GCMA and such other persons as he considers appropriate.

(10) The Minister may make regulations for the purposes of section 110(8).

(11) The regulations may, in particular-

- (a) provide for the time at which information or documents are to be treated as provided (including the time at which they are to be treated as provided to the satisfaction of the GCMA for the purposes of section 110(8));



- (b) provide for the time at which a person is to be treated as appearing as a witness (including the time at which he is to be treated as appearing as a witness in accordance with the requirements of the GCMA for the purposes of section 110(8));
- (c) provide for the persons carrying on the enterprises which have or may have ceased to be, or may cease to be, distinct enterprises to be informed, in circumstances in which section 110(8) applies, of the fact that-
  - (i) the GCMA is satisfied as to the provision of the information or documents required by it; or
  - (ii) the person concerned has appeared as a witness in accordance with the requirements of the GCMA;
- (d) provide for the persons carrying on the enterprises which have or may have ceased to be, or may cease to be, distinct enterprises to be informed, in circumstances in which section 110(8) applies, of the time at which the GCMA is to be treated as satisfied as mentioned in paragraph (c)(i) above or the person concerned is to be treated as having appeared as mentioned in paragraph (c)(ii) above.

**Restrictions on action where public interest considerations not finalised.**

112.(1) The GCMA shall cancel a reference under section 103 if-

- (a) the intervention notice concerned mentions a public interest consideration which was not finalised on the giving of that notice or public interest considerations which, at that time, were not finalised;
- (b) no other public interest consideration is mentioned in the notice;
- (c) at least 24 weeks has elapsed since the giving of the notice; and
- (d) the public interest consideration mentioned in the notice has not been finalised within that period of 24 weeks or (as the case may be) none of the public interest considerations mentioned in the notice has been finalised within that period of 24 weeks.

(2) Where a reference under section 103 specifies a public interest consideration which has not been finalised before the making of the reference, the GCMA shall not give its report to the Minister under section 109 in relation to that reference unless-

- (a) the period of 24 weeks beginning with the giving of the intervention notice concerned has expired;

(b) the public interest consideration concerned has been finalised.

(3) The GCMA shall, in reporting on any of the questions mentioned in section 106(2)(b), (3), (5)(b), (6) and (7), disregard any public interest consideration which has not been finalised before the giving of the report.

(4) The GCMA shall, in reporting on any of the questions mentioned in section 106(2)(b), (3), (5)(b), (6) and (7), disregard any public interest consideration which was not finalised on the giving of the intervention notice concerned and has not been finalised within the period of 24 weeks beginning with the giving of the notice concerned.

(5) Subsections (1) to (4) are without prejudice to the power of the GCMA to carry out investigations in relation to any public interest consideration to which it might be able to have regard in its report.

### *Decisions of the Minister*

#### **Decision of Minister in public interest cases.**

113.(1) Subsection (2) applies where the Minister has received a report of the GCMA under section 109 in relation to a relevant merger situation.

(2) The Minister shall decide whether to make an adverse public interest finding in relation to the relevant merger situation and whether to make no finding at all in the matter.

(3) For the purposes of this Part the Minister makes an adverse public interest finding in relation to a relevant merger situation if, in relation to that situation, he decides-

- (a) in connection with a reference under subsection (2) of section 103, that it is the case as mentioned in paragraphs (a) to (d) of that subsection or subsection (3) of that section;
- (b) in connection with a reference under subsection (3) of that section, that it is the case as mentioned in paragraphs (a) to (d) of that subsection;
- (c) in connection with a reference under subsection (4) of that section, that it is the case as mentioned in paragraphs (a) to (d) of that subsection or subsection (5) of that section; and
- (d) in connection with a reference under subsection (5) of that section, that it is the case as mentioned in paragraphs (a) to (d) of that subsection.

(4) The Minister may make no finding at all in the matter only if he decides that there is no public interest consideration which is relevant to a consideration of the relevant merger situation concerned.

(5) The Minister shall make and publish his decision under subsection (2) within the period of 30 days beginning with the receipt of the report of the GCMA under section 109.

(6) In making a decision under subsections (2) to (4), the Minister shall disregard any public interest consideration not specified in the reference under section 103 and any public interest consideration disregarded by the GCMA for the purposes of its report.

(7) In deciding whether to make an adverse public interest finding under subsection (2), the Minister shall accept-

- (a) in connection with a reference under section 103(2) or (4), the decision of the report of the GCMA under section 109 as to whether there is an anti-competitive outcome; and
- (b) in connection with a reference under section 103(3) or (5)-
  - (i) the decision of the report of the GCMA under section 109 as to whether a relevant merger situation has been created or (as the case may be) arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation; and
  - (ii) the decision of the report of the GCMA under section 102 as to the absence of a substantial lessening of competition.

(8) In determining for the purposes of subsection (5) the period of 30 days no account shall be taken of-

- (a) Saturday, Sunday, Good Friday and Christmas Day; and
- (b) any day which is a bank or public holiday in Gibraltar.

#### **Enforcement action by Minister.**

114.(1) Subsection (2) applies where the Minister has decided under subsection (2) of section 113 within the period required by subsection (5) of that section to make an adverse public interest finding in relation to a relevant merger situation and has published his decision within the period so required.

(2) The Minister may take such action under paragraph 8 or 10 of Schedule 7 as he considers to be reasonable and practicable to remedy, mitigate or prevent any of the effects adverse to the public interest which have resulted from, or may be expected to result from, the creation of the relevant merger situation concerned.

(3) In making a decision under subsection (2) the Minister shall, in particular, have regard to the report of the GCMA under section 109.

(4) In making a decision under subsection (2) in any case of a substantial lessening of competition, the Minister may, in particular, have regard to the effect of any action on any relevant customer benefits in relation to the creation of the relevant merger situation concerned.

*Other*

**Competition cases where intervention on public interest grounds ceases.**

115.(1) Where the Minister decides not to make a reference under section 103 on the ground that no public interest consideration to which he is able to have regard is relevant to a consideration of the relevant merger situation concerned, he shall by notice require the GCMA to deal with the matter otherwise than under this Chapter.

(2) Where a notice is given to the GCMA in the circumstances mentioned in subsection (1), the GCMA shall decide whether to make a reference under section 74 or 85; and any time-limits in relation to the Minister's decision whether to make a reference under section 103 (including any remaining powers of extension) shall apply in relation to the decision of the GCMA whether to make a reference under section 74 or 85.

(3) Where the GCMA cancels under section 112(1) a reference under section 103 and its report under section 102 contains the decision that it is or may be the case that there is an anti-competitive outcome in relation to the relevant merger situation concerned, the GCMA shall proceed under this Part as if a reference under section 74 or (as the case may be) 85 had been made.

(4) In proceeding by virtue of subsection (3) to prepare and publish a report under section 94, the GCMA shall proceed as if-

- (a) the reference under section 74 or 85 had been made at the same time as the reference under section 103;
- (b) the timetable for preparing and giving its report under section 109 (including any remaining powers of extension and as extended by an additional period of 20 days) were the timetable for preparing and publishing its report under section 94; and
- (c) in relation to the question whether a relevant merger situation has been created or the question whether arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation, the GCMA were confined to the questions on the subject to be investigated by it under section 106.

(5) In determining the period of 20 days mentioned in subsection (4) no account shall be taken of-

- (a) Saturday, Sunday, Good Friday and Christmas Day; and
- (b) any day which is a bank or public holiday in Gibraltar.

(6) Where the Minister decides under section 113(2) to make no finding at all in the matter in connection with a reference under section 103(2) or (4), the GCMA shall proceed under this Part as if a reference under section 74 or (as the case may be) 85 had been made instead of a reference under section 103 and as if its report to the Minister under section 109 had been prepared and published by it under section 94 within the period permitted by section 95.

(7) In relation to proceedings by virtue of subsection (6), the reference in section 97(3) to decisions of the GCMA as included in its report by virtue of section 91(3) or 92(2) shall be construed as a reference to decisions which were included in the report of the GCMA by virtue of section 106(8).

(8) Where the GCMA becomes under a duty to proceed as mentioned in subsection (3) or (6)

- (a) references in this Part to references under sections 74 and 85 shall, so far as may be necessary, be construed accordingly; and, in particular, sections 134 to 138 shall apply as if a reference has been made under section 74 or (as the case may be) 85; and
- (b) or the purposes of section 90, the group constituted in consequence of the reference under section 103 is to be treated as if it were constituted in consequence of a reference under section 74 or (as the case may be) 85.

#### **Duties of GCMA to inform Minister.**

116.(1) The GCMA shall, in considering whether to make a reference under section 74 or 85, bring to the attention of the Minister any case which it believes raises any consideration specified in section 117 unless it believes that the Minister would consider any such consideration immaterial in the context of the particular case.

(2) The GCMA shall bring to the attention of the Minister any representations about exercising his powers under section 117(3) which have been made to the GCMA.

#### **Specified considerations.**

117.(1) The interests of the security of Gibraltar are specified in this section.

(2) In subsection (1) “the security of Gibraltar” includes public security.

(3) The Minister may by order modify this section for the purpose of specifying in this section a new consideration or removing or amending any consideration which is for the time being specified in this section.

(4) An order under this section may, in particular-

- (a) provide for a consideration to be specified in this section for a particular purpose or purposes or for all purposes;
- (b) apply in relation to cases under consideration by the GCMA or the Minister before the making of the order as well as cases under consideration on or after the making of the order.

### CHAPTER 3 OTHER SPECIAL CASES

#### *Special public interest cases*

#### **Intervention by Minister in special public interest cases.**

118.(1) Subsection (2) applies where the Minister has reasonable grounds for suspecting that it is or may be the case that a special merger situation has been created or arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a special merger situation.

(2) The Minister may give a notice to the GCMA (in this Part “a special intervention notice”) if he believes that it is or may be the case that one or more than one consideration specified in section 117 is relevant to a consideration of the special merger situation concerned.

(3) For the purposes of this Part a special merger situation has been created if-

- (a) the condition mentioned in subsection (4) is satisfied; and
- (b) immediately before the enterprises concerned ceased to be distinct, the conditions mentioned in subsection (5) were satisfied.

(4) The condition mentioned in this subsection is that-

- (a) no relevant merger situation has been created because of section 75(1)(b) and (2)(b); but
- (b) a relevant merger situation would have been created if those enactments were disregarded.

(5) The conditions mentioned in this subsection are that-

- (a) at least one of the enterprises concerned was carried on in Gibraltar or by or under the control of a body corporate incorporated in Gibraltar; and
- (b) a person carrying on one or more of the enterprises concerned was a relevant government contractor.

(6) For the purposes of deciding whether a relevant merger situation has been created or whether arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation, sections 75 to 83 (read together with section 86) shall apply for the purposes of this Chapter as they do for the purposes of Chapter 1 but subject to subsection (6).

(7) In their application by virtue of subsection (6) sections 75 to 83 shall have effect as if-

(a) for paragraph (a) of section 75(12) there were substituted-

- “(a) in relation to the giving of a special intervention notice, the time when the notice is given;
- (aa) in relation to the making of a report by the GCMA under section 120, the time of the making of the report;
- (ab) in the case of a reference which is treated as having been made under section 121(2) by virtue of section 124(2), such time as the GCMA may determine; and”;

(b) the references to the GCMA in section 77(2)(a) and (b) included references to the Minister;

(c) the references to the GCMA in section 78(1) to (3), included references to the Minister;

(d) the references to the GCMA in section 78(4) and (5) were references to the Minister;

(e) the reference in section 78(4) to section 128 were a reference to paragraph 3 of Schedule 7;

(f) the reference in section 78(9) to one extension were a reference to one extension by the GCMA and one extension by the Minister;

- (g) the powers to extend time-limits under section 78 as applied by subsection (6) above were not exercisable by the GCMA or the Minister before the giving of a special intervention notice;
- (h) in the case of the giving of special intervention notices, the references in sections 75 to 83 to the making of a reference or a reference were, so far as necessary, references to the giving of a special intervention notice or a special intervention notice.

(8) No more than one special intervention notice shall be given under subsection (2) in relation to the same special merger situation.

(9) In this section “relevant government contractor” means-

- (a) a government contractor-
  - (i) who has been notified by or on behalf of the Minister of information, documents or other articles relating to the security of Gibraltar and of a confidential nature which the government contractor or an employee of his may hold or receive in connection with being such a contractor; and
  - (ii) whose notification has not been revoked by or on behalf of the Minister; or
- (b) a former government contractor who was so notified when he was a government contractor and whose notification has not been revoked by or on behalf of the Minister.

### **Special intervention notices under section 118.**

119.(1) A special intervention notice shall state-

- (a) the special merger situation concerned; and
- (b) the consideration specified in section 117 or considerations so specified which are, or may be, relevant to the special merger situation concerned.

(2) Where the Minister believes that it is or may be the case that two or more considerations specified in section 117 are relevant to a consideration of the special merger situation concerned, he may decide not to mention in the special intervention notice such of those considerations as he considers appropriate.

(3) A special intervention notice shall come into force when it is given and shall cease to be in force when the matter to which it relates is finally determined under this Chapter.



(4) For the purposes of this Part, a matter to which a special intervention notice relates is finally determined under this Chapter if-

- (a) the time within which the GCMA is to report to the Minister under section 120 has expired and no such report has been made;
- (b) the Minister decides to accept an undertaking or group of undertakings under paragraph 2 of Schedule 7 instead of making a reference under section 121;
- (c) the Minister otherwise decides not to make a reference under that section;
- (d) the GCMA cancels such a reference under section 124(1);
- (e) the time within which the GCMA is to prepare a report under section 125 and give it to the Minister has expired and no such report has been prepared and given to the Minister;
- (f) the time within which the Minister is to make and publish a decision under section 126(2) has expired and no such decision has been made and published;
- (g) the Minister decides under subsection (2) of section 126 otherwise than as mentioned in subsection (5) of that section;
- (h) the Minister decides under subsection (2) of section 126 as mentioned in subsection (5) of that section but decides neither to accept an undertaking under paragraph 8 of Schedule 7 nor to make an order under paragraph 10 of that Schedule; or
- (i) the Minister decides under subsection (2) of section 126 as mentioned in subsection (5) of that section and accepts an undertaking under paragraph 8 of Schedule 7 or makes an order under paragraph 10 of that Schedule.

(5) For the purposes of this Part the time when a matter to which a special intervention notice relates is finally determined under this Chapter is-

- (a) in a case falling within subsection (4)(a), (e) or (f), the expiry of the time concerned;
- (b) in a case falling within subsection (4)(b), the acceptance of the undertaking or group of undertakings concerned;
- (c) in a case falling within subsection (4)(c), (d) or (g), the making of the decision concerned;

- (d) in a case falling within subsection (4)(h), the making of the decision neither to accept an undertaking under paragraph 8 of Schedule 7 nor to make an order under paragraph 10 of that Schedule; and
- (e) in a case falling within subsection (4)(i), the acceptance of the undertaking concerned or (as the case may be) the making of the order concerned.

**Initial investigation and report by GCMA.**

120.(1) Subsection (2) applies where the Minister has given a special intervention notice in relation to a special merger situation.

(2) The GCMA shall, within such period as the Minister may require, give a report to the Minister in relation to the case.

(3) The report shall contain-

- (a) advice from the GCMA on the considerations relevant to the making of a reference under section 74 or 85 which are also relevant to the Minister's decision as to whether to make a reference under section 121; and
- (b) a summary of any representations about the case which have been received by the GCMA and which relate to any consideration mentioned in the special intervention notice concerned and which is or may be relevant to the Minister's decision as to whether to make a reference under section 121.

(4) The report shall include a decision as to whether the GCMA believes (disregarding section 118(5)(b)) that it is, or may be, the case that a special merger situation has been created or (as the case may be) arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a special merger situation.

(5) The report may, in particular, include advice and recommendations on any consideration mentioned in the special intervention notice concerned and which is or may be relevant to the Minister's decision as to whether to make a reference under section 121.

(6) The GCMA shall carry out such investigations as it considers appropriate for the purposes of producing a report under this section.

**Power of Minister to refer the matter.**

121.(1) Subsection (2) applies where the Minister-

- (a) has given a special intervention notice in relation to a special merger situation; and
- (b) has received a report of the GCMA under section 120 in relation to the matter.

(2) The Minister may make a reference to the chair of the GCMA for the constitution of a group under Schedule 11 if he believes that it is or may be the case that-

- (a) a special merger situation has been created;
- (b) one or more than one consideration mentioned in the special intervention notice is relevant to a consideration of the special merger situation concerned; and
- (c) taking account only of the relevant consideration or considerations concerned, the creation of that situation operates or may be expected to operate against the public interest.

(3) The Minister may make a reference to the chair of the GCMA for the constitution of a group under Schedule 11 if he believes that it is or may be the case that-

- (a) arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a special merger situation;
- (b) one or more than one consideration mentioned in the special intervention notice is relevant to a consideration of the special merger situation concerned; and
- (c) taking account only of the relevant consideration or considerations concerned, the creation of that situation may be expected to operate against the public interest.

(4) No reference shall be made under this section if the making of the reference is prevented by paragraph 3 of Schedule 7.

(5) The Minister, in deciding whether to make a reference under this section, shall accept the decision of the GCMA included in its report under section 120 by virtue of subsection (4) of that section.

(6) A reference under this section shall, in particular, specify-

- (a) the subsection of this section under which it is made;
- (b) the date on which it is made; and
- (c) the consideration or considerations mentioned in the special intervention notice which the Minister believes are, or may be, relevant to a consideration of the special merger situation concerned.

**Functions to be exercised by GCMA groups.**

122.(1) Where a reference is made to the chair of the GCMA under section 121 for the constitution of a group under Schedule 11, the functions of the GCMA under or by virtue of the following provisions of this Part in relation to the matter concerned are to be carried out on behalf of the GCMA by the group so constituted-

- (a) sections 123 to 125;
- (b) where a reference is treated by virtue of section 124(2) as having been made under section 121(2), section 75(12)(ab) (as it has effect by virtue of section 118(7));
- (c) sections 163, so far as relating to any decision mentioned in paragraph (a)(iii) of the definition of relevant decision in subsection (6) of that section;
- (d) section 166, so far as relating to anything done on behalf of the GCMA by the group;
- (e) section 168, where the permitted purpose relates to a function that (by virtue of this section) is being or is to be carried out on behalf of the GCMA by the group;
- (f) sections 170 to 177, so far as relating to a notice given under section 168 on behalf of the GCMA by the group;
- (g) section 180(4);
- (h) section 182(5)(b), so far as relating to a decision of the group.

**Questions to be decided on references under section 121.**

123.(1) The GCMA shall, on a reference under section 121(2), decide whether a special merger situation has been created.

(2) The GCMA shall, on a reference under section 121(3), decide whether arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a special merger situation.

(3) If the GCMA decides that a special merger situation has been created or that arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a special merger situation, it shall, on a reference under section 121, decide whether, taking account only of the consideration or considerations mentioned in the reference, the creation of that situation operates or may be expected to operate against the public interest.

(4) The GCMA shall, if it has decided on a reference under section 121 that the creation of a special merger situation operates or may be expected to operate against the public interest, decide the following additional questions-

- (a) whether action should be taken by the Minister under section 126 for the purpose of remedying, mitigating or preventing any of the effects adverse to the public interest which have resulted from, or may be expected to result from, the creation of the special merger situation concerned;
- (b) whether the GCMA should recommend the taking of other action by the Minister or action by persons other than itself and the Minister for the purpose of remedying, mitigating or preventing any of the effects adverse to the public interest which have resulted from, or may be expected to result from, the creation of the special merger situation concerned; and
- (c) in either case, if action should be taken, what action should be taken and what is to be remedied, mitigated or prevented.

#### **Cancellation and variation of references under section 121.**

124.(1) The GCMA shall cancel a reference under section 121(3) if it considers that the proposal to make arrangements of the kind mentioned in that reference has been abandoned.

(2) The GCMA may, if it considers that doing so is justified by the facts (including events occurring on or after the making of the reference concerned), treat a reference made under subsection (2) or (3) of section 121 as if it had been made under subsection (3) or (as the case may be) (2) of that section; and, in such cases, references in this Part to references under those enactments shall, so far as may be necessary, be construed accordingly.

(3) Where, by virtue of subsection (2), the GCMA treats a reference made under subsection (2) or (3) of section 121 as if it had been made under subsection (3) or (as the case may be) (2) of that section, paragraphs 1, 6 and 7 of Schedule 7 shall, in particular, apply as if the reference had been made under subsection (3) or (as the case may be) (2) of that section instead of under subsection (2) or (3) of that section.

(4) Subsection (5) applies in relation to any order made under paragraph 1 of Schedule 7, which is in force immediately before the GCMA, by virtue of subsection (2), treats a reference made under subsection (2) or (3) of section 121 as if it had been made under subsection (3) or (as the case may be) (2) of that section.

(5) The order shall, so far as applicable, continue in force as if-

- (a) in the case of an order which relates to a reference under subsection (2) of section 121 made in relation to a reference made under subsection (3) of that section; and

- (b) in the case of an order which relates to a reference made under subsection (3) of that section made in relation to a reference made under subsection (2) of that section;

and the order concerned may be varied or revoked accordingly.

- (6) The Minister may at any time vary a reference under section 121.
- (7) The Minister shall consult the GCMA before varying any such reference.
- (8) Subsection (7) shall not apply if the GCMA has requested the variation concerned.
- (9) No variation by the Minister under this section shall be capable of altering the consideration or considerations specified in the reference or the period permitted by virtue of section 125 within which the report of the GCMA under that section is to be prepared and given to the Minister.

#### **Investigations and reports on references under section 121.**

125.(1) The GCMA shall prepare a report on a reference under section 121 and give it to the Minister within the period permitted by virtue of this section.

- (2) The report shall, in particular, contain-
  - (a) the decisions of the GCMA on the questions which it is required to answer by virtue of section 123;
  - (b) its reasons for its decisions; and
  - (c) such information as the GCMA considers appropriate for facilitating a proper understanding of those questions and of its reasons for its decisions.

(3) Sections 110 and 111 (but not section 112) shall apply for the purposes of a report under this section as they apply for the purposes of a report under section 109.

(4) The GCMA shall carry out such investigations as it considers appropriate for the purpose of producing a report under this section.

#### **Decision and enforcement action by Minister.**

126.(1) Subsection (2) applies where the Minister has received a report of the GCMA under section 125 in relation to a special merger situation.

(2) The Minister shall, in connection with a reference under section 121(2) or (3), decide the questions which the GCMA is required to decide by virtue of section 123(1) to (3).

(3) The Minister shall make and publish his decision under subsection (2) within the period of 30 days beginning with the receipt of the report of the GCMA under section 125; and subsection (8) of section 113 shall apply for the purposes of this subsection as it applies for the purposes of subsection (5) of that section.

(4) In making his decisions under subsection (2), the Minister shall accept the decisions of the report of the GCMA under section 125 as to whether a special merger situation has been created or whether arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a special merger situation.

(5) Subsection (6) applies where the Minister has decided under subsection (2) that-

- (a) a special merger situation has been created or arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a special merger situation;
- (b) at least one consideration which is mentioned in the special intervention notice concerned is relevant to a consideration of the special merger situation concerned; and
- (c) taking account only of the relevant consideration or considerations concerned, the creation of that situation operates or may be expected to operate against the public interest;

and has so decided, and published his decision, within the period required by subsection (3).

(6) The Minister may take such action under paragraph 8 or 10 of Schedule 7 as he considers to be reasonable and practicable to remedy, mitigate or prevent any of the effects adverse to the public interest which have resulted from, or may be expected to result from, the creation of the special merger situation concerned.

(7) In making a decision under subsection (6), the Minister shall, in particular, have regard to the report of the GCMA under section 125.

## **CHAPTER 4 ENFORCEMENT**

### *Powers exercisable before references under section 74 or 85*

#### **Initial enforcement orders: completed or anticipated mergers.**

127.(1) Subsection (2) applies where-

- (a) the GCMA is considering whether to make a reference under section 74 or 85; and

- (b) the GCMA has reasonable grounds for suspecting that it is or may be the case that two or more enterprises have ceased to be distinct or that arrangements are in progress or in contemplation which, if carried into effect, will result in two or more enterprises ceasing to be distinct.
- (2) The GCMA may by order, for the purpose of preventing pre-emptive action-
- (a) prohibit or restrict the doing of things which the GCMA considers would constitute pre-emptive action;
  - (b) impose on any person concerned obligations as to the carrying on of any activities or the safeguarding of any assets;
  - (c) provide for the carrying on of any activities or the safeguarding of any assets either by the appointment of a person to conduct or supervise the conduct of any activities (on such terms and with such powers as may be specified or described in the order) or in any other manner;
  - (d) do anything which may be done by virtue of paragraph 20 of Schedule 8.
- (3) Subsection (4) applies where-
- (a) subsection (1)(a) and (b) applies; and
  - (b) the GCMA also has reasonable grounds for suspecting that pre-emptive action has or may have been taken.
- (4) The GCMA may by order, for the purpose of restoring the position to what it would have been had the pre-emptive action not been taken or otherwise for the purpose of mitigating its effects-
- (a) do anything mentioned in subsection (2)(b) to (d);
  - (b) impose such other obligations, prohibitions or restrictions as it considers appropriate for that purpose.
- (5) A person may, with the consent of the GCMA, take action or action of a particular description where the action would otherwise constitute a contravention of an order under this section.
- (6) An order under this section-
- (a) shall come into force at such time as is determined by or under the order; and



(b) may be varied or revoked by another order.

(7) An order under this section shall, if it has not previously ceased to be in force and if it is not adopted under paragraph 1 of Schedule 7, cease to be in force-

(a) where the GCMA has decided to make the reference concerned under section 74 or 85

(i) if the GCMA accepts an undertaking under section 137 or makes an order under section 138, on the acceptance of the undertaking or the making of the order, and

(ii) otherwise on the final determination of the reference concerned;

(b) where the GCMA has decided to accept an undertaking under section 128 instead of making that reference, on the acceptance of that undertaking;

(c) where an intervention notice is in force, at the end of the period of 7 days beginning with the giving of that notice; and

(d) where the GCMA has otherwise decided not to make the reference concerned under section 74 or 85, on the making of that decision.

(8) The GCMA shall, as soon as reasonably practicable, consider any representations received by it in relation to varying or revoking an order under this section.

(9) In this section “pre-emptive action” means action which might prejudice the reference concerned or impede the taking of any action under this Part which may be justified by the GCMA’s decisions on the reference.

#### **Undertakings in lieu of references under section 74 or 85.**

128.(1) Subsection (2) applies if the GCMA considers that it is under a duty to make a reference under section 74 or 85 (disregarding the operation of section 74(3)(c) or (as the case may be) 85(3)(c) but taking account of the power of the GCMA under section 74(2) or (as the case may be) 85) to decide not to make such a reference).

(2) The GCMA may, instead of making such a reference and for the purpose of remedying, mitigating or preventing the substantial lessening of competition concerned or any adverse effect which has or may have resulted from it or may be expected to result from it, accept from such of the parties concerned as it considers appropriate undertakings to take such action as it considers appropriate.

(3) In proceeding under subsection (2), the GCMA shall, in particular, have regard to the need to achieve as comprehensive a solution as is reasonable and practicable to the substantial lessening of competition and any adverse effects resulting from it.

(4) In proceeding under subsection (2), the GCMA may, in particular, have regard to the effect of any action on any relevant customer benefits in relation to the creation of the relevant merger situation concerned.

(5) An undertaking under this section-

- (a) shall come into force when accepted;
- (b) may be varied or superseded by another undertaking; and
- (c) may be released by the GCMA.

(6) An undertaking under this section which is in force in relation to a relevant merger situation shall cease to be in force if an order comes into force under section 132 or 133 in relation to that undertaking.

(7) The GCMA shall, as soon as reasonably practicable, consider any representations received by it in relation to varying or releasing an undertaking under this section.

#### **Time-limits for consideration of undertakings.**

129.(1) A party concerned who wishes to offer an undertaking to the GCMA for the purposes of section 128(2) must do so before the end of the period of 5 working days beginning with the day after the GCMA gives the person the notice required by section 87(1)(b).

(2) If an undertaking is offered for those purposes, the GCMA shall, before the end of the period of 10 working days beginning with the day mentioned in subsection (1)-

- (a) decide whether there are reasonable grounds for believing that the undertaking or a modified version of it might be accepted by the GCMA under section 128(2), and
- (b) if it considers that it might be, give notice to the person who offered the undertaking that it is considering it.

(3) If such a notice is given, the GCMA shall decide whether to accept the undertaking before the end of the period of 50 working days beginning with the day mentioned in subsection (1).

(4) The GCMA may extend the period mentioned in subsection (3), by no more than 40 working days, if it considers that there are special reasons for doing so.

(5) The GCMA shall prepare and publish guidance in relation to the exercise of its power under subsection (4).

(6) The GCMA may revise any such guidance and, where it does so, shall publish the revised statement.

(7) The GCMA may extend the period mentioned in subsection (3) if it considers that a relevant person has failed (with or without reasonable excuse) to comply with any requirement of a notice given under section 168 in relation to the case in question.

(8) In subsection (7), “relevant person” means-

- (a) any person carrying on any of the enterprises concerned;
- (b) any person who (whether alone or as a member of a group) owns or has control of any such person; or
- (c) any officer, employee or agent of any person mentioned in paragraph (a) or (b).

(9) For the purposes of subsection (8), a person or group of persons able, directly or indirectly, to control or materially influence the policy of a body of persons corporate or unincorporate, but without having a controlling interest in that body of persons, may be treated as having control of it.

(10) An extension under subsection (4) or (7) comes into force when published under section 166.

(11) An extension under subsection (7) continues in force until-

- (a) the person concerned provides the information or documents to the satisfaction of the GCMA or (as the case may be) appears as a witness in accordance with the requirements of the GCMA; or
- (b) the GCMA publishes its decision to cancel the extension.

(12) In this section and section 130, “working day” means any day which is not-

- (a) a Saturday, a Sunday, Good Friday or Christmas Day, or
- (b) a day which is a bank or public holiday in Gibraltar.

**Section 129: supplementary.**

130.(1) A period extended under section 129(4) may also be extended under section 129(7), and a period extended under section 129(7) may also be extended under section 129(4).

(2) No more than one extension is possible under section 129(4).

(3) Where a period is extended or further extended under section 129(4) or (7), the period as extended or (as the case may be) further extended is, subject to subsections (4) and (5), to be calculated by taking the period being extended and adding to it the period of the extension (whether or not those periods overlap in time).

(4) Subsection (5) applies where-

- (a) the period within which the GCMA must discharge its duty under section 129(3) is further extended,
- (b) the further extension and at least one previous extension is made under section 129(7), and
- (c) the same days or fractions of days are included in or comprise the further extension and are included in or comprise at least one such previous extension.

(5) In calculating the period of the further extension, any days or fractions of days of the kind mentioned in subsection (4)(c) are to be disregarded.

(6) The Minister may by order amend section 129 so as to alter one or more of the periods for the time being mentioned in the section.

(7) But no alteration may be made by virtue of subsection (6) which results in-

- (a) the period mentioned in section 129(1) exceeding 5 working days;
- (b) the period mentioned in section 129(2) exceeding 10 working days;
- (c) the period mentioned in section 129(3) exceeding 50 working days;
- (d) the period mentioned in section 129(4) exceeding 40 working days.

(8) Before making an order under subsection (6) the Minister shall consult the GCMA and such other persons as the Minister considers appropriate.

#### **Effect of undertakings under section 128.**

131.(1) The relevant authority shall not make a reference under section 74, 85 or 103 in relation to the creation of a relevant merger situation if-

- (a) the GCMA has accepted an undertaking or group of undertakings under section 128; and
- (b) the relevant merger situation is the situation by reference to which the undertaking or group of undertakings was accepted.

(2) Subsection (1) does not prevent the making of a reference if material facts about relevant arrangements or transactions, or relevant proposed arrangements or transactions, were not notified (whether in writing or otherwise) to the GCMA or made public before any undertaking concerned was accepted.

(3) For the purposes of subsection (2) arrangements or transactions, or proposed arrangements or transactions, are relevant if they are the ones in consequence of which the enterprises concerned ceased or may have ceased, or may cease, to be distinct enterprises.

(4) In subsection (2) “made public” means so publicised as to be generally known or readily ascertainable.

(5) In this section “relevant authority” means-

- (a) in relation to a possible reference under section 74 or 85, the GCMA; and
- (b) in relation to a possible reference under section 103, the Minister.

**Order-making power where undertakings under section 128 not fulfilled etc.**

132.(1) Subsection (2) applies where the GCMA considers that-

- (a) an undertaking accepted by it under section 128 has not been, is not being or will not be fulfilled; or
- (b) in relation to an undertaking accepted by it under that section, information which was false or misleading in a material respect was given to the GCMA by the person giving the undertaking before the GCMA decided to accept the undertaking.

(2) The GCMA may, for any of the purposes mentioned in section 128(2), make an order under this section.

(3) Subsections (3) and (4) of section 128 shall apply for the purposes of subsection (2) above as they apply for the purposes of subsection (2) of that section.

(4) An order under this section may contain-

- (a) anything permitted by Schedule 8; and
- (b) such supplementary, consequential or incidental provision as the GCMA considers appropriate.

(5) An order under this section-

- (a) shall come into force at such time as is determined by or under the order;
- (b) may contain provision which is different from the provision contained in the undertaking concerned; and
- (c) may be varied or revoked by another order.

(6) The GCMA shall, as soon as reasonably practicable, consider any representations received by it in relation to varying or revoking an order under this section.

**Supplementary interim order-making power.**

133.(1) Subsection (2) applies where-

- (a) the GCMA has the power to make an order under section 132 in relation to a particular undertaking and intends to make such an order; or
- (b) the GCMA has the power to make an order under section 140 in relation to a particular undertaking and intends to make such an order.

(2) The GCMA may, for the purpose of preventing any action which might prejudice the making of that order, make an order under this section.

(3) No order shall be made under subsection (2) unless the GCMA has reasonable grounds for suspecting that it is or may be the case that action which might prejudice the making of the order under section 132 or (as the case may be) 140 is in progress or in contemplation.

(4) An order under subsection (2) may-

- (a) prohibit or restrict the doing of things which the GCMA considers would prejudice the making of the order under section 132 or (as the case may be) 140;
- (b) impose on any person concerned obligations as to the carrying on of any activities or the safeguarding of any assets;
- (c) provide for the carrying on of any activities or the safeguarding of any assets either by the appointment of a person to conduct or supervise the conduct of any activities (on such terms and with such powers as may be specified or described in the order) or in any other manner;
- (d) do anything which may be done by virtue of paragraph 18 of Schedule 8.

(5) An order under this section-

- (a) shall come into force at such time as is determined by or under the order; and

(b) may be varied or revoked by another order.

(6) An order under this section shall, if it has not previously ceased to be in force, cease to be in force on-

(a) the coming into force of an order under section 132 or (as the case may be) 140 in relation to the undertaking concerned; or

(b) the making of the decision not to proceed with such an order.

(7) The GCMA shall, as soon as reasonably practicable, consider any representations received by it in relation to varying or revoking an order under this section.

*Interim restrictions and powers*

**Restrictions on certain dealings: completed mergers.**

134.(1) Subsections (2) and (3) apply where-

(a) a reference has been made under section 74 but not finally determined; and

(b) no undertakings under section 137 are in force in relation to the relevant merger situation concerned and no orders under section 127 or 138 are in force in relation to that situation.

(2) No relevant person shall, without the consent of the GCMA -

(a) complete any outstanding matters in connection with any arrangements which have resulted in the enterprises concerned ceasing to be distinct enterprises;

(b) make any further arrangements in consequence of that result (other than arrangements which reverse that result); or

(c) transfer the ownership or control of any enterprises to which the reference relates.

(3) No relevant person shall, without the consent of the GCMA, assist in any of the activities mentioned in paragraphs (a) to (c) of subsection (2).

(4) The prohibitions in subsections (2) and (3) do not apply in relation to anything which the person concerned is required to do by virtue of any enactment.

(5) The consent of the GCMA under subsection (2) or (3)-

(a) may be general or special;

- (b) may be revoked by the GCMA; and
- (c) shall be published in such manner as the GCMA considers appropriate for the purpose of bringing it to the attention of any person entitled to the benefit of it.

(6) Paragraph (c) of subsection (5) shall not apply if the GCMA considers that publication is not necessary for the purpose mentioned in that paragraph.

(7) Subsections (2) and (3) shall apply to a person's conduct outside Gibraltar if (and only if) he is-

- (a) a resident of Gibraltar;
- (b) a body incorporated under the law of Gibraltar; or
- (c) a person carrying on business in Gibraltar.

(8) In this section "relevant person" means-

- (a) any person who carries on any enterprise to which the reference relates or who has control of any such enterprise;
- (b) any subsidiary of any person falling within paragraph (a); or
- (c) any person associated with any person falling within paragraph (a) or any subsidiary of any person so associated.

**Restrictions on certain share dealings: anticipated mergers.**

135.(1) Subsection (2) applies where-

- (a) a reference has been made under section 85; and
- (b) no undertakings under section 137 are in force in relation to the relevant merger situation concerned and no orders under section 127 or 138 are in force in relation to that situation.

(2) No relevant person shall, without the consent of the GCMA, directly or indirectly acquire during the relevant period an interest in shares in a company if any enterprise to which the reference relates is carried on by or under the control of that company.

(3) The consent of the GCMA under subsection (2)-

- (a) may be general or special;



- (b) may be revoked by the GCMA; and
- (c) shall be published in such manner as the GCMA considers appropriate for bringing it to the attention of any person entitled to the benefit of it.

(4) Paragraph (c) of subsection (3) shall not apply if the GCMA considers that publication is not necessary for the purpose mentioned in that paragraph.

(5) Subsection (2) shall apply to a person's conduct outside Gibraltar if (and only if) he is-

- (a) a resident of Gibraltar;
- (b) a body incorporated under the law of Gibraltar; or
- (c) a person carrying on business in Gibraltar.

(6) In this section and section 136-

“company” includes any body corporate;

“relevant period” means the period beginning with the making of the reference concerned and ending when the reference is finally determined;

“relevant person” means-

- (a) any person who carries on any enterprise to which the reference relates or who has control of any such enterprise;
- (b) any subsidiary of any person falling within paragraph (a); or
- (c) any person associated with any person falling within paragraph (a) or any subsidiary of any person so associated; and

“share” means share in the capital of a company, and includes stock.

**Sections 134 and 135: further interpretation provisions.**

136.(1) For the purposes of this Part a reference under section 74 or 85 is finally determined if-

- (a) the reference is cancelled under section 93(1);

- (b) the time within which the GCMA is to prepare and publish a report under section 94 in relation to the reference has expired and no such report has been prepared and published;
- (c) the report of the GCMA under section 94 contains the decision that there is not an anti-competitive outcome;
- (d) the report of the GCMA under section 94 contains the decision that there is an anti-competitive outcome and the GCMA has decided under section 97(2) neither to accept an undertaking under section 139 nor to make an order under section 141; or
- (e) the report of the GCMA under section 94 contains the decision that there is an anti-competitive outcome and the GCMA has decided under section 97(2) to accept an undertaking under section 139 or to make an order under section 141.

(2) For the purposes of this Part the time when a reference under section 74 or 85 is finally determined is-

- (a) in a case falling within subsection (1)(a), the making of the decision concerned;
- (b) in a case falling within subsection (1)(b), the expiry of the time concerned;
- (c) in a case falling within subsection (1)(c), the publication of the report;
- (d) in a case falling within subsection (1)(d), the making of the decision under section 97(2); and
- (e) in a case falling within subsection (1)(e), the acceptance of the undertaking concerned or (as the case may be) the making of the order concerned.

(3) For the purposes of section 135 and subject to subsection (4) below, the circumstances in which a person acquires an interest in shares include those where-

- (a) he enters into a contract to acquire the shares (whether or not for cash);
- (b) he is not the registered holder but acquires the right to exercise, or to control the exercise of, any right conferred by the holding of the shares; or
- (c) he-
  - (i) acquires a right to call for delivery of the shares to himself or to his order or to acquire an interest in the shares; or

(ii) assumes an obligation to acquire such an interest.

(4) The circumstances in which a person acquires an interest in shares for the purposes of section 135 do not include those where he acquires an interest in pursuance of an obligation assumed before the publication by the GCMA of the reference concerned.

(5) The circumstances in which a person acquires a right mentioned in subsection (3)-

(a) include those where he acquires a right, or assumes an obligation, whose exercise or fulfilment would give him that right; but

(b) do not include those where he is appointed as proxy to vote at a specified meeting of a company or of any class of its members or at any adjournment of the meeting or he is appointed by a corporation to act as its representative at any meeting of the company or of any class of its members.

(6) References to rights and obligations in subsections (3) to (5) include conditional rights and conditional obligations.

(7) References in sections 134 and 135 to a person carrying on or having control of any enterprise includes a group of persons carrying on or having control of an enterprise and any member of such a group.

(8) Sections 79(2) to (4) and 187(1), (2) and (4) to (6) shall apply for the purposes of sections 134 and 135 to determine whether any person or group of persons has control of any enterprise and whether persons are associated as they apply for the purposes of section 79 to determine whether enterprises are brought under common control.

(9) Section 2 of the Companies Act 2014 shall apply for the purposes of sections 134 and 135 to determine whether a company is a subsidiary of an individual or of a group of persons as they apply to determine whether it is a subsidiary of a company.

