



Fair Trading Act 1973

1973 CHAPTER 41

PART X

EXTENSION OF ACT OF 1956 TO AGREEMENTS RELATING TO SERVICES

107 Order bringing under control restrictive agreements relating to services

- (1) The Secretary of State may by statutory instrument make an order in respect of a class of services described in the order (in this Act referred to, in relation to an order under this section, as "services brought under control by the order") and direct by the order that, subject to the following provisions of this Part of this Act, the agreements to which Part I of the Act of 1956 applies shall include agreements, whether made before or after the passing of this Act and whether before or after the making of the order, which—
 - (a) are agreements between two or more persons carrying on business within the United Kingdom in the supply of services brought under control by the order, or between two or more such persons together with one or more other parties, and
 - (b) are agreements under which restrictions, in respect of matters specified in the order for the purposes of this paragraph, are accepted by two or more parties.
- (2) A class of services described in an order under this section, as being the services brought under control by the order, may consist—
 - (a) of services of one or more descriptions specified in that behalf in the order, or
 - (b) of all services except services of one or more descriptions so specified, or
 - (c) of all services without exception.
- (3) The matters which may be specified in such an order for the purposes of subsection (1) (b) of this section are any of the following, that is to say—
 - (a) the charges to be made, quoted or paid for designated services supplied, offered or obtained;
 - (b) the terms or conditions on or subject to which designated services are to be supplied or obtained ;

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- (c) the extent (if any) to which, or the scale (if any) on which, designated services are to be made available, supplied or obtained ;
- (d) the form or manner in which designated services are to be made available, supplied or obtained ;
- (e) the persons or classes of persons for whom or from whom, or the areas or places in or from which, designated services are to be made available or supplied or are to be obtained.

108 Order bringing under control information agreements relating to services

- (1) The Secretary of State may by statutory instrument make an order in respect of a class of services described in the order (in this Act referred to, in relation to an order under this section, as " services brought under control by the order ") and direct by the order that, subject to the following provisions of this Part of this Act, the agreements to which Part I of the Act of 1956 applies shall include agreements, whether made before or after the passing of this Act and whether before or after the making of the order, which—
- (a) are agreements between two or more persons carrying on business within the United Kingdom in the supply of services brought under control by the order, or between two or more such persons together with one or more other parties, and
 - (b) are agreements under which provision is made for or in relation to the furnishing by two or more parties to each other or to other persons (whether parties or not) of information with respect to matters specified in the order for the purposes of this paragraph.
- (2) A class of services described in an order under this section, as being the services brought under control by the order may consist—
- (a) of services of one or more descriptions specified in that behalf in the order, or
 - (b) of all services except services of one or more descriptions so specified, or
 - (c) of all services without exception.
- (3) The matters which may be specified in such an order for the purposes of subsection (1) (b) of this section are any of the following, that is to say—
- (a) the charges made, quoted or paid or to be made, quoted or paid for designated services which have been or are to be supplied, offered or obtained ;
 - (b) the terms or conditions on or subject to which designated services have been or are to be supplied or obtained;
 - (c) the extent (if any) to which, or the scale (if any) on which, designated services have been or are to be made available, supplied or obtained ;
 - (d) the form or manner in which designated services have been or are to be made available, supplied or obtained ;
 - (e) the costs incurred or to be incurred in making available, supplying or obtaining designated services;
 - (f) the persons or classes of persons for whom or from whom, or the areas or places in or from which, designated services have been or are to be made available or supplied or have been or are to be obtained.

109 Designated services

- (1) In relation to any order made under section 107 or section 108 of this Act, "designated services" in this Part of this Act means services of any class described in the order as being designated services.
- (2) Subject to the next following subsection, a class of services described in any such order as being designated services may consist wholly or partly of services brought under control by the order or wholly or partly of other services, and may be described so as to consist—
 - (a) of services of one or more descriptions specified in that behalf in the order, or
 - (b) of all services except services of one or more descriptions so specified,and different classes of services may be so described in relation to different matters specified in the order for the purposes of section 107(1)(b) or section 108(1)(b) of this Act, as the case may be.
- (3) A class of services described in such an order as being designated services shall not include any of the services specified in Schedule 4 to this Act.

