



Competition Act 1998

1998 CHAPTER 41

PART II

INVESTIGATIONS IN RELATION TO ARTICLES 85 AND 86

61 Introduction

(1) In this Part—

“Article 85” and “Article 86” have the same meaning as in Part I;

“authorised officer”, in relation to the Director, means an officer to whom an authorisation has been given under subsection (2);

“the Commission” means the European Commission;

“the Director” means the Director General of Fair Trading;

“Commission investigation” means an investigation ordered by a decision of the Commission under a prescribed provision of Community law relating to Article 85 or 86;

“Director’s investigation” means an investigation conducted by the Director at the request of the Commission under a prescribed provision of Community law relating to Article 85 or 86;

“Director’s special investigation” means a Director’s investigation conducted at the request of the Commission in connection with a Commission investigation;

“prescribed” means prescribed by order made by the Secretary of State;

“premises” means—

- (a) in relation to a Commission investigation, any premises, land or means of transport which an official of the Commission has power to enter in the course of the investigation; and
- (b) in relation to a Director’s investigation, any premises, land or means of transport which an official of the Commission would have power to enter if the investigation were being conducted by the Commission.

(2) For the purposes of a Director’s investigation, an officer of the Director to whom an authorisation has been given has the powers of an official authorised by the

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Commission in connection with a Commission investigation under the relevant provision.

- (3) “Authorisation” means an authorisation given in writing by the Director which—
- (a) identifies the officer;
 - (b) specifies the subject matter and purpose of the investigation; and
 - (c) draws attention to any penalties which a person may incur in connection with the investigation under the relevant provision of Community law.

62 Power to enter premises: Commission investigations

- (1) A judge of the High Court may issue a warrant if satisfied, on an application made to the High Court in accordance with rules of court by the Director, that a Commission investigation is being, or is likely to be, obstructed.
- (2) A Commission investigation is being obstructed if—
- (a) an official of the Commission (“the Commission official”), exercising his power in accordance with the provision under which the investigation is being conducted, has attempted to enter premises but has been unable to do so; and
 - (b) there are reasonable grounds for suspecting that there are books or records on the premises which the Commission official has power to examine.
- (3) A Commission investigation is also being obstructed if there are reasonable grounds for suspecting that there are books or records on the premises—
- (a) the production of which has been required by an official of the Commission exercising his power in accordance with the provision under which the investigation is being conducted; and
 - (b) which have not been produced as required.
- (4) A Commission investigation is likely to be obstructed if—
- (a) an official of the Commission (“the Commission official”) is authorised for the purpose of the investigation;
 - (b) there are reasonable grounds for suspecting that there are books or records on the premises which the Commission official has power to examine; and
 - (c) there are also reasonable grounds for suspecting that, if the Commission official attempted to exercise his power to examine any of the books or records, they would not be produced but would be concealed, removed, tampered with or destroyed.
- (5) A warrant under this section shall authorise—
- (a) a named officer of the Director,
 - (b) any other of his officers whom he has authorised in writing to accompany the named officer, and
 - (c) any official of the Commission authorised for the purpose of the Commission investigation,
- to enter the premises specified in the warrant, and search for books and records which the official has power to examine, using such force as is reasonably necessary for the purpose.
- (6) Any person entering any premises by virtue of a warrant under this section may take with him such equipment as appears to him to be necessary.

- (7) On leaving any premises entered by virtue of the warrant the named officer must, if the premises are unoccupied or the occupier is temporarily absent, leave them as effectively secured as he found them.
- (8) A warrant under this section continues in force until the end of the period of one month beginning with the day on which it is issued.
- (9) In the application of this section to Scotland, references to the High Court are to be read as references to the Court of Session.

63 Power to enter premises: Director's special investigations

- (1) A judge of the High Court may issue a warrant if satisfied, on an application made to the High Court in accordance with rules of court by the Director, that a Director's special investigation is being, or is likely to be, obstructed.
- (2) A Director's special investigation is being obstructed if—
 - (a) an authorised officer of the Director has attempted to enter premises but has been unable to do so;
 - (b) the officer has produced his authorisation to the undertaking, or association of undertakings, concerned; and
 - (c) there are reasonable grounds for suspecting that there are books or records on the premises which the officer has power to examine.
- (3) A Director's special investigation is also being obstructed if—
 - (a) there are reasonable grounds for suspecting that there are books or records on the premises which an authorised officer of the Director has power to examine;
 - (b) the officer has produced his authorisation to the undertaking, or association of undertakings, and has required production of the books or records; and
 - (c) the books and records have not been produced as required.
- (4) A Director's special investigation is likely to be obstructed if—
 - (a) there are reasonable grounds for suspecting that there are books or records on the premises which an authorised officer of the Director has power to examine; and
 - (b) there are also reasonable grounds for suspecting that, if the officer attempted to exercise his power to examine any of the books or records, they would not be produced but would be concealed, removed, tampered with or destroyed.
- (5) A warrant under this section shall authorise—
 - (a) a named authorised officer of the Director,
 - (b) any other authorised officer accompanying the named officer, and
 - (c) any named official of the Commission,to enter the premises specified in the warrant, and search for books and records which the authorised officer has power to examine, using such force as is reasonably necessary for the purpose.
- (6) Any person entering any premises by virtue of a warrant under this section may take with him such equipment as appears to him to be necessary.
- (7) On leaving any premises which he has entered by virtue of the warrant the named officer must, if the premises are unoccupied or the occupier is temporarily absent, leave them as effectively secured as he found them.

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- (8) A warrant under this section continues in force until the end of the period of one month beginning with the day on which it is issued.
- (9) In the application of this section to Scotland, references to the High Court are to be read as references to the Court of Session.

64 Entry of premises under sections 62 and 63: supplementary

- (1) A warrant issued under section 62 or 63 must indicate—
 - (a) the subject matter and purpose of the investigation;
 - (b) the nature of the offence created by section 65.
- (2) The powers conferred by section 62 or 63 are to be exercised on production of a warrant issued under that section.
- (3) If there is no one at the premises when the named officer proposes to execute such a warrant he must, before executing it—
 - (a) take such steps as are reasonable in all the circumstances to inform the occupier of the intended entry; and
 - (b) if the occupier is informed, afford him or his legal or other representative a reasonable opportunity to be present when the warrant is executed.
- (4) If the named officer is unable to inform the occupier of the intended entry he must, when executing the warrant, leave a copy of it in a prominent place on the premises.
- (5) In this section—
 - “named officer” means the officer named in the warrant; and
 - “occupier”, in relation to any premises, means a person whom the named officer reasonably believes is the occupier of those premises.

65 Offences

- (1) A person is guilty of an offence if he intentionally obstructs any person in the exercise of his powers under a warrant issued under section 62 or 63.
- (2) A person guilty of an offence under subsection (1) is liable—
 - (a) on summary conviction, to a fine not exceeding the statutory maximum;
 - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.