



# Fair Trading Act 1973

## 1973 CHAPTER 41

### PART VIII

#### ADDITIONAL PROVISIONS RELATING TO REFERENCES TO COMMISSION

#### 84 Public interest

- (1) In determining for any purposes to which this section applies whether any particular matter operates, or may be expected to operate, against the public interest, the Commission shall take into account all matters which appear to them in the particular circumstances to be relevant and, among other things, shall have regard to the desirability—
  - (a) of maintaining and promoting effective competition between persons supplying goods and services in the United Kingdom;
  - (b) of promoting the interests of consumers, purchasers and other users of goods and services in the United Kingdom in respect of the prices charged for them and in respect of their quality and the variety of goods and services supplied;
  - (c) of promoting, through competition, the reduction of costs and the development and use of new techniques and new products, and of facilitating the entry of new competitors into existing markets ;
  - (d) of maintaining and promoting the balanced distribution of industry and employment in the United Kingdom; and
  - (e) of maintaining and promoting competitive activity in markets outside the United Kingdom on the part of producers of goods, and of suppliers of goods and services, in the United Kingdom.
- (2) This section applies to the purposes of any functions of the Commission under this Act other than functions to which section 59(3) of this Act applies.

## **85 Attendance of witnesses and production of documents**

- (1) For the purposes of any investigation on a reference made to them under this Act the Commission may, by notice in writing signed on their behalf by any of their members or by their secretary,—
  - (a) require any person to attend at a time and place specified in the notice, and to give evidence to the Commission or a member of the Commission nominated by them for the purpose, or
  - (b) require any person to produce, at a time and place specified in the notice, to the Commission or to any person nominated by the Commission for the purpose, any documents which are specified or described in the notice and which are documents in his custody or under his control and relating to any matter relevant to the investigation, or
  - (c) require any person carrying on any business to furnish to the Commission such estimates, returns or other information as may be specified or described in the notice, and specify the time, the manner and the form in which any such estimates, returns or information are to be furnished.
- (2) For the purposes of any such investigation the Commission, or a member of the Commission nominated by them for that purpose, may take evidence on oath, and for that purpose may administer oaths.
- (3) No person shall be compelled for the purpose of any such investigation to give any evidence or produce any document which he could not be compelled to give or produce in civil proceedings before the court or, in complying with any requirement for the furnishing of information, to give any information which he could not be compelled to give in evidence in such proceedings.
- (4) No person shall be required, in obedience to a notice under subsection (1) of this section, to go more than ten miles from his place of residence unless the necessary expenses of his attendance are paid or tendered to him.
- (5) Any person who refuses or, without reasonable excuse, fails to do anything duly required of him by a notice under subsection (1) of this section shall be guilty of an offence and liable on summary conviction to a fine not exceeding £400.
- (6) Any person who—
  - (a) wilfully alters, suppresses or destroys any document which he has been required by any such notice to produce, or
  - (b) in furnishing any estimate, return or other information required of him under any such notice, makes any statement which he knows to be false in a material particular or recklessly makes any statement which is false in a material particular,
 shall be guilty of an offence and liable on summary conviction to a fine not exceeding £400 or, on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.
- (7) If a person makes default in complying with a notice under subsection (1) of this section, the court may, on the application of the Secretary of State, make such order as the court thinks fit for requiring the default to be made good; and any such order may provide that all the costs or expenses of and incidental to the application shall be borne by the person in default or by any officers of a company or other association who are responsible for its default.

- (8) In this section " the court "—
- (a) in relation to England and Wales, means the High Court;
  - (b) in relation to Scotland, means the Court of Session; and
  - (c) in relation to Northern Ireland, means the High Court or a judge of the High Court.

## **86 Director to receive copies of reports**

- (1) Subject to the next following subsection, a copy of every report of the Commission on a monopoly reference, or on a merger reference other than a newspaper merger reference, shall be transmitted by the Commission to the Director; and the Minister or Ministers to whom any such report is made shall take account of any advice given to him or them by the Director with respect to a report of which a copy is transmitted to the Director under this section.
- (2) The preceding subsection shall not apply to a report made on a monopoly reference, where the reference was made by a Minister or Ministers and (by virtue of any of the provisions of section 50 of this Act) could not have been made by the Director.
- (3) In this section "Minister" includes the Minister of Agriculture for Northern Ireland and the Minister of Commerce for Northern Ireland.

