



Fair Trading Act 1973

1973 CHAPTER 41

PART I

INTRODUCTORY

1 Director General of Fair Trading

- (1) The Secretary of State shall appoint an officer to be known as the Director General of Fair Trading (in this Act referred to as "the Director") for the purpose of performing the functions assigned or transferred to the Director by or under this Act.
- (2) An appointment of a person to hold office as the Director shall not be for a term exceeding five years; but previous appointment to that office shall not affect eligibility for re-appointment.
- (3) The Director may at any time resign his office as the Director by notice in writing addressed to the Secretary of State; and the Secretary of State may remove any person from that office on the ground of incapacity or misbehaviour.
- (4) Subject to subsections (2) and (3) of this section, the Director shall hold and vacate office as such in accordance with the terms of his appointment.
- (5) The Director may appoint such staff as he may think fit, subject to the approval of the Minister for the Civil Service as to numbers and as to terms and conditions of service.
- (6) The provisions of Schedule 1 to this Act shall have effect with respect to the Director.

2 General functions of Director

- (1) Without prejudice to any other functions assigned or transferred to him by or under this Act, it shall be the duty of the Director, so far as appears to him to be practicable from time to time,—
 - (a) to keep under review the carrying on of commercial activities in the United Kingdom which relate to goods supplied to consumers in the United Kingdom or produced with a view to their being so supplied, or which relate to services

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supplied for consumers in the United Kingdom, and to collect information with respect to such activities, and the persons by whom they are carried on, with a view to his becoming aware of, and ascertaining the circumstances relating to, practices which may adversely affect the economic interests of consumers in the United Kingdom, and

- (b) to receive and collate evidence becoming available to him with respect to such activities as are mentioned in the preceding paragraph and which appears to him to be evidence of practices which may adversely affect the interests (whether they are economic interests or interests with respect to health, safety or other matters) of consumers in the United Kingdom.
- (2) It shall also be the duty of the Director, so far as appears to him to be practicable from time to time, to keep under review the carrying on of commercial activities in the United Kingdom, and to collect information with respect to those activities, and the persons by whom they are carried on, with a view to his becoming aware of, and ascertaining the circumstances relating to, monopoly situations or uncompetitive practices.
- (3) It shall be the duty of the Director, where either he considers it expedient or he is requested by the Secretary of State to do so,—
- (a) to give information and assistance to the Secretary of State with respect to any of the matters in respect of which the Director has any duties under subsections (1) and (2) of this section, or
 - (b) subject to the provisions of Part II of this Act in relation to recommendations under that Part of this Act, to make recommendations to the Secretary of State as to any action which in the opinion of the Director it would be expedient for the Secretary of State or any other Minister to take in relation to any of the matters in respect of which the Director has any such duties.
- (4) It shall also be the duty of the Director to have regard to evidence becoming available to him with respect to any course of conduct on the part of a person carrying on a business which appears to be conduct detrimental to the interests of consumers in the United Kingdom and (in accordance with the provisions of Part III of this Act) to be regarded as unfair to them, with a view to considering what action (if any) he should take under Part III of this Act.
- (5) It shall be the duty of the Director to have regard to the needs of regional development and to the desirability of dispersing administrative offices from London in making decisions on the location of offices for his staff.

3 Consumer Protection Advisory Committee

- (1) There shall be established an advisory committee to be called the Consumer Protection Advisory Committee (in this Act referred to as " the Advisory Committee ") for the purpose of performing the functions assigned to that Committee by Part II of this Act.
- (2) Subject to subsection (6) of this section, the Advisory Committee shall consist of not less than ten and not more than fifteen members, who shall be appointed by the Secretary of State.
- (3) The Secretary of State may appoint persons to the Advisory Committee either as full-time members or as part-time members.

- (4) Of the members of the Advisory Committee, the Secretary of State shall appoint one to be chairman and one to be deputy chairman of the Advisory Committee.
- (5) In appointing persons to be members of the Advisory Committee, the Secretary of State shall have regard to the need for securing that the Advisory Committee will include—
 - (a) one or more persons appearing to him to be qualified to advise on practices relating to goods supplied to consumers in the United Kingdom or produced with a view to their being so supplied, or relating to services supplied for consumers in the United Kingdom, by virtue of their knowledge of or experience in the supply (whether to consumers or not) of such goods or by virtue of their knowledge of or experience in the supply of such services;
 - (b) one or more persons appearing to him to be qualified to advise on such practices as are mentioned in the preceding paragraph by virtue of their knowledge of or experience in the enforcement of the Weights and Measures Act 1963 or the Trade Descriptions Act 1968 or other similar enactments ; and
 - (c) one or more persons appearing to him to be qualified to advise on such practices by virtue of their knowledge of or experience in organisations established, or activities carried on, for the protection of consumers.
- (6) The Secretary of State may by order made by statutory instrument increase the maximum number of members of the Advisory Committee to such number as he may think fit.
- (7) The provisions of Schedule 2 to this Act shall have effect with respect to the Advisory Committee.