### **Interim undertakings.**

137.(1) Subsections (2) and (3)) apply where a reference under section 74 or 85 has been made but is not finally determined.

(2) The GCMA may, for the purpose of preventing pre-emptive action, accept from such of the parties concerned as it considers appropriate undertakings to take such action as it considers appropriate.

(3) Where the GCMA has reasonable grounds for suspecting that pre-emptive action has or may have been taken, it may, for the purpose of restoring the position to what it would have been had the action not been taken or otherwise for the purpose of mitigating its effects, accept

from such of the parties concerned as it considers appropriate undertakings to take such action as it considers appropriate.

(4) A person may, with the consent of the GCMA, take action or action of a particular description where the action would otherwise constitute a contravention of an undertaking under this section.

(5) An undertaking under this section-

- (a) shall come into force when accepted;
- (b) may be varied or superseded by another undertaking; and
- (c) may be released by the GCMA.

(6) An undertaking which is in force under this section in relation to a reference under section 74 or 85 shall cease to be in force if an order under section 138 comes into force in relation to that reference.

(7) An undertaking under this section shall, if it has not previously ceased to be in force, cease to be in force when the reference under section 74 or 85 is finally determined.

(8) The GCMA shall, as soon as reasonably practicable, consider any representations received by it in relation to varying or releasing an undertaking under this section.

(9) In this section and section 138 “pre-emptive action” means action which might prejudice the reference concerned or impede the taking of any action under this Part which may be justified by the GCMA’s decisions on the reference.

**Interim orders.**

138.(1) Subsections (2) and (3) apply where a reference has been made under section 74 or 85 but is not finally determined.

(2) The GCMA may by order, for the purpose of preventing pre-emptive action-

- (a) prohibit or restrict the doing of things which the GCMA considers would constitute pre-emptive action;
- (b) impose on any person concerned obligations as to the carrying on of any activities or the safeguarding of any assets;
- (c) provide for the carrying on of any activities or the safeguarding of any assets either by the appointment of a person to conduct or supervise the conduct of any activities (on such terms and with such powers as may be specified or described in the order) or in any other manner;

(d) do anything which may be done by virtue of paragraph 18 of Schedule 8.

(3) Where the GCMA has reasonable grounds for suspecting that pre-emptive action has or may have been taken, it may by order, for the purpose of restoring the position to what it would have been had the action not been taken or otherwise for the purpose of mitigating its effects-

(a) do anything mentioned in subsection (2)(b) to (d);

(b) impose such other obligations, prohibitions or restrictions as it considers appropriate for that purpose.

(4) A person may, with the consent of the GCMA, take action or action of a particular description where the action would otherwise constitute a contravention of an order under this section.

(5) An order under this section-

(a) shall come into force at such time as is determined by or under the order; and

(b) may be varied or revoked by another order.

(6) An order which is in force under this section in relation to a reference under section 74 or 85 shall cease to be in force if an undertaking under section 137 comes into force in relation to that reference.

(7) An order under this section shall, if it has not previously ceased to be in force, cease to be in force when the reference under section 74 or 85 is finally determined.

(8) The GCMA shall, as soon as reasonably practicable, consider any representations received by it in relation to varying or revoking an order under this section.

#### *Final powers*

#### **Final undertakings.**

139.(1) The GCMA may, in accordance with section 97, accept, from such persons as it considers appropriate, undertakings to take action specified or described in the undertakings.

(2) An undertaking under this section-

(a) shall come into force when accepted;

(b) may be varied or superseded by another undertaking; and

(c) may be released by the GCMA.

(3) An undertaking which is in force under this section in relation to a reference under section 74 or 85 shall cease to be in force if an order under section 133(1)(b) or 140 comes into force in relation to the subject-matter of the undertaking.

(4) No undertaking shall be accepted under this section in relation to a reference under section 74 or 85 if an order has been made under-

(a) section 133(1)(b) or 140 in relation to the subject-matter of the undertaking; or

(b) section 141 in relation to that reference.

(5) The GCMA shall, as soon as reasonably practicable, consider any representations received by it in relation to varying or releasing an undertaking under this section.

**Order-making power where final undertakings not fulfilled.**

140.(1) Subsection (2) applies where the GCMA considers that-

(a) an undertaking accepted by it under section 139 has not been, is not being or will not be fulfilled; or

(b) in relation to an undertaking accepted by it under that section, information which was false or misleading in a material respect was given to the GCMA by the person giving the undertaking before the GCMA decided to accept the undertaking.

(2) The GCMA may, for any of the purposes mentioned in section 97(2), make an order under this section.

(3) Subsections (3) to (5) of section 97 shall apply for the purposes of subsection (2) above as they apply for the purposes of subsection (2) of that section.

(4) An order under this section may contain-

(a) anything permitted by Schedule 8; and

(b) such supplementary, consequential or incidental provision as the GCMA considers appropriate.

(5) An order under this section-

(a) shall come into force at such time as is determined by or under the order;

- (b) may contain provision which is different from the provision contained in the undertaking concerned; and

may be varied or revoked by another order.

**Final orders.**

141.(1) The GCMA may, in accordance with section 97, make an order under this section.

(2) An order under this section may contain-

- (a) anything permitted by Schedule 8; and
- (b) such supplementary, consequential or incidental provision as the GCMA considers appropriate.

(3) An order under this section-

- (a) shall come into force at such time as is determined by or under the order; and
- (b) may be varied or revoked by another order.

(4) No order shall be made under this section in relation to a reference under section 74 or 85 if an undertaking has been accepted under section 139 in relation to that reference.

*Public interest and special public interest cases*

**Enforcement regime for public interest and special public interest cases.**

142.(1) Schedule 7 (which provides for the enforcement regime in public interest and special public interest cases) shall have effect.

(2) The GCMA may advise the Minister in relation to the taking by him of enforcement action under Schedule 7.

*Undertakings and orders: general provisions*

**Enforcement orders: general provisions.**

143.(1) An enforcement order may extend to a person's conduct outside Gibraltar if (and only if) he is-

- (a) a resident of Gibraltar;
- (b) a body incorporated under the law of Gibraltar; or

- (c) a person carrying on business in Gibraltar.
- (2) Nothing in an enforcement order shall have effect so as to-
- (a) cancel or modify conditions in licences granted-
    - (i) under a patent that has been registered in Gibraltar in accordance with the Patents Act; or
    - (ii) in respect of a design which is valid in Gibraltar pursuant to the Designs Act;by the proprietor of the patent or design; or
  - (b) require an entry to be made in the register of patents or the register of designs to the effect that licences under such a patent or such a design are to be available as of right.
- (3) An enforcement order may prohibit the performance of an agreement already in existence when the order is made.
- (4) Schedule 8 (which provides for the contents of certain enforcement orders) shall have effect.
- (5) Part 1 of Schedule 9 (which enables certain enforcement orders to modify licence conditions etc. in regulated markets) shall have effect.
- (6) In this Part “enforcement order” means an order made under section 127, 132, 133, 138, 140 or 141 or under paragraph 1, 4, 5, 9 or 10 of Schedule 7.

**Delegated power of directions.**

- 144.(1) An enforcement order may authorise the person making the order to give directions falling within subsection (2) to-
- (a) a person specified in the directions; or
  - (b) the holder for the time being of an office so specified in any body of persons corporate or unincorporate.
- (2) Directions fall within this subsection if they are directions-
- (a) to take such action as may be specified or described in the directions for the purpose of carrying out, or ensuring compliance with, the enforcement order concerned; or



(b) to do, or refrain from doing, anything so specified or described which the person might be required by that order to do or refrain from doing.

(3) An enforcement order may authorise the person making the order to vary or revoke any directions so given.

(4) The court may by order require any person who has failed to comply with directions given by virtue of this section to comply with them, or otherwise remedy his failure, within such time as may be specified in the order.

(5) Where the directions related to anything done in the management or administration of a body of persons corporate or unincorporate, the court may by order require the body of persons concerned or any officer of it to comply with the directions, or otherwise remedy the failure to comply with them, within such time as may be specified in the order.

(6) An order under subsection (4) or (5) shall be made on the application of the person authorised by virtue of this section to give the directions concerned.

(7) An order under subsection (4) or (5) may provide for all the costs or expenses of, or incidental to, the application for the order to be met by any person in default or by any officers of a body of persons corporate or unincorporate who are responsible for its default.

(8) In this section “the court” means the Supreme Court.

#### **Contents of certain enforcement orders.**

145.(1) This section applies in relation to any order under section 132, 140 or 141 or under paragraph 4, 9 or 10 of Schedule 7.

(2) The order or any explanatory material accompanying the order shall state-

(a) the actions that the persons or description of persons to whom the order is addressed must do or (as the case may be) refrain from doing;

(b) the date on which the order comes into force;

(c) the possible consequences of not complying with the order; and

(d) the section of this Part under which a review can be sought in relation to the order.

#### **Subject-matter of undertakings.**

146.(1) The provision which may be contained in an enforcement undertaking is not limited to the provision which is permitted by Schedule 8.

(2) In this Part “enforcement undertaking” means an undertaking under section 128, 137 or 139 or under paragraph 2 or 8 of Schedule 7

**Procedural requirements for certain undertakings and orders.**

147. Schedule 10 (which provides for the procedure for accepting certain enforcement undertakings and making certain enforcement orders and for their termination) shall have effect.

**Register of undertakings and orders.**

148.(1) The GCMA shall compile and maintain a register for the purposes of this Part.

(2) The register shall be kept in such form as the GCMA considers appropriate.

(3) The GCMA shall ensure that the following matters are entered in the register-

- (a) the provisions of any enforcement undertaking accepted under this Part;
- (b) the provisions of any enforcement order made under this Part;
- (c) the details of any variation, release or revocation of such an undertaking or order; and
- (d) the details of any consent given by the GCMA under section 134(2) or (3) or 135(2) or by the Minister under paragraph 6(2) or (3) or 7(2) of Schedule 7.

(4) The duty in subsection (3) does not extend to anything of which the GCMA is unaware.

(5) The Minister shall inform the GCMA of any matters which are to be included in the register by virtue of subsection (3) and which relate to enforcement undertakings accepted by the Minister, enforcement orders made by the Minister or consents given by the Minister.

(6) The GCMA shall ensure that the contents of the register are available to the public-

- (a) during (as a minimum) such hours as may be specified in an order made by the Minister; and
- (b) subject to such reasonable fees (if any) as the GCMA may determine.

(7) If requested by any person to do so and subject to such reasonable fees (if any) as the GCMA may determine, the GCMA shall supply the person concerned with a copy (certified to be true) of the register or of an extract from it.

*Enforcement functions of GCMA*

**Duty of GCMA to monitor undertakings and orders.**

149.(1) The GCMA shall keep under review-

- (a) the carrying out of any enforcement undertaking or any enforcement order; and
- (b) compliance with the prohibitions in sections 134(2) and (3) and 135(2) and in paragraphs 6(2) and (3) and 7(2) of Schedule 7.

(2) The GCMA shall, in particular, from time to time consider-

- (a) whether an enforcement undertaking or enforcement order has been or is being complied with;
- (b) whether, by reason of any change of circumstances, an enforcement undertaking is no longer appropriate and-
  - (i) one or more of the parties to it can be released from it; or
  - (ii) it needs to be varied or to be superseded by a new enforcement undertaking; and
- (c) whether, by reason of any change of circumstances, an enforcement order is no longer appropriate and needs to be varied or revoked.

(3) The GCMA shall give the Minister such advice as it considers appropriate in relation to-

- (a) any possible variation or release by the Minister of an enforcement undertaking accepted by him;
- (b) any possible new enforcement undertaking to be accepted by the Minister so as to supersede another enforcement undertaking given to the Minister;
- (c) any possible variation or revocation by the Minister of an enforcement order made by the Minister;
- (d) any possible enforcement undertaking to be accepted by the Minister instead of an enforcement order or any possible enforcement order to be made by the Minister instead of an enforcement undertaking;
- (e) the enforcement by virtue of section 151(6) to (8) of any enforcement undertaking or enforcement order; or

- (f) the enforcement by virtue of section 154(4) and (5) of the prohibitions in sections 134(2) and (3) and 135(2) and in paragraphs 6(2) and (3) and 7(2) of Schedule 7.
- (4) The GCMA shall take such action as it considers appropriate in relation to-
- (a) any possible variation or release by it of an enforcement undertaking accepted by it;
  - (b) any possible new enforcement undertaking to be accepted by it so as to supersede another enforcement undertaking given to it;
  - (c) any possible variation or revocation by it of an enforcement order made by it;
  - (d) any possible enforcement undertaking to be accepted by it instead of an enforcement order or any possible enforcement order to be made by it instead of an enforcement undertaking;
  - (e) the enforcement by it by virtue of section 151(6) of any enforcement undertaking or enforcement order; or
  - (f) the enforcement by it by virtue of section 154(4) and (5) of the prohibitions in sections 134(2) and (3) and 135(2) and in paragraphs 6(2) and (3) and 7(2) of Schedule 7.
- (5) The GCMA shall keep under review the effectiveness of enforcement undertakings accepted under this Part and enforcement orders made under this Part.
- (6) The GCMA shall, whenever requested to do so by the Minister and otherwise from time to time, prepare a report of its findings under subsection (5).
- (7) The GCMA shall-
- (a) give a copy of any report prepared by it under subsection (6) to the Minister; and
  - (b) publish the report.

**Further role of GCMA in relation to undertakings and orders.**

150.(1) Subsections (2) and (3) apply where the Minister is considering whether to accept undertakings under paragraph 2 or 8 of Schedule 7.

(2) The Minister may require the GCMA to consult with such persons as the Minister considers appropriate with a view to discovering whether they will offer undertakings which the Minister would be prepared to accept under paragraph 2 or 8 of Schedule 7.

(3) The Minister may require the GCMA to report to the Minister on the outcome of the GCMA's consultations within such period as the Minister may require.

(4) A report under subsection (3) shall, in particular, contain advice from the GCMA as to whether any undertakings offered should be accepted by the Minister under paragraph 2 or 8 of Schedule 7.

(5) The powers conferred on the relevant authority by subsections (1) to (4) are without prejudice to the power of the relevant authority to consult the persons concerned itself.

(6) If asked by the Minister for advice in relation to the taking of enforcement action (whether or not by way of undertaking) in a particular case, the GCMA shall give such advice as it considers appropriate.

*Other*

**Rights to enforce undertakings and orders.**

151.(1) This section applies to any enforcement undertaking or enforcement order.

(2) Any person to whom such an undertaking or order relates shall have a duty to comply with it.

(3) The duty shall be owed to any person who may be affected by a contravention of the undertaking or (as the case may be) order.

(4) Any breach of the duty which causes such a person to sustain loss or damage shall be actionable by him.

(5) In any proceedings brought under subsection (4) against a person to whom an enforcement undertaking or an enforcement order relates it shall be a defence for that person to show that he took all reasonable steps and exercised all due diligence to avoid contravening the undertaking or (as the case may be) order.

(6) Compliance with an enforcement undertaking or an enforcement order shall also be enforceable by civil proceedings brought by the GCMA for an injunction or for any other appropriate relief or remedy.

(7) Compliance with an undertaking under paragraph 2 or 8 of Schedule 7, an order made by the Minister under paragraph 2 of that Schedule or an order under paragraph 4, 5, 9 or 10 of that Schedule, shall also be enforceable by civil proceedings brought by the Minister for an injunction or for any other appropriate relief or remedy.

(8) Subsections (6) and (7) shall not prejudice any right that a person may have by virtue of subsection (4) to bring civil proceedings for contravention or apprehended contravention of an enforcement undertaking or an enforcement order.

**Interim undertakings and orders under this Part: penalties.**

152.(1) Where the appropriate authority considers that a person has, without reasonable excuse, failed to comply with an interim measure, it may impose a penalty of such fixed amount as it considers appropriate.

(2) A penalty imposed under subsection (1) shall not exceed 5% of the total value of the turnover (both in and outside Gibraltar) of the enterprises owned or controlled by the person on whom it is imposed.

(3) For the purposes of subsection (2), the Minister may by order make provision for determining-

- (a) when an enterprise is to be treated as controlled by a person; and
- (b) the turnover (both in and outside Gibraltar) of an enterprise.

(4) An order under subsection (3)(b) may, in particular, make provision as to-

- (a) the amounts which are, or which are not, to be treated as comprising an enterprise's turnover;
- (b) the date or dates by reference to which an enterprise's turnover is to be determined.

(5) An order under subsection (3) may, in particular, make provision enabling the appropriate authority to determine matters of a description specified in the order (including any of the matters mentioned in paragraphs (a) and (b) of subsection (4)).

(6) The Minister may by order amend subsection (2) so as to alter the percentage for the time being mentioned there to any percentage not exceeding 5%.

(7) Sections 174 to 177 apply in relation to a penalty imposed under subsection (1) as they apply in relation to a penalty of a fixed amount imposed under section 170(1), with the modification that any reference in those provisions to the GCMA is to be read as a reference to the person who imposed the penalty under this section.

(8) In this section-

“interim measure” means-

- (a) an undertaking under section 137; or

- (b) an order under section 127 or 138 or paragraph 1 of Schedule 7;

“appropriate authority” means-

- (a) in relation to an interim measure which is an order made by the Minister under paragraph 1 of Schedule 7, the Minister;
- (b) in relation to any other interim measure, the GCMA.

**Statement of policy in relation to powers under sections 151 and 152.**

153.(1) The GCMA shall prepare and publish a statement of policy in relation to the use of its powers under-

- (a) section 151, insofar as they relate to interim measures; and
- (b) section 152.

(2) The GCMA shall, in particular, include a statement about the considerations relevant to the determination of the amount of any penalty imposed under section 152.

(3) The GCMA may revise its statement of policy and, where it does so, it shall publish the revised statement.

(4) The GCMA shall consult the Minister and such other persons as it considers appropriate when preparing or revising its statement of policy.

(5) A statement or revised statement of policy may not be published under this section unless the Minister approves the statement.

(6) In this section, “interim measure” has the same meaning as in section 152.

**Rights to enforce statutory restrictions.**

154.(1) The obligation to comply with section 134(2) or (3) or 135(2) or paragraph 6(2) or (3) or 7(2) of Schedule 7 shall be a duty owed to any person who may be affected by a contravention of the enactment concerned.

(2) Any breach of the duty which causes such a person to sustain loss or damage shall be actionable by him.

(3) In any proceedings brought under subsection (2) against a person who has an obligation to comply with section 134(2) or (3) or 135(2) or paragraph 6(2) or (3) or 7(2) of Schedule 7

it shall be a defence for that person to show that he took all reasonable steps and exercised all due diligence to avoid contravening the enactment concerned.

(4) Compliance with section 134(2) or (3) or 135(2) shall also be enforceable by civil proceedings brought by the GCMA for an injunction or for any other appropriate relief or remedy.

(5) Compliance with paragraph 6(2) or (3) or 7(2) of Schedule 7 shall also be enforceable by civil proceedings brought by the GCMA or the Minister for an injunction or for any other appropriate relief or remedy.

(6) Subsections (4) and (5) shall not prejudice any right that a person may have by virtue of subsection (2) to bring civil proceedings for contravention or apprehended contravention of section 134(2) or (3) or 135(2) or paragraph 6(2) or (3) or 7(2) of Schedule 7.

#### *Transferred EU merger commitments*

#### **Transferred EU merger commitments.**

155.(1) The GCMA must-

- (a) monitor compliance with transferred EU merger commitments, and
- (b) take such action (if any) under subsection (3) or section 156 as it considers appropriate.

(2) Any person to whom transferred EU merger commitments relate has a duty to comply with those commitments.

(3) Compliance with transferred EU merger commitments is enforceable by civil proceedings brought by the GCMA for an injunction or for any other appropriate relief or remedy.

(4) The rights of the GCMA under subsection (3) are not affected by any provisions of transferred EU merger commitments which provide for disputes relating to compliance with the commitments to be resolved by arbitration.

(5) The GCMA must ensure that the provisions of transferred EU merger commitments are entered and kept up to date in the register referred to in section 148.

(6) In this Part “transferred EU merger commitments” means EU merger commitments which-

- (a) are the subject of an Article 95(2) transfer decision (and, where those commitments are modified by, or as contemplated by, that decision or by a later Article 95(2) transfer decision, means those commitments as so modified), and



(b) which have not been waived or substituted by the European Commission.

(7) In this section-

“Article 95(2) transfer decision” means an instrument issued by the European Commission in accordance with Article 95(2) of the EU withdrawal agreement transferring responsibility for the monitoring and enforcement of EU merger commitments to the GCMA;

“EU merger commitments” means commitments attached to a decision adopted by the European Commission under Article 6(1)(b) and (2) or 8(2) of Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings.

(8) So far as the context permits or requires, transferred EU merger commitments are to be treated for the purposes of this Part as if-

- (a) any reference to the area of the European Union or of the European Economic Area included Gibraltar;
- (b) any reference to the internal market included Gibraltar;
- (c) any reference to a member State included Gibraltar;
- (d) any reference to a party to the EEA agreement included Gibraltar.

(9) Subsection (8) is subject to any different provision made by the Article 95(2) transfer decision in question.

**Power of directions in connection with transferred EU merger commitments.**

156.(1) The GCMA may give directions falling within subsection (2) to-

- (a) a person specified in the directions; or
- (b) the holder for the time being of an office so specified in any body of persons corporate or unincorporate.

(2) Directions fall within this subsection if they are directions-

- (a) to take such action as may be specified or described in the directions for the purpose of carrying out, or ensuring compliance with, transferred EU merger commitments; or

- (b) to do, or refrain from doing, anything so specified or described which the person is required by transferred EU merger commitments to do or refrain from doing.
- (3) The GCMA may vary or revoke any directions so given.
- (4) Directions under this section may extend to a person's conduct outside Gibraltar if (and only if) the person is-
- (a) a person bound by the transferred EU merger commitments concerned;
  - (b) a resident of Gibraltar;
  - (c) a body incorporated under the law of Gibraltar; or
  - (d) a person carrying on business in Gibraltar.
- (5) The Supreme Court may by order require any person who has failed to comply with directions given under this section to comply with them, or otherwise remedy the failure, within such time as may be specified in the order.
- (6) Where the directions related to anything done in the management or administration of a body of persons corporate or unincorporate, the Supreme Court may by order require the body of persons concerned or any officer of it to comply with the directions, or otherwise remedy the failure to comply with them, within such time as may be specified in the order.
- (7) An order under subsection (5) or (6) may only be made on the application of the GCMA.
- (8) An order under subsection (5) or (6) may provide for all the costs or expenses of, or incidental to, the application for the order to be met by any person in default or by any officers of a body of persons corporate or unincorporate who are responsible for its default.

## CHAPTER 5 SUPPLEMENTARY

### *Merger notices*

#### **Merger notices.**

157.(1) A person authorised to do so by regulations under section 160 may give notice to the GCMA of arrangements or proposed arrangements which might have resulted or might result in the creation of a relevant merger situation.

- (2) Any such notice (in this Part a "merger notice")-

- (a) shall be in the prescribed form;
- (b) shall contain the prescribed information; and
- (c) shall state that the existence of the proposal has been made public.

(3) Where the GCMA is satisfied that a merger notice meets the requirements of subsection (2), it shall give notice to that effect to the person who gave the merger notice.

(4) In this section and sections 158(5)(c) and 159(1)(c) “prescribed” means prescribed by the GCMA by notice in the Gazette.

(5) In this Part “notified arrangements” means arrangements of which notice is given under subsection (1) above or arrangements not differing from them in any material respect.

**Certain functions of GCMA in relation to merger notices.**

158.(1) The GCMA shall, so far as practicable and when the initial period (within the meaning of section 87) begins in relation to the merger notice, take such action as the GCMA considers appropriate to bring-

- (a) the existence of the proposal;
- (b) the fact that the merger notice has been given; and
- (c) the date on which the period for considering the notice may expire;

to the attention of those whom the GCMA considers would be affected if the arrangements were carried into effect.

(2) The GCMA may, at any time before the end of the initial period (within the meaning of section 87) in relation to a merger notice, reject the notice if-

- (a) the GCMA suspects that any information given in respect of the notified arrangements (whether in the merger notice or otherwise) by the person who gave the notice or any connected person is in any material respect false or misleading;
- (b) the GCMA suspects that it is not proposed to carry the notified arrangements into effect;
- (c) any prescribed information is not given in the merger notice or the person who gave the merger notice has failed (with or without a reasonable excuse) to comply with any requirement of a notice under section 168 in relation to the case concerned; or

- (d) the GCMA considers that the notified arrangements are, or if carried into effect would result in, a concentration with a Community dimension within the meaning of the EC Merger Regulation.

(3) In this section and section 159 “connected person”, in relation to the person who gave a merger notice, means-

- (a) any person who, for the purposes of section 187, is associated with him; or
- (b) any subsidiary of the person who gave the merger notice or of any person so associated with him.

**Exceptions to protection given by merger notices.**

159.(1) Sections 74(3)(a) and 85(3)(a) do not prevent any reference being made under section 74 or (as the case may be) 85 if-

- (a) before the end of the initial period (within the meaning of section 87) in relation to the merger notice, the GCMA rejects the notice under section 158(5);
- (b) any information (whether prescribed information or not) that-
  - (i) is, or ought to be, known to the person who gave the merger notice or any connected person; and
  - (ii) is material to the notified arrangements; is not disclosed to the GCMA;
- (c) at any time after the merger notice is given but before the enterprises to which the notified arrangements relate cease to be distinct from each other, any of those enterprises ceases to be distinct from any enterprise other than an enterprise to which those arrangements relate;
- (d) the six months beginning with the end of the initial period (within the meaning of section 87) in relation to the merger notice expires without the enterprises to which the notified arrangements relate ceasing to be distinct from each other;
- (e) the merger notice is withdrawn; or
- (f) any information given in respect of the notified arrangements (whether in the merger notice or otherwise) by the person who gave the notice or any connected person is in any material respect false or misleading.

(2) Subsection (3) applies where-

- (a) two or more transactions which have occurred, or, if any arrangements are carried into effect, will occur, may be treated for the purposes of a reference under section 74 or 85 as having occurred simultaneously on a particular date; and
  - (b) sections 74(3)(a) and 85(3)(a) do not prevent such a reference in relation to the last of those transactions.
- (3) Sections 74(3)(a) and 85(3)(a) do not prevent such a reference in relation to any of those transactions which actually occurred less than six months before-
- (a) that date; or
  - (b) the actual occurrence of another of those transactions in relation to which such a reference may be made (whether or not by virtue of this subsection).
- (4) In determining for the purposes of subsections (2) and (3) the time at which any transaction actually occurred, no account shall be taken of any option or other conditional right until the option is exercised or the condition is satisfied.
- (5) In this section references to the enterprises to which the notified arrangements relate are references to those enterprises that would have ceased to be distinct from one another if the arrangements mentioned in the merger notice concerned had been carried into effect at the time when the notice was given.

**Merger notices: regulations.**

160.(1) The Minister may make regulations for the purposes of sections 157 to 159.

- (2) The regulations may, in particular-
- (a) provide for section 159(1)(d) to apply as if any reference to a period of days or months were a reference to a period specified in the regulations for the purposes of the enactment concerned;
  - (b) provide for the manner in which any merger notice is authorised or required to be rejected or withdrawn, and the time at which any merger notice is to be treated as received or rejected;
  - (c) provide for the time at which any fee is to be treated as paid;
  - (d) provide that a person is, or is not, to be treated, in such circumstances as may be specified in the regulations, as acting on behalf of a person authorised by regulations under this section to give a merger notice or a person who has given such a notice.

**Power to modify sections 158 to 160.**

161. The Minister may, for the purposes of determining the effect of giving a merger notice and the action which may be or is to be taken by any person in connection with such a notice, by order modify sections 158 to 160.

*General duties in relation to references*

**Duty of expedition in relation to references.**

162.(1) In making any decision for the purposes of its functions of making and determining references under this Part, the GCMA shall have regard, with a view to the prevention or removal of uncertainty, to the need for making a decision as soon as reasonably practicable.

(2) In deciding whether to make a reference under section 103 or 121 the Minister shall have regard, with a view to the prevention or removal of uncertainty, to the need for making a decision as soon as reasonably practicable.

**Certain duties of relevant authorities to consult.**

163.(1) Subsection (2) applies where the relevant authority is proposing to make a relevant decision in a way which the relevant authority considers is likely to be adverse to the interests of a relevant party.

(2) The relevant authority shall, so far as practicable, consult that party about what is proposed before making that decision.

(3) In consulting the party concerned, the relevant authority shall, so far as practicable, give the reasons of the relevant authority for the proposed decision.

(4) In considering what is practicable for the purposes of this section the relevant authority shall, in particular, have regard to-

(a) any restrictions imposed by any timetable for making the decision; and

(b) any need to keep what is proposed, or the reasons for it, confidential.

(5) The duty under this section shall not apply in relation to the making of any decision so far as particular provision is made elsewhere by virtue of this Part for consultation before the making of that decision.

(6) In this section-

“the relevant authority” means the GCMA or the Minister;

“relevant decision” means-

- (a) in the case of the GCMA, any decision by the GCMA -
  - (i) as to whether to make a reference under section 74 or 85 or accept undertakings under section 128 instead of making such a reference; or
  - (ii) to vary under section 93 such a reference;
  - (iii) on the questions mentioned in section 91(1) or (3), 92(1) or (2), 106 or 123;
- (b) in the case of the Minister, any decision by the Minister-
  - (i) as to whether to make a reference under section 103 or 121; or
  - (ii) to vary under section 108 or (as the case may be) 124 such a reference; and

“relevant party” means any person who appears to the relevant authority to control enterprises which are the subject of the reference or possible reference concerned.

#### *Information and publicity requirements*

#### **General information duties of GCMA.**

164.(1) Where the GCMA decides to investigate a matter so as to enable it to decide whether to make a reference under section 74 or 85, or so as to make a report under section 102 or 120, it shall, so far as practicable, take such action as it considers appropriate to bring information about the investigation to the attention of those whom it considers might be affected by the creation of the relevant merger situation concerned or (as the case may be) the special merger situation concerned.

(2) Subsection (1) does not apply in relation to arrangements which might result in the creation of a relevant merger situation if a merger notice has been given in relation to those arrangements under section 157.

(3) The GCMA shall give the Minister-

- (a) such information in their possession as the Minister may by direction reasonably require to enable him to carry out his functions under this Part; and
- (b) any other assistance which the Minister may by direction reasonably require for the purpose of assisting him in carrying out his functions under this Part and which it is within the power of the GCMA to give.

(4) The GCMA shall give the Minister any information in their possession which has not been requested by the Minister but which, in the opinion of the GCMA, would be appropriate to give to the Minister for the purpose of assisting him in carrying out his functions under this Part.

(5) The Minister shall have regard to any information given to him under subsection (3) or (4).

(6) Any direction given under subsection (3)-

(a) shall be in writing; and

(b) may be varied or revoked by a subsequent direction.

**Advice and information about references under sections 74 and 85.**

165.(1) The GCMA shall prepare and publish general advice and information about-

(a) the making and consideration by it of references under section 74 or 85, and

(b) the way in which relevant customer benefits may affect the taking of enforcement action in relation to such references.

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

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

(a) explaining relevant provisions of this Part to persons who are likely to be affected by them; and

(b) indicating how the GCMA expects such provisions to operate.

(4) Advice (or information) published by virtue of subsection (1) may include advice (or information) about the factors which the GCMA may take into account in considering whether, and if so how, to exercise a function conferred by this Part.

(5) Any advice or information published by the GCMA under this section shall be published in such manner as the GCMA considers appropriate.

(6) In preparing any advice or information under this section, the GCMA shall consult such persons as it considers appropriate.

**Further publicity requirements.**

166.(1) The GCMA shall publish-



- (a) any decision made by it that the duty to make a reference under section 74 or 85 applies and any such reference made by it;
  - (b) any decision made by it that the duty to make such a reference does not apply (other than a decision made by virtue of subsection (2)(b) of section 85);
  - (c) any notice given by it as mentioned in paragraph (b) of the definition of “initial period” in section 87(3);
  - (d) any extension by it under section 88 of the initial period;
  - (e) any decision made by it to cancel an extension as mentioned in section 88(6)(b);
  - (f) any variation made by it under section 93 of a reference under section 74 or 85;
  - (g) such information as it considers appropriate about any decision made by it under section 116(1) to bring a case to the attention of the Minister;
  - (h) any enforcement order made by it under section 127 or paragraph 1 of Schedule 7;
  - (i) any extension by it under section 129 of the period for considering whether to accept an undertaking under section 128;
  - (j) any decision made by it to cancel an extension as mentioned in section 129(11)(b);
  - (k) any variation, release or revocation of an order mentioned in paragraph (h); and
  - (l) any notice given by it under section 157(3).
- (2) The GCMA shall also publish-
- (a) any cancellation by it under section 93(1) of a reference under section 85;
  - (b) any decision made by it under section 93(2) to treat a reference made under section 74 or 85 as if it had been made under section 85 or (as the case may be) 74;
  - (c) any extension by it under section 95 of the period within which a report under section 94 is to be prepared and published;
  - (d) any decision made by it to cancel an extension as mentioned in section 95(7)(b);
  - (e) any decision made by it under section 97(2) neither to accept an undertaking under section 139 nor to make an order under section 141;

- (f) any extension by it under section 98 of the period within which its duty under section 97(2) is to be discharged;
  - (g) any decision made by it to cancel an extension as mentioned in section 98(7)(b);
  - (h) any decision made by it that there has been a material change of circumstances as mentioned in subsection (3) of section 97 or there is another special reason as mentioned in that subsection of that section;
  - (i) any cancellation by it under section 107(1) or 112(1) of a reference under section 103 or any cancellation by it under section 124(1) of a reference under section 121;
  - (j) any decision made by it under section 108(1) to treat-
    - (i) a reference made under subsection (2) or (3) of section 103 as if it had been made under subsection (4) or (as the case may be) (5) of that section; or
    - (ii) a reference made under subsection (4) or (5) of section 103 as if it had been made under subsection (2) or (as the case may be) (3) of that section;
  - (k) any extension by it under section 110 of the period within which a report under section 109 is to be prepared and published;
  - (l) any decision made by it under section 110(8)(b) to cancel such an extension;
  - (m) any extension by it under section 110 as applied by section 125(3) of the period within which a report under section 125 is to be prepared and published;
  - (n) any decision made by it under section 110(8)(b) as applied by section 125(3) to cancel such an extension;
  - (o) any decision made by it under section 124(2) to treat a reference made under subsection (2) or (3) of section 121 as if it had been made under subsection (3) or (as the case may be) (2) of that section;
  - (p) any decision made by it as mentioned in section 133(6)(b);
  - (q) any enforcement order made by it under section 133 or 138;
  - (r) any enforcement undertaking accepted by it under section 137;
  - (s) any variation, release or revocation of such an order or undertaking; and
  - (t) any decision made by it to dispense with the requirements of Schedule 10.
- (3) The Minister shall publish-

- (a) any intervention notice or special intervention notice given by him;
- (b) any report of the GCMA under section 102 or 120 which has been received by him;
- (c) any reference made by him under section 103 or 121 or any decision made by him not to make such a reference;
- (d) any variation made by him under section 108 of a reference under section 103 or under section 124 of a reference under section 121;
- (e) any report of the GCMA under section 109 or 125 which has been received by him;
- (f) any decision made by him neither to accept an undertaking under paragraph 8 of Schedule 7 nor to make an order under paragraph 10 of that Schedule;
- (g) any notice given by him under section 115(1);
- (h) any decision made by him as mentioned in paragraph 5(6)(b) of Schedule 7; and
- (i) any decision made by him to dispense with the requirements of Schedule 10.

(4) Where any person is under a duty by virtue of subsection (1), (2) or (3) to publish the result of any action taken by that person or any decision made by that person, the person concerned shall, subject to subsections (5) and (6), also publish that person's reasons for the action concerned or (as the case may be) the decision concerned.

(5) Such reasons need not, if it is not reasonably practicable to do so, be published at the same time as the result of the action concerned or (as the case may be) as the decision concerned.

(6) Subsections (4) and (5) shall not apply in relation to any information published under subsection (1)(g).

(7) The Minister shall publish his reasons for-

- (a) any decision made by him under section 113(2) or 126(2); or
- (b) any decision to make an order under section 117(3) or vary or revoke such an order.

(8) Such reasons may be published after-

- (a) in the case of subsection (7)(a), the publication of the decision concerned; and

- (b) in the case of subsection (7)(b), the making of the order or of the variation or revocation; if it is not reasonably practicable to publish them at the same time as the publication of the decision or (as the case may be) the making of the order or variation or revocation.

(9) The Minister shall publish-

- (a) the report of the GCMA under section 102 in relation to a matter no later than publication of his decision as to whether to make a reference under section 103 in relation to that matter; and
- (b) the report of the GCMA under section 109 in relation to a matter no later than publication of his decision under section 113(2) in relation to that matter.

(10) The Minister shall publish-

- (a) the report of the GCMA under section 120, in relation to a matter no later than publication of his decision as to whether to make a reference under section 121 in relation to that matter; and
- (b) the report of the GCMA under section 125 in relation to a matter no later than publication of his decision under section 126(2) in relation to that matter.

(11) Where the Minister has decided under section 114(2) or 126(6) to accept an undertaking under paragraph 8 of Schedule 7 or to make an order under paragraph 10 of that Schedule, he shall (after the acceptance of the undertaking or (as the case may be) the making of the order) lay details of his decision and his reasons for it, and the GCMA's report under section 109 or (as the case may be) 125, before Parliament.

### **Defamation.**

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

### *Investigation powers*

### **Attendance of witnesses and production of documents etc.**

168.(1) For the purposes of this section, the permitted purposes are the following-

- (a) assisting the GCMA in carrying out any functions, including enforcement functions, exercisable by it under or by virtue of this Part in connection with a

matter that is or has been the subject of a reference or possible reference under section 74 or 85;

- (b) assisting the GCMA or the Minister in carrying out any functions, including enforcement functions, of the GCMA or (as the case may be) the Minister under or by virtue of this Part in connection with a matter that is or has been the subject of a reference or possible reference under section 103 or 121.
- (2) The GCMA may, for a permitted purpose, give notice to any person requiring him-
- (a) to attend at a time and place specified in the notice; and
  - (b) to give evidence to the GCMA or a person nominated by the GCMA for the purpose.
- (3) The GCMA may, for a permitted purpose, give notice to any person requiring him-
- (a) to produce any documents which-
    - (i) are specified or described in the notice, or fall within a category of document which is specified or described in the notice; and
    - (ii) are in that person's custody or under his control; and
  - (b) to produce them at a time and place so specified and to a person so specified.
- (4) The GCMA may, for a permitted purpose, give notice to any person who carries on any business requiring him-
- (a) to supply to the GCMA such estimates, forecasts, returns or other information as may be specified or described in the notice; and
  - (b) to supply it at a time and place, and in a form and manner, so specified and to a person so specified.
- (5) A notice under this section shall -
- (a) specify the permitted purpose for which the notice is given, including the function or functions in question; and
  - (b) include information about the possible consequences of not complying with the notice.
- (6) The GCMA, or any person nominated by it for the purpose, may for a permitted purpose take evidence on oath, and for that purpose may administer oaths.

(7) The person to whom any document is produced in accordance with a notice under this section may, or a permitted purpose, copy the document so produced.

(8) No person shall be required under this section-

- (a) to give any evidence or produce any documents which he could not be compelled to give or produce in civil proceedings before the court; or
- (b) to supply any information which he could not be compelled to supply in evidence in such proceedings.

(9) In subsection (1), “enforcement functions” means-

(a) in relation to the GCMA-

- (i) functions conferred by virtue of section 144 on the GCMA by enforcement orders;
- (ii) functions of the GCMA in relation to the variation, supersession or release of enforcement undertakings or the variation or revocation of enforcement orders;
- (iii) functions of the GCMA under or by virtue of section 132, 133, 140 or 149 in relation to enforcement undertakings or enforcement orders;

(b) in relation to the Minister-

- (i) functions conferred by virtue of section 144 on the Minister by enforcement orders;
- (ii) functions of the Minister in relation to the variation, supersession or release of enforcement undertakings or the variation or revocation of enforcement orders;
- (iii) functions of the Minister under or by virtue of paragraph 4, 5 or 9 of Schedule 7 in relation to enforcement undertakings or enforcement orders.

(10) Any reference in this section to the production of a document includes a reference to the production of a legible and intelligible copy of information recorded otherwise than in legible form.

(11) In this section “the court” means the Supreme Court.

**Transferred EU merger commitments: witnesses, documents etc.**

169. Any power exercisable by the GCMA under section 168 for “permitted purposes” (as mentioned in subsection (1) of that section) is also exercisable by the GCMA under that section for the purposes of assisting the GCMA in carrying out any of its functions under or by virtue of section 155(1) or 156.

**Enforcement of powers under section 168: general.**

170.(1) Where the GCMA considers that a person has, without reasonable excuse, failed to comply with any requirement of a notice under section 168, it may impose a penalty in accordance with section 173.

(2) The GCMA may proceed (whether at the same time or at different times) under subsection (1) and section 95(3) or (as the case may be) 110(3) (including that enactment as applied by section 125(3)) in relation to the same failure.

(3) Where the GCMA considers that a person has intentionally obstructed or delayed another person in the exercise of his powers under section 168(7), it may impose a penalty in accordance with section 173.

(4) A person, subject to subsection (5), commits an offence if he intentionally alters, suppresses or destroys any document which he has been required to produce by a notice under section 168.