110 Supplementary provisions as to orders under s.107 or s.108

- (1) An order under section 107 or section 108 of this Act may limit the operation of the order to agreements fulfilling such conditions (in addition to those mentioned in section 107 or section 108, as the case may be) as may be specified in the order.
- (2) In particular, but without prejudice to the generality of the preceding subsection, an order under section 108 of this Act may limit the operation of the order to agreements under which the provision for the furnishing of information (as mentioned in subsection (1)(b) of that section) is provision of a kind specified in the order or provides for the furnishing of information of a kind so specified.
- (3) Subject to subsection (1) of this section—
 - (a) for the purposes of any order under section 107 of this Act it is immaterial whether any restrictions accepted by parties to an agreement relate to the same or to different matters specified in the order for the purposes of subsection (1)(b) of that section, or have the same or a different effect in relation to any matter so specified, and
 - (b) for the purposes of any order under section 108 of this Act it is immaterial whether any provision made by an agreement for or in relation to the furnishing of information relates to the same or to different matters specified in the order for the purposes of subsection (1)(b) of that section,and it is immaterial for those purposes whether the parties accepting any restrictions, or the parties by whom any information is to be furnished, as the case may be, carry on the same class or different classes of business.
- (4) Where, at a time when an order under section 107 or section 108 of this Act (in this subsection referred to as "the earlier order") is in force, another order (in this subsection referred to as "the subsequent order") is made under the same section, the subsequent order may provide that—
 - (a) for the purposes of the earlier order, or
 - (b) for the purposes of the subsequent order, or
 - (c) for the purposes of both orders,

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the condition specified in subsection (1)(a) of section 107 or in subsection (1)(a) of section 108 of this Act, as the case may be, shall be treated as fulfilled in relation to an agreement if it is an agreement to which the parties are or include one person carrying on business in the United Kingdom in the supply of services brought under control by the earlier order and one person carrying on business within the United Kingdom in the supply of services brought under control by the subsequent order.

- (5) Subsection (4) of this section shall have effect without prejudice to any power to vary any order made under section 107 or section 108 of this Act.
- (6) In the following provisions of this Part of this Act " the relevant enactments ", in relation to an order under section 107 or section 108 of this Act, means the provisions of this Part of this Act (including whichever of those sections is applicable) as they have effect in relation to that order and the provisions of the Act of 1956 and of the Act of 1968 as applied in relation to that order by the following provisions of this Part of this Act.

111 Procedure in relation to orders under s.107 or s.108

- (1) No order shall be made under section 107 or section 108 of this Act unless a draft of the order has been laid before Parliament and approved by a resolution of each House of Parliament.
- (2) Before laying before Parliament a draft of any such order, the Secretary of State shall publish in such manner as he thinks appropriate a notice—
 - (a) describing the classes of services which, if the order is made, will be services brought under control by the order and will be designated services in relation to the order respectively;
 - (b) indicating the nature of any limitation to be imposed by the order under subsection (1) or subsection (2) of section 110 of this Act; and
 - (c) specifying a period (not being less than twenty-eight days) within which representations with respect to the proposed order may be made to the Secretary of State.
- (3) In settling the draft to be laid before Parliament the Secretary of State shall take into consideration any representations with respect to the proposed order which may be received by him within the period specified in the notice in accordance with subsection (2)(c) of this section.

