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S T A T U T O R Y   I N S T R U M E N T S

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**2000 No. 260**

**COMPETITION**

**The Competition Act 1998 (Concurrency) Regulations 2000**

*Made* - - - - - *7th February 2000*

*Laid before Parliament* *8th February 2000*

*Coming into force* - - *1st March 2000*

The Secretary of State, in exercise of the powers conferred on him by section 54(4), (5) and (6) and section 71 of the Competition Act 1998(a), hereby makes the following regulations—

**Citation**

1. These Regulations may be cited as the Competition Act 1998 (Concurrency) Regulations 2000 and shall come into force on 1st March 2000.

**Interpretation**

2. In these Regulations—

- (a) “the Act” means the Competition Act 1998;
- (b) “applicant” means a person who has submitted an application;
- (c) “application” means an application made under section 4(6), 13, 14, 21 or 22 of the Act or made under sections 13 or 14 of the Act, as extended by Regulations made pursuant to section 12(3) of the Act;
- (d) “Director’s rules” means rules made by the Director and approved by an order made by the Secretary of State in accordance with section 51 of the Act;
- (e) “prescribed functions” means—
  - (i) the exercise by any competent person of any of the functions of the Director under the provisions of sections 25, 26, 27, 28 and 29 of the Act;
  - (ii) making a decision, as defined in section 46(3) of the Act;
  - (iii) giving written notification in accordance with the Director’s rules that a competent person proposes to make a decision that either the Chapter I prohibition or the Chapter II prohibition has been infringed and considering any representations made pursuant to that notification;
  - (iv) giving written notification in accordance with the Director’s rules that a competent person proposes to grant an individual exemption subject to condition or obligations in accordance with section 4(3) of the Act and considering any representations made pursuant to that notification;
  - (v) issuing guidance in accordance with either section 13 or section 21 of the Act;
  - (vi) making a provisional decision in accordance with the Director’s rules;
  - (vii) exercising functions under paragraph 4 of Schedule 1 or paragraph 2 of Schedule 3 or in accordance with an order made pursuant to section 50 of the Act;

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(a) 1998 c. 41.

- (f) “Part I functions” means any functions of the Director under the provisions of Part I of the Act which can be exercised by a regulator;
- (g) “working day” means a day which is not a Saturday, Sunday or an official holiday on which the Office of Fair Trading is closed.

### **Information**

3. For the purposes of determining which competent persons have jurisdiction to exercise Part I functions in relation to a case—

- (a) the Director General of Fair Trading may send to any other competent person details of information submitted as an application;
- (b) a competent person may send to any other competent person details of information he receives in relation to a proposed application; and
- (c) a competent person may send to any other competent person details of any information he receives that an infringement of the Chapter I or the Chapter II prohibition may have taken place.

### **Applications**

4. All applications shall be submitted to the Director General of Fair Trading in accordance with the Director’s rules.

### **Determination of the exercise of prescribing functions**

5.—(1) If the Director General of Fair Trading considers that a regulator has or may have concurrent jurisdiction to exercise Part I functions in relation to an agreement or conduct in respect of which an application has been submitted, he shall—

- (a) send one copy of the information submitted as that application to that regulator; and
- (b) inform the applicant in writing that he has done so.

(2) If a competent person proposes to exercise any of the prescribed functions in relation to a case which is not the subject of an application and he considers that another competent person has or may have concurrent jurisdiction to exercise Part I functions in relation to that case, he shall inform that other competent person of his intention to exercise prescribed functions in relation to that case.

(3) Where either—

- (a) the Director General of Fair Trading has sent information submitted as an application to another competent person in accordance with paragraph (1) above; or
- (b) a competent person has informed another competent person of his intention to exercise prescribed functions in accordance with paragraph (2) above in relation to a case

all such competent persons (together “the relevant competent persons”) shall agree who shall exercise prescribed functions in relation to that case.

(4) When agreement has been reached in accordance with paragraph (3) above, the case shall be transferred to the competent person who is to exercise prescribed functions in relation to that case and the Director General of Fair Trading shall as soon as practicable inform in writing—

- (a) the relevant competent persons; and
- (b) in cases where an application has been submitted, the applicant,

which competent person is to exercise prescribed functions in relation to the case.

### **Dispute**

6.—(1) If the relevant competent persons are not able to reach agreement in accordance with regulation 5(3) above within a reasonable time, the Director General of Fair Trading shall inform the Secretary of State in writing.

(2) Any relevant competent person may make representations in writing to the Secretary of State no later than the date upon which the Director General of Fair Trading informs the Secretary of State in accordance with paragraph (1) above of the failure to reach agreement.

(3) The Secretary of State shall within 8 working days of receipt of a communication made in accordance with paragraph (1) above—

- (a) determine which competent person shall exercise prescribed functions in relation to the case and direct that the case shall be transferred to that competent person; and
- (b) inform in writing—
  - (i) all relevant competent persons; and
  - (ii) in cases where an application has been made, the applicant

which competent person is to exercise jurisdiction in relation to the case and the date of transfer of the case.

(4) In making a determination in accordance with paragraph (3)(a) above the Secretary of State shall take into consideration any representations made in accordance with paragraph (2) above.

