



Channel Tunnel Act 1987

1987 CHAPTER 53

PART III

STATUS, OPERATION AND REGULATION OF THE TUNNEL SYSTEM

Miscellaneous

33 Competition, etc.

- (1) The Act of 1976 shall not apply to any Concession agreement and shall be deemed never to have applied to any such agreement.
- (2) Where the Concessionaires are for the time being two or more persons, the Secretary of State may, after consultation with the Director General of Fair Trading, by order provide that—
 - (a) the Concessionaires and any body corporate which is a member of the same group as any of them shall be deemed to be members of one and the same group of interconnected bodies corporate for the purposes of section 6(1)(b) (monopoly situation in relation to the supply of goods by or to members of one and the same group of interconnected bodies corporate) and 7(1)(b) (corresponding provision in relation to the supply of services) of the Act of 1973;
 - (b) the Concessionaires and any body corporate which is a member of the same group as any of them shall be deemed to be interconnected bodies corporate for the purposes of the Act of 1976 in relation to any specified channel tunnel agreement, any specified class of channel tunnel agreements or all such agreements; and
 - (c) the Concessionaires and any body corporate which is a member of the same group as any of them shall be deemed to be persons who are to be treated as associated for the purposes of section 2 of the Act of 1980 (anti-competitive practices).
- (3) In the case of any channel tunnel agreement—

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- (a) the Secretary of State shall consult the Director General of Fair Trading before approving the agreement under section 29 of the Act of 1976 (exemption from registration under that Act of agreements which are of importance to the national economy and approved by the Secretary of State for the purposes of that section); and
 - (b) that section shall apply as if for the condition set out in subsection (2)(b) there were substituted a condition that the object or main object of the agreement is the facilitation of the construction or operation of the tunnel system.
- (4) In the case of any channel tunnel agreement made before, or within the period of six months beginning with, the date of passing of this Act, the Secretary of State may, before the expiration of that period, approve the agreement under section 29 by order made after it has been concluded; and, if he does so, the Act of 1976 shall be deemed not to have applied to the agreement at any time before that order comes into force.
- (5) In connection with the approval of any channel tunnel agreement for the purposes of section 29, the Secretary of State may, after consultation with the Director General of Fair Trading, by order provide that—
 - (a) in relation to any specified description of goods or services supplied in connection with the construction or operation of the tunnel system, such of the parties to that agreement as he may specify and any body corporate which is a member of the same group as any of them shall be deemed to be members of one and the same group of interconnected bodies corporate for the purposes of sections 6(1)(b) and 7(1)(b) of the Act of 1973;
 - (b) in relation to any specified class of agreement which is made in pursuance or furtherance of that agreement, such of the parties to that agreement as he may specify and any body corporate which is a member of the same group as any of them shall be deemed to be interconnected bodies corporate for the purposes of the Act of 1976; and
 - (c) in relation to any course of conduct engaged in in connection with the construction or operation of the tunnel system, such of the parties to that agreement as he may specify and any body corporate which is a member of the same group as any of them shall be deemed to be persons who are to be treated as associated for the purposes of section 2 of the Act of 1980.
- (6) An order under subsection (2) or (5) above may impose, on any person to whom any provision made under that subsection relates, such requirements as the Secretary of State considers it expedient to impose in connection with that provision.
- (7) Section 93(3) and (4) of the Act of 1973 (which enables the Secretary of State to apply to the court for an order to enforce certain directions given by him under that Act and makes provision with respect to the expenses of such an application) shall apply in relation to requirements imposed by an order under subsection (2) or (5) above as it applies in relation to directions given under section 90(7) of that Act.
- (8) Where, before the expiration of the period mentioned in subsection (4) above, the Secretary of State makes such provision as is mentioned in subsection (5)(b) above in connection with the approval of any agreement for the purposes of section 29, the Act of 1976 shall be deemed not to have applied, at any time before the order making the provision comes into force, to any agreement made in pursuance or furtherance of that agreement if, by virtue of that provision, the agreement so made is one to which that Act does not apply on the coming into force of that order.

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- (9) Where an order under subsection (2) or (5) above is revoked, section 24 of the Act of 1976 (time for registering particulars of agreements subject to registration) shall apply in relation to any agreement which becomes subject to registration under that Act by virtue of the revocation of that order as it applies in relation to any agreement which becomes subject to registration under that Act by virtue of the expiry or revocation of an order under section 29 of that Act.
- (10) In section 137(3) of the Act of 1973 (which defines "the supply of services" for the purposes of that Act and, by virtue of section 33(2) of the Act of 1980, for the purposes also of sections 2 to 24 of the latter Act) there shall be added after paragraph (d)—
- “and
- (e) includes the making of arrangements permitting use of the tunnel system (within the meaning of the Channel Tunnel Act 1987) by a person operating services for the carriage of passengers or goods by rail.”
- (11) In paragraph 5 of Schedule 5 to the Act of 1973 (which lists the carriage of goods or passengers by rail as among the services in respect of which a reference to the Consumer Protection Advisory Committee or the Monopolies and Mergers Commission is excluded or subject to special restrictions) there shall be added at the end "otherwise than on shuttle services (within the meaning of the Channel Tunnel Act 1987)."
- (12) In this section—
- "the Act of 1973" means the Fair Trading Act 1973;
- "the Act of 1976" means the Restrictive Trade Practices Act 1976;
- "the Act of 1980" means the Competition Act 1980;
- "channel tunnel agreement" means any agreement connected with the construction or operation of the tunnel system;
- "group" means a body corporate and all other bodies corporate which are its subsidiaries within the meaning of the Companies Act 1985; and
- "specify" and "specified" mean specify and specified in an order.