(5) A person does not commit an offence under subsection (4) in relation to any act which constitutes a failure to comply with a notice under section 168 if the GCMA has proceeded against that person under subsection (1) above in relation to that failure.

(6) A person who commits an offence under subsection (4) shall be 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.

(7) The GCMA shall not proceed against a person under subsection (1) in relation to an act which constitutes an offence under subsection (4) if that person has been found guilty of that offence.

(8) In deciding whether and, if so, how to proceed under subsection (1) or (3) or section 95(3) or 110(3) (including that enactment as applied by section 125(3)), the GCMA shall have regard to the statement of policy which was most recently published under section 178 at the time when the failure concerned or (as the case may be) the obstruction or delay concerned occurred.

(9) The reference in this section to the production of a document includes a reference to the production of a legible and intelligible copy of information recorded otherwise than in legible form; and the reference to suppressing a document includes a reference to destroying the means of reproducing information recorded otherwise than in legible form.

**Restriction on powers to impose penalties under section 170.**

171.(1) No penalty shall be imposed by virtue of section 170(1) or (3) if more than 4 weeks have passed since the day which is the relevant day in the case in question; but this subsection shall not apply in relation to any variation or substitution of the penalty which is permitted by virtue of this Part.

(2) In the following provisions of this section, “the section 168 power” means the power under section 168 to which the failure or (as the case may be) the obstruction or delay in question relates.

(3) Where the section 168 power is exercised in connection with an enforcement function (within the meaning of that section), the relevant day is the day when the enforcement undertaking concerned is superseded or released or (as the case may be) the enforcement order concerned is revoked.

(4) Except where subsection (3) applies, the relevant day is the day determined in accordance with the following provisions of this section.

(5) Where the section 168 power is exercised for the purpose mentioned in section 168(1)(a) in connection with a matter that is the subject of a possible reference under section 74 or 85, the relevant day is the day when the GCMA finally decides whether to make the reference.

(6) Where the section 168 power is exercised for the purpose mentioned in section 168(1)(a) in connection with a matter that is the subject of a reference under section 74 or 85, the relevant day is the day when the reference is finally determined (see section 136).

(7) Where the section 168 power is exercised for the purpose mentioned in section 168(1)(b) in connection with a matter that is the subject of a possible reference under section 103 or 121, the relevant day is the day when the Minister finally decides whether to make the reference.

(8) Where the section 168 power is exercised for the purpose mentioned in section 168(1)(b) in connection with a matter that is the subject of a reference under section 103 or 121, the relevant day is the day when the reference is finally determined.

(9) Where the section 168 power is exercised for the purposes of assisting the GCMA in carrying out any of its functions under or by virtue of section 155(1) or 156 (see section 169), the relevant day is the day when the transferred EU merger commitments concerned are waived or substituted by the European Commission.



**Section 171: supplementary provision.**

172.(1) For the purpose of section 171(5), the GCMA finally decides whether to make a reference under section 74 or 85 if-

- (a) the GCMA decides that the duty to make such a reference applies;
- (b) the GCMA accepts an undertaking under section 128;
- (c) the GCMA decides not to make such a reference (otherwise than because it has accepted an undertaking under section 128);
- (d) the initial period for the purposes of section 87 expires without the GCMA having complied with the duty under subsection (1) of that section;
- (e) the period permitted by section 129 for the GCMA to make a decision required by subsection (2)(a) or (3) of that section expires without the GCMA having made the decision.

(2) For the purpose of section 171(5), the time when the GCMA finally decides whether to make a reference under section 74 or 85 is-

- (a) in a case falling within subsection (1)(a), the making of the decision that the duty to make such a reference applies;
- (b) in a case falling within subsection (1)(b), the acceptance of the undertaking;
- (c) in a case falling within subsection (1)(c), the making of the decision not to make the reference;
- (d) in a case falling within subsection (1)(d), the expiry of the initial period;
- (e) in a case falling within subsection (1)(e), the expiry of the period in question.

(3) For the purpose of section 171(7), the Minister finally decides whether to make a reference under section 103 or 121 if-

- (a) the Minister makes such a reference;
- (b) the Minister accepts an undertaking under paragraph 2 of Schedule 7;
- (c) the Minister decides not to make such a reference (otherwise than because of the acceptance of an undertaking under paragraph 2 of Schedule 7);

(4) For the purpose of section 171(7), the time when the Minister finally decides whether to make a reference under section 103 or 121 is-

- (a) in a case falling within subsection (3)(a), the making of the reference;
- (b) in a case falling within subsection (3)(b), the acceptance of the undertaking;
- (c) in a case falling within subsection (3)(c), the making of the decision not to make the reference;

(5) Paragraph 6(8) to (10) of Schedule 7 applies for deciding if and when a reference under section 103(2) or (3) or 121(2) is finally determined for the purpose of section 171(8) as it applies for deciding those questions for the purpose of paragraph 6 of Schedule 7.

(6) Paragraph 7(7) to (9) of Schedule 7 applies for deciding if and when a reference under section 103(4) or (5) or 121(3) is finally determined for the purpose of section 171(8) as it applies for deciding those questions for the purpose of the definition of “relevant period” in paragraph 7(6) of that Schedule.

#### **Penalties.**

173.(1) A penalty imposed under section 170(1) or (3) shall be of such amount as the GCMA considers appropriate.

(2) The amount may, in the case of a penalty imposed under section 170(1), be a fixed amount, an amount calculated by reference to a daily rate or a combination of a fixed amount and an amount calculated by reference to a daily rate.

(3) The amount shall, in the case of a penalty imposed under section 170(3), be a fixed amount.

(4) No penalty imposed under section 170(1) shall-

- (a) in the case of a fixed amount, exceed such amount as the Minister may by order specify;
- (b) in the case of an amount calculated by reference to a daily rate, exceed such amount per day as the Minister may so specify; and
- (c) in the case of a fixed amount and an amount calculated by reference to a daily rate, exceed such fixed amount and such amount per day as the Minister may so specify.

(5) In imposing a penalty by reference to a daily rate-

- (a) no account shall be taken of any days before the service of the notice under section 174 on the person concerned; and
- (b) unless the GCMA determines an earlier date (whether before or after the penalty is imposed), the amount payable shall cease to accumulate at the beginning of-
  - (i) the day on which the requirement of the notice concerned under section 168 is satisfied; or
  - (ii) if earlier, the day which is the relevant day in the case in question for the purposes of section 171.

(6) No penalty imposed under section 170(3) shall exceed such amount as the Minister may by order specify.

(7) An order under subsection (4) or (6) shall not specify-

- (a) in the case of a fixed amount, an amount exceeding £30,000;
- (b) in the case of an amount calculated by reference to a daily rate, an amount per day exceeding £15,000; and
- (c) in the case of a fixed amount and an amount calculated by reference to a daily rate, a fixed amount exceeding £30,000 and an amount per day exceeding £15,000.

(8) Before making an order under subsection (4) or (6) the Minister shall consult the GCMA and such other persons as he considers appropriate.

**Penalties: main procedural requirements.**

174.(1) As soon as practicable after imposing a penalty under section 170(1) or (3), the GCMA shall give notice of the penalty.

(2) The notice shall state-

- (a) that the GCMA has imposed a penalty on the person concerned;
- (b) whether the penalty is of a fixed amount, of an amount calculated by reference to a daily rate or of both a fixed amount and an amount calculated by reference to a daily rate;
- (c) the amount or amounts concerned and, in the case of an amount calculated by reference to a daily rate, the day on which the amount first starts to accumulate and the day or days on which it might cease to accumulate;

- (d) the failure or (as the case may be) the obstruction or delay which the GCMA considers gave it the power to impose the penalty;
- (e) any other facts which the GCMA considers justify the imposition of a penalty and the amount or amounts of the penalty;
- (f) the manner in which, and place at which, the penalty is required to be paid to the GCMA;
- (g) the date or dates, no earlier than the end of the relevant period beginning with the date of service of the notice on the person concerned, by which the penalty or (as the case may be) different portions of it are required to be paid;
- (h) that the penalty or (as the case may be) different portions of it may be paid earlier than the date or dates by which it or they are required to be paid; and
- (i) that the person concerned has the right to apply under subsection (3) below or to appeal under section 176 and the main details of those rights.

(3) The person against whom the penalty was imposed may, within 14 days of the date of service on him of a notice under subsection (1), apply to the GCMA for it to specify a different date or (as the case may be) different dates by which the penalty or (as the case may be) different portions of it are to be paid.

(4) A notice under this section shall be given by-

- (a) serving a copy of the notice on the person on whom the penalty was imposed; and
- (b) publishing the notice.

(5) In this section “relevant period” means the period of 28 days mentioned in subsection (3) of section 176 or, if another period is specified by the Minister under that subsection, that period.

#### **Payments and interest by instalments.**

175.(1) If the whole or any portion of a penalty is not paid by the date by which it is required to be paid, the unpaid balance from time to time shall carry interest at the rate for the time being pursuant to section 36 of the Supreme Court Act.

(2) Where an application has been made under section 174(3), the penalty shall not be required to be paid until the application has been determined, withdrawn or otherwise dealt with.

(3) If a portion of a penalty has not been paid by the date required for it, the GCMA may, where it considers it appropriate to do so, require so much of the penalty as has not already been paid (and is capable of being paid immediately) to be paid immediately.

(4) Any sums received by the GCMA in or towards the payment of a penalty, or interest on a penalty, shall be paid into the Consolidated Fund.

**Appeals in relation to penalties.**

176.(1) This section applies if a person on whom a penalty is imposed under section 170(1) or (3) is aggrieved by-

- (a) the imposition or nature of the penalty;
- (b) the amount or amounts of the penalty; or
- (c) the date by which the penalty is required to be paid or (as the case may be) the different dates by which portions of the penalty are required to be paid.

(2) The person aggrieved may apply to the Supreme Court.

(3) If a copy of the notice under section 174(1) was served on the person on whom the penalty was imposed, the application to the Supreme Court shall, subject to subsection (4), be made within-

- (a) the period of 28 days starting with the day on which the copy was served on the person concerned; or
- (b) such other period as the Minister may by order specify.

(4) If the application relates to a decision of the GCMA on an application by the person on whom the penalty was imposed under section 174(3), the application to the Supreme Court shall be made within-

- (a) the period of 28 days starting with the day on which the person concerned is notified of the decision; or
- (b) such other period as the Minister may by order specify.

(5) On an application under this section, the Supreme Court may-

- (a) quash the penalty;
- (b) substitute a penalty of a different nature or of such lesser amount or amounts as the Supreme Court considers appropriate; or

- (c) in a case falling within subsection (1)(c), substitute for the date or dates imposed by the GCMA an alternative date or dates;

if it considers it appropriate to do so.

(6) The Supreme Court shall not substitute a penalty of a different nature under subsection (5)(b) unless it considers that the person on whom the penalty is imposed will, or is likely to, pay less under the substituted penalty than he would have paid under the original penalty.

(7) Where an application has been made under this section-

- (a) the penalty shall not be required to be paid until the application has been determined, withdrawn or otherwise dealt with; and
- (b) the GCMA may agree to reduce the amount or amounts of the penalty in settlement of the application.

(8) Where the Supreme Court substitutes a penalty of a different nature or of a lesser amount or amounts it may require the payment of interest on the substituted penalty at such rate or rates, and from such date or dates, as it considers appropriate.

(9) Where the Supreme Court specifies as a date by which the penalty, or a portion of the penalty, is to be paid a date before the determination of the application under this section it may require the payment of interest on the penalty, or portion, from that date at such rate as it considers appropriate.

(10) An appeal lies to the Court of Appeal-

- (a) on a point of law arising from a decision of the Supreme Court in proceedings under this section; or
- (b) from a decision of the Supreme Court in such proceedings as to the amount or amounts of a penalty.

(11) An appeal under subsection (10)-

- (a) may be brought by a party to the proceedings before the Supreme Court; and
- (b) requires the permission of the Supreme Court or the Court of Appeal.

### **Recovery of penalties.**

177. Where a penalty imposed under section 170(1) or (3), or any portion of such a penalty, has not been paid by the date on which it is required to be paid and-

- (a) no application relating to the penalty has been made under section 176 during the period within which such an application may be made, or
- (b) any such application which has been made has been determined, withdrawn or otherwise dealt with,

the GCMA may recover from the person on whom the penalty was imposed any of the penalty and any interest which has not been paid; and such penalty and interest may be recovered as a civil debt due to the GCMA.

**Statement of policy.**

178.(1) The GCMA shall prepare and publish a statement of policy in relation to the enforcement of notices under section 168.

(2) The statement shall, in particular, include a statement about the considerations relevant to the determination of the nature and amount of any penalty imposed under section 170(1) or (3).

(3) The GCMA may revise its statement of policy and, where it does so, it shall publish the revised statement.

(4) The GCMA shall consult such persons as it considers appropriate when preparing or revising its statement of policy.

**False or misleading information.**

179.(1) A person commits an offence if-

- (a) he supplies any information to the GCMA or the Minister in connection with any of their functions under this Part;
- (b) the information is false or misleading in a material respect; and
- (c) he knows that it is false or misleading in a material respect or is reckless as to whether it is false or misleading in a material respect.

(2) A person commits an offence if he-

- (a) supplies any information to another person which he knows to be false or misleading in a material respect; or
- (b) recklessly supplies any information to another person which is false or misleading in a material respect;

knowing that the information is to be used for the purpose of supplying information to the GCMA or the Minister in connection with any of their functions under this Part.

- (3) A person who commits an offence under subsection (1) or (2) shall be 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.

### *Reports*

#### **Excisions from reports.**

180.(1) Subsection (2) applies where the Minister is under a duty to publish-

- (a) a report of the GCMA under section 102 or 120;
- (b) a report of the GCMA under section 109 or 125.

(2) The Minister may exclude a matter from the report concerned if he considers that publication of the matter would be inappropriate.

(3) In deciding what is inappropriate for the purposes of subsection (2) the Minister shall have regard to the considerations mentioned in section 284.

(4) The body which has prepared the report shall advise the Minister as to the matters (if any) which it considers should be excluded by him under subsection (2).

(5) References in section 166(11) to the giving or laying of a report of the GCMA shall be construed as references to the giving or laying of the report as published.

#### **Minority reports of GCMA.**

181.(1) Subsection (2) applies where, on a reference to the GCMA under this Part, a member of a group constituted in connection with the reference, disagrees with any decisions contained in the report of the GCMA under this Part as the decisions of the GCMA.

(2) The report shall, if the member so wishes, include a statement of his disagreement and of his reasons for disagreeing.

#### **Review of decisions under Part IV.**

182.(1) Any person aggrieved by a decision mentioned in subsection (2) may apply to the Supreme Court for a review of that decision.



(2) For this purpose “decision” -

- (a) does not include a decision to impose a penalty under section 152(1) or 170(1) or (3); but
- (b) includes a failure to take a decision permitted or required by this Part in connection with a reference or possible reference.

(3) Except in so far as a direction to the contrary is given by the Supreme Court, the effect of the decision is not suspended by reason of the making of the application.

(4) In determining such an application the Supreme Court shall apply the same principles as would be applied by a court on an application for judicial review.

(5) The Supreme Court may-

- (a) dismiss the application 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, refer the matter back to the GCMA with a direction to reconsider and make a new decision in accordance with the ruling of the Supreme Court.

(6) An appeal lies on any point of law arising from a decision of the Supreme Court under this section to the appropriate court.

(7) An appeal under subsection (6) requires the permission of the Supreme Court or the Court of Appeal.

#### **Fees.**

183.(1) The Minister may by order require the payment to him or the GCMA of such fees as may be prescribed by the order in connection with the exercise by the Minister or the GCMA of their functions under or by virtue of this Part.

(2) An order under this section may, in particular, provide for fees to be payable-

- (a) in respect of a merger notice; or
- (b) on the occurrence of any event specified in the order.

(3) The events that may be specified in an order under this section by virtue of subsection (2)(b) include, in particular-

- (a) the decision by the GCMA in relation to a possible reference under section 74 or 85 that it is or may be the case that a relevant merger situation has been created or (as the case may be) that arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation;
- (b) the decision by the Minister in relation to a possible reference under section 103 that it is or may be the case that a relevant merger situation has been created or (as the case may be) that arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation;
- (c) the decision by the Minister in relation to a possible reference under section 121 that-
  - (i) it is or may be the case that a special merger situation has been created or (as the case may be) that arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a special merger situation; and
  - (ii) one or more than one consideration mentioned in the special intervention notice is relevant to a consideration of the special merger situation concerned.

(4) An order under this section may, in particular, contain provision-

- (a) for ascertaining the persons by whom fees are payable;
- (b) specifying whether any fee is payable to the Minister or the GCMA;
- (c) for the amount of any fee to be calculated by reference to matters which may include the value of the turnover of the enterprises concerned;
- (d) as to the time when any fee is to be paid; and
- (e) for the repayment by the Minister or the GCMA of the whole or part of any fee in specified circumstances.

(5) For the purposes of subsection (4)(c) the turnover of an enterprise shall be determined in accordance with such provisions as may be specified in an order under this section.

(6) Provision made by virtue of subsection (5) may, in particular, include provision-

- (a) as to the amounts which are, or which are not, to be treated as comprising an enterprise's turnover;

- (b) as to the date or dates by reference to which an enterprise's turnover is to be determined;
- (c) restricting the turnover to be taken into consideration to turnover which has a connection of a particular description with Gibraltar.

(7) An order under this section may, in particular, in connection with provisions of the kind mentioned in subsection (5) make provision enabling the Minister or the GCMA to determine matters of a description specified in the order (including any of the matters mentioned in paragraphs (a) to (c) of subsection (6)).

(8) Fees paid to the Minister or the GCMA under this section shall be paid into the Consolidated Fund.

**Power to alter share of supply test.**

184.(1) The Minister may by order amend or replace the conditions which determine for the purposes of this Part whether a relevant merger situation has been created.

(2) The Minister may exercise the power under subsection (1)-

- (a) to amend or replace the conditions mentioned in paragraphs (a) and (b) of subsection (1) of section 75;
- (b) to amend or replace the condition mentioned in paragraph (a) of subsection (2) of that section.

(3) In exercising the power under subsection (1) to amend or replace the condition mentioned in paragraph (b) of subsection (2) of section 75 or any condition which for the time being applies instead of it, the Minister shall, in particular, have regard to the desirability of ensuring that any amended or new condition continues to operate by reference to the degree of commercial strength which results from the enterprises concerned having ceased to be distinct.

(4) Before making an order under this section the Minister shall consult the GCMA.

**Offences by bodies corporate.**

185.(1) Where an offence under this Part committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of-

- (a) a director, manager, secretary or other similar officer of the body corporate, or
- (b) a person purporting to act in such a capacity,

he as well as the body corporate commits the offence and shall be liable to be proceeded against and punished accordingly.

(2) Where the affairs of a body corporate are managed by its members, subsection (1) 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.

### **Service of documents.**

186.(1) Any document required or authorised by virtue of this Part to be served on any person may be served-

- (a) by delivering it to him or by leaving it at his proper address or by sending it by post to him at that address;
- (b) if the person is a body corporate other than a limited liability partnership, by serving it in accordance with paragraph (a) on the secretary of the body;
- (c) if the person is a limited liability partnership, by serving it in accordance with paragraph (a) on a member of the partnership; or
- (d) if the person is a partnership, by serving it in accordance with paragraph (a) on a partner or a person having the control or management of the partnership business.

(2) For the purposes of this section, the proper address of any person on whom a document is to be served shall be his last known address, except that-

- (a) in the case of service on a body corporate (other than a limited liability partnership) or its secretary, it shall be the address of the registered or principal office of the body;
- (b) in the case of service on a limited liability partnership or a member of the partnership, it shall be the address of the registered or principal office of the partnership;
- (c) in the case of service on a partnership or a partner or a person having the control or management of a partnership business, it shall be the address of the principal office of the partnership.

(3) For the purposes of subsection (2) the principal office of a company constituted under the law of a country or territory outside Gibraltar or of a partnership carrying on business outside Gibraltar is its principal office within Gibraltar.

(4) Subsection (5) applies if a person to be served under this Part with any document by another has specified to that other an address within Gibraltar other than his proper address (as determined under subsection (2)) as the one at which he or someone on his behalf will accept documents of the same description as that document.

(5) In relation to that document, that address shall be treated as his proper address for the purposes of this section, instead of that determined under subsection (2).

(6) Any notice in writing or other document required or authorised by virtue of this Part to be served on any person may be served on that person by transmitting the text of the notice or other document to him by means of an electronic communications network or by other means but while in electronic form provided the text is received by that person in legible form and is capable of being used for subsequent reference.

(7) This section does not apply to any document if rules of court make provision about its service.

(8) In this section references to serving include references to similar expressions (such as giving or sending).

### **Associated persons.**

187.(1) Persons, and any bodies corporate which they or any of them control, shall be treated as one person-

- (a) for the purpose of deciding under section 79 whether any two enterprises have been brought under common ownership or common control;
- (b) for the purpose of determining what activities are carried on by way of business by any one person so far as that question arises in connection with paragraph 13(2) of Schedule 8.

(2) Subsection (1) shall not exclude from section 79 any case which would otherwise fall within that section.

(3) A reference under section 74, 85, 103 or 121 (whether or not made by virtue of this section) may be framed so as to exclude from consideration, either altogether or for a specified purpose or to a specified extent, any matter which, apart from this section, would not have been taken into account on that reference.

(4) For the purposes of this section-

- (a) any individual and that individual's spouse, civil partner or partner and any relative, or spouse, civil partner or partner of a relative, of that individual or of that individual's spouse, civil partner or partner;
- (b) any person in his capacity as trustee of a settlement and the settlor or grantor and any person associated with the settlor or grantor;
- (c) persons carrying on business in partnership and the spouse, civil partner or partner and relatives of any of them; or
- (d) two or more persons acting together to secure or exercise control of a body of persons corporate or unincorporate or to secure control of any enterprise or assets,

shall be regarded as associated with one another.

(5) The reference in subsection (1) to bodies corporate which associated persons control shall be construed in accordance with section 79(3) and (4).

(6) In this section "relative" means a brother, sister, uncle, aunt, nephew, niece, lineal ancestor or descendant (the stepchild of any person, or anyone adopted by a person, whether legally or otherwise, as his child being regarded as a relative or taken into account to trace a relationship in the same way as that person's child); and references to a spouse, civil partner or partner shall include a former spouse, civil partner or partner.

### **Supply of services and market for services etc.**

188.(1) References in this Part to the supply of services shall be construed in accordance with this section; and references in this Part to a market for services and other related expressions shall be construed accordingly.

(2) The supply of services does not include the provision of services under a contract of service or of apprenticeship whether it is express or implied and (if it is express) whether it is oral or in writing.

(3) The supply of services includes-

- (a) performing for gain or reward any activity other than the supply of goods;

(b) rendering services to order;

(c) the provision of services by making them available to potential users.

(4) The supply of services includes making arrangements for the use of computer software or for granting access to data stored in any form which is not readily accessible.

(5) The supply of services includes making arrangements by means of a relevant agreement for sharing the use of electronic communications apparatus.

(6) The supply of services includes permitting or making arrangements to permit the use of land in such circumstances as the Minister may by order specify.

### **Other interpretation provisions.**

189.(1) In this Part, unless the context otherwise requires-

“action” includes omission; and references to the taking of action include references to refraining from action;

“agreement” means any agreement or arrangement, in whatever way and whatever form it is made, and whether it is, or is intended to be, legally enforceable or not;

“business” includes a professional practice and includes any other undertaking which is carried on for gain or reward or which is an undertaking in the course of which goods or services are supplied otherwise than free of charge;

“change of circumstances” includes any discovery that information has been supplied which is false or misleading in a material respect;

“consumer” means any person who is-

(a) a person to whom goods are or are sought to be supplied (whether by way of sale or otherwise) in the course of a business carried on by the person supplying or seeking to supply them; or

(b) a person for whom services are or are sought to be supplied in the course of a business carried on by the person supplying or seeking to supply them;

and who does not receive or seek to receive the goods or services in the course of a business carried on by him;

“customer” includes a customer who is not a consumer;

“enterprise” means the activities, or part of the activities, of a business;

“goods” includes buildings and other structures, and also includes ships, aircraft and hovercraft;

“modify” includes amend or repeal; “notice” means notice in writing;

“price” includes any charge or fee (however described);

“subsidiary” has the meaning given in the Companies Act 2014;

“supply”, in relation to the supply of goods, includes supply by way of sale, lease, hire or hire-purchase, and, in relation to buildings or other structures, includes the construction of them by a person for another person;

“the Gibraltar financial system” means the financial system in Gibraltar.

(2) For the purposes of this Part any two bodies corporate are interconnected if-

- (a) one of them is a body corporate of which the other is a subsidiary; or
- (b) both of them are subsidiaries of one and the same body corporate;

and in this Part “interconnected bodies corporate” shall be construed accordingly and “group of interconnected bodies corporate” means a group consisting of two or more bodies corporate all of whom are interconnected with each other.

(3) References in this Part to a person carrying on business include references to a person carrying on business in partnership with one or more other persons.

(4) Any duty to publish which is imposed on a person by this Part shall, unless the context otherwise requires, be construed as a duty on that person to publish in such manner as he considers appropriate for the purpose of bringing the matter concerned to the attention of those likely to be affected by it.

## **PART V**

### **MARKET STUDIES AND MARKET INVESTIGATIONS**

#### **CHAPTER 1**

#### **MARKET STUDIES AND MARKET INVESTIGATION REFERENCES**

##### *Market studies*



**Duty to publish market study notice.**

190.(1) Where the GCMA is proposing to carry out its functions under section 69 in relation to a matter for the purposes mentioned in subsection (2), the GCMA must publish a notice under this section (referred to in this Part as a “market study notice”).

(2) The purposes are-

- (a) to consider the extent to which a matter in relation to the acquisition or supply of goods or services of one or more than one description in Gibraltar has or may have effects adverse to the interests of consumers; and
- (b) to assess the extent to which steps can and should be taken to remedy, mitigate or prevent any such adverse effects.

(3) A market study notice shall, in particular, specify-

- (a) the matter in relation to which the GCMA is proposing to carry out its functions under section 69;
- (b) the period during which representations may be made to the GCMA in relation to the matter; and
- (c) the dates by which the GCMA is required to comply with the requirements imposed on it by sections 192 and 193.

**Power of GCMA to make references.**

191.(1) The GCMA may, subject to subsection (5), make a reference to its chair for the constitution of a group under Schedule 11 if the GCMA has reasonable grounds for suspecting that any feature, or combination of features, of a market in Gibraltar for goods or services prevents, restricts or distorts competition in connection with the supply or acquisition of any goods or services in Gibraltar.

(2) For the purposes of this Part any reference to a feature of a market in Gibraltar for goods or services shall be construed as a reference to-

- (a) the structure of the market concerned or any aspect of that structure;
- (b) any conduct (whether or not in the market concerned) of one or more than one person who supplies or acquires goods or services in the market concerned; or
- (c) any conduct relating to the market concerned of customers of any person who supplies or acquires goods or services.

(3) In a case where the feature or each of the features concerned falls within subsection (2)(b) or (c), a reference under subsection (1) may be made in relation to more than one market in Gibraltar for goods or services.

(4) In subsection (2) “conduct” includes any failure to act (whether or not intentional) and any other unintentional conduct.

(5) No reference shall be made under this section if-

- (a) the making of the reference is prevented by section 230(1) or (2); or
- (b) a reference has been made under section 195 or 207(6) in relation to the same matter but has not been finally determined.

(6) References in this Part to a market investigation reference being finally determined shall be construed in accordance with section 260(3) to (6).

(7) In this Part-

“cross-market reference” means a reference under this section which falls within subsection (3) or a reference under section 195 which falls within subsection (4) of that section (and see section 207);

“market in Gibraltar” includes so far as it operates in Gibraltar, any market which operates there and in another country or territory or in a part of another country or territory;

“market investigation reference” means a reference under this section or section 195 or 207 (6);

“ordinary reference” means a reference under this section or section 195 which is not a cross-market reference (and see section 207);

and references to a market for goods or services include references to a market for goods and services.

**Decisions about references under section 191: consultation.**

192.(1) This section applies to a case where the GCMA has published a market study notice and-

- (a) the GCMA is proposing to make a reference under section 191 in relation to the matter specified in the notice; or

- (b) a representation has been made to the GCMA within the period specified in the notice under section 190(3)(b) to the effect that such a reference should be made but the GCMA is proposing not to make such a reference.

(2) The GCMA shall-

- (a) publish notice of the proposal concerned; and
- (b) consult the relevant persons about the proposal, in such manner as it considers practicable, before deciding whether to make a reference.

(3) The GCMA may, for the purposes of subsection (1), ignore any representation which it considers to be frivolous or vexatious.

(4) For the purposes of subsection (2), a person is a “relevant person” if the GCMA considers that its decision whether to make a reference is likely to have a substantial impact on the person’s interests.

(5) In consulting a person for the purposes of this section, the GCMA shall, so far as practicable, give its reasons for the proposal.

(6) In considering what is practicable for the purposes of this section, the GCMA shall, in particular, have regard to-

- (a) the restrictions imposed by the time-table for making the decision (see section 193); and
- (b) any need to keep what is proposed, or the reasons for it, confidential.

**Market studies and the making of decisions to refer: time-limits.**

193.(1) Where the GCMA has published a market study notice in a case to which section 192 applies, the GCMA shall, within the period of 6 months beginning with the date on which it publishes the notice-

- (a) publish the notice under section 192(2)(a); and
- (b) begin the process of consultation under section 192(2)(b) (but the GCMA need not complete the process within that period).

(2) Subsection (3) applies where-

- (a) the GCMA has published a market study notice;

(b) no representation has been made to the GCMA within the period specified in the notice under section 192(3)(b) to the effect that a reference under section 191 should be made in relation to the matter specified in the notice; and

(c) the GCMA has decided not to make such a reference.

(3) The GCMA shall, within the period of 6 months beginning with the date on which it publishes the market study notice, publish notice of the decision not to make a reference.

(4) Where the GCMA has published a market study notice it shall, within the period of 12 months beginning with the date on which it publishes the notice, prepare and publish a report (referred to in this Part as a “market study report”) which sets out-

(a) the findings of the GCMA in relation to the matter specified in the notice; and

(b) the action (if any) which the GCMA proposes to take in relation to the matter.

(5) In a case to which section 192 applies, the market study report shall, in particular, contain-

(a) the decision of the GCMA to make a reference under section 191 in relation to the matter specified in the market study notice, the decision to accept an undertaking under section 228 instead of making such a reference or (as the case may be) the decision otherwise not to make such a reference;

(b) the GCMA’s reasons for the decision; and

(c) such information as the GCMA considers appropriate for facilitating a proper understanding of its reasons for the decision.

(6) Where a market study report contains a decision of the GCMA to make a reference under section 191 in relation to a matter, the GCMA shall, at the same time as it publishes the report, make the reference.

(7) This section is subject to section 207 (duty of Minister to refer in public interest intervention cases).

**Time-limits under section 193: supplementary.**

194.(1) The Minister may by order amend section 193 so as to alter one or more of the following periods-

(a) the period of 6 months mentioned in subsection (1) or (3) or any period for the time being mentioned in either of those subsections in substitution for that period;

(b) the period of 12 months mentioned in subsection (4) or any period for the time being there mentioned in substitution for that period.

(2) But no alteration may be made by virtue of subsection (1) which results in-

(a) the period for the time being mentioned in subsection (1) or (3) exceeding 6 months; or

(b) the period for the time being mentioned in subsection (4) exceeding 12 months.

(3) Before making an order under this section the Minister shall consult the GCMA and such other persons as the Minister considers appropriate.

**Ministerial power to make references.**

195.(1) Subsection (3) applies where, in relation to any goods or services-

(a) the Minister is not satisfied with a decision of the GCMA not to make a reference under section 191; and

(b) in a case in which the GCMA has published a market study notice under section 190, the period permitted by section 193 for the preparation and publication by the GCMA of the market study report has expired.

(2) Subsection (3) also applies where, in relation to any goods or services, the Minister-

(a) has brought to the attention of the GCMA information which the Minister considers to be relevant to the question of whether the GCMA should make a reference under section 191; but

(b) is not satisfied that the GCMA will decide, within such period as the Minister considers to be reasonable, whether to publish a market study notice in relation to the matter concerned.

(3) The Minister may, subject to subsection (4), make a reference to the chair of the GCMA for the constitution of a group under Schedule 11 if he has reasonable grounds for suspecting that any feature, or combination of features, of a market in Gibraltar for goods or services prevents, restricts or distorts competition in connection with the supply or acquisition of any goods or services in Gibraltar.

(4) In a case where the feature or each of the features concerned falls within section 191(2)(b) or (c), a reference under subsection (3) may be made in relation to more than one market in Gibraltar for goods or services.

(5) No reference shall be made under this section if-

- (a) the making of the reference is prevented by section 230(1) or (2); or
- (b) a reference has been made under section 207(6) in relation to the same matter but has not been finally determined.

**Contents of references.**

196.(1) A market investigation reference shall, in particular, specify-

- (a) the enactment under which it is made;
- (b) the date on which it is made;
- (c) in the case of an ordinary reference, the description of goods or services to which the feature or combination of features concerned relates; and
- (d) in the case of a cross-market reference, the feature or features concerned and the descriptions of goods or services to which it or they relate.

(2) A market investigation reference may be framed so as to require the group constituted by the chair of the GCMA in respect of the reference to confine its investigation into the effects of features of markets in Gibraltar for goods or services of a description specified in the reference to the effects of features of such of those markets as exist in connection with-

- (a) a supply or, in the case of a crossmarket reference, supplies, of a description specified in the reference, of the goods or services concerned; or
- (b) an acquisition or, in the case of a cross-market reference, acquisitions, of a description specified in the reference, of the goods or services concerned.

(3) A description of the kind mentioned in subsection (2)(a) or (b) may, in particular, be by reference to-

- (a) the place where the goods or services are supplied or acquired; or
- (b) the persons by or to whom they are supplied or by or from whom they are acquired.

**Functions to be exercised by GCMA groups.**

197.(1) Where a reference is made to the chair of the GCMA under section 191, 195 or 207 for the constitution of a group under Schedule 11, the functions of the GCMA under or by virtue of the following provisions of this Part in relation to the matter concerned are to be carried out on behalf of the GCMA by the group so constituted-

- (a) sections 198 to 204, except for section 199(1);

- (b) sections 208 to 216, 221, 222 and 225;
- (c) sections 231 and 232;
- (d) section 233;
- (e) section 234, except for subsection (7) of that section;
- (f) section 235, except for subsection (5) of that section;
- (g) section 236(4), so far as relating to an enforcement undertaking or enforcement order made on behalf of the GCMA by the group;
- (h) section 238(2)(b), so far as relating to an enforcement order made on behalf of the GCMA by the group;
- (i) section 241, so far as relating to an enforcement undertaking or enforcement order made on behalf of the GCMA by the group;
- (j) section 242;
- (k) section 243, so far as relating to a decision mentioned in paragraph (a)(iii) of the definition of relevant decision in subsection (6) of that section;
- (l) section 246, so far as relating to anything done on behalf of the GCMA by the group;
- (m) section 248, where the permitted purpose in question relates to a function that (by virtue of this section) is being or is to be carried out on behalf of the GCMA by the group;
- (n) sections 249 to 252, so far as relating to a notice given under section 248 on behalf of the GCMA by the group;
- (o) section 256(5)(b), so far as relating to a decision of the group;
- (p) Schedule 10, so far as relating to an enforcement undertaking or enforcement order which the group is considering accepting or making, or which the group has accepted or made, on behalf of the GCMA.

(2) Nothing in subsection (1) prevents the GCMA Board from carrying out a function of the GCMA under or by virtue of the following provisions of this Part where the group constituted as mentioned in subsection (1) has ceased to exist-

- (a) section 234 and Schedule 10, so far as relating to the making of an order under section 234;
- (b) sections 233 to 235 and Schedule 10, so far as relating to the variation, supersession or release of enforcement undertakings or the variation or revocation of enforcement orders;
- (c) section 236(4);
- (d) section 238(b);
- (e) section 241.

**Questions to be decided on market investigation references.**

198.(1) The GCMA shall, on an ordinary reference, decide whether any feature, or combination of features, of each relevant market prevents, restricts or distorts competition in connection with the supply or acquisition of any goods or services in Gibraltar.

(2) The GCMA shall, on a cross-market reference, decide in relation to each feature and each combination of the features specified in the reference, whether the feature or combination of features, as it relates to goods or services of one or more than one of the descriptions so specified, prevents, restricts or distorts competition in connection with the supply or acquisition of any goods or services in Gibraltar.

(3) For the purposes of this Part, in relation to an ordinary reference, there is an adverse effect on competition if any 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 Gibraltar.

(4) For the purposes of this Part, in relation to a cross-market reference, there is an adverse effect on competition if a feature or a combination of the features specified in the reference, as that feature or combination of features relates to goods or services of one or more than one of the descriptions so specified, prevents, restricts or distorts competition in connection with the supply or acquisition of any goods or services in Gibraltar.

(5) In subsections (1) and (3) “relevant market” means-

- (a) in the case of subsection (3) so far as it applies in connection with a possible reference, a market in Gibraltar-
  - (i) for goods or services of a description to be specified in the reference; and



(ii) which would not be excluded from investigation by virtue of section 196(2); and

(b) in any other case, a market in Gibraltar-

(i) for goods or services of a description specified in the reference concerned; and

(ii) which is not excluded from investigation by virtue of section 196(2).

(6) The GCMA shall, if it has decided on a market investigation reference that there is an adverse effect on competition, decide the following additional questions-

(a) whether action should be taken by it under section 202 for the purpose of remedying, mitigating or preventing the adverse effect on competition concerned or any detrimental effect on customers so far as it has resulted from, or may be expected to result from, the adverse effect on competition;

(b) whether it should recommend the taking of action by others for the purpose of remedying, mitigating or preventing the adverse effect on competition concerned or any detrimental effect on customers so far as it has resulted from, or may be expected to result from, the adverse effect on competition; and

(c) in either case, if action should be taken, what action should be taken and what is to be remedied, mitigated or prevented.

(7) For the purposes of this Part, in relation to a market investigation reference, there is a detrimental effect on customers if there is a detrimental effect on customers or future customers in the form of-

(a) higher prices, lower quality or less choice of goods or services in any market in Gibraltar (whether or not the market or markets to which the feature or features concerned relate); or

(b) less innovation in relation to such goods or services.

(8) In deciding the questions mentioned in subsection (6), the GCMA shall, in particular, have regard to the need to achieve as comprehensive a solution as is reasonable and practicable to the adverse effect on competition and any detrimental effects on customers so far as resulting from the adverse effect on competition.

(9) In deciding the questions mentioned in subsection (6), the GCMA may, in particular, have regard to the effect of any action on any relevant customer benefits of the feature or features of the market or markets concerned.

(10) For the purposes of this Part a benefit is a relevant customer benefit of a feature or features of a market if-

- (a) it is a benefit to customers or future customers in the form of-
  - (i) lower prices, higher quality or greater choice of goods or services in any market in Gibraltar (whether or not the market or markets to which the feature or features concerned relate); or
  - (ii) greater innovation in relation to such goods or services; and
- (b) the GCMA or (as the case may be) the Minister believes that-
  - (i) the benefit has accrued as a result (whether wholly or partly) of the feature or features concerned or may be expected to accrue within a reasonable period as a result (whether wholly or partly) of that feature or those features; and
  - (ii) the benefit was, or is, unlikely to accrue without the feature or features concerned.

**Variation of market investigation references.**

199.(1) The GCMA or may at any time vary a market investigation reference made by it under section 191 or (as the case may be) by the Minister under section 195.

(2) The Minister shall consult the GCMA before varying any such reference made by him.

(3) Subsection (2) shall not apply if the GCMA has requested the variation concerned.

**Investigations and reports on market investigation references.**

200.(1) The GCMA shall prepare and publish a report on a market investigation reference within the period permitted by section 201.

(2) The report shall, in particular, contain-

- (a) the decisions of the GCMA on the questions which it is required to answer by virtue of section 198;
- (b) its reasons for its decisions; and
- (c) such information as the GCMA considers appropriate for facilitating a proper understanding of those questions and of its reasons for its decisions.

(3) The GCMA shall carry out such investigations as it considers appropriate for the purposes of preparing a report under this section.

(4) Where a reference has been made by the Minister under section 195 the GCMA shall, at the same time as the report under this section is published, give it to the Minister.

(5) Where a reference has been made by the GCMA under section 191 or by the Minister under section 195 in circumstances in which a reference could have been made by a relevant sectoral regulator under section 191 as it has effect by virtue of a relevant sectoral enactment, the GCMA shall, at the same time as the report under this section is published, give a copy of it to the relevant sectoral regulator concerned.

(6) In this Part “relevant sectoral enactment” means such enactment as the Minister may by order prescribe.

(7) In this Part “relevant sectoral regulator” means such authority as the Minister may by order prescribe.

#### **Time-limits for market investigations and reports.**

201.(1) The GCMA shall prepare and publish its report under section 200 within the period of 18 months beginning with the date of the market investigation reference concerned.

(2) Subsection (1) is subject to section 225(3) and (5).

(3) The GCMA may extend, by no more than 6 months, the period within which its report under section 200 is to be prepared and published if it considers that there are special reasons for doing so.

(4) An extension under subsection (3) shall come into force when published under section 246.

(5) No more than one extension is possible under subsection (3).