112 Provisions as to certain associations

- (1) For the purposes of any order made under section 107 or section 108 of this Act, and for the purposes of the operation of the relevant enactments in relation to any such order, subsections (2) to (5) of this section shall have effect in relation to any association (whether incorporated or not) if—
 - (a) its membership consists wholly or mainly of persons (in this subsection referred to as " members affected by the order ") who are either engaged in the supply of services brought under control by the order or are employed by or represent persons so engaged, and
 - (b) its objects or activities include the promotion of the interests of persons engaged in the supply of those services who are either members affected by the order or are persons represented by such members, and

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- (c) it is not a society which is for the time being approved under section 6A of the Act of 1956.
- (2) The relevant enactments shall have effect in relation to any agreement made by the association—
 - (a) as if the agreement were made between all persons who are members of the association or are represented on it by members of the association, and
 - (b) where any restriction is accepted under the agreement by the association, or provision is made in the agreement for or in relation to the furnishing of information by the association, as if the like restriction were accepted by, or (as the case may be) the like provision were made for or in relation to the furnishing of information by, each of the persons who are members of the association or are so represented.
 - (3) Where the order is one made under section 107 of this Act, and specific recommendations (whether express or implied) are made by or on behalf of the association to its members, or to any class of its members, as to the action to be taken or not to be taken by them in relation to any particular class of services in respect of any matters specified in the order for the purposes of subsection (1)(b) of that section, the relevant enactments shall have effect in relation to the agreement for the constitution of the association as if it contained a term by which each such member, and any person represented on the association by any such member, agreed to comply with those recommendations and with any subsequent recommendations made to them by or on behalf of the association as to the action to be taken by them in relation to the same class of services and in respect of the same matters.
 - (4) Where the order is one made under section 108 of this Act, and specific recommendations (whether express or implied) are made by or on behalf of the association to its members, or to any class of its members, as to the furnishing of information in relation to any particular class of services in respect of any matters specified in the order for the purposes of subsection (1)(b) of that section, the relevant enactments shall have effect in relation to the agreement for the constitution of the association as if it contained a term by which each such member, and any person represented on the association by any such member, agreed to comply with those recommendations and with any subsequent recommendations made to them by or on behalf of the association as to the furnishing of information in relation to the same class of services and in respect of the same matters.
 - (5) Subsection (3) or subsection (4) of this section (where applicable) shall have effect in relation to the agreement for the constitution of an association notwithstanding any provision to the contrary in that agreement.
 - (6) In relation to a society which is for the time being approved under section 6A of the Act of 1956, but which, in consequence of an order made under section 107 or section 108 of this Act, is a society to which the preceding provisions of this section would apply if it were not so approved, subsection (4) of that section (which confers power on the Secretary of State to withdraw any such approval) shall have effect as if in that subsection—
 - (a) any reference to an agreement which would have been subject to registration under Part I of the Act of 1956 if the approval had not been given included a reference to an agreement which would in those circumstances have been subject to such registration by virtue of the order, and

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- (b) any reference to such a recommendation as is mentioned in section 6(7) of that Act included a reference to such a recommendation as is mentioned in subsection (3) or subsection (4) of this section.

113 Matters to be treated as equivalent to restrictions for purposes of s.107

- (1) For the purposes of any order made under section 107 of this Act, and for the purposes of the operation of the relevant enactments in relation to any such order, an agreement which—
 - (a) confers privileges or benefits only upon such parties as comply with conditions as to any such matters as are mentioned in subsection (3) of that section, or
 - (b) imposes obligations upon parties who do not comply with such conditions, shall be treated as an agreement under which restrictions are accepted by each of the parties in respect of those matters.
- (2) Without prejudice to the preceding subsection, an obligation on the part of any party to an agreement to make payments calculated by reference to the extent to which, or the scale on which,—
 - (a) any designated services are made available or supplied by him, or
 - (b) any services are obtained by him for the purpose of making available or supplying any designated services,
 if the payments are calculated, or calculated at an increased rate, in respect of an extent or scale exceeding an extent or scale specified in or ascertained in accordance with the agreement, shall, subject to the next following subsection, be treated for the purposes mentioned in the preceding subsection as a restriction in respect of the extent or scale of the designated services to be made available or supplied.
- (3) Subsection (2) of this section shall not apply to any obligation on the part of any person to make payments to an association of which he is a member, if it is such an association as is mentioned in section 112(1) of this Act and the payments are to consist only of bona fide subscriptions for membership of the association.

