



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—

Status: This is the original version (as it was originally enacted).

- (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

Status: This is the original version (as it was originally enacted).

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—

Status: This is the original version (as it was originally enacted).

- (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.

Status: This is the original version (as it was originally enacted).

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—

Status: This is the original version (as it was originally enacted).

- (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.

CHAPTER II

ABUSE OF DOMINANT POSITION

Introduction

17 Enactments replaced

Sections 2 to 10 of the Competition Act 1980 (control of anti-competitive practices) shall cease to have effect.

The prohibition

18 Abuse of dominant position

- (1) Subject to section 19, any conduct on the part of one or more undertakings which amounts to the abuse of a dominant position in a market is prohibited if it may affect trade within the United Kingdom.
- (2) Conduct may, in particular, constitute such an abuse if it consists in—
- (a) directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions;
 - (b) limiting production, markets or technical development to the prejudice of consumers;
 - (c) applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;

- (d) making 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 the contracts.
- (3) In this section—
 - “dominant position” means a dominant position within the United Kingdom; and
 - “the United Kingdom” means the United Kingdom or any part of it.
- (4) The prohibition imposed by subsection (1) is referred to in this Act as “the Chapter II prohibition”.

Excluded cases

19 Excluded cases

- (1) The Chapter II 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); or
 - (b) Schedule 3 (general exclusions).
- (2) The Secretary of State may at any time by order amend Schedule 1, with respect to the Chapter II 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 paragraph 8 of Schedule 3 with respect to the Chapter II prohibition.
- (4) Schedule 3 also gives the Secretary of State power to provide that the Chapter II prohibition is not to apply in certain circumstances.

Notification

20 Requests for Director to consider conduct

- (1) Sections 21 and 22 provide for conduct of a person which that person thinks may infringe the Chapter II prohibition to be considered by the Director on the application of that person.
- (2) Schedule 6 provides for the procedure to be followed—
 - (a) by any person making an application, and
 - (b) by the Director, in considering an application.

21 Notification for guidance

- (1) A person who applies for conduct to be considered under this section must—
 - (a) notify the Director of it; and
 - (b) apply to him for guidance.

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

- (2) On an application under this section, the Director may give the applicant guidance as to whether or not, in his view, the conduct is likely to infringe the Chapter II prohibition.

22 Notification for a decision

- (1) A person who applies for conduct to be considered under this section must—
- (a) notify the Director of it; 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 II prohibition has been infringed; and
 - (b) if it has not been infringed, whether that is because of the effect of an exclusion.

23 Effect of guidance

- (1) This section applies to conduct if the Director has determined an application under section 21 by giving guidance that the conduct is unlikely to infringe the Chapter II prohibition.
- (2) The Director is to take no further action under this Part with respect to the conduct 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; or
 - (c) a complaint about the conduct has been made to him.
- (3) No penalty may be imposed under this Part in respect of any infringement of the Chapter II prohibition by conduct 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 conduct in one of the circumstances mentioned in subsection (2);
 - (b) he considers that it is likely that the conduct will infringe the prohibition; and
 - (c) he gives notice in writing to the undertaking 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 an undertaking engaging in the conduct,
- 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.

24 Effect of a decision that the Chapter II prohibition has not been infringed

- (1) This section applies to conduct if the Director has determined an application under section 22 by making a decision that the conduct has not infringed the Chapter II prohibition.

- (2) The Director is to take no further action under this Part with respect to the conduct unless—
 - (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 II prohibition by conduct 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 conduct in one of the circumstances mentioned in subsection (2);
 - (b) he considers that it is likely that the conduct will infringe the prohibition; and
 - (c) he gives notice in writing to the undertaking 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 an undertaking engaging in the conduct,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.

CHAPTER III

INVESTIGATION AND ENFORCEMENT

Investigations

25 Director’s power to investigate

The Director may conduct an investigation if there are reasonable grounds for suspecting—

- (a) that the Chapter I prohibition has been infringed; or
- (b) that the Chapter II prohibition has been infringed.

26 Powers when conducting investigations

- (1) For the purposes of an investigation under section 25, the Director may require any person to produce to him a specified document, or to provide him with specified information, which he considers relates to any matter relevant to the investigation.
- (2) The power conferred by subsection (1) is to be exercised by a notice in writing.
- (3) A notice under subsection (2) must indicate—
 - (a) the subject matter and purpose of the investigation; and
 - (b) the nature of the offences created by sections 42 to 44.
- (4) In subsection (1) “specified” means—

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

- (a) specified, or described, in the notice; or
 - (b) falling within a category which is specified, or described, in the notice.
- (5) The Director may also specify in the notice—
- (a) the time and place at which any document is to be produced or any information is to be provided;
 - (b) the manner and form in which it is to be produced or provided.
- (6) The power under this section to require a person to produce a document includes power—
- (a) if the document is produced—
 - (i) to take copies of it or extracts from it;
 - (ii) to require him, or any person who is a present or past officer of his, or is or was at any time employed by him, to provide an explanation of the document;
 - (b) if the document is not produced, to require him to state, to the best of his knowledge and belief, where it is.

