



# Restrictive Trade Practices Act 1976

## 1976 CHAPTER 34

### PART II

#### GOODS

#### **6 Restrictive agreements as to goods**

- (1) This Act applies to agreements (whenever made) between two or more persons carrying on business within the United Kingdom in the production or supply of goods, or in the application to goods of any process of manufacture, whether with or without other parties, being agreements under which restrictions are accepted by two or more parties in respect of any of the following matters—
  - (a) the prices to be charged, quoted or paid for goods supplied, offered or acquired, or for the application of any process of manufacture to goods ;
  - (b) the prices to be recommended or suggested as the prices to be charged or quoted in respect of the resale of goods supplied;
  - (c) the terms or conditions on or subject to which goods are to be supplied or acquired or any such process is to be applied to goods;
  - (d) the quantities or descriptions of goods to be produced, supplied or acquired;
  - (e) the processes of manufacture to be applied to any goods, or the quantities or descriptions of goods to which any such process is to be applied ; or
  - (f) the persons or classes of persons to, for or from whom, or the areas or places in or from which, goods are to be supplied or acquired, or any such process applied.
- (2) For the purposes of subsection (1) above it is immaterial—
  - (a) whether any restrictions accepted by parties to an agreement relate to the same or different matters specified in that subsection, or have the same or different effect in relation to any matter so specified, and
  - (b) whether the parties accepting any restrictions carry on the same class or different classes of business.
- (3) For the purposes of this Part of this Act an agreement which—

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- (a) confers privileges or benefits only upon such parties as comply with conditions as to any such matters as are described in subsection (1)(a) to (f) above; or
  - (b) imposes obligations upon parties who do not comply with such conditions;
- shall be treated as an agreement under which restrictions are accepted by each of the parties in respect of those matters.
- (4) Without prejudice to subsection (3) above, an obligation on the part of any party to an agreement to make payments calculated by reference—
- (a) to the quantity of goods produced or supplied by him, or to which any process of manufacture is applied by him; or
  - (b) to the quantity of materials acquired or used by him for the purpose of or in the production of any goods or the application of any such process to goods ;
- being payments calculated, or calculated at an increased rate, in respect of quantities of goods or materials exceeding any quantity specified in or ascertained in accordance with the agreement, shall be treated for the purposes of this Act as a restriction in respect of the quantities of those goods to be produced or supplied, or to which that process is to be applied. This subsection does not apply to any obligation on the part of any person to make payments to a trade association of which he is a member, if the payments are to consist only of bona fide subscriptions for membership of the association.

## 7 Information agreements as to goods

- (1) The Secretary of State may by statutory instrument make an order directing that this Act shall apply to information agreements (whenever made) of any class described in the order; and in this section " information agreement" means an agreement between two or more persons carrying on within the United Kingdom any such business as is described in section 6(1) above, whether with or without other parties, being an agreement under which provision is made for or in relation to the furnishing by two or more parties to each other or to other persons (whether parties or not) of information in respect of any of the following matters—
- (a) the prices charged, quoted or paid or to be charged, quoted or paid for goods which have been or are to be supplied, offered or acquired or for the application of any process of manufacture to goods ;
  - (b) the prices to be recommended or suggested as the prices to be charged or quoted in respect of the resale of goods supplied;
  - (c) the terms or conditions on or subject to which goods have been or are to be supplied or acquired or any such process has been or is to be applied to goods;
  - (d) the quantities or descriptions of goods produced, supplied or acquired or to be produced, supplied or acquired;
  - (e) the costs incurred or to be incurred in producing, supplying or acquiring goods or in applying any such process to goods;
  - (f) the processes of manufacture which have been or are to be applied to any goods or the quantities or descriptions of goods to which any such process has been or is to be applied ;
  - (g) the persons or classes of persons to or for whom goods have been or are to be supplied, or from or for whom goods have been or are to be acquired, or for whom any such process has been or is to be applied ;