4 The Monopolies and Mergers Commission

- (1) The Commission established under section 1 of the Monopolies and Restrictive Practices (Inquiry and Control) Act 1948 by the name of the Monopolies and Restrictive Practices Commission, and subsequently renamed the Monopolies and Mergers Commission, shall as from the commencement of this Act be known as the Monopolies and Mergers Commission, and shall continue to exist by that name for the purpose of performing the functions assigned to that Commission (in this Act referred to as " the Commission ") by or under this Act.
- (2) There shall be not less than ten and (subject to the next following subsection) not more than twenty-five regular members of the Commission, who shall be appointed by the Secretary of State.
- (3) The Secretary of State may by order made by statutory instrument increase the maximum number of regular members of the Commission to such number as he may think fit.
- (4) The provisions of Schedule 3 to this Act shall have effect with respect to the Commission.

5 Principal functions of Commission

- (1) Without prejudice to any other functions assigned to the Commission by or under this Act, it shall be the duty of the Commission, subject to and in accordance with the

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following provisions of this Act, to investigate and report on any question which may be referred to the Commission under this Act—

- (a) with respect to the existence, or possible existence, of a monopoly situation, or
 - (b) with respect to a transfer of a newspaper or of newspaper assets (within the meaning of Part V of this Act), or
 - (c) with respect to the creation, or possible creation, of a merger situation qualifying for investigation (within the meaning of Part V of this Act).
- (2) It shall be the duty of the Director, for the purpose of assisting the Commission in carrying out an investigation on a reference made to them under this Act, to give to the Commission—
- (a) any information which is in his possession and which relates to matters falling within the scope of the investigation, and which is either requested by the Commission for that purpose or is information which in his opinion it would be appropriate for that purpose to give to the Commission without any such request, and
 - (b) any other assistance which the Commission may require, and which it is within his power to give, in relation to any such matters,

and the Commission, for the purpose of carrying out any such investigation, shall take account of any information given to them for that purpose under this subsection.

- (3) In this Act " monopoly reference " means any reference to the Commission under this Act which falls within paragraph (a) of subsection (1) of this section; "merger reference" (subject to section 63 of this Act) means any reference to the Commission under this Act which falls within paragraph (b) or paragraph (c) of that subsection; and " monopoly situation " (except in sections 6 to 8 of this Act) means circumstances in which, in accordance with the following provisions of this Part of this Act, a monopoly situation is for the purposes of this Act to be taken to exist in relation to any matters specified in section 6(1), section 7(1) or section 8 of this Act.

6 Monopoly situation in relation to supply of goods

- (1) For the purposes of this Act a monopoly situation shall be taken to exist in relation to the supply of goods of any description in the following cases, that is to say, if—
- (a) at least one-quarter of all the goods of that description which are supplied in the United Kingdom are supplied by one and the same person, or are supplied to one and the same person, or
 - (b) at least one-quarter of all the goods of that description which are supplied in the United Kingdom are supplied by members of one and the same group of interconnected bodies corporate, or are supplied to members of one and the same group of interconnected bodies corporate, or
 - (c) at least one-quarter of all the goods of that description which are supplied in the United Kingdom are supplied by members of one and the same group consisting of two or more such persons as are mentioned in subsection (2) of this section, or are supplied to members of one and the same group consisting of two or more such persons, or
 - (d) one or more agreements are in operation, the result or collective result of which is that goods of that description are not supplied in the United Kingdom at all.
- (2) The two or more persons referred to in subsection (1)(c) of this section, in relation to goods of any description, are any two or more persons (not being a group of

interconnected bodies corporate) who whether voluntarily or not, and whether by agreement or not, so conduct their respective affairs as in any way to prevent, restrict or distort competition in connection with the production or supply of goods of that description, whether or not they themselves are affected by the competition and whether the competition is between persons interested as producers or suppliers or between persons interested as customers of producers or suppliers.

