



Competition Act 1998

1998 CHAPTER 41

PART I

COMPETITION

CHAPTER III

INVESTIGATION AND ENFORCEMENT

Investigations

25 Director's power to investigate

The Director may conduct an investigation if there are reasonable grounds for suspecting—

- (a) that the Chapter I prohibition has been infringed; or
- (b) that the Chapter II prohibition has been infringed.

26 Powers when conducting investigations

- (1) For the purposes of an investigation under section 25, the Director may require any person to produce to him a specified document, or to provide him with specified information, which he 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 42 to 44.
- (4) In subsection (1) "specified" means—
 - (a) specified, or described, in the notice; or

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- (b) falling within a category which is specified, or described, in the notice.
- (5) The Director 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.

27 Power to enter premises without a warrant

- (1) Any officer of the Director who is authorised in writing by the Director to do so (“an investigating officer”) may enter any premises in connection with an investigation under section 25.
- (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 42 to 44.
- (3) Subsection (2) does not apply—
 - (a) if the Director has a reasonable suspicion that the premises are, or have been, occupied by—
 - (i) a party to an agreement which he is investigating under section 25(a); or
 - (ii) an undertaking the conduct of which he is investigating under section 25(b); 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 held in a computer 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.

28 Power to enter premises under a warrant

- (1) On an application made by the Director to the court in accordance with rules of court, a judge may issue a warrant if he is satisfied that—
 - (a) there are reasonable grounds for suspecting that there are on any premises documents—
 - (i) the production of which has been required under section 26 or 27; and
 - (ii) which have not been produced as required;
 - (b) there are reasonable grounds for suspecting that—
 - (i) there are on any premises documents which the Director has power under section 26 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 27 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 Director, and any other of his officers whom he 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 held in a computer 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—

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- (i) in which it can be taken away, and
 - (ii) in which it is visible and legible.
- (3) If, in the case of a warrant under subsection (1)(b), the judge 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) 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.
- (5) 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.
- (6) 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.
- (7) Any document of which possession is taken under subsection (2)(c) may be retained for a period of three months.

29 Entry of premises under warrant: supplementary

- (1) A warrant issued under section 28 must indicate—
- (a) the subject matter and purpose of the investigation;
 - (b) the nature of the offences created by sections 42 to 44.
- (2) The powers conferred by section 28 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.

30 Privileged communications

- (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 High Court would be protected from disclosure on grounds of legal professional privilege.

- (3) In the application of this section to Scotland—
- (a) references to the High Court are to be read as references to the Court of Session; and
 - (b) the reference to legal professional privilege is to be read as a reference to confidentiality of communications.

31 Decisions following an investigation

- (1) Subsection (2) applies if, as the result of an investigation conducted under section 25, the Director proposes to make—
- (a) a decision that the Chapter I prohibition has been infringed, or
 - (b) a decision that the Chapter II prohibition has been infringed.
- (2) Before making the decision, the Director 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.

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.
- (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.

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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.

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.

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- (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.
- (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.

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- (5) In this section “provisional immunity from penalties” has such meaning as may be prescribed.

Offences

42 Offences

- (1) A person is guilty of an offence if he fails to comply with a requirement imposed on him under section 26, 27 or 28.
- (2) If a person is charged with an offence under subsection (1) in respect of a requirement to produce a document, it is a defence for him to prove—
 - (a) that the document was not in his possession or under his control; and
 - (b) that it was not reasonably practicable for him to comply with the requirement.
- (3) If a person is charged with an offence under subsection (1) in respect of a requirement—
 - (a) to provide information,
 - (b) to provide an explanation of a document, or
 - (c) to state where a document is to be found,
 it is a defence for him to prove that he had a reasonable excuse for failing to comply with the requirement.
- (4) Failure to comply with a requirement imposed under section 26 or 27 is not an offence if the person imposing the requirement has failed to act in accordance with that section.
- (5) A person is guilty of an offence if he intentionally obstructs an officer acting in the exercise of his powers under section 27.
- (6) A person guilty of an offence under subsection (1) or (5) is liable—
 - (a) on summary conviction, to a fine not exceeding the statutory maximum;
 - (b) on conviction on indictment, to a fine.
- (7) A person who intentionally obstructs an officer in the exercise of his powers under a warrant issued under section 28 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.

43 Destroying or falsifying documents

- (1) A person is guilty of an offence if, having been required to produce a document under section 26, 27 or 28—
 - (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.

44 False or misleading information

- (1) If information is provided by a person to the Director in connection with any function of the Director 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 Director in connection with any of his 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.