114 Provisions to be disregarded

- (1) The following provisions of this section shall have effect for the purpose of determining whether an agreement is one to which Part I of the Act of 1956 applies by virtue of an order made under section 107 or section 108 of this Act.
- (2) Subject to subsections (3) and (4) of this section, no account shall for that purpose be taken of any term which relates exclusively to the services supplied in pursuance of the agreement in question.
- (3) Where the order referred to in subsection (1) of this section is an order under section 107 of this Act, and any of the restrictions accepted as mentioned in subsection (1)(b) of that section are accepted as between two or more persons by whom designated services are to be supplied, or as between two or more persons for whom designated services are to be supplied, in pursuance of the agreement, subsection (2) of this section shall not apply to any term of the agreement which imposes those restrictions unless those restrictions are accepted in pursuance of a previous agreement in respect of which particulars have been registered under Part I of the Act of 1956 as applied by this Part of this Act.

- (4) Where the order referred to in subsection (1) of this section is an order made under section 108 of this Act, and the term referred to in subsection (2) of this section is a term by which provision is made for the furnishing of information as mentioned in subsection (1)(b) of that section by two or more persons by whom designated services are to be supplied, or by two or more persons for whom designated services are to be supplied, in pursuance of the agreement, subsection (2) of this section shall not apply to that term unless it was included in the agreement in pursuance of a previous agreement of which particulars have been registered under Part I of the Act of 1956 as applied by this Part of this Act.
- (5) For the purpose mentioned in subsection (1) of this section no account shall be taken of any term by which the parties or any of them agree to comply with or apply, in respect of making available, supplying or obtaining any designated services,—
- (a) any standards (whether being standards of performance in the provision of the services or standards of dimension, design, quality or performance in respect of goods used in providing them) which are either standards approved for the time being by the British Standards Institution or standards prescribed or adopted by an association or other body and for the time being approved by an order made by the Secretary of State by statutory instrument, or
 - (b) any arrangements either approved by the British Standards Institution, or prescribed or adopted and approved by an order of the Secretary of State, as mentioned in the preceding paragraph, as to the provision of information or advice to persons for whom designated services are supplied or agreed to be supplied.
- (6) For the purpose mentioned in subsection (1) of this section no account shall be taken of any restriction which affects or relates to any of the matters mentioned in section 7(4) of the Act of 1956 (which relates to employment and to terms and conditions of employment) or of any provision for or in relation to the furnishing of information with respect to any of those matters.

115 Excepted agreements

- (1) Subsection (1) of section 8 of the Act of 1956 (which relates to agreements expressly authorised by or under an enactment) and subsection (2) of that section (which relates to agreements constituting or forming part of a scheme certified under provisions of the Income and Corporation Taxes Act 1970 relating to schemes for rationalising industry) shall have effect in relation to any agreement notwithstanding any order under section 107 or section 108 of this Act.
- (2) Part I of the Act of 1956 shall not apply by virtue of any such order to an agreement to which there are no parties other than one person who agrees to supply services and another person for whom they are to be supplied, where neither of those persons is, in relation to that order, such an association as is mentioned in section 112(1) of this Act and, except in respect of the supply of services of the same description to, or obtaining services of the same description from, other persons,—
- (a) in the case of an order under section 107 of this Act, no restrictions are accepted under the agreement by those parties in respect of matters specified in the order for the purposes of subsection (1)(b) of that section, or
 - (b) in the case of an order under section 108 of this Act, no provision is made under the agreement for or in relation to the furnishing of information with

