Competition Act 1998

1998 CHAPTER 41

PART I

COMPETITION

CHAPTER V

MISCELLANEOUS

Vertical agreements and land agreements

50 Vertical agreements and land agreements.

(1) The Secretary of State may by order provide for any provision of this Part to apply in relation to—
   (a) vertical agreements, or
   (b) land agreements,
   with such modifications as may be prescribed.

(2) An order may, in particular, provide for exclusions or exemptions, or otherwise provide for prescribed provisions not to apply, in relation to—
   (a) vertical agreements, or land agreements, in general; or
   (b) vertical agreements, or land agreements, of any prescribed description.

(3) An order may empower the Director to give directions to the effect that in prescribed circumstances an exclusion, exemption or modification is not to apply (or is to apply in a particular way) in relation to an individual agreement.

(4) Subsections (2) and (3) are not to be read as limiting the powers conferred by section 71.

(5) In this section—

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"land agreement" and "vertical agreement" have such meaning as may be prescribed; and

"prescribed" means prescribed by an order.

Director's rules, guidance and fees

51 Rules.

(1) The Director may make such rules about procedural and other matters in connection with the carrying into effect of the provisions of this Part as he considers appropriate.

(2) Schedule 9 makes further provision about rules made under this section but is not to be taken as restricting the Director's powers under this section.

(3) If the Director is preparing rules under this section he must consult such persons as he considers appropriate.

(4) If the proposed rules relate to a matter in respect of which a regulator exercises concurrent jurisdiction, those consulted must include that regulator.

(5) No rule made by the Director is to come into operation until it has been approved by an order made by the Secretary of State.

(6) The Secretary of State may approve any rule made by the Director—
  (a) in the form in which it is submitted; or
  (b) subject to such modifications as he considers appropriate.

(7) If the Secretary of State proposes to approve a rule subject to modifications he must inform the Director of the proposed modifications and take into account any comments made by the Director.

(8) Subsections (5) to (7) apply also to any alteration of the rules made by the Director.

(9) The Secretary of State may, after consulting the Director, by order vary or revoke any rules made under this section.

(10) If the Secretary of State considers that rules should be made under this section with respect to a particular matter he may direct the Director to exercise his powers under this section and make rules about that matter.

52 Advice and information.

(1) As soon as is reasonably practicable after the passing of this Act, the Director must prepare and publish general advice and information about—
  (a) the application of the Chapter I prohibition and the Chapter II prohibition, and
  (b) the enforcement of those prohibitions.

(2) The Director may at any time publish revised, or new, advice or information.

(3) Advice and information published under this section must be prepared with a view to—
  (a) explaining provisions of this Part to persons who are likely to be affected by them; and
  (b) indicating how the Director expects such provisions to operate.

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(4) Advice (or information) published by virtue of subsection (3)(b) may include advice (or information) about the factors which the Director may take into account in considering whether, and if so how, to exercise a power conferred on him by Chapter I, II or III.

(5) Any advice or information published by the Director under this section is to be published in such form and in such manner as he considers appropriate.

(6) If the Director is preparing any advice or information under this section he must consult such persons as he considers appropriate.

(7) If the proposed advice or information relates to a matter in respect of which a regulator exercises concurrent jurisdiction, those consulted must include that regulator.

(8) In preparing any advice or information under this section about a matter in respect of which he may exercise functions under this Part, a regulator must consult—
   (a) the Director;
   (b) the other regulators; and
   (c) such other persons as he considers appropriate.

53 Fees.

(1) The Director may charge fees, of specified amounts, in connection with the exercise by him of specified functions under this Part.

(2) Rules may, in particular, provide—
   (a) for the amount of any fee to be calculated by reference to matters which may include—
      (i) the turnover of any party to an agreement (determined in such manner as may be specified);
      (ii) the turnover of a person whose conduct the Director is to consider (determined in that way);
   (b) for different amounts to be specified in connection with different functions;
   (c) for the repayment by the Director of the whole or part of a fee in specified circumstances;
   (d) that an application or notice is not to be regarded as duly made or given unless the appropriate fee is paid.

