



# Competition Act 1998

## 1998 CHAPTER 41

### PART I

#### COMPETITION

#### CHAPTER IV

##### THE COMPETITION COMMISSION AND APPEALS

##### *The Commission*

#### **45 The Competition Commission.**

- (1) There is to be a body corporate known as the Competition Commission.
- (2) The Commission is to have such functions as are conferred on it by or as a result of this Act.
- (3) The Monopolies and Mergers Commission is dissolved and its functions are transferred to the Competition Commission.
- (4) In any enactment, instrument or other document, any reference to the Monopolies and Mergers Commission which has continuing effect is to be read as a reference to the Competition Commission.
- (5) The Secretary of State may by order make such consequential, supplemental and incidental provision as he considers appropriate in connection with—
  - (a) the dissolution of the Monopolies and Mergers Commission; and
  - (b) the transfer of functions effected by subsection (3).
- (6) An order made under subsection (5) may, in particular, include provision—
  - (a) for the transfer of property, rights, obligations and liabilities and the continuation of proceedings, investigations and other matters; or

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- (b) amending any enactment which makes provision with respect to the Monopolies and Mergers Commission or any of its functions.
- (7) [<sup>F1</sup>Schedules 7 and 7A make] further provision about the Competition Commission.
- [<sup>F2</sup>(8) The Secretary of State may by order make such modifications in Part 2 of Schedule 7 and in Schedule 7A (performance of the Competition Commission’s general functions) as he considers appropriate for improving the performance by the Competition Commission of its functions.]

#### Textual Amendments

- F1** Words in s. 45(7) substituted (20.6.2003) by [Enterprise Act 2002 \(c. 40\), ss. 187\(1\), 279](#); S.I. 2003/1397, art. 2(1), Sch.
- F2** S. 45(8) inserted (20.6.2003) by [Enterprise Act 2002 \(c. 40\), s. 279, Sch. 25 para. 38\(35\)](#); S.I. 2003/1397, art. 2(1), Sch.

### *Appeals*

#### 46 Appealable decisions.

- (1) Any party to an agreement in respect of which the [<sup>F3</sup>OFT] has made a decision may appeal to [<sup>F4</sup>the Tribunal] against, or with respect to, the decision.
- (2) Any person in respect of whose conduct the [<sup>F3</sup>OFT] has made a decision may appeal to [<sup>F4</sup>the Tribunal] against, or with respect to, the decision.
- (3) In this section “decision” means a decision of the [<sup>F3</sup>OFT]—
- (a) as to whether the Chapter I prohibition has been infringed,
  - (b) as to whether the Chapter II prohibition has been infringed,
  - (c) as to whether to grant an individual exemption,
  - (d) in respect of an individual exemption—
    - (i) as to whether to impose any condition or obligation under section 4(3)(a) or 5(1)(c),
    - (ii) where such a condition or obligation has been imposed, as to the condition or obligation,
    - (iii) as to the period fixed under section 4(3)(b), or
    - (iv) as to the date fixed under section 4(5),
  - (e) as to—
    - (i) whether to extend the period for which an individual exemption has effect, or
    - (ii) the period of any such extension,
  - (f) cancelling an exemption,
  - (g) as to the imposition of any penalty under section 36 or as to the amount of any such penalty,
  - <sup>F5</sup>(h) .....
- and includes a direction given under section 32, 33 or 35 and such other decision [<sup>F6</sup>under this Part] as may be prescribed.

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- (4) Except in the case of an appeal against the imposition, or the amount, of a penalty, the making of an appeal under this section does not suspend the effect of the decision to which the appeal relates.
- (5) Part I of Schedule 8 makes further provision about appeals.

#### Textual Amendments

- F3** Word in s. 46 substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\), s. 279, Sch. 25 para. 38\(36\)](#); [S.I. 2003/766, art. 2, Sch.](#) (with [art. 3](#)) (as amended (20.7.2007) by [S.I. 2007/1846, reg. 3\(2\), Sch.](#))
- F4** Words in s. 46(1)(2) substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\), s. 279, Sch. 5 para. 2\(a\)](#); [S.I. 2003/766, art. 2, Sch.](#) (with [art. 3](#)) (as amended (20.7.2007) by [S.I. 2007/1846, reg. 3\(2\), Sch.](#))
- F5** S. 46(3)(h) repealed (20.6.2003) by [Enterprise Act 2002 \(c. 40\), s. 279, Sch. 5 para. 2\(c\), Sch. 26](#); [S.I. 2003/1397, art. 2\(1\), Sch.](#)
- F6** Words in s. 46(3) inserted (1.4.2003) by [Enterprise Act 2002 \(c. 40\), s. 279, Sch. 5 para. 2\(b\)](#); [S.I. 2003/766, art. 2, Sch.](#) (with [art. 3](#)) (as amended (20.7.2007) by [S.I. 2007/1846, reg. 3\(2\), Sch.](#))

