



Competition Act 1998

1998 CHAPTER 41

PART I

COMPETITION

CHAPTER I

AGREEMENTS

Introduction

1 Enactments replaced

The following shall cease to have effect—

- (a) the Restrictive Practices Court Act 1976 (c. 33),
- (b) the Restrictive Trade Practices Act 1976 (c. 34),
- (c) the Resale Prices Act 1976 (c. 53), and
- (d) the Restrictive Trade Practices Act 1977 (c. 19).

The prohibition

2 Agreements etc. preventing, restricting or distorting competition

(1) Subject to section 3, agreements between undertakings, decisions by associations of undertakings or concerted practices which—

- (a) may affect trade within the United Kingdom, and
- (b) have as their object or effect the prevention, restriction or distortion of competition within the United Kingdom,

are prohibited unless they are exempt in accordance with the provisions of this Part.

(2) Subsection (1) applies, in particular, to agreements, decisions or practices which—

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- (a) directly or indirectly fix purchase or selling prices or any other trading conditions;
 - (b) limit or control production, markets, technical development or investment;
 - (c) share markets or sources of supply;
 - (d) apply dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;
 - (e) make the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.
- (3) Subsection (1) applies only if the agreement, decision or practice is, or is intended to be, implemented in the United Kingdom.
- (4) Any agreement or decision which is prohibited by subsection (1) is void.
- (5) A provision of this Part which is expressed to apply to, or in relation to, an agreement is to be read as applying equally to, or in relation to, a decision by an association of undertakings or a concerted practice (but with any necessary modifications).
- (6) Subsection (5) does not apply where the context otherwise requires.
- (7) In this section “the United Kingdom” means, in relation to an agreement which operates or is intended to operate only in a part of the United Kingdom, that part.
- (8) The prohibition imposed by subsection (1) is referred to in this Act as “the Chapter I prohibition”.

Excluded agreements

3 Excluded agreements

- (1) The Chapter I prohibition does not apply in any of the cases in which it is excluded by or as a result of—
- (a) Schedule 1 (mergers and concentrations);
 - (b) Schedule 2 (competition scrutiny under other enactments);
 - (c) Schedule 3 (planning obligations and other general exclusions); or
 - (d) Schedule 4 (professional rules).
- (2) The Secretary of State may at any time by order amend Schedule 1, with respect to the Chapter I prohibition, by—
- (a) providing for one or more additional exclusions; or
 - (b) amending or removing any provision (whether or not it has been added by an order under this subsection).
- (3) The Secretary of State may at any time by order amend Schedule 3, with respect to the Chapter I prohibition, by—
- (a) providing for one or more additional exclusions; or
 - (b) amending or removing any provision—
 - (i) added by an order under this subsection; or
 - (ii) included in paragraph 1, 2, 8 or 9 of Schedule 3.

- (4) The power under subsection (3) to provide for an additional exclusion may be exercised only if it appears to the Secretary of State that agreements which fall within the additional exclusion—
 - (a) do not in general have an adverse effect on competition, or
 - (b) are, in general, best considered under Chapter II or the Fair Trading Act 1973.
- (5) An order under subsection (2)(a) or (3)(a) may include provision (similar to that made with respect to any other exclusion provided by the relevant Schedule) for the exclusion concerned to cease to apply to a particular agreement.
- (6) Schedule 3 also gives the Secretary of State power to exclude agreements from the Chapter I prohibition in certain circumstances.

Exemptions

4 Individual exemptions

- (1) The Director may grant an exemption from the Chapter I prohibition with respect to a particular agreement if—
 - (a) a request for an exemption has been made to him under section 14 by a party to the agreement; and
 - (b) the agreement is one to which section 9 applies.
- (2) An exemption granted under this section is referred to in this Part as an individual exemption.
- (3) The exemption—
 - (a) may be granted subject to such conditions or obligations as the Director considers it appropriate to impose; and
 - (b) has effect for such period as the Director considers appropriate.
- (4) That period must be specified in the grant of the exemption.
- (5) An individual exemption may be granted so as to have effect from a date earlier than that on which it is granted.
- (6) On an application made in such way as may be specified by rules under section 51, the Director may extend the period for which an exemption has effect; but, if the rules so provide, he may do so only in specified circumstances.