27 Power to enter premises without a warrant

- (1) Any officer of the Director who is authorised in writing by the Director to do so (“an investigating officer”) may enter any premises in connection with an investigation under section 25.
- (2) No investigating officer is to enter any premises in the exercise of his powers under this section unless he has given to the occupier of the premises a written notice which—
- (a) gives at least two working days' notice of the intended entry;
 - (b) indicates the subject matter and purpose of the investigation; and
 - (c) indicates the nature of the offences created by sections 42 to 44.
- (3) Subsection (2) does not apply—
- (a) if the Director has a reasonable suspicion that the premises are, or have been, occupied by—
 - (i) a party to an agreement which he is investigating under section 25(a); or
 - (ii) an undertaking the conduct of which he is investigating under section 25(b); or
 - (b) if the investigating officer has taken all such steps as are reasonably practicable to give notice but has not been able to do so.
- (4) In a case falling within subsection (3), the power of entry conferred by subsection (1) is to be exercised by the investigating officer on production of—
- (a) evidence of his authorisation; and
 - (b) a document containing the information referred to in subsection (2)(b) and (c).
- (5) An investigating officer entering any premises under this section may—
- (a) take with him such equipment as appears to him to be necessary;
 - (b) require any person on the premises—
 - (i) to produce any document which he considers relates to any matter relevant to the investigation; and
 - (ii) if the document is produced, to provide an explanation of it;

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

- (c) require any person to state, to the best of his knowledge and belief, where any such document is to be found;
- (d) take copies of, or extracts from, any document which is produced;
- (e) require any information which is held in a computer and is accessible from the premises and which the investigating officer considers relates to any matter relevant to the investigation, to be produced in a form—
 - (i) in which it can be taken away, and
 - (ii) in which it is visible and legible.

28 Power to enter premises under a warrant

- (1) On an application made by the Director to the court in accordance with rules of court, a judge may issue a warrant if he is satisfied that—
 - (a) there are reasonable grounds for suspecting that there are on any premises documents—
 - (i) the production of which has been required under section 26 or 27; and
 - (ii) which have not been produced as required;
 - (b) there are reasonable grounds for suspecting that—
 - (i) there are on any premises documents which the Director has power under section 26 to require to be produced; and
 - (ii) if the documents were required to be produced, they would not be produced but would be concealed, removed, tampered with or destroyed; or
 - (c) an investigating officer has attempted to enter premises in the exercise of his powers under section 27 but has been unable to do so and that there are reasonable grounds for suspecting that there are on the premises documents the production of which could have been required under that section.
- (2) A warrant under this section shall authorise a named officer of the Director, and any other of his officers whom he has authorised in writing to accompany the named officer—
 - (a) to enter the premises specified in the warrant, using such force as is reasonably necessary for the purpose;
 - (b) to search the premises and take copies of, or extracts from, any document appearing to be of a kind in respect of which the application under subsection (1) was granted (“the relevant kind”);
 - (c) to take possession of any documents appearing to be of the relevant kind if—
 - (i) such action appears to be necessary for preserving the documents or preventing interference with them; or
 - (ii) it is not reasonably practicable to take copies of the documents on the premises;
 - (d) to take any other steps which appear to be necessary for the purpose mentioned in paragraph (c)(i);
 - (e) to require any person to provide an explanation of any document appearing to be of the relevant kind or to state, to the best of his knowledge and belief, where it may be found;
 - (f) to require any information which is held in a computer and is accessible from the premises and which the named officer considers relates to any matter relevant to the investigation, to be produced in a form—

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

- (i) in which it can be taken away, and
 - (ii) in which it is visible and legible.
- (3) If, in the case of a warrant under subsection (1)(b), the judge is satisfied that it is reasonable to suspect that there are also on the premises other documents relating to the investigation concerned, the warrant shall also authorise action mentioned in subsection (2) to be taken in relation to any such document.
- (4) Any person entering premises by virtue of a warrant under this section may take with him such equipment as appears to him to be necessary.
- (5) On leaving any premises which he has entered by virtue of a warrant under this section, the named officer must, if the premises are unoccupied or the occupier is temporarily absent, leave them as effectively secured as he found them.
- (6) A warrant under this section continues in force until the end of the period of one month beginning with the day on which it is issued.
- (7) Any document of which possession is taken under subsection (2)(c) may be retained for a period of three months.

29 Entry of premises under warrant: supplementary

- (1) A warrant issued under section 28 must indicate—
- (a) the subject matter and purpose of the investigation;
 - (b) the nature of the offences created by sections 42 to 44.
- (2) The powers conferred by section 28 are to be exercised on production of a warrant issued under that section.
- (3) If there is no one at the premises when the named officer proposes to execute such a warrant he must, before executing it—
- (a) take such steps as are reasonable in all the circumstances to inform the occupier of the intended entry; and
 - (b) if the occupier is informed, afford him or his legal or other representative a reasonable opportunity to be present when the warrant is executed.
- (4) If the named officer is unable to inform the occupier of the intended entry he must, when executing the warrant, leave a copy of it in a prominent place on the premises.
- (5) In this section—
- “named officer” means the officer named in the warrant; and
 - “occupier”, in relation to any premises, means a person whom the named officer reasonably believes is the occupier of those premises.

30 Privileged communications

- (1) A person shall not be required, under any provision of this Part, to produce or disclose a privileged communication.
- (2) “Privileged communication” means a communication—
- (a) between a professional legal adviser and his client, or
 - (b) made in connection with, or in contemplation of, legal proceedings and for the purposes of those proceedings,

which in proceedings in the High Court would be protected from disclosure on grounds of legal professional privilege.

