



Fair Trading Act 1973

1973 CHAPTER 41

PART IV

FUNCTIONS OF DIRECTOR AND COMMISSION IN RELATION TO MONOPOLY SITUATIONS AND UNCOMPETITIVE PRACTICES

Powers for Director to require information

44 General power for Director to require information

- (1) Where it appears to the Director that there are grounds for believing—
- (a) that a monopoly situation may 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, and
 - (b) that in accordance with the following provisions of this Part of this Act he would not be precluded from making a monopoly reference to the Commission with respect to the existence or possible existence of that situation,

the Director, for the purpose of assisting him in determining whether to make a monopoly reference with respect to the existence or possible existence of that situation, may exercise the powers conferred by the next following subsection.

- (2) In the circumstances and for the purpose mentioned in the preceding subsection the Director may require any person who supplies or produces goods of the description in question in the United Kingdom, or to whom any such goods are supplied in the United Kingdom, or (as the case may be) any person who supplies services of that description in the United Kingdom, or for whom any such services are so supplied, to furnish to the Director such information as the Director may consider necessary with regard to—
- (a) the value, cost, price or quantity of goods of that description supplied or produced by that person, or of goods of that description supplied to him, or (as the case may be) the value, cost, price or extent of the services of that description supplied by that person or of the services of that description supplied for him, or

- (b) the capacity of any undertaking carried on by that person to supply, produce or make use of goods of that description, or (as the case may be) to supply or make use of services of that description, or
- (c) the number of persons employed by that person wholly or partly on work related to the supply, production or use of goods of that description, or (as the case may be) the supply or use of services of that description.

45 Special power to require information with respect to complex monopoly situations

- (1) Where it appears to the Director that there are grounds for believing—
- (a) that a complex monopoly situation may 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, and
 - (b) that in accordance with the following provisions of this Part of this Act he would not be precluded from making a monopoly reference to the Commission with respect to the existence or possible existence of that situation,

the Director may formulate proposals for requiring specified persons to furnish information to him in accordance with the proposals for the purpose of assisting him in determining whether to make a monopoly reference with respect to the existence or possible existence of that situation.

- (2) The persons specified in any such proposals shall be persons appearing to the Director to be, or to be included among, those who, in relation to the production or supply of goods or to the supply of services of the description in question, or in relation to exports from the United Kingdom of goods of the description in question,—
- (a) may be parties to any such agreement as is mentioned in paragraph (d) of section 6(1) or paragraph (d) of section 7(1) of this Act (or mentioned in either of those paragraphs as modified by section 9(2) of this Act) or may be parties to any such agreement as is mentioned in subsection (2) or subsection (3) of section 8 of this Act, or
 - (b) may be conducting their respective affairs as mentioned in section 6(2) or in section 7(2) of this Act.
- (3) Any such proposals shall also specify the description of goods or services in question, and—
- (a) in a case falling within paragraph (a) of subsection (2) of this section, shall indicate the particular respects in which it appears to the Director that any agreement in question may be such an agreement as is referred to in that paragraph, or
 - (b) in a case falling within paragraph (b) of that subsection, shall indicate the particular respects in which it appears to the Director that the persons specified in the proposals may be conducting their respective affairs in a manner referred to in that paragraph,

and shall state what information the Director proposes that the persons specified in the proposals should be required to furnish for the purpose of indicating whether, in those respects, they are parties to such an agreement, or are so conducting their respective affairs, and, if so, of indicating in what circumstances they are parties to such an agreement or are so conducting their affairs.

- (4) Where the Director has formulated proposals under this section, he may submit those proposals to the Secretary of State for approval; and if the Secretary of State approves the proposals, with or without modifications, the Director may require any person specified in the proposals to furnish to the Director such information as the Director may specify in accordance with the proposals, or, if the proposals have been approved with modifications, in accordance with the proposals as so modified.

46 Supplementary provisions as to requirements to furnish information

- (1) Any power conferred on the Director by the preceding provisions of this Part of this Act to require a person to furnish information shall be exercisable by notice in writing served on that person.
- (2) Any person who refuses or wilfully neglects to furnish to the Director information required by such a notice shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding £400.
- (3) Any person who, in furnishing information required by such a notice, makes a statement which he knows to be false in a material particular, or recklessly makes a statement which is false in a material particular, shall be guilty of an offence and shall be liable—
- (a) on summary conviction, to a fine not exceeding £400 ;
 - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.