## **87 Supplementary provisions as to laying reports before Parliament**

- (1) Where under section 83 of this Act the Secretary of State lays before Parliament a copy of a report of the Commission on a newspaper merger reference, then—
- (a) if before laying it the Secretary of State has consented to the transfer of a newspaper or of newspaper assets to which the report relates, he shall annex a copy of that consent to the copy of the report laid before Parliament, or
  - (b) if he subsequently consents to that transfer, he shall thereupon lay before Parliament a copy of that consent.
- (2) Where the persons to whom a report of the Commission is made under this Act include the Minister of Agriculture for Northern Ireland, that Minister shall lay a copy of the report before the Senate and House of Commons of Northern Ireland, and shall arrange for it to be published in Northern Ireland in such manner as appears to him to be appropriate.
- (3) If a report to which subsection (2) of this section applies is presented by command of the Governor of Northern Ireland to the Senate or House of Commons of Northern Ireland otherwise than at or during the time of a sitting of the Senate or of that House, as the case may be, the presentation of the report shall for the purposes of that subsection be treated as the laying of a copy of it before the Senate or that House as required by that subsection.

## **88 Action by Director in consequence of report of Commission on monopoly or merger reference**

- (1) Where a report of the Commission on a monopoly reference, or on a merger reference other than a newspaper merger reference, as laid before Parliament,—
- (a) in the case of a monopoly reference, sets out such conclusions as are mentioned in section 56(1) of this Act, or

---

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

---

- (b) in the case of a merger reference, sets out such conclusions as are mentioned in section 73(1) or in section 75(4)(e) of this Act,
- and a copy of the report is transmitted to the Director under section 86 of this Act, it shall be the duty of the Director, if requested by the appropriate Minister or Ministers to do so, to consult the relevant parties with a view to obtaining from them undertakings to take action indicated in the request made to the Director as being action requisite, in the opinion of the appropriate Minister or Ministers, for the purpose of remedying or preventing the adverse effects specified in the report.
- (2) The Director shall report to the appropriate Minister or Ministers the outcome of his consultations under the preceding subsection; and if any undertaking is given by any of the relevant parties to take action indicated in the request made to the Director as mentioned in that subsection (in this section referred to as an "appropriate undertaking") the Minister to whom the undertaking is given shall furnish particulars of it to the Director.
- (3) Where in his consultations under subsection (1) of this section the Director seeks to obtain an appropriate undertaking from any of the relevant parties, and either—
- (a) he is satisfied that no such undertaking is likely to be given by that party within a reasonable time, or
  - (b) having allowed such time as in his opinion is reasonable for the purpose, he is satisfied that no such undertaking has been given by that party,
- the Director shall give such advice to the appropriate Minister or Ministers as he may think proper in the circumstances (including, if the Director thinks fit, advice with respect to the exercise by the appropriate Minister or Ministers of his or their powers under section 56 or section 73 of this Act, as the case may be).
- (4) Where the Director has made a report under subsection (2) of this section, and particulars of an undertaking given by any of the relevant parties have been furnished to the Director in accordance with that subsection, it shall be the duty of the Director—
- (a) to keep under review the carrying out of that undertaking, and from time to time to consider whether, by reason of any change of circumstances, it needs to be varied or to be superseded by a new undertaking, and
  - (b) if it appears to him that it has not been or is not being fulfilled, or needs to be varied or superseded, to give such advice to the appropriate Minister or Ministers as he may think proper in the circumstances.
- (5) Where, in consequence of a report of which a copy is transmitted to the Director under section 86 of this Act, an order is made under section 56 or section 73 of this Act in relation to any of the matters to which the report relates, it shall be the duty of the Director to keep under review the action (if any) taken in compliance with that order, and from time to time to consider whether, by reason of any change of circumstances, the order should be varied or should be superseded by a new order, and—
- (a) if it appears to him that the order has in any respect not been complied with, to consider whether any action (by way of proceedings in accordance with section 93 of this Act or otherwise) should be taken for the purpose of securing compliance with the order, and (where in his opinion it is appropriate to do so) to take such action himself or give advice to any Minister or other person by whom such action might be taken, or
  - (b) if it appears to him that the order needs to be varied, or to be superseded by a new order, to give such advice to the appropriate Minister or Ministers as he may think proper in the circumstances.