- (3) In the application of this section to Scotland—
- (a) references to the High Court are to be read as references to the Court of Session; and
 - (b) the reference to legal professional privilege is to be read as a reference to confidentiality of communications.

31 Decisions following an investigation

- (1) Subsection (2) applies if, as the result of an investigation conducted under section 25, the Director proposes to make—
- (a) a decision that the Chapter I prohibition has been infringed, or
 - (b) a decision that the Chapter II prohibition has been infringed.
- (2) Before making the decision, the Director must—
- (a) give written notice to the person (or persons) likely to be affected by the proposed decision; and
 - (b) give that person (or those persons) an opportunity to make representations.

Enforcement

32 Directions in relation to agreements

- (1) If the Director has made a decision that an agreement infringes the Chapter I prohibition, he may give to such person or persons as he considers appropriate such directions as he considers appropriate to bring the infringement to an end.
- (2) Subsection (1) applies whether the Director's decision is made on his own initiative or on an application made to him under this Part.
- (3) A direction under this section may, in particular, include provision—
- (a) requiring the parties to the agreement to modify the agreement; or
 - (b) requiring them to terminate the agreement.
- (4) A direction under this section must be given in writing.

33 Directions in relation to conduct

- (1) If the Director has made a decision that conduct infringes the Chapter II prohibition, he may give to such person or persons as he considers appropriate such directions as he considers appropriate to bring the infringement to an end.
- (2) Subsection (1) applies whether the Director's decision is made on his own initiative or on an application made to him under this Part.
- (3) A direction under this section may, in particular, include provision—
- (a) requiring the person concerned to modify the conduct in question; or
 - (b) requiring him to cease that conduct.
- (4) A direction under this section must be given in writing.

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

34 Enforcement of directions

- (1) If a person fails, without reasonable excuse, to comply with a direction under section 32 or 33, the Director may apply to the court for an order—
 - (a) requiring the defaulter to make good his default within a time specified in the order; or
 - (b) if the direction related to anything to be done in the management or administration of an undertaking, requiring the undertaking or any of its officers to do it.
- (2) An order of the court under subsection (1) may provide for all of the costs of, or incidental to, the application for the order to be borne by—
 - (a) the person in default; or
 - (b) any officer of an undertaking who is responsible for the default.
- (3) In the application of subsection (2) to Scotland, the reference to “costs” is to be read as a reference to “expenses”.

35 Interim measures

- (1) This section applies if the Director—
 - (a) has a reasonable suspicion that the Chapter I prohibition has been infringed, or
 - (b) has a reasonable suspicion that the Chapter II prohibition has been infringed, but has not completed his investigation into the matter.
- (2) If the Director considers that it is necessary for him to act under this section as a matter of urgency for the purpose—
 - (a) of preventing serious, irreparable damage to a particular person or category of person, or
 - (b) of protecting the public interest,he may give such directions as he considers appropriate for that purpose.
- (3) Before giving a direction under this section, the Director must—
 - (a) give written notice to the person (or persons) to whom he proposes to give the direction; and
 - (b) give that person (or each of them) an opportunity to make representations.
- (4) A notice under subsection (3) must indicate the nature of the direction which the Director is proposing to give and his reasons for wishing to give it.
- (5) A direction given under this section has effect while subsection (1) applies, but may be replaced if the circumstances permit by a direction under section 32 or (as appropriate) section 33.
- (6) In the case of a suspected infringement of the Chapter I prohibition, sections 32(3) and 34 also apply to directions given under this section.
- (7) In the case of a suspected infringement of the Chapter II prohibition, sections 33(3) and 34 also apply to directions given under this section.

36 Penalty for infringing Chapter I or Chapter II prohibition

- (1) On making a decision that an agreement has infringed the Chapter I prohibition, the Director may require an undertaking which is a party to the agreement to pay him a penalty in respect of the infringement.
- (2) On making a decision that conduct has infringed the Chapter II prohibition, the Director may require the undertaking concerned to pay him a penalty in respect of the infringement.
- (3) The Director may impose a penalty on an undertaking under subsection (1) or (2) only if he is satisfied that the infringement has been committed intentionally or negligently by the undertaking.
- (4) Subsection (1) is subject to section 39 and does not apply if the Director is satisfied that the undertaking acted on the reasonable assumption that that section gave it immunity in respect of the agreement.
- (5) Subsection (2) is subject to section 40 and does not apply if the Director is satisfied that the undertaking acted on the reasonable assumption that that section gave it immunity in respect of the conduct.
- (6) Notice of a penalty under this section must—
 - (a) be in writing; and
 - (b) specify the date before which the penalty is required to be paid.
- (7) The date specified must not be earlier than the end of the period within which an appeal against the notice may be brought under section 46.
- (8) No penalty fixed by the Director under this section may exceed 10% of the turnover of the undertaking (determined in accordance with such provisions as may be specified in an order made by the Secretary of State).
- (9) Any sums received by the Director under this section are to be paid into the Consolidated Fund.

37 Recovery of penalties

- (1) If the specified date in a penalty notice has passed and—
 - (a) the period during which an appeal against the imposition, or amount, of the penalty may be made has expired without an appeal having been made, or
 - (b) such an appeal has been made and determined,the Director may recover from the undertaking, as a civil debt due to him, any amount payable under the penalty notice which remains outstanding.
- (2) In this section—
 - “penalty notice” means a notice given under section 36; and
 - “specified date” means the date specified in the penalty notice.

