



# Competition Act 1998

## 1998 CHAPTER 41

### PART III

#### MONOPOLIES

#### **66 Monopoly investigations: general**

(1) Section 44 of the Fair Trading Act 1973 (power of the Director to require information about monopoly situations) is amended as follows.

(2) In subsection (1), for the words after paragraph (b) substitute—

“the Director may exercise the powers conferred by subsection (2) below for the purpose of assisting him in determining whether to take either of the following decisions with regard to that situation.”

(3) After subsection (1) insert—

“(1A) Those decisions are—

- (a) whether to make a monopoly reference with respect to the existence or possible existence of the situation;
- (b) whether, instead, to make a proposal under section 56A below for the Secretary of State to accept undertakings.”

(4) For subsection (2) substitute—

“(2) In the circumstances and for the purpose mentioned in subsection (1) above, the Director may—

- (a) require any person within subsection (3) below to produce to the Director, at a specified time and place—
  - (i) any specified documents, or
  - (ii) any document which falls within a specified category,which are in his custody or under his control and which are relevant;

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*Status: This is the original version (as it was originally enacted).*

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- (b) require any person within subsection (3) below who is carrying on a business to give the Director specified estimates, forecasts, returns, or other information, and specify the time at which and the form and manner in which the estimates, forecasts, returns or information are to be given;
  - (c) enter any premises used by a person within subsection (3) below for business purposes, and—
    - (i) require any person on the premises to produce any documents on the premises which are in his custody or under his control and which are relevant;
    - (ii) require any person on the premises to give the Director such explanation of the documents as he may require.
- (3) A person is within this subsection if—
  - (a) he produces goods of the description in question in the United Kingdom;
  - (b) he supplies goods or (as the case may be) services of the description in question in the United Kingdom; or
  - (c) such goods (or services) are supplied to him in the United Kingdom.
- (4) The power to impose a requirement under subsection (2)(a) or (b) above is to be exercised by notice in writing served on the person on whom the requirement is imposed; and “specified” in those provisions means specified or otherwise described in the notice, and “specify” is to be read accordingly.
- (5) The power under subsection (2)(a) above to require a person (“the person notified”) to produce a document includes power—
  - (a) if the document is produced—
    - (i) to take copies of it or extracts from it;
    - (ii) to require the person notified, or any person who is a present or past officer of his, or is or was at any time employed by him, to provide an explanation of the document;
  - (b) if the document is not produced, to require the person notified to state, to the best of his knowledge and belief, where it is.
- (6) Nothing in this section confers power to compel any person—
  - (a) to produce any document which he could not be compelled to produce in civil proceedings before the High Court or, in Scotland, the Court of Session; or
  - (b) in complying with any requirement for the giving of information, to give any information which he could not be compelled to give in evidence in such proceedings.
- (7) No person has to comply with a requirement imposed under subsection (2) above by a person acting under an authorisation under paragraph 7 of Schedule 1 to this Act unless evidence of the authorisation has, if required, been produced.
- (8) For the purposes of subsection (2) above—
  - (a) a document is relevant if—
    - (i) it is relevant to a decision mentioned in subsection (1A) above; and

- (ii) the powers conferred by this section are exercised in relation to the document for the purpose of assisting the Director in determining whether to take that decision;
  - (b) “document” includes information recorded in any form; and
  - (c) in relation to information recorded otherwise than in legible form, the power to require its production includes power to require production of it in legible form, so far as the means to do so are within the custody or under the control of the person on whom the requirement is imposed.”
- (5) The amendments made by this section and section 67 have effect in relation to sectoral regulators in accordance with paragraph 1 of Schedule 10.

## **67 Offences**

- (1) Section 46 of the Fair Trading Act 1973 is amended as follows.
- (2) Omit subsections (1) and (2).
- (3) At the end insert—
- “(4) Any person who refuses or wilfully neglects to comply with a requirement imposed under section 44(2) above is guilty of an offence and liable—
- (a) on summary conviction, to a fine not exceeding the prescribed sum, or
  - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.
- (5) If a person is charged with an offence under subsection (4) in respect of a requirement to produce a document, it is a defence for him to prove—
- (a) that the document was not in his possession or under his control; and
  - (b) that it was not reasonably practicable for him to comply with the requirement.
- (6) If a person is charged with an offence under subsection (4) in respect of a requirement—
- (a) to provide an explanation of a document, or
  - (b) to state where a document is to be found,
- it is a defence for him to prove that he had a reasonable excuse for failing to comply with the requirement.
- (7) A person who intentionally obstructs the Director in the exercise of his powers under section 44 is guilty of an offence and liable—
- (a) on summary conviction, to a fine not exceeding the prescribed sum;
  - (b) on conviction on indictment, to a fine.
- (8) A person who wilfully alters, suppresses or destroys any document which he has been required to produce under section 44(2) is guilty of an offence and liable—
- (a) on summary conviction, to a fine not exceeding the prescribed sum;
  - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.”

**68 Services relating to use of land**

In section 137 of the Fair Trading Act 1973, after subsection (3) insert—

“(3A) The Secretary of State may by order made by statutory instrument—

- (a) provide that “the supply of services” in the provisions of this Act is to include, or to cease to include, any activity specified in the order which consists in, or in making arrangements in connection with, permitting the use of land; and
- (b) for that purpose, amend or repeal any of paragraphs (c), (d), (e) or (g) of subsection (3) above.

(3B) No order under subsection (3A) above is to be made unless a draft of the order has been laid before Parliament and approved by a resolution of each House of Parliament.

(3C) The provisions of Schedule 9 to this Act apply in the case of a draft of any such order as they apply in the case of a draft of an order to which section 91(1) above applies.”

**69 Reports: monopoly references**

In section 83 of the Fair Trading Act 1973—

- (a) in subsection (1), omit “Subject to subsection (1A) below”; and
- (b) omit subsection (1A) (reports on monopoly references to be transmitted to certain persons at least twenty-four hours before laying before Parliament).