5 Cancellation etc. of individual exemptions

- (1) If the Director has reasonable grounds for believing that there has been a material change of circumstance since he granted an individual exemption, he may by notice in writing—
 - (a) cancel the exemption;
 - (b) vary or remove any condition or obligation; or
 - (c) impose one or more additional conditions or obligations.
- (2) If the Director has a reasonable suspicion that the information on which he based his decision to grant an individual exemption was incomplete, false or misleading in a

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material particular, he may by notice in writing take any of the steps mentioned in subsection (1).

- (3) Breach of a condition has the effect of cancelling the exemption.
- (4) Failure to comply with an obligation allows the Director, by notice in writing, to take any of the steps mentioned in subsection (1).
- (5) Any step taken by the Director under subsection (1), (2) or (4) has effect from such time as may be specified in the notice.
- (6) If an exemption is cancelled under subsection (2) or (4), the date specified in the notice cancelling it may be earlier than the date on which the notice is given.
- (7) The Director may act under subsection (1), (2) or (4) on his own initiative or on a complaint made by any person.

6 Block exemptions

- (1) If agreements which fall within a particular category of agreement are, in the opinion of the Director, likely to be agreements to which section 9 applies, the Director may recommend that the Secretary of State make an order specifying that category for the purposes of this section.
- (2) The Secretary of State may make an order (“a block exemption order”) giving effect to such a recommendation—
 - (a) in the form in which the recommendation is made; or
 - (b) subject to such modifications as he considers appropriate.
- (3) An agreement which falls within a category specified in a block exemption order is exempt from the Chapter I prohibition.
- (4) An exemption under this section is referred to in this Part as a block exemption.
- (5) A block exemption order may impose conditions or obligations subject to which a block exemption is to have effect.
- (6) A block exemption order may provide—
 - (a) that breach of a condition imposed by the order has the effect of cancelling the block exemption in respect of an agreement;
 - (b) that if there is a failure to comply with an obligation imposed by the order, the Director may, by notice in writing, cancel the block exemption in respect of the agreement;
 - (c) that if the Director considers that a particular agreement is not one to which section 9 applies, he may cancel the block exemption in respect of that agreement.
- (7) A block exemption order may provide that the order is to cease to have effect at the end of a specified period.
- (8) In this section and section 7 “specified” means specified in a block exemption order.

7 Block exemptions: opposition

- (1) A block exemption order may provide that a party to an agreement which—

- (a) does not qualify for the block exemption created by the order, but
 - (b) satisfies specified criteria,
- may notify the Director of the agreement for the purposes of subsection (2).
- (2) An agreement which is notified under any provision included in a block exemption order by virtue of subsection (1) is to be treated, as from the end of the notice period, as falling within a category specified in a block exemption order unless the Director—
 - (a) is opposed to its being so treated; and
 - (b) gives notice in writing to the party concerned of his opposition before the end of that period.
 - (3) If the Director gives notice of his opposition under subsection (2), the notification under subsection (1) is to be treated as both notification under section 14 and as a request for an individual exemption made under subsection (3) of that section.
 - (4) In this section “notice period” means such period as may be specified with a view to giving the Director sufficient time to consider whether to oppose under subsection (2).

8 Block exemptions: procedure

- (1) Before making a recommendation under section 6(1), the Director must—
 - (a) publish details of his proposed recommendation in such a way as he thinks most suitable for bringing it to the attention of those likely to be affected; and
 - (b) consider any representations about it which are made to him.
- (2) If the Secretary of State proposes to give effect to such a recommendation subject to modifications, he must inform the Director of the proposed modifications and take into account any comments made by the Director.
- (3) If, in the opinion of the Director, it is appropriate to vary or revoke a block exemption order he may make a recommendation to that effect to the Secretary of State.
- (4) Subsection (1) also applies to any proposed recommendation under subsection (3).
- (5) Before exercising his power to vary or revoke a block exemption order (in a case where there has been no recommendation under subsection (3)), the Secretary of State must—
 - (a) inform the Director of the proposed variation or revocation; and
 - (b) take into account any comments made by the Director.
- (6) A block exemption order may provide for a block exemption to have effect from a date earlier than that on which the order is made.

9 The criteria for individual and block exemptions

This section applies to any agreement which—

- (a) contributes to—
 - (i) improving production or distribution, or
 - (ii) promoting technical or economic progress,while allowing consumers a fair share of the resulting benefit; but
- (b) does not—

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- (i) impose on the undertakings concerned restrictions which are not indispensable to the attainment of those objectives; or
- (ii) afford the undertakings concerned the possibility of eliminating competition in respect of a substantial part of the products in question.