(3) In this section—
   (a) "rules" means rules made by the Director under section 51; and
   (b) "specified" means specified in rules.

Regulators

54 Regulators.

(1) In this Part "regulator" means any person mentioned in paragraphs (a) to (g) of paragraph 1 of Schedule 10.

(2) Parts II and III of Schedule 10 provide for functions of the Director under this Part to be exercisable concurrently by regulators.

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(3) Parts IV and V of Schedule 10 make minor and consequential amendments in connection with the regulators' competition functions.

(4) The Secretary of State may make regulations for the purpose of co-ordinating the performance of functions under this Part ("Part I functions") which are exercisable concurrently by two or more competent persons as a result of any provision made by Part II or III of Schedule 10.

(5) The regulations may, in particular, make provision—

(a) as to the procedure to be followed by competent persons when determining who is to exercise Part I functions in a particular case;

(b) as to the steps which must be taken before a competent person exercises, in a particular case, such Part I functions as may be prescribed;

(c) as to the procedure for determining, in a particular case, questions arising as to which competent person is to exercise Part I functions in respect of the case;

(d) for Part I functions in a particular case to be exercised jointly—

(i) by the Director and one or more regulators, or

(ii) by two or more regulators,

and as to the procedure to be followed in such cases;

(e) as to the circumstances in which the exercise by a competent person of such Part I functions as may be prescribed is to preclude the exercise of such functions by another such person;

(f) for cases in respect of which Part I functions are being, or have been, exercised by a competent person to be transferred to another such person;

(g) for the person ("A") exercising Part I functions in a particular case—

(i) to appoint another competent person ("B") to exercise Part I functions on A's behalf in relation to the case; or

(ii) to appoint officers of B (with B's consent) to act as officers of A in relation to the case;

(h) for notification as to who is exercising Part I functions in respect of a particular case.

(6) Provision made by virtue of subsection (5)(c) may provide for questions to be referred to and determined by the Secretary of State or by such other person as may be prescribed.

(7) "Competent person" means the Director or any of the regulators.

Commencement Information

I1 S. 54 wholly in force; s. 54 not in force at Royal Assent see s. 76(3); s. 54(2) in force for certain purposes at 26.11.1998 by S.I. 1998/2750, **art. 2**; s. 54(3) in force for certain purposes at 11.1.1999 and s. 54(4)-(7) in force at the same date by S.I. 1998/3166, art. 2, **Sch.**; s. 54(3) in force for certain purposes at 1.4.1999 by S.I. 1999/505, art. 2, **Sch. 2**; s. 54 (1)(2) and (3) wholly in force at 1.3.2000 by S.I. 2000/344, art. 2, **Sch.**

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Confidentiality and immunity from defamation

55 General restrictions on disclosure of information.

(1) No information which—

(a) has been obtained under or as a result of any provision of this Part, and

(b) relates to the affairs of any individual or to any particular business of an undertaking,

is to be disclosed during the lifetime of that individual or while that business continues to be carried on, unless the condition mentioned in subsection (2) is satisfied.

(2) The condition is that consent to the disclosure has been obtained from—

(a) the person from whom the information was initially obtained under or as a result of any provision of this Part (if the identity of that person is known); and

(b) if different—

(i) the individual to whose affairs the information relates, or

(ii) the person for the time being carrying on the business to which the information relates.

(3) Subsection (1) does not apply to a disclosure of information—

(a) made for the purpose of—

(i) facilitating the performance of any relevant functions of a designated person;

(ii) facilitating the performance of any functions of the Commission in respect of Community law about competition;

(iii) facilitating the performance by the Comptroller and Auditor General of any of his functions;

(iv) criminal proceedings in any part of the United Kingdom;

(b) made with a view to the institution of, or otherwise for the purposes of, civil proceedings brought under or in connection with this Part;

(c) made in connection with the investigation of any criminal offence triable in the United Kingdom or in any part of the United Kingdom; or

(d) which is required to meet a Community obligation.