- (h) the areas or places in or from which goods have been or are to be supplied or acquired or in which any such process has been or is to be applied to goods.
- (2) For the purposes of subsection (1) above it is immaterial—
    - (a) whether any information provisions made by the parties to an agreement relate to the same or different matters specified in that subsection, or have the same or different effect in relation to any matter so specified, and
    - (b) whether the parties by whom any information is to be furnished carry on the same class or different classes of business.
  - (3) An order under this section may describe the classes of information agreements to which it applies by reference to one or more of the following matters—
    - (a) the trade or industry in which the persons to whom the information provision made by the agreement applies are engaged, or the class of business carried on by such persons ;
    - (b) the character of the information provision made by the agreement, or the goods, processes, transactions, areas, places or other matters with respect to which that provision relates ;
    - (c) any other features which appear to the Secretary of State to be expedient.
  - (4) No order shall be made under this section unless a draft of the order has been laid before, and approved by resolution of, each House of Parliament.
  - (5) The Secretary of State shall, before laying before Parliament the draft of an order under this section for applying this Act in relation to information agreements of any class, publish in such manner as he thinks appropriate a notice—
    - (a) describing the classes of agreements to which the proposed order would apply; and
    - (b) specifying a period (not being less than 28 days) within which representations with respect to the proposed order may be made to the Secretary of State;and in settling the draft to be laid before Parliament shall take into consideration any such representations received by him within that period.

## **8 Trade associations**

- (1) This Act has effect in relation to an agreement made by a trade association as if the agreement were made between all persons who are members of the association or are represented on it by such members and, where any restriction is accepted or information provision made in the agreement on the part of the association, as if the like restriction or the like information provision were accepted or made by each of those persons.
- (2) Where—
  - (a) specific recommendations (whether express or implied) are made by or on behalf of an association to its members, or to any class of its members, and
  - (b) those recommendations are as to the action to be taken or not to be taken by them in relation to any particular class of goods or process of manufacture in respect of any matters described in section 6(1) above,this Act has effect in relation to the agreement for the constitution of the association (notwithstanding any provision in the agreement to the contrary) as if that agreement contained the term mentioned in subsection (3) below.

- (3) The term referred to in subsection (2) above is one by which each such member, and any person represented on the association by any such member, agrees to comply with those recommendations and with any subsequent recommendations made to them by or on behalf of the association as to the action to be taken by them in relation to the same class of goods or process of manufacture and in respect of the same matters.
- (4) In the case of an order under section 7 above, where—
- (a) specific recommendations (whether express or implied) are made by or on behalf of an association to its members, or to any class of its members, and
  - (b) those recommendations are as to the furnishing of information in relation to any particular class of goods or process of manufacture in respect of any matters described in subsection (1) of that section,
- this Act has effect in relation to the agreement for the constitution of the association (notwithstanding any provision in the agreement to the contrary) as if that agreement contained the term mentioned in subsection (5) below.
- (5) The term referred to in subsection (4) above is one by which each such member, and any person represented on the association by any such member, agrees to comply with those recommendations and with any subsequent recommendations made to them by or on behalf of the association as to the furnishing of information in relation to the same class of goods or process of manufacture and in respect of the same matters.

## **9 Provisions to be disregarded under Part II**

- (1) In determining whether an agreement is an agreement to which this Act applies by virtue of this Part, where—
- (a) the parties to the agreement are or include two or more bodies to which this subsection applies, and
  - (b) restrictions or information provisions relating to coal or steel, or relating to both coal and steel, are accepted or made, as the case may be, under the agreement by two or more such bodies, whether the restrictions so accepted or the information provisions so made by those bodies are the same restrictions or different restrictions or are the same information provisions or different information provisions,
- no account shall be taken of any such restriction or information provision which is accepted or made under the agreement by a body to which this subsection applies, whether that restriction or information provision is also accepted or made by any other party to the agreement or not.
- (2) Subsection (1) above applies to any body which, in accordance with Article 80 of the E.C.S.C. Treaty, constitutes an undertaking for the purposes of Articles 65 and 66 of that Treaty, and in that subsection " coal" and " steel" have the meanings assigned to them respectively by Annex I to that Treaty.
- (3) In determining whether an agreement for the supply of goods or for the application of any process of manufacture to goods is an agreement to which this Act applies by virtue of this Part, no account shall be taken of any term which relates exclusively to the goods supplied, or to which the process is applied, in pursuance of the agreement.
- (4) Where any such restrictions as are described in section 6(1) above are accepted or any such information provisions as are described in section 7(1) above are made as between two or more persons by whom, or two or more persons to or for whom, goods

are to be supplied, or the process applied, in pursuance of the agreement, subsection (3) above shall not apply to those restrictions or to those information provisions unless accepted or made in pursuance of a previous agreement—

- (a) in respect of which particulars have been registered under this Act; or
- (b) which is exempt from registration by virtue of an order under section 29 (agreements important to the national economy) or section 30 (agreements holding down prices) below.