Monopoly references

47 General provisions as to monopoly references

- (1) A monopoly reference—
- (a) shall specify the description of goods or services to which it relates;
 - (b) in the case of a reference relating to goods, shall state whether it relates to the supply of goods or to exports of goods from the United Kingdom or to both ; and
 - (c) if, for the purposes of the reference, consideration is to be limited to a part of the United Kingdom, shall specify the part of the United Kingdom to which consideration is to be limited,
- and (subject to the next following subsection) shall be framed in one or other of the ways specified in section 48 or section 49 of this Act.
- (2) A monopoly reference (whether it falls within section 48 or within section 49 of this Act) may be so framed as to require the Commission to exclude from consideration, or to limit consideration to,—
- (a) such agreements as are mentioned in paragraph (d) of section 6(1) or paragraph (d) of section 7(1) of this Act (or in either of those paragraphs as modified by section 9(2) of this Act) or as are mentioned in subsection (2) or subsection (3) of section 8 of this Act, or
 - (b) agreements or practices whereby persons conduct their affairs as mentioned in section 6(2) or section 7(2) of this Act,

or to exclude from consideration, or to limit consideration to, such one or more agreements or practices falling within paragraph (a) or paragraph (b) of this subsection as are specified in the reference.

48 Monopoly reference limited to the facts

A monopoly reference may be so framed as to require the Commission only to investigate and report on the questions whether a monopoly situation exists in relation to the matters set out in the reference in accordance with section 47 of this Act and, if so,—

- (a) by virtue of which provisions of sections 6 to 8 of this Act that monopoly situation is to be taken to exist;
- (b) in favour of what person or persons that monopoly situation exists;
- (c) whether any steps (by way of uncompetitive practices or otherwise) are being taken by that person or those persons for the purpose of exploiting or maintaining the monopoly situation and, if so, by what uncompetitive practices or in what other way; and
- (d) whether any action or omission on the part of that person or those persons is attributable to the existence of the monopoly situation and, if so, what action or omission and in what way it is so attributable ;

and a monopoly reference so framed is in this Act referred to as a " monopoly reference limited to the facts ".

49 Monopoly reference not limited to the facts

- (1) A monopoly reference may be so framed as to require the Commission to investigate and report on the question whether a monopoly situation exists in relation to the matters set out in the reference in accordance with section 47 of this Act and, if so, to investigate and report—
 - (a) on the questions mentioned in paragraphs (a) to (d) of section 48 of this Act, and
 - (b) on the question whether any facts found by the Commission in pursuance of their investigations under the preceding provisions of this subsection operate, or may be expected to operate, against the public interest.
- (2) A monopoly reference may be so framed as to require the commission to investigate and report on the questions whether a monopoly situation exists in relation to the matters set out in the reference in accordance with section 47 of this Act and, if so,—
 - (a) by virtue of which provisions of sections 6 to 8 of this Act that monopoly situation is to be taken to exist;
 - (b) in favour of what person or persons that monopoly situation exists; and
 - (c) whether any action or omission on the part of that person or those persons in respect of matters specified in the reference for the purposes of this paragraph operates, or may be expected to operate, against the public interest.
- (3) For the purposes of subsection (2)(c) of this section any matter may be specified in a monopoly reference if it relates to any of the following, that is to say—
 - (a) prices charged, or proposed to be charged, for goods or services of the description specified in the reference ;
 - (b) any recommendation or suggestion made as to such prices;

- (c) any refusal to supply goods or services of the description specified in the reference ;
- (d) any preference given to any person (whether by way of discrimination in respect of prices or in respect of priority of supply or otherwise) in relation to the supply of goods or services of that description ;

and any matter not falling within any of the preceding paragraphs may be specified for those purposes in a monopoly reference if, in the opinion of the person or persons making the reference, it is of a kind such that (if a monopoly situation is found to exist) that matter might reasonably be regarded as a step taken for the purpose of exploiting or maintaining that situation or as being attributable to the existence of that situation.

- (4) A monopoly reference framed in either of the ways mentioned in subsections (1) and (2) of this section is in this Act referred to as a " monopoly reference not limited to the facts " .

