



Financial Services Act 1986

1986 CHAPTER 60

PART I

REGULATION OF INVESTMENT BUSINESS

CHAPTER XIV

PREVENTION OF RESTRICTIVE PRACTICES

Consultation with Director General of Fair Trading

122 Reports by Director General of Fair Trading

- (1) The Secretary of State shall before deciding—
 - (a) whether to refuse to make, or to refuse leave for the making of, a recognition order in pursuance of section 119(1) or 120(2) above; or
 - (b) whether he is precluded by section 121(1) above from making a delegation order,send to the Director General of Fair Trading (in this Chapter referred to as " the Director ") a copy of the rules and regulations and of any guidance or arrangements which the Secretary of State is required to consider in making that decision together with such other information as the Secretary of State considers will assist the Director in discharging his functions under subsection (2) below.
- (2) The Director shall report to the Secretary of State whether. In his opinion, the rules, regulations, guidance or arrangements of which copies are sent to him under subsection (1) above have, or are intended or likely to have, to any significant extent the effect of restricting, distorting, or preventing competition and, if so, what that effect is likely to be ; and in making any such decision as is mentioned in that subsection the Secretary of State shall have regard to the Director's report.
- (3) The Secretary of State shall send the Director copies of any notice received by him under section 14(6), 41(5) or (6) or 120(3) above or under paragraph 4 of Schedule 9

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to this Act together with such other information as the Secretary of State considers will assist the Director in discharging his functions under subsections (4) and (5) below.

- (4) The Director shall keep under review—
- (a) the rules, guidance, arrangements and regulations mentioned in section 119(2) and 121(2) above; and
 - (b) the matters specified in the notices of which copies are sent to him under subsection (3) above ;
- and if at any time he is of the opinion that any such rules, guidance, arrangements, regulations or matters, or any such rules, guidance, arrangements or regulations taken together with any such matters, have, or are intended or likely to have, to any significant extent the effect mentioned in subsection (2) above, he shall make a report to the Secretary of State stating his opinion and what that effect is or is likely to be.
- (5) The Director may report to the Secretary of State his opinion that any such matter as is mentioned in subsection (4)(b) above does not in his opinion have, and is not intended or likely to have, to any significant extent the effect mentioned in subsection (2) above.
- (6) The Director may from time to time consider whether any such practices as are mentioned in section 119(2) or 121(2) above have, or are intended or likely to have, to any significant extent the effect mentioned in subsection (2) above and, if so, what that effect is or is likely to be; and if he is of that opinion he shall make a report to the Secretary of State stating his opinion and what the effect is or is likely to be.
- (7) The Secretary of State shall not exercise his powers under section 119(3), 120(4) or 121(3) above except after receiving and considering a report from the Director under subsection (4) or (6) above.
- (8) The Director may, if he thinks fit, publish any report made by him under this section but shall exclude from a published report, so far as practicable, any matter which relates to the affairs of a particular person (other than the self-regulating organisation, investment exchange, clearing house or designated agency concerned) the publication of which would or might in his opinion seriously and prejudicially affect the interests of that person.

123 Investigations by Director General of Fair Trading

- (1) For the purpose of investigating any matter with a view to its consideration under section 122 above the Director may by a notice in writing—
- (a) require any person to produce, at a time and place specified in the notice, to the Director or to any person appointed by him for the purpose, any documents which are specified or described in the notice and which are documents in his custody or under his control and relating to any matter relevant to the investigation ; or
 - (b) require any person carrying on any business to furnish to the Director such information as may be specified or described in the notice, and specify the time within which, and the manner and form in which, any such information is to be furnished.
- (2) A person shall not under this section be required to produce any document or disclose any information which he would be entitled to refuse to produce or disclose on grounds of legal professional privilege in proceedings in the High Court or on grounds of confidentiality as between client and professional legal adviser in proceedings in the Court of Session.

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- (3) Subsections (5) to (8) of section 85 of the Fair Trading Act 1973 (enforcement provisions) shall apply in relation to a notice under this section as they apply in relation to a notice under subsection (1) of that section.