



Competition Act 1980

1980 CHAPTER 21

Control of anti-competitive practices

2 Anti-competitive practices

- (1) The provisions of sections 3 to 10 below have effect with a view to the control of anti-competitive practices, and for the purposes of this Act a person engages in an anti-competitive practice if, in the course of business, that person pursues a course of conduct which, of itself or when taken together with a course of conduct pursued by persons associated with him, has or is intended to have or is likely to have the effect of restricting, distorting or preventing competition in connection with the production, supply or acquisition of goods in the United Kingdom or any part of it or the supply or securing of services in the United Kingdom or any part of it.
- (2) To the extent that a course of conduct is required or envisaged by a material provision of, or a material recommendation in, an agreement which is registered or subject to registration under the Restrictive Trade Practices Act 1976, that course of conduct shall not be regarded as constituting an anti-competitive practice for the purposes of this Act; and for the purposes of this subsection—
 - (a) a provision of an agreement is a material provision if, by virtue of the existence of the provision (taken alone or together with other provisions) the agreement is one to which that Act applies ; and
 - (b) a recommendation is a material recommendation in an agreement if it is one to which a term implied into the agreement by any provision of section 8 or section 16 of that Act (terms implied into trade association agreements and services supply association agreements) applies.
- (3) For the purposes of this Act, a course of conduct does not constitute an anti-competitive practice if it is excluded for those purposes by an order made by the Secretary of State; and any such order may limit the exclusion conferred by it by reference to a particular class of persons or to particular circumstances.
- (4) Without prejudice to the generality of subsection (3) above, an order under that subsection may exclude the conduct of any person by reference to the size of his

business, whether expressed by reference to turnover, as defined in the order, or to his share of a market, as so defined, or in any other manner.

- (5) For the purpose only of enabling the Director General of Fair Trading (in this Act referred to as "the Director") to establish whether any person's course of conduct is excluded by virtue of any such provision of an order under subsection (3) above as is referred to in subsection (4) above, the order may provide for the application, with appropriate modifications, of any provisions of sections 44 and 46 of the Fair Trading Act 1973 (power of Director to require information).
- (6) For the purposes of this section any two persons are to be treated as associated—
- (a) if one is a body corporate of which the other directly or indirectly has control either alone or with other members of a group of interconnected bodies corporate of which he is a member, or
 - (b) if both are bodies corporate of which one and the same person or group of persons directly or indirectly has control;
- and for the purposes of this subsection a person or group of persons able directly or indirectly to control or materially to influence the policy of a body corporate, but without having a controlling interest in that body corporate, may be treated as having control of it.
- (7) In this section "the supply or securing of services" includes providing a place or securing that a place is provided other than on a highway, or in Scotland a public right of way, for the parking of a motor vehicle (within the meaning of the Road Traffic Act 1972).
- (8) For the purposes of this Act any question whether, by pursuing any course of conduct in connection with the acquisition of goods or the securing of services by it, a local authority is engaging in an anti-competitive practice shall be determined as if the words "in the course of business" were omitted from subsection (1) above; and in this subsection "local authority" means—
- (a) in England and Wales, a local authority within the meaning of the Local Government Act 1972, the Common Council of the City of London or the Council of the Isles of Scilly,
 - (b) in Scotland, a local authority within the meaning of the Local Government (Scotland) Act 1973, and
 - (c) in Northern Ireland, a district council established under the Local Government Act (Northern Ireland) 1972.

3 Preliminary investigation by Director of possible anticompetitive practice

- (1) If it appears to the Director that any person has been or is pursuing a course of conduct which may amount to an anti-competitive practice, the Director may in accordance with this section carry out an investigation with a view to establishing whether that person has been or is pursuing a course of conduct which does amount to such a practice.
- (2) Before carrying out an investigation under this section, the Director shall—
- (a) give to the Secretary of State and the person or persons whose conduct is to be investigated notice of the proposed investigation, together with an indication of the matters to be investigated, the person or persons concerned and the goods or services to which the investigation is to relate; and

