



Restrictive Trade Practices Act 1976

1976 CHAPTER 34

PART I

REGISTRATION AND JUDICIAL INVESTIGATION OF RESTRICTIVE AGREEMENTS

1 Registration of agreements and Court's jurisdiction

- (1) Every agreement to which this Act applies by virtue of—
 - (a) section 6 below (restrictive agreements as to goods);
 - (b) an order under section 7 below (information agreements as to goods);
 - (c) an order under section 11 below (restrictive agreements as to services);
 - (d) an order under section 12 below (information agreements as to services);is subject to registration under this Act.
- (2) The Director General of Fair Trading (" the Director ") continues charged with the duty—
 - (a) of compiling and maintaining a register of agreements subject to registration under this Act;
 - (b) of entering or filing in the register such particulars as may be prescribed by regulations made under section 27 below of any such agreement, being—
 - (i) particulars duly furnished to him under this Act by parties to the agreement; or
 - (ii) documents or information obtained by him under this Act;
 - (c) of taking proceedings before the Restrictive Practices Court ("the Court") in respect of the agreements of which particulars are from time to time entered or filed in the register; but this paragraph is subject to—
 - (i) such directions as may be given by the Secretary of State as to the order in which those proceedings are to be taken;
 - (ii) section 21 below (Director's duties as to proceedings for investigation).
- (3) The Court has jurisdiction, on the Director's application in respect of an agreement of which particulars are for the time being registered under this Act, to declare whether

or not any restrictions or information provisions by virtue of which this Act applies to the agreement are contrary to the public interest; but this jurisdiction is subject to paragraphs 6(2) and 9(2) of Schedule 3 to this Act.

2 Restrictions against public interest and consequent Court orders

- (1) Where under section 1(3) above any restrictions or information provisions by virtue of which this Act applies to an agreement are found by the Court to be contrary to the public interest, the agreement shall be void in respect of those restrictions or those information provisions.
- (2) Without prejudice to subsection (1) above, the Court may, on the Director's application, make such order as appears to the Court to be proper for restraining all or any of those mentioned in subsection (3) below—
 - (a) from giving effect to, or enforcing or purporting to enforce, the agreement in respect of those restrictions or those information provisions;
 - (b) from making any other agreement (whether with the same parties or with other parties) to the like effect; or
 - (c) where such an agreement as is mentioned in paragraph (b) above has already been made, from giving effect to that agreement or enforcing or purporting to enforce it.
- (3) Those who may be restrained by an order of the Court under subsection (2) above are—
 - (a) the persons party to the agreement who carry on business within the United Kingdom ;
 - (b) a trade association or a services supply association of which any such person is a member ; or
 - (c) any person acting on behalf of any such association.
- (4) Where any of the parties to an agreement against whom an order under subsection (2) is made is a member of a trade association or of a services supply association, the order may include provisions for restraining the association and any person acting on behalf of the association from procuring or assisting any such party to do anything which would be a contravention of the order in its application to him.
- (5) Where—
 - (a) any restriction accepted under a term implied by virtue of section 8(2) below in an agreement for the constitution of a trade association ;
 - (b) any information provision made under a term implied by virtue of section 8(4) below in an agreement for the constitution of a trade association ;
 - (c) any restriction accepted under a term implied by virtue of section 16(3) below in an agreement for the constitution of a services supply association ;
 - (d) any information provision made under a term implied by virtue of section 16(5) below in an agreement for the constitution of a services supply association ;

is found by the Court to be contrary to the public interest, the Court may (without prejudice to its powers under this section) make such order as appears to the Court to be proper for restraining the association or any person acting on behalf of the association from making any recommendation to which that term would apply.

- (6) The powers of the Court under this and the preceding section are not affected by the determination of an agreement effected after the commencement of the proceedings, and where an agreement is varied after the commencement of the proceedings, the Court may make a declaration and, if it thinks fit, an order under subsection (2) or subsection (5) above, either in respect of the agreement as at the commencement of the proceedings or in respect of the agreement as varied, or both.

