



# Competition Act 1998

## 1998 CHAPTER 41

### PART I

#### COMPETITION

### CHAPTER III

#### INVESTIGATION AND ENFORCEMENT

##### *Enforcement*

#### **32 Directions in relation to agreements**

- (1) If the Director has made a decision that an agreement infringes the Chapter I prohibition, he may give to such person or persons as he considers appropriate such directions as he considers appropriate to bring the infringement to an end.
- (2) Subsection (1) applies whether the Director's decision is made on his own initiative or on an application made to him under this Part.
- (3) 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.
- (4) A direction under this section must be given in writing.

#### **33 Directions in relation to conduct**

- (1) If the Director has made a decision that conduct infringes the Chapter II prohibition, he may give to such person or persons as he considers appropriate such directions as he considers appropriate to bring the infringement to an end.

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- (2) Subsection (1) applies whether the Director's decision is made on his own initiative or on an application made to him under this Part.
- (3) 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.
- (4) A direction under this section must be given in writing.

### **34 Enforcement of directions**

- (1) If a person fails, without reasonable excuse, to comply with a direction under section 32 or 33, the Director 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.
- (3) In the application of subsection (2) to Scotland, the reference to “costs” is to be read as a reference to “expenses”.

### **35 Interim measures**

- (1) This section applies if the Director—
  - (a) has a reasonable suspicion that the Chapter I prohibition has been infringed, or
  - (b) has a reasonable suspicion that the Chapter II prohibition has been infringed, but has not completed his investigation into the matter.
- (2) If the Director considers that it is necessary for him to act under this section as a matter of urgency for the purpose—
  - (a) of preventing serious, irreparable damage to a particular person or category of person, or
  - (b) of protecting the public interest,he may give such directions as he considers appropriate for that purpose.
- (3) Before giving a direction under this section, the Director must—
  - (a) give written notice to the person (or persons) to whom he 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 Director is proposing to give and his reasons for wishing to give it.
- (5) A direction given under this section has effect while subsection (1) applies, but may be replaced if the circumstances permit by a direction under section 32 or (as appropriate) section 33.

- (6) In the case of a suspected infringement of the Chapter I prohibition, sections 32(3) and 34 also apply to directions given under this section.
- (7) In the case of a suspected infringement of the Chapter II prohibition, sections 33(3) and 34 also apply to directions given under this section.

### **36 Penalty for infringing Chapter I or Chapter II prohibition**

- (1) On making a decision that an agreement has infringed the Chapter I prohibition, the Director may require an undertaking which is a party to the agreement to pay him a penalty in respect of the infringement.
- (2) On making a decision that conduct has infringed the Chapter II prohibition, the Director may require the undertaking concerned to pay him a penalty in respect of the infringement.
- (3) The Director may impose a penalty on an undertaking under subsection (1) or (2) only if he is satisfied that the infringement has been committed intentionally or negligently by the undertaking.
- (4) Subsection (1) is subject to section 39 and does not apply if the Director 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 40 and does not apply if the Director 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 46.
- (8) No penalty fixed by the Director 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 Secretary of State).
- (9) Any sums received by the Director under this section are to be paid into the Consolidated Fund.

### **37 Recovery of penalties**

- (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 Director may recover from the undertaking, as a civil debt due to him, any amount payable under the penalty notice which remains outstanding.
- (2) In this section—
  - “penalty notice” means a notice given under section 36; and
  - “specified date” means the date specified in the penalty notice.

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

- (1) The Director must prepare and publish guidance as to the appropriate amount of any penalty under this Part.
- (2) The Director may at any time alter the guidance.
- (3) If the guidance is altered, the Director must publish it as altered.
- (4) No guidance is to be published under this section without the approval of the Secretary of State.
- (5) The Director may, after consulting the Secretary of State, choose how he publishes his guidance.
- (6) If the Director is preparing or altering guidance under this section he must consult such persons as he 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, the Director must have regard to the guidance for the time being in force under this section.
- (9) If a penalty or a fine has been imposed by the Commission, or by a court or other body in another Member State, in respect of an agreement or conduct, the Director, an appeal tribunal or the appropriate court must take that penalty or fine into account when setting the amount of a penalty under this Part in relation to that agreement or conduct.
- (10) In subsection (9) “the appropriate court” means—
  - (a) in relation to England and Wales, the Court of Appeal;
  - (b) in relation to Scotland, the Court of Session;
  - (c) in relation to Northern Ireland, the Court of Appeal in Northern Ireland;
  - (d) the House of Lords.

### **39 Limited immunity for small agreements**

- (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 36(1); but the Director may withdraw that immunity under subsection (4).
- (4) If the Director has investigated a small agreement, he may make a decision withdrawing the immunity given by subsection (3) if, as a result of his investigation, he considers that the agreement is likely to infringe the Chapter I prohibition.

- (5) The Director must give each of the parties in respect of which immunity is withdrawn written notice of his 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 Director 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 I 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.

#### **40 Limited immunity in relation to the Chapter II prohibition**

- (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 36(2) if his conduct is conduct of minor significance; but the Director may withdraw that immunity under subsection (4).
- (4) If the Director has investigated conduct of minor significance, he may make a decision withdrawing the immunity given by subsection (3) if, as a result of his investigation, he considers that the conduct is likely to infringe the Chapter II prohibition.
- (5) The Director must give the person, or persons, whose immunity has been withdrawn written notice of his 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 Director 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 II prohibition.

#### **41 Agreements notified to the Commission**

- (1) This section applies if a party to an agreement which may infringe the Chapter I prohibition has notified the agreement to the Commission for a decision as to whether an exemption will be granted under Article 85 with respect to the agreement.

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- (2) A penalty may not be required to be paid under this Part in respect of any infringement of the Chapter I prohibition after notification but before the Commission determines the matter.
- (3) If the Commission withdraws the benefit of provisional immunity from penalties with respect to the agreement, subsection (2) ceases to apply as from the date on which that benefit is withdrawn.
- (4) The fact that an agreement has been notified to the Commission does not prevent the Director from investigating it under this Part.
- (5) In this section “provisional immunity from penalties” has such meaning as may be prescribed.