



# Competition Act 1998

## 1998 CHAPTER 41

### PART I

#### COMPETITION

#### CHAPTER II

#### ABUSE OF DOMINANT POSITION

#### *Notification*

#### **20 Requests for Director to consider conduct**

- (1) Sections 21 and 22 provide for conduct of a person which that person thinks may infringe the Chapter II prohibition to be considered by the Director on the application of that person.
- (2) Schedule 6 provides for the procedure to be followed—
  - (a) by any person making an application, and
  - (b) by the Director, in considering an application.

#### **21 Notification for guidance**

- (1) A person who applies for conduct to be considered under this section must—
  - (a) notify the Director of it; and
  - (b) apply to him for guidance.
- (2) On an application under this section, the Director may give the applicant guidance as to whether or not, in his view, the conduct is likely to infringe the Chapter II prohibition.

## **22 Notification for a decision**

- (1) A person who applies for conduct to be considered under this section must—
  - (a) notify the Director of it; and
  - (b) apply to him for a decision.
- (2) On an application under this section, the Director may make a decision as to—
  - (a) whether the Chapter II prohibition has been infringed; and
  - (b) if it has not been infringed, whether that is because of the effect of an exclusion.

## **23 Effect of guidance**

- (1) This section applies to conduct if the Director has determined an application under section 21 by giving guidance that the conduct is unlikely to infringe the Chapter II prohibition.
- (2) The Director is to take no further action under this Part with respect to the conduct to which this section applies, unless—
  - (a) he has reasonable grounds for believing that there has been a material change of circumstance since he gave his guidance;
  - (b) he has a reasonable suspicion that the information on which he based his guidance was incomplete, false or misleading in a material particular; or
  - (c) a complaint about the conduct has been made to him.
- (3) No penalty may be imposed under this Part in respect of any infringement of the Chapter II prohibition by conduct to which this section applies.
- (4) But the Director may remove the immunity given by subsection (3) if—
  - (a) he takes action under this Part with respect to the conduct in one of the circumstances mentioned in subsection (2);
  - (b) he considers that it is likely that the conduct will infringe the prohibition; and
  - (c) he gives notice in writing to the undertaking on whose application the guidance was given that he is removing the immunity as from the date specified in his notice.
- (5) If the Director has a reasonable suspicion that information—
  - (a) on which he based his guidance, and
  - (b) which was provided to him by an undertaking engaging in the conduct,was incomplete, false or misleading in a material particular, the date specified in a notice under subsection (4)(c) may be earlier than the date on which the notice is given.

## **24 Effect of a decision that the Chapter II prohibition has not been infringed**

- (1) This section applies to conduct if the Director has determined an application under section 22 by making a decision that the conduct has not infringed the Chapter II prohibition.
- (2) The Director is to take no further action under this Part with respect to the conduct unless—
  - (a) he has reasonable grounds for believing that there has been a material change of circumstance since he gave his decision; or

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*Status: This is the original version (as it was originally enacted).*

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- (b) he has a reasonable suspicion that the information on which he based his decision was incomplete, false or misleading in a material particular.
- (3) No penalty may be imposed under this Part in respect of any infringement of the Chapter II prohibition by conduct to which this section applies.
- (4) But the Director may remove the immunity given by subsection (3) if—
- (a) he takes action under this Part with respect to the conduct in one of the circumstances mentioned in subsection (2);
  - (b) he considers that it is likely that the conduct will infringe the prohibition; and
  - (c) he gives notice in writing to the undertaking on whose application the decision was made that he is removing the immunity as from the date specified in his notice.
- (5) If the Director has a reasonable suspicion that information—
- (a) on which he based his decision, and
  - (b) which was provided to him by an undertaking engaging in the conduct,
- was incomplete, false or misleading in a material particular, the date specified in a notice under subsection (4)(c) may be earlier than the date on which the notice is given.