50 Monopoly references by Director

- (1) Where it appears to the Director that a monopoly situation exists or may exist in relation to—

- (a) the supply of goods of any description, or
- (b) the supply of services of any description, or
- (c) exports of goods of any description from the United Kingdom, either generally or to any particular market,

the Director, subject to section 12 of this Act and to the following provisions of this section, may if he thinks fit make a monopoly reference to the Commission with respect to the existence or possible existence of such a monopoly situation.

- (2) No monopoly reference shall be made by the Director with respect to the existence or possible existence of a monopoly situation in relation to the supply of goods or services of any description specified in Part I of Schedule 5 or in Part I of Schedule 7 to this Act.

- (3) Notwithstanding anything in subsections (3) and (4) of section 10 of this Act—

- (a) for the purposes of any monopoly reference made by the Director the supply of goods or services of any description specified in the first column of Part II of Schedule 5 or of Part II of Schedule 7 to this Act in any manner specified in relation to that description of goods or services in the second column of Part II of the relevant Schedule shall be taken to be a separate form of supply, and
- (b) any monopoly reference made by the Director in relation to the supply of goods or services of any such description shall be limited so as to exclude that form of supply.

- (4) For the purposes of any monopoly reference made by the Director in relation to goods of any description specified in the first column of Part III of Schedule 7 to this Act—

- (a) the supply of goods of that description in Northern Ireland in any manner specified in relation to that description of goods in the second column of that Part of that Schedule shall be taken to be a separate form of supply, and, notwithstanding anything in section 10(3) and (4) of this Act, any monopoly reference so made in relation to the supply of goods of any such description in Northern Ireland shall be limited so as to exclude that form of supply, and

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- (b) for the purposes of any such monopoly reference the Director shall so exercise his powers under section 9 of this Act as to comply with the requirements of the preceding paragraph.
- (5) The Secretary of State may by order made by statutory instrument vary any of the provisions of Schedule 7 to this Act, either by adding one or more further entries or by altering or deleting any entry for the time being contained in it; and any reference in this Act to that Schedule shall be construed as a reference to that Schedule as for the time being in force.
- (6) On making a monopoly reference to the Commission, the Director shall send a copy of it to the Secretary of State; and if, before the end of the period of fourteen days from the day on which the reference is first published in the Gazette in accordance with section 53 of this Act, the Secretary of State directs the Commission not to proceed with the reference,—
 - (a) the Commission shall not proceed with that reference, but
 - (b) nothing in the preceding paragraph shall prevent the Commission from proceeding with any subsequent monopoly reference, notwithstanding that it relates wholly or partly to the same matters.

51 Monopoly references by Ministers

- (1) Subject to the following provisions of this section, the Secretary of State, or the Secretary of State and any other Minister acting jointly, where it appears to him or them that a monopoly situation exists or may exist in relation to—
 - (a) the supply of goods of any description, or
 - (b) the supply of services of any description, or
 - (c) exports of goods of any description from the United Kingdom, either generally or to any particular market,
 may, if the Secretary of State (or, in the case of joint action by the Secretary of State and another Minister, each of them) thinks fit, make a monopoly reference to the Commission with respect to the existence or possible existence of such a monopoly situation.
- (2) Where it appears to the Secretary of State that a monopoly situation exists or may exist as mentioned in the preceding subsection, and that the goods or services in question are of a description specified in Part I of, or in the first column of Part II of, Schedule 5 or Schedule 7 to this Act, the Secretary of State shall not make a monopoly reference with respect to the existence or possible existence of that situation except jointly with such one or more of the Ministers mentioned in the next following subsection as appear to him to have functions directly relating—
 - (a) to the supply of goods or services of that description in the area (whether consisting of the whole or part of the United Kingdom) in relation to which the question arises, or
 - (b) to exports of goods of that description from the United Kingdom,
 as the case may be.
- (3) The Ministers referred to in subsection (2) of this section are the Secretary of State for Scotland, the Secretary of State for Wales, the Secretary of State for Northern Ireland, the Secretary of State for the Environment, the Minister of Agriculture, Fisheries and Food, the Minister of Agriculture for Northern Ireland, the Minister of Commerce for Northern Ireland and the Minister of Posts and Telecommunications.