38 The appropriate level of a penalty

- (1) The Director must prepare and publish guidance as to the appropriate amount of any penalty under this Part.
- (2) The Director may at any time alter the guidance.

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

- (3) If the guidance is altered, the Director must publish it as altered.
- (4) No guidance is to be published under this section without the approval of the Secretary of State.
- (5) The Director may, after consulting the Secretary of State, choose how he publishes his guidance.
- (6) If the Director is preparing or altering guidance under this section he must consult such persons as he considers appropriate.
- (7) If the proposed guidance or alteration relates to a matter in respect of which a regulator exercises concurrent jurisdiction, those consulted must include that regulator.
- (8) When setting the amount of a penalty under this Part, the Director must have regard to the guidance for the time being in force under this section.
- (9) If a penalty or a fine has been imposed by the Commission, or by a court or other body in another Member State, in respect of an agreement or conduct, the Director, an appeal tribunal or the appropriate court must take that penalty or fine into account when setting the amount of a penalty under this Part in relation to that agreement or conduct.
- (10) In subsection (9) “the appropriate court” means—
 - (a) in relation to England and Wales, the Court of Appeal;
 - (b) in relation to Scotland, the Court of Session;
 - (c) in relation to Northern Ireland, the Court of Appeal in Northern Ireland;
 - (d) the House of Lords.

39 Limited immunity for small agreements

- (1) In this section “small agreement” means an agreement—
 - (a) which falls within a category prescribed for the purposes of this section; but
 - (b) is not a price fixing agreement.
- (2) The criteria by reference to which a category of agreement is prescribed may, in particular, include—
 - (a) the combined turnover of the parties to the agreement (determined in accordance with prescribed provisions);
 - (b) the share of the market affected by the agreement (determined in that way).
- (3) A party to a small agreement is immune from the effect of section 36(1); but the Director may withdraw that immunity under subsection (4).
- (4) If the Director has investigated a small agreement, he may make a decision withdrawing the immunity given by subsection (3) if, as a result of his investigation, he considers that the agreement is likely to infringe the Chapter I prohibition.
- (5) The Director must give each of the parties in respect of which immunity is withdrawn written notice of his decision to withdraw the immunity.
- (6) A decision under subsection (4) takes effect on such date (“the withdrawal date”) as may be specified in the decision.
- (7) The withdrawal date must be a date after the date on which the decision is made.

- (8) In determining the withdrawal date, the Director must have regard to the amount of time which the parties are likely to require in order to secure that there is no further infringement of the Chapter I prohibition with respect to the agreement.
- (9) In subsection (1) “price fixing agreement” means an agreement which has as its object or effect, or one of its objects or effects, restricting the freedom of a party to the agreement to determine the price to be charged (otherwise than as between that party and another party to the agreement) for the product, service or other matter to which the agreement relates.

40 Limited immunity in relation to the Chapter II prohibition

- (1) In this section “conduct of minor significance” means conduct which falls within a category prescribed for the purposes of this section.
- (2) The criteria by reference to which a category is prescribed may, in particular, include—
 - (a) the turnover of the person whose conduct it is (determined in accordance with prescribed provisions);
 - (b) the share of the market affected by the conduct (determined in that way).
- (3) A person is immune from the effect of section 36(2) if his conduct is conduct of minor significance; but the Director may withdraw that immunity under subsection (4).
- (4) If the Director has investigated conduct of minor significance, he may make a decision withdrawing the immunity given by subsection (3) if, as a result of his investigation, he considers that the conduct is likely to infringe the Chapter II prohibition.
- (5) The Director must give the person, or persons, whose immunity has been withdrawn written notice of his decision to withdraw the immunity.
- (6) A decision under subsection (4) takes effect on such date (“the withdrawal date”) as may be specified in the decision.
- (7) The withdrawal date must be a date after the date on which the decision is made.
- (8) In determining the withdrawal date, the Director must have regard to the amount of time which the person or persons affected are likely to require in order to secure that there is no further infringement of the Chapter II prohibition.

41 Agreements notified to the Commission

- (1) This section applies if a party to an agreement which may infringe the Chapter I prohibition has notified the agreement to the Commission for a decision as to whether an exemption will be granted under Article 85 with respect to the agreement.
- (2) A penalty may not be required to be paid under this Part in respect of any infringement of the Chapter I prohibition after notification but before the Commission determines the matter.
- (3) If the Commission withdraws the benefit of provisional immunity from penalties with respect to the agreement, subsection (2) ceases to apply as from the date on which that benefit is withdrawn.
- (4) The fact that an agreement has been notified to the Commission does not prevent the Director from investigating it under this Part.

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

- (5) In this section “provisional immunity from penalties” has such meaning as may be prescribed.

