



# Competition Act 1998

## 1998 CHAPTER 41

### PART I

#### COMPETITION

#### CHAPTER I

#### AGREEMENTS

##### *Notification*

### **12 Requests for Director to examine agreements**

- (1) Sections 13 and 14 provide for an agreement to be examined by the Director on the application of a party to the agreement who thinks that it may infringe the Chapter I prohibition.
- (2) Schedule 5 provides for the procedure to be followed—
  - (a) by any person making such an application; and
  - (b) by the Director, in considering such an application.
- (3) The Secretary of State may by regulations make provision as to the application of sections 13 to 16 and Schedule 5, with such modifications (if any) as may be prescribed, in cases where the Director—
  - (a) has given a direction withdrawing an exclusion; or
  - (b) is considering whether to give such a direction.

### **13 Notification for guidance**

- (1) A party to an agreement who applies for the agreement to be examined under this section must—
  - (a) notify the Director of the agreement; and

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- (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 agreement is likely to infringe the Chapter I prohibition.
- (3) If the Director considers that the agreement is likely to infringe the prohibition if it is not exempt, his guidance may indicate—
  - (a) whether the agreement is likely to be exempt from the prohibition under—
    - (i) a block exemption;
    - (ii) a parallel exemption; or
    - (iii) a section 11 exemption; or
  - (b) whether he would be likely to grant the agreement an individual exemption if asked to do so.
- (4) If an agreement to which the prohibition applies has been notified to the Director under this section, no penalty is to be imposed under this Part in respect of any infringement of the prohibition by the agreement which occurs during the period—
  - (a) beginning with the date on which notification was given; and
  - (b) ending with such date as may be specified in a notice in writing given to the applicant by the Director when the application has been determined.
- (5) The date specified in a notice under subsection (4)(b) may not be earlier than the date on which the notice is given.

#### **14 Notification for a decision**

- (1) A party to an agreement who applies for the agreement to be examined under this section must—
  - (a) notify the Director of the agreement; 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 I prohibition has been infringed; and
  - (b) if it has not been infringed, whether that is because of the effect of an exclusion or because the agreement is exempt from the prohibition.
- (3) If an agreement is notified to the Director under this section, the application may include a request for the agreement to which it relates to be granted an individual exemption.
- (4) If an agreement to which the prohibition applies has been notified to the Director under this section, no penalty is to be imposed under this Part in respect of any infringement of the prohibition by the agreement which occurs during the period—
  - (a) beginning with the date on which notification was given; and
  - (b) ending with such date as may be specified in a notice in writing given to the applicant by the Director when the application has been determined.
- (5) The date specified in a notice under subsection (4)(b) may not be earlier than the date on which the notice is given.

## **15 Effect of guidance**

- (1) This section applies to an agreement if the Director has determined an application under section 13 by giving guidance that—
  - (a) the agreement is unlikely to infringe the Chapter I prohibition, regardless of whether or not it is exempt;
  - (b) the agreement is likely to be exempt under—
    - (i) a block exemption;
    - (ii) a parallel exemption; or
    - (iii) a section 11 exemption; or
  - (c) he would be likely to grant the agreement an individual exemption if asked to do so.
- (2) The Director is to take no further action under this Part with respect to an agreement 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;
  - (c) one of the parties to the agreement applies to him for a decision under section 14 with respect to the agreement; or
  - (d) a complaint about the agreement has been made to him by a person who is not a party to the agreement.
- (3) No penalty may be imposed under this Part in respect of any infringement of the Chapter I prohibition by an agreement 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 agreement in one of the circumstances mentioned in subsection (2);
  - (b) he considers it likely that the agreement will infringe the prohibition; and
  - (c) he gives notice in writing to the party 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 a party to the agreement,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.

## **16 Effect of a decision that the Chapter I prohibition has not been infringed**

- (1) This section applies to an agreement if the Director has determined an application under section 14 by making a decision that the agreement has not infringed the Chapter I prohibition.
- (2) The Director is to take no further action under this Part with respect to the agreement unless—
  - (a) he has reasonable grounds for believing that there has been a material change of circumstance since he gave his decision; or
  - (b) he has a reasonable suspicion that the information on which he based his decision was incomplete, false or misleading in a material particular.

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- (3) No penalty may be imposed under this Part in respect of any infringement of the Chapter I prohibition by an agreement 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 agreement in one of the circumstances mentioned in subsection (2);
  - (b) he considers that it is likely that the agreement will infringe the prohibition; and
  - (c) he gives notice in writing to the party 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 a party to the agreement,
- 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.