(6) The Minister may by order amend this section so as to alter one or more of the following periods-

(a) the period of 18 months mentioned in subsection (1) or any period for the time being there mentioned in substitution for that period;

(b) the period of 6 months mentioned in subsection (3) or any period for the time being there mentioned in substitution for that period.

(7) But no alteration shall be made by virtue of subsection (6) which results in-

- (a) the period for the time being mentioned in subsection (1) exceeding 18 months; or
- (b) the period for the time being mentioned in subsection (3) exceeding 6 months.

(8) An order under subsection (6) shall not affect any period of time within which the GCMA is under a duty to prepare and publish its report under section 200 in relation to a market investigation reference if the GCMA is already under that duty in relation to that reference when the order is made.

(9) Before making an order under subsection (6) the Minister shall consult the GCMA and such other persons as he considers appropriate.

(10) References in this Part to the date of a market investigation reference shall be construed as references to the date specified in the reference as the date on which it is made.

#### **Duty to remedy adverse effects.**

202.(1) Subsection (2) applies where a report of the GCMA has been prepared and published under section 200 within the period permitted by section 201 and contains the decision that there is one or more than one adverse effect on competition.

(2) The GCMA shall, within the period permitted by section 203, in relation to each adverse effect on competition, take such action under section 233 or 235 as it considers to be reasonable and practicable-

- (a) to remedy, mitigate or prevent the adverse effect on competition concerned; and
- (b) to remedy, mitigate or prevent any detrimental effects on customers so far as they have resulted from, or may be expected to result from, the adverse effect on competition.

(3) The decisions of the GCMA under subsection (2) shall be consistent with its decisions as included in its report by virtue of section 198(6) unless there has been a material change of circumstances since the preparation of the report or the GCMA otherwise has a special reason for deciding differently.

(4) In making a decision under subsection (2), the GCMA shall, in particular, have regard to the need to achieve as comprehensive a solution as is reasonable and practicable to the adverse effect on competition concerned and any detrimental effects on customers so far as resulting from the adverse effect on competition.

(5) In making a decision under subsection (2), the GCMA may, in particular, have regard to the effect of any action on any relevant customer benefits of the feature or features of the market or markets concerned.

(6) The GCMA shall take no action under subsection (2) to remedy, mitigate or prevent any detrimental effect on customers so far as it may be expected to result from the adverse effect on competition concerned if-

- (a) no detrimental effect on customers has resulted from the adverse effect on competition; and
- (b) the adverse effect on competition is not being remedied, mitigated or prevented.

**Time-limits for discharging duty under section 202.**

203.(1) The GCMA shall discharge its duty under section 202(2) within the period of 6 months beginning with the date on which it publishes the report concerned under section 200.

(2) The GCMA may extend, by no more than 4 months, the period within which its duty under section 202(2) is required to be discharged if it considers that there are special reasons for doing so.

(3) The GCMA may extend the period within which its duty under section 202(2) is required to be discharged if it considers that-

- (a) a person has failed (whether with or without reasonable excuse) to comply with any requirement of a notice under section 248 which was given in relation to the reference; and
- (b) the failure is preventing the GCMA from properly discharging its duty under section 202(2).

(4) An extension under subsection (2) or (3) shall come into force when published under section 246.

(5) An extension under subsection (3) continues in force until-

- (a) the person concerned provides the information or documents to the satisfaction of the GCMA or (as the case may be) appears as a witness in accordance with the requirements of the GCMA; or
- (b) the GCMA publishes its decision to cancel the extension.

**Section 203: supplementary.**

204.(1) A period extended under section 203(2) may also be extended under section 203(3), and a period extended under section 203(3) may also be extended under section 203(2).

(2) No more than one extension is possible under section 203(2).

(3) Where a period is extended or further extended under section 203(2) or (3), the period as extended or (as the case may be) further extended shall, subject to subsections (4) and (5), be calculated by taking the period being extended and adding to it the period of the extension (whether or not those periods overlap in time).

(4) Subsection (5) applies where-

- (a) the period within which the GCMA shall discharge its duty under section 202(2) is further extended;
- (b) the further extension and at least one previous extension is made under section 203(3); and
- (c) the same days or fractions of days are included in or comprise the further extension and are included in or comprise at least one such previous extension.

(5) In calculating the period of the further extension, any days or fractions of days of the kind mentioned in subsection (4)(c) shall be disregarded.

(6) The Minister may by order amend section 203 so as to alter one or more of the following periods-

- (a) the period of 6 months mentioned in subsection (1) or any period for the time being there mentioned in substitution for that period;
- (b) the period of 4 months mentioned in subsection (2) or any period for the time being there mentioned in substitution for that period.

(7) But no alteration shall be made by virtue of subsection (6) which results in-

- (a) the period for the time being mentioned in section 203(1) exceeding 6 months; or
- (b) the period for the time being mentioned in section 203(2) exceeding 4 months.

(8) Before making an order under subsection (6) the Minister shall consult the GCMA and such other persons as the Minister considers appropriate.

## **CHAPTER 2 PUBLIC INTEREST CASES**

### *Intervention notices*

**Public interest intervention by the Minister.**

205.(1) This section applies where-

- (a) the GCMA has published a market study notice in relation to a matter; or
- (b) the GCMA has begun the process of consultation under section 243 in respect of a decision of the kind mentioned in subsection (6)(a)(i) of that section.

(2) The Minister may, within the permitted period, give a notice to the GCMA if the Minister believes that it is or may be the case that one or more than one public interest consideration is relevant to the matter.

(3) For the purposes of subsection (3), the permitted period, in a case to which this section applies by virtue of paragraph (a) of subsection (1), is the period beginning with the publication of the market study notice and ending with-

- (a) the acceptance by the GCMA of an undertaking under section 228 instead of the making of a reference under section 191 in relation to the matter;
- (b) the publication of notice of the fact that the GCMA has otherwise decided not to make such a reference in relation to the matter;
- (c) the making of such a reference in relation to the matter; or
- (d) in a case where the period permitted by section 193 for the preparation and publication by the GCMA of the market study report in relation to the matter has expired and no such report has been prepared or published, the end of that period.

(4) For the purposes of subsection (2), the permitted period, in a case to which this section applies by virtue of paragraph (b) of subsection (1), is the period beginning with the date on which the GCMA begins the process of consultation concerned and ending with-

- (a) the acceptance by the GCMA of an undertaking under section 228 instead of the making of a reference under section 191 in relation to the matter concerned;
- (b) the publication of notice of the fact that the GCMA has otherwise decided not to make such a reference in relation to the matter; or
- (c) the making of such a reference in relation to the matter.

(5) The Minister may, within the permitted period, give a notice to the GCMA if-

- (a) the GCMA is considering whether to accept-

- (i) an undertaking under section 228 instead of making a reference under section 191 in relation to the matter; or
    - (ii) an undertaking varying or superseding any such undertaking;
  - (b) the GCMA has published a notice under section 229(1) or (4); and
  - (c) the Minister believes that it is or may be the case that one or more than one public interest consideration is relevant to the proposal to accept the undertaking.
- (6) For the purposes of subsection (5), the permitted period is-
- (a) where the GCMA publishes a notice under section 229(1), the period within which representations may be made in relation to the proposed undertaking (as to which, see section 229(2)(f));
  - (b) where the GCMA publishes a notice under section 229(4), the period within which representations may be made in relation to the proposed modifications to the proposed undertaking (as to which, see section 229(5)(c)).
- (7) In this Part “intervention notice” means a notice under subsection (2) or (5).
- (8) No more than one intervention notice shall be given under subsection (2) in relation to the same matter.
- (9) An intervention notice shall not be given under subsection (5) in relation to a proposal to accept an undertaking if the proposal relates to a matter in respect of which an intervention notice under subsection (12) has already been given.
- (10) No more than one intervention notice shall be given under subsection (5) in relation to the same proposed undertaking or in relation to proposed undertakings which do not differ from each other in any material respect.
- (11) In this section, a reference to the acceptance of an undertaking shall, in a case where the GCMA has accepted a group of undertakings under section 228, be treated as a reference to the acceptance of the last undertaking in the group; but undertakings which vary, supersede or revoke earlier undertakings shall be disregarded for the purposes of this section.
- (12) For the purposes of this Part a public interest consideration is a consideration which, at the time of the giving of the intervention notice concerned, is specified in section 227 or is not so specified but, in the opinion of the Minister, ought to be so specified.



(13) Where the Minister has given an intervention notice mentioning a public interest consideration which, at that time, is not finalised, he shall, as soon as practicable, take such action as is within his power to ensure that it is finalised.

(14) For the purposes of this Part a public interest consideration is finalised if-

- (a) it is specified in section 227 otherwise than by virtue of an order under subsection (3) of that section; or
- (b) it is specified in that section by virtue of an order under subsection (3) of that section and the order providing for it to be so specified has been laid before, and approved by, Parliament in accordance with subsection (5) of section 258 and within the period mentioned in that subsection.

*Intervention notices under section 205(2)*

**Intervention notices under section 205(2).**

206.(1) An intervention notice under section 205(2) shall state-

- (a) the matter to which the market study notice or (as the case may be) the consultation under section 243 concerned relates;
- (b) the date of publication of that notice or (as the case may be) on which the process of consultation began;
- (c) the public interest consideration or considerations which are, or may be, relevant to the matter; and
- (d) where any public interest consideration concerned is not finalised, the proposed timetable for finalising it.

(2) Where the Minister believes that it is or may be the case that two or more public interest considerations are relevant to the matter, he may decide not to mention in the intervention notice such of those considerations as he considers appropriate.

(3) The Minister may at any time revoke an intervention notice which has been given under section 205 (2) and which is in force.

(4) An intervention notice under section 205(2) shall come into force when it is given and shall cease to be in force when the matter to which it relates is finally determined under this Chapter.

(5) An intervention notice under section 205(2) shall also cease to be in force if-

- (a) it mentions a public interest consideration which was not finalised on the giving of the notice or public interest considerations which, at that time, were not finalised;
  - (b) no other public interest consideration is mentioned in the notice;
  - (c) at least 24 weeks has elapsed since the giving of the notice;
  - (d) the public interest consideration mentioned in the notice has not been finalised within that period of 24 weeks or (as the case may be) none of the public interest considerations mentioned in the notice has been finalised within that period of 24 weeks; and
  - (e) the Minister has not, by the end of that period of 24 weeks, made a reference under section 207 in relation to the matter.
- (6) Subsection (8) applies in a case where-
- (a) an intervention notice ceases to be in force in accordance with subsection (5);
  - (b) the GCMA has, before the time at which the notice ceases to be in force, prepared a market study report in relation to the matter within the period permitted by section 193(4) and given it to the Minister in accordance with section 207(3)(b); and
  - (c) the report contains the decision of the GCMA that it should make a reference in relation to the matter concerned under section 191.
- (7) Subsection (8) also applies in a case where-
- (a) an intervention notice ceases to be in force in accordance with subsection (5); and
  - (b) the GCMA has, before the time at which the notice ceases to be in force-
    - (i) decided that it should make an ordinary reference or a cross-market reference under section 191 in relation to the matter concerned; and
    - (ii) given a document containing its decision, the reasons for it and such information as the GCMA considers appropriate for facilitating a proper understanding of the reasons for its decision to the Minister in accordance with section 207(3)(c).
- (8) In a case to which this subsection applies-
- (a) the GCMA shall, as soon as reasonably practicable, make a reference in relation to the matter under section 191; and

- (b) the reference is to be treated for the purposes of this Part as having been made in accordance with the requirements imposed by this Part.

(9) For the purposes of subsection (4) a matter to which an intervention notice under section 205(2) relates is finally determined under this Chapter if-

- (a) the GCMA accepts an undertaking under section 228 instead of making a reference under section 191 in relation to the matter;
- (b) the GCMA publishes notice that it has otherwise decided not to make a reference under section 191 in relation to the matter;
- (c) the period permitted for the preparation by the GCMA of the market study report in relation to the matter and for the report to be published under section 193(4) or (as the case may be) given to the Minister under section 207(3) has expired and no such report has been so prepared or no such action has been taken;
- (d) the Minister makes a reference under section 207(5) in relation to the matter;
- (e) the period permitted by section 215 for the preparation of the report of the GCMA under section 212 and for action to be taken in relation to it under section 213(2) or (3) or (as the case may be) 214(2) or (3) has expired and no such report has been so prepared or no such action has been taken;
- (f) the GCMA decides under section 216(1) to terminate its investigation;
- (g) the report of the GCMA has been prepared under section 212 and published under section 213 (2) or (as the case may be) 214(2) within the period permitted by section 215;
- (h) the Minister fails to make and publish a decision under subsection (2) of section 217 within the period required by subsection (3) of that section or (as the case may be) fails to make and publish a decision under subsection (2) of section 218 within the period required by subsection (6) of that section;
- (i) the Minister decides under section 217(2) that no eligible public interest consideration is relevant or (as the case may be) decides under section 218(2) to make no finding at all in relation to the matter;
- (j) the Minister decides under section 219(2) or (as the case may be) 220(2) neither to accept an undertaking under section 233 nor to make an order under section 235;
- (k) the Minister accepts an undertaking under section 233 or makes an order under section 235; or

(l) the Minister decides to revoke the intervention notice concerned.

(10) For the purposes of subsections (4) and (5) the time when a matter to which an intervention notice under section 205(2) relates is finally determined under this Chapter is-

- (a) in a case falling within subsection (9)(a), the acceptance of the undertaking concerned;
- (b) in a case falling within subsection (9)(b), the publication of the notice concerned;
- (c) in a case falling within subsection (9) (c), (e) or (h), the expiry of the period concerned;
- (d) in a case falling within subsection (9)(d), the making of the reference concerned;
- (e) in a case falling within subsection (9)(f), (i), (j) or (l), the making of the decision concerned;
- (f) in a case falling within subsection (9)(g), the publication of the report concerned; and
- (g) in a case falling within subsection (9)(k), the acceptance of the undertaking concerned or (as the case may be) the making of the order concerned.

(11) In subsection (10)(a) the reference to the acceptance of the undertaking concerned shall, in a case where the GCMA has accepted a group of undertakings under section 228, be treated as a reference to the acceptance of the last undertaking in the group; but undertakings which vary, supersede or revoke earlier undertakings shall be disregarded for the purposes of subsections (9)(a) and (10)(a).

(12) In subsection (10)(g) the reference to the acceptance of the undertaking concerned or the making of the order concerned shall, in a case where the enforcement action under section 219(2) or (as the case may be) 220(2) involves the acceptance of a group of undertakings, the making of a group of orders or the acceptance and making of a group of undertakings and orders, be treated as a reference to the acceptance or making of the last undertaking or order in the group; but undertakings or orders which vary, supersede or revoke earlier undertakings or orders shall be disregarded for the purposes of subsections (9)(k) and (10)(g).

**Section 205(2) intervention notices: Minister's duty to refer.**

207.(1) This section applies where-

- (a) the GCMA has prepared a market study report in relation to a matter within the period permitted by section 193(4);
- (b) an intervention notice under section 205(2) is in force in relation to the matter at the time when the GCMA would (but for this section) be required to publish the report; and
- (c) the report contains the decision of the GCMA that it should make an ordinary reference or a cross-market reference in relation to the matter under section 191.

(2) This section also applies where-

- (a) the GCMA has conducted a consultation under section 243 in respect of a decision of the kind mentioned in subsection (6)(a)(i) of that section;
- (b) the GCMA has decided that it should make an ordinary reference or a cross-market reference in relation to the matter concerned under section 191; and
- (c) an intervention notice under section 205(2) is in force in relation to the matter at the time when the GCMA makes that decision.

(3) The GCMA-

- (a) shall not exercise the power under section 191 to refer the matter;
- (b) in a case falling within subsection (1), shall not publish the market study report under section 193(4) and shall instead, within the period mentioned in section 193(4), give the report to the Minister; and
- (c) in a case falling within subsection (2), shall give to the Minister a document containing-
  - (i) its decision and the reasons for its decision; and
  - (ii) such information as the GCMA considers appropriate for facilitating a proper understanding of the reasons for its decision.

(4) The Minister shall decide whether any public interest consideration which was mentioned in the intervention notice is relevant to the matter in question.

(5) Where the Minister decides that there is no relevant public interest consideration-

- (a) the Minister shall (in accordance with the GCMA's decision) make a reference in relation to the matter to the chair of the GCMA for the constitution of a group under Schedule 11; and

- (b) the reference is to be treated for the purposes of this Part as an ordinary reference or (as the case may be) a cross-market reference made under section 191 in accordance with the requirements imposed by this Part.

(6) Where the Minister decides that there is one or more than one relevant public interest consideration, the Minister shall (in accordance with the GCMA's decision) make a reference in relation to the matter to the chair of the GCMA for the constitution of a group under Schedule 11.

(7) The Minister shall specify in a reference made under subsection (6)-

- (a) the relevant public interest consideration or considerations; and
- (b) whether the reference is a restricted PI reference or a full PI reference (as to which, see sections 209 and 210 respectively).

(8) Where the Minister makes a full PI reference under subsection (6), the reference shall also specify whether the Minister proposes to appoint a public interest expert under section 211.

(9) For the purposes of this Part, a reference under subsection (6) is to be treated-

- (a) in a case where the decision of the GCMA was that it should make an ordinary reference, as an ordinary reference;
- (b) in a case where the decision of the GCMA was that it should make a cross-market reference, as a cross-market reference.

(10) In a case falling within subsection (1), the Minister shall publish the market study report concerned at the same time as the Minister makes a reference under this section.

(11) In a case falling within subsection (2), the Minister shall publish the document given to the Minister by the GCMA under subsection (3)(c), at the same time as the Minister makes a reference under this section.

(12) In this Part-

“full PI reference” means a reference made by the Minister under subsection (6) which specifies that it is a full PI reference;

“restricted PI reference” means a reference made by the Minister under subsection (6) which specifies that it is a restricted PI reference.

**Variation of restricted PI references and full PI references.**

208.(1) The Minister may at any time vary a restricted PI reference or a full PI reference.

(2) The Minister shall consult the GCMA before varying any such reference.

(3) But subsection (2) does not apply if the GCMA requested the variation concerned.

(4) No variation under this section is capable of altering the public interest consideration or considerations specified in the reference.

**Restricted PI references: questions to be decided by GCMA.**

209.(1) This section applies where the Minister makes a restricted PI reference.

(2) The GCMA shall, on an ordinary reference, decide whether any feature, or combination of features, of each relevant market (within the meaning given by section 198(3)) prevents, restricts or distorts competition in connection with the supply or acquisition of any goods or services in Gibraltar.

(3) The GCMA shall, on a cross-market reference, decide in relation to each feature and each combination of the features specified in the reference, whether the feature or combination of features, as it relates to goods or services of one or more than one of the descriptions so specified, prevents, restricts or distorts competition in connection with the supply or acquisition of any goods or services in Gibraltar.

(4) The GCMA shall, if it has decided that there is an adverse effect on competition, decide the following additional questions-

- (a) whether action should be taken by the Minister under section 219 for the purpose of remedying, mitigating or preventing the adverse effect on competition concerned or any detrimental effect on customers so far as it has resulted from, or may be expected to result from, the adverse effect on competition;
- (b) whether the GCMA should recommend the taking of other action by the Minister or action by persons other than itself and the Minister for the purpose of remedying, mitigating or preventing the adverse effect on competition concerned or any detrimental effect on customers so far as it has resulted from, or may be expected to result from, the adverse effect on competition; and
- (c) in either case, if action should be taken, what action should be taken and what is to be remedied, mitigated or prevented.

(5) The GCMA shall, if it has decided that there is an adverse effect on competition, also decide separately the following questions (on the assumption that it is proceeding as mentioned in section 221(1))-

- (a) whether action should be taken by it under section 202 for the purpose of remedying, mitigating or preventing the adverse effect on competition concerned or any detrimental effect on customers so far as it has resulted from, or may be expected to result from, the adverse effect on competition;
- (b) whether the GCMA should recommend the taking of action by other persons for the purpose of remedying, mitigating or preventing the adverse effect on competition concerned or any detrimental effect on customers so far as it has resulted from, or may be expected to result from, the adverse effect on competition; and
- (c) in either case, if action should be taken, what action should be taken and what is to be remedied, mitigated or prevented.

(6) In deciding the questions mentioned in subsections (4) and (5), the GCMA shall, in particular, have regard to the need to achieve as comprehensive a solution as is reasonable and practicable to the adverse effect on competition concerned and any detrimental effects on customers so far as resulting from the adverse effect on competition.

(7) In deciding the questions mentioned in subsections (4) and (5), the GCMA may, in particular, have regard to the effect of any action on any relevant customer benefits of the feature or features of the market or markets concerned.

**Full PI references: questions to be decided by GCMA.**

210.(1) This section applies where the Minister makes a full PI reference.

(2) The GCMA shall, on an ordinary reference, decide whether any feature, or combination of features, of each relevant market (within the meaning given by section 198(5)) prevents, restricts or distorts competition in connection with the supply or acquisition of any goods or services in Gibraltar.

(3) The GCMA shall, on a cross-market reference, decide in relation to each feature and each combination of the features specified in the reference, whether the feature or combination of features, as it relates to goods or services of one or more than one of the descriptions so specified, prevents, restricts or distorts competition in connection with the supply or acquisition of any goods or services in Gibraltar.

(4) The GCMA shall, if it has decided that there is an adverse effect on competition, decide whether, taking account only of any adverse effect on competition and the admissible public interest consideration or considerations concerned, any feature or combination of features



which gave rise to an adverse effect on competition operates or may be expected to operate against the public interest.

(5) The GCMA shall, if it has decided that any such feature or combination of features operates or may be expected to operate against the public interest, also decide separately the following additional questions-

- (a) whether action should be taken by the Minister under section 220 for the purpose of remedying, mitigating or preventing any of the effects adverse to the public interest concerned;
- (b) whether the GCMA should recommend the taking of other action by the Minister, or action by persons other than itself and the Minister, for the purpose of remedying, mitigating or preventing any of the effects adverse to the public interest concerned; and
- (c) in either case, if action should be taken, what action should be taken and what is to be remedied, mitigated or prevented.

(6) The GCMA shall, if it has decided that there is an adverse effect on competition, also decide separately the following questions (on the assumption that it is proceeding as mentioned in section 222(2))-

- (a) whether action should be taken by it under section 202 for the purpose of remedying, mitigating or preventing the adverse effect on competition concerned or any detrimental effect on customers so far as it has resulted from, or may be expected to result from, the adverse effect on competition;
- (b) whether the GCMA should recommend the taking of action by other persons for the purpose of remedying, mitigating or preventing the adverse effect on competition concerned or any detrimental effect on customers so far as it has resulted from, or may be expected to result from, the adverse effect on competition; and
- (c) in either case, if action should be taken, what action should be taken and what is to be remedied, mitigated or prevented.

(7) In a case where the Minister has appointed a public interest expert under section 211 in relation to a full PI reference, the GCMA shall, in deciding the questions mentioned in subsections (4) and (5), have regard, in particular, to the views of the expert.

(8) In deciding the questions mentioned in subsection (5), the GCMA shall, in particular, have regard to-

- (a) the need to achieve as comprehensive a solution as is reasonable and practicable to the effects adverse to the public interest concerned; and

(b) any detrimental effects on customers so far as resulting from those effects.

(9) In deciding the questions mentioned in subsection (6), the GCMA shall, in particular, have regard to-

(a) the need to achieve as comprehensive a solution as is reasonable and practicable to the adverse effect on competition concerned; and

(b) any detrimental effects on customers so far as resulting from it.

(10) In deciding the questions mentioned in subsections (5) and (6), the GCMA may, in particular, have regard to the effect of any action on any relevant customer benefits of the feature or features of the market or markets concerned.

(11) In this section, “admissible public interest consideration” means any public interest consideration specified in the reference concerned and which the GCMA is not under a duty to disregard.

**Full PI references: power of Minister to appoint expert.**

211.(1) This section applies where the Minister makes a full PI reference.

(2) The Minister may appoint one or more than one person to advise the GCMA on the questions mentioned in subsections (5) and (6) of section 210 in relation to the reference.

(3) A person so appointed shall be a person who appears to the Minister to have particular knowledge of, or expertise in, matters relating to a public interest consideration specified in the reference.

(4) Each person so appointed is referred to in this Part as a “public interest expert”.

(5) The terms and conditions of appointment of a public interest expert (including, in particular, as to remuneration) are to be determined by the Minister.

(6) Any appointment of a public interest expert under this section shall be made within the period of 2 months beginning with the date of the reference concerned.

(7) Before appointing a public interest expert the Minister shall consult the chair of the GCMA.

**Investigations and reports by GCMA.**

212.(1) Where the Minister makes a restricted PI reference or a full PI reference, the GCMA shall prepare a report on the reference and take action in relation to it under section 213(2) or (3) or (as the case may be) 214(2) or (3) within the period permitted by section 215.

(2) The report shall, in particular, contain-

- (a) the decisions of the GCMA on the questions which it is required to answer by virtue of section 209 or (as the case may be) 210;
- (b) its reasons for its decisions;
- (c) such information as the GCMA considers appropriate for facilitating a proper understanding of those questions and of its reasons for its decisions; and
- (d) in the case of a report in relation to a full PI reference in respect of which the Minister appointed a public interest expert, a summary of the views of the expert.

(3) A summary of the views of a public interest expert in a report under this section shall be approved by the expert before action is taken in relation to the report under section 214(2) or (3).

(4) The GCMA shall carry out such investigations as it considers appropriate for the purposes of preparing a report under this section.

**Restricted PI references: publication etc. of reports of GCMA.**

213.(1) This section applies in relation to a report prepared under section 212 in respect of a restricted PI reference.

(2) The GCMA shall publish the report if it contains-

- (a) the decision of the GCMA that there is no adverse effect on competition; or
- (b) the decisions of the GCMA that there is one or more than one adverse effect on competition but, on the question mentioned in section 209(4)(a) and in relation to each adverse effect on competition, that no action should be taken by it.

(3) Where the report contains the decisions of the GCMA that there is one or more than one adverse effect on competition and, on the question mentioned in section 209(4)(a) and in relation to at least one such adverse effect, that action should be taken by it, the GCMA shall give the report to the Minister.

(4) The Minister shall publish, no later than publication of his decision under section 217(2) in relation to the case, a report of the GCMA given to him under subsection (3) and not required to be published by virtue of section 221(2).

**Full PI references: publication etc. of reports of GCMA.**

214.(1) This section applies in relation to a report prepared under section 212 in respect of a full PI reference.

(2) The GCMA shall publish the report if it contains-

- (a) the decision of the GCMA that there is no adverse effect on competition;
- (b) the decision of the GCMA that there is an adverse effect on competition but that the feature or combination of features which gave rise to it does not operate and may not be expected to operate against the public interest; or
- (c) the decisions of the GCMA that there is one or more than one adverse effect on competition and that one or more than one of the features or combinations of features which gave rise to an adverse effect on competition operates or may be expected to operate against the public interest but, on the question mentioned in section 210(5)(a), and in relation to each effect adverse to the public interest concerned, that no action should be taken by the Minister.

(3) The GCMA shall give the report to the Minister if it contains the decisions of the GCMA-

- (a) that there is one or more than one adverse effect on competition and that one or more than one of the features or combinations of features which gave rise to an adverse effect on competition operates or may be expected to operate against the public interest; and
- (b) in relation to at least one effect adverse to the public interest concerned, that action should be taken by the Minister.

(4) The Minister shall publish, no later than publication of the Minister's decision under section 218(2) in relation to the case, a report of the GCMA given to the Minister under subsection (3) and not required to be published by virtue of section 222(3).

**Time-limits for investigations and reports: Part V.**

215.(1) The GCMA shall, within the period of 18 months beginning with the relevant date, prepare its report under section 212 and publish it under section 213(2) or 214(2) or (as the case may be) give it to the Minister in accordance with section 213(3) or 214(3).

(2) For the purposes of subsection (1), the "relevant date" is-

- (a) in the case of a report in relation to a restricted PI reference or to a full PI reference which specifies that the Minister does not propose to appoint a public interest expert, the date of the reference;
  - (b) in the case of a report in relation to a full PI reference which specifies that the Minister proposes to appoint a public interest expert, the earliest of the following-
    - (i) the date of the appointment of the expert;
    - (ii) the date on which the Minister gives notice to the GCMA that the Minister no longer intends to appoint such an expert;
    - (iii) the end of the period of 2 months beginning with the date of the reference.
- (3) The GCMA may extend, by no more than 6 months, the period within which its report under section 212 is to be prepared and action is to be taken in relation to it under section 213(2) or (3) or (as the case may be) 214(2) or (3) if it considers that there are special reasons for doing so.
- (4) An extension under subsection (3) shall come into force when published under section 246.
- (5) No more than one extension is possible under subsection (3).
- (6) The Minister may by order amend-
- (a) subsection (1) so as to alter the period of 18 months mentioned in that subsection or any period for the time being mentioned in that subsection in substitution for that period;
  - (b) subsection (3) so as to alter the period of 6 months mentioned in that subsection or any period for the time being mentioned in that subsection in substitution for that period.
- (7) No alteration shall be made by virtue of subsection (6) which results in -
- (a) the period for the time being mentioned in subsection (1) exceeding 18 months; or
  - (b) the period for the time being mentioned in subsection (3) exceeding 6 months.
- (8) An order under subsection (6) shall not affect any period of time within which, in relation to a market investigation reference, the GCMA is under a duty to prepare its report under section 212 and take action in relation to it under section 213(2) or (3) or (as the case may be) 214(2) or (3) if the GCMA is already under that duty in relation to that reference when the order is made.

(9) Before making an order under subsection (6) the Minister shall consult the GCMA and such other persons as he considers appropriate.

**Restrictions where public interest considerations not finalised: Part V.**

216.(1) The GCMA shall terminate its investigation under section 212 if-

- (a) the intervention notice concerned mentions a public interest consideration which was not finalised on the giving of that notice or public interest considerations which, at that time, were not finalised;
- (b) no other public interest consideration is mentioned in the notice;
- (c) at least 24 weeks has elapsed since the giving of the notice; and
- (d) the public interest consideration mentioned in the notice has not been finalised within that period of 24 weeks or (as the case may be) none of the public interest considerations mentioned in the notice has been finalised within that period of 24 weeks.

(2) Where the intervention notice concerned mentions a public interest consideration which is not finalised on the giving of the notice, the GCMA shall not give its report under section 212 to the Minister in accordance with section 213(3) or (as the case may be) 214(3) unless the period of 24 weeks beginning with the giving of the intervention notice concerned has expired or the public interest consideration concerned has been finalised.

(3) The GCMA shall, in reporting on any of the questions mentioned in section 209(4) or (as the case may be) 210(4) and (5), disregard any public interest consideration which has not been finalised before the giving of the report.

(4) The GCMA shall, in reporting on any of the questions mentioned in section 209(3) or (as the case may be) 210(4) and (5), disregard any public interest consideration which was not finalised on the giving of the intervention notice concerned and has not been finalised within the period of 24 weeks beginning with the giving of the notice concerned.

(5) Subsections (1) to (4) are without prejudice to the power of the GCMA to carry out investigations in relation to any public interest consideration to which it might be able to have regard in its report.

**Restricted PI references: Decision of Minister.**

217.(1) Subsection (2) applies where the Minister has received a report of the GCMA in relation to a restricted PI reference which-

- (a) has been prepared under section 212;
- (b) contains the decisions that there is one or more than one adverse effect on competition and, on the question mentioned in section 209(5)(a) and in relation to at least one such adverse effect, that action should be taken by it; and
- (c) has been given to the Minister as required by section 213(3).

(2) The Minister shall decide whether-

- (a) any eligible public interest consideration is relevant; or
- (b) any eligible public interest considerations are relevant;

to any action which is mentioned in the report by virtue of section 209(5)(a) and (c) and which the GCMA should take for the purpose of remedying, mitigating or preventing any adverse effect on competition concerned or any detrimental effect on customers so far as it has resulted or may be expected to result from any adverse effect on competition.

(3) The Minister shall make and publish his decision under subsection (2) within the period of 90 days beginning with the receipt of the report of the GCMA under section 212.

(4) In this section “eligible public interest consideration” means a public interest consideration which-

- (a) was mentioned in the intervention notice concerned; and
- (b) was not disregarded by the GCMA for the purposes of its report under section 212.

**Full PI references: decision of Minister.**

218.(1) Subsection (2) applies where the Minister has received a report of the GCMA in relation to a full PI reference which-

- (a) has been prepared under section 212;
- (b) contains the decisions of the GCMA that there is one or more than one adverse effect on competition and that one or more than one of the features or combinations of features that gave rise to an adverse effect on competition operates or may be expected to operate against the public interest and that, in relation to at least one effect adverse to the public interest concerned, action should be taken by the Minister; and
- (c) has been given to the Minister as required by section 214(3).

(2) The Minister shall decide whether to make an adverse public interest finding in relation to the matter and whether to make no finding at all in the matter.

(3) For the purposes of this Part, the Minister makes an adverse public interest finding in relation to a matter if, in relation to that matter, the Minister decides-

- (a) that there is an adverse effect on competition;
- (b) that there is one or more than one admissible public interest consideration which is relevant to the matter; and
- (c) taking account only of any adverse effect on competition and any relevant admissible public interest consideration or considerations, that any feature or combination of features which gave rise to an adverse effect on competition operates or may be expected to operate against the public interest.

(4) The Minister may make no finding at all in a matter only if the Minister decides that there is no admissible public interest consideration which is relevant to a consideration of the matter concerned.

(5) In deciding whether to make an adverse public interest finding under subsection (2), the Minister shall accept the decision of the GCMA as to whether there is an adverse effect on competition in relation to the matter.

(6) The Minister shall make and publish the decision under subsection (2) within the period of 90 days beginning with the receipt of the report of the GCMA under section 212.

(7) In this section “admissible public interest consideration” means a public interest consideration which-

- (a) was mentioned in the intervention notice concerned; and
- (b) was not disregarded by the GCMA for the purposes of its report under section 212.

**Restricted PI references: Remedial action by Minister.**

219.(1) Subsection (2) applies where the Minister-

- (a) has decided under subsection (2) of section 217 within the period required by subsection (3) of that section that an eligible public interest consideration is relevant as mentioned in subsection (2) of that section or eligible public interest considerations are so relevant; and
- (b) has published his decision within the period required by subsection (3) of that section.



(2) The Minister may, in relation to any adverse effect on competition identified in the report concerned, take such action under section 233 or 235 as he considers to be-

(a) reasonable and practicable-

(i) to remedy, mitigate or prevent the adverse effect on competition concerned;  
or

(ii) to remedy, mitigate or prevent any detrimental effect on customers so far as it has resulted from, or may be expected to result from, the adverse effect on competition; and

(b) appropriate in the light of the eligible public interest consideration concerned or (as the case may be) the eligible public interest considerations concerned.

(3) In making a decision under subsection (2), the Minister shall, in particular, have regard to-

(a) the need to achieve as comprehensive a solution as is reasonable and practicable to the adverse effect on competition concerned and any detrimental effects on customers so far as resulting from the adverse effect on competition; and

(b) the report of the GCMA under section 212.

(4) In having regard by virtue of subsection (3) to the report of the GCMA under section 212, the Minister shall not challenge the decision of the GCMA contained in the report that there is one or more than one adverse effect on competition.

(5) In making a decision under subsection (2), the Minister may, in particular, have regard to the effect of any action on any relevant customer benefits of the feature or features of the market or markets concerned.

(6) The Minister shall take no action under subsection (2) to remedy, mitigate or prevent any detrimental effect on customers so far as it may be expected to result from the adverse effect on competition concerned if-

(a) no detrimental effect on customers has resulted from the adverse effect on competition; and

(b) the adverse effect on competition is not being remedied, mitigated or prevented.

(7) In this section “eligible public interest consideration” has the same meaning as in section 217.

**Full PI references: remedial action by Minister.**

220.(1) Subsection (2) applies where the Minister has decided under subsection (2) of section 218 within the period required by subsection (6) of that section to make an adverse public interest finding in relation to a matter and has published the decision within the period so required.

(2) The Minister may take such action under section 233 or 235 as the Minister considers to be reasonable and practicable to remedy, mitigate or prevent any of the effects adverse to the public interest which have resulted from, or may be expected to result from, the features or combinations of features in question.

(3) In making a decision under subsection (2), the Minister shall, in particular, have regard to the report of the GCMA under section 212.

(4) In making a decision under subsection (2), the Minister may, in particular, have regard to-

- (a) the need to achieve as comprehensive a solution as is reasonable and practicable to the effects adverse to the public interest concerned; and
- (b) any detrimental effects on customers so far as resulting from those effects.

**Restricted PI references: reversion of the matter to GCMA.**

221.(1) If-

- (a) the Minister fails to make and publish his decision under subsection (2) of section 217 within the period required by subsection (3) of that section; or
- (b) the Minister decides that no eligible public interest consideration is relevant as mentioned in subsection (2) of that section;

the GCMA shall proceed under section 202 as if the report had been prepared and published under section 200 within the period permitted by section 201.

(2) The GCMA shall publish the report which has been prepared by it under section 212 (if still unpublished) as soon as it becomes able to proceed by virtue of subsection (1).

(3) In relation to proceedings by virtue of subsection (1), the reference in section 202(3) to decisions of the GCMA included in its report by virtue of section 198(6) shall be construed as a reference to decisions which were included in the report of the GCMA by virtue of section 209(5).

(4) Where the GCMA, in proceeding by virtue of subsection (1), intends to proceed in a way which is not consistent with its decisions as included in its report by virtue of section 209(5), it shall not so proceed without the consent of the Minister.

(5) The Minister shall not withhold his consent under subsection (4) unless he believes that the proposed alternative way of proceeding will operate against the public interest.

(6) For the purposes of subsection (5) a proposed alternative way of proceeding will operate against the public interest only if any eligible public interest consideration or considerations outweigh the considerations which have led the GCMA to propose proceeding in that way.

(7) In deciding whether to withhold his consent under subsection (4), the Minister shall accept the GCMA's view of what, if the only relevant consideration were how to remedy, mitigate or prevent the adverse effect on competition concerned or any detrimental effect on customers so far as resulting from the adverse effect on competition, would be the most appropriate way to proceed.

(8) In this section "eligible public interest consideration" has the same meaning as in section 217.

**Full PI references: reversion of the matter to GCMA.**

222.(1) This section applies if-

- (a) the Minister decides under section 218(2) to make no finding at all in the matter; or
- (b) the Minister fails to make and publish the decision under subsection (2) of section 218 within the period required by subsection (6) of that section.

(2) The GCMA shall proceed under section 202 as if-

- (a) a reference under section 191 had been made (in accordance with the requirements imposed by this Part) instead of a full PI reference; and
- (b) its report had been prepared and published under section 200 within the period permitted by section 201.

(3) The GCMA shall publish the report which has been prepared by it under section 212 (if still unpublished) as soon as it becomes able to proceed by virtue of subsection (2).

(4) In relation to proceedings by virtue of subsection (2), the reference in section 202(3) to decisions of the GCMA included in its report by virtue of section 198(6) is to be construed as a reference to decisions which were included in the report of the GCMA by virtue of section 210(6).

(5) Where the GCMA becomes under a duty to proceed as mentioned in subsection (2), references in this Part to a reference under section 191, so far as necessary, are to be construed accordingly.

(6) Where the GCMA, in proceeding by virtue of subsection (2), intends to proceed in a way which is not consistent with its decisions as included in its report by virtue of section 210(6), it shall not so proceed without the consent of the Minister.

(7) The Minister shall not withhold consent under subsection (6) unless the Minister believes that the proposed alternative way of proceeding will operate against the public interest.

(8) For the purposes of subsection (7) a proposed alternative way of proceeding will operate against the public interest only if any admissible public interest consideration or considerations outweigh the considerations which have led the GCMA to propose proceeding in that way.

(9) In deciding whether to withhold consent under subsection (6), the Minister shall accept the GCMA's view of what, if the only relevant consideration were how to remedy, mitigate or prevent the adverse effect on competition concerned or any detrimental effect on customers so far as resulting from the adverse effect on competition, would be the most appropriate way to proceed.

(10) In this section "admissible public interest consideration" has the same meaning as in section 218.

*Intervention notices under section 205(5)*

**Intervention notices under section 205(5).**

223.(1) An intervention notice under section 205(5) shall state-

- (a) the proposed undertaking which may be accepted by the GCMA;
- (b) the notice under section 229(1) or (4);
- (c) the public interest consideration or considerations which are, or may be, relevant to the proposal to accept the undertaking; and
- (d) where any public interest consideration concerned is not finalised, the proposed timetable for finalising it.

(2) Where the Minister believes that it is or may be the case that two or more public interest considerations are relevant to the proposal to accept the undertaking, he may decide not to mention in the intervention notice such of those considerations as he considers appropriate.

(3) The Minister may at any time revoke an intervention notice which has been given under section 205(5) and which is in force.

(4) An intervention notice under section 205(5) shall come into force when it is given and shall cease to be in force on the occurrence of any of the events mentioned in subsection (5).

(5) The events are-

- (a) the acceptance by the GCMA with the consent of the Minister of an undertaking which is the same as the proposed undertaking mentioned in the intervention notice by virtue of subsection (1)(a) or which does not differ from it in any material respect;
- (b) the decision of the GCMA to proceed neither with the proposed undertaking mentioned in the intervention notice by virtue of subsection (1)(a) nor a proposed undertaking which does not differ from it in any material respect; or
- (c) the decision of the Minister to revoke the intervention notice concerned.