Offences

42 Offences

- (1) A person is guilty of an offence if he fails to comply with a requirement imposed on him under section 26, 27 or 28.
- (2) If a person is charged with an offence under subsection (1) in respect of a requirement to produce a document, it is a defence for him to prove—
 - (a) that the document was not in his possession or under his control; and
 - (b) that it was not reasonably practicable for him to comply with the requirement.
- (3) If a person is charged with an offence under subsection (1) in respect of a requirement—
 - (a) to provide information,
 - (b) to provide an explanation of a document, or
 - (c) to state where a document is to be found,
 it is a defence for him to prove that he had a reasonable excuse for failing to comply with the requirement.
- (4) Failure to comply with a requirement imposed under section 26 or 27 is not an offence if the person imposing the requirement has failed to act in accordance with that section.
- (5) A person is guilty of an offence if he intentionally obstructs an officer acting in the exercise of his powers under section 27.
- (6) A person guilty of an offence under subsection (1) or (5) is liable—
 - (a) on summary conviction, to a fine not exceeding the statutory maximum;
 - (b) on conviction on indictment, to a fine.
- (7) A person who intentionally obstructs an officer in the exercise of his powers under a warrant issued under section 28 is guilty of an offence and liable—
 - (a) on summary conviction, to a fine not exceeding the statutory maximum;
 - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.

43 Destroying or falsifying documents

- (1) A person is guilty of an offence if, having been required to produce a document under section 26, 27 or 28—
 - (a) he intentionally or recklessly destroys or otherwise disposes of it, falsifies it or conceals it, or
 - (b) he causes or permits its destruction, disposal, falsification or concealment.
- (2) A person guilty of an offence under subsection (1) is liable—
 - (a) on summary conviction, to a fine not exceeding the statutory maximum;
 - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.

44 False or misleading information

- (1) If information is provided by a person to the Director in connection with any function of the Director under this Part, that person is guilty of an offence if—
 - (a) the information is false or misleading in a material particular, and
 - (b) he knows that it is or is reckless as to whether it is.
- (2) A person who—
 - (a) provides any information to another person, knowing the information to be false or misleading in a material particular, or
 - (b) recklessly provides any information to another person which is false or misleading in a material particular,knowing that the information is to be used for the purpose of providing information to the Director in connection with any of his functions under this Part, is guilty of an offence.
- (3) A person guilty of an offence under this section is liable—
 - (a) on summary conviction, to a fine not exceeding the statutory maximum;
 - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.

CHAPTER IV

THE COMPETITION COMMISSION AND APPEALS

The Commission

45 The Competition Commission

- (1) There is to be a body corporate known as the Competition Commission.
- (2) The Commission is to have such functions as are conferred on it by or as a result of this Act.
- (3) The Monopolies and Mergers Commission is dissolved and its functions are transferred to the Competition Commission.
- (4) In any enactment, instrument or other document, any reference to the Monopolies and Mergers Commission which has continuing effect is to be read as a reference to the Competition Commission.
- (5) The Secretary of State may by order make such consequential, supplemental and incidental provision as he considers appropriate in connection with—
 - (a) the dissolution of the Monopolies and Mergers Commission; and
 - (b) the transfer of functions effected by subsection (3).
- (6) An order made under subsection (5) may, in particular, include provision—
 - (a) for the transfer of property, rights, obligations and liabilities and the continuation of proceedings, investigations and other matters; or
 - (b) amending any enactment which makes provision with respect to the Monopolies and Mergers Commission or any of its functions.

(7) Schedule 7 makes further provision about the Competition Commission.

Appeals

46 Appealable decisions

- (1) Any party to an agreement in respect of which the Director has made a decision may appeal to the Competition Commission against, or with respect to, the decision.
- (2) Any person in respect of whose conduct the Director has made a decision may appeal to the Competition Commission against, or with respect to, the decision.
- (3) In this section “decision” means a decision of the Director—
 - (a) as to whether the Chapter I prohibition has been infringed,
 - (b) as to whether the Chapter II prohibition has been infringed,
 - (c) as to whether to grant an individual exemption,
 - (d) in respect of an individual exemption—
 - (i) as to whether to impose any condition or obligation under section 4(3)(a) or 5(1)(c),
 - (ii) where such a condition or obligation has been imposed, as to the condition or obligation,
 - (iii) as to the period fixed under section 4(3)(b), or
 - (iv) as to the date fixed under section 4(5),
 - (e) as to—
 - (i) whether to extend the period for which an individual exemption has effect, or
 - (ii) the period of any such extension,
 - (f) cancelling an exemption,
 - (g) as to the imposition of any penalty under section 36 or as to the amount of any such penalty,
 - (h) withdrawing or varying any of the decisions in paragraphs (a) to (f) following an application under section 47(1),

and includes a direction given under section 32, 33 or 35 and such other decision as may be prescribed.
- (4) Except in the case of an appeal against the imposition, or the amount, of a penalty, the making of an appeal under this section does not suspend the effect of the decision to which the appeal relates.
- (5) Part I of Schedule 8 makes further provision about appeals.

47 Third party appeals

- (1) A person who does not fall within section 46(1) or (2) may apply to the Director asking him to withdraw or vary a decision (“the relevant decision”) falling within paragraphs (a) to (f) of section 46(3) or such other decision as may be prescribed.
- (2) The application must—
 - (a) be made in writing, within such period as the Director may specify in rules under section 51; and

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

- (b) give the applicant's reasons for considering that the relevant decision should be withdrawn or (as the case may be) varied.
- (3) If the Director decides—
 - (a) that the applicant does not have a sufficient interest in the relevant decision,
 - (b) that, in the case of an applicant claiming to represent persons who have such an interest, the applicant does not represent such persons, or
 - (c) that the persons represented by the applicant do not have such an interest,he must notify the applicant of his decision.
- (4) If the Director, having considered the application, decides that it does not show sufficient reason why he should withdraw or vary the relevant decision, he must notify the applicant of his decision.
- (5) Otherwise, the Director must deal with the application in accordance with such procedure as may be specified in rules under section 51.
- (6) The applicant may appeal to the Competition Commission against a decision of the Director notified under subsection (3) or (4).
- (7) The making of an application does not suspend the effect of the relevant decision.

