



# Competition Act 1998

## 1998 CHAPTER 41

### PART I

#### COMPETITION

### CHAPTER II

#### ABUSE OF DOMINANT POSITION

##### *Introduction*

#### **17 Enactments replaced**

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

##### *The prohibition*

#### **18 Abuse of dominant position**

- (1) Subject to section 19, any conduct on the part of one or more undertakings which amounts to the abuse of a dominant position in a market is prohibited if it may affect trade within the United Kingdom.
- (2) Conduct may, in particular, constitute such an abuse if it consists in—
  - (a) directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions;
  - (b) limiting production, markets or technical development to the prejudice of consumers;
  - (c) applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;

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- (d) making the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of the contracts.
- (3) In this section—
  - “dominant position” means a dominant position within the United Kingdom; and
  - “the United Kingdom” means the United Kingdom or any part of it.
- (4) The prohibition imposed by subsection (1) is referred to in this Act as “the Chapter II prohibition”.

### *Excluded cases*

## **19 Excluded cases**

- (1) The Chapter II prohibition does not apply in any of the cases in which it is excluded by or as a result of—
  - (a) Schedule 1 (mergers and concentrations); or
  - (b) Schedule 3 (general exclusions).
- (2) The Secretary of State may at any time by order amend Schedule 1, with respect to the Chapter II prohibition, by—
  - (a) providing for one or more additional exclusions; or
  - (b) amending or removing any provision (whether or not it has been added by an order under this subsection).
- (3) The Secretary of State may at any time by order amend paragraph 8 of Schedule 3 with respect to the Chapter II prohibition.
- (4) Schedule 3 also gives the Secretary of State power to provide that the Chapter II prohibition is not to apply in certain circumstances.

### *Notification*

## **20 Requests for Director to consider conduct**

- (1) Sections 21 and 22 provide for conduct of a person which that person thinks may infringe the Chapter II prohibition to be considered by the Director on the application of that person.
- (2) Schedule 6 provides for the procedure to be followed—
  - (a) by any person making an application, and
  - (b) by the Director, in considering an application.

## **21 Notification for guidance**

- (1) A person who applies for conduct to be considered under this section must—
  - (a) notify the Director of it; and
  - (b) apply to him for guidance.

- (2) On an application under this section, the Director may give the applicant guidance as to whether or not, in his view, the conduct is likely to infringe the Chapter II prohibition.

## **22 Notification for a decision**

- (1) A person who applies for conduct to be considered under this section must—
- (a) notify the Director of it; and
  - (b) apply to him for a decision.
- (2) On an application under this section, the Director may make a decision as to—
- (a) whether the Chapter II prohibition has been infringed; and
  - (b) if it has not been infringed, whether that is because of the effect of an exclusion.

## **23 Effect of guidance**

- (1) This section applies to conduct if the Director has determined an application under section 21 by giving guidance that the conduct is unlikely to infringe the Chapter II prohibition.
- (2) The Director is to take no further action under this Part with respect to the conduct to which this section applies, unless—
- (a) he has reasonable grounds for believing that there has been a material change of circumstance since he gave his guidance;
  - (b) he has a reasonable suspicion that the information on which he based his guidance was incomplete, false or misleading in a material particular; or
  - (c) a complaint about the conduct has been made to him.
- (3) No penalty may be imposed under this Part in respect of any infringement of the Chapter II prohibition by conduct to which this section applies.
- (4) But the Director may remove the immunity given by subsection (3) if—
- (a) he takes action under this Part with respect to the conduct in one of the circumstances mentioned in subsection (2);
  - (b) he considers that it is likely that the conduct will infringe the prohibition; and
  - (c) he gives notice in writing to the undertaking on whose application the guidance was given that he is removing the immunity as from the date specified in his notice.
- (5) If the Director has a reasonable suspicion that information—
- (a) on which he based his guidance, and
  - (b) which was provided to him by an undertaking engaging in the conduct,
- was incomplete, false or misleading in a material particular, the date specified in a notice under subsection (4)(c) may be earlier than the date on which the notice is given.

## **24 Effect of a decision that the Chapter II prohibition has not been infringed**

- (1) This section applies to conduct if the Director has determined an application under section 22 by making a decision that the conduct has not infringed the Chapter II prohibition.

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- (2) The Director is to take no further action under this Part with respect to the conduct unless—
  - (a) he has reasonable grounds for believing that there has been a material change of circumstance since he gave his decision; or
  - (b) he has a reasonable suspicion that the information on which he based his decision was incomplete, false or misleading in a material particular.
- (3) No penalty may be imposed under this Part in respect of any infringement of the Chapter II prohibition by conduct to which this section applies.
- (4) But the Director may remove the immunity given by subsection (3) if—
  - (a) he takes action under this Part with respect to the conduct in one of the circumstances mentioned in subsection (2);
  - (b) he considers that it is likely that the conduct will infringe the prohibition; and
  - (c) he gives notice in writing to the undertaking on whose application the decision was made that he is removing the immunity as from the date specified in his notice.
- (5) If the Director has a reasonable suspicion that information—
  - (a) on which he based his decision, and
  - (b) which was provided to him by an undertaking engaging in the conduct,was incomplete, false or misleading in a material particular, the date specified in a notice under subsection (4)(c) may be earlier than the date on which the notice is given.