10 Parallel exemptions

- (1) An agreement is exempt from the Chapter I prohibition if it is exempt from the Community prohibition—
 - (a) by virtue of a Regulation,
 - (b) because it has been given exemption by the Commission, or
 - (c) because it has been notified to the Commission under the appropriate opposition or objection procedure and—
 - (i) the time for opposing, or objecting to, the agreement has expired and the Commission has not opposed it; or
 - (ii) the Commission has opposed, or objected to, the agreement but has withdrawn its opposition or objection.
- (2) An agreement is exempt from the Chapter I prohibition if it does not affect trade between Member States but otherwise falls within a category of agreement which is exempt from the Community prohibition by virtue of a Regulation.
- (3) An exemption from the Chapter I prohibition under this section is referred to in this Part as a parallel exemption.
- (4) A parallel exemption—
 - (a) takes effect on the date on which the relevant exemption from the Community prohibition takes effect or, in the case of a parallel exemption under subsection (2), would take effect if the agreement in question affected trade between Member States; and
 - (b) ceases to have effect—
 - (i) if the relevant exemption from the Community prohibition ceases to have effect; or
 - (ii) on being cancelled by virtue of subsection (5) or (7).
- (5) In such circumstances and manner as may be specified in rules made under section 51, the Director may—
 - (a) impose conditions or obligations subject to which a parallel exemption is to have effect;
 - (b) vary or remove any such condition or obligation;
 - (c) impose one or more additional conditions or obligations;
 - (d) cancel the exemption.
- (6) In such circumstances as may be specified in rules made under section 51, the date from which cancellation of an exemption is to take effect may be earlier than the date on which notice of cancellation is given.
- (7) Breach of a condition imposed by the Director has the effect of cancelling the exemption.
- (8) In exercising his powers under this section, the Director may require any person who is a party to the agreement in question to give him such information as he may require.

- (9) For the purpose of this section references to an agreement being exempt from the Community prohibition are to be read as including references to the prohibition being inapplicable to the agreement by virtue of a Regulation or a decision by the Commission.
- (10) In this section—
- “the Community prohibition” means the prohibition contained in—
 - (a) paragraph 1 of Article 85;
 - (b) any corresponding provision replacing, or otherwise derived from, that provision;
 - (c) such other Regulation as the Secretary of State may by order specify; and
- “Regulation” means a Regulation adopted by the Commission or by the Council.
- (11) This section has effect in relation to the prohibition contained in paragraph 1 of Article 53 of the EEA Agreement (and the EFTA Surveillance Authority) as it has effect in relation to the Community prohibition (and the Commission) subject to any modifications which the Secretary of State may by order prescribe.

11 Exemption for certain other agreements

- (1) The fact that a ruling may be given by virtue of Article 88 of the Treaty on the question whether or not agreements of a particular kind are prohibited by Article 85 does not prevent such agreements from being subject to the Chapter I prohibition.
- (2) But the Secretary of State may by regulations make such provision as he considers appropriate for the purpose of granting an exemption from the Chapter I prohibition, in prescribed circumstances, in respect of such agreements.
- (3) An exemption from the Chapter I prohibition by virtue of regulations under this section is referred to in this Part as a section 11 exemption.

Notification

12 Requests for Director to examine agreements

- (1) Sections 13 and 14 provide for an agreement to be examined by the Director on the application of a party to the agreement who thinks that it may infringe the Chapter I prohibition.
- (2) Schedule 5 provides for the procedure to be followed—
- (a) by any person making such an application; and
 - (b) by the Director, in considering such an application.
- (3) The Secretary of State may by regulations make provision as to the application of sections 13 to 16 and Schedule 5, with such modifications (if any) as may be prescribed, in cases where the Director—
- (a) has given a direction withdrawing an exclusion; or
 - (b) is considering whether to give such a direction.

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13 Notification for guidance

- (1) A party to an agreement who applies for the agreement to be examined under this section must—
 - (a) notify the Director of the agreement; and
 - (b) apply to him for guidance.
- (2) On an application under this section, the Director may give the applicant guidance as to whether or not, in his view, the agreement is likely to infringe the Chapter I prohibition.
- (3) If the Director considers that the agreement is likely to infringe the prohibition if it is not exempt, his guidance may indicate—
 - (a) whether the agreement is likely to be exempt from the prohibition under—
 - (i) a block exemption;
 - (ii) a parallel exemption; or
 - (iii) a section 11 exemption; or
 - (b) whether he would be likely to grant the agreement an individual exemption if asked to do so.
- (4) If an agreement to which the prohibition applies has been notified to the Director under this section, no penalty is to be imposed under this Part in respect of any infringement of the prohibition by the agreement which occurs during the period—
 - (a) beginning with the date on which notification was given; and
 - (b) ending with such date as may be specified in a notice in writing given to the applicant by the Director when the application has been determined.
- (5) The date specified in a notice under subsection (4)(b) may not be earlier than the date on which the notice is given.

