



Competition Act 1980

1980 CHAPTER 21

Further references and investigations

11 References of public bodies and certain other persons to the Commission

- (1) The Secretary of State may at any time refer to the Commission any question relating to—
- (a) the efficiency and costs of,
 - (b) the service provided by, or
 - (c) possible abuse of a monopoly situation by,
- a person falling within subsection (3) below and specified in the reference, including any question whether, in relation to a matter falling within paragraph (a), (b) or (c) above, the person is pursuing a course of conduct which operates against the public interest.
- (2) For the purposes of subsection (1)(c) above "monopoly situation" includes a monopoly situation which is limited to a part of the United Kingdom and, accordingly, for those purposes references to the United Kingdom in sections 6 and 7 of the Fair Trading Act 1973 shall be taken to include references to a part of the United Kingdom.
- (3) The persons referred to in subsection (1) above are—
- (a) any body corporate—
 - (i) which supplies goods or services by way of business,
 - (ii) the affairs of which are managed by its members, and
 - (iii) the members of which hold office as such by virtue of their appointment to that or another office by a Minister under any enactment; or
 - (b) any person (not falling within paragraph (a) above) who provides a bus service, within the meaning of the Transport Act 1968 or the Finance Act (Northern Ireland) 1966, or a London bus service, within the meaning of the Transport (London) Act 1969 ; or
 - (c) any statutory water undertaker, within the meaning of the Water Act 1973 ; or

Status: This is the original version (as it was originally enacted).

- (d) any board administering a scheme under the Agricultural Marketing Act 1958 or the Agricultural Marketing Act (Northern Ireland) 1964 ; or
 - (e) any body corporate with a statutory duty to promote and assist the maintenance and development of the efficient supply of any goods or services by a body falling within paragraphs (a) to (d) above ; or
 - (f) any subsidiary, within the meaning of the Companies Act 1948, of a body falling within paragraphs (a) to (e) above.
- (4) The Secretary of State may by order exclude from subsection (3)(b) above persons of such descriptions as may be specified in the order.
- (5) No question concerning a person falling within subsection (3)(b) above or a subsidiary of a body falling within that subsection may be referred to the Commission under this section unless it relates to the carriage of passengers by the person or, as the case may be, the subsidiary.
- (6) The Secretary of State may at any time by notice given to the Commission vary a reference under this section.
- (7) On making a reference under this section or on varying such a reference under subsection (6) above the Secretary of State shall arrange for the reference or, as the case may be, the variation to be published in such manner as he considers most suitable for bringing it to the attention of persons who in his opinion would be affected by it or be likely to have an interest in it.
- (8) On a reference under this section the Commission shall investigate and report on any question referred to them but shall exclude from their investigation and report consideration of—
- (a) any question relating to the appropriateness of any financial obligations or guidance as to financial objectives (however expressed) imposed on or given to the person in question by or under any enactment, or otherwise by a Minister; and
 - (b) the question whether any course of conduct required or envisaged as mentioned in section 2(2) above operates against the public interest.
- (9) Sections 70 (time limit for report on merger reference), 84 (public interest) and 85 (attendance of witnesses and production of documents) of the Fair Trading Act 1973 and Part II of Schedule 3 to that Act (performance of functions of Commission) shall apply in relation to a reference under this section as if—
- (a) the functions of the Commission under this section were functions under that Act;
 - (b) the expression " merger reference " included a reference to the Commission under this section ;
 - (c) in paragraph 11 of that Schedule, the reference to section 71 of that Act were a reference to subsection (6) above; and
 - (d) in paragraph 16(2) of that Schedule, the reference to section 56 of that Act were a reference to section 12 below.
- (10) A report of the Commission on a reference under this section shall be made to the Secretary of State and shall state, with reasons, the conclusions of the Commission with respect to any question referred to them and, where the Commission conclude that the person specified in the reference is pursuing a course of conduct which operates against the public interest, the report may include recommendations as to what action

(if any) should be taken by the person for the purpose of remedying or preventing what the Commission consider are the adverse effects of that course of conduct.

- (11) In this section "Minister" includes a Northern Ireland department and the head of such a department.

12 Orders following report under section 11

- (1) This section applies where a report of the Commission on a reference under section 11 above concludes that the person specified in the reference is pursuing a course of conduct which operates against the public interest.