(4) In subsection (3) "relevant functions" and "designated person" have the meaning given in Schedule 11.

(5) Subsection (1) also does not apply to a disclosure of information made for the purpose of facilitating the performance of specified functions of any specified person.

(6) In subsection (5) "specified" means specified in an order made by the Secretary of State.

(7) If information is disclosed to the public in circumstances in which the disclosure does not contravene subsection (1), that subsection does not prevent its further disclosure by any person.

(8) A person who contravenes this section is guilty of an offence and liable—

(a) on summary conviction, to a fine not exceeding the statutory maximum; or

(b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.

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Commencement Information

I2 S. 55 wholly in force; s. 55 not in force at Royal Assent see s. 76(3); s. 55(6) in force at 11.1.1999 by S.I. 1998/3166, art, 2, Sch.; s. 55(1)-(5), (7) and (8) in force at 1.3.2000 by S.I. 2000/344, art. 2, **Sch.**

VALID FROM 01/03/2000

56 Director and Secretary of State to have regard to certain matters in relation to the disclosure of information.

(1) This section applies if the Secretary of State or the Director is considering whether to disclose any information acquired by him under, or as a result of, any provision of this Part.

(2) He must have regard to the need for excluding, so far as is practicable, information the disclosure of which would in his opinion be contrary to the public interest.

(3) He must also have regard to—

(a) the need for excluding, so far as is practicable—

(i) commercial information the disclosure of which would, or might, in his opinion, significantly harm the legitimate business interests of the undertaking to which it relates, or

(ii) information relating to the private affairs of an individual the disclosure of which would, or might, in his opinion, significantly harm his interests; and

(b) the extent to which the disclosure is necessary for the purposes for which the Secretary of State or the Director is proposing to make the disclosure.

Modifications etc. (not altering text)

C1 S. 56 applied (with modifications) (1.3.2000) by S.I. 2000/261, **Rule 14(8)**

57 Defamation.

For the purposes of the law relating to defamation, absolute privilege attaches to any advice, guidance, notice or direction given, or decision made, by the Director in the exercise of any of his functions under this Part.

VALID FROM 01/03/2000

Findings of fact by Director

58 Findings of fact by Director.

(1) Unless the court directs otherwise or the Director has decided to take further action in accordance with section 16(2) or 24(2), a Director's finding which is relevant to an issue arising in Part I proceedings is binding on the parties if—

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(a) the time for bringing an appeal in respect of the finding has expired and the relevant party has not brought such an appeal; or

(b) the decision of an appeal tribunal on such an appeal has confirmed the finding.

(2) In this section—

"a Director's finding" means a finding of fact made by the Director in the course of—

(a) determining an application for a decision under section 14 or 22, or

(b) conducting an investigation under section 25;

"Part I proceedings" means proceedings—

(a) in respect of an alleged infringement of the Chapter I prohibition or of the Chapter II prohibition; but

(b) which are brought otherwise than by the Director;

"relevant party" means—

(a) in relation to the Chapter I prohibition, a party to the agreement which is alleged to have infringed the prohibition; and

(b) in relation to the Chapter II prohibition, the undertaking whose conduct is alleged to have infringed the prohibition.

(3) Rules of court may make provision in respect of assistance to be given by the Director to the court in Part I proceedings.