- (b) arrange for notice of the proposed investigation, together with an indication of the matters to be investigated, the person or persons concerned and the goods or services to which the investigation is to relate, to be published in such manner as the Director considers most suitable for bringing the proposed investigation to the attention of any other persons who, in the opinion of the Director, would be affected by or be likely to have an interest in the investigation.
- (3) The Secretary of State may by regulations prescribe the manner in which any notice is to be given under subsection (2) above, and the evidence which is to be sufficient evidence of its having been given, and of its contents and authenticity.
- (4) Subject to the following provisions of this section, where notice of a proposed investigation has been given in accordance with paragraph (a) and published in accordance with paragraph (b) of subsection (2) above, the Director shall proceed with the investigation as expeditiously as possible.
- (5) If, before the end of the period of two weeks beginning with the day on which the Secretary of State receives notice of a proposed investigation under paragraph (a) of subsection (2) above, the Secretary of State directs the Director not to proceed with the investigation the Director shall take no further action under this section with respect to the matters referred to in the notice ; but nothing in this subsection shall prevent the Director from proceeding with a subsequent investigation, notwithstanding that it relates wholly or partly to the same matters.
- (6) Where the Secretary of State gives a direction under subsection (5) above, he shall—
 - (a) give notice of the direction to the person or persons whose conduct was to be investigated; and
 - (b) arrange for the direction to be published in such manner as he considers most suitable for bringing it to the attention of any other person who, in his opinion, would have been affected by, or likely to have had an interest in, the direction.
- (7) For the purposes of an investigation under this section the Director may, by notice in writing signed by him—
 - (a) require any person to produce, at a time and place specified in the notice, to the Director or to any person appointed by him 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
 - (b) require any person carrying on any business to furnish to the Director 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;

but no person shall be compelled for the purpose of any such investigation to produce any document which he could not be compelled to produce in civil proceedings before the High Court or, in Scotland, the Court of Session 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.
- (8) Subsections (5) to (8) of section 85 of the Fair Trading Act 1973 (enforcement provisions relating to notices under subsection (1) of that section requiring production of documents etc.) shall apply in relation to a notice under subsection (7) above as they apply in relation to a notice under subsection (1) of that section.

- (9) At any time before the completion of an investigation under this section the Director may, with the consent of the Secretary of State, determine not to proceed with the investigation and, in that event, he shall—
- (a) give notice of his determination to the person or persons whose conduct was being investigated; and
 - (b) arrange for the determination to be published in such manner as he considers most suitable for bringing it to the attention of any other person who, in his opinion, would have been affected by, or likely to have had an interest in, the investigation.
- (10) As soon as practicable after the completion of an investigation under this section the Director shall, in such manner as he considers appropriate, publish a report stating, with reasons, whether in his opinion any course of conduct described in the report constituted or constitutes an anti-competitive practice and, if so—
- (a) specifying the person or persons concerned and the goods or services in question ; and
 - (b) stating, with reasons, whether he considers that it is appropriate for him to make a reference under section 5 below.

4 Undertakings in consequence of Director's reports

- (1) Where a report is published under section 3 above stating, in accordance with subsection (10)(b) of that section, that it is appropriate for the Director to make a reference under section 5 below, the Director shall consider any representations in writing which are made to him by a person specified in the report as a person who was or is engaged in an anti-competitive practice and which contain proposals as to what should be done in consequence of the conclusions of the report so far as they relate to that person.
- (2) Any such representations may include an undertaking by which the person who makes the representations agrees to be bound, if the undertaking is accepted by the Director, for a period specified in the representations.
- (3) At any time before the Director makes a reference under section 5 below in relation to a report under section 3 above, the Director may, by notice given to the person concerned, accept an undertaking which is offered by that person by reference to that report.
- (4) It shall be the duty of the Director—
 - (a) to arrange for any undertaking accepted by him under this section to be published in such manner as appears to him to be appropriate,
 - (b) to keep under review the carrying out of any such undertaking and from time to time to consider whether, by reason of any change of circumstances, the undertaking is no longer appropriate and either the person concerned can be released from the undertaking or the undertaking needs to be varied or superseded by a new undertaking, and
 - (c) if it appears to him that the person by whom an undertaking was given has failed to carry it out, to give that person notice of that fact.
- (5) If at any time the Director concludes under subsection (4)(b) above—
 - (a) that any person can be released from an undertaking, or
 - (b) that an undertaking needs to be varied or superseded by a new undertaking,

he shall give notice to that person stating that he is so released, or specifying the variation or, as the case may be, the new undertaking which in his opinion is required.

- (6) Where a notice is served on any person under subsection (5) above specifying a variation or new undertaking, the notice shall state the change of circumstances by virtue of which the notice is served.
- (7) Subject to subsection (8) below, the Director may at any time, by notice given to the person concerned—
 - (a) agree to the continuation of an undertaking in relation to which he has given notice under subsection (5) above specifying a variation or new undertaking, or
 - (b) accept a new or varied undertaking which is offered by that person as a result of such a notice.
- (8) If the Director makes a reference under section 5 below in relation to a notice under subsection (5) above, he shall not, after the reference has been made, agree to the continuation of the undertaking in relation to which that notice was given or accept a new or varied undertaking which is offered as a result of that notice.
- (9) The Secretary of State may by regulations prescribe the manner in which any notice is to be given under this section, and the evidence which is to be sufficient evidence of its having been given, and of its contents and authenticity.