- (2) If it appears to the Secretary of State that any other Minister has functions directly relating to the person specified in the reference or, in the case of a reference only concerning the activities of the person in a part of the United Kingdom, functions directly relating to the person in respect of his activities in that part, he shall send a copy of the report of the Commission on the reference to that Minister; and in subsection (3) below "the relevant Minister" means—

- (a) in a case where it appears to the Secretary of State that any Minister (including himself) has such functions, that Minister, and
- (b) in a case where it appears to the Secretary of State that no Minister has such functions, the Secretary of State.

- (3) If—

- (a) the relevant Minister considers it appropriate for the purpose of remedying or preventing what he considers are the adverse effects of the course of conduct specified in the report of the Commission as operating against the public interest, and
- (b) the person specified in the reference does not fall within paragraph (d) of section 11(3) above and is not a subsidiary of a body falling within that paragraph,

he may by order direct the person to prepare within such time, if any, as may be specified in the order a plan for remedying or preventing such of those effects as are so specified; but where there is more than one relevant Minister no such order shall be made except by all the relevant Ministers acting jointly and where none of the relevant Ministers is the Secretary of State no such order shall be made except after consultation with him.

- (4) It shall be the duty of a person to whom a direction is given under subsection (3) above to prepare such a plan as is mentioned in that subsection and to send a copy of that plan to the Minister or Ministers by whom the order containing the direction was made who shall lay it before Parliament; and, in a case where the plan involves the use by a body of its powers in relation to any subsidiary within the meaning of the Companies Act 1948, the plan shall specify the manner in which the body proposes using those powers.

- (5) Whether or not an order has been or may be made under subsection (3) above, the Secretary of State may, if he considers it appropriate for the purpose of remedying or preventing what he considers are the adverse effects of the course of conduct specified in the report of the Commission as operating against the public interest, by order exercise one or more of the powers specified in Part I, excluding paragraph 10, of Schedule 8 to the Fair Trading Act 1973, to such extent and in such manner as he considers appropriate.

- (6) In the Fair Trading Act 1973—
- (a) section 90 (general provisions as to orders under section 56 etc.) except subsections (2) and (3),
 - (b) section 91(2) (publication of proposals to make an order),
 - (c) section 93 (enforcement of certain orders), and
 - (d) Part I (except paragraph 10) of Schedule 8 (powers exercisable by orders under section 56 etc.),

shall have effect as if any reference in those provisions to an order under section 56 of that Act included a reference to an order under subsection (5) above.

13 Investigations of prices directed by Secretary of State

- (1) If so directed by the Secretary of State, the Director shall carry out an investigation into any price specified in the direction with a view to providing the Secretary of State with information of a description so specified relating to that price: but the giving of a direction under this section shall not affect the power of the Director to initiate an investigation under section 3 above (subject to subsection (5) of that section) into a course of conduct pursued by any person by or to whom the price specified in the direction is charged.
- (2) The Secretary of State shall not give a direction under this section unless he is satisfied that the price in question is one of major public concern and, in this connection, he shall have regard to whether—
 - (a) the provision or acquisition of the goods or services in question is of general economic importance; or
 - (b) consumers are significantly affected, whether directly or indirectly, by the price.
- (3) The Secretary of State may at any time vary or revoke a direction given under this section, but he shall not exercise his power to vary such a direction unless he is satisfied that the direction as proposed to be varied would be such as he could have given, having regard to subsection (2) above.
- (4) On giving a direction under this section or on varying or revoking such a direction, the Secretary of State shall arrange for the direction, variation or revocation to be published in such manner as he considers most suitable for bringing it to the attention of persons who, in his opinion, would be affected by, or be likely to have an interest in, the investigation to which the direction, variation or revocation relates.
- (5) A direction under this section shall specify a period within which the Director is to report on his investigation to the Secretary of State, and, before the expiry of the period specified in the direction (whether as originally given or as varied under subsection (3) above), the Director shall make a report on the investigation to the Secretary of State—
 - (a) stating his findings of fact which are material to the information which he is required to provide in accordance with the direction ; and
 - (b) containing such additional observations (if any) as the Director considers should be brought to the attention of the Secretary of State as a result of the investigation.
- (6) Subsections (7) and (8) of section 3 above shall have effect in relation to an investigation under this section as they have effect in relation to an investigation under that section.