3 Interim orders of the Court

- (1) Where the Director has made an application under section 1(3) above, he may apply to the Court for an interim order under this section—
- (a) at any time before the Court has made an order under section 2(2) above in respect of the agreement, and
 - (b) whether before or after the Court has made a declaration under section 1(3) in respect of the agreement.
- (2) An application under this section shall specify the restrictions or information provisions which appear to the Director, in relation to the agreement to which the application relates—
- (a) to be restrictions or information provisions such as are mentioned in section 1(3), and
 - (b) to be contrary to the public interest, and
 - (c) to be restrictions or information provisions in respect of which, in accordance with the following provisions of this section, it would be appropriate for an interim order to be made.
- (3) If on an application under this section the Court is satisfied that the following conditions are fulfilled in relation to all or any of the restrictions or information provisions specified in the application—
- (a) that they are restrictions or information provisions such as are mentioned in section 1(3);
 - (b) that they could not reasonably be expected to be shown to fall within any of paragraphs (a) to (h) of section 10(1) below or any of paragraphs (a) to (h) of section 19(1) below, as the case may be ; and
 - (c) that the operation of the restrictions or information provisions, during the period likely to elapse before an order can be made in respect of them under section 2(2), is likely to cause material detriment to the public or a section of the public generally, or to a particular person who is not a party to the agreement;
- the Court may, if it thinks fit, make an interim order specifying the restrictions or information provisions in relation to which the Court is satisfied that those conditions are fulfilled.
- (4) Any such interim order may exercise, in respect of the restrictions or information provisions specified in the order, any powers which could be exercised in respect of them by an order under section 2(2) if those restrictions or those information provisions had been found by the Court to be contrary to the public interest.
- (5) At any time when any such interim order is in force the Court, on the application of the Director or of any person who is subject to or entitled to the benefit of any restriction or information provision specified in the order, may discharge the order and substitute

for it any interim order which could have been made on the original application under this section.

- (6) An interim order made under this section in respect of an agreement ceases to have effect on the occurrence of whichever of the following first occurs—
- (a) the termination of such period, or the happening of such event, as may be specified for that purpose in the order ;
 - (b) the discharge of the order by the Court;
 - (c) a declaration by the Court that the restrictions or information provisions specified in the interim order are not contrary to the public interest;
 - (d) the final determination by the Court of an application under section 2(2) in respect of that agreement.

4 Variation of the Court's decisions

- (1) The Court, upon application made in accordance with this section, may—
- (a) discharge any previous declaration of the Court in respect of any restriction or information provision, and any order made by the Court in pursuance of that declaration, and
 - (b) substitute such other declaration, and make such order in pursuance of that declaration,
- as appears to the Court to be proper at the time of the hearing of the application.
- (2) The provisions of section 10 below or of section 19 below, as the case may be, apply with the necessary modifications in relation to proceedings on an application under this section as they apply in relation to the proceedings mentioned in those sections.
- (3) An application under this section may be made by the Director or by any person who is, or was at the time of the previous determination of the Court, subject to or entitled to the benefit of the restriction or information provision in question.
- (4) No application shall be made under this section except with the leave of the Court, and such leave shall not be granted except upon prima facie evidence of a material change in the relevant circumstances.
- (5) Notwithstanding anything in subsection (4) above, leave to make an application under this section for the discharge of a declaration or order of the Court made before the commencement of the Restrictive Trade Practices Act 1968 (25th November 1968) may, if the applicant proposes to rely on paragraph (h) of section 10(1) below, be granted upon prima facie evidence of the relevance of that paragraph to the application.
- (6) This section does not apply in relation to any order made under section 3 above.

5 The European Communities

- (1) This Act applies to an agreement notwithstanding that it is or may be void by reason of any directly applicable Community provision, or is expressly authorised by or under any such provision; but this subsection is subject to subsection (2) and section 34 below.
- (2) The Court—
- (a) may decline or postpone the exercise of its jurisdiction under sections 1 and 2 above, or

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(b) may, notwithstanding subsection (2) of section 4 above, exercise its jurisdiction under that section,
if and in so far as it appears to the Court right so to do having regard to the operation of any directly applicable Community provision or to the purpose and effect of any authorisation or exemption granted in relation to such a provision.