



Fair Trading Act 1973

1973 CHAPTER 41

PART XII

MISCELLANEOUS AND SUPPLEMENTARY PROVISIONS

126 Special provisions relating to patents

The following subsections shall be substituted for subsections (3) and (4) of section 40 of the Patents Act 1949 (which confer certain powers on the comptroller where a report of the Commission relates to patented articles or processes):—

“(3) Where, on a reference under section 50 or section 51 of the Fair Trading Act 1973, a report of the Monopolies and Mergers Commission, as laid before Parliament, contains conclusions to the effect—

- (a) that a monopoly situation (within the meaning of that Act) exists in relation to a description of goods which consists of or includes patented articles, or consists of or includes articles to which a patented process has been applied, or that such a situation exists in relation to a description of services in which a patented process is used, and
- (b) that facts found by the Commission in pursuance of their investigations under section 49 of that Act operate, or may be expected to operate, against the public interest,

the appropriate Minister or Ministers, subject to subsection (3B) of this section, may apply to the comptroller for an order under subsection (4) of this section in respect of the patent.

(3A) Where, on a reference under section 64 or section 75 of the Fair Trading Act 1973, a report of the Monopolies and Mergers Commission, as laid before Parliament, contains conclusions to the effect—

- (a) that a merger situation qualifying for investigation has been created;
- (b) that one of the elements which constitute the creation of that situation is that the condition specified in subsection (2) or in subsection (3) of section 64 of that Act prevails (or does so to a greater extent) in respect of a description of goods which consists of or includes patented articles,

Status: This is the original version (as it was originally enacted).

or consists of or includes articles to which a patented process has been applied, or in respect of a description of services in which a patented process is used; and

- (c) that the creation of that situation, or particular elements in or consequences of it specified in the report, operate, or may be expected to operate, against the public interest,

the Secretary of State, subject to the next following subsection, may apply to the comptroller for an order under subsection (5) of this section in respect of the patent.

- (3B) Before making an application under subsection (3) or subsection (3A) of this section, the appropriate Minister or Ministers shall publish, in such manner as he or they think appropriate, a notice describing the nature of the proposed application, and shall consider any representations which, within the period of thirty days from the date of publication of the notice, may be made to him or them by persons whose interests appear to the appropriate Minister or Ministers to be likely to be affected by the proposed application.

- (4) If, on an application under subsection (3) of this section, it appears to the comptroller that the facts specified in the report of the Monopolies and Mergers Commission as being those which, in the opinion of the Commission, operate or may be expected to operate against the public interest include—

- (a) any conditions in a licence or licences granted by the patentee under the patent restricting the use of the invention by the licensee or the right of the patentee to grant other licences under the patent, or
- (b) a refusal by the patentee to grant licences under the patent on reasonable terms,

the comptroller may by order cancel or modify any such condition or may, if he thinks fit, instead of making such an order or in addition to making such an order, order the patent to be endorsed with the words ' licences of right'.

- (5) If on an application under subsection (3A) of this section it appears to the comptroller that the particular matters indicated in the report of the Monopolies and Mergers Commission as being those which, in the opinion of the Commission, operate or may be expected to operate against the public interest (whether those matters are so indicated in pursuance of a requirement imposed under section 69(4) or section 75(3) of the Fair Trading Act 1973 or otherwise) include any such condition or refusal as is mentioned in paragraph (a) or paragraph (b) of subsection (4) of this section, the comptroller may by order cancel or modify any such condition or may, if he thinks fit, instead of making such an order or in addition to making such an order, order the patent to be endorsed with the words licences of right'.

- (6) In this section ' the appropriate Minister or Ministers' in relation to a report of the Monopolies and Mergers Commission, means the Minister or Ministers to whom the report is made.”