- (6) In this section " the relevant parties "—
- (a) in relation to a report of the Commission on a monopoly reference, means the person or persons specified in the report as being the person or persons in whose favour the monopoly situation in question exists ;
  - (b) in relation to a report of the Commission on a merger reference under section 75 of this Act, which includes a finding that a merger situation qualifying for investigation will be created if the arrangements in question are carried into effect, means any person indicated in the report as being a person by whom in accordance with the arrangements any assets are to be taken over;
  - (c) in relation to a report of the Commission on a merger reference, other than a newspaper merger reference or a reference falling within paragraph (b) of this subsection, means the persons specified in the report as being persons carrying on, owning or controlling any of the enterprises which, in accordance with the conclusions of the Commission, have ceased to be distinct enterprises;
- and, in relation to a report of the Commission, " the appropriate Minister or Ministers " means the Minister or Ministers to whom the report is made, " undertaking " means an undertaking given to that Minister or to one of those Ministers, as the case may be, and, in subsections (3) and (5) of this section, the references to section 73 of this Act shall be construed as including references to that section as applied by section 75(4) of this Act.

## **89 Interim order after report of Commission under s.54 or s.72**

- (1) The provisions of this section shall have effect where—
- (a) in the circumstances specified in subsection (1) of section 56 of this Act the Secretary of State makes, or has under consideration the making of, an order under that section exercising any of the powers specified in Part II of Schedule 8 to this Act, or
  - (b) in the circumstances specified in subsection (1) of section 73 of this Act the Secretary of State makes, or has under consideration the making of, an order under that section exercising any of those powers;
- and in those provisions " the principal order " means the order which the Secretary of State makes, or has it under consideration to make, as mentioned in paragraph (a) or paragraph (b) of this subsection.
- (2) With a view to achieving the purpose for which any of the powers specified in Part II of that Schedule are, or are proposed to be, exercised by the principal order, the Secretary of State may by order made by statutory instrument exercise any of the powers mentioned in the next following subsection.
- (3) An order under this section may—
- (a) prohibit or restrict the doing of things which, in the opinion of the Secretary of State, might impede the operation of the principal order or, where it has not yet been made, might be an impediment to making it;
  - (b) impose on any person concerned obligations as to the carrying on of any activities or the safeguarding of any assets;
  - (c) provide for the carrying on of any activities or the safe guarding of any assets either by the appointment of a person to conduct or supervise the conduct of any activities (on such terms and with such powers as may be specified or described in the order under this section) or in any other manner.

## **90 General provisions as to orders under ss.56, 73, 74 and 89**

- (1) This section applies to any order under section 56, section 73, section 74 or section 89 of this Act.
- (2) Any such order declaring anything to be unlawful may declare it to be unlawful either for all persons or for such persons as may be specified or described in the order.
- (3) Nothing in any such order shall have effect so as to apply to any person in relation to his conduct outside the United Kingdom unless that person is—
  - (a) a citizen of the United Kingdom and Colonies, or
  - (b) a body corporate incorporated under the law of the United Kingdom or of a part of the United Kingdom, or
  - (c) a person carrying on business in the United Kingdom, either alone or in partnership with one or more other persons,
 but, in the case of a person falling within paragraph (a), paragraph (b) or paragraph (c) of this subsection, any such order may extend to acts or omissions outside the United Kingdom.
- (4) An order to which this section applies may extend so as to prohibit the carrying out of agreements already in existence on the date on which the order is made.
- (5) Nothing in any order to which this section applies shall have effect so as to restrict the doing of anything for the purpose of restraining an infringement of a United Kingdom patent or so as to restrict any person as to the conditions which he attaches to a licence to do anything the doing of which would, but for the licence, be an infringement of a United Kingdom patent.
- (6) Nothing in any such order shall affect the conduct of a board established under a scheme made under the Agricultural Marketing Act 1958 or under the Agricultural Marketing Act (Northern Ireland) 1964.
- (7) An order to which this section applies may authorise the Minister making the order to give directions to a person specified in the directions, or to the holder for the time being of an office so specified in any company or association,—
  - (a) to take such steps within his competence as may be specified or described in the directions for the purpose of carrying out, or securing compliance with, the order, or
  - (b) to do or refrain from doing anything so specified or described which he might be required by the order to do or refrain from doing,
 and may authorise that Minister to vary or revoke any directions so given.