5 Competition references

- (1) In any case where—
 - (a) a report has been published under section 3 above stating, in accordance with subsection (10) (b) of that section, that it is appropriate for the Director to make a reference under this section and the Director has not accepted from each of the persons specified in the relevant report such undertaking or undertakings as, in his opinion, covers or cover every course of conduct which is described in the report as constituting an anti-competitive practice, or
 - (b) the Director has given notice to any person under section 4(4)(c) above with respect to an undertaking given by that person, or
 - (c) the Director has given notice to any person under section 4(5) above specifying either a variation of an undertaking or a new undertaking which is required and has neither accepted a new or varied undertaking from that person nor agreed upon the continuation of the original undertaking,then, subject to the following provisions of this section, the Director may make a reference under this section to the Monopolies and Mergers Commission (in the following provisions of this Act referred to as a "competition reference").
- (2) In this section a competition reference is referred to—
 - (a) as a "report reference" if it is made by virtue of subsection (1)(a) above ; and
 - (b) as a "notice reference" if it is made by virtue of subsection (1)(b) or subsection (1)(c) above.
- (3) No competition reference may be made within the period of four weeks beginning with the relevant date nor, subject to subsection (4) below, may such a reference be made after the expiry of the period of eight weeks beginning on that date; and in this subsection "the relevant date" means—

- (a) in the case of a report reference, the date on which was first published, in accordance with section 3(10) above, the report of the Director to which the reference relates; and
 - (b) in the case of a notice reference, the date on which notice was given as mentioned in subsection (1)(b) or, as the case may be, subsection (1)(c) above.
- (4) If the Secretary of State so directs, subsection (3) above shall have effect in relation to a competition reference of a description specified in the direction as if for the period of eight weeks specified in that subsection there were substituted such longer period not exceeding twelve weeks as may be specified in the direction; but the Secretary of State shall not give a direction under this subsection unless, upon representations made to him by the Director, it appears to the Secretary of State that it would be appropriate in the case in question to allow the Director a longer period in which to negotiate one or more undertakings under section 4 above.
- (5) In this section and section 6 below " the relevant report" means—
- (a) in the case of a report reference, the report referred to in subsection (1)(a) above ;
 - (b) in the case of a notice reference made by virtue of subsection (1)(b) above, the report by reference to which the person to whom the notice was given under section 4(4)(c) above gave the undertaking to which that notice refers; and
 - (c) in the case of a notice reference made by virtue of subsection (1)(c) above, the report by reference to which the person to whom the notice was given under section 4(5) above gave the undertaking which the Director proposes should be varied or superseded.

6 Scope of competition references

- (1) In a competition reference the Director shall specify—
- (a) the person or persons whose activities are to be investigated by the Commission (in this section referred to as the person or persons " subject to the reference "),
 - (b) the goods or services to which the investigation is to extend, and
 - (c) the course or courses of conduct to be investigated.
- (2) The Director may not under subsection (1) above specify in a competition reference any person who is not specified in the relevant report nor any goods or services which are not so specified nor any course of conduct which is not described in that report but, subject to that and subsection (3) below, the Director may under subsection (1) above specify such person or persons, such goods or services and such course or courses of conduct as he considers appropriate.
- (3) To the extent that the Director is of the opinion that an undertaking accepted by him under section 4 above covers the activities of any person specified in the relevant report, or any goods or services so specified, or any course of conduct described in that report, the Director shall exclude that person, those goods or services or, as the case may require, that course of conduct from the reference.
- (4) In subsection (3) above the reference to an undertaking accepted by the Director under section 4 above does not include—
- (a) an undertaking in respect of which notice has been served under subsection (4) (c) of that section, or

- (b) an undertaking in respect of which the Director has given notice under subsection (5)(b) of that section specifying a new or varied undertaking, unless he has agreed upon its continuation with or without variation.
- (5) Subject to subsection (6) below, on a competition reference the Commission shall investigate and report on the following questions, namely—
- (a) whether any person subject to the reference was at any time during the period of twelve months ending on the date of the reference pursuing, in relation to goods or services specified in the reference, a course of conduct so specified or any other course of conduct which appears to be similar in form and effect to the one so specified; and
 - (b) whether, by pursuing any such course of conduct, a person subject to the reference was at any time during that period engaging in an anti-competitive practice; and
 - (c) whether, if any person was so engaging in an anti competitive practice, the practice operated or might be expected to operate against the public interest.
- (6) The Director may at any time, by notice given to the Commission, restrict the scope of a competition reference by excluding from the reference—
- (a) some or all of the activities of any person subject to the reference,
 - (b) any goods or services specified in the reference, or
 - (c) any course of conduct so specified,
- and, subject to section 7 below, on the receipt of such notice the Commission shall discontinue their investigation so far as it relates to any matter so excluded and shall make no reference to any such matter in their report.