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- respect to matters specified in the order for the purpose of subsection (1)(b) of that section.
- (3) Subject to the next following subsection, Part I of the Act of 1956 shall not apply by virtue of any such order to any licence granted by the proprietor or any licensee of a patent or by a person who has applied for a patent, to any assignment of a patent or of the right to apply for a patent, or to any agreement for such a licence or assignment, if it is a licence, assignment or agreement under which—
- (a) in the case of an order under section 107 of this Act, no restrictions in respect of matters specified in the order for the purposes of subsection (1)(b) of that section are accepted except in respect of the invention to which the patent or application for a patent relates, or
 - (b) in the case of an order under section 108 of this Act, no provision for or in relation to the furnishing of information with respect to matters specified in the order for the purposes of subsection (1)(b) of that section is made except in respect of that invention.
- (4) No licence, assignment or agreement shall by virtue of subsection (3) of this section be precluded from being an agreement to which Part I of the Act of 1956 applies if—
- (a) in the case of an agreement, it is a patent or design pooling agreement, or
 - (b) whether being a licence, assignment or agreement, it is a licence, assignment or agreement granted or made in pursuance (directly or indirectly) of a patent or design pooling agreement.
- (5) Part I of the Act of 1956 shall not apply by virtue of any order under section 107 of this Act to an agreement between two persons, neither of whom is such an association as is mentioned in section 112(1) of this Act, for the exchange of information relating to techniques or processes to be applied in the provision of designated services where—
- (a) no other person is party to the agreement, and
 - (b) all such restrictions as are mentioned in section 107(1)(b) of this Act which are accepted under the agreement relate exclusively to the form or manner in which services incorporating those techniques or processes are to be made available or supplied.
- (6) Part I of the Act of 1956 shall not apply by virtue of any such order to any agreement where—
- (a) in the case of an order under section 107 of this Act, all such restrictions as are accepted under the agreement in respect of matters specified in the order for the purposes of subsection (1)(b) of that section (or, in a case falling within subsection (3) of section 112 of this Act, all the recommendations referred to in that subsection) relate to the supply of services outside the United Kingdom or to the supply of services to persons or in relation to property outside the United Kingdom, or
 - (b) in the case of an order under section 108 of this Act, all such provision as is made under the agreement for or in relation to the furnishing of information with respect to matters specified in the order for the purposes of subsection (1)(b) of that section (or, in a case falling within subsection (4) of section 112 of this Act, every such recommendation as is referred to in that subsection) relates to the supply of services as mentioned in the preceding paragraph.
- (7) Any reference in this section to restrictions accepted in respect of matters specified in an order under section 107 of this Act for the purposes of subsection (1)(b) of that section, or to provision made for or in relation to the furnishing of information with

respect to matters specified in an order under section 108 of this Act for the purposes of subsection (1)(b) of that section, shall be construed, in relation to any agreement, as not including anything of which, by virtue of section 114 of this Act, account cannot be taken for the purpose mentioned in subsection (1) of that section.

- (8) Subsections (2) to (4) of section 8A of the Act of 1956 shall have effect for the purposes of this section as they have effect for the purposes of that section.
- (9) In this section " property" means property of any description, whether movable or immovable.

116 Application of provisions of Acts of 1956 and 1968

- (1) Subject to the following provisions of this section, sections 9 to 23 of the Act of 1956 shall have effect in relation to agreements to which Part I of that Act applies by virtue of an order under section 107 or section 108 of this Act as they have effect in relation to agreements to which Part I of that Act applies apart from any such order.
- (2) For the purposes of the application of those sections in relation to an agreement to which Part I of that Act applies by virtue of such an order, such of those sections as are specified in the first column of Part I of Schedule 10 to this Act shall have effect subject to the modifications specified in relation to them in the second column of that Part of that Schedule.
- (3) For the purposes of the application of section 21 of that Act in relation to an agreement to which Part I of that Act applies by virtue of such an order, that section shall have effect subject to the following modifications, that is to say—
 - (a) with the substitution, for paragraphs (a) and (b) of subsection (1), of the following paragraphs:—
 - “(a) that the restriction is reasonably necessary, having regard to the character of the services to which it applies, to protect the public against injury (whether to persons or to premises) in connection with the use of those services or in connection with the consumption, installation or use of goods in relation to which those services are supplied;
 - (b) that the removal of the restriction would deny to the public as users of any services, or as purchasers, consumers or users of any goods in relation to which any services are supplied, other specific and substantial benefits or advantages enjoyed or likely to be enjoyed by them as such, whether by virtue of the restriction itself or of any arrangements or operations resulting therefrom”;
 - (b) with the substitution, for paragraph (d) of subsection (1), of the following paragraph:—
 - “(d) that the restriction is reasonably necessary to enable the persons party to the agreement to negotiate fair terms for the supply of services to, or for obtaining services from, any one person not party thereto who controls a preponderant part of the trade or business of supplying such services, or for the supply of services to any person not party to the agreement and not carrying on such a trade or business who, either alone or in combination with any other such person, controls a preponderant part of the market for such services”; and

