



Fair Trading Act 1973

1973 CHAPTER 41

PART VIII

ADDITIONAL PROVISIONS RELATING TO REFERENCES TO COMMISSION

88 Action by Director in consequence of report of Commission on monopoly or merger reference

- (1) Where a report of the Commission on a monopoly reference, or on a merger reference other than a newspaper merger reference, as laid before Parliament,—
 - (a) in the case of a monopoly reference, sets out such conclusions as are mentioned in section 56(1) of this Act, or
 - (b) in the case of a merger reference, sets out such conclusions as are mentioned in section 73(1) or in section 75(4)(e) of this Act,and a copy of the report is transmitted to the Director under section 86 of this Act, it shall be the duty of the Director, if requested by the appropriate Minister or Ministers to do so, to consult the relevant parties with a view to obtaining from them undertakings to take action indicated in the request made to the Director as being action requisite, in the opinion of the appropriate Minister or Ministers, for the purpose of remedying or preventing the adverse effects specified in the report.
- (2) The Director shall report to the appropriate Minister or Ministers the outcome of his consultations under the preceding subsection; and if any undertaking is given by any of the relevant parties to take action indicated in the request made to the Director as mentioned in that subsection (in this section referred to as an "appropriate undertaking") the Minister to whom the undertaking is given shall furnish particulars of it to the Director.
- (3) Where in his consultations under subsection (1) of this section the Director seeks to obtain an appropriate undertaking from any of the relevant parties, and either—
 - (a) he is satisfied that no such undertaking is likely to be given by that party within a reasonable time, or
 - (b) having allowed such time as in his opinion is reasonable for the purpose, he is satisfied that no such undertaking has been given by that party,

Status: This is the original version (as it was originally enacted).

the Director shall give such advice to the appropriate Minister or Ministers as he may think proper in the circumstances (including, if the Director thinks fit, advice with respect to the exercise by the appropriate Minister or Ministers of his or their powers under section 56 or section 73 of this Act, as the case may be).

- (4) Where the Director has made a report under subsection (2) of this section, and particulars of an undertaking given by any of the relevant parties have been furnished to the Director in accordance with that subsection, it shall be the duty of the Director—
- (a) to keep under review the carrying out of that undertaking, and from time to time to consider whether, by reason of any change of circumstances, it needs to be varied or to be superseded by a new undertaking, and
 - (b) if it appears to him that it has not been or is not being fulfilled, or needs to be varied or superseded, to give such advice to the appropriate Minister or Ministers as he may think proper in the circumstances.
- (5) Where, in consequence of a report of which a copy is transmitted to the Director under section 86 of this Act, an order is made under section 56 or section 73 of this Act in relation to any of the matters to which the report relates, it shall be the duty of the Director to keep under review the action (if any) taken in compliance with that order, and from time to time to consider whether, by reason of any change of circumstances, the order should be varied or should be superseded by a new order, and—
- (a) if it appears to him that the order has in any respect not been complied with, to consider whether any action (by way of proceedings in accordance with section 93 of this Act or otherwise) should be taken for the purpose of securing compliance with the order, and (where in his opinion it is appropriate to do so) to take such action himself or give advice to any Minister or other person by whom such action might be taken, or
 - (b) if it appears to him that the order needs to be varied, or to be superseded by a new order, to give such advice to the appropriate Minister or Ministers as he may think proper in the circumstances.
- (6) In this section " the relevant parties "—
- (a) in relation to a report of the Commission on a monopoly reference, means the person or persons specified in the report as being the person or persons in whose favour the monopoly situation in question exists ;
 - (b) in relation to a report of the Commission on a merger reference under section 75 of this Act, which includes a finding that a merger situation qualifying for investigation will be created if the arrangements in question are carried into effect, means any person indicated in the report as being a person by whom in accordance with the arrangements any assets are to be taken over;
 - (c) in relation to a report of the Commission on a merger reference, other than a newspaper merger reference or a reference falling within paragraph (b) of this subsection, means the persons specified in the report as being persons carrying on, owning or controlling any of the enterprises which, in accordance with the conclusions of the Commission, have ceased to be distinct enterprises;

and, in relation to a report of the Commission, " the appropriate Minister or Ministers " means the Minister or Ministers to whom the report is made, " undertaking " means an undertaking given to that Minister or to one of those Ministers, as the case may be, and, in subsections (3) and (5) of this section, the references to section 73 of this Act shall be construed as including references to that section as applied by section 75(4) of this Act.