



# Enterprise Act 2002

## 2002 CHAPTER 40

### PART 2

#### THE COMPETITION APPEAL TRIBUNAL

##### *Proceedings under Part 1 of 1998 Act*

#### **17 Third party appeals**

For section 47 of the 1998 Act (third party appeals) there is substituted—

##### **“47 Third party appeals**

- (1) A person who does not fall within section 46(1) or (2) may appeal to the Tribunal with respect to a decision falling within paragraphs (a) to (f) of section 46(3) or such other decision of the OFT under this Part as may be prescribed.
- (2) A person may make an appeal under subsection (1) only if the Tribunal 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.”

#### **18 Monetary claims**

(1) After section 47 of the 1998 Act there is inserted—

##### **“47A Monetary claims before Tribunal**

- (1) This section applies to—
  - (a) any claim for damages, or<sup>3</sup>

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- (b) any other claim for a sum of money,  
which a person who has suffered loss or damage as a result of the infringement of a relevant prohibition may make in civil proceedings brought in any part of the United Kingdom.
- (2) In this section “relevant prohibition” means any of the following—
- (a) the Chapter I prohibition;
  - (b) the Chapter II prohibition;
  - (c) the prohibition in Article 81(1) of the Treaty;
  - (d) the prohibition in Article 82 of the Treaty;
  - (e) the prohibition in Article 65(1) of the Treaty establishing the [F<sup>1</sup>European Union] ;
  - (f) the prohibition in Article 66(7) of that Treaty.
- (3) For the purpose of identifying claims which may be made in civil proceedings, any limitation rules that would apply in such proceedings are to be disregarded.
- (4) A claim to which this section applies may (subject to the provisions of this Act and Tribunal rules) be made in proceedings brought before the Tribunal.
- (5) But no claim may be made in such proceedings—
- (a) until a decision mentioned in subsection (6) has established that the relevant prohibition in question has been infringed; and
  - (b) otherwise than with the permission of the Tribunal, during any period specified in subsection (7) or (8) which relates to that decision.
- (6) The decisions which may be relied on for the purposes of proceedings under this section are —
- (a) a decision of the OFT that the Chapter I prohibition or the Chapter II prohibition has been infringed;
  - (b) a decision of the OFT that the prohibition in Article 81(1) or Article 82 of the Treaty has been infringed;
  - (c) a decision of the Tribunal (on an appeal from a decision of the OFT) that the Chapter I prohibition, the Chapter II prohibition or the prohibition in Article 81(1) or Article 82 of the Treaty has been infringed;
  - (d) a decision of the European Commission that the prohibition in Article 81(1) or Article 82 of the Treaty has been infringed; or
  - (e) a decision of the European Commission that the prohibition in Article 65(1) of the Treaty establishing the [F<sup>1</sup>European Union] has been infringed, or a finding made by the European Commission under Article 66(7) of that Treaty.
- (7) The periods during which proceedings in respect of a claim made in reliance on a decision mentioned in subsection (6)(a), (b) or (c) may not be brought without permission are—
- (a) in the case of a decision of the OFT, the period during which an appeal may be made to the Tribunal under section 46, section 47 or the EC Competition Law (Articles 84 and 85) Enforcement Regulations 2001 (S.I. 2001/2916);

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- (b) in the case of a decision of the OFT which is the subject of an appeal mentioned in paragraph (a), the period following the decision of the Tribunal on the appeal during which a further appeal may be made under section 49 or under those Regulations;
- (c) in the case of a decision of the Tribunal mentioned in subsection (6) (c), the period during which a further appeal may be made under section 49 or under those Regulations;
- (d) in the case of any decision which is the subject of a further appeal, the period during which an appeal may be made to the House of Lords from a decision on the further appeal;

and, where any appeal mentioned in paragraph (a), (b), (c) or (d) is made, the period specified in that paragraph includes the period before the appeal is determined.

- (8) The periods during which proceedings in respect of a claim made in reliance on a decision or finding of the European Commission may not be brought without permission are—
  - (a) the period during which proceedings against the decision or finding may be instituted in the European Court; and
  - (b) if any such proceedings are instituted, the period before those proceedings are determined.
- (9) In determining a claim to which this section applies the Tribunal is bound by any decision mentioned in subsection (6) which establishes that the prohibition in question has been infringed.
- (10) The right to make a claim to which this section applies in proceedings before the Tribunal does not affect the right to bring any other proceedings in respect of the claim.”

- (2) Section 47A applies to claims arising before the commencement of this section as it applies to claims arising after that time.

#### Textual Amendments

- F1** Words in Act substituted (22.4.2011) by [The Treaty of Lisbon \(Changes in Terminology\) Order 2011 \(S.I. 2011/1043\)](#), arts. 2, 3, 4 (with art. 3(2)(3), 4(2), 6(4)(5))

## 19 Claims on behalf of consumers

After section 47A of the 1998 Act (which is inserted by section 18), there is inserted—

### “47B Claims brought on behalf of consumers

- (1) A specified body may (subject to the provisions of this Act and Tribunal rules) bring proceedings before the Tribunal which comprise consumer claims made or continued on behalf of at least two individuals.
- (2) In this section “consumer claim” means a claim to which section 47A applies which an individual has in respect of an infringement affecting (directly or indirectly) goods or services to which subsection (7) applies.
- (3) A consumer claim may be included in proceedings under this section if it is—

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- (a) a claim made in the proceedings on behalf of the individual concerned by the specified body; or
  - (b) a claim made by the individual concerned under section 47A which is continued in the proceedings on his behalf by the specified body;and such a claim may only be made or continued in the proceedings with the consent of the individual concerned.
- (4) The consumer claims included in proceedings under this section must all relate to the same infringement.
- (5) The provisions of section 47A(5) to (10) apply to a consumer claim included in proceedings under this section as they apply to a claim made in proceedings under that section.
- (6) Any damages or other sum (not being costs or expenses) awarded in respect of a consumer claim included in proceedings under this section must be awarded to the individual concerned; but the Tribunal may, with the consent of the specified body and the individual, order that the sum awarded must be paid to the specified body (acting on behalf of the individual).
- (7) This subsection applies to goods or services which—
  - (a) the individual received, or sought to receive, otherwise than in the course of a business carried on by him (notwithstanding that he received or sought to receive them with a view to carrying on a business); and
  - (b) were, or would have been, supplied to the individual (in the case of goods whether by way of sale or otherwise) in the course of a business carried on by the person who supplied or would have supplied them.
- (8) A business includes—
  - (a) a professional practice;
  - (b) any other undertaking carried on for gain or reward;
  - (c) any undertaking in the course of which goods or services are supplied otherwise than free of charge.
- (9) “Specified” means specified in an order made by the Secretary of State, in accordance with criteria to be published by the Secretary of State for the purposes of this section.
- (10) An application by a body to be specified in an order under this section is to be made in a form approved by the Secretary of State for the purpose.”

**Changes to legislation:**

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