7 Monopoly situation in relation to supply of services

- (1) For the purposes of this Act a monopoly situation shall be taken to exist in relation to the supply of services of any description in the following cases, that is to say, if—
- (a) the supply of services of that description in the United Kingdom is, to the extent of at least one-quarter, supply by one and the same person, or supply for one and the same person, or
 - (b) the supply of services of that description in the United Kingdom is, to the extent of at least one-quarter, supply by members of one and the same group of interconnected bodies corporate, or supply for members of one and the same group of interconnected bodies corporate, or
 - (c) the supply of services of that description in the United Kingdom is, to the extent of at least one-quarter, supply by members of one and the same group consisting of two or more such persons as are mentioned in subsection (2) of this section, or supply for members of one and the same group consisting of two or more such persons, or
 - (d) one or more agreements are in operation, the result or collective result of which is that services of that description are not supplied in the United Kingdom at all.
- (2) The two or more persons referred to in subsection (1)(c) of this section, in relation to services of any description, are any two or more persons (not being a group of interconnected bodies corporate) who whether voluntarily or not, and whether by agreement or not, so conduct their respective affairs as in any way to prevent, restrict or distort competition in connection with the supply of services of that description, whether or not they themselves are affected by the competition, and whether the competition is between persons interested as persons by whom, or as persons for whom, services are supplied.
- (3) In the application of this section for the purposes of a monopoly reference, the Commission, or the person or persons making the reference, may, to such extent as the Commission, or that person or those persons, think appropriate in the circumstances, treat services as supplied in the United Kingdom if the person supplying the services—
- (a) has a place of business in the United Kingdom, or
 - (b) controls the relevant activities from the United Kingdom, or
 - (c) being a body corporate, is incorporated under the law of Great Britain or of Northern Ireland,
- and may do so whether or not those services would otherwise be regarded as supplied in the United Kingdom.

8 Monopoly situation in relation to exports

- (1) For the purposes of this Act a monopoly situation shall be taken to exist in relation to exports of goods of any description from the United Kingdom in the following cases, that is to say, if—

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- (a) at least one-quarter of all the goods of that description which are produced in the United Kingdom are produced by one and the same person, or
- (b) at least one-quarter of all the goods of that description which are produced in the United Kingdom are produced by members of one and the same group of interconnected bodies corporate;

and in those cases a monopoly situation shall for the purposes of this Act be taken to exist both in relation to exports of goods of that description from the United Kingdom generally and in relation to exports of goods of that description from the United Kingdom to each market taken separately.

- (2) In relation to exports of goods of any description from the United Kingdom generally, a monopoly situation shall for the purposes of this Act be taken to exist if—
 - (a) one or more agreements are in operation which in any way prevent or restrict, or prevent, restrict or distort competition in relation to, the export of goods of that description from the United Kingdom, and
 - (b) that agreement is or (as the case may be) those agreements collectively are operative with respect to at least one-quarter of all the goods of that description which are produced in the United Kingdom.
- (3) In relation to exports of goods of any description from the United Kingdom to any particular market, a monopoly situation shall for the purposes of this Act be taken to exist if—
 - (a) one or more agreements are in operation which in any way prevent or restrict, or prevent, restrict or distort competition in relation to, the supply of goods of that description (whether from the United Kingdom or not) to that market, and
 - (b) that agreement is or (as the case may be) those agreements collectively are operative with respect to at least one-quarter of all the goods of that description which are produced in the United Kingdom.

9 Monopoly situation limited to part of United Kingdom

- (1) For the purposes of a monopoly reference, other than a reference relating to exports of goods from the United Kingdom, the person or persons making the reference may, if it appears to him or them to be appropriate in the circumstances to do so, determine that consideration shall be limited to a part of the United Kingdom.
- (2) Where such a determination is made, then for the purposes of that monopoly reference the provisions of sections 6 and 7 of this Act, or such of those provisions as are applicable for those purposes, shall have effect as if, wherever those provisions refer to the United Kingdom, they referred to that part of the United Kingdom to which, in accordance with that determination, consideration is to be limited.
- (3) The preceding provisions of this section shall have effect subject to subsection (4) of section 50 of this Act in cases to which that subsection applies.

10 Supplementary provisions relating to ss.6 to 9

- (1) In the application of any of the provisions of sections 6 to 9 of this Act for the purposes of a monopoly reference, those provisions shall have effect subject to the following provisions of this section.