48 Appeal tribunals

- (1) Any appeal made to the Competition Commission under section 46 or 47 is to be determined by an appeal tribunal.
- (2) The Secretary of State may, after consulting the President of the Competition Commission Appeal Tribunals and such other persons as he considers appropriate, make rules with respect to appeals and appeal tribunals.
- (3) The rules may confer functions on the President.
- (4) Part II of Schedule 8 makes further provision about rules made under this section but is not to be taken as restricting the Secretary of State's powers under this section.

49 Appeals on point of law etc

- (1) An appeal lies—
 - (a) on a point of law arising from a decision of an appeal tribunal, or
 - (b) from any decision of an appeal tribunal as to the amount of a penalty.
- (2) An appeal under this section may be made only—
 - (a) to the appropriate court;
 - (b) with leave; and
 - (c) at the instance of a party or at the instance of a person who has a sufficient interest in the matter.
- (3) Rules under section 48 may make provision for regulating or prescribing any matters incidental to or consequential upon an appeal under this section.
- (4) In subsection (2)—
 - “the appropriate court” means—

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

- (a) in relation to proceedings before a tribunal in England and Wales, the Court of Appeal;
 - (b) in relation to proceedings before a tribunal in Scotland, the Court of Session;
 - (c) in relation to proceedings before a tribunal in Northern Ireland, the Court of Appeal in Northern Ireland;
- “leave” means leave of the tribunal in question or of the appropriate court; and
- “party”, in relation to a decision, means a person who was a party to the proceedings in which the decision was made.

CHAPTER V

MISCELLANEOUS

Vertical agreements and land agreements

50 Vertical agreements and land agreements

- (1) The Secretary of State may by order provide for any provision of this Part to apply in relation to—
 - (a) vertical agreements, or
 - (b) land agreements,
 with such modifications as may be prescribed.
- (2) An order may, in particular, provide for exclusions or exemptions, or otherwise provide for prescribed provisions not to apply, in relation to—
 - (a) vertical agreements, or land agreements, in general; or
 - (b) vertical agreements, or land agreements, of any prescribed description.
- (3) An order may empower the Director to give directions to the effect that in prescribed circumstances an exclusion, exemption or modification is not to apply (or is to apply in a particular way) in relation to an individual agreement.
- (4) Subsections (2) and (3) are not to be read as limiting the powers conferred by section 71.
- (5) In this section—
 - “land agreement” and “vertical agreement” have such meaning as may be prescribed; and
 - “prescribed” means prescribed by an order.

Director’s rules, guidance and fees

51 Rules

- (1) The Director may make such rules about procedural and other matters in connection with the carrying into effect of the provisions of this Part as he considers appropriate.

- (2) Schedule 9 makes further provision about rules made under this section but is not to be taken as restricting the Director's powers under this section.
- (3) If the Director is preparing rules under this section he must consult such persons as he considers appropriate.
- (4) If the proposed rules relate to a matter in respect of which a regulator exercises concurrent jurisdiction, those consulted must include that regulator.
- (5) No rule made by the Director is to come into operation until it has been approved by an order made by the Secretary of State.
- (6) The Secretary of State may approve any rule made by the Director—
 - (a) in the form in which it is submitted; or
 - (b) subject to such modifications as he considers appropriate.
- (7) If the Secretary of State proposes to approve a rule subject to modifications he must inform the Director of the proposed modifications and take into account any comments made by the Director.
- (8) Subsections (5) to (7) apply also to any alteration of the rules made by the Director.
- (9) The Secretary of State may, after consulting the Director, by order vary or revoke any rules made under this section.
- (10) If the Secretary of State considers that rules should be made under this section with respect to a particular matter he may direct the Director to exercise his powers under this section and make rules about that matter.

52 Advice and information

- (1) As soon as is reasonably practicable after the passing of this Act, the Director must prepare and publish general advice and information about—
 - (a) the application of the Chapter I prohibition and the Chapter II prohibition, and
 - (b) the enforcement of those prohibitions.
- (2) The Director may at any time publish revised, or new, advice or information.
- (3) Advice and information published under this section must be prepared with a view to—
 - (a) explaining provisions of this Part to persons who are likely to be affected by them; and
 - (b) indicating how the Director expects such provisions to operate.
- (4) Advice (or information) published by virtue of subsection (3)(b) may include advice (or information) about the factors which the Director may take into account in considering whether, and if so how, to exercise a power conferred on him by Chapter I, II or III.
- (5) Any advice or information published by the Director under this section is to be published in such form and in such manner as he considers appropriate.
- (6) If the Director is preparing any advice or information under this section he must consult such persons as he considers appropriate.

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

- (7) If the proposed advice or information relates to a matter in respect of which a regulator exercises concurrent jurisdiction, those consulted must include that regulator.
- (8) In preparing any advice or information under this section about a matter in respect of which he may exercise functions under this Part, a regulator must consult—
 - (a) the Director;
 - (b) the other regulators; and
 - (c) such other persons as he considers appropriate.