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- (c) with the substitution, in the provisions of that subsection after paragraph (h), for the words " (being purchasers, consumers or users of goods produced or sold by such parties, or persons engaged or seeking to become engaged in the trade or business of selling such goods or of producing or selling similar goods) " of the words " (being users of services supplied by such parties, or persons engaged or seeking to become engaged in any business of supplying such services or of making available or supplying similar services, or being purchasers, consumers or users of goods in relation to which any such services or similar services are supplied) ".
- (4) Sections 1 to 3 and sections 6 and 7 of the Act of 1968 shall have effect in relation to agreements to which Part I of the Act of 1956 applies by virtue of an order under section 107 or section 108 of this Act, but, in the case of such of those sections as are specified in the first column of Part II of Schedule 10 to this Act, shall have effect in relation to such agreements subject to the modifications specified in relation to them in the second column of that Part of that Schedule.
- (5) In section 9 of the Act of 1968 any reference to particulars entered or filed in the register pursuant to Part I of the Act of 1956 shall be construed as including a reference to particulars so entered or filed pursuant to any provisions of Part I of the Act of 1956 as applied by subsection (1) of this section.
- (6) Any reference in this section to any provisions of the Act of 1956 shall be construed as including a reference to those provisions as applied by section 5(2) of the Act of 1968 (which relates to information agreements); and the modifications of section 21 of the Act of 1956 made by subsection (3) of this section shall be construed accordingly.
- (7) Where by virtue of subsection (2) or subsection (4) of this section any provisions of the Act of 1956 or of the Act of 1968 are to have effect subject to modifications specified in Schedule 10 to this Act for the purposes of their application to an agreement to which Part I of the Act of 1956 applies by virtue of an order under section 107 or section 108 of this Act—
 - (a) that order shall be taken to be " the relevant order " referred to in those modifications, and
 - (b) in those modifications " the Act of 1973 " means this Act and " services brought under control by the relevant order" means services of the class described in that order in accordance with section 107(1) or section 108(1) of this Act.

117 Interpretation of Part X and Schedule 10

- (1) In this Part of this Act, and in the modifications made by it, " services " does not include the application to goods of any process of manufacture or any services rendered to an employer under a contract of employment, but, with those exceptions, includes engagements (whether professional or other) which for gain or reward are undertaken and performed for any matter other than the production or supply of goods, and any reference to the supply of services or to supplying, obtaining or offering services or to making services available shall be construed accordingly.
- (2) In this Part of this Act and in the modifications made by it " business " includes a professional practice.
- (3) Subsection (3) of section' 6 (which relates to the meaning of " agreement" and " restriction ") and subsections (1) to (3) of section 36 (interpretation) of the Act of

1956 shall have effect for the purposes of this Part of this Act and of the modifications made by it.

- (4) For the purposes of this Part of this Act any two or more interconnected bodies corporate, or any two or more individuals carrying on business in partnership with each other, shall be treated as a single person.
- (5) In this section any reference to the modifications made by this Part of this Act is a reference to any provisions which by virtue of section 116 of this Act (whether they are provisions set out in that section or in Schedule 10 to this Act) are to be treated, for purposes mentioned in that section, as substituted for provisions of the Act of 1956 or of the Act of 1968.