- (2) No account shall for those purposes be taken of any provisions of an agreement in so far as they are provisions by virtue of which it is an agreement to which Part I of the Act of 1956 applies.
- (3) In relation to goods or services of any description which are the subject of different forms of supply—
- (a) references in paragraphs (a) to (d) of subsection (1), and in subsection (2), of section 6 or in section 8(3) of this Act to the supply of goods, or
 - (b) references in paragraphs (a) to (d) of subsection (1), and in subsection (2), of section 7 of this Act to the supply of services,
- shall for those purposes be construed in whichever of the following ways the Commission, or the person or persons making the monopoly reference, think appropriate in all the circumstances, that is to say, as references to any of those forms of supply taken separately, to all those forms of supply taken together, or to any of those forms of supply taken in groups.
- (4) For the purposes of subsection (3) of this section the Commission, or the person or persons making the monopoly reference in question, may treat goods or services as being the subject of different forms of supply whenever the transactions in question differ as to their nature, their parties, their terms or their surrounding circumstances, and the difference is one which, in the opinion of the Commission, or the person or persons making the reference, ought for the purposes of that subsection to be treated as a material difference.
- (5) For the purposes of a monopoly reference made by the Director, subsections (3) and (4) of this section shall have effect subject to section 50(3) and (4) of this Act.
- (6) In determining, for the purposes of a monopoly reference, whether the proportion of one-quarter mentioned in any provision of section 6, section 7 or section 8 of this Act is fulfilled with respect to goods or services of any description, the Commission, or the person or persons making the reference, shall apply such criterion (whether it be value or cost or price or quantity or capacity or number of workers employed or some other criterion, of whatever nature) or such combination of criteria as may appear to them or him to be most suitable in all the circumstances.
- (7) The criteria for determining when goods or services can be treated, for the purposes of a monopoly reference, as goods or services of a separate description shall be such as the person or persons making the reference may think most suitable in the circumstances.
- (8) In construing the provisions of section 7(3) and section 9 of this Act and the provisions of subsections (1) to (7) of this section, the purposes of a monopoly reference shall be taken to include the purpose of enabling the Director, or the Secretary of State or any other Minister, to determine in any particular circumstances—
- (a) whether a monopoly reference could be made under Part IV of this Act, and
 - (b) if so, whether in those circumstances such a reference could be made by the Director,
- and references in those provisions to the person or persons making a monopoly reference shall be construed accordingly.

11 Meaning of "complex monopoly situation"

- (1) In this Act " complex monopoly situation " means circumstances in which, in accordance with the preceding provisions of this Act, a monopoly situation is for the

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purposes of this Act to be taken to exist in relation to the supply of goods or services of any description, or in relation to exports of goods of any description from the United Kingdom, by reason that the condition specified in paragraph (c) or in paragraph (d) of section 6(1) or of section 7(1) of this Act is fulfilled, or that the conditions specified in subsection (2) or in subsection (3) of section 8 of this Act are fulfilled.

- (2) Any reference in the preceding subsection to paragraph (c) or paragraph (d) of section 6(1) or of section 7(1) of this Act shall be construed as including a reference to that paragraph as modified by section 9(2) of this Act.

12 Powers of Secretary of State in relation to functions of Director

- (1) The Secretary of State may give general directions indicating considerations to which the Director should have particular regard in determining the order of priority in which—
- (a) matters are to be brought under review in the performance of his duty under section 2(1) of this Act, or
 - (b) classes of goods or services are to be brought under review by him for the purpose of considering whether a monopoly situation exists or may exist in relation to them.
- (2) The Secretary of State may also give general directions indicating—
- (a) considerations to which, in cases where it appears to the Director that a practice may adversely affect the interests of consumers in the United Kingdom, he should have particular regard in determining whether to make a recommendation to the Secretary of State under section 2(3)(b) of this Act, or
 - (b) considerations to which, in cases where it appears to the Director that a consumer trade practice may adversely affect the economic interests of consumers in the United Kingdom, he should have particular regard in determining whether to make a reference to the Advisory Committee under Part II of this Act, or
 - (c) considerations to which, in cases where it appears to the Director that a monopoly situation exists or may exist, he should have particular regard in determining whether to make a monopoly reference to the Commission under Part IV of this Act.
- (3) The Secretary of State, on giving any directions under this section, shall arrange for those directions to be published in such manner as the Secretary of State thinks most suitable in the circumstances.