



# Fair Trading Act 1973

## 1973 CHAPTER 41

### PART I

#### INTRODUCTORY

#### **10 Supplementary provisions relating to ss.6 to 9**

- (1) In the application of any of the provisions of sections 6 to 9 of this Act for the purposes of a monopoly reference, those provisions shall have effect subject to the following provisions of this section.
- (2) No account shall for those purposes be taken of any provisions of an agreement in so far as they are provisions by virtue of which it is an agreement to which Part I of the Act of 1956 applies.
- (3) In relation to goods or services of any description which are the subject of different forms of supply—
  - (a) references in paragraphs (a) to (d) of subsection (1), and in subsection (2), of section 6 or in section 8(3) of this Act to the supply of goods, or
  - (b) references in paragraphs (a) to (d) of subsection (1), and in subsection (2), of section 7 of this Act to the supply of services,shall for those purposes be construed in whichever of the following ways the Commission, or the person or persons making the monopoly reference, think appropriate in all the circumstances, that is to say, as references to any of those forms of supply taken separately, to all those forms of supply taken together, or to any of those forms of supply taken in groups.
- (4) For the purposes of subsection (3) of this section the Commission, or the person or persons making the monopoly reference in question, may treat goods or services as being the subject of different forms of supply whenever the transactions in question differ as to their nature, their parties, their terms or their surrounding circumstances, and the difference is one which, in the opinion of the Commission, or the person or persons making the reference, ought for the purposes of that subsection to be treated as a material difference.

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*Status: This is the original version (as it was originally enacted).*

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- (5) For the purposes of a monopoly reference made by the Director, subsections (3) and (4) of this section shall have effect subject to section 50(3) and (4) of this Act.
- (6) In determining, for the purposes of a monopoly reference, whether the proportion of one-quarter mentioned in any provision of section 6, section 7 or section 8 of this Act is fulfilled with respect to goods or services of any description, the Commission, or the person or persons making the reference, shall apply such criterion (whether it be value or cost or price or quantity or capacity or number of workers employed or some other criterion, of whatever nature) or such combination of criteria as may appear to them or him to be most suitable in all the circumstances.
- (7) The criteria for determining when goods or services can be treated, for the purposes of a monopoly reference, as goods or services of a separate description shall be such as the person or persons making the reference may think most suitable in the circumstances.
- (8) In construing the provisions of section 7(3) and section 9 of this Act and the provisions of subsections (1) to (7) of this section, the purposes of a monopoly reference shall be taken to include the purpose of enabling the Director, or the Secretary of State or any other Minister, to determine in any particular circumstances—
- (a) whether a monopoly reference could be made under Part IV of this Act, and
  - (b) if so, whether in those circumstances such a reference could be made by the Director,
- and references in those provisions to the person or persons making a monopoly reference shall be construed accordingly.