**Power of veto of the Minister.**

224.(1) Where an intervention notice under subsection 205(2) is in force, the GCMA shall not, without the consent of the Minister, accept any proposed undertaking under section 228 in relation to the matter concerned.

(2) Where an intervention notice under section 205(5) is in force, the GCMA shall not, without the consent of the Minister, accept the proposed undertaking concerned or a proposed undertaking which does not differ from it in any material respect.

(3) The Minister shall withhold his consent if he believes that it is or may be the case that the proposed undertaking will, if accepted, operate against the public interest.

(4) For the purposes of subsection (2) a proposed undertaking will, if accepted, operate against the public interest only if any public interest consideration which is mentioned in the intervention notice concerned and has been finalised, or any public interest considerations which are so mentioned and have been finalised, outweigh the considerations which have led the GCMA to propose accepting the undertaking.

(5) In making his decision under subsection (2) the Minister shall accept the GCMA's view of what undertakings, if the only relevant consideration were how to remedy, mitigate or prevent the adverse effect on competition concerned or any detrimental effect on customers so far as resulting from the adverse effect on competition, would be most appropriate.

(6) Where a public interest consideration which is mentioned in the intervention notice concerned is not finalised on the giving of the notice, the Minister shall not make his decision as to whether to give his consent under this section before-

- (a) the end of the period of 24 weeks beginning with the giving of the intervention notice; or
- (b) if earlier, the date on which the public interest consideration concerned has been finalised.

(7) Subject to subsections (2) to (5), the Minister shall not withhold his consent under this section.

*Other*

**Public interest intervention cases: interaction with general procedure.**

225.(1) Sections 198(1), (2), (6), (8) and (9), 200(1) to (5), 201(1) to (9), 202 and 203 do not apply in relation to a restricted PI reference or a full PI reference.

(2) Where the Minister revokes an intervention notice which has been given under section 205(2) at a time after the Minister has made a restricted PI reference or a full PI reference, the GCMA shall proceed as if the reference concerned had instead been made under section 191 (in accordance with the requirements imposed by this Part).

(3) Where the GCMA is proceeding by virtue of subsection (2), the period within which the GCMA shall prepare and publish its report under section 200 shall be extended by an additional period of 20 days.

(4) Where the GCMA terminates its investigation under section 216(1), the GCMA shall proceed as if the restricted PI reference or (as the case may be) the full PI reference concerned had instead been made by the GCMA under section 191 (in accordance with the requirements imposed by this Part).

(5) Where the GCMA is proceeding by virtue of subsection (4), the period within which the GCMA shall prepare and publish its report under section 200 shall be extended by an additional period of 20 days.

(6) In determining the period of 20 days mentioned in subsection (3) or (5) no account shall be taken of-

- (a) Saturday, Sunday, Good Friday and Christmas Day; and
- (b) any day which is a public or bank holiday in Gibraltar.

### **Certain duties of GCMA**

226.(1) The GCMA shall, in considering whether to make a reference under section 191, bring to the attention of the Minister any case which it believes raises any consideration specified in section 227 unless it believes that the Minister would consider any such consideration immaterial in the context of the particular case.

(2) The GCMA shall bring to the attention of the Minister any representations about exercising his power under section 227(3) which have been made to the GCMA.

### **Specified considerations: Part V.**

227.(1) The interests of the security of Gibraltar are specified in this section.

(2) The Minister may by order modify this section for the purpose of specifying in this section a new consideration or removing or amending any consideration which is for the time being specified in this section.

## **CHAPTER 3 ENFORCEMENT**

### *Undertakings and orders*

#### **Undertakings in lieu of market investigation references.**

228.(1) Subsection (2) applies if the GCMA considers that it has the power to make a reference under section 191 and otherwise intends to make such a reference.

(2) The GCMA may, instead of making such a reference and for the purpose of remedying, mitigating or preventing-

- (a) any adverse effect on competition concerned; or
- (b) any detrimental effect on customers so far as it has result from, or may be expected to result from, the adverse effect on competition;

accept, from such persons as it considers appropriate, undertakings to take such action as it considers appropriate.

(3) In proceeding under subsection (2), the GCMA shall, in particular, have regard to the need to achieve as comprehensive a solution as is reasonable and practicable to the adverse effect on competition concerned and any detrimental effects on customers so far as resulting from the adverse effect on competition.

(4) In proceeding under subsection (2), the GCMA may, in particular, have regard to the effect of any action on any relevant customer benefits of the feature or features of the market or markets concerned.

(5) The GCMA shall take no action under subsection (2) to remedy, mitigate or prevent any detrimental effect on customers so far as it may be expected to result from the adverse effect on competition concerned if-

- (a) no detrimental effect on customers has resulted from the adverse effect on competition; and
- (b) the adverse effect on competition is not being remedied, mitigated or prevented.

(6) An undertaking under this section-

- (a) shall come into force when accepted;
- (b) may be varied or superseded by another undertaking; and
- (c) may be released by the GCMA.

(7) The GCMA shall, as soon as reasonably practicable, consider any representations received by it in relation to varying or releasing an undertaking under this section.

(8) This section is subject to sections 224 and 229.

**Undertakings in lieu: procedural requirements.**

229.(1) Before accepting an undertaking under section 228 (other than an undertaking under that section which varies an undertaking under that section but not in any material respect), the GCMA shall-

- (a) publish notice of the proposed undertaking; and
- (b) consider any representations made in accordance with the notice and not withdrawn.

(2) A notice under subsection (1) shall state-

- (a) that the GCMA proposes to accept the undertaking;
- (b) the purpose and effect of the undertaking;
- (c) the situation that the undertaking is seeking to deal with;



- (d) any other facts which the GCMA considers justify the acceptance of the undertaking;
  - (e) a means of gaining access to an accurate version of the proposed undertaking at all reasonable times; and
  - (f) the period (not less than 15 days starting with the date of publication of the notice) within which representations may be made in relation to the proposed undertaking.
- (3) The matters to be included in a notice under subsection (1) by virtue of subsection (2) shall, in particular, include-
- (a) the terms of the reference under section 191 which the GCMA considers that it has power to make and which it otherwise intends to make or (but for the effect of section 207(3)) it would have had power to make and which it would otherwise have intended to make; and
  - (b) the adverse effect on competition, and any detrimental effect on customers so far as resulting from the adverse effect on competition, which the GCMA has identified.
- (4) The GCMA shall not accept the undertaking with modifications unless it-
- (a) publishes notice of the proposed modifications; and
  - (b) considers any representations made in accordance with the notice and not withdrawn.
- (5) A notice under subsection (4) shall state-
- (a) the proposed modifications;
  - (b) the reasons for them; and
  - (c) the period (not less than 7 days starting with the date of the publication of the notice under subsection (4)) within which representations may be made in relation to the proposed modifications.
- (6) If, after publishing notice under subsection (1) or (4), the GCMA decides-
- (a) not to accept the undertaking concerned; and
  - (b) not to proceed by virtue of subsection (8) or (9); it shall publish notice of that decision.

(7) As soon as practicable after accepting an undertaking to which this section applies, the GCMA shall-

- (a) serve a copy of the undertaking on any person by whom it is given; and
- (b) publish the undertaking.

(8) The requirements of subsection (4) (and those of subsection (1)) shall not apply if the GCMA-

- (a) has already published notice under subsection (1) but not subsection (4) in relation to the proposed undertaking; and
- (b) considers that the modifications which are now being proposed are not material in any respect.

(9) The requirements of subsection (4) (and those of subsection (1)) shall not apply if the GCMA-

- (a) has already published notice under subsections (1) and (4) in relation to the matter concerned; and
- (b) considers that the further modifications which are now being proposed do not differ in any material respect from the modifications in relation to which notice was last given under subsection (4).

(10) Paragraphs 7 to 9 (but not paragraph 10) of Schedule 10 (procedural requirements before terminating undertakings) shall apply in relation to the proposed release of undertakings under section 228 (other than in connection with accepting an undertaking under that section which varies or supersedes an undertaking under that section) as they apply in relation to the proposed release of undertakings under section 128.

**Effect of undertakings under section 228.**

230.(1) No market investigation reference shall be made by the GCMA or the Minister in relation to any feature, or combination of features, of a market for goods or services if-

- (a) the GCMA has accepted an undertaking or group of undertakings under section 228 within the previous 12 months;
- (b) the feature or combination of features to which the undertaking or group of undertakings relates is the same as the feature or combination of features to which the reference would relate; and

- (c) the goods or services to which the undertaking or group of undertakings relates are of the same description as the goods or services to which the reference would relate.

(2) No ordinary reference shall be made by the GCMA or the Minister in relation to any feature, or combination of features, of a market for goods or services if-

- (a) the GCMA has, instead of making an ordinary reference, accepted an undertaking or group of undertakings under section 228 within the previous 12 months; and
- (b) the goods or services to which the undertaking or group of undertakings relates are of the same description as the goods or services to which the reference would relate.

(3) Subsections (A1) and (1) do not prevent the making of a market investigation reference if-

- (a) the GCMA considers that any undertaking concerned has been breached and has given notice of that fact to the person responsible for giving the undertaking; or
- (b) the person responsible for giving any undertaking concerned supplied, in connection with the matter, information to the GCMA which was false or misleading in a material respect.

(4) The expiry of the period mentioned in section 193(4) does not prevent the making of a market investigation reference if the GCMA has accepted an undertaking or group of undertakings under section 228 and the GCMA considers that any undertaking concerned has been breached and has given notice of that fact to the person responsible for giving the undertaking.

#### **Interim undertakings: Part V.**

231.(1) Subsection (2) applies where-

- (a) a market investigation reference has been made;
- (b) a report has been published under section 200 within the period permitted by section 201 or (as the case may be) a report prepared under section 212 and given to the Minister under section 213(3) or (as the case may be) 214(3) within the period permitted by section 215 has been published; and
- (c) the market investigation reference concerned is not finally determined.

(2) The relevant authority may, for the purpose of preventing pre-emptive action, accept, from such persons as the relevant authority considers appropriate, undertakings to take such action as the relevant authority considers appropriate.

(3) Subsection (4) applies where-

- (a) subsection (1)(a) to (c) applies; and
- (b) the relevant authority has reasonable grounds for suspecting that pre-emptive action has or may have been taken.

(4) The relevant authority may, for the purpose of restoring the position to what it would have been had the pre-emptive action not been taken or otherwise for the purpose of mitigating its effects, accept, from such persons as the relevant authority considers appropriate, undertakings to take such action as the relevant authority considers appropriate.

(5) A person may, with the consent of the relevant authority, take action of a particular description where the action would otherwise constitute a contravention of an undertaking accepted under this section.

(6) An undertaking under this section-

- (a) shall come into force when accepted;
- (b) may be varied or superseded by another undertaking; and
- (c) may be released by the relevant authority.

(7) An undertaking under this section shall, if it has not previously ceased to be in force, cease to be in force when the market investigation reference is finally determined.

(8) The relevant authority shall, as soon as reasonably practicable, consider any representations received by the relevant authority in relation to varying or releasing an undertaking under this section.

(9) In this section and section 232-

“pre-emptive action” means action which might impede the taking of any action under section 202(2), 219(2) or (as the case may be) 220(2) in relation to the market investigation reference concerned; and

“the relevant authority” means-

- (a) in the case of a restricted PI reference or a full PI reference, the Minister;

- (b) in any other case, the GCMA

**Interim orders: Part V.**

232.(1) Subsection (2) applies where-

- (a) a market investigation reference has been made;
- (b) a report has been published under section 200 within the period permitted by section 201 or (as the case may be) a report prepared under section 212 and given to the Minister under section 213(3) or (as the case may be) 214(3) within the period permitted by section 215 has been published; and
- (c) the market investigation reference concerned is not finally determined.

(2) The relevant authority may by order, for the purpose of preventing pre-emptive action-

- (a) prohibit or restrict the doing of things which the relevant authority considers would constitute pre-emptive action;
- (b) impose on any person concerned obligations as to the carrying on of any activities or the safeguarding of any assets;
- (c) provide for the carrying on of any activities or the safeguarding of any assets either by the appointment of a person to conduct or supervise the conduct of any activities (on such terms and with such powers as may be specified or described in the order) or in any other manner;
- (d) do anything which may be done by virtue of paragraph 18 of Schedule 8.

(3) Subsection (4) applies where-

- (a) subsection (1)(a) to (c) applies; and
- (b) the relevant authority has reasonable grounds for suspecting that pre-emptive action has or may have been taken.

(4) The relevant authority may by order, for the purpose of restoring the position to what it would have been had the pre-emptive action not been taken or otherwise for the purpose of mitigating its effects-

- (a) do anything mentioned in subsection (2)(b) to (d);
- (b) impose such other obligations, prohibitions or restrictions as it considers appropriate for that purpose.

(5) A person may, with the consent of the relevant authority, take action of a particular description where the action would otherwise constitute a contravention of an order under this section.

(6) An order under this section-

(a) shall come into force at such time as is determined by or under the order; and

(b) may be varied or revoked by another order.

(7) An order under this section shall, if it has not previously ceased to be in force, cease to be in force when the market investigation reference is finally determined.

(8) The relevant authority shall, as soon as reasonably practicable, consider any representations received by the relevant authority in relation to varying or revoking an order under this section.

#### **Final undertakings: Part V.**

233.(1) The GCMA may, in accordance with section 202, accept, from such persons as it considers appropriate, undertakings to take action specified or described in the undertakings.

(2) The Minister may, in accordance with section 219 or (as the case may be) 220, accept, from such persons as he considers appropriate, undertakings to take action specified or described in the undertakings.

(3) An undertaking under this section shall come into force when accepted.

(4) An undertaking under subsection (1) or (2) may be varied or superseded by another undertaking under that subsection.

(5) An undertaking under subsection (1) may be released by the GCMA and an undertaking under subsection (2) may be released by the Minister.

(6) The GCMA or (as the case may be) the Minister shall, as soon as reasonably practicable, consider any representations received by it or (as the case may be) him in relation to varying or releasing an undertaking under this section.

#### **Order-making power where final undertakings not fulfilled: Part V.**

234.(1) Subsection (2) applies where the relevant authority considers that-

- (a) an undertaking accepted by the relevant authority under section 233 has not been, is not being or will not be fulfilled; or
  - (b) in relation to an undertaking accepted by the relevant authority under that section, information which was false or misleading in a material respect was given to a relevant person by the person giving the undertaking before the relevant authority decided to accept the undertaking.
- (2) In subsection (1), a “relevant person” means-
- (a) in a case where the relevant authority is the GCMA, the GCMA;
  - (b) in a case where the relevant authority is the Minister, the Minister or the GCMA.
- (3) The relevant authority may, for any of the purposes mentioned in section 202(2), 219(2) or (as the case may be) 220(2), make an order under this section.
- (4) Subsections (3) to (6) of section 202 or 219 or (as the case may be) subsections (3) and (4) of section 220 shall apply for the purposes of subsection (2) above as they apply for the purposes of that section.
- (5) An order under this section may contain-
- (a) anything permitted by Schedule 8; and
  - (b) such supplementary, consequential or incidental provision as the relevant authority considers appropriate.
- (6) An order under this section-
- (a) shall come into force at such time as is determined by or under the order;
  - (b) may contain provision which is different from the provision contained in the undertaking concerned; and
  - (c) may be varied or revoked by another order.
- (7) The Minister shall not vary or revoke an order made by him under this section unless the GCMA advises that such a variation or revocation is appropriate by reason of a change of circumstances.
- (8) In this section “the relevant authority” means-
- (a) in the case of an undertaking accepted under section 233 by the GCMA, the GCMA; and

- (b) in the case of an undertaking accepted under that section by the Minister, the Minister.

**Final orders: Part V.**

235.(1) The GCMA may, in accordance with section 202, make an order under this section.

(2) The Minister may, in accordance with section 219 or (as the case may be) 220, make an order under this section.

(3) An order under this section may contain-

- (a) anything permitted by Schedule 8; and
- (b) such supplementary, consequential or incidental provision as the person making it considers appropriate.

(4) An order under this section-

- (a) shall come into force at such time as is determined by or under the order; and
- (b) may be varied or revoked by another order.

(5) The Minister shall not vary or revoke an order made by him under this section unless the GCMA advises that such a variation or revocation is appropriate by reason of a change of circumstances.

**Duty of GCMA to monitor undertakings and orders: Part V.**

236.(1) The GCMA shall keep under review the carrying out of any enforcement undertaking or any enforcement order.

(2) The GCMA shall, in particular, from time to time consider-

- (a) whether an enforcement undertaking or enforcement order has been or is being complied with;
- (b) whether, by reason of any change of circumstances, an enforcement undertaking is no longer appropriate and-
  - (i) one or more of the parties to it can be released from it; or
  - (ii) it needs to be varied or to be superseded by a new enforcement undertaking; and



- (c) whether, by reason of any change of circumstances, an enforcement order is no longer appropriate and needs to be varied or revoked.
- (3) The GCMA shall give the Minister such advice as it considers appropriate in relation to-
- (a) any possible variation or release by the Minister of an enforcement undertaking accepted by him;
  - (b) any possible new enforcement undertaking to be accepted by the Minister so as to supersede another enforcement undertaking given to the Minister;
  - (c) any possible variation or revocation by the Minister of an enforcement order made by the Minister;
  - (d) any possible enforcement undertaking to be accepted by the Minister instead of an enforcement order or any possible enforcement order to be made by the Minister instead of an enforcement undertaking; or
  - (e) the enforcement by virtue of section 241(6) and (7) of any enforcement undertaking or enforcement order.
- (4) The GCMA shall take such action as it considers appropriate in relation to-
- (a) any possible variation or release by it of an undertaking accepted by it under section 228;
  - (b) any possible new undertaking to be accepted by it under section 228 so as to supersede another undertaking given to it under that section;
  - (c) any possible variation or release by it of an enforcement undertaking accepted by it;
  - (d) any possible new enforcement undertaking to be accepted by it so as to supersede another enforcement undertaking given to it;
  - (e) any possible variation or revocation by it of an enforcement order made by it;
  - (f) any possible enforcement undertaking to be accepted by it instead of an enforcement order or any possible enforcement order to be made by it instead of an enforcement undertaking; or
  - (g) the enforcement by it by virtue of section 241(6) of any enforcement undertaking or enforcement order.

(5) The GCMA shall keep under review the effectiveness of enforcement undertakings accepted under this Part and enforcement orders made under this Part.

(6) The GCMA shall, whenever requested to do so by the Minister and otherwise from time to time, prepare a report of its findings under subsection (5).

(7) The GCMA shall-

(a) give a copy of any report prepared by it under subsection (6) to the Minister; and

(b) publish the report.

(7) In this Part-

“enforcement order” means an order made under section 232, 234 or 235; and

“enforcement undertaking” means an undertaking accepted under section 228, 231 or 233.

#### **Role of GCMA in relation to undertakings and orders in public interest cases: Part V.**

237.(1) Subsections (2) and (3) apply where the GCMA is considering whether to accept undertakings under section 231 or 233.

(2) The Minister may require the Minister to consult with such persons as the Minister considers appropriate with a view to discovering whether they will offer undertakings which the Minister would be prepared to accept under section 231 or (as the case may be) 233.

(3) The Minister may require the GCMA to report to the Minister on the outcome of the GCMA’s consultations within such period as the Minister may require.

(4) A report under subsection (3) shall, in particular, contain advice from the GCMA as to whether any undertakings offered should be accepted by the Minister under section 231 or (as the case may be) 233.

(5) The powers conferred on the Minister by subsections (1) to (4) are without prejudice to the power of the Minister to consult the persons concerned.

(6) If asked by the Minister for advice in relation to the taking of enforcement action (whether or not by way of undertakings) in a particular case, the GCMA shall give such advice as it considers appropriate.

#### **Enforcement undertakings and orders under this Part: general provisions.**

238.(1) The provision which may be contained in an enforcement undertaking is not limited to the provision which is permitted by Schedule 8.

(2) The following enactments in Part IV shall apply in relation to enforcement orders under this Part as they apply in relation to enforcement orders under that Part-

- (a) section 143(1) to (5) (enforcement orders: general provisions); and
- (b) section 144 (power of directions conferred by enforcement order).

(3) An enforcement order under section 234 or 235 or any explanatory material accompanying the order shall state-

- (a) the actions that the persons or description of persons to whom the order is addressed must do or (as the case may be) refrain from doing;
- (b) the date on which the order comes into force;
- (c) the possible consequences of not complying with the order; and
- (d) the section of this Part under which a review can be sought in relation to the order.

**Procedural requirements for certain undertakings and orders: Part V.**

239. Schedule 10 (procedural requirements for certain undertakings and orders), other than paragraph 10 of that Schedule, shall apply in relation to undertakings under section 233 and orders under section 234 or 235 as it applies in relation to undertakings under section 139 and orders under section 140 or 141.

**Register of undertakings and orders: Part V.**

240.(1) The GCMA shall compile and maintain a register for the purposes of this Part.

- (2) The register shall be kept in such form as the GCMA considers appropriate.
- (3) The GCMA shall ensure that the following matters are entered in the register-
  - (a) the provisions of any enforcement undertaking accepted by virtue of this Part;
  - (b) the provisions of any enforcement order made by virtue of this Part; and
  - (c) the details of any variation, release or revocation of such an undertaking or order.
- (4) The duty in subsection (3) does not extend to anything of which the GCMA is unaware.

(5) The Minister and any relevant sectoral regulator shall inform the GCMA of any matters which are to be included in the register by virtue of subsection (3) and which relate to enforcement undertakings accepted by them or enforcement orders made by them.

(6) The GCMA shall ensure that the contents of the register are available to the public-

- (a) during (as a minimum) such hours as may be specified in an order made by the Minister; and
- (b) subject to such reasonable fees (if any) as the GCMA may determine.

(7) If requested by any person to do so and subject to such reasonable fees (if any) as the GCMA may determine, the GCMA shall supply the person concerned with a copy (certified to be true) of the register or of an extract from it.

### **Rights to enforce undertakings and orders under this Part.**

241.(1) This section applies to any enforcement undertaking or enforcement order.

(2) Any person to whom such an undertaking or order relates shall have a duty to comply with it.

(3) The duty shall be owed to any person who may be affected by a contravention of the undertaking or (as the case may be) order.

(4) Any breach of the duty which causes such a person to sustain loss or damage shall be actionable by him.

(5) In any proceedings brought under subsection (4) against a person to whom an enforcement undertaking or enforcement order relates it shall be a defence for that person to show that he took all reasonable steps and exercised all due diligence to avoid contravening the undertaking or (as the case may be) order.

(6) Compliance with an enforcement undertaking or an enforcement order shall also be enforceable by civil proceedings brought by the GCMA for an injunction or for any other appropriate relief or remedy.

(7) Compliance with an undertaking accepted by the Minister under section 231 or 233, or an order made by the Minister under section 232, 234 or 235, shall also be enforceable by civil proceedings brought by the Minister for an injunction or for any other appropriate relief or remedy.

(8) Subsections (6) and (7) shall not prejudice any right that a person may have by virtue of subsection (4) to bring civil proceedings for contravention or apprehended contravention of an enforcement undertaking or an enforcement order.

**CHAPTER 4  
SUPPLEMENTARY**

*Regulated markets*

**Regulated markets.**

242.(1) Subsection (2) applies where the GCMA or the Minister is considering for the purposes of this Part whether relevant action would be reasonable and practicable for the purpose of remedying, mitigating or preventing an adverse effect on competition or any detrimental effect on customers so far as resulting from such an effect.

(2) The GCMA or (as the case may be) the Minister shall, in deciding whether such action would be reasonable and practicable, have regard to the relevant statutory functions of the sectoral regulator concerned.

(3) The Minister may by order amend Schedule 9 for the purposes of specifying “relevant action”, “relevant statutory functions”, “sectoral regulator” and for amending sectoral enactments as appropriate.

**Certain duties of relevant authorities to consult: Part V.**

243.(1) Subsection (2) applies where the relevant authority is proposing to make a relevant decision in a way which the relevant authority considers is likely to have a substantial impact on the interests of any person.

(2) The relevant authority shall, so far as practicable, consult that person about what is proposed before making that decision.

(3) In consulting the person concerned, the relevant authority shall, so far as practicable, give the reasons of the relevant authority for the proposed decision.

(4) In considering what is practicable for the purposes of this section the relevant authority shall, in particular, have regard to-

- (a) any restrictions imposed by any timetable for making the decision; and
- (b) any need to keep what is proposed, or the reasons for it, confidential.

(5) The duty under this section shall not apply in relation to the making of any decision so far as particular provision is made elsewhere by virtue of this Part for consultation before the making of that decision.

(6) In this section-

“the relevant authority” means the GCMA or the Minister; and

“relevant decision” means-

- (a) in the case of the GCMA, any decision by the GCMA-
  - (i) to make a reference under section 191 in a case where the GCMA has not published a market study notice under section 190 in relation to the matter concerned;
  - (ii) as to whether to accept undertakings under section 228 instead of making any reference under section 191;
  - (iii) to vary under section 199 such a reference; or-
  - (iv) on the questions mentioned in section 198, 209 or 210; and
- (b) in the case of the Minister acting alone, any decision-
  - (i) to make a reference under section 195; or
  - (ii) to vary under section 199 such a reference;
- (c) in the case of the Minister, any decision by the Minister-
  - (i) to make a reference under section 195;
  - (ii) to vary under section 199 such a reference;
  - (iii) in a case where the Minister is required to make a reference under section 207, whether to make a reference under subsection (5) or (6) of that section; or
  - (iv) to vary under section 208 a reference made under section 207(6).

**General information duties.**

244.(1) The GCMA shall give the Minister-

- (a) such information in its possession as the Minister may by direction reasonably require to enable him to carry out his functions under this Part; and

- (b) any other assistance which the Minister may by direction reasonably require for the purpose of assisting him in carrying out his functions under this Part and which it is within the power of the GCMA to give.

(2) The GCMA shall give the Minister any information in its possession which has not been requested by the Minister but which, in the opinion of the GCMA, would be appropriate to give to the Minister for the purpose of assisting him in carrying out his functions under this Part.

(3) The Minister shall have regard to any information given to him under subsection (1) or (2).

(4) Any direction given under subsection (1)-

- (a) shall be in writing; and
- (b) may be varied or revoked by a subsequent direction.

**Advice and information: Part V.**

245.(1) The GCMA shall prepare and publish general advice and information about -

- (a) the making and consideration by it of market investigation references, and
- (b) the way in which relevant customer benefits may affect the taking of enforcement action in relation to such references.

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

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

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

(5) Advice (or information) published by virtue of subsection (1) may include advice (or information) about the factors which the GCMA may take into account in considering whether, and if so how, to exercise a function conferred by this Part.

(6) Any advice or information published by the GCMA under this section shall be published in such manner as the GCMA considers appropriate.

(7) In preparing any advice or information under this section, the GCMA shall consult such persons as it considers appropriate.

**Further publicity requirements: Part V.**

246.(1) The GCMA shall publish-

- (a) any reference made by it under section 191, other than a reference treated as so made by virtue of section 207(5)(b);
- (b) any decision not to make a reference under section 191 following a consultation in relation to the matter concerned under section 243;
- (c) any variation made by it under section 199 of a reference under section 191;
- (d) any decision of a kind mentioned in section 223(5)(b); and
- (e) such information as it considers appropriate about any decision made by it under section 226(1) to bring a case to the attention of the Minister.

(2) The GCMA shall also publish-

- (a) any extension by it under section 201 of the period within which a report under section 200 is to be prepared and published;
- (b) any extension by it under section 203 of the period within which its duty under section 202(2) is to be discharged;
- (c) any decision made by it under section 202(2) neither to accept an undertaking under section 233 nor to make an order under section 235;
- (d) any decision made by it that there has been a material change of circumstances as mentioned in section 202(3) or there is another special reason as mentioned in that section;
- (e) any extension by it under section 215 of the period within which a report under section 212 is to be prepared and action is to be taken in relation to it;
- (f) any termination under section 216(1) of an investigation by it;
- (g) any enforcement undertaking accepted by it under section 231;
- (h) any enforcement order made by it under section 232; and
- (i) any variation, release or revocation of such an undertaking or order.

(3) The Minister shall publish-



- (a) any reference made by him under section 195;
- (b) any variation made by him under section 199 of a reference under section 195;
- (c) any intervention notice given by him;
- (d) any decision made by him to revoke such a notice;
- (e) any reference made by him under section 207(5) or (6);
- (f) any variation made by him under section 208 of a reference under section 207(6);
- (g) any decision made by him under section 219(2) or (as the case may be) 220(2) neither to accept an undertaking under section 233 nor to make an order under section 235;
- (h) any enforcement undertaking accepted by him under section 231;
- (i) any variation or release of such an undertaking; and
- (j) any direction given by him under section 244 in connection with the exercise by him of his functions under section 195(3).

(4) Where any person is under an obligation by virtue of subsection (1), (2) or (3) to publish the result of any action taken by that person or any decision made by that person, the person concerned shall, subject to subsections (5) and (6), also publish that person's reasons for the action concerned or (as the case may be) the decision concerned.

(5) Such reasons need not, if it is not reasonably practicable to do so, be published at the same time as the result of the action concerned or (as the case may be) as the decision concerned.

(6) Subsections (4) and (5) shall not apply in relation to any case falling within subsection (1)(e).

(7) Subsection (5) shall not apply in relation to any case falling within subsection (1)(a) or (3)(d).

(8) The Minister shall publish his reasons for-

- (a) any decision made by him under section 217(2) or 218(2); or
- (b) any decision to make an order under section 227(3) or vary or revoke such an order.

(9) Such reasons may be published after-

- (a) in the case of subsection (8)(a), the publication of the decision concerned; and
- (b) in the case of subsection (8)(b), the making of the order or of the variation or revocation; if it is not reasonably practicable to publish them at the same time as the publication of the decision or (as the case may be) the making of the order or variation or revocation.

(10) Where the Minister has decided under section 219(2) or 220(2) to accept an undertaking under section 233 or to make an order under section 235, he shall (after the acceptance of the undertaking or (as the case may be) the making of the order) lay details of his decision and his reasons for it, and the GCMA's report under section 212, before Parliament.

### **Defamation: Part V.**

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

#### *Investigation powers*

### **Attendance of witnesses and production of documents etc.**

248.(1) For the purposes of this section, the permitted purposes are the following-

- (a) assisting the GCMA in carrying out its functions under section 69 in relation to a matter in a case where it has published a market study notice;
- (b) assisting the GCMA in carrying out any functions, including enforcement functions, exercisable by it under or by virtue of this Part in connection with a matter that is or has been the subject of a reference under section 191 or 195 or possible reference under section 191;
- (c) assisting the GCMA or the Minister in carrying out any functions, including enforcement functions, of the GCMA or (as the case may be) the Minister under or by virtue of this Part in connection with a matter that is or has been the subject of a reference under section 207(6) or possible reference under section 207(5) or (6).

(2) The GCMA may exercise any of the powers in subsections (3) to (5) for a permitted purpose.

(3) The GCMA may give notice to any person requiring him-

- (a) to attend at a time and place specified in the notice; and

- (b) to give evidence to the GCMA or a person nominated by the GCMA for the purpose.
- (4) The GCMA may give notice to any person requiring him-
- (a) to produce any documents which-
    - (i) are specified or described in the notice, or fall within a category of document which is specified or described in the notice; and
    - (ii) are in that person's custody or under his control; and
  - (b) to produce them at a time and place so specified and to a person so specified.
- (5) The GCMA may give notice to any person who carries on any business requiring him-
- (a) to supply to the GCMA such estimates, forecasts, returns or other information as may be specified or described in the notice; and
  - (b) to supply it at a time and place, and in a form and manner, so specified and to a person so specified.
- (6) A notice under this section shall-
- (a) specify the permitted purpose for which the notice is given, including the function or functions in question; and
  - (b) include information about the possible consequences of not complying with the notice.
- (7) The GCMA or any person nominated by it for the purpose may, for a permitted purpose, take evidence on oath and for that purpose may administer oaths.
- (8) The person to whom any document is produced in accordance with a notice under this section may, for a permitted purpose, copy the document so produced.
- (9) No person shall be required under this section-
- (a) to give any evidence or produce any documents which he could not be compelled to give or produce in civil proceedings before the court; or
  - (b) to supply any information which he could not be compelled to supply in evidence in such proceedings.

(10) No person shall be required, in compliance with a notice under this section, to go more than 10 miles from his place of residence unless his necessary travelling expenses are paid or offered to him.

(11) In subsection (1), “enforcement functions” means-

(a) in relation to the GCMA-

- (i) functions conferred by virtue of section 238(2)(b) on the GCMA by enforcement orders;
- (ii) functions of the GCMA in relation to the variation, supersession or release of enforcement undertakings or the variation or revocation of enforcement orders;
- (iii) functions of the GCMA under or by virtue of section 234 or 236 in relation to enforcement undertakings or enforcement orders;

(b) in relation to the Minister-

- (i) functions conferred by virtue of section 238(2)(b) on the Minister by enforcement orders;
- (ii) functions of the Minister in relation to the variation, supersession or release of enforcement undertakings or the variation or revocation of enforcement orders;
- (iii) functions of the Minister under or by virtue of section 234 in relation to enforcement undertakings or enforcement orders.

(12) Any reference in this section to the production of a document includes a reference to the production of a legible and intelligible copy of information recorded otherwise than in legible form.

(13) In this section “the court” means the Supreme Court.

**Enforcement of powers under section 248: general.**

249.(1) Where the GCMA considers that a person has, without reasonable excuse, failed to comply with any requirement of a notice under section 248, it may impose a penalty in accordance with section 252.

(2) The GCMA may proceed (whether at the same time or at different times) under subsection (1) and section 203(3) in relation to the same failure.

(3) Where the GCMA considers that a person has intentionally obstructed or delayed another person in the exercise of its powers under section 248(8), it may impose a penalty in accordance with section 252.

(4) A person commits an offence if the person intentionally alters, suppresses or destroys any document which the person has been required to produce by a notice under section 248.

(5) But a person does not commit an offence under subsection (4) in relation to any act which constitutes a failure to comply with a notice under section 248 if the GCMA has proceeded against the person under subsection (1) in relation to that failure.

(6) A person who commits an offence under subsection (4) 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 2 years or to a fine or to both.

(7) The GCMA shall not proceed against a person under subsection (1) in relation to an act which constitutes an offence under subsection (4) if that person has been found guilty of that offence.

(8) In deciding whether and, if so, how to proceed under subsection (1) or (3) or section 203(3), the GCMA shall have regard to the statement of policy which was most recently published under section 253 at the time the failure or (as the case may be) the obstruction or delay concerned occurred.

(9) In this section-

- (a) the reference to the production of a document includes a reference to the production of a legible and intelligible copy of information recorded otherwise than in legible form; and
- (b) the reference to suppressing a document includes a reference to destroying the means of reproducing information recorded otherwise than in legible form.

#### **Restriction on powers to impose penalties under section 249.**

250.(1) No penalty shall be imposed by virtue of section 249(1) or (3) if more than 4 weeks have passed since the day which is the relevant day in the case in question; but this subsection shall not apply in relation to any variation or substitution of the penalty which is permitted by virtue of this Part.

(2) In the following provisions of this section, “the section 248 power” means the power under section 248 to which the failure or (as the case may be) the obstruction or delay in question relates.

(3) Where the section 248 power is exercised for the purpose mentioned in section 248(1)(a), the relevant day is the day when the GCMA finally concludes the carrying out of its section 69 functions.

(4) Where the section 248 power is exercised in connection with an enforcement function (within the meaning of that section), the relevant day is the day when the enforcement undertaking concerned is superseded or released or (as the case may be) the enforcement order concerned is revoked.

(5) Except where subsection (3) or (4) applies, the relevant day is the day determined in accordance with the following provisions of this section.

(6) Where the section 248 power is exercised for the purpose mentioned in section 248(1)(b) in connection with a matter that is the subject of a possible reference under section 191, the relevant day is the day when the GCMA finally decides whether to make the reference.

(7) Where the section 248 power is exercised for the purpose mentioned in section 248(1)(b) in connection with a matter that is the subject of a reference under section 191 or 195, the relevant day is the day when the reference is finally determined (see section 260).

(8) Where the section 248 power is exercised for the purpose mentioned in section 248(1)(c) in connection with a matter that is the subject of a possible reference under section 207(5) or (6), the relevant day is the day when the Minister makes the reference.

(9) Where the section 248 power is exercised for the purpose mentioned in section 248(1)(c) in connection with a matter that is the subject of a reference under section 207(6), the relevant day is the day when the reference is finally determined (see section 260).

**Section 250: supplementary provision.**

251.(1) For the purpose of section 250(3), the GCMA finally concludes the carrying out of its section 72 functions if-

- (a) the GCMA publishes the market study report under section 193(4) or (as the case may be) gives it to the Minister under section 207(3)(b); or
- (b) the period permitted for the preparation by the GCMA of the market study report and for the report to be published under section 193(4) or (as the case may be) given to the Minister under section 207(3)(b) expires and no such report has been so prepared or no such action has been taken.

(2) For the purpose of section 250(3), the time when the GCMA finally concludes the carrying out of its section 5 functions is-

- (a) in a case falling within subsection (1)(a), the publication of the report or (as the case may be) the giving of it to the Minister;
- (b) in a case falling within subsection (1)(b), the expiry of the period concerned.

(3) For the purpose of section 250(6), the GCMA finally decides whether to make a reference under section 191 if-

- (a) the GCMA makes such a reference;
- (b) the GCMA accepts an undertaking under section 228 instead of making such a reference;
- (c) the GCMA publishes notice that it has otherwise decided not to make such a reference; or
- (d) the period permitted for the preparation by the GCMA of a market study report in relation to the matter and for the report to be published under section 193(4) has expired and no such report has been so prepared or published.

(4) For the purpose of section 250(6), the time when the GCMA finally decides whether to make a reference under section 191 is-

- (a) in a case falling within subsection (3)(a), the making of the reference;
- (b) in a case falling within subsection (3)(b), the acceptance of the undertaking concerned;
- (c) in a case falling within subsection (3)(c), the publication of the notice concerned;
- (d) in a case falling within subsection (3)(d), the expiry of the period concerned.

(5) In subsection (4)(b) the reference to the acceptance of the undertaking concerned shall, in a case where the GCMA has accepted a group of undertakings under section 228, be treated as a reference to the acceptance of the last undertaking in the group; but undertakings which vary, supersede or revoke earlier undertakings shall be disregarded for the purposes of subsections (3)(b) and (4)(b).

### **Penalties.**

252.(1) A penalty imposed under section 249(1) or (3) shall be of such amount as the GCMA considers appropriate.

- (2) In the case of a penalty imposed under section 249(1), the amount may be-
- (a) a fixed amount;
  - (b) an amount calculated by reference to a daily rate; or
  - (c) a combination of a fixed amount and an amount calculated by reference to a daily rate.
- (3) In the case of a penalty imposed under section 249(3), the amount shall be a fixed amount.
- (4) A penalty imposed under section 249(1) shall not-
- (a) in the case of a fixed amount, exceed such amount as the Minister may by order specify;
  - (b) in the case of an amount calculated by reference to a daily rate, exceed such amount per day as the Minister may so specify; and
  - (c) in the case of a fixed amount and an amount calculated by reference to a daily rate, exceed such fixed amount and such amount per day as the Minister may so specify.
- (5) A penalty imposed under section 249(3) shall not exceed such amount as the Minister may by order specify.
- (6) An order under subsection (4) or (5) shall not specify-
- (a) in the case of a fixed amount, an amount exceeding £30,000;
  - (b) in the case of an amount calculated by reference to a daily rate, an amount per day exceeding £15,000; and
  - (c) in the case of a fixed amount and an amount calculated by reference to a daily rate, a fixed amount exceeding £30,000 and an amount per day exceeding £15,000.
- (7) Before making an order under subsection (4) or (5), the Minister shall consult-
- (a) the GCMA; and
  - (b) such other persons as the Minister considers appropriate.
- (8) In imposing a penalty by reference to a daily rate-



- (a) no account is to be taken of any days before the service on the person concerned of notice of the penalty under section 174 (as applied by subsection (10)); and
- (b) unless the GCMA determines an earlier date (whether before or after the penalty is imposed), the amount payable ceases to accumulate at the beginning of the earliest of the days mentioned in subsection (9).

(9) Those days are-

- (a) the day on which the requirement of the notice concerned under section 248 is satisfied;
- (b) the day which is the relevant day in the case in question for the purposes of section 250.

(10) Sections 174 to 177 apply in relation to a penalty imposed under section 249(1) or (3) as they apply in relation to a penalty imposed under section 170(1) or (3).

#### **Statement of policy on penalties.**

253.(1) The GCMA shall prepare and publish a statement of policy in relation to the enforcement of notices given under section 248.

(2) The statement shall, in particular, include a statement about the considerations relevant to the determination of the nature and amount of any penalty imposed under section 249(1) or (3).

(3) The GCMA may revise its statement of policy and, where it does so, it shall publish the revised statement.

(4) The GCMA shall consult such persons as it considers appropriate when preparing or revising its statement of policy.

#### *Reports*

#### **Excisions from reports: Part V.**

254.(1) Subsection (2) applies where the Minister is under a duty to publish a report of the GCMA under section 212.

(2) The Minister may exclude a matter from the report if he considers that publication of the matter would be inappropriate.

(3) In deciding what is inappropriate for the purposes of subsection (2) the Minister shall have regard to the considerations mentioned in section 284.

(4) The GCMA shall advise the Minister as to the matters (if any) which it considers should be excluded by him under subsection (2).