(5) In determining whether an agreement is an agreement to which this Act applies by virtue of this Part, no account shall be taken of any term by which the parties or any of them agree to comply with or apply, in respect of the production, supply or acquisition of any goods or the application to goods of any process of manufacture—

- (a) standards of dimension, design, quality or performance, or
- (b) arrangements as to the provision of information or advice to purchasers, consumers or users,

being either standards or arrangements for the time being approved by the British Standards Institution or standards or arrangements prescribed or adopted by any trade association or other body and for the time being approved by order of the Secretary of State made by statutory instrument.

(6) In determining whether an agreement is an agreement to which this Act applies by virtue of this Part, no account shall be taken of any restriction or information provision which affects or otherwise relates to the workers to be employed or not employed by any person, or as to the remuneration, conditions of employment, hours of work or working conditions of such workers.

In this subsection " worker " means a person who has entered into or works under a contract with an employer whether the contract be by way of manual labour, clerical work, or otherwise, be express or implied, oral or in writing, and whether it be a contract of service or of apprenticeship or a contract personally to execute any work or labour.

(7) Any reference in Schedule 3 to this Act to—

- (a) such restrictions as are described in section 6(1) above, or
- (b) such information provisions as are described in section 7(1) above,

shall be construed, in relation to any agreement, as not including references to restrictions or information provisions of which, by virtue of any provision of this section, account cannot be taken in determining whether the agreement is one to which this Act applies by virtue of this Part, or of restrictions accepted or information provisions made by any term of which account cannot be so taken.

## **10 Presumption under Part II as to the public interest**

(1) For the purposes of any proceedings before the Court under Part I of this Act, a restriction accepted or information provision made in pursuance of an agreement to which this Act applies by virtue of this Part shall be deemed to be contrary to the public interest unless the Court is satisfied of any one or more of the following circumstances—

- (a) that the restriction or information provision is reasonably necessary, having regard to the character of the goods to which it applies, to protect the public against injury (whether to persons or to premises) in connection with the consumption, installation or use of those goods;

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- (b) that the removal of the restriction or information provision would deny to the public as purchasers, consumers or users of any goods other specific and substantial benefits or advantages enjoyed or likely to be enjoyed by them as such, whether by virtue of the restriction or information provision itself or of any arrangements or operations resulting therefrom;
- (c) that the restriction or information provision is reasonably necessary to counteract measures taken by any one person not party to the agreement with a view to preventing or restricting competition in or in relation to the trade or business in which the persons party thereto are engaged;
- (d) that the restriction or information provision is reasonably necessary to enable the persons party to the agreement to negotiate fair terms for the supply of goods to, or the acquisition of goods from, any one person not party thereto who controls a preponderant part of the trade or business of acquiring or supplying such goods, or for the supply of goods to any person not party to the agreement and not carrying on such a trade or business who, either alone or in combination with any other such person, controls a preponderant part of the market for such goods ;
- (e) that, having regard to the conditions actually obtaining or reasonably foreseen at the time of the application, the removal of the restriction or information provision would be likely to have a serious and persistent adverse effect on the general level of unemployment in an area, or in areas taken together, in which a substantial proportion of the trade or industry to which the agreement relates is situated ;
- (f) that, having regard to the conditions actually obtaining or reasonably foreseen at the time of the application, the removal of the restriction or information provision would be likely to cause a reduction in the volume or earnings of the export business which is substantial either in relation to the whole export business of the United Kingdom or in relation to the whole business (including export business) of the said trade or industry;
- (g) that the restriction or information provision is reasonably required for purposes connected with the maintenance of any other restriction accepted or information provision made by the parties, whether under the same agreement or under any other agreement between them, being a restriction or information provision which is found by the Court not to be contrary to the public interest upon grounds other than those specified in this paragraph, or has been so found in previous proceedings before the Court; or
- (h) that the restriction or information provision does not directly or indirectly restrict or discourage competition to any material degree in any relevant trade or industry and is not likely to do so ;

and is further satisfied (in any such case) that the restriction or information provision is not unreasonable having regard to the balance between those circumstances and any detriment to the public or to persons not parties to the agreement (being purchasers, consumers or users of goods produced or sold by such parties, or persons engaged or seeking to become engaged in the trade or business of selling such goods or of producing or selling similar goods) resulting or likely to result from the operation of the restriction or the information provision.

(2) In this section—

- (a) " purchasers ", " consumers " and " users " include persons purchasing, consuming or using for the purpose or in the course of trade or business or for public purposes; and

- (b) references to any one person include references to any two or more persons being interconnected bodies corporate or individuals carrying on business in partnership with each other.