7 Supplementary provisions as to competition references

- (1) On making a competition reference or on varying such a reference under section 6(6) above the Director shall send a copy of the reference or, as the case may be, the variation to the Secretary of State.
- (2) If, before the end of the period of two weeks beginning with the day on which the Secretary of State receives a copy of a competition reference under subsection (1) above, 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 paragraph (a) above shall prevent the Commission from proceeding with a subsequent competition reference, notwithstanding that it relates wholly or partly to the same matters.
- (3) If, before the end of the period of two weeks beginning with the day on which the Secretary of State receives a copy of a variation of a competition reference under subsection (1) above, 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 paragraph (a) above shall prevent the Commission from giving effect to any subsequent variation, notwithstanding that it relates wholly or partly to the matters to which that variation related.

- (4) On making a competition reference or on varying such a reference under section 6(6) above the Director shall arrange for the reference or, as the case may be, the variation to be published in such manner as he considers most suitable for bringing it to the attention of persons who, in his opinion, would be affected by it or be likely to have an interest in it.
- (5) Where the Secretary of State gives a direction under subsection (2) or subsection (3) above, the Secretary of State shall arrange for the direction to be published in such manner as he considers most suitable for bringing it to the attention of persons who, in his opinion, would have been affected by, or likely to have had an interest in, the reference or variation to which the direction relates.
- (6) Sections 70 (time limit for report on merger reference), 84 (public interest) and 85 (attendance of witnesses and production of documents) of the Fair Trading Act 1973 and Part II of Schedule 3 to that Act (performance of functions of Commission) shall apply in relation to competition references as if—
 - (a) the functions of the Commission in relation to those references were functions under that Act;
 - (b) the expression "merger reference" included a competition reference;
 - (c) in paragraph 11 of that Schedule the reference to section 71 of that Act were a reference to section 6(6) above; and
 - (d) in paragraph 16(2) of that Schedule the reference to section 56 of that Act were a reference to sections 9 and 10 below.

8 Conclusions and reports of the Commission

- (1) A report of the Commission on a competition reference shall be made to the Secretary of State.
- (2) Subject to section 6(6) above and subsection (3) below, a report on a competition reference shall state, with reasons, the conclusions of the Commission with respect to the following matters—
 - (a) whether any person whose activities were investigated was at any time during the period of twelve months referred to in paragraph (a) of subsection (5) of section 6 above pursuing any such course of conduct as is referred to in that paragraph ; and
 - (b) if so, whether by pursuing such a course of conduct any such person was at any time during that period engaging in an anti-competitive practice; and
 - (c) if so, whether that anti-competitive practice operated or might be expected to operate against the public interest; and
 - (d) if so, what are, or are likely to be, the effects adverse to the public interest.
- (3) If, on a competition reference, the Commission conclude that any person was pursuing such a course of conduct as is referred to in section 6(5)(a) above but that, by virtue of section 2(2) above, that course of conduct does not, in whole or in part, constitute an anti-competitive practice, the Commission shall state their conclusion in their report and shall not make any recommendation under subsection (4) below with respect to things done as mentioned in section 2(2) above.
- (4) If, on a competition reference, the Commission conclude that any person was at any time during the period of twelve months referred to in section 6(5)(a) above engaging

in an anticompetitive practice which operated or might be expected to operate against the public interest, the Commission—

- (a) shall, as part of their investigations, consider what action (if any) should be taken for the purpose of remedying or preventing the adverse effects of that practice ; and
 - (b) may, if they think fit, include in their report recommendations as to such action including, where appropriate, action by one or more Ministers (including Northern Ireland departments) or other public authorities.
- (5) A copy of every report of the Commission on a competition reference shall be transmitted by the Commission to the Director; and the Secretary of State shall take account of any advice given to him by the Director with respect to any such report.

