
STATUTORY INSTRUMENTS

2007 No. 1896

COMPETITION

**The Competition Act 1998 (Public
Policy Exclusion) Order 2007**

<i>Made</i>	- - - -	<i>2nd July 2007</i>
<i>Laid before Parliament</i>		<i>4th July 2007</i>
<i>Coming into force</i>	- -	<i>3rd August 2007</i>

The Secretary of State is satisfied that there are exceptional and compelling reasons of public policy why the prohibitions contained in Chapters I and II of the Competition Act 1998⁽¹⁾ ought not to apply to agreements of the description specified in this Order nor to conduct in the circumstances specified in this Order. In exercise of the powers conferred by paragraphs 7(1), (2) and (4) of Schedule 3 to the Competition Act 1998, the Secretary of State makes the following Order:

Citation and commencement

1. This Order may be cited as the Competition Act 1998 (Public Policy Exclusion) Order 2007 and shall come into force on 3rd August 2007.

Interpretation

2. In this Order—

“Complex Weapon” means a strategic or tactical weapon which relies on guidance systems to produce precision effects and which is developed or manufactured for the Secretary of State but excludes torpedoes;

“Core Competence” means the ability in relation to the whole or part of a Complex Weapon or a Supporting Technology to provide research, development, manufacture, upgrades or support in service or on disposal;

“Supporting Technology” means the design, development and integration of technology which supports and enables the use of a Complex Weapon including—

- (a) mission critical software;
- (b) guidance and control algorithms;
- (c) safety and arming functions;

- (d) insensitive propulsion systems and warheads;
- (e) compatibility with other weapons systems and platforms;
- (f) directed energy and electro-optic countermeasures;
- (g) aerodynamics;
- (h) radiation compatibility;
- (i) electro-magnetic compatibility; and
- (j) stealth;

“Team CW” means the Secretary of State together with such persons as comply with the conditions set out in article 3.

Membership of Team CW

3. In order to be a member of Team CW, a person shall—
- (a) have one or more Core Competences; and
 - (b) be a party to one or more agreements with the Secretary of State which
 - (i) concern a Complex Weapon or Supporting Technology; and
 - (ii) designate that person as a member of Team CW.

Exclusion from the Chapter I and II prohibitions

4.—(1) The prohibitions contained in Chapters I and II of the Competition Act 1998 shall not apply to—

- (a) any agreement between two or more members of Team CW or between a member of Team CW and any other person; or
- (b) any conduct by a member of Team CW

which relates to a Complex Weapon or a Supporting Technology and is made in the circumstances set out in paragraph (2).

- (2) The circumstances referred to in paragraph (1), are—
- (a) the purpose of the agreement or conduct is to protect the essential security interests of the United Kingdom and to maintain or develop a Core Competence in relation to the whole or part of a Complex Weapon or a Supporting Technology; and
 - (b) the agreement or conduct does not have as its object or effect the prevention, restriction or distortion of competition within the United Kingdom except in relation to the market for the whole or part of a Complex Weapon or a Supporting Technology.

John Hutton
Secretary of State
Department of Business, Enterprise and
Regulatory Reform

2nd July 2007

EXPLANATORY NOTE

(This note is not part of the Order)

Agreements between undertakings, decisions by associations of undertakings or concerted practices which may affect trade within the United Kingdom, and have as their object or effect the prevention, restriction or distortion of competition within the United Kingdom are prohibited by Chapter I of the Competition Act 1998. Conduct on the part of one or more undertakings which amounts to an abuse of a dominant position in a market is prohibited by Chapter II of the Competition Act 1998 if it may affect trade within the United Kingdom.

Where there are exceptional and compelling reasons of public policy to do so, the Secretary of State may exclude agreements or descriptions of agreements and conduct which is carried out in particular circumstances from the prohibitions contained in Chapter I and II.

This Order disapplies the prohibitions, contained in Chapters I and II of the Competition Act 1998, in the case of agreements between two or more members of Team CW or between a member of Team CW and any other person and any conduct by a member of Team CW which, in either case, relates to a Complex Weapon or a Supporting Technology. The agreement or conduct is required to have the purpose of protecting the essential security interests of the United Kingdom and maintaining or developing a Core Competence in relation to the whole or part of a Complex Weapon or a Supporting Technology. In addition, the agreement or conduct must not have as its object or effect the prevention, restriction or distortion of competition within the United Kingdom except in relation to the market for the whole or part of a Complex Weapon or a Supporting Technology.

A full regulatory impact assessment of the effect that this Order will have on the costs of business has been prepared by the Ministry of Defence and is available from Defence Equipment and Support, Ministry of Defence, Abbey Wood, Bristol BS34 8JH and can also be found at <http://www.mod.uk/DefenceInternet/AboutDefence/CorporatePublications/PolicyStrategy/RegulatoryImpactAssessmentria.htm>.