- (4) Where it appears to the Secretary of State that a monopoly situation exists or may exist as mentioned in subsection (1) of this section in relation to the supply in Northern Ireland of goods of a description specified in the first column of Part III of Schedule 7 to this Act, the Secretary of State shall not make a monopoly reference with respect to the existence or possible existence of that situation except jointly with the Minister of Agriculture for Northern Ireland.

52 Variation of monopoly reference

- (1) Subject to the following provisions of this section, the Director may at any time vary a monopoly reference made by him, and the Secretary of State (or, in the case of a monopoly reference made by the Secretary of State jointly with one or more other Ministers, the Secretary of State and that Minister or those Ministers acting jointly) may vary a monopoly reference made by him or them.
- (2) A monopoly reference not limited to the facts shall not be varied so as to become a monopoly reference limited to the facts; but (subject to the following provisions of this section) a monopoly reference limited to the facts may be varied so as to become a monopoly reference not limited to the facts, whether the Commission have already reported on the reference as originally made or not.
- (3) A monopoly reference made by the Director shall not be varied so as to become a reference which he is precluded from making by any provisions of section 50 of this Act.
- (4) On varying a monopoly reference made by him, the Director shall send a copy of the variation to the Secretary of State; and if, before the end of the period of fourteen days from the day on which the variation is first published in the Gazette in accordance with the next following section, the Secretary of State directs the Commission not to give effect to the variation,—
- (a) the Commission shall proceed with the reference as if that variation had not been made, but
 - (b) nothing in the preceding paragraph shall prevent the Commission from proceeding with any subsequent monopoly reference, or from giving effect to any subsequent variation, notwithstanding that it relates wholly or partly to the matters to which that variation related.
- (5) In this section and in sections 53 to 55 of this Act " Minister " includes the Minister of Agriculture for Northern Ireland and the Minister of Commerce for Northern Ireland.

53 Publication of monopoly references and variations, and of directions relating to them

- (1) On making a monopoly reference, or a variation of a monopoly reference, the Director or, as the case may be, the Secretary of State (or, in the case of a monopoly reference or variation made by the Secretary of State acting jointly with one or more other Ministers, the Secretary of State and that Minister or those Ministers acting jointly) shall arrange for the reference or variation to be published in full in the Gazette, and shall arrange for the reference or variation to be published in such other manner as he or they may think most suitable for bringing it to the attention of persons who, in his or their opinion, would be affected by it.

- (2) Where the Secretary of State gives a direction under section 50(6) of this Act with respect to a monopoly reference, or gives a direction under section 52(4) of this Act with respect to a variation of a monopoly reference, the Secretary of State shall arrange for the direction to be published in the Gazette and otherwise in the same manner as the monopoly reference or variation was published in accordance with the preceding subsection.
- (3) In this section " the Gazette" means the London, Edinburgh and Belfast Gazettes, except that, in relation to a monopoly reference under which consideration is limited to a particular part of the United Kingdom in accordance with section 9 of this Act (including a reference under which consideration is required to be so limited by section 50(4)(b) of this Act), it means such one or more of those Gazettes as are appropriate to that part of the United Kingdom.
- (4) In sections 50 and 52 of this Act any reference to publication in the Gazette is a reference to publication in the London Gazette, the Edinburgh Gazette or the Belfast Gazette, whichever first occurs.

54 Report of Commission on monopoly reference

- (1) a report of the Commission on a monopoly reference—
 - (a) if the reference was made by the Director, shall be made to the Secretary of State, and
 - (b) in any other case, shall be made to the Minister or Ministers by whom the reference was made.
- (2) In making their report on a monopoly reference, the Commission shall include in it definite conclusions on the questions comprised in the reference, together with—
 - (a) such an account of their reasons for those conclusions, and
 - (b) such a survey of the general position with respect to the subject-matter of the reference, and of the developments which have led to that position,
 as in their opinion are expedient for facilitating a proper understanding of those questions and of their conclusions.
- (3) Where, on a monopoly reference not limited to the facts, the Commission find that a monopoly situation exists and that facts found by the Commission in pursuance of their investigations under subsection (1) or subsection (2) of section 49 of this Act operate, or may be expected to operate, against the public interest, the report shall specify those facts, and the conclusions to be included in the report, in so far as they relate to the operation of those facts, shall specify the particular effects, adverse to the public interest, which in their opinion those facts have or may be expected to have; and the Commission—
 - (a) shall, as part of their investigations, consider what action (if any) should be taken for the purpose of remedying or preventing those adverse effects, and
 - (b) may, if they think fit, include in their report recommendations as to such action.
- (4) In paragraph (a) of subsection (3) of this section the reference to action to be taken for the purpose mentioned in that paragraph is a reference to action to be taken for that purpose either—
 - (a) by one or more Ministers (including Ministers or departments of the Government of Northern Ireland) or other public authorities, or