53 Fees

- (1) The Director may charge fees, of specified amounts, in connection with the exercise by him of specified functions under this Part.
- (2) Rules may, in particular, provide—
 - (a) for the amount of any fee to be calculated by reference to matters which may include—
 - (i) the turnover of any party to an agreement (determined in such manner as may be specified);
 - (ii) the turnover of a person whose conduct the Director is to consider (determined in that way);
 - (b) for different amounts to be specified in connection with different functions;
 - (c) for the repayment by the Director of the whole or part of a fee in specified circumstances;
 - (d) that an application or notice is not to be regarded as duly made or given unless the appropriate fee is paid.
- (3) In this section—
 - (a) “rules” means rules made by the Director under section 51; and
 - (b) “specified” means specified in rules.

Regulators

54 Regulators

- (1) In this Part “regulator” means any person mentioned in paragraphs (a) to (g) of paragraph 1 of Schedule 10.
- (2) Parts II and III of Schedule 10 provide for functions of the Director under this Part to be exercisable concurrently by regulators.
- (3) Parts IV and V of Schedule 10 make minor and consequential amendments in connection with the regulators' competition functions.
- (4) The Secretary of State may make regulations for the purpose of co-ordinating the performance of functions under this Part (“Part I functions”) which are exercisable concurrently by two or more competent persons as a result of any provision made by Part II or III of Schedule 10.
- (5) The regulations may, in particular, make provision—
 - (a) as to the procedure to be followed by competent persons when determining who is to exercise Part I functions in a particular case;

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

- (b) as to the steps which must be taken before a competent person exercises, in a particular case, such Part I functions as may be prescribed;
 - (c) as to the procedure for determining, in a particular case, questions arising as to which competent person is to exercise Part I functions in respect of the case;
 - (d) for Part I functions in a particular case to be exercised jointly—
 - (i) by the Director and one or more regulators, or
 - (ii) by two or more regulators,and as to the procedure to be followed in such cases;
 - (e) as to the circumstances in which the exercise by a competent person of such Part I functions as may be prescribed is to preclude the exercise of such functions by another such person;
 - (f) for cases in respect of which Part I functions are being, or have been, exercised by a competent person to be transferred to another such person;
 - (g) for the person (“A”) exercising Part I functions in a particular case—
 - (i) to appoint another competent person (“B”) to exercise Part I functions on A’s behalf in relation to the case; or
 - (ii) to appoint officers of B (with B’s consent) to act as officers of A in relation to the case;
 - (h) for notification as to who is exercising Part I functions in respect of a particular case.
- (6) Provision made by virtue of subsection (5)(c) may provide for questions to be referred to and determined by the Secretary of State or by such other person as may be prescribed.
- (7) “Competent person” means the Director or any of the regulators.

Confidentiality and immunity from defamation

55 General restrictions on disclosure of information

- (1) No information which—
- (a) has been obtained under or as a result of any provision of this Part, and
 - (b) relates to the affairs of any individual or to any particular business of an undertaking,
- is to be disclosed during the lifetime of that individual or while that business continues to be carried on, unless the condition mentioned in subsection (2) is satisfied.
- (2) The condition is that consent to the disclosure has been obtained from—
- (a) the person from whom the information was initially obtained under or as a result of any provision of this Part (if the identity of that person is known); and
 - (b) if different—
 - (i) the individual to whose affairs the information relates, or
 - (ii) the person for the time being carrying on the business to which the information relates.
- (3) Subsection (1) does not apply to a disclosure of information—
- (a) made for the purpose of—
 - (i) facilitating the performance of any relevant functions of a designated person;

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

- (ii) facilitating the performance of any functions of the Commission in respect of Community law about competition;
 - (iii) facilitating the performance by the Comptroller and Auditor General of any of his functions;
 - (iv) criminal proceedings in any part of the United Kingdom;
 - (b) made with a view to the institution of, or otherwise for the purposes of, civil proceedings brought under or in connection with this Part;
 - (c) made in connection with the investigation of any criminal offence triable in the United Kingdom or in any part of the United Kingdom; or
 - (d) which is required to meet a Community obligation.
- (4) In subsection (3) “relevant functions” and “designated person” have the meaning given in Schedule 11.
- (5) Subsection (1) also does not apply to a disclosure of information made for the purpose of facilitating the performance of specified functions of any specified person.
- (6) In subsection (5) “specified” means specified in an order made by the Secretary of State.
- (7) If information is disclosed to the public in circumstances in which the disclosure does not contravene subsection (1), that subsection does not prevent its further disclosure by any person.
- (8) A person who contravenes this section is guilty of an offence and liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum; or
 - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.

56 Director and Secretary of State to have regard to certain matters in relation to the disclosure of information

- (1) This section applies if the Secretary of State or the Director is considering whether to disclose any information acquired by him under, or as a result of, any provision of this Part.
- (2) He must have regard to the need for excluding, so far as is practicable, information the disclosure of which would in his opinion be contrary to the public interest.
- (3) He must also have regard to—
- (a) the need for excluding, so far as is practicable—
 - (i) commercial information the disclosure of which would, or might, in his opinion, significantly harm the legitimate business interests of the undertaking to which it relates, or
 - (ii) information relating to the private affairs of an individual the disclosure of which would, or might, in his opinion, significantly harm his interests; and
 - (b) the extent to which the disclosure is necessary for the purposes for which the Secretary of State or the Director is proposing to make the disclosure.