### **Avoidance of double jeopardy**

7.—(1) Where two or more competent persons may have concurrent jurisdiction in relation to a case, no competent person shall exercise any prescribed functions in relation to that case before agreement has been reached in accordance with regulation 5(3) or a determination has been made in accordance with regulation 6(3)(a) above as to which competent person is to exercise prescribed functions in relation to a case.

(2) Subject to regulation 8 below, once agreement has been reached in accordance with regulation 5(3) or a determination has been made in accordance with regulation 6(3)(a) above as to which competent person is to exercise prescribed functions in relation to a case, no other competent person shall exercise any of the prescribed functions in relation to that case.

### **Transfer**

8.—(1) Subject to paragraphs (2), (5) and (6) below, a competent person who has exercised any Part I functions in relation to a case (“the transferor”) may agree with another competent person who has concurrent jurisdiction to exercise Part I functions in relation to that case (“the transferee”) to transfer the case to the transferee.

(2) If the transferor and the transferee propose to agree a transfer in accordance with paragraph (1) above, the transferor shall notify in writing either—

- (a) in the case of an application, the applicant, or
- (b) in other cases, subject to paragraph (5) below, the undertaking which is the subject of the exercise of Part I functions in that case,

of the proposed transfer and shall invite the recipient of the notice to make written representations upon the proposal within seven working days of the date of that notice.

(3) If, after taking into consideration any representations made in accordance with paragraph (2) above, a transfer is agreed in accordance with paragraph (1) in respect of a case which is the subject of an application the transferor shall—

- (a) send the original application, together with all supporting documents which have been supplied to the transferor to support that application, to the transferee, and
- (b) inform the applicant in writing—
  - (i) that the transferee is to exercise jurisdiction in relation to the case and of the reasons for the transfer; and
  - (ii) of the date of the transfer.

(4) Subject to paragraph (5) below, if a transfer is agreed in accordance with paragraph (1) for a case which is not the subject of an application, the transferor shall inform the undertaking which is the subject of the exercise of Part I functions in that case in writing that the transferee is to exercise jurisdiction in relation to the case from the date of the transfer and of the reasons for this transfer.

(5) The transferor shall not be under any obligation to notify an undertaking in accordance with paragraph (2)(b) above or to inform an undertaking in accordance with paragraph (4) above if—

- (a) the transfer takes place before agreement has been reached in accordance with

- regulation 5(3) or a determination has been made in accordance with regulation 6(3)(a) above as to which competent person is to exercise prescribed functions in relation to a case; or
- (b) the transferor has not informed that undertaking that he has exercised Part I functions in relation to the case; or
  - (c) that undertaking is not an applicant but is a party to an agreement or conduct which is the subject of an application.
- (6) Where a transfer of an application takes place in accordance with regulation 5(4) of 6(3)(a) above—
- (a) paragraphs (1), (2) and (3) above shall have no application;
  - (b) the Director General of Fair Trading shall as soon as reasonably practicable send the original application, together with all supporting documents which have been supplied to him to support that application to the competent person who is to exercise prescribed functions in relation to the case.

#### **Use of staff**

**9.**—(1) A competent person who wishes to exercise Part I functions in relation to a case (“the appointor”) may appoint an officer of another competent person (“the appointee”) to act as his officer in relation to that case provided that the competent person of which the appointee is an officer gives his written consent to the appointment on or prior to the date upon which the appointment commences.

(2) An appointee shall be an officer of the appointor for the purposes of sections 27 to 29 inclusive of the Act.

(3) Any act or omission of the appointee within the terms of the appointment shall be deemed to be an act or omission of the appointor.

#### **Service of notices**

**10.** Any notice to be served on any person under these Regulations may be served by post, and a letter containing that notice shall be deemed to be properly addressed if it is addressed to that person at its registered office or last known residence or last known place of business in the United Kingdom.

7th February 2000

*Kim Howells,*  
Parliamentary Under Secretary of State for  
Consumers and Corporate Affairs,  
Department of Trade and Industry

## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations make provision for the Director General of Fair Trading and the regulators who can exercise functions of the Director under Part I the Competition Act 1998 concurrently with him to co-ordinate the performance of those functions.

Regulation 3 provides for the Director and regulators to circulate information for the purposes of determining which of their number may exercise Part I functions in relation to a case.

Regulation 4 provides that all applications for guidance or a decision as to whether a Chapter I or Chapter II prohibition have been infringed shall be submitted to the Director.

Regulation 5 sets out the steps which must be taken before a competent person exercises prescribed functions (as defined in regulation 2) in relation to a case.

Regulation 6 provides the procedure for determining which competent person is to exercise prescribed functions in a particular case when agreement has not been reached on this issue in accordance with regulation 5.

Regulation 7 makes provision for the circumstances in which the exercise of prescribed functions by a competent person in relation to a case precludes the exercise of those functions by another competent person.

Regulation 8 makes provision for a competent person who has exercised Part I functions (as defined in regulation 2) in relation to a case to transfer that case to another competent person.

Regulation 9 makes provision for the appointment of an officer of one competent person to act as the officer of another competent person in relation to a case.

Regulation 10 makes provision for the service of notices.

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