14 Notification for a decision

- (1) A party to an agreement who applies for the agreement to be examined under this section must—
 - (a) notify the Director of the agreement; and
 - (b) apply to him for a decision.
- (2) On an application under this section, the Director may make a decision as to—
 - (a) whether the Chapter I prohibition has been infringed; and
 - (b) if it has not been infringed, whether that is because of the effect of an exclusion or because the agreement is exempt from the prohibition.
- (3) If an agreement is notified to the Director under this section, the application may include a request for the agreement to which it relates to be granted an individual exemption.
- (4) If an agreement to which the prohibition applies has been notified to the Director under this section, no penalty is to be imposed under this Part in respect of any infringement of the prohibition by the agreement which occurs during the period—
 - (a) beginning with the date on which notification was given; and
 - (b) ending with such date as may be specified in a notice in writing given to the applicant by the Director when the application has been determined.

- (5) The date specified in a notice under subsection (4)(b) may not be earlier than the date on which the notice is given.

15 Effect of guidance

- (1) This section applies to an agreement if the Director has determined an application under section 13 by giving guidance that—
- (a) the agreement is unlikely to infringe the Chapter I prohibition, regardless of whether or not it is exempt;
 - (b) the agreement is likely to be exempt under—
 - (i) a block exemption;
 - (ii) a parallel exemption; or
 - (iii) a section 11 exemption; or
 - (c) he would be likely to grant the agreement an individual exemption if asked to do so.
- (2) The Director is to take no further action under this Part with respect to an agreement to which this section applies, unless—
- (a) he has reasonable grounds for believing that there has been a material change of circumstance since he gave his guidance;
 - (b) he has a reasonable suspicion that the information on which he based his guidance was incomplete, false or misleading in a material particular;
 - (c) one of the parties to the agreement applies to him for a decision under section 14 with respect to the agreement; or
 - (d) a complaint about the agreement has been made to him by a person who is not a party to the agreement.
- (3) No penalty may be imposed under this Part in respect of any infringement of the Chapter I prohibition by an agreement to which this section applies.
- (4) But the Director may remove the immunity given by subsection (3) if—
- (a) he takes action under this Part with respect to the agreement in one of the circumstances mentioned in subsection (2);
 - (b) he considers it likely that the agreement will infringe the prohibition; and
 - (c) he gives notice in writing to the party on whose application the guidance was given that he is removing the immunity as from the date specified in his notice.
- (5) If the Director has a reasonable suspicion that information—
- (a) on which he based his guidance, and
 - (b) which was provided to him by a party to the agreement,
- was incomplete, false or misleading in a material particular, the date specified in a notice under subsection (4)(c) may be earlier than the date on which the notice is given.

16 Effect of a decision that the Chapter I prohibition has not been infringed

- (1) This section applies to an agreement if the Director has determined an application under section 14 by making a decision that the agreement has not infringed the Chapter I prohibition.
- (2) The Director is to take no further action under this Part with respect to the agreement unless—

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- (a) he has reasonable grounds for believing that there has been a material change of circumstance since he gave his decision; or
 - (b) he has a reasonable suspicion that the information on which he based his decision was incomplete, false or misleading in a material particular.
- (3) No penalty may be imposed under this Part in respect of any infringement of the Chapter I prohibition by an agreement to which this section applies.
- (4) But the Director may remove the immunity given by subsection (3) if—
- (a) he takes action under this Part with respect to the agreement in one of the circumstances mentioned in subsection (2);
 - (b) he considers that it is likely that the agreement will infringe the prohibition; and
 - (c) he gives notice in writing to the party on whose application the decision was made that he is removing the immunity as from the date specified in his notice.
- (5) If the Director has a reasonable suspicion that information—
- (a) on which he based his decision, and
 - (b) which was provided to him by a party to the agreement,
- was incomplete, false or misleading in a material particular, the date specified in a notice under subsection (4)(c) may be earlier than the date on which the notice is given.