#### Modifications etc. (not altering text)

- C1** Ss. 46-47 modified (1.3.2000) by [S.I. 2000/261, rule 3](#)  
Ss. 46-47 modified (1.3.2000) by [S.I. 2000/261, rule 6](#)

### [<sup>F7</sup>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.]

#### Textual Amendments

- F7** S. 47 substituted (20.6.2003) by [Enterprise Act 2002 \(c. 40\), ss. 17, 279](#); [S.I. 2003/1397, art. 2\(1\), Sch.](#) (with [art. 5](#))

#### Modifications etc. (not altering text)

- C2** Ss. 46-47 modified (1.3.2000) by [S.I. 2000/261, rule 3](#)  
Ss. 46-47 modified (1.3.2000) by [S.I. 2000/261, rule 6](#)

### [<sup>F8</sup>47A Monetary claims before Tribunal

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

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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 European Coal and Steel Community;
  - (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 European Coal and Steel Community 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);
  - (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;

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- (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.]

#### Textual Amendments

**F8** S. 47A inserted (20.6.2003) by [Enterprise Act 2002 \(c. 40\)](#), **ss. 18(1), 279** (with [s. 18\(2\)](#)); [S.I. 2003/1397](#), [art. 2\(1\)](#), [Sch.](#)

#### [<sup>F9</sup>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—
  - (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.

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- (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.]

**Textual Amendments**

**F9** S. 47B inserted (20.6.2003) by [Enterprise Act 2002 \(c. 40\)](#), **ss. 19, 279**; [S.I. 2003/1397](#), **art. 2(1)**, **Sch.**

**<sup>F10</sup>48 Appeal tribunals.**

**Textual Amendments**

**F10** S. 48 repealed (1.4.2003) by [Enterprise Act 2002 \(c. 40\)](#), **s. 279**, **Sch. 5 para. 3**, **Sch. 26**; [S.I. 2003/766](#), **art. 2**, **Sch.** (with **art. 3**) (as amended (20.7.2007) by [S.I. 2007/1846](#), **reg. 3(2)**, **Sch.**)

**[<sup>F11</sup>49 Further appeals**

- (1) An appeal lies to the appropriate court—
- (a) from a decision of the Tribunal as to the amount of a penalty under section 36;
  - (b) from a decision of the Tribunal as to the award of damages or other sum in respect of a claim made in proceedings under section 47A or included in proceedings under section 47B (other than a decision on costs or expenses) or as to the amount of any such damages or other sum; and

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- (c) on a point of law arising from any other decision of the Tribunal on an appeal under section 46 or 47.
- (2) An appeal under this section—
- (a) may be brought by a party to the proceedings before the Tribunal or by a person who has a sufficient interest in the matter; and
  - (b) requires the permission of the Tribunal or the appropriate court.
- (3) In this section “the appropriate court” means the Court of Appeal or, in the case of an appeal from Tribunal proceedings in Scotland, the Court of Session.]

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#### **Textual Amendments**

- F11** S. 49 substituted (1.4.2003 for specified purposes, 18.7.2004 in so far as not already in force) by [Enterprise Act 2002 \(c. 40\), s. 279, Sch. 5 para. 4](#); [S.I. 2003/766, art. 2, Sch.](#) (with [art. 3](#)) (as amended (20.7.2007) by [S.I. 2007/1846, reg. 3\(2\), Sch.](#)); [S.I. 2004/1866, art. 2](#)

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#### **Commencement Information**

- I1** S. 49 wholly in force; s. 49 not in force at Royal Assent see s. 76(3); s. 49(3) in force at 1.4.1999 by [S.I. 1999/505, art. 2 Sch. 2](#); s. 49(1)(2) and (4) in force at 1.3.2000 by [S.I. 2000/344, art. 2, Sch.](#)

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