



Fair Trading Act 1973

1973 CHAPTER 41

PART III

ADDITIONAL FUNCTIONS OF DIRECTOR FOR PROTECTION OF CONSUMERS

38 Provisions as to persons consenting to or conniving at courses of conduct detrimental to interests of consumers

- (1) The provisions of this section shall have effect where it appears to the Director—
- (a) that a body corporate has in the course of a business carried on by that body persisted in such a course of conduct as is mentioned in section 34(1) of this Act, and
 - (b) that the course of conduct in question has been so persisted in with the consent or connivance of a person (in this and the next following section referred to as "the accessory") who at a material time fulfilled the relevant conditions in relation to that body.
- (2) For the purposes of this section a person shall be taken to fulfil the relevant conditions in relation to a body corporate at any time if that person either—
- (a) is at that time a director, manager, secretary or other similar officer of the body corporate or a person purporting to act in any such capacity, or
 - (b) whether being an individual or a body of persons, corporate or unincorporate, has at that time a controlling interest in that body corporate.
- (3) If, in the circumstances specified in subsection (1) of this section,—
- (a) the Director has used his best endeavours to obtain from the accessory such an assurance as is mentioned in the next following subsection and has been unable to obtain such an assurance from him, or
 - (b) the accessory has given such an assurance to the Director and it appears to the Director that he has failed to observe it,

the Director may bring proceedings against the accessory before the Restrictive Practices Court.

Status: This is the original version (as it was originally enacted).

- (4) The assurance referred to in subsection (3) of this section is a satisfactory written assurance given by the accessory that he will refrain—
- (a) from continuing to consent to or connive at the course of conduct in question;
 - (b) from carrying on any similar course of conduct in the course of any business which may at any time be carried on by him ; and
 - (c) from consenting to or conniving at the carrying on of any such course of conduct by any other body corporate in relation to which, at any time when that course of conduct is carried on, he fulfils the relevant conditions.
- (5) Proceedings may be brought against the accessory under this section whether or not any proceedings are brought under section 35 of this Act against the body corporate referred to in subsection (1) of this section.
- (6) Section 36 of this Act shall have effect in relation to proceedings under this section as it has effect in relation to proceedings under section 35 of this Act.
- (7) For the purposes of this section a person (whether being an individual or a body of persons, corporate or unincorporate) has a controlling interest in a body corporate if (but only if) that person can, directly or indirectly, determine the manner in which one-half of the votes which could be cast at a general meeting of the body corporate are to be cast on matters, and in circumstances, not of such a description as to bring into play any special voting rights or restrictions on voting rights.