
STATUTORY INSTRUMENTS

2001 No. 2993

COMPETITION

**The Competition Act 1998 (Section
11 Exemption) Regulations 2001**

Made - - - - - *28th August 2001*
Laid before Parliament *4th September 2001*
Coming into force - - - *30th September 2001*

The Secretary of State, in exercise of the powers conferred on her by section 11(2) and section 71 of the Competition Act 1998(1) hereby makes the following Regulations:

Citation

1. These Regulations may be cited as the Competition Act 1998 (Section 11 Exemption) Regulations 2001 and shall come into force on 30th September 2001.

Interpretation

2. In these Regulations—

“the Act” means the Competition Act 1998;

“the Community prohibition” means the prohibition contained in—

(a) paragraph 1 of Article 81(2) of the Treaty;

(b) any corresponding provision replacing, or otherwise derived from, that provision;

“the Director’s rules” means the Director’s rules set out in the Schedule to the Competition Act 1998 (Director’s rules) Order 2000(3);

“the enforcement regulations” means the EC Competition Law (Articles 84 and 85) Enforcement Regulations 2001(4).

(1) 1998 c. 41.

(2) References in these Regulations to Articles of the Treaty are to Articles as renumbered by the Treaty signed at Amsterdam on 2nd October 1997 amending the Treaty on European Union, the Treaties establishing the European Communities and certain related Acts.

(3) S.I. 2000/293.

(4) S.I. 2001/2916.

Exemption

3.—(1) The prescribed circumstances in which agreements in relation to which a ruling may be given by virtue of Article 84 of the Treaty are exempt from the Chapter I prohibition are—

- (a) that an agreement is exempt from the Community prohibition by virtue of a decision by the Director under the enforcement regulations; and
- (b) that the Director has not found that an agreement which would otherwise benefit from a section 11 exemption has effects in the United Kingdom, or a part of it, which are incompatible with the conditions laid down in section 9 of the Act.

(2) A section 11 exemption—

- (a) subject to paragraph (3), takes effect on the date on which the relevant exemption from the Community prohibition takes effect, and
- (b) ceases to have effect on the date on which—
 - (i) a cancellation of the relevant exemption from the Community prohibition pursuant to the enforcement regulations takes effect;
 - (ii) the relevant exemption from the Community prohibition otherwise ceases to have effect; or
 - (iii) a finding is made by the Director that the agreement to which the relevant exemption relates has effects in the United Kingdom, or a part of it, which are incompatible with the conditions laid down in section 9 of the Act.

(3) A section 11 exemption may, if the Director considers it appropriate and so determines, take effect from a date specified by the Director which is earlier than the date on which the exemption from the Community prohibition takes effect.

(4) The Director shall not make a finding that the agreement to which the relevant exemption relates has effects in the United Kingdom, or a part of it, which are incompatible with the conditions laid down in section 9 of the Act unless he does so in the manner specified in rule 21 of the Director's rules.

28th August 2001

Brian Wilson,
Minister of State for Industry and Energy,
Department of Trade and Industry

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made under section 11 of the Competition Act 1998 (“the Act”). Section 11 of the Act enables the Secretary of State to make such provision as she considers appropriate for the purpose of granting an exemption from the prohibition in Chapter I of the Act in prescribed circumstances for agreements in relation to which a ruling has been given by virtue of Article 84 of the Treaty on the question whether or not agreements of a particular kind are prohibited by Article 81.

References in these Regulations to Articles of the Treaty are to Articles of the Treaty establishing the European Community as renumbered by the Treaty of Amsterdam.

Article 84 applies to cases where the Council of Ministers of the European Community has not made regulations under Article 83 giving effect to Articles 81 and 82 of the EC Treaty. Subject to the possibility of exemption under Article 81(3), Article 81 prohibits agreements between undertakings which have as their object or effect the prevention, restriction or distortion of competition within the common market and which may affect trade between Member States. Article 82 prohibits the abuse by one or more undertakings of a dominant position in the common market or in a substantial part of it in so far as it may affect trade between Member States.

No implementing regulation has been made under Article 83 in respect of air transport services between Member States of the European Community and countries outside the European Community or in respect of international maritime tramp vessel services.

The EC Competition Law (Articles 84 and 85) Enforcement Regulations 2001 (“the enforcement regulations”) (S.I.2001/2916) provide for decisions to be made by the Director General of Fair Trading where it appears to him that the United Kingdom might have a duty to rule, by virtue of Article 84, on whether an agreement or conduct is prohibited by Article 81 or 82.

Pursuant to the enforcement regulations, the Director may, in certain circumstances, grant an exemption from the prohibition in Article 81(1) (“the Community prohibition”). The exemption may be granted subject to such conditions or obligations as the Director considers it appropriate to impose.

These Regulations prescribe the circumstances in which agreements which have been granted an exemption from the Community prohibition under the enforcement regulations will be exempt from the Chapter I prohibition.

These Regulations come into force on 30th September 2001.