## **91 Procedure relating to orders to which s.90 applies**

- (1) No order to which section 90 of this Act applies and which exercises any of the powers specified in Part II of Schedule 8 to this Act, and no order varying or revoking any such order, shall be made unless a draft of the order has been laid before Parliament and approved by a resolution of each House of Parliament; and the provisions of Schedule 9 to this Act shall have effect with respect to the procedure to be followed before laying before Parliament a draft of any such order.
- (2) Before making any order under section 56 or section 73 of this Act other than any such order as is mentioned in the preceding subsection, the Minister proposing to make the order shall publish, in such manner as appears to him to be appropriate, a notice—

- (a) stating his intention to make the order ;
- (b) indicating the nature of the provisions to be embodied in the order; and
- (c) stating that any person whose interests are likely to be affected by the order, and who is desirous of making representations in respect of it, should do so in writing (stating his interest and the grounds on which he wishes to make the representations) before a date specified in the notice (that date being not earlier than the end of the period of thirty days beginning with the day on which publication of the notice is completed);

and the Minister shall not make the order before the date specified in the notice in accordance with paragraph (c) of this subsection and shall consider any representations duly made to him in accordance with the notice before that date.

## **92 Investigation of company or association with reference to order to which s.90 applies**

- (1) For the purpose of determining whether to make an order to which section 90 of this Act applies whereby any powers are to be exercised in relation to a company or association, or for the purpose of obtaining information on which to exercise by or under any such order any powers in relation to a company or association, the Secretary of State may appoint an inspector to investigate and report to him on any such matters falling within the next following subsection as are specified or described in the appointment.
- (2) The matters which may be so specified or described are any matters which, in the case of a company registered under the Companies Act 1948,—
  - (a) could in accordance with sections 165 and 166 of that Act be investigated by an inspector appointed under section 165 of that Act, or
  - (b) could in accordance with section 172 of that Act, or in accordance with any provisions as applied by subsection (5) of that section, be investigated by an inspector appointed under that section.
- (3) For purposes connected with any investigation made by an inspector appointed under this section—
  - (a) section 167 (or that section as applied by section 172(5)) of the Companies Act 1948 shall have effect as it has effect for the purposes of any investigation under section 165 or section 172 of that Act, and
  - (b) the provisions of that Act referred to in this and the last preceding subsection shall be taken to extend throughout the United Kingdom.

## **93 Enforcement of orders to which s.90 applies**

- (1) No criminal proceedings shall, by virtue of the making of an order to which section 90 of this Act applies, lie against any person on the grounds that he has committed, or aided, abetted, counselled or procured the commission of, or conspired or attempted to commit, or incited others to commit, any contravention of the order.
- (2) Nothing in the preceding subsection shall limit any right of any person to bring civil proceedings in respect of any contravention or apprehended contravention of any such order, and (without prejudice to the generality of the preceding words) compliance with any such order shall be enforceable by civil proceedings by the Crown for an injunction or interdict or for any other appropriate relief.

---

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

---

- (3) If any person makes default in complying with any directions given under section 90(7) of this Act, the court may, on the application of the Secretary of State, make an order requiring him to make good the default within a time specified in the order, or, if the directions related to anything to be done in the management or administration of a company or association, requiring the company or association or any officer of it to do so.
- (4) Any order of the court under subsection (3) of this section may provide that all the costs or expenses of or incidental to the application for the order shall be borne by any person in default or by any officers of a company or association who are responsible for its default.
- (5) In this section " the court"—
- (a) in relation to England and Wales, means the High Court;
  - (b) in relation to Scotland, means the Court of Session; and
  - (c) in relation to Northern Ireland, means the High Court or a judge of the High Court.