57 Defamation

For the purposes of the law relating to defamation, absolute privilege attaches to any advice, guidance, notice or direction given, or decision made, by the Director in the exercise of any of his functions under this Part.

Findings of fact by Director

58 Findings of fact by Director

- (1) Unless the court directs otherwise or the Director has decided to take further action in accordance with section 16(2) or 24(2), a Director’s finding which is relevant to an issue arising in Part I proceedings is binding on the parties if—
 - (a) the time for bringing an appeal in respect of the finding has expired and the relevant party has not brought such an appeal; or
 - (b) the decision of an appeal tribunal on such an appeal has confirmed the finding.
- (2) In this section—
 - “a Director’s finding” means a finding of fact made by the Director in the course of—
 - (a) determining an application for a decision under section 14 or 22, or
 - (b) conducting an investigation under section 25;
 - “Part I proceedings” means proceedings—
 - (a) in respect of an alleged infringement of the Chapter I prohibition or of the Chapter II prohibition; but
 - (b) which are brought otherwise than by the Director;
 - “relevant party” means—
 - (a) in relation to the Chapter I prohibition, a party to the agreement which is alleged to have infringed the prohibition; and
 - (b) in relation to the Chapter II prohibition, the undertaking whose conduct is alleged to have infringed the prohibition.
- (3) Rules of court may make provision in respect of assistance to be given by the Director to the court in Part I proceedings.

Interpretation and governing principles

59 Interpretation

- (1) In this Part—
 - “appeal tribunal” means an appeal tribunal established in accordance with the provisions of Part III of Schedule 7 for the purpose of hearing an appeal under section 46 or 47;
 - “Article 85” means Article 85 of the Treaty;
 - “Article 86” means Article 86 of the Treaty;
 - “block exemption” has the meaning given in section 6(4);
 - “block exemption order” has the meaning given in section 6(2);
 - “the Chapter I prohibition” has the meaning given in section 2(8);
 - “the Chapter II prohibition” has the meaning given in section 18(4);

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

“the Commission” (except in relation to the Competition Commission) means the European Commission;

“the Council” means the Council of the European Union;

“the court”, except in sections 58 and 60 and the expression “European Court”, means—

(a) in England and Wales, the High Court;

(b) in Scotland, the Court of Session; and

(c) in Northern Ireland, the High Court;

“the Director” means the Director General of Fair Trading;

“document” includes information recorded in any form;

“the EEA Agreement” means the Agreement on the European Economic Area signed at Oporto on 2nd May 1992 as it has effect for the time being;

“the European Court” means the Court of Justice of the European Communities and includes the Court of First Instance;

“individual exemption” has the meaning given in section 4(2);

“information” includes estimates and forecasts;

“investigating officer” has the meaning given in section 27(1);

“Minister of the Crown” has the same meaning as in the Ministers of the Crown Act 1975;

“officer”, in relation to a body corporate, includes a director, manager or secretary and, in relation to a partnership in Scotland, includes a partner;

“parallel exemption” has the meaning given in section 10(3);

“person”, in addition to the meaning given by the Interpretation Act 1978, includes any undertaking;

“premises” does not include domestic premises unless—

(a) they are also used in connection with the affairs of an undertaking, or

(b) documents relating to the affairs of an undertaking are kept there,

but does include any vehicle;

“prescribed” means prescribed by regulations made by the Secretary of State;

“regulator” has the meaning given by section 54;

“section 11 exemption” has the meaning given in section 11(3); and

“the Treaty” means the treaty establishing the European Community.

- (2) The fact that to a limited extent the Chapter I prohibition does not apply to an agreement, because of an exclusion provided by or under this Part or any other enactment, does not require those provisions of the agreement to which the exclusion relates to be disregarded when considering whether the agreement infringes the prohibition for other reasons.
- (3) For the purposes of this Part, the power to require information, in relation to information recorded otherwise than in a legible form, includes power to require a copy of it in a legible form.
- (4) Any power conferred on the Director by this Part to require information includes power to require any document which he believes may contain that information.

60 Principles to be applied in determining questions

- (1) The purpose of this section is to ensure that so far as is possible (having regard to any relevant differences between the provisions concerned), questions arising under this Part in relation to competition within the United Kingdom are dealt with in a manner which is consistent with the treatment of corresponding questions arising in Community law in relation to competition within the Community.
- (2) At any time when the court determines a question arising under this Part, it must act (so far as is compatible with the provisions of this Part and whether or not it would otherwise be required to do so) with a view to securing that there is no inconsistency between—
 - (a) the principles applied, and decision reached, by the court in determining that question; and
 - (b) the principles laid down by the Treaty and the European Court, and any relevant decision of that Court, as applicable at that time in determining any corresponding question arising in Community law.
- (3) The court must, in addition, have regard to any relevant decision or statement of the Commission.
- (4) Subsections (2) and (3) also apply to—
 - (a) the Director; and
 - (b) any person acting on behalf of the Director, in connection with any matter arising under this Part.
- (5) In subsections (2) and (3), “court” means any court or tribunal.
- (6) In subsections (2)(b) and (3), “decision” includes a decision as to—
 - (a) the interpretation of any provision of Community law;
 - (b) the civil liability of an undertaking for harm caused by its infringement of Community law.