(5) References in sections 200(4) to (5) and 246(11) to the giving or laying of a report of the GCMA shall be construed as references to the giving or laying of the report as published.

#### **Minority reports of GCMA: Part V.**

255.(1) Subsection (2) applies where, on a market investigation reference, a member of a group constituted in connection with the reference, disagrees with any decisions contained in the report of the GCMA under this Part as the decisions of the GCMA.

(2) The report shall, if the member so wishes, include a statement of his disagreement and of his reasons for disagreeing.

#### **Review of decisions under Part V.**

256.(1) Any person aggrieved by a decision of the GCMA or the Minister in connection with a reference or possible reference under this Part may apply to the Supreme Court for a review of that decision.

(2) For this purpose “decision”-

- (a) does not include a decision whether to carry out functions under section 69 in a case where the GCMA is, or would have been, required to publish a market study notice (see section 190(1));
- (b) does not include a decision to impose a penalty under section 249(1) or (3); but
- (c) includes a failure to take a decision permitted or required by this Part in connection with a reference or possible reference.

(3) Except in so far as a direction to the contrary is given by the Supreme Court, the effect of the decision is not suspended by reason of the making of the application.

(4) In determining such an application the Supreme Court shall apply the same principles as would be applied by a court on an application for judicial review.

(5) The Supreme Court may-

- (a) dismiss the application 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, refer the matter back to the original decision maker with a direction to reconsider and make a new decision in accordance with the ruling of the Supreme Court.

(6) An appeal lies on any point of law arising from a decision of the Supreme Court under this section to the Court of Appeal.

(7) An appeal under subsection (6) requires the permission of the Supreme Court.

### **Offences.**

257. Sections 179 (false or misleading information) and 185 (offences by bodies corporate) shall apply for the purposes of this Part as they apply for the purposes of Part IV.

### **Orders under Part V.**

258.(1) Any power of the Minister to make an order under this Part-

- (a) may be exercised so as to make different provision for different cases or different purposes;
- (b) includes power to make such incidental, supplementary, consequential, transitory, transitional or saving provision as the Minister considers appropriate.

(2) The power of the Minister under 194(1), 200(8), 201(6), 204(6), 215(6) or 227(3) as extended by subsection (2) above may be exercised by modifying any enactment comprised in or made under this Act, or any other enactment.

### **Service of documents: Part V.**

259. Section 186 shall apply for the purposes of this Part as it applies for the purposes of Part IV.

### **Interpretation: Part V.**

260.(1) In this Part, unless the context otherwise requires-

“action” includes omission; and references to the taking of action include references to refraining from action;

“business” includes a professional practice and includes any other undertaking which is carried on for gain or reward or which is an undertaking in the course of which goods or services are supplied otherwise than free of charge;

“change of circumstances” includes any discovery that information has been supplied which is false or misleading in a material respect;

“consumer” means any person who is-

- (a) a person to whom goods are or are sought to be supplied (whether by way of sale or otherwise) in the course of a business carried on by the person supplying or seeking to supply them; or
- (b) a person for whom services are or are sought to be supplied in the course of a business carried on by the person supplying or seeking to supply them;

and who does not receive or seek to receive the goods or services in the course of a business carried on by him;

“customer” includes a customer who is not a consumer;

“goods” includes buildings and other structures, and also includes ships, aircraft and hovercraft;

“modify” includes amend or repeal; “notice” means notice in writing; and

“supply”, in relation to the supply of goods, includes supply by way of sale, lease, hire or hire-purchase, and, in relation to buildings or other structures, includes the construction of them by a person for another person.

(2) Sections 187(1)(b) and (4) to (6) and 188 shall apply for the purposes of this Part as they apply for the purposes of Part IV.

(3) For the purposes of this Part a market investigation reference is finally determined if-

- (a) where the reference is made under section 191 or 195-
  - (i) the period permitted by section 201 for preparing and publishing a report under section 200 has expired and no such report has been prepared and published;
  - (ii) such a report has been prepared and published within the period permitted by section 201 and contains the decision that there is no adverse effect on competition;
  - (iii) the GCMA has decided under section 202(2) neither to accept undertakings under section 233 nor to make an order under section 235; or

- (iv) the GCMA has accepted an undertaking under section 233 or made an order under section 235;
- (b) where the reference is a restricted PI reference or a full PI reference-
  - (i) the period permitted by section 215 for the preparation of the report of the GCMA under section 212 and for action to be taken in relation to it under section 213(2) or (3) or (as the case may be) 214(2) or (3) has expired while the intervention notice is still in force and no such report has been so prepared or no such action has been taken;
  - (ii) the GCMA has terminated under section 216(1) its investigation and the reference is finally determined under paragraph (a) above;
  - (iii) the report of the GCMA has been prepared under section 212 and published under section 213(2) or (as the case may be) 214(2) within the period permitted by section 215;
  - (iv) the intervention notice was revoked and the reference is finally determined under paragraph (a) above;
  - (v) the Minister has failed to make and publish a decision under subsection (2) of section 217 within the period permitted by subsection (3) of that section or (as the case may be) under subsection (2) of section 218 within the period permitted by subsection (6) of that section and the reference is finally determined under paragraph (a) above;
  - (vi) the Minister has decided under section 217(2) that no eligible public interest consideration is relevant and the reference is finally determined under paragraph (a) above;
  - (vii) the Minister has made no finding at all under section 218(2) and the reference is finally determined under paragraph (a) above;
  - (viii) the Minister has decided under 217(2) that a public interest consideration is relevant but has decided under section 219(2) neither to accept an undertaking under section 233 nor to make an order under section 235;
  - (ix) the Minister has made an adverse public interest finding under section 218(2) but has decided under section 220(2) neither to accept an undertaking under section 233 nor to make an order under section 235;
  - (x) the Minister has decided under section 217(2) that a public interest consideration is relevant and has accepted an undertaking under section 233 or made an order under section 235; or

- (xi) the Minister has made an adverse public interest finding under section 218(2) and has accepted an undertaking under section 233 or made an order under section 235.

(4) For the purposes of this Part the time when a market investigation reference is finally determined is-

- (a) in a case falling within subsection (3)(a)(i) or (b)(i), the expiry of the time concerned;
- (b) in a case falling within subsection (3)(a)(ii) or (b)(iii), the publication of the report;
- (c) in a case falling within subsection (3)(a)(iv), (b)(x) or (xi), the acceptance of the undertaking concerned or (as the case may be) the making of the order concerned; and
- (d) in any other case, the making of the decision or last decision concerned or the taking of the action concerned.

(5) The references in subsection (4) to subsections (3)(a)(i), (ii) and (iv) include those enactments as applied by subsection (3)(b)(ii), (iv), (v), (vi) or (vii).

(6) In subsection (4)(c) the reference to the acceptance of the undertaking concerned or the making of the order concerned shall, in a case where the enforcement action concerned involves the acceptance of a group of undertakings, the making of a group of orders or the acceptance and making of a group of undertakings and orders, be treated as a reference to the acceptance or making of the last undertaking or order in the group; but undertakings or orders which vary, supersede or revoke earlier undertakings or orders shall be disregarded for the purposes of subsections (3)(a)(iv) and (b)(x) and (xi) and (4)(c).

(7) Any duty to publish which is imposed on a person by this Part shall, unless the context otherwise requires, be construed as a duty on that person to publish in such manner as that person considers appropriate for the purpose of bringing the matter concerned to the attention of those likely to be affected by it.

## **PART VI**

### **CARTEL OFFENCE**

#### *Cartel offence*

**Cartel offence.**

261.(1) An individual is guilty of an offence if he agrees with one or more other persons to make or implement, or to cause to be made or implemented, arrangements of the following kind relating to at least two undertakings (A and B).

(2) The arrangements must be ones which, if operating as the parties to the agreement intend, would-

- (a) directly or indirectly fix a price for the supply by A in Gibraltar (otherwise than to B) of a product or service,
- (b) limit or prevent supply by A in Gibraltar of a product or service,
- (c) limit or prevent production by A in Gibraltar of a product,
- (d) divide between A and B the supply in Gibraltar of a product or service to a customer or customers,
- (e) divide between A and B customers for the supply in Gibraltar of a product or service, or
- (f) be bid-rigging arrangements.

(3) Unless subsection (2)(d), (e) or (f) applies, the arrangements must also be ones which, if operating as the parties to the agreement intend, would-

- (a) directly or indirectly fix a price for the supply by B in Gibraltar (otherwise than to A) of a product or service,
- (b) limit or prevent supply by B in Gibraltar of a product or service, or
- (c) limit or prevent production by B in Gibraltar of a product.

(4) In subsections (2)(a) to (d) and (3), references to supply or production are to supply or production in the appropriate circumstances (for which see section 264).

(5) “Bid-rigging arrangements” are arrangements under which, in response to a request for bids for the supply of a product or service in Gibraltar, or for the production of a product in Gibraltar-

- (a) A but not B may make a bid, or
- (b) A and B may each make a bid but, in one case or both, only a bid arrived at in accordance with the arrangements.

(7) “Undertaking” has the same meaning as in Part I.

(8) This section is subject to section 262.

**Circumstances in which cartel offence not committed.**

262.(1) An individual does not commit an offence under section 261(1) if, under the arrangements-

- (a) in a case where the arrangements would (operating as the parties intend) affect the supply in Gibraltar of a product or service, customers would be given relevant information about the arrangements before they enter into agreements for the supply to them of the product or service so affected,
- (b) in the case of bid-rigging arrangements, the person requesting bids would be given relevant information about them at or before the time when a bid is made, or
- (c) in any case, relevant information about the arrangements would be published, before the arrangements are implemented, in the manner specified at the time of the making of the agreement in an order made by the Minister.

(2) In subsection (1), “relevant information” means-

- (a) the names of the undertakings to which the arrangements relate,
- (b) a description of the nature of the arrangements which is sufficient to show why they are or might be arrangements of the kind to which section 261(1) applies,
- (c) the products or services to which they relate, and
- (d) such other information as may be specified in an order made by the Minister.

(3) An individual does not commit an offence under section 261(1) if the agreement is made in order to comply with a legal requirement.

(4) In subsection (3), “legal requirement” has the same meaning as in paragraph 2 of Schedule 2.

(5) A power to make an order under this section-

- (a) may be exercised so as to make different provision for different cases or different purposes, and



- (b) includes power to make such incidental, supplementary, consequential, transitory, transitional or saving provision as the Minister considers appropriate.

**Defences to commission of cartel offence.**

263.(1) In a case where the arrangements would (operating as the parties intend) affect the supply in Gibraltar of a product or service, it is a defence for an individual charged with an offence under section 261(1) to show that, at the time of the making of the agreement, he or she did not intend that the nature of the arrangements would be concealed from customers at all times before they enter into agreements for the supply to them of the product or service.

(2) It is a defence for an individual charged with an offence under section 261(1) to show that, at the time of the making of the agreement, he or she did not intend that the nature of the arrangements would be concealed from the GCMA.

(3) It is a defence for an individual charged with an offence under section 261(1) to show that, before the making of the agreement, he or she took reasonable steps to ensure that the nature of the arrangements would be disclosed to professional legal advisers for the purposes of obtaining advice about them before their making or (as the case may be) their implementation.

**Cartel offence: supplementary.**

264.(1) For section 261(2)(a), the appropriate circumstances are that A's supply of the product or service would be at a level in the supply chain at which the product or service would at the same time be supplied by B in Gibraltar.

(2) For section 261(2)(b), the appropriate circumstances are that A's supply of the product or service would be at a level in the supply chain-

- (a) at which the product or service would at the same time be supplied by B in Gibraltar, or
- (b) at which supply by B in Gibraltar of the product or service would be limited or prevented by the arrangements.

(3) For section 261(2)(c), the appropriate circumstances are that A's production of the product would be at a level in the production chain-

- (a) at which the product would at the same time be produced by B in Gibraltar, or
- (b) at which production by B in Gibraltar of the product would be limited or prevented by the arrangements.

(4) For section 261(2)(d), the appropriate circumstances are that A's supply of the product or service would be at the same level in the supply chain as B's.

(5) For section 261(3)(a), the appropriate circumstances are that B's supply of the product or service would be at a level in the supply chain at which the product or service would at the same time be supplied by A in Gibraltar.

(6) For section 261(3)(b), the appropriate circumstances are that B's supply of the product or service would be at a level in the supply chain-

- (a) at which the product or service would at the same time be supplied by A in Gibraltar, or
- (b) at which supply by A in Gibraltar of the product or service would be limited or prevented by the arrangements.

(7) For section 261(3)(c), the appropriate circumstances are that B's production of the product would be at a level in the production chain-

- (a) at which the product would at the same time be produced by A in Gibraltar, or
- (b) at which production by A in Gibraltar of the product would be limited or prevented by the arrangements.

**Cartel offence: penalty and prosecution.**

265.(1) A person guilty of an offence under section 261 is liable-

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

(2) Proceedings for an offence under section 261 may be instituted only with the consent of the Attorney General.

(3) No proceedings may be brought for an offence under section 261 in respect of an agreement outside Gibraltar, unless it has been implemented in whole or in part in Gibraltar.

(4) Where, for the purpose of the investigation or prosecution of offences under section 261, the GCMA gives a person written notice under this subsection, no proceedings for an offence under section 261 that falls within a description specified in the notice may be brought against that person except in circumstances specified in the notice.

**Cartel offence: prosecution guidance.**

266.(1) The GCMA must prepare and publish guidance on the principles to be applied in determining, in any case, whether proceedings for an offence under section 261(1) should be instituted.

(2) The GCMA may at any time issue revised or new guidance.

(3) Guidance published by the GCMA under this section is to be published in such manner as it considers appropriate.

(4) In preparing guidance under this section the GCMA must consult-

(a) the Attorney General; and

(b) such other persons as it considers appropriate.

*Criminal investigations by GCMA*

**Investigation of offences under section 261.**

267.(1) The GCMA may conduct an investigation if there are reasonable grounds for suspecting that an offence under section 261 has been committed.

(2) The powers of the GCMA under sections 268 and 269 are exercisable, but only for the purposes of an investigation under subsection (1), in any case where it appears to the GCMA that there is good reason to exercise them for the purpose of investigating the affairs, or any aspect of the affairs, of any person (“the person under investigation”).

**Powers when conducting an investigation.**

268.(1) The GCMA may by notice in writing require the person under investigation, or any other person who it has reason to believe has relevant information, to answer questions, or otherwise provide information, with respect to any matter relevant to the investigation at a specified place and either at a specified time or forthwith.

(2) The GCMA may by notice in writing require the person under investigation, or any other person, to produce, at a specified place and either at a specified time or forthwith, specified documents, or documents of a specified description, which appear to the GCMA to relate to any matter relevant to the investigation.

(3) If any such documents are produced, the GCMA may-

(a) take copies or extracts from them;

(b) require the person producing them to provide an explanation of any of them.

(4) If any such documents are not produced, the GCMA may require the person who was required to produce them to state, to the best of his knowledge and belief, where they are.

(5) A notice under subsection (1) or (2) must indicate-

(a) the subject matter and purpose of the investigation; and

(b) the nature of the offences created by section 273.

**Power to enter premises under a warrant.**

269.(1) On an application made to it by the GCMA, Magistrate's Court may issue a warrant if it is satisfied that there are reasonable grounds for believing-

(a) that there are on any premises documents which the GCMA has power under section 268 to require to be produced for the purposes of an investigation; and

(b) that-

(i) a person has failed to comply with a requirement under that section to produce the documents;

(ii) it is not practicable to serve a notice under that section in relation to them; or

(iii) the service of such a notice in relation to them might seriously prejudice the investigation.

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

(a) to enter the premises, using such force as is reasonably necessary for the purpose;

(b) to search the premises and-

(i) take possession of any documents appearing to be of the relevant kind, or

(ii) take, in relation to any documents appearing to be of the relevant kind, any other steps which may appear to be necessary for preserving them or preventing interference with them;

- (c) 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;
- (d) 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) Documents are of the relevant kind if they are of a kind in respect of which the application under subsection (1) was granted.

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

#### **Exercise of powers by authorised person.**

270.(1) The GCMA may authorise any competent person who is not an officer of the GCMA to exercise on its behalf all or any of the powers conferred by section 268 or 269.

(2) No such authority may be granted except for the purpose of investigating the affairs, or any aspect of the affairs, of a person specified in the authority.

(3) No person is bound to comply with any requirement imposed by a person exercising powers by virtue of any authority granted under this section unless he has, if required to do so, produced evidence of his authority.

#### **Privileged information etc.**

271.(1) A person may not under section 268 or 269 be required to disclose any information or produce any document which he would be entitled to refuse to disclose or produce on grounds of legal professional privilege in proceedings in the Supreme Court, except that a lawyer may be required to provide the name and address of his client.

(2) A person may not under section 268 or 269 be required to disclose any information or produce any document in respect of which he owes an obligation of confidence by virtue of carrying on any banking business unless-

- (a) the person to whom the obligation of confidence is owed consents to the disclosure or production; or

- (b) the GCMA has authorised the making of the requirement.

**Restriction on use of statements in court.**

272.(1) A statement by a person in response to a requirement imposed by virtue of section 268 or 269 may only be used in evidence against him-

- (a) on a prosecution for an offence under section 273(2); or
- (b) on a prosecution for some other offence where in giving evidence he makes a statement inconsistent with it.

(2) However, the statement may not be used against that person by virtue of paragraph (b) of subsection (1) unless evidence relating to it is adduced, or a question relating to it is asked, by or on behalf of that person in the proceedings arising out of the prosecution.

**Offences.**

273.(1) Any person who without reasonable excuse fails to comply with a requirement imposed on him under section 268 or 269 is guilty of an offence and liable on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding level 5 on the standard scale or to both.

- (2) A person who, in purported compliance with a requirement under section 268 or 269-
  - (a) makes a statement which he knows to be false or misleading in a material particular; or
  - (b) recklessly makes a statement which is false or misleading in a material particular, is guilty of an offence.
- (3) A person guilty of an offence under subsection (2) is liable-
  - (a) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both; and
  - (b) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum, or to both.
- (4) Where any person-
  - (a) knows or suspects that an investigation into an offence under section 261 is being or is likely to be carried out; and

- (b) falsifies, conceals, destroys or otherwise disposes of, or causes or permits the falsification, concealment, destruction or disposal of documents which he knows or suspects are or would be relevant to such an investigation,

he is guilty of an offence unless he proves that he had no intention of concealing the facts disclosed by the documents from the persons carrying out such an investigation.

(5) A person guilty of an offence under subsection (4) is liable-

- (a) on conviction on indictment, to imprisonment for a term not exceeding 5 years or to a fine or to both; and
- (b) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum, or to both.

(6) A person who intentionally obstructs a person in the exercise of his powers under a warrant issued under section 269 is guilty of an offence and liable-

- (a) on conviction on indictment, to imprisonment for a term not exceeding 2 years or to a fine or to both; and
- (b) on summary conviction, to a fine not exceeding the statutory maximum.

### **Interpretation of sections 267 to 273.**

274. In sections 267 to 273-

“documents” includes information recorded in any form and, in relation to information recorded otherwise than in a form in which it is visible and legible, references to its production include references to producing it in a form in which it is visible and legible or from which it can readily be produced in a visible and legible form;

“person under investigation” has the meaning given in section 267(2).

## **PART VII MISCELLANEOUS**

### **Super-complaints to regulators other than GCMA.**

275.(1) The Minister may by order provide that section 73 is to apply to complaints made to a specified regulator in relation to a market of a specified description as it applies to complaints made to the GCMA, with such modifications as may be specified.

(2) In this section-

“regulator” has the meaning given in section 62(1); and

“specified” means specified in the order.

**Power to modify Schedule 8.**

276.(1) The Minister may by order modify Schedule 8.

(2) An order under this section may make-

- (a) different provision for different cases or different purposes;
- (b) such incidental, supplementary, consequential, transitory, transitional or saving provision as the Minister considers appropriate.

(3) An order under this section may, in particular, modify that Schedule in its application by virtue of Part IV of this Act, in its application by virtue of Part V of this Act, in its application by virtue of any other enactment (whether by virtue of Part V of this Act as applied by that enactment or otherwise) or in its application by virtue of every enactment that applies it.

(4) An order under this section as extended by subsection (2) may modify any enactment comprised in or made under this Act, or any other enactment.

(5) No modification of Schedule 8 in its application by virtue of Part IV of this Act shall be made by an order under this section if the modification relates to a relevant merger situation or (as the case may be) a special merger situation which has been created before the coming into force of the order.

(6) No modification shall be made by an order under this section of Schedule 8 in its application in relation to references made under section 74, 85, 103 or 121 before the coming into force of the order.

(7) No modification shall be made by an order under this section of Schedule 8 in its application in relation to references made under section 191 or 195 before the coming into force of the order (including references made under section 191 as applied by another enactment).

(8) Before making an order under this section, the Minister shall consult the GCMA.

(9) Expressions used in this section which are also used in Part IV of this Act have the same meaning in this section as in that Part.

**PART VIII  
INFORMATION**



*Restrictions on disclosure*

**General restriction.**

277.(1) This section applies to specified information which relates to-

- (a) the affairs of an individual;
- (b) any business of an undertaking.

(2) Such information must not be disclosed-

- (a) during the lifetime of the individual, or
- (b) while the undertaking continues in existence, unless the disclosure is permitted under this Part.

(3) But subsection (2) does not prevent the disclosure of any information if the information has on an earlier occasion been disclosed to the public in circumstances which do not contravene-

- (a) that subsection;
- (b) any other enactment or rule of law prohibiting or restricting the disclosure of the information.

(4) Nothing in this Part authorises a disclosure of information which contravenes the data protection legislation.

(5) This Part (except section 284) does not affect any power or duty to disclose information which exists apart from this Part.

(6) In this section, “the data protection legislation” has the same meaning as in section 2 of the Data Protection Act 2004.

(7) In this Part “public authority” includes any person certain of whose functions are functions of a public nature, but does not include the Gibraltar Parliament or a person exercising functions in connection with proceedings in Parliament, a court or a tribunal.

**Information.**

278.(1) Information is specified information if it comes to a public authority in connection with the exercise of any function it has under or by virtue of-

- (a) Part III, IV, V, VI or;

(b) such subordinate legislation as the Minister may by order specify for the purposes of this subsection.

(2) It is immaterial whether information comes to a public authority before or after the passing of this Act.

(3) Public authority (except in the expression “overseas public authority”) includes any person certain of whose functions are of a public nature.

(4) This section applies for the purposes of this Part.

### **Consent.**

279.(1) This Part does not prohibit the disclosure by a public authority of information held by it to any other person if it obtains each required consent.

(2) If the information was obtained by the authority from a person who had the information lawfully and the authority knows the identity of that person the consent of that person is required.

(3) If the information relates to the affairs of an individual the consent of the individual is required.

(4) If the information relates to the business of an undertaking the consent of the person for the time being carrying on the business is required.

(5) For the purposes of subsection (4) consent may be given-

(a) in the case of a company by a director, secretary or other officer of the company;

(b) in the case of a partnership by a partner;

(c) in the case of an unincorporated body or association by a person concerned in the management or control of the body or association.

### **Statutory functions.**

280.(1) A public authority which holds information to which section 277 applies may disclose that information for the purpose of facilitating the exercise by the authority of any function it has under or by virtue of this Act or any other enactment.

(2) If information is disclosed under subsection (1) so that it is not made available to the public it must not be further disclosed by a person to whom it is so disclosed other than with the agreement of the public authority for the purpose mentioned in that subsection.

(3) Information disclosed under subsection (1) so that it is not made available to the public must not be used by the person to whom it is disclosed for any purpose other than that mentioned in subsection (1).

(4) A public authority which holds information to which section 277 applies may disclose that information to any other person for the purpose of facilitating the exercise by that person of any function he has under or by virtue of-

- (a) this Act;
- (b) such subordinate legislation as the Minister may by order specify for the purposes of this subsection.

(5) Information disclosed under subsection (4) must not be used by the person to whom it is disclosed for any purpose other than a purpose relating to a function mentioned in that subsection.

#### **Civil proceedings.**

281.(1) A public authority which holds prescribed information to which section 277 applies may disclose that information to any person-

- (a) for the purposes of, or in connection with, prescribed civil proceedings (including prospective proceedings) in Gibraltar or elsewhere, or
- (b) for the purposes of obtaining legal advice in relation to such proceedings, or
- (c) otherwise for the purposes of establishing, enforcing or defending legal rights that are or may be the subject of such proceedings.

(2) Subsection (1) does not apply to-

- (a) information which comes to a public authority in connection with an investigation under Parts I and II;
- (b) information which comes to a public authority in connection with an investigation under Part IV or V or section 248 of this Act;

(3) In subsection (1) "prescribed" means prescribed by order of the Minister.

(4) An order under this section-

- (a) may prescribe information, or civil proceedings, for the purposes of this section by reference to such factors as appear to the Minister to be appropriate;

- (b) may prescribe for the purposes of this section all information, or civil proceedings, or all information or civil proceedings not falling within one or more specified exceptions.

(5) Information disclosed under this section must not be used by the person to whom it is disclosed for any purpose other than those specified in subsection (1).

### **Criminal proceedings.**

282.(1) A public authority which holds information to which section 277 applies may disclose that information to any person-

- (a) in connection with the investigation of any criminal offence in Gibraltar;
- (b) for the purposes of any criminal proceedings there;
- (c) for the purpose of any decision whether to start or bring to an end such an investigation or proceedings.

(2) Information disclosed under this section must not be used by the person to whom it is disclosed for any purpose other than that for which it is disclosed.

(3) A public authority must not make a disclosure under this section unless it is satisfied that the making of the disclosure is proportionate to what is sought to be achieved by it.

### **Overseas disclosures.**

283.(1) A public authority which holds information to which section 277 applies (the discloser) may disclose that information to an overseas public authority for the purpose mentioned in subsection (2) or in accordance with (3).

(2) The purpose is facilitating the exercise by the overseas public authority of any function which it has relating to-

- (a) carrying out investigations in connection with the enforcement of any relevant legislation by means of civil proceedings;
- (b) bringing civil proceedings for the enforcement of such legislation or the conduct of such proceedings;
- (c) the investigation of crime;
- (d) bringing criminal proceedings or the conduct of such proceedings;

- (e) deciding whether to start or bring to an end such investigations or proceedings.
- (3) Disclosure of information under subsection (1) is permitted where the disclosure is made-
- (a) pursuant to an international obligation that applies to or has effect in Gibraltar; or
  - (b) in accordance with the terms of an arrangement entered into by the Minister or by a public authority, having first obtained the Minister's consent, and another Government or an overseas authority.
- (4) But subsection (1) does not apply to information which comes to a public authority in connection with an investigation under part V or section 248 of this Act.
- (5) The Minister may direct that a disclosure permitted by this section must not be made if he thinks that in connection with any matter in respect of which the disclosure could be made it is more appropriate-
- (a) if any investigation is to be carried out, that it is carried out by an authority in Gibraltar or in another specified country or territory;
  - (b) if any proceedings are to be brought, that they are brought in a court in Gibraltar or in another specified country or territory.
- (6) The Minister must take such steps as he thinks are appropriate to bring a direction under subsection (5) to the attention of persons likely to be affected by it.
- (7) In deciding whether to disclose information under this section a public authority must have regard in particular to the following considerations-
- (a) whether the matter in respect of which the disclosure is sought is sufficiently serious to justify making the disclosure;
  - (b) whether the law of the country or territory to whose authority the disclosure would be made provides appropriate protection against self-incrimination in criminal proceedings;
  - (c) whether the law of that country or territory provides appropriate protection in relation to the storage and disclosure of personal data;
  - (d) whether there are arrangements in place for the provision of mutual assistance as between Gibraltar and that country or territory in relation to the disclosure of information of the kind to which section 277 applies.
- (8) The Minister may by order-

- (a) modify the list of considerations in subsection (7);
- (b) add to those considerations;
- (c) remove any of those considerations.

(9) Information disclosed under this section-

- (a) may be disclosed subject to the condition that it must not be further disclosed without the agreement of the discloser, and
- (b) must not otherwise be used by the overseas public authority to which it is disclosed for any purpose other than that for which it is first disclosed.

(10) An overseas public authority is a person or body in any country or territory outside Gibraltar which appears to the discloser to exercise functions of a public nature in relation to any of the matters mentioned in paragraphs (a) to (e) of subsection (2).

(11) Relevant legislation is-

- (a) this Act and such subordinate legislation as is specified by order for the purposes of section 278(1);
- (b) legislation in any country or territory outside Gibraltar which appears to the discloser to make provision corresponding to this Act or to any such enactment or subordinate legislation.

**Specified information: considerations relevant to disclosure.**

284.(1) A public authority must have regard to the following considerations before disclosing any specified information (within the meaning of section 278(1)).

(2) The first consideration is the need to exclude from disclosure (so far as practicable) any information whose disclosure the authority thinks is contrary to the public interest.

(3) The second consideration is the need to exclude from disclosure (so far as practicable)-

- (a) commercial information whose disclosure the authority thinks might significantly harm the legitimate business interests of the undertaking to which it relates, or
- (b) information relating to the private affairs of an individual whose disclosure the authority thinks might significantly harm the individual's interests.

(4) The third consideration is the extent to which the disclosure of the information mentioned in subsection (3)(a) or (b) is necessary for the purpose for which the authority is permitted to make the disclosure.

**Offences.**

285.(1) A person commits an offence if he discloses information to which section 277 applies in contravention of section 277(2).

(2) A person commits an offence if he discloses information in contravention of a direction given under section 283(4).

(3) A person commits an offence if he uses information disclosed to him under this Part for a purpose which is not permitted under this Part.

(4) A person who commits an offence under this section is liable-

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

**PART IX  
THE GCMA**

**The GCMA.**

286.(1) The Gibraltar Regulatory Authority established under the Gibraltar Regulatory Authority Act 2000 must discharge the functions and duties of the GCMA provided for in this Act or any other enactment.

(2) Schedule 11, which makes further provision about the GCMA, has effect.

**PART X  
CONSEQUENTIAL AND SUPPLEMENTAL PROVISION**

**References to Minister.**

287.(1) Subject to subsections (2) and 3) a reference in this Act to “Minister” means the Chief Minister.

(2) The Chief Minister may by notice published in the Gazette, delegate any powers or duties vested in or required by any provision of this Act or any subordinate legislation made under

this Act to one or more Ministers and such a delegation may be for any period or any purposes specified in the delegation.

**Consequential and supplementary provision.**

288.(1) The Minister may by regulations 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) Regulations 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;
- (c) for the payment of fees;
- (d) amend any schedules to 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.

**Amendment of fair trading legislation.**

289.(1) The Minister may by regulations amend any enactment that has its object or purpose matters relating to fair trading.

(2) Where regulations made under subsection (1) amend any Act, the regulations must be laid in Parliament at the next meeting thereof after they have been made.

**Repeal of Rules.**

290.(1) The Fair Trading (Damages for Infringement of Competition) Rules 2016 (“the Rules” are repealed.

(2) The repeal of the Rules under subsection (1) does not affect any proceedings that were commenced before the repeal and any such proceedings must continue as though the Rules had not been repealed.



(3) In subsection (2) “proceedings” includes an appeal.

## SCHEDULE 1

### EXCLUSIONS: MERGERS

*Sections 4(1)(a) and 11(1)(a)*

#### **Enterprises ceasing to be distinct: the Chapter 1 prohibition.**

1.(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 IV, the Chapter 1 prohibition does not apply to the agreement.

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

(3) In subparagraph (2) “merger provisions” means the provisions of the agreement which cause, or if carried out would cause, the agreement to have the result mentioned in subparagraph (1).

(4) Section 79 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”.

#### **Enterprises ceasing to be distinct: the Chapter 2 prohibition.**

2.(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 IV; or
- (b) is directly related and necessary to the attainment of the result mentioned in paragraph (a),

the Chapter 2 prohibition does not apply to that conduct.

(2) Section 79 applies for the purposes of this paragraph as it applies for the purposes of paragraph 1.

**Withdrawal of the paragraph 1 exclusion.**

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

(2) If the GCMA 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 GCMA such information in connection with the agreement as it may require.

(3) The GCMA may give a direction under this paragraph only as provided in subparagraph (4) or (5).

(4) If at the end of such period as may be specified in rules under section 60 a person has failed, without reasonable excuse, to comply with a requirement imposed under subparagraph (2), the GCMA may give a direction under this paragraph.

(5) The GCMA may also give a direction under this paragraph if-

- (a) it considers that the agreement will, if not excluded, infringe the Chapter 1 prohibition; and
- (b) the agreement is not a protected agreement.

(6) 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).

**Protected agreements.**

4. An agreement is a protected agreement for the purposes of paragraph 3 if-

- (a) the GCMA or (as the case may be) the Minister has published its or his decision not to make a reference under section 74, 85, 103 or 121 in connection with the agreement;
- (b) the GCMA or (as the case may be) the Minister has made a reference under section 74, 85, 103 or 121 in connection with the agreement and the GCMA 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 79 as ceasing to be distinct enterprises (otherwise than as the result of subsection (3) or (4)(b) of that section).

**SCHEDULE 2**  
**GENERAL EXCLUSIONS**

*Sections 4(1)(B) and 11(1)(b)*

**Services of general economic interest etc.**

1. Neither the Chapter 1 prohibition nor the Chapter 2 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.

**Compliance with legal requirements.**

2.(1) The Chapter 1 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 2 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 imposed by or under -

- (a) any enactment in force in Gibraltar; and
- (b) retained direct EU legislation.

**Avoidance of conflict with international obligations.**

3.(1) If the Minister is satisfied that, in order to avoid a conflict between provisions of this Part and an international obligation binding upon Gibraltar, it would be appropriate for the Chapter 1 prohibition not to apply to-

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

the Minister may by order exclude the agreement, or agreements of that description, from the Chapter 1 prohibition.

(2) An order under subparagraph (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 subparagraph (1) may also provide that the Chapter 1 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 Minister is satisfied that, in order to avoid a conflict between provisions of this Part and an international obligation binding upon Gibraltar, it would be appropriate for the Chapter 2 prohibition not to apply in particular circumstances, the Minister may by order provide for it not to apply in such circumstances as may be specified.

(5) An order under subparagraph (4) may provide that the Chapter 2 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 Minister is to be treated as an international obligation for the purposes of this paragraph.

(7) In this paragraph and paragraph 4 “specified” means specified in the order.

**Public policy.**

4.(1) If the Minister is satisfied that there are exceptional and compelling reasons of public policy why the Chapter 1 prohibition ought not to apply to-

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

the Minister may by order exclude the agreement, or agreements of that description, from the Chapter 1 prohibition.

(2) An order under subparagraph (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 subparagraph (1) may also provide that the Chapter 1 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 Minister is satisfied that there are exceptional and compelling reasons of public policy why the Chapter 2 prohibition ought not to apply in particular circumstances, the Minister may by order provide for it not to apply in such circumstances as may be specified.

(5) An order under subparagraph (4) may provide that the Chapter 2 prohibition is to be deemed never to have applied in relation to specified conduct.

**SCHEDULE 3  
COMMITMENTS**

*Section 23*

**PART 1  
PROCEDURAL REQUIREMENTS FOR THE ACCEPTANCE  
AND VARIATION OF COMMITMENTS**

1. Paragraph 2 applies where the GCMA proposes to—
  - (a) accept any commitments under section 23; 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 GCMA 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 GCMA 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 GCMA’s competition concerns;
  - (c) any other facts which the GCMA 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 subparagraph (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 GCMA 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 subparagraph (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 3 or 4 the GCMA decides-
- (a) not to accept the commitments or variation concerned, and
  - (b) not to proceed by virtue of paragraph 5 or 6, the GCMA must give notice that it has so decided.
5. The requirements of paragraph 3 shall not apply if the GCMA-
- (a) has already given notice under paragraph 2 but not under paragraph 4; 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 GCMA-
- (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 23 the GCMA must publish the commitments or the variation in such manner as the GCMA 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 GCMA 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 GCMA considers appropriate for the purpose of bringing the matter to which it relates to the attention of those likely to be affected by it.

**PART 2**  
**PROCEDURAL REQUIREMENTS FOR THE RELEASE OF COMMITMENTS**

9. Paragraph 10 applies where the GCMA proposes to release any commitments under section 23.

10.(1) Before releasing the commitments, the GCMA 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 subparagraph (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.

11. If after giving notice under paragraph 10 the GCMA 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.

12. As soon as practicable after releasing the commitments, the GCMA 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.

13. A notice under paragraph 10 or 11 shall be given by-

- (a) sending a copy of the notice to such other person or persons as the GCMA 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 GCMA 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 4**  
**APPEALS**

*Sections 47, 48 and 57*

**PART I GENERAL**

*Decisions of the Supreme Court*

- 1.(1) This paragraph applies to any appeal under section 47 or 48 other than-
- (a) an appeal under section 47 against, or with respect to, a decision of the kind specified in subsection (3)(d) or (e) of that section, and
  - (b) an appeal under section 48(1)(b) or (c).
- (2) The Supreme Court 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 GCMA;
  - (b) impose or revoke, or vary the amount of, a penalty;
  - (c) give such directions, or take such other steps, as the GCMA could itself have given or taken; or
  - (d) make any other decision which the GCMA could itself have made.
- (3) If the court 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.
- 2.(1) This paragraph applies to-
- (a) any appeal under section 47 against, or with respect to, a decision of the kind specified in subsection (3)(d) or (e) of that section, and
  - (b) any appeal under section 48(1)(b) or (c).
- (2) The Court must, by reference to the grounds of appeal set out in the notice of appeal, determine the appeal by applying the same principles as it would apply on an application for judicial review.
- (3) The Supreme Court 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 GCMA with a direction to reconsider and make a new decision in accordance with its ruling.

3.(1) This paragraph applies to an appeal under section 57(3).

(2) The Supreme Court on determining the appeal may-

- (a) approve the amount of costs which is the subject of the appeal; or
- (b) order the payment of costs of a different amount.

(3) The court may also give such directions, or take such other steps, as the GCMA could itself have given or taken.

**SCHEDULE 5**  
**FURTHER PROVISION ABOUT CLAIMS IN RESPECT OF LOSS OR DAMAGE**

*Section 52*

**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 1 prohibition; and
- (b) the Chapter 2 prohibition.

(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
- (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 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 GCMA; and
- (b) a regulator, so far as it exercises functions under Part 1 of this Act concurrently with the GCMA.

(2) “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.

(3) Section 65 applies for the purposes of determining when a decision of the GCMA or a regulator becomes “final”.

### **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 subparagraph (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 subparagraph (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.

(6) References to a cartel leniency statement include-

- (a) a part of a cartel leniency statement;
- (b) a quotation from a cartel leniency statement;
- (c) all or part of a record of a cartel leniency statement; and
- (d) a copy of all or part of a cartel leniency statement or of a record of such a statement.

(7) On the application of a claimant in competition proceedings, a court may, in accordance with procedural rules, determine whether information is a cartel leniency statement.

(8) For the purposes of making a determination under subparagraph (7), the court may-

- (a) take evidence from the author of the document, and
- (b) obtain assistance from a competition authority,

but may not obtain assistance from anyone else.

**Settlement submission to a competition authority.**

5.(1) “Settlement submission” means a statement made, orally or in writing, to a competition authority by or on behalf of an undertaking-

- (a) which states-
  - (i) that the undertaking accepts that it has infringed competition law, or
  - (ii) that the undertaking does not accept that it has infringed competition law but will not dispute a decision of the competition authority that it has done so,
- (b) which is made voluntarily, and
- (c) which is made for the sole purpose of allowing the competition authority to follow a simplified or expedited procedure in connection with the infringement.

(2) References to a settlement submission include-

- (a) a part of a settlement submission,
- (b) a quotation from a settlement submission,
- (c) all or part of a record of a settlement submission, and
- (d) a copy of all or part of a settlement submission or of a record of such a submission.

(3) On the application of a claimant in competition proceedings, a court may, in accordance with procedural rules, determine whether a document is a settlement submission.

(4) For the purposes of making a determination under subparagraph (3), the court may-

- (a) take evidence from the author of the document, and
- (b) obtain assistance from a competition authority,

but may not obtain assistance from anyone else.

**Consensual dispute resolution process.**

6.(1) “Consensual dispute resolution process” means arbitration, mediation or any other process enabling parties to a dispute to resolve it out of court.



(2) A dispute is resolved “out of court” even if the process involves a court or the Tribunal approving what the parties agree or declaring their agreement binding.

**Other definitions.**

7.(1) “Court” means the Supreme Court or the Court of Appeal.

(2) “Damages” includes any sum of money (other than costs or expenses) which may be awarded in respect of a competition claim.

(3) “Procedural rules” means rules of court.

(4) “Undertaking” includes an association of undertakings.

**PART 2  
PASSING ON**

**Overcharges and underpayments.**

8.(1) For the purposes of this Part of this Schedule-

- (a) there is an overcharge as a result of an infringement of competition law if, when a product or service is acquired directly from the infringer, the price actually paid exceeds the price that would have been paid in the absence of the infringement, and
- (b) there is an underpayment as a result of an infringement of competition law if, when a product or service is provided directly to the infringer, the price actually paid is less than the amount that would have been paid in the absence of the infringement.

**Burden of proof where an overcharge is passed on to an indirect purchaser.**

9.(1) Subparagraph (2) applies where-

- (a) there is an overcharge as a result of an infringement of competition law, and
- (b) a competition claim is made in respect of loss or damage which-
  - (i) arises, directly or indirectly, from the overcharge, and
  - (ii) was suffered by a person who acquired a product or service indirectly from the infringer (“the injured person”).