- (b) by the person or (as the case may be) one or more of the persons in whose favour, in accordance with the findings of the Commission, the monopoly situation in question exists.
- (5) Where, on a monopoly reference not limited to the facts, the Commission find—
- (a) that a monopoly situation exists, and
 - (b) that the person (or, if more than one, any of the persons) in whose favour it exists is a party to an agreement to which Part I of the Act of 1956 applies,
- the Commission, in making their report on that reference, shall exclude from their consideration the question whether the provisions of that agreement, in so far as they are provisions by virtue of which it is an agreement to which Part I of that Act applies, operate, or may be expected to operate, against the public interest; and subsection (3) of this section, in so far as it refers to facts found by the Commission in pursuance of their investigations, shall have effect subject to the provisions of this subsection.

55 Time-limit for report on monopoly reference

- (1) A monopoly reference shall specify a period within which the Commission are to report on the reference; and, if a report of the Commission on the reference—
- (a) is not made before the end of the period so specified, or
 - (b) if one or more extended periods are allowed under the next following subsection, is not made before the end of that extended period or of the last of those extended periods, as the case may be,
- the reference shall cease to have effect and no action, or (if action has already been taken) no further action, shall be taken in relation to that reference under this Act.
- (2) Directions may be given—
- (a) in the case of a monopoly reference made by the Director or by the Secretary of State otherwise than jointly with one or more Ministers, by the Secretary of State, or
 - (b) in the case of a monopoly reference made by the Secretary of State jointly with one or more other Ministers, by the Secretary of State and that Minister or those Ministers acting jointly,
- allowing to the Commission such extended period for the purpose of reporting on the reference as may be specified in the directions, or, if the period has already been extended once or more than once by directions under this subsection, allowing to the Commission such further extended period for that purpose as may be so specified.

56 Order of appropriate Minister on report on monopoly reference

- (1) The provisions of this section shall have effect where a report of the Commission on a monopoly reference not limited to the facts has been laid before Parliament in accordance with the provisions of Part VII of this Act, and the conclusions of the Commission set out in the report, as so laid,—
- (a) include conclusions to the effect that a monopoly situation exists and that facts found by the Commission in pursuance of their investigations under section 49 of this Act operate, or may be expected to operate, against the public interest, and
 - (b) specify particular effects, adverse to the public interest which in their opinion those facts have or may be expected to have.

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- (2) In the circumstances mentioned in the preceding subsection the appropriate Minister may (subject to subsection (6) of this section) by order made by statutory instrument exercise such one or more of the powers specified in Parts I and II of Schedule 8 to this Act as he considers it requisite to exercise for the purpose of remedying or preventing the adverse effects specified in the report as mentioned in the preceding subsection ; and those powers may be so exercised to such extent and in such manner as the appropriate Minister considers requisite for that purpose.
- (3) In determining whether, or to what extent or in what manner, to exercise any of those powers, the appropriate Minister shall take into account any recommendations included in the report of the Commission in pursuance of section 54(3)(b) of this Act and any advice given by the Director under section 88 of this Act.
- (4) Subject to the next following subsection, in this section " the appropriate Minister " means the Secretary of State.
- (5) Where, in any such report as is mentioned in subsection (1) of this section, the person or one of the persons specified as being the person or persons in whose favour the monopoly situation in question exists is a body corporate fulfilling the following conditions, that is to say—
 - (a) that the affairs of the body corporate are managed by its members, and
 - (b) that by virtue of an enactment those members are appointed by a Minister,then for the purpose of making any order under this section in relation to that body corporate (but not for the purpose of making any such order in relation to any other person) " the appropriate Minister" in this section means the Minister by whom members of that body corporate are appointed.
- (6) In relation to any such body corporate as is mentioned in subsection (5) of this section, the powers exercisable by virtue of subsection (2) of this section shall not include the powers specified in Part II of Schedule 8 to this Act.