

1990 No. 2159

MONOPOLIES AND MERGERS

The Credit Cards (Price Discrimination) Order 1990

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| <i>Made - - - -</i> | <i>31st October 1990</i> |
| <i>Laid before Parliament</i> | <i>1st November 1990</i> |
| <i>Coming into force</i> | <i>28th February 1991</i> |

Whereas the Secretary of State, in accordance with section 91(2) of the Fair Trading Act 1973(a), published on 25th April 1990 a notice stating his intention to make this Order, indicating the nature of the provisions to be embodied in it and stating that any person whose interests were likely to be affected by it and who was desirous of making representations in respect of it should do so in writing before 31st May 1990;

And whereas the Secretary of State has considered the representations made to him in accordance with that notice:

Now, therefore, the Secretary of State, being the appropriate Minister within the meaning of section 56 of the said Act, in exercise of the powers conferred by sections 56(2) and 90(2), (3) and (4) of, and paragraphs 1 and 2 of Schedule 8 to, the said Act, and for the purpose of remedying or preventing adverse effects specified in a report of the Monopolies and Mergers Commission entitled "Credit Card Services—a report on the supply of credit card services in the United Kingdom"(b), hereby makes the following Order:—

Citation and Commencement

1. This Order may be cited as the Credit Cards (Price Discrimination) Order 1990 and shall come into force on 28th February 1991.

Interpretation

2.—(1) In this Order—

"credit card" means a payment card the holder of which is permitted under his contract with the issuer of the card to discharge less than the whole of any outstanding balance on his payment card account on or before the expiry of a specified period (subject to any contractual requirements with respect to minimum or fixed amounts of payment), other than:

- (a) a payment card issued with respect to the purchase of the goods, services, accommodation or facilities of only one supplier or of suppliers who are members of a single group of interconnected bodies corporate(c) or who trade under a common name,
- (b) a payment card with respect to which the payment card account is a current account, or
- (c) a trading check;

"credit card transaction" means a transaction under which goods, services, accommodation or facilities are supplied on the production in the United Kingdom of:

- (a) a credit card, or
- (b) any other type of payment card which:

(a) 1973 c.41.

(b) Cm 718.

(c) See section 137(5) of the Fair Trading Act 1973 for the definition of "group of interconnected bodies corporate".

- (i) bears a trade mark or service mark which is also borne by a credit card,
- (ii) does not bear a trade mark or service mark registered in a Member State of the European Economic Community and borne by (and only by) a type of payment card which is not a credit card, and
- (iii) is not readily distinguishable from a credit card;

“payment card” means a card, the production of which (whether or not any other action is required) enables the person to whom it is issued (“the holder”) to discharge his obligation to a supplier in respect of payment for the acquisition of goods, services, accommodation or facilities, the supplier being reimbursed by a third party (whether or not the third party is the issuer of the card and whether or not a fee or charge is imposed for such reimbursement);

“price” means the aggregate of the sums required to be paid by a purchaser for or otherwise in respect of the supply of the goods, services, accommodation or facilities in question.

(2) For the purposes of the definition of “credit card transaction”:

- (a) “production in the United Kingdom” includes the identification of a payment card described in paragraph (a) or (b) of the definition in a telephone order or mail order received at a place of business in the United Kingdom, and
- (b) without prejudice to it otherwise being readily distinguishable, a payment card shall be deemed to be readily distinguishable from a credit card when:
 - (i) either it bears a trade mark, service mark or other distinguishing feature which is borne only by the payment card or it does not bear such a feature which is borne only by the credit card,
 - (ii) the supplier in question has received in writing a clear description of the distinguishing feature and notice that such a payment card is not a credit card, and
 - (iii) with the facilities and equipment which he possesses, the supplier is able quickly and easily to ascertain by reference to the distinguishing feature or its absence (if shown to the supplier or identified to him in a telephone order or mail order) whether or not the payment card is a credit card.

(3) For the purposes of this Order, a person shall not be treated as carrying out an agreement by reason only that he refrains from doing something the doing of which is the subject of a prohibition or restriction imposed by the agreement.

(4) In the case of a person falling within paragraph (a), (b) or (c) of section 90(3) of the Fair Trading Act 1973, this Order shall extend to his acts and omissions outside the United Kingdom.

(5) This Order shall extend so as to prohibit the carrying out of agreements already in existence on the making of this Order as it prohibits the carrying out of agreements made subsequently.

Prohibition

3.—(1) Subject to article 4 below, the parties to any agreement^(a) relating to payment cards which:

- (a) imposes or has the effect of imposing any prohibition or restriction on the charging by any party to the agreement of prices for credit card transactions which differ from prices charged by him for other transactions with respect to goods, services, accommodation or facilities of the same description;
- (b) requires or has the effect of requiring any party to the agreement to charge prices for credit card transactions which are the same as prices charged by him for other transactions with respect to goods, services, accommodation or facilities of the same description; or
- (c) requires or has the effect of requiring any party to the agreement to include in any other agreement made by him a prohibition or restriction falling within subparagraph (a) above or a requirement falling within subparagraph (b) above,

shall terminate it before 7th March 1991 to the extent of that prohibition, restriction or requirement.

^(a) Agreement is defined in section 137(2) of the Fair Trading Act 1973 (c.41).

(2) On and after 7th March 1991, it shall be unlawful for any person to make or carry out an agreement relating to payment cards to the extent that it imposes or has the effect of imposing any prohibition, restriction or requirement falling within the preceding provisions of this article.

4. Article 3 does not apply to a requirement:

- (a) to comply with any provision of the law of the United Kingdom; or
- (b) to limit the maximum amount of a difference in price to the amount of the fee or charge imposed under the agreement with respect to the reimbursement for supplies made on the production of a credit card.

5. This Order shall not apply in respect of an agreement so far as it is or, if made, would be an agreement to which the Restrictive Trade Practices Act 1976(a) applies or would apply, as the case may be.

31st October 1990

John Redwood
Parliamentary Under Secretary of State,
Department of Trade and Industry

(a) 1976 c.34.

EXPLANATORY NOTE

(This note is not part of the Order)

On and after 7th March 1991, this Order makes it unlawful for any person to make or carry out any agreement relating to credit cards to the extent that it imposes or requires the imposition of a "no discrimination rule". A "no discrimination rule" prohibits merchants from charging different prices to those who pay by credit card rather than by another means of payment. All such existing agreements must be terminated before 7th March 1991.

The Order does not make unlawful a requirement to limit differences in price to the amount of the merchant service charge imposed with respect to the reimbursement for supplies made on the production of a credit card.

The Order also applies to other payment cards which bear a trade or service mark associated with a credit card, which do *not* bear a mark registered in the European Economic Community and borne by (and only by) a type of payment card which is not a credit card, and which are not readily distinguishable from a credit card.

Merchants are not required by this Order to charge different prices for credit card transactions nor are payment card organizations or their members required to limit differences in price.

The Order does not apply to agreements to which the Restrictive Trade Practices Act 1976 applies.

Copies of the Monopolies and Mergers Commission Report on Credit Card Services are available from Her Majesty's Stationery Office (Cm 718) at a price of £14.20.

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