(2) The claimant is to be treated as having proved that the overcharge was passed on to the claimant if the claimant proves that-

- (a) the defendant infringed competition law,
- (b) as a result of the infringement, there was an overcharge when a person acquired a product or service directly from the defendant, and
- (c) the claimant subsequently acquired-
  - (i) the product or service mentioned in paragraph (b), or
  - (ii) a product or service derived from or containing the product or service mentioned in paragraph (b).

(3) Subparagraph (2) does not apply if the defendant proves that the overcharge, or part of it, was not passed on to the claimant.

(4) Where the claimant is not the injured person, the following are to be read as references to the injured person-

- (a) the second reference to the claimant in the opening words of subparagraph (2), and
- (b) the references to the claimant in subparagraphs (2)(c) and (3).

(5) Where the defendant is not the infringer, the references in subparagraph (2)(a) and (b) to the defendant are to be read as references to the infringer.

**Burden of proof where an underpayment is passed on to an indirect provider.**

10.(1) Subparagraph (2) applies where-

- (a) there is an underpayment as a result of an infringement of competition law, and
- (b) a competition claim is made in respect of loss or damage which-
  - (i) arises, directly or indirectly, from the underpayment, and
  - (i) was suffered by a person who provided a product or service indirectly to the infringer (“the injured person”).

(2) The claimant is to be treated as having proved that the underpayment was passed on to the claimant if the claimant proves that-

- (a) the defendant infringed competition law,

- (b) as a result of the infringement, there was an underpayment when a person provided a product or service directly to the defendant, and
- (c) the product or service mentioned in paragraph (b)-
  - (i) was provided to the person by the claimant, or
  - (ii) contained or was derived from a product or service provided by the claimant.

(3) Subparagraph (2) does not apply if the defendant proves that the underpayment, or part of it, was not passed on to the claimant.

(4) Where the claimant is not the injured person, the following are to be read as references to the injured person-

- (a) the second reference to the claimant in the opening words of subparagraph (2), and
- (b) the references to the claimant in subparagraphs (2)(c) and (3).

(5) Where the defendant is not the infringer, the references in subparagraph (2)(a) and (b) to the defendant are to be read as references to the infringer.

**Burden of proof where an overcharge or underpayment is passed on by the claimant.**

11.(1) This paragraph applies where-

- (a) there is an overcharge or underpayment as a result of an infringement of competition law,
- (b) a person makes a competition claim in respect of loss or damage which arises, directly or indirectly, from the overcharge or underpayment, and
- (c) in its defence, the defendant claims that the claimant passed on all or part of the overcharge or underpayment to another person.

(2) The defendant has the burden of proving-

- (a) that the claimant passed on the overcharge or underpayment, and
- (b) the extent to which the claimant did so.

(3) Where the competition claim is made by someone other than the person who suffered the loss or damage (“the injured person”), the references in sub-paragraphs (1)(c) and (2) to the claimant are to be read as references to the injured person.

**PART 3**  
**SMALL AND MEDIUM-SIZED ENTERPRISES**

**Liability of small and medium-sized enterprises.**

12.(1) Subparagraph (3) applies where-

- (a) an undertaking participated in an infringement of competition law with one or more other undertakings,
- (b) throughout the period of the infringement, the undertaking's share of the relevant market (or, if there was more than one, each relevant market) was less than 5%,
- (c) but for this paragraph, the undertaking's liability to pay damages in respect of the infringement (whatever the legal basis of the liability) would irretrievably jeopardise its economic viability and cause its assets to lose all their value, and
- (d) the undertaking is a small or medium-sized enterprise.

(2) Subparagraph (3) does not apply where-

- (a) the undertaking led the infringement,
- (b) the undertaking coerced one or more of the other undertakings to participate in the infringement, or
- (c) the undertaking has previously been found to have infringed competition law.

(3) The undertaking is not liable (either alone or jointly) to pay damages in respect of loss or damage suffered by a person as a result of the infringement of competition law (whatever the legal basis of the liability) except where-

- (a) the person acquired a product or service that was the object of the infringement directly or indirectly from the undertaking, or
- (b) the person acquired a product or service containing or derived from a product or service that was the object of the infringement indirectly from the undertaking.

(4) The reference in subparagraph (1)(c) to the effect of the undertaking's liability to pay damages is to its effect taking account of the undertaking's other liabilities.

(5) In this paragraph "small or medium-sized enterprise" means a small or medium-sized enterprise as defined in the Annex to Commission Recommendation (EC) No. 2003/361 of 6 May 2003 ("the SME Annex"), subject to subparagraph (6).

- (6) For the purposes of this paragraph, the SME Annex has effect as if-
- (a) in Article 2(1), for “EUR 50 million and/or an annual balance sheet total not exceeding EUR 43 million” there were substituted “£44,000,000 and/or an annual balance sheet total not exceeding £38,000,000”;
  - (b) in Article 2(2), for “EUR 10 million” there were substituted “£8,800,000”;
  - (c) in Article 2(3), for “EUR 2 million” there were substituted “£1,750,000”;
  - (d) in Article 3(2)(a), for “EUR 1 250 000” there were substituted “£1,100,000”;
  - (e) in Article 3(2)(d), for “EUR 10 million” there were substituted “£8,800,000”;
  - (f) in Article 3(5), for “by national or Community rules” there were substituted “under the law of Gibraltar”;
  - (g) in Article 5(b), for “national law” there were substituted “the law of Gibraltar”.

#### **PART 4 CARTELS**

##### **Presumption that cartels cause harm.**

13. For the purposes of competition proceedings, it is to be presumed, unless the contrary is proved, that a cartel causes loss or damage.

##### **Immunity recipients.**

14.(1) Paragraphs 15 and 16 apply where-

- (a) undertakings have infringed the Chapter 1 prohibition by participating in a cartel, and
- (b) in respect of its participation in the infringement (the “cartel infringement”), an undertaking has been granted immunity from financial penalties under a cartel leniency programme.

(2) The undertaking mentioned in subparagraph (1)(b) is referred to in paragraphs 15 and 16 as “an immunity recipient”.

**Liability of immunity recipients.**

15. An immunity recipient is not liable (either alone or jointly) to pay damages in respect of loss or damage suffered by a person as a result of the cartel infringement (whatever the legal basis of the liability) except where-

- (a) the person acquired a product or service that was the object of the cartel infringement directly or indirectly from the immunity recipient,
- (b) the person acquired a product or service containing or derived from a product or service that was the object of the cartel infringement indirectly from the immunity recipient,
- (c) the person provided a product or service that was the object of the cartel infringement directly or indirectly to the immunity recipient,
- (d) a product or service that was the object of the cartel infringement contained or was derived from a product or service provided by the person, or
- (e) the person is unable to obtain full compensation for the loss or damage from other undertakings involved in the cartel infringement.

**Contribution between participants in cartels.**

16.(1) Subparagraph (2) applies in relation to proceedings to recover contribution under section 5(1) of the Contract and Tort Act where contribution is to be recovered-

- (a) in respect of loss or damage suffered by a person as a result of a cartel infringement, and
- (b) from a person who is an immunity recipient in relation to the cartel infringement.

(2) The amount of contribution that the immunity recipient may be required to pay may not exceed the amount of the loss or damage the immunity recipient caused to-

- (a) persons who acquired products or services that were the object of the cartel infringement directly or indirectly from the immunity recipient,
- (b) persons who acquired products or services containing or derived from products or services that were the object of the cartel infringement indirectly from the immunity recipient,
- (c) persons who provided products or services that were the object of the cartel infringement directly or indirectly to the immunity recipient, and

(d) persons who provided-

- (i) products or services that were subsequently contained in products or services that were the object of the cartel infringement, or
- (ii) products or services from which products or services that were the object of the cartel infringement were subsequently derived.

(3) Section 5(2) of the Contract and Tort Act (assessment of contribution) has effect subject to subparagraph (2).

## **PART 5 LIMITATION**

### **Time limits for bringing competition proceedings.**

17. Proceedings in respect of a competition claim may not be brought before a court after the end of the limitation period for the claim determined in accordance with this Part of this Schedule.

### **Length of limitation.**

18.(1) The limitation period is 6 years.

(2) But see-

- (a) the provision in paragraphs 20 to 24 for the running of the period to be suspended in certain circumstances, and
- (b) paragraph 23(5), which extends the period in certain circumstances.

### **Beginning of limitation period.**

19.(1) The limitation period for a competition claim against an infringer begins with the later of-

- (a) the day on which the infringement of competition law that is the subject of the claim ceases, and
- (b) the claimant's day of knowledge.

(2) "The claimant's day of knowledge" is the day on which the claimant first knows or could reasonably be expected to know-

- (a) of the infringer's behaviour,

- (b) that the behaviour constitutes an infringement of competition law,
- (c) that the claimant has suffered loss or damage arising from that infringement, and
- (d) the identity of the infringer.

(3) Where the claimant has acquired the right to make the competition claim from another person (whether by operation of law or otherwise)-

- (a) the reference in subparagraph (2) to the day on which the claimant first knows or could reasonably be expected to know something is to be read as a reference to the first day on which either the claimant or a person in whom the cause of action was previously vested first knows or could reasonably be expected to know it, and
- (b) the reference to the claimant in subparagraph (2)(c) is to be read as a reference to the injured person.

(4) In subparagraph (3), “injured person”, in relation to a competition claim, means a person who suffered the loss or damage that is the subject of the claim.

(5) Where a person (“P”) has acquired an infringer’s liability in respect of an infringement of competition law from another person (whether by operation of law or otherwise)-

- (a) the reference to an infringer in subparagraph (1) is to be read as a reference to P, but
- (b) the references to the infringer in subparagraph (2) are to be read as references to the original infringer.

(6) The references in subparagraphs (2) and (3) to a person knowing something are to a person having sufficient knowledge of it to bring competition proceedings.

(7) This paragraph has effect subject to the provision in paragraphs 20 to 24, which defers the beginning of the limitation period in certain circumstances.

**Effect of disability on beginning of limitation period.**

20.(1) This paragraph applies if the claimant in relation to a competition claim is under a disability on the day on which, but for this paragraph, the limitation period for the claim would begin.

(2) The limitation period for the claim begins with the earlier of-

- (a) the day on which the claimant ceases to be under a disability, and



(b) the day on which the claimant dies.

(3) Where-

- (a) the claimant has acquired the right to make the competition claim from another person (whether by operation of law or otherwise), and
- (b) but for this paragraph, the limitation period would begin on the day specified in paragraph 19(2),

the references to the claimant in subparagraphs (1) and (2) of this paragraph are to be read as references to the person by reference to whose knowledge that day would fall to be determined in accordance with paragraph 19(3).

(4) References in this paragraph to a person being “under a disability” have the same meaning as in the Limitation Act (see section 2(2) of that Act).

**Suspension during investigation by competition authority.**

21.(1) Where a competition authority investigates an infringement of competition law, the period of the investigation is not to be counted when calculating whether the limitation or prescriptive period for a competition claim in respect of loss or damage arising from the infringement has expired.

(2) The period of an investigation by a competition authority begins when the competition authority takes the first formal step in the investigation.

(3) The period of an investigation by a competition authority ends-

- (a) if the competition authority makes a decision in relation to the infringement as a result of the investigation, at the end of the period of one year beginning with the day on which the decision becomes final, and
- (b) otherwise, at the end of the period of one year beginning with the day on which the competition authority closes the investigation.

**Suspension during consensual dispute resolution process.**

22.(1) This paragraph applies where-

- (a) a dispute arising from an infringement of competition law is the subject of a consensual dispute resolution process,
- (b) a competition claim is made which arises from the dispute, and

- (c) the claimant and the defendant participated in the consensual dispute resolution process.
- (2) The period of the consensual dispute resolution process is not to be counted when calculating whether the limitation or prescriptive period for the claim expired.
- (3) The period of a consensual dispute resolution process in relation to a dispute begins with the first day on which either of the following occurs-
- (a) the claimant and the defendant (with or without others) enter into an agreement to engage in the process in respect of the dispute, or
  - (b) the claimant and the defendant submit the dispute to the person who is to run the process.
- (4) The period of a consensual dispute resolution process ends with the first day on which one of the following occurs-
- (a) the claimant and the defendant reach an agreement to resolve the dispute;
  - (b) where the process is the subject of an agreement or rules, the process comes to an end in accordance with the agreement or rules;
  - (c) the claimant or defendant notifies the other that it has withdrawn from the process;
  - (d) the claimant or the defendant asks the other to confirm that it wishes to continue with the process and does not receive a response within the period of 14 days beginning with the day on which the request is made;
  - (e) the claimant and the defendant are notified that the person to whom they submitted the dispute refuses to deal with it;
  - (f) the claimant and defendant are notified that the person running the process cannot continue to act in relation to the dispute and fail to agree to submit the dispute to another person within the period of 14 days beginning with the day on which they are notified.
- (5) Where the competition claim is made in collective proceedings, the references to the claimant in subparagraphs (1)(c), (3) and (4) are to be read as references to the claimant or the representative.
- (6) Where the claimant has acquired the right to make the competition claim from another person (whether by operation of law or otherwise), the references to the claimant in

subparagraphs (1)(c), (3), (4) and (5) are to be read as references to the claimant or a person in whom the cause of action was previously vested.

(7) Where the defendant has acquired the infringer's liability in respect of the infringement of competition law from another person (whether by operation of law or otherwise), the references to the defendant in sub-paragraphs (1)(c), (3) and (4) are to be read as references to the defendant or a person who has previously held the liability.

### **Suspension during collective proceedings.**

23.(1) Where a competition claim is made in collective proceedings at the commencement of those proceedings ("the section 50 claim"), this paragraph applies for the purpose of determining the limitation period for the claim if it is subsequently made in proceedings under section 49.

(2) The period of the collective proceedings is not to be counted when calculating whether the limitation period has expired.

(3) The period of collective proceedings begins with the day on which the collective proceedings are commenced.

(4) The period of collective proceedings ends with the first day on which one of the following occurs-

- (a) the court declines to make a collective proceedings order in respect of the collective proceedings;
- (b) the court makes a collective proceedings order in respect of the proceedings, but the order does not provide that the section 50 claim is eligible for inclusion in the proceedings;
- (c) the court rejects the section 50 claim;
- (d) in the case of opt-in collective proceedings, the period within which a person may choose to have the section 50 claim included in the proceedings expires without the person having done so;
- (e) in the case of opt-out collective proceedings-
  - (i) a person domiciled in Gibraltar chooses (within the period in which such a choice may be made) to have the section 50 claim excluded from the collective proceedings, or
  - (ii) the period within which a person not domiciled in Gibraltar may choose to have the section 50 claim included in the collective proceedings expires without the person having done so;

- (f) the section 50 claim is withdrawn;
  - (g) the court revokes the collective proceedings order in respect of the collective proceedings;
  - (h) the court varies the collective proceedings order in such a way that the section 50 claim is no longer included in the collective proceedings;
  - (i) the section 50 claim is settled with or without the court's approval;
  - (j) the section 50 claim is dismissed, discontinued or otherwise disposed of without an adjudication on the merits.
- (5) Where-
- (a) there is a period of collective proceedings in relation to a competition claim, and
  - (b) but for this subparagraph, the limitation period would expire before the end of the period of 6 months beginning with the day after the day on which the period of collective proceedings ends,

the limitation period for the claim is to be treated as expiring at the end of that 6 month period.

**Continuity of limitation period.**

24. For the purposes of calculating whether the limitation period for a competition claim has expired, a period described in paragraph 21, 22, or 23 is not to be regarded as separating the time immediately before it from the time immediately after it.

**PART 6  
DISCLOSURE ETC.**

**Disclosure orders.**

25.(1) For the purposes of this Part of this Schedule (and subject to subparagraph (2)), a court makes a disclosure order in respect of something if it orders its disclosure or production in accordance with procedural rules.

(2) A court does not make a disclosure order in respect of something if it does something described in subparagraph (1) for the purposes of enabling a court to determine whether it is a cartel leniency statement or a settlement submission.

**Restriction in relation to settlement submissions and cartel leniency statements.**

26. For the purposes of competition proceedings, a court must not make a disclosure order in respect of-

- (a) a settlement submission which has not been withdrawn, or
- (b) a cartel leniency statement (whether or not it has been withdrawn).

**Restriction in relation to investigation materials.**

27. For the purposes of competition proceedings, a court must not make a disclosure order in respect of a competition authority's investigation materials before the day on which the competition authority closes the investigation to which those materials relate.

**Restriction in relation to material in a competition authority's file.**

28.(1) For the purposes of competition proceedings, a court must not make a disclosure order addressed to a competition authority in respect of documents or information included in a competition authority's file.

(2) Subparagraph (1) does not apply where the court making the order is satisfied that no-one else is reasonably able to provide the documents or information.

**PART 7  
USE OF EVIDENCE**

**Cartel leniency statements and settlement submissions.**

29.(1) A settlement submission which has not been withdrawn is not admissible in evidence in competition proceedings.

(2) A cartel leniency statement is not admissible in evidence in competition proceedings (whether or not it has been withdrawn).

(3) The prohibitions in subparagraphs (1) and (2) do not apply if a party to the proceedings obtained the submission or statement-

- (a) lawfully, and
- (b) otherwise than from a competition authority's file.

**Investigation materials.**

30.(1) A competition authority's investigation materials are not admissible in evidence in competition proceedings at any time before the competition authority has closed the investigation to which those materials relate.

(2) The prohibition in subparagraph (1) does not apply if a party to the proceedings obtained the materials-

- (a) lawfully, and
- (b) otherwise than from a competition authority's file.

**Material obtained from a competition authority's file.**

31. Documents or information obtained by a person ("P") from a competition authority's file are admissible in evidence in competition proceedings only where-

- (a) the proceedings relate, entirely or partly, to a competition claim made by P or by a person who has acquired P's right to make the claim (whether by operation of law or otherwise), and
- (b) none of the prohibitions in paragraphs 29 and 30 applies.

**PART 8  
EXEMPLARY DAMAGES**

**Exemplary damages.**

32. A court may not award exemplary damages in competition proceedings.

**PART 9  
CONTRIBUTION AND CONSENSUAL SETTLEMENTS**

**Consensual settlement.**

33. In this Part of this Schedule, "consensual settlement" means an agreement relating to a dispute about loss or damage arising from an infringement of competition law which-

- (a) is reached through a consensual dispute resolution process,
- (b) is made between-

- (i) an infringer or a person who has acquired an infringer's liability in respect of the infringement (whether by operation of law or otherwise) ("the settling infringer"), and
  - (ii) a person who suffered the loss or damage or a person who has acquired such a person's right to make a claim in respect of the loss or damage (whether by operation of law or otherwise) ("the settling complainant"), and
- (c) entirely resolves the dispute between the settling infringer and the settling complainant.

**Assessment of contribution.**

34.(1) This paragraph applies in relation to proceedings to recover contribution under section 5(1) of the Contract and Tort Act where contribution is to be recovered in respect of loss or damage suffered by a person as a result of an infringement of competition law.

(2) The amount of contribution that one person liable in respect of the loss or damage may recover from another must be determined in the light of their relative responsibility for the whole of the loss or damage caused by the infringement.

(3) The determination of that amount must take into account any damages paid by the other person in respect of the loss or damage in accordance with a consensual settlement.

(4) Section 5(2) of the Contract and Tort Act (assessment of contribution) has effect subject to this paragraph.

**Effect of consensual settlement on the amount of a claim.**

35.(1) Where loss or damage arising from an infringement of competition law is the subject of-

- (a) a consensual settlement, and
- (b) a competition damages claim by the settling complainant,

the amount of the settling complainant's claim is reduced by the settling infringer's share of the loss or damage.

(2) Subparagraph (1) has effect regardless of the terms of the consensual settlement.

**Effect of consensual settlement for the settling infringer.**

36.(1) Where loss or damage arising from an infringement of competition law is the subject of a consensual settlement, the settling complainant ceases to have a right of action against the settling infringer in respect of the loss or damage.

(2) Subparagraph (1) has effect regardless of the terms of the consensual settlement.

(3) Subparagraphs (1) and (2) do not apply where-

- (a) an undertaking other than the settling infringer is liable to pay damages to the settling complainant in respect of loss or damage which arises from the infringement,
- (b) that undertaking is (or, if there is more than one, those undertakings are) unable to pay damages corresponding to the outstanding amount of the settling complainant's claim, and
- (c) the settling infringer's liability for that amount is not expressly excluded by the terms of the consensual settlement.

**Effect of consensual settlement on contribution between defendants.**

37.(1) Where-

- (a) loss or damage arising from an infringement of competition law is the subject of a consensual settlement,
- (b) it is also the subject of a competition damages claim by the settling complainant, and
- (c) an undertaking other than the settling infringer is liable to pay damages to the settling complainant in respect of the loss or damage that is the subject of the claim,

that undertaking may not recover contribution from the settling infringer in respect of the loss or damage under section 5(1) of the Contract and Tort Act.

(2) Subparagraph (1) has effect regardless of the terms of the consensual settlement.

(3) Section 5(2) of the Contract and Tort Act (assessment of contribution) has effect subject to this paragraph.



**PART 10**  
**APPLICATION**

38.(1) Parts 2 to 5, 8 and 9 of this Schedule apply in relation to competition claims, competition proceedings, claims for contribution arising from competition claims and proceedings relating to such claims only to the extent that the claims and proceedings relate to loss or damage suffered on or after the relevant day as a result of an infringement of competition law that takes place on or after that day.

(2) Where an infringement of competition law takes place over a period of 2 or more days it is to be taken for the purposes of subparagraph (1) to have taken place on the first of those days.

**SCHEDULE 6**  
**GCMA'S RULES**

*Section 60.*

1. In this Schedule “rules” means rules made by the GCMA under section 60.

*Delegation of functions*

2.(1) Rules may provide for the exercise of a function of the GCMA under this Part on its behalf-

- (a) by one or more members of the GCMA Board;
- (b) by one or more members of the GCMA panel;
- (c) by one or more members of staff of the GCMA;
- (d) jointly by one or more of the persons mentioned in paragraph (a), (b) or (c).

*Decisions*

3.(1) Rules may make provisions 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 GCMA is to publish a decision;
- (d) the procedure to be followed if-
  - (i) the GCMA takes further action with respect to an agreement after having decided that it does not infringe the Chapter 1 prohibition; or
  - (ii) the GCMA takes further action with respect to conduct after having decided that it does not infringe the Chapter 2 prohibition.

(2) In this paragraph “decision” means a decision of the GCMA-

- (a) as to whether or not an agreement has infringed the Chapter 1 prohibition; or
- (b) as to whether or not conduct has infringed the Chapter 2 prohibition.

*Block exemptions*

4. Rules may make provision as to the procedure to be followed by the GCMA if it cancels a block exemption.

*Retained exemptions*

5. Rules may make provision as to-

- (a) the circumstances in which the GCMA may-
  - (i) impose conditions or obligations in relation to a retained 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 GCMA if it is acting under section 8(5);
- (c) the form and manner in which notice of a decision to take any of the steps in subparagraph (a) is to be given;
- (d) the circumstances in which an exemption may be cancelled with retrospective effect.

*Directions withdrawing exclusions*

6. Rules may make provision as to the factors which the GCMA may take into account when it is determining the date on which a direction given under paragraph 3(1) of Schedule 1 is to have effect.

*Disclosure of information*

7.(1) Rules may make provision as to the circumstances in which the GCMA is to be required, before disclosing information given to it by a third party in connection with the exercise of any of the GCMA'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).

*Applications under section 48*

8. Rules may make provision as to-

- (a) the period within which an application under section 48(1) must be made;
- (b) the procedure to be followed by the GCMA in dealing with the application;
- (c) the person or persons to whom notice of the GCMA's response to the application is to be given.

*Oral hearings: procedure*

9.(1) Rules may make provision as to the procedure to be followed by the GCMA in holding oral hearings as part of an investigation.

(2) Rules may, in particular, make provision as to the appointment of a person mentioned in subparagraph (3) who has not been involved in the investigation in question to-

- (a) chair an oral hearing, and
- (b) prepare a report following the hearing and give it to the person who is to exercise on behalf of the GCMA its function of making a decision (within the meaning given by section 22(2)) as a result of the investigation.

(3) The persons are-

- (a) a member of the GCMA Board;
- (b) a member of the GCMA panel;
- (c) a member of staff of the GCMA.

(4) The report must-

- (a) contain an assessment of the fairness of the procedure followed in holding the oral hearing, and
- (b) identify any other concerns about the fairness of the procedure followed in the investigation which have been brought to the attention of the person preparing the report.

*Procedural complaints*

10.(1) Rules may make provision as to arrangements to be made by the GCMA for dealing with complaints about the conduct by the GCMA of an investigation.

(2) Rules may, in particular, make provision as to-

- (a) the appointment of a person mentioned in subparagraph (3) who has not been involved in the investigation in question to consider any such complaint;
- (b) the time-table for the consideration of any such complaint.

(3) The persons are-

- (a) a member of the GCMA Board;
- (b) a member of the GCMA panel;
- (c) a member of staff of the GCMA.

11. Rules may make provision as to the procedure to be followed in a case where, during an investigation, one or more persons notify the GCMA that they accept that there has been an infringement of a kind to which the investigation relates.

*Enforcement*

12. Rules may make provision as to the procedure to be followed when the GCMA takes action under any of sections 29 to 37 with respect to the enforcement of the provisions of this Part.

**SCHEDULE 7**

**ENFORCEMENT REGIME FOR PUBLIC INTEREST AND SPECIAL PUBLIC INTEREST CASES**

**Section 142**

*Pre-emptive undertakings and orders*

1.(1) Sub-paragraph (2) applies where an intervention notice or special intervention notice is in force.

(2) The Minister or the GCMA may by order, for the purpose of preventing pre-emptive action-

- (a) prohibit or restrict the doing of things which the Minister or (as the case may be) the GCMA considers would constitute pre-emptive action;
- (b) impose on any person concerned obligations as to the carrying on of any activities or the safeguarding of any assets;
- (c) provide for the carrying on of any activities or the safeguarding of any assets either by the appointment of a person to conduct or supervise the conduct of any activities (on such terms and with such powers as may be specified or described in the order) or in any other manner;
- (d) do anything which may be done by virtue of paragraph 18 of Schedule 8.

(3) Sub-paragraph (4) applies where-

- (a) an intervention notice or special intervention notice is in force, and
- (b) the Minister or the GCMA has reasonable grounds for suspecting that pre-emptive action has or may have been taken.

(4) The Minister or (as the case may be) the GCMA may by order, for the purpose of restoring the position to what it would have been had the pre-emptive action not been taken or otherwise for the purpose of mitigating its effects-

- (a) do anything mentioned in sub-paragraph (2)(b) to (d);
- (b) impose such other obligations, prohibitions or restrictions as it considers appropriate for that purpose.

(5) A person may, with the consent of the Minister or (as the case may be) the GCMA, take action or action of a particular description where the action would otherwise constitute a

contravention of an order under this paragraph by the Minister or (as the case may be) the GCMA.

(6) Sub-paragraph (4) applies where an intervention notice is in force.

(7) The Minister may, for the purpose of preventing pre-emptive action, adopt an order made by the GCMA under section 127 if the order is still in force when the Minister adopts it.

(8) An order adopted under sub-paragraph (7)-

- (a) shall continue in force, in accordance with its terms, when adopted; and
- (b) may be varied or revoked by an order under this paragraph.

(9) Any other order under this paragraph-

- (a) shall come into force at such time as is determined by or under the order; and
- (b) may be varied or revoked by another order.

(10) References in this Part to orders under this paragraph shall, unless the context otherwise requires, include references to orders adopted under this paragraph; and references to the making of orders under this paragraph shall be construed accordingly.

(11) An order which is in force under this paragraph in relation to a reference or possible reference under section 103 or (as the case may be) 121 shall cease to be in force if an undertaking under paragraph 6 comes into force in relation to that reference.

(12) An order under this paragraph shall, if it has not previously ceased to be in force, cease to be in force when the intervention notice concerned or (as the case may be) special intervention notice concerned ceases to be in force.

(13) No order shall be made by the Minister or the GCMA under this paragraph before the making of a reference under section 103 or (as the case may be) 121 unless-

- (a) the Minister or (as the case may be) the GCMA has reasonable grounds for suspecting that it is or may be the case that two or more enterprises have ceased to be distinct or that arrangements are in progress or in contemplation which, if carried into effect, will result in two or more enterprises ceasing to be distinct; or
- (b) the order relates to a special merger situation which has been, or may have been, created.

(14) The Minister or (as the case may be) the GCMA shall, as soon as reasonably practicable, consider any representations received by that person in relation to varying or revoking an order under this paragraph.

(15) In this paragraph “pre-emptive action” means action which might prejudice the reference or possible reference concerned under section 103 or (as the case may be) 121 or impede the taking of any action under this Part which may be justified by the Minister’s decisions on the reference.

*Undertakings in lieu of reference under section 103 or 121*

2.(1) Sub-paragraph (2) applies if the Minister has power to make a reference to the Commission under section 103 or 121 and otherwise intends to make such a reference.

(2) The Minister may, instead of making such a reference and for the purpose of remedying, mitigating or preventing any of the effects adverse to the public interest which have or may have resulted, or which may be expected to result, from the creation of the relevant merger situation concerned or (as the case may be) the special merger situation concerned, accept from such of the parties concerned as he considers appropriate undertakings to take such action as he considers appropriate.

(3) In proceeding under sub-paragraph (2), the Minister shall, in particular-

- (a) accept the decisions of the GCMA included in its report under section 102 so far as they relate to the matters mentioned in subsections (4) and (5) of that section; or
- (b) (as the case may be) accept the decisions of the GCMA included in its report under section 120 so far as they relate to the matters mentioned in subsections (3)(a) and (4) of that section.

(4) In proceeding under sub-paragraph (2) in relation to an anti-competitive outcome, the Minister may, in particular, have regard to the effect of any action on any relevant customer benefits in relation to the creation of the relevant merger situation concerned.

(5) No undertaking shall be accepted by the Minister under this paragraph in connection with a possible reference under section 103 if a public interest consideration mentioned in the intervention notice concerned has not been finalised and the period of 24 weeks beginning with the giving of that notice has not expired.

(6) The Minister may delay making a decision as to whether to accept any such undertaking (and any related decision as to whether to make a reference under section 103) if he considers that there is a realistic prospect of the public interest consideration being finalised within the period of 24 weeks beginning with the giving of the intervention notice concerned.



(7) A delay under sub-paragraph (6) shall not extend beyond-

- (a) the time when the public interest consideration is finalised; or
- (b) if earlier, the expiry of the period of 24 weeks mentioned in that sub-paragraph.

(8) An undertaking under this paragraph-

- (a) shall come into force when accepted;
- (b) may be varied or superseded by another undertaking; or
- (c) may be released by the Minister.

(9) An undertaking under this paragraph which is in force in relation to a relevant merger situation or (as the case may be) a special merger situation shall cease to be in force if an order comes into force under paragraph 4 or 5 in relation to that undertaking.

(10) The Minister shall, as soon as reasonably practicable, consider any representations received by him in relation to varying or releasing an undertaking under this section.

3.(1) The relevant authority shall not make a reference under section 74, 85 or 103 in relation to the creation of a relevant merger situation or (as the case may be) a reference under section 121 in relation to the creation of a special merger situation if-

- (a) the Minister has accepted an undertaking or group of undertakings under paragraph 2; and
- (b) the relevant merger situation or (as the case may be) the special merger situation is the situation by reference to which the undertaking or group of undertakings was accepted.

(2) In sub-paragraph (1) “the relevant authority” means-

- (a) in relation to a possible reference under section 74 or 85 , the GCMA; and
- (b) in relation to a possible reference under section 103 or 121, the Minister.

(3) Sub-paragraph (1) does not prevent the making of a reference if material facts about relevant arrangements or transactions, or relevant proposed arrangements or transactions, were not notified (whether in writing or otherwise) to the Minister or the GCMA or made public before any undertaking concerned was accepted.

(4) For the purposes of sub-paragraph (3) arrangements or transactions, or proposed arrangements or transactions, are relevant if they are the ones in consequence of which the enterprises concerned ceased or may have ceased, or may cease, to be distinct enterprises.

(5) In sub-paragraph (3) “made public” means so publicised as to be generally known or readily ascertainable.

4.(1) Sub-paragraph (2) applies where the Minister considers that-

- (a) an undertaking accepted by him under paragraph 2 has not been, is not being or will not be fulfilled; or
- (b) in relation to an undertaking accepted by him under that paragraph, information which was false or misleading in a material respect was given to him or the GCMA by the person giving the undertaking before he decided to accept the undertaking.

(2) The Minister may, for any of the purposes mentioned in paragraph 2(2), make an order under this paragraph.

(3) Sub-paragraphs (3) and (4) of paragraph 2 shall apply for the purposes of sub-paragraph (2) above as they apply for the purposes of sub-paragraph (2) of that paragraph.

(4) An order under this paragraph may contain-

- (a) anything permitted by Schedule 8; and
- (b) such supplementary, consequential or incidental provision as the Minister considers appropriate.

(5) An order under this paragraph

- (a) shall come into force at such time as is determined by or under the order; and
- (b) may contain provision which is different from the provision contained in the undertaking concerned.

(6) No order shall be varied or revoked under this paragraph unless the GCMA advises that such a variation or revocation is appropriate by reason of a change of circumstances.

5.(1) Sub-paragraph (2) applies where-

- (a) the Minister has the power to make an order under paragraph 4 in relation to a particular undertaking and intends to make such an order; or

- (b) the Minister has the power to make an order under paragraph 9 in relation to a particular undertaking and intends to make such an order.

(2) The Minister may, for the purpose of preventing any action which might prejudice the making of that order, make an order under this paragraph.

(3) No order shall be made under sub-paragraph (2) unless the Minister has reasonable grounds for suspecting that it is or may be the case that action which might prejudice the making of the order under paragraph 4 or (as the case may be) 9 is in progress or in contemplation.

(4) An order under sub-paragraph (2) may-

- (a) prohibit or restrict the doing of things which the Minister considers would prejudice the making of the order under paragraph 4 or 9;
- (b) impose on any person concerned obligations as to the carrying on of any activities or the safeguarding of any assets;
- (c) provide for the carrying on of any activities or the safeguarding of any assets either by the appointment of a person to conduct or supervise the conduct of any activities (on such terms and with such powers as may be specified or described in the order) or in any other manner;
- (d) do anything which may be done by virtue of paragraph 18 of Schedule 8.

(5) An order under this paragraph shall come into force at such time as is determined by or under the order.

(6) An order under this paragraph shall, if it has not previously ceased to be in force, cease to be in force on-

- (a) the coming into force of an order under paragraph 4 or (as the case may be) 9 in relation to the undertaking concerned; or
- (b) the making of the decision not to proceed with such an order.

(7) The Minister shall, as soon as reasonably practicable, consider any representations received by him in relation to varying or revoking an order under this paragraph.

6.(1) Sub-paragraphs (2) and (3) apply where-

- (a) a reference has been made under section 103(2) or (3) or 121(2) but not finally determined; and

- (b) no orders under paragraph 2 are in force in relation to the relevant merger situation concerned or (as the case may be) the special merger situation concerned.
- (2) No relevant person shall, without the consent of the Minister-
- (a) complete any outstanding matters in connection with any arrangements which have resulted in the enterprises concerned ceasing to be distinct enterprises;
  - (b) make any further arrangements in consequence of that result (other than arrangements which reverse that result); or
  - (c) transfer the ownership or control of any enterprises to which the reference relates.
- (3) No relevant person shall, without the consent of the Minister, assist in any of the activities mentioned in paragraphs (a) to (c) of sub-paragraph (2).
- (4) The prohibitions in sub-paragraphs (2) and (3) do not apply in relation to anything which the person concerned is required to do by virtue of any enactment.
- (5) The consent of the Minister under sub-paragraph (2) or (3)-
- (a) may be general or specific;
  - (b) may be revoked by the Minister; and
  - (c) shall be published in such manner as the Minister considers appropriate for bringing it to the attention of any person entitled to the benefit of it.
- (6) Paragraph (c) of sub-paragraph (5) shall not apply if the Minister considers that publication is not necessary for the purpose mentioned in that paragraph.
- (7) Sub-paragraphs (2) and (3) shall apply to a person's conduct outside Gibraltar if (and only if) he is-
- (a) a British person who is a resident of Gibraltar;
  - (b) a body incorporated under the law of Gibraltar or of any part of Gibraltar; or
  - (c) a person carrying on business in Gibraltar.
- (8) For the purpose of this paragraph a reference under section 103(2) or (3) is finally determined if-
- (a) the time within which the GCMA is to prepare a report under section 109 in relation to the reference and give it to the Minister has expired and no such report has been so prepared and given;

- (b) the GCMA decides to cancel the reference under section 112(1);
  - (c) the time within which the Minister is to make and publish a decision under section 113(2) has expired and no such decision has been made and published;
  - (d) the Minister decides under section 113(2) to make no finding at all in the matter;
  - (e) the Minister otherwise decides under section 113(2) not to make an adverse public interest finding;
  - (f) the Minister decides under section 113(2) to make an adverse public interest finding but decides neither to accept an undertaking under paragraph 8 of this Schedule nor to make an order under paragraph 10 of this Schedule; or
  - (g) the Minister decides under section 113(2) to make an adverse public interest finding and accepts an undertaking under paragraph 8 of this Schedule or makes an order under paragraph 10 of this Schedule.
- (9) For the purpose of this paragraph a reference under section 121(2) is finally determined if-
- (a) the time within which the GCMA is to prepare a report under section 125 in relation to the reference and give it to the Minister has expired and no such report has been so prepared and given;
  - (b) the time within which the Minister is to make and publish a decision under section 126(2) has expired and no such decision has been made and published;
  - (c) the Minister decides under subsection (2) of section 126 otherwise than as mentioned in subsection (5) of that section;
  - (d) the Minister decides under subsection (2) of section 126 as mentioned in subsection (5) of that section but decides neither to accept an undertaking under paragraph 8 of this Schedule nor to make an order under paragraph 10 of this Schedule; or
  - (e) the Minister decides under subsection (2) of section 126 as mentioned in subsection (5) of that section and accepts an undertaking under paragraph 8 of this Schedule or makes an order under paragraph 10 of this Schedule.
- (10) For the purposes of this paragraph the time when a reference under section 103(2) or (3) or (as the case may be) 121(2) is finally determined is-

- (a) in a case falling within sub-paragraph (8)(a) or (c) or (as the case may be) (9)(a) or (b), the expiry of the time concerned;
- (b) in a case falling within sub-paragraph (8)(b), (d) or (e) or (as the case may be) (9)(c), the making of the decision concerned;
- (c) in a case falling within sub-paragraph (8)(f) or (as the case may be) (9)(d), the making of the decision neither to accept an undertaking under paragraph 8 of this Schedule nor to make an order under paragraph 10 of this Schedule; and
- (d) in a case falling within sub-paragraph (8)(g) or (as the case may be) (9)(e), the acceptance of the undertaking concerned or (as the case may be) the making of the order concerned.

(11) In this paragraph “relevant person” means-

- (a) any person who carries on any enterprise to which the reference relates or who has control of any such enterprise;
- (b) any subsidiary of any person falling within paragraph (a); or
- (c) any person associated with any person falling within paragraph (a) or any subsidiary of any person so associated.

7.(1) Sub-paragraph (2) applies where-

- (a) a reference has been made under section 103(4) or (5) or 121(3); and
- (b) no orders under paragraph 1 are in force in relation to the relevant merger situation concerned or (as the case may be) the special merger situation concerned.

(2) No relevant person shall, without the consent of the Minister, directly or indirectly acquire during the relevant period an interest in shares in a company if any enterprise to which the reference relates is carried on by or under the control of that company.

(3) The consent of the Minister under sub-paragraph (2)-

- (a) may be general or specific;
- (b) may be revoked by the Minister; and
- (c) shall be published in such manner as the Minister considers appropriate for bringing it to the attention of any person entitled to the benefit of it.

(4) Paragraph (c) of sub-paragraph (3) shall not apply if the Minister considers that publication is not necessary for the purpose mentioned in that paragraph.

(5) Sub-paragraph (2) shall apply to a person's conduct outside Gibraltar if (and only if) he is-

- (a) a resident of Gibraltar;
- (b) a body incorporated under the law of Gibraltar; or
- (c) a person carrying on business in Gibraltar.

(6) In this paragraph-

“company” includes any body corporate;

“relevant period” means the period beginning with the publication of the decision of the Minister to make the reference concerned and ending when the reference is finally determined;

“relevant person” means-

- (a) any person who carries on any enterprise to which the reference relates or who has control of any such enterprise;
- (b) any subsidiary of any person falling within paragraph (a); or
- (c) any person associated with any person falling within paragraph (a) or any subsidiary of any person so associated; and

“share” means share in the capital of a company, and includes stock.

(7) For the purposes of the definition of “relevant period” in sub-paragraph (6), a reference under section 103(4) or (5) is finally determined if-

- (a) the GCMA cancels the reference under section 107(1) or 112(1);
- (b) the time within which the GCMA is to prepare a report under section 109 in relation to the reference and give it to the Minister has expired and no such report has been so prepared and given;
- (c) the time within which the Minister is to make and publish a decision under section 113(2) has expired and no such decision has been made and published;
- (d) the Minister decides under section 113(2) to make no finding at all in the matter;

- (e) the Minister otherwise decides under section 113(2) not to make an adverse public interest finding;
- (f) the Minister decides under section 113(2) to make an adverse public interest finding but decides neither to accept an undertaking under paragraph 8 of this Schedule nor to make an order under paragraph 10 of this Schedule; or
- (g) the Minister decides under section 113(2) to make an adverse public interest finding and accepts an undertaking under paragraph 8 of this Schedule or makes an order under paragraph 10 of this Schedule.