Interpretation and governing principles

59 Interpretation.

(1) In this Part—

"appeal tribunal" means an appeal tribunal established in accordance with the provisions of Part III of Schedule 7 for the purpose of hearing an appeal under section 46 or 47;

"Article 85" means Article 85 of the Treaty;

"Article 86" means Article 86 of the Treaty;

"block exemption" has the meaning given in section 6(4);

"block exemption order" has the meaning given in section 6(2);

"the Chapter I prohibition" has the meaning given in section 2(8);

"the Chapter II prohibition" has the meaning given in section 18(4);

"the Commission" (except in relation to the Competition Commission) means the European Commission;

"the Council" means the Council of the European Union;

"the court", except in sections 58 and 60 and the expression "European Court", means—

(a) in England and Wales, the High Court;

(b) in Scotland, the Court of Session; and

(c) in Northern Ireland, the High Court;

"the Director" means the Director General of Fair Trading;

"document" includes information recorded in any form;

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"the EEA Agreement" means the Agreement on the European Economic Area signed at Oporto on 2nd May 1992 as it has effect for the time being;

"the European Court" means the Court of Justice of the European Communities and includes the Court of First Instance;

"individual exemption" has the meaning given in section 4(2);

"information" includes estimates and forecasts;

"investigating officer" has the meaning given in section 27(1);

"Minister of the Crown" has the same meaning as in the Ministers of the [M1]Crown Act 1975;

"officer", in relation to a body corporate, includes a director, manager or secretary and, in relation to a partnership in Scotland, includes a partner;

"parallel exemption" has the meaning given in section 10(3);

"person", in addition to the meaning given by the [M2]Interpretation Act 1978, includes any undertaking;

"premises" does not include domestic premises unless—

(a) they are also used in connection with the affairs of an undertaking, or

(b) documents relating to the affairs of an undertaking are kept there,

but does include any vehicle;

"prescribed" means prescribed by regulations made by the Secretary of State;

"regulator" has the meaning given by section 54;

"section 11 exemption" has the meaning given in section 11(3); and

"the Treaty" means the treaty establishing the European Community.

(2) The fact that to a limited extent the Chapter I prohibition does not apply to an agreement, because of an exclusion provided by or under this Part or any other enactment, does not require those provisions of the agreement to which the exclusion relates to be disregarded when considering whether the agreement infringes the prohibition for other reasons.

(3) For the purposes of this Part, the power to require information, in relation to information recorded otherwise than in a legible form, includes power to require a copy of it in a legible form.

(4) Any power conferred on the Director by this Part to require information includes power to require any document which he believes may contain that information.

Commencement Information

I3 S. 59 wholly in force at 11.1.1999; s. 59 not in force at Royal Assent see s. 76(3); s. 59 in force for certain purposes at 26.11.1998 by S.I. 1998/2750, **art. 2**; s. 59 in force in so far as not already in force by S.I. 1998/3166, art. 2, **Sch.**

Marginal Citations

M1 1975 c. 26.

M2 1978 c. 30.

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60 Principles to be applied in determining questions.

(1) The purpose of this section is to ensure that so far as is possible (having regard to any relevant differences between the provisions concerned), questions arising under this Part in relation to competition within the United Kingdom are dealt with in a manner which is consistent with the treatment of corresponding questions arising in Community law in relation to competition within the Community.

(2) At any time when the court determines a question arising under this Part, it must act (so far as is compatible with the provisions of this Part and whether or not it would otherwise be required to do so) with a view to securing that there is no inconsistency between—

(a) the principles applied, and decision reached, by the court in determining that question; and

(b) the principles laid down by the Treaty and the European Court, and any relevant decision of that Court, as applicable at that time in determining any corresponding question arising in Community law.

(3) The court must, in addition, have regard to any relevant decision or statement of the Commission.

(4) Subsections (2) and (3) also apply to—

(a) the Director; and

(b) any person acting on behalf of the Director, in connection with any matter arising under this Part.

(5) In subsections (2) and (3), "court" means any court or tribunal.

(6) In subsections (2)(b) and (3), "decision" includes a decision as to—

(a) the interpretation of any provision of Community law;

(b) the civil liability of an undertaking for harm caused by its infringement of Community law.

Modifications etc. (not altering text)

C2 S. 60 applied (prosp.) by Company Directors Disqualification Act 1986 (c. 46), s. 9A(11) (as inserted (prosp.) by Enterprise Act 2002 (c. 40), **ss. 204(2)**, 279)

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