9 Undertakings following report on competition reference

- (1) In any case where—
- (a) the report of the Commission on a competition reference concludes that any person specified in the report was engaging in an anti-competitive practice which operated or might be expected to operate against the public interest, and
 - (b) it appears to the Secretary of State that the effects of that practice which are adverse to the public interest might be remedied or prevented if that person or any other person specified in the report took or refrained from taking any action,

the Secretary of State may by notice in writing request the Director to seek to obtain from the person or, as the case may be, each of the persons specified in the notice an undertaking to take or refrain from taking any action with a view to remedying or preventing those adverse effects.

- (2) Where the Secretary of State makes a request under subsection (1) above—
- (a) he shall at the same time send a copy of the notice by which the request is made to the person or, as the case may be, each of the persons from whom an undertaking is to be sought; and
 - (b) it shall be the duty of the Director to seek to obtain an undertaking or undertakings of the description requested.

- (3) In any case where—
- (a) the Director is satisfied that a person from whom he has been requested to seek to obtain an undertaking is unlikely to give a suitable undertaking within a reasonable time, or
 - (b) having allowed such time as in his opinion is reasonable for the purpose, he is satisfied that a suitable undertaking has not been given by the person in question,

the Director shall give such advice to the Secretary of State as he may think proper in the circumstances.

- (4) Where, following a request under subsection (1) above, an undertaking has been accepted by the Director, it shall be his duty—
- (a) to give a copy of the undertaking to the Secretary of State;
 - (b) to arrange for the undertaking to be published in such manner as appears to him to be appropriate;
 - (c) to keep under review the carrying out of the undertaking and from time to time to consider whether, by reason of any change of circumstances, the

undertaking is no longer appropriate and either the person concerned can be released from the undertaking or the undertaking needs to be varied or to be superseded by a new undertaking ; and

- (d) if it appears to him that any person can be so released or that an undertaking has not been or is not being fulfilled, or needs to be varied or superseded, to give such advice to the Secretary of State as he may think proper in the circumstances.

- (5) If, following advice from the Director that a person can be released from an undertaking, the Secretary of State considers that it is appropriate for the Director to release him from it—

- (a) the Secretary of State shall request the Director to do so, and
- (b) the Director shall give the person concerned notice that he is released from the undertaking ;

and regulations under subsection (9) of section 4 above shall apply in relation to such a notice as they apply to a notice under subsection (5) of that section.

- (6) The Secretary of State shall take account of any advice given to him by the Director under this section (including advice as to the exercise by the Secretary of State of any of his powers under this Act).

10 Orders following report on competition reference

- (1) If, in any case where the report of the Commission on a competition reference concludes that any person specified in the report was engaged in an anti-competitive practice which operated or might be expected to operate against the public interest—

- (a) the Secretary of State has not under section 9(1) above requested the Director to seek to obtain undertakings from one or more of the persons so specified, or
- (b) following a request under subsection (1) of section 9 above, the Director has informed the Secretary of State that he is satisfied as mentioned in paragraph (a) or paragraph (b) of subsection (3) of that section, or
- (c) the Director has informed the Secretary of State that an undertaking accepted by him under section 9 above from a person specified in the report has not been or is not being fulfilled,

the Secretary of State may, if he thinks fit, make an order under this section.

- (2) Subject to the following provisions of this section, an order under this section may do either or both of the following, that is to say—

- (a) prohibit a person named in the order from engaging in any anti-competitive practice which was specified in the report or from pursuing any other course of conduct which is similar in form and effect to that practice; and
- (b) for the purpose of remedying or preventing any adverse effects which are specified in the report as mentioned in section S(2)(d) above, exercise one or more of the powers specified in Part I of Schedule 8 to the Fair Trading Act 1973 to such extent and in such manner as the Secretary of State considers necessary for that purpose.

- (3) No order may be made by virtue of paragraph (a) of subsection (2) above in respect of any person unless he is a person specified in the Commission's report and either—

- (a) he has not given an undertaking which the Director sought to obtain from him in pursuance of a request under section 9(1) above ; or

- (b) the Director was not requested under section 9(1) above to seek to obtain an undertaking from him; or
 - (c) the Director has informed the Secretary of State that an undertaking given by him and accepted by the Director under section 9 above has not been or is not being fulfilled.
- (4) In the Fair Trading Act 1973—
- (a) section 90 (general provisions as to orders under section 56 etc.) except subsection (2),
 - (b) section 91(2) (publication of proposals to make an order),
 - (c) section 93 (enforcement of certain orders), and
 - (d) Part I of Schedule 8 (powers exercisable by orders under section 56 etc.),
- shall have effect as if any reference in those provisions to an order under section 56 of that Act included a reference to an order under this section.