(8) For the purposes of the definition of “relevant period” in sub-paragraph (6), a reference under section 121(3) is finally determined if-

- (a) the GCMA cancels the reference under section 124(1);
- (b) the time within which the GCMA is to prepare a report under section 125 in relation to the reference and give it to the Minister has expired and no such report has been so prepared and given;
- (c) the time within which the Minister is to make and publish a decision under section 126(2) has expired and no such decision has been made and published;
- (d) the Minister decides under subsection (2) of section 126 otherwise than as mentioned in subsection (5) of that section;
- (e) the Minister decides under subsection (2) of section 126 as mentioned in subsection (5) of that section but decides neither to accept an undertaking under paragraph 8 of this Schedule nor to make an order under paragraph 10 of this Schedule; or
- (f) the Minister decides under subsection (2) of section 126 as mentioned in subsection (5) of that section and accepts an undertaking under paragraph 8 of this Schedule or makes an order under paragraph 10 of this Schedule.

(9) For the purposes of the definition of “relevant period” in sub-paragraph (6) above, the time when a reference under section 103(4) or (5) or (as the case may be) 121(3) is finally determined is-

- (a) in a case falling within sub-paragraph (7)(a), (d) or (e) or (as the case may be) (8)(a) or (d), the making of the decision concerned;
- (b) in a case falling within sub-paragraph (7)(b) or (c) or (as the case may be) (8)(b) or (c), the expiry of the time concerned;



- (c) in a case falling within sub-paragraph (7)(f) or (as the case may be) (8)(e), the making of the decision neither to accept an undertaking under paragraph 8 of this Schedule nor to make an order under paragraph 10 of this Schedule; and
- (d) in a case falling within sub-paragraph (7)(g) or (as the case may be) (8)(f), the acceptance of the undertaking concerned or (as the case may be) the making of the order concerned.

(10) Section 136 shall apply for the purposes of paragraph 6 and this paragraph in relation to a reference under section 103 or 121 as it applies for the purposes of sections 134 and 135 in relation to a reference under section 74 or 85.

(11) In its application by virtue of sub-paragraph (10) section 136 shall have effect as if-

- (a) subsections (1) and (2) were omitted; and
- (b) for the reference in subsection (4) to the GCMA there were substituted a reference to the Minister.

8.(1) The Minister may, in accordance with section 114 or (as the case may be) 126(5) to (7), accept, from such persons as he considers appropriate, undertakings to take action specified or described in the undertakings.

(2) An undertaking under this paragraph-

- (a) shall come into force when accepted;
- (b) may be varied or superseded by another undertaking; and
- (c) may be released by the Minister.

(3) An undertaking which is in force under this paragraph in relation to a reference under section 103 or 121 shall cease to be in force if an order under paragraph 5(1)(b) or 9 comes into force in relation to the subject-matter of the undertaking.

(4) No undertaking shall be accepted under this paragraph in relation to a reference under section 103 or 121 if an order has been made under-

- (a) paragraph 5(1)(b) or 9 in relation to the subject-matter of the undertaking; or
- (b) paragraph 10 in relation to that reference.

(5) The Minister shall, as soon as reasonably practicable, consider any representations received by him in relation to varying or releasing an undertaking under this section

9.(1) Sub-paragraph (2) applies where the Minister considers that-

- (a) an undertaking accepted by him under paragraph 8 has not been, is not being or will not be fulfilled; or
- (b) in relation to an undertaking accepted by him under that paragraph, information which was false or misleading in a material respect was given to him or the GCMA by the person giving the undertaking before he decided to accept the undertaking.

(2) The Minister may, for any purpose mentioned in section 114(2) or (as the case may be) 126(6), make an order under this paragraph.

(3) Subsections (3) and (4) of section 114 or (as the case may be) subsection (7) of section 126 shall apply for the purposes of sub-paragraph (2) above as they or it applies for the purposes of section 114(2) or (as the case may be) 126(6).

(4) An order under this paragraph may contain-

- (a) anything permitted by Schedule 8; and
- (b) such supplementary, consequential or incidental provision as the Minister considers appropriate.

(5) An order under this paragraph-

- (a) shall come into force at such time as is determined by or under the order; and
- (b) may contain provision which is different from the provision contained in the undertaking concerned.

(6) No order shall be varied or revoked under this paragraph unless the GCMA advises that such a variation or revocation is appropriate by reason of a change of circumstances.

10.(1) The Minister may, in accordance with section 114 or (as the case may be) 126(5) to (7), make an order under this paragraph.

(2) An order under this paragraph may contain-

- (a) anything permitted by Schedule 8; and
- (b) such supplementary, consequential or incidental provision as the Minister considers appropriate.

(3) An order under this paragraph shall come into force at such time as is determined by or under the order.

(4) No order shall be made under this paragraph in relation to a reference under section 103 or (as the case may be) 121 if an undertaking has been accepted under paragraph 8 in relation to that reference.

(5) No order shall be varied or revoked under this paragraph unless the GCMA advises that such a variation or revocation is appropriate by reason of a change of circumstances.

## SCHEDULE 8

### PROVISION THAT MAY BE CONTAINED IN CERTAIN ENFORCEMENT ORDERS

#### Section 143(4)

#### *Introductory*

1. This Schedule applies in relation to such orders, and to such extent, as is provided by Parts IV and V and any other enactment; and references in this Schedule to an order shall be construed accordingly.

#### *General restrictions on conduct*

2.(2) An order may-

- (a) prohibit the making or performance of an agreement;
- (b) require any party to an agreement to terminate the agreement.

(3) An order made by virtue of sub-paragraph (1) shall not-

- (a) prohibit the making or performance of; or
- (b) require any person to terminate,

an agreement so far as, if made, the agreement would relate, or (as the case may be) so far as the agreement relates, to the terms and conditions of employment of any workers or to the physical conditions in which any workers are required to work.

3.(1) In order may prohibit the withholding from any person of-

- (a) any goods or services;
- (b) any orders for any such goods or services.

(2) References in sub-paragraph (1) to withholding include references to-

- (a) agreeing or threatening to withhold; and
- (b) procuring others to withhold or to agree or threaten to withhold.

4.(1) An order may prohibit requiring as a condition of the supply of goods or services to any person-

- (a) the buying of any goods;
- (b) the making of any payment in respect of services other than the goods or services supplied;
- (c) the doing of any other such matter or the refraining from doing anything mentioned in paragraph (a) or (b) or any other such matter.

5.(1) An order may prohibit-

- (a) discrimination between persons in the prices charged for goods or services;
- (b) anything which the relevant authority considers to be such discrimination;
- (c) procuring others to do anything which is such discrimination or which the relevant authority considers to be such discrimination.

6.(1) An order may prohibit-

- (a) giving, or agreeing to give in other ways, any preference in respect of the supply of goods or services or in respect of the giving of orders for goods or services;
- (b) giving, or agreeing to give in other ways, anything which the relevant authority considers to be a preference in respect of the supply of goods or services or in respect of the giving of orders for goods or services;
- (c) procuring others to do anything mentioned in paragraph (a) or (b).

7.(1) An order may prohibit-

- (a) charging, for goods or services supplied, prices differing from those in any published list or notification;
- (b) doing anything which the relevant authority considers to be charging such prices.

8.(1) An order may regulate the prices to be charged for any goods or services.

(2) No order shall be made by virtue of sub-paragraph (1) unless the relevant report in relation to the matter concerned identifies the prices charged for the goods or services as requiring remedial action.

(3) In this paragraph “the relevant report” means the report of the GCMA which is required by the enactment concerned before an order can be made under this Schedule .

9. An order may prohibit the exercise of any right to vote exercisable by virtue of the holding of any shares, stock or securities.

*General obligations to be performed*

10.(1) An order may require a person to supply goods or services or to do anything which the relevant authority considers appropriate to facilitate the provision of goods or services.

(2) An order may require a person who is supplying, or is to supply, goods or services to supply such goods or services to a particular standard or in a particular manner or to do anything which the relevant authority considers appropriate to facilitate the provision of such goods or services to that standard or in that manner.

11. An order may require any activities to be carried on separately from any other activities.

*Acquisitions and divisions*

12.(1) An order may prohibit or restrict-

- (a) the acquisition by any person of the whole or part of the undertaking or assets of another person’s business;
- (b) the doing of anything which will or may result in two or more bodies corporate becoming interconnected bodies corporate.

(2) An order may require that if-

- (a) an acquisition of the kind mentioned in sub-paragraph (1)(a) is made; or
- (b) anything is done which results in two or more bodies corporate becoming interconnected bodies corporate;

the persons concerned or any of them shall observe any prohibitions or restrictions imposed by or under the order.

(3) This paragraph shall also apply to any result consisting in two or more enterprises ceasing to be distinct enterprises (other than any result consisting in two or more bodies corporate becoming interconnected bodies corporate).

13.(1) An order may provide for-

- (a) the division of any business (whether by the sale of any part of the undertaking or assets or otherwise);
- (b) the division of any group of interconnected bodies corporate.

(2) For the purposes of sub-paragraph (1)(a) all the activities carried on by way of business by any one person or by any two or more interconnected bodies corporate may be treated as a single business.

(3) An order made by virtue of this paragraph may contain such provision as the relevant authority considers appropriate to effect or take account of the division, including, in particular, provision as to-

- (a) the transfer or creation of property, rights, liabilities or obligations;
- (b) the number of persons to whom the property, rights, liabilities or obligations are to be transferred or in whom they are to be vested;
- (c) the time within which the property, rights, liabilities or obligations are to be transferred or vested;
- (d) the adjustment of contracts (whether by discharge or reduction of any liability or obligation or otherwise);
- (e) the creation, allotment, surrender or cancellation of any shares, stock or securities;
- (f) the formation or winding up of any company or other body of persons corporate or unincorporate;
- (g) the amendment of the articles or other instruments regulating any such company or other body of persons;
- (h) the extent to which, and the circumstances in which, provisions of the order affecting a company or other body of persons corporate or unincorporate in its share capital, constitution or other matters may be altered by the company or other body of persons concerned;
- (i) the registration of the order under any enactment by a company or other body of persons corporate or unincorporate which is affected by it as mentioned in paragraph (h);
- (j) the continuation, with any necessary change of parties, of any legal proceedings;

- (k) the approval by the relevant authority or another person of anything required by virtue of the order to be done or of any person to whom anything is to be transferred, or in whom anything is to be vested, by virtue of the order; or
- (l) the appointment of trustees or other persons to do anything on behalf of another person which is required of that person by virtue of the order or to monitor the doing by that person of any such thing.

14. The references in paragraph 13 to the division of a business as mentioned in sub-paragraph (1)(a) of that paragraph shall, in the case of an order under section 132, 140, 141, 234 or 235, or an order under paragraph 4, 9 or 10 of Schedule 7, be construed as including references to the separation, by the sale of any part of any undertaking or assets concerned or other means, of enterprises which are under common control (within the meaning of section 79) otherwise than by reason of their being enterprises of interconnected bodies corporate.

15. An order may prohibit any person from notifying (whether by publication or otherwise) to persons supplying goods or services prices recommended or suggested as appropriate to be charged by those persons for those goods or services.

16.(1) An order may require a person supplying goods or services to publish or otherwise notify-

- (a) accounting information in relation to the supply of the goods or services;
- (b) information in relation to the quantities of goods or services supplied;
- (c) information in relation to the geographical areas in which they are supplied;
- (d) information in relation to prices of the goods or services supplied;
- (e) such other information in relation to the goods or services supplied as the relevant authority considers appropriate.

(2) An order may prohibit the publication or other notification of information falling within sub-paragraph (1)(a) to (e) by a person supplying goods or services.

(3) In sub-paragraph (1) “accounting information”, in relation to a supply of goods or services, means information as to-

- (a) the costs of the supply, including fixed costs and overheads;
- (b) the manner in which fixed costs and overheads are calculated and apportioned for accounting purposes of the supplier; and
- (c) the income attributable to the supply.



17.(1) An order made by virtue of paragraph 16 may provide for the manner in which information is to be published or otherwise notified.

18. An order may-

- (a) require any person to supply information to the relevant authority;
- (b) where the GCMA is not the relevant authority, require any person to supply information to the GCMA;
- (c) provide for the publication, by the person who has received information by virtue of paragraph (a) or (b), of that information.

*Security of Gibraltar*

19.(1) An order may make such provision as the person making the order considers to be appropriate in the interests of security of Gibraltar (within the meaning of section 117(1)).

(2) Such provision may, in particular, include provision requiring a person to do, or not to do, particular things.

(3) An order under this paragraph may only be made with the consent of the Governor.

20.(1) An order may provide for the appointment of one or more than one person (referred to in this paragraph as an “appointee”) by the relevant authority or by such other persons as may be specified or described in the order to-

- (a) monitor compliance with such terms of the order as are so specified or described or terms of any directions given under the order;
- (b) determine any dispute between persons who are subject to the order about what is required by any such terms.

(2) An order made by virtue of this paragraph must make provision as to the terms of an appointee’s appointment.

(3) A determination made by virtue of an order under this paragraph is binding on-

- (a) any person who is subject to the order;
- (b) the relevant authority; and
- (c) in the case where the relevant authority is the Minister, the GCMA.

21.(1) An order, as well as making provision in relation to all cases to which it may extend, may make provision in relation to-

- (a) those cases subject to specified exceptions; or
- (b) any particular case or class of case.

(2) An order may, in relation to the cases in relation to which it applies, make the full provision which may be made by it or any less provision (whether by way of exception or otherwise).

(3) An order may make provision for matters to be determined under the order.

(4) An order may-

- (a) make different provision for different cases or classes of case or different purposes;
- (b) make such transitional, transitory or saving provision as the person making it considers appropriate.

22.(1) An order which may prohibit the doing of anything (or the refraining from doing anything) may in particular by virtue of paragraph 21(2) prohibit the doing of that thing (or the refraining from doing of it) except to such extent and in such circumstances as may be provided by or under the order.

(2) Any such order may, in particular, prohibit the doing of that thing (or the refraining from doing of it)-

- (a) without the agreement of the relevant authority or another person; or
- (b) by or in relation to a person who has not been approved by the relevant authority or another person.

23. References in this Schedule to the notification of prices or other information are not limited to the notification in writing of prices or other information.

24.(1) In this Schedule “the relevant authority” means-

- (a) in the case of an order to be made by the GCMA, the GCMA; and
- (b) in the case of an order to be made by the Minister, the Minister.

**SCHEDULE 9**

**CERTAIN AMENDMENTS OF SECTORAL ENACTMENTS**

**Sections 143(5) and 242(3)**

## SCHEDULE 10

### PROCEDURAL REQUIREMENTS FOR CERTAIN ENFORCEMENT UNDERTAKINGS AND ORDERS

#### Section 147

#### *Requirements for accepting undertakings and making orders*

1. Paragraph 3 applies in relation to-

- (a) any undertaking under section 128 or 139 or paragraph 2 or 8 of Schedule 7 (other than an undertaking under the enactment concerned which varies an undertaking under that enactment but not in any material respect); and
- (b) any order under section 132, 140 or 141 or paragraph 4, 9 or 10 of Schedule 7 (other than an order under the enactment concerned which is a revoking order of the kind dealt with by paragraphs 6 to 8 below).

2.(1) Before accepting an undertaking to which this paragraph applies or making an order to which this paragraph applies, the GCMA or (as the case may be) the Minister (in this Schedule “the relevant authority”) shall-

- (a) give notice of the proposed undertaking or (as the case may be) order; and
- (b) consider any representations made in accordance with the notice and not withdrawn.

(2) A notice under sub-paragraph (1) shall state-

- (a) that the relevant authority proposes to accept the undertaking or (as the case may be) make the order;
- (b) the purpose and effect of the undertaking or (as the case may be) order;
- (c) the situation that the undertaking or (as the case may be) order is seeking to deal with;
- (d) any other facts which the relevant authority considers justify the acceptance of the undertaking or (as the case may be) the making of the order;
- (e) a means of gaining access to an accurate version of the proposed undertaking or (as the case may be) order at all reasonable times; and

- (f) the period (not less than 15 days starting with the date of publication of the notice in the case of an undertaking and not less than 30 days starting with that date in the case of an order) within which representations may be made in relation to the proposed undertaking or (as the case may be) order.
- (3) A notice under sub-paragraph (1) shall be given by-
- (a) in the case of a proposed order, serving on any person identified in the order as a person on whom a copy of the order should be served a copy of the notice and a copy of the proposed order; and
  - (b) in every case, publishing the notice.
- (4) The relevant authority shall not accept the undertaking with modifications or (as the case may be) make the order with modifications unless the relevant authority-
- (a) gives notice of the proposed modifications; and
  - (b) considers any representations made in accordance with the notice and not withdrawn.
- (5) A notice under sub-paragraph (4) shall state-
- (a) the proposed modifications;
  - (b) the reasons for them; and
  - (c) the period (not less than 7 days starting with the date of the publication of the notice under sub-paragraph (4)) within which representations may be made in relation to the proposed modifications.
- (6) A notice under sub-paragraph (4) shall be given by-
- (a) in the case of a proposed order, serving a copy of the notice on any person identified in the order as a person on whom a copy of the order should be served; and
  - (b) in every case, publishing the notice.
- 3.(1) If, after giving notice under paragraph 2(1) or (4), the relevant authority decides-
- (a) not to accept the undertaking concerned or (as the case may be) make the order concerned; and

- (b) not to proceed by virtue of paragraph 5; the relevant authority shall give notice of that decision.

(2) A notice under sub-paragraph (1) shall be given by-

- (a) in the case of a proposed order, serving a copy of the notice on any person identified in the order as a person on whom a copy of the order should be served; and
- (b) in every case, publishing the notice.

4. As soon as practicable after accepting an undertaking to which paragraph 2 applies or (as the case may be) making an order to which that paragraph applies, the relevant authority shall (except in the case of an order which is subordinate legislation)-

- (a) serve a copy of the undertaking on any person by whom it is given or (as the case may be) serve a copy of the order on any person identified in the order as a person on whom a copy of the order should be served; and
- (b) publish the undertaking or (as the case may be) the order.

5.(1) The requirements of paragraph 2(4) (and those of paragraph 2(1)) shall not apply if the relevant authority-

- (a) has already given notice under paragraph 2(1) but not paragraph 2(4) in relation to the proposed undertaking or order; and
- (b) considers that the modifications which are now being proposed are not material in any respect.

(2) The requirements of paragraph 2(4) (and those of paragraph 2(1)) shall not apply if the relevant authority-

- (a) has already given notice under paragraphs 2(1) and (4) in relation to the matter concerned; and
- (b) considers that the further modifications which are now being proposed do not differ in any material respect from the modifications in relation to which notice was last given under paragraph 2(4).

6. Paragraph 8 applies where the relevant authority is proposing to-

- (a) release any undertaking under section 128 or 139 or paragraph 2 or 8 of Schedule 7 (other than in connection with accepting an undertaking under the enactment concerned which varies or supersedes an undertaking under that enactment); or
- (b) revoke any order under section 132, 140 or 141 or paragraph 4, 9 or 10 of Schedule 7 (other than in connection with making an order under the enactment concerned which varies or supersedes an order under that enactment).

7.(1) Before releasing an undertaking to which this paragraph applies or (as the case may be) revoking an order to which this paragraph applies, the relevant authority shall-

- (a) give notice of the proposed release or (as the case may be) revocation; and
- (b) consider any representations made in accordance with the notice and not withdrawn.

(2) A notice under sub-paragraph (1) shall state-

- (a) the fact that a release or (as the case may be) revocation is proposed;
- (b) the reasons for it; and
- (c) the period (not less than 15 days starting with the date of publication of the notice in the case of an undertaking and not less than 30 days starting with that date in the case of an order) within which representations may be made in relation to the proposed release or (as the case may be) revocation.

(3) If after giving notice under sub-paragraph (1) the relevant authority decides not to proceed with the release or (as the case may be) the revocation, the relevant authority shall give notice of that decision.

(4) A notice under sub-paragraph (1) or (3) shall be given by-

- (a) serving a copy of the notice on the person who gave the undertaking which is being released or (as the case may be) on any person identified in the order being revoked as a person on whom a copy of the order should be served; and
- (b) publishing the notice.

8. As soon as practicable after releasing the undertaking or making the revoking order, the relevant authority shall-

- (a) serve a copy of the release of the undertaking on the person who gave the undertaking or (as the case may be) serve a copy of the revoking order on any

person identified in the order being revoked as a person on whom a copy of that order should be served; and

(b) publish the release or (as the case may be) the revoking order.

9. The relevant authority may dispense with any or all of the requirements of this Schedule if the relevant authority considers that the relevant authority has special reasons for doing so.



## SCHEDULE 11

### THE GIBRALTAR COMPETITION AND MARKETS AUTHORITY

#### Part 1

#### General

##### *Designation as competent authority*

1. The Gibraltar Regulatory Authority established under the Gibraltar Regulatory Authority Act 2000 is designated as the competent authority for the promotion and enforcement of competition law in Gibraltar.
2. For the purposes of paragraph 1 and pursuant to such designation the Gibraltar Regulatory Authority must discharge all the functions, duties and obligations vested in or required by or under this Act from the Gibraltar Competition and Markets Authority.
3. Whenever discharging any function, duty or obligation or otherwise acting in accordance with the provisions of this Act the GRA must refer to itself as the “Gibraltar Competition and Markets Authority” or “GCMA”.
4. A reference in this Act to “GCMA staff” is a reference to such persons as the Gibraltar Regulatory Authority makes available for the purposes of the carrying out of the duties and obligations of the GCMA.

##### *Membership*

5. The GCMA comprises-
  - (a) the Chairperson, who is also the Chairperson of the GCMA Board;
  - (b) the GCMA Board, and
  - (c) the GCMA Panel.
6. The Chairperson and the Chairperson of the GCMA Board is the Chairman of the Gibraltar Regulatory Authority.
7. The GCMA Board, in addition to the Chairperson consist of such other persons as the Minister, after having consulted with the Chairperson appoints.
8. The GCMA panel consists of such persons as are appointed the Minister, after having consulted with the Chairperson.

9. At least one person must be appointed to the GCMA Board and the GCMA panel.
10. With the exception of the Chairperson, membership of the GCMA Board and of the GCMA panel is for the term set out in the instrument of appointment.
11. A person whose membership of the GCMA Board or GCMA panel has expired may be reappointed.
12. A member of the GCMA Board or GCMA panel may resign by giving the Chairperson 1 month written notice.
13. The Minister may at any time remove a person as a member of the GCMA Board or the GCMA panel on any of the following grounds-
  - (a) incapacity;
  - (b) misbehaviour;
  - (c) failure to carry out duties.

## **PART 2**

### **THE GCMA BOARD**

#### *Membership*

14. The GCMA Board is to consist of-
  - (a) the Chairperson;
  - (b) the members appointed under paragraph 7 to membership of the GCMA Board.

#### *Functions*

15. Except where otherwise provided by or under any enactment, the functions of the GCMA are exercisable by the GCMA Board on behalf of the GCMA.

#### *Delegation*

- 16.(1) Anything that the GCMA Board is required or permitted to do (including conferring authorisation under this subparagraph) may be done by-
  - (a) a member of the GCMA Board, or a member of staff of the GCMA, who has been authorised for that purpose by the GCMA Board, whether generally or specifically;

(b) a committee or sub-committee of the GCMA Board that has been so authorised.

(2) Subparagraph (1) does not apply to the functions of deciding-

- (a) whether the duty to publish a market study notice under 190 applies;
- (b) whether to propose to make, or to make, a reference under section 191;
- (c) for the purposes of the requirement imposed by section 192(2)(b), whether the GCMA is proposing to make a decision as to whether to make a reference under section 191 Act in a way that is likely to have a substantial impact on the interests of any person;
- (d) whether section 207 applies in respect of a particular case;
- (e) whether to accept an undertaking under section 228, or to vary or supersede or release an undertaking under that section;
- (f) for the purposes of the requirement imposed by section 243(2), whether the GCMA is proposing to make a decision to make a reference under section 191 in a way that is likely to have a substantial impact on the interests of any person.

(3) Subparagraph (1)(b) does not apply to a committee or subcommittee whose members include any person who is not a member of the GCMA.

17. Paragraph 16(1) is subject to provision in rules made under section 60, in respect of the exercise of a function of the GCMA under Part I of this Act.

#### *Proceedings*

18.(1) The GCMA Board may regulate its own proceedings.

(2) The GCMA Board must consult the Minister before making or revising rules and procedures, under subparagraph (1), for dealing with-

- (a) conflicts of interest, or
- (b) quorum.

#### *Validity*

19. The validity of anything done by the GCMA Board is not affected by-

- (a) a vacancy;

(b) a defective appointment.

*Reference of matter to the chair*

20.(1) This paragraph applies where the GCMA Board is to consider whether a matter should be referred to the chair for the constitution of a group under this Schedule.

(2) Before the GCMA Board considers whether to refer the matter to the chair, the chair must determine whether a person who is a member of the GCMA Board might reasonably be expected to be a member of a group constituted in connection with the matter.

(3) If the chair determines that a person who is a member of the GCMA Board might reasonably be expected to be a member of such a group, that person is not to participate in the GCMA Board's consideration of whether to refer the matter to the chair.

**PART 3**

**THE GCMA PANEL**

*The GCMA panel*

21. The GCMA panel is a panel of persons available for selection as members of a group constituted in accordance with this Part of this Schedule.

22. The GCMA panel is to consist of persons who are available for selection as a member of a group constituted to carry out functions on behalf of the GCMA and which includes as far as possible persons who possess specialist knowledge in subject matter areas that are likely to be dealt with by GCMA groups.

*Constitution of GCMA groups*

23. Where the chair is, by or under any enactment, required to constitute a group under this Schedule (a "GCMA group"), the chair must constitute the group in accordance with this Part of this Schedule.

*Membership of GCMA groups*

24.(1) The members of a GCMA group are to be selected by the chair.

(2) In selecting the members of a GCMA group, the chair must comply with any requirements imposed by or under any enactment.

(3) Subject to that, paragraph 25 has effect for the purposes of the membership of a GCMA group.

25.(1) Each GCMA group is to consist of at least three members, and if a GCMA panel has been established the members are to be selected from the GCMA panel.

(2) Subject to sub-paragraphs (3) to (6), those members are to be such persons as the chair may select but the chair must endeavour to include a member that has knowledge of the sector in which the merger arises.

(3) The chair may at any time appoint a reporting panel member to be an additional member of a GCMA group.

(4) The chair must appoint one of the members of a GCMA group to chair the group (the “group chair”).

26. The validity of anything done by a GCMA group is not affected by-

- (a) a vacancy;
- (b) a defective appointment.

*Termination of person’s membership of a GCMA group*

27. A member of the GCMA panel may at any time resign from a GCMA group by giving written notice to this effect to the chair.

28.(1) Subparagraph (2) applies if the chair considers that-

- (a) a member of a GCMA group will be unable, for a substantial period, to perform his or her duties as a member of the group, or
- (b) because of a particular interest of a member of a GCMA group, it is inappropriate for that person to remain a member of the group.

(2) The chair may remove the person in question from membership of the group.

29. A person ceases to be a member of a GCMA group on ceasing to be a member of the GCMA panel.

*Replacement of a member of a GCMA group*

30.(1) Subparagraph (2) applies if a person ceases to be a member of a GCMA group, whether by being removed under paragraph 27, or otherwise.

(2) The chair may select a replacement member of the group from the GCMA panel.

*Continuity on removal or replacement*

31.(1) A person's ceasing to be a member of a GCMA group, whether by being removed under paragraph 40, or otherwise, does not prevent-

- (a) the group from continuing with anything begun before the person ceased to be a member of it;
- (b) any decision made or direction given by the person while a member of the group from having effect after that person has ceased to be a member of the group.

(2) Subparagraph (1)-

- (a) applies whether or not a replacement member of the group is selected under paragraph 29;
- (b) does not affect any requirements imposed by or under any enactment with respect to the constitution of a GCMA group.

*Attendance of other members*

32.(1) At the invitation of the group chair of a GCMA group, any reporting panel member who is not a member of the group may attend its meetings or otherwise take part in its proceedings.

(2) But a 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 or her dissent from a conclusion of the group included in a report made by the group.

(3) Nothing in subparagraph (1) is to be taken to prevent a GCMA group from consulting any member of the GCMA panel with respect to any matter or question with which the group is concerned.

*Powers of chair pending group's constitution and first meeting*

33.(1) While a GCMA group is being constituted, the chair may take such steps as the chair considers appropriate to facilitate the work of the group once it has been constituted.

(2) The steps taken must be steps that it would be within the power of the group to take, had it already been constituted.

34.(1) The chair may, on behalf of the GCMA, exercise the power conferred by section 93(1), 107(1) or 124 in respect of the reference of a matter-

- (a) while a GCMA group is being constituted in connection with the reference;
- (b) after a GCMA group has been so constituted, but before it has held its first meeting.

(2) Sections 90, 105 and 122 have effect subject to subparagraph (1).

*Performance of functions of chair with respect to constitution etc. of GCMA group*

35.(1) A function of the chair that is specified in subparagraph (4) may, with the consent of the GCMA Board, be exercised on behalf of the chair by-

- (a) a person who is a member of both the GCMA panel and the GCMA Board, or
- (b) a member of the GCMA panel designated by the Minister (whether generally or specifically) for the purposes of this paragraph.

(2) The consent referred to in subparagraph (1) must specify the identity of the person by whom a function of the chair is to be exercised.

(3) It may be given-

- (a) by reference generally to functions specified in subparagraph (4);
- (b) by reference to specific functions, or functions of a particular description;
- (c) by reference generally to GCMA groups;
- (d) by reference to specific matters or specific GCMA groups, or by reference to matters or GCMA groups of a particular description.

(4) The functions are-

- (a) the chair's functions under paragraph 19 and under this Part of this Schedule;
- (b) the chair's functions by or under any other enactment in respect of the constitution of a GCMA group.

*Independence of groups*

36.(1) In making decisions that they are required or permitted to make by virtue of any enactment, GCMA groups must act independently of the GCMA Board.

(2) Nothing in sub-paragraph (1) prevents-

- (a) the GCMA Board from giving information in its possession to a GCMA group, or
- (b) a GCMA group giving information in its possession to the GCMA Board.

*Casting votes*

37. If a GCMA group's vote on any decision is tied, the group chair is to have a casting vote.

*Requirement to make rules of procedure for certain groups*

38.(1) The GCMA Board must make rules of procedure for merger reference groups and market reference groups.

(2) Those rules are subject to any provision made by or under any enactment in respect of the procedure of a GCMA group.

(3) Before making rules under this paragraph, the GCMA Board must consult such persons as it considers appropriate.

(4) The GCMA Board must publish rules made under this paragraph in whatever manner it considers appropriate for bringing them to the attention of those likely to be affected by them.

(5) Subject to rules made under this paragraph, and to any provision made by or under any enactment, a GCMA group of a type referred to in subparagraph (1) may determine its own procedure.

(6) In this paragraph and 40-

- (a) "market reference group" means a GCMA group constituted in connection with a reference under section 191, 195 or 207;
- (b) "merger reference group" means a GCMA group constituted in connection with a reference under section 74, 85, 103, or 121.

39.(1) In determining how to proceed in accordance with rules made for it by the GCMA Board, and in determining its own procedure under paragraph 38(5), a group must have regard to any guidance issued by the GCMA Board.



(2) Before issuing guidance for the purposes of this paragraph, or amending or revoking it, the GCMA Board must consult such persons as it considers appropriate.

40.(1) Rules made under paragraph 38 may-

- (a) make different provision for different cases or different purposes;
- (b) be varied or revoked by rules subsequently made under that paragraph.

(2) They may in particular make provision-

- (a) for particular stages of a merger investigation or market investigation to be dealt with in accordance with a timetable and for revision of that timetable;
- (b) as to the documents and information that must be given to a relevant group in connection with a merger investigation or market investigation;
- (c) as to the documents and information that a relevant group must give to other persons in connection with such an investigation.

(3) Rules making provision as described in subparagraph (2)(a) or (2)(b) may, in particular, permit or require a relevant group to disregard documents or information given after a particular date.

(4) Rules making provision as described in subparagraph (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 made under paragraph 38 may make provision as to the quorum of relevant groups.

(6) They may make provision-

- (a) as to the extent (if any) to which persons interested or claiming to be interested in a matter under consideration that is specified or described in the rules are allowed-
  - (i) to be present before or heard by a relevant group, either by themselves or by their representatives;
  - (ii) to cross-examine witnesses;
  - (ii) otherwise to take part;
- (b) as to the extent (if any) to which sittings of a relevant group are to be held in public;

- (c) generally in connection with any matters permitted by rules making provision as described in paragraph (a) or (b) (including, in particular, provision for a record of any hearings).

(7) Rules made under paragraph 38 may make provision for-

- (a) the notification or publication of information relating to merger investigations or market investigations;
- (b) consultation about such investigations.

(8) Rules made under paragraph 38 for market reference groups may make provision as to the involvement of any public interest expert in the market investigation in connection with the reference under section 207 in relation to which the expert was appointed.

(9) For the purposes of this paragraph-

“market investigation” means an investigation carried out by a market reference group in connection with a reference under section 191, 195 or 207;

“merger investigation” means an investigation carried out by a merger reference group in connection with a reference under section 74, 85, 103, or 121;

“public interest expert” means a person appointed under section 211 in relation to a reference under section 207;

“relevant group” means a market reference group or a merger reference group.

#### *Procedure of other GCMA groups*

41.(1) Subject to any special or general directions given by the Minister, and to any provision made by or under any enactment, a GCMA group that is not a group of a type referred to in paragraph 38(1) may determine its own procedure.

(2) It may, in particular, determine its quorum, and determine-

- (a) the extent (if any) to which persons interested or claiming to be interested in a matter under consideration are allowed-
  - (i) to be present before or heard by it, either by themselves or by their representatives;
  - (ii) to cross-examine witnesses;
  - (iii) otherwise to take part;

(b) the extent (if any) to which its sittings are to be held in public.

(3) In determining its procedure under subparagraph (1), a GCMA group must have regard to any guidance issued by the GCMA Board.

*GCMA group decision: requirement for two thirds majority*

42. For the purposes of paragraphs 43 to 45, a “qualifying majority decision” is a decision made by a GCMA group which is that of at least two-thirds of the members of the group.

43.(1) This paragraph applies for the purposes of Part IV of this Act.

(2) Where a decision of a GCMA group under section 91(1) or 92(1) that there is an anti-competitive outcome is not a qualifying majority decision, it is to be treated as a decision under that section that there is not an anti-competitive outcome.

(3) Where a decision of a GCMA group under section 106 is not a qualifying majority decision-

- (a) in the case of a decision that a relevant merger situation has been created, it is to be treated as a decision under section 106 that no such situation has been created;
- (b) in the case of a decision 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 Gibraltar for goods and services, it is to be treated as a decision under section 106 that the creation of that situation has not resulted, or may be expected not to result, in such a substantial lessening of competition;
- (c) in the case of a decision that arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation, it is to be treated as a decision under section 106 that no such arrangements are in progress or in contemplation;
- (d) in the case of a decision 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 Gibraltar for goods and services, it is to be treated as a decision under section 106 that the creation of that situation may be expected not to result in such a substantial lessening of competition.

(4) Where a decision of a GCMA group under section 123 is not a qualifying majority decision-

- (a) in the case of a decision that a special merger situation has been created, it is to be treated as a decision under section 123 that no such situation has been created;

- (b) in the case of a decision that arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a special merger situation, it is to be treated as a decision under section 123 that no such arrangements are in progress or in contemplation.

(5) Expressions used in this paragraph are to be construed in accordance with Part IV of this Act.

44.(1) This paragraph applies for the purposes of Part V of this Act.

(2) Where a decision under 198, 209 or 210 is not a qualifying majority decision-

- (a) in the case of a decision on an ordinary reference 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 Gibraltar, it is to be treated as a decision that the feature or (as the case may be) combination of features of that relevant market does not prevent, restrict or distort such competition;
- (b) in the case of a decision on a cross-market reference that a feature or a combination of the features specified in the reference, as that feature or combination of features relates to goods or services of one or more than one of the descriptions so specified, prevents, restricts or distorts competition in connection with the supply or acquisition of any goods or services in Gibraltar, it is to be treated as a decision that that feature or (as the case may be) combination of features as it relates to goods or services of those descriptions does not prevent, restrict or distort such competition.

(3) Accordingly, a GCMA group is to be treated as having decided under section 198, 209 or 210 that there is no adverse effect on competition in relation to an ordinary reference or a cross-market reference if-

- (a) one or more than one decision of the group, in relation to the reference, is to be treated as mentioned in subparagraph (2)(a) or (as the case may be) (b), and
- (b) there is, in relation to the reference, no other relevant decision of the group.

(4) “*Relevant decision*”, in subparagraph (3)(b), means-

- (a) in relation to an ordinary reference, a decision that is not to be treated as mentioned in subparagraph (2)(a), 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 Gibraltar;

- (b) in relation to a cross-market reference, a decision that is not to be treated as mentioned in subparagraph (2)(b), and which is that a feature or a combination of the features specified in the reference, as that feature or combination of features relates to goods or services of one or more than one of the descriptions so specified, prevents, restricts or distorts competition in connection with the supply or acquisition of any goods or services in Gibraltar.

(5) Where a decision of a GCMA group under section 210 is not a qualifying majority decision, in the case of a decision under section 210(4) that the feature or combination of features in question operates or may be expected to operate against the public interest, it is to be treated as a decision under section 210 that the feature or combination of features in question does not operate nor may be expected to operate against the public interest.

(6) Expressions used in this paragraph are to be construed in accordance with Part V of this Act.

45. A decision made by a GCMA group is also subject to any other provision made by or under any enactment about decisions that are not qualifying majority decisions.

## EXPLANATORY MEMORANDUM

This Bill makes provisions about competition and the abuse of a dominant position. It also makes provisions in relation to mergers and establishes the Gibraltar Competition and Markets Authority (the GCMA) and provides it with powers of investigation and other functions.

It is divided into 10 Parts as follows:

Part 1: Prohibits agreements that can prevent, restrict or distort competition in Gibraltar (Chapter 1 prohibition). Certain agreements may be exempt from the Chapter 1 prohibition. These include agreements that fall under a block exemption.

Conduct which amounts to an abuse of a dominant position in a market, if it may affect trade within Gibraltar, is prohibited (Chapter 2 prohibition).

Chapter 3 confers investigatory powers on the GCMA. These powers allow the GCMA to conduct investigations, require documents or information, ask questions, enter a business premises and, with a warrant, domestic premises, make decisions on whether an infringement has taken place. In certain cases, prepare and publish guidance as to the circumstances in which it may be appropriate to accept commitments from such persons concerned and enforce such commitments.

The GCMA is accorded powers to give and enforce directions in relation to infringing agreements, and enforce penalties and civil sanctions.

It also creates offences for obstruction, destroying or falsifying documents and giving false or misleading information.

It creates the ability to appeal an agreement in respect of which the GCMA has made a decision, claim for damages and have collective proceedings, collective settlements and redress schemes.

This Part also makes provision to retain EU anti-trust commitments which are to be treated as accepted by the GCMA.

This Part enables the GCMA to make rules about procedural and other matters in connection with this Part and must publish advice and information. The GCMA may make findings of fact and findings of infringement that are binding.

It also enables the Minister to make regulations.

Part 2: This Part creates an offence that can be committed by a body corporate as well as an officer in relation to this Act and they can be liable to be proceeded against and punished

accordingly. It also provides when certain powers are not exercisable in relation to Crown property.

Part 3: This Part provides for the GCMA having the function of making the public aware of the ways in which competition may be of benefit and giving information or advice in respect of matters relating to any of its functions to the public and Ministers. It also stipulates how it deals with complaints.

Part 4: This Part provides for a merger regime, covering the definition of a qualifying merger, the duty of the GCMA to make references to its Chair; how references are determined; the procedures that relate to certain public interest cases and other special cases; powers of enforcement; undertakings and orders; and various supplementary matters, such as information and publicity requirements and powers to require information and penalties.

Mergers that have the effect of substantially lessening competition are generally not in the consumers' interests. Whether a merger falls within the scope of this Part depends on whether certain thresholds are met. There may be mergers that invoke a public interest and these may be the subject of a reference.

Part 5: This Part makes provision for market studies and market investigations. It sets out the power of the GCMA to make references to its Chair, and how it should report on the references. It provides for particular arrangements to apply in public interest cases and also covers powers of enforcement and various supplementary matters.

Part 6: This Part deals with the creation of a cartel offence. Cartel activity is conduct such as direct or indirect price-fixing, limitation of production or supply, sharing customers or markets and bid-rigging. The part sets out the circumstances under which conduct does not attract liability and defences to the commission of the cartel offence.

Part 7: This Part deals with super-complaints to regulators other than the GCMA.

Part 8: This Part provides for rules governing the disclosure of specified information held by public authorities. It also provides for the circumstances where information may be exchanged with overseas authorities.

Part 9: This Part deals constitutes the GCMA and provides for its rules of procedure.

Part 10: This Part provides for Minister's ability to make consequential and supplementary provisions.

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