



Competition Act 1998

1998 CHAPTER 41

PART I

COMPETITION

CHAPTER III

INVESTIGATION AND ENFORCEMENT

Enforcement

32 Directions in relation to agreements.

- (1) If the [^{F1}OFT] has made a decision that an agreement infringes the Chapter I prohibition [^{F2}or that it infringes the prohibition in Article 81(1)], [^{F1}it] may give to such person or persons as [^{F1}it] considers appropriate such directions as [^{F1}it] considers appropriate to bring the infringement to an end.
- (2) [^{F3}Subsection (1) applies whether the [^{F4}OFT's] decision is made on [^{F4}its] own initiative or on an application made to [^{F4}it] under this Part.]
- (3) A direction under this section may, in particular, include provision—
 - (a) requiring the parties to the agreement to modify the agreement; or
 - (b) requiring them to terminate the agreement.
- (4) A direction under this section must be given in writing.

Textual Amendments

- F1** Words in s. 32(1) substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\), s. 279, Sch. 25 para. 38\(24\)\(a\)](#); [S.I. 2003/766, art. 2, Sch.](#) (with art. 3) (as amended (20.7.2007) by [S.I. 2007/1846, reg. 3\(2\), Sch.](#))
- F2** Words in s. 32(1) inserted (1.5.2004) by [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\), reg. 1\(a\), Sch. 1 para. 19\(2\)](#)

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- F3** S. 32(2) ceased to have effect (1.5.2004) by virtue of [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\)](#), reg. 1(a), **Sch. 1 para. 19(3)** (with reg. 6(2))
- F4** Words in s. 32(2) substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, **Sch. 25 para. 38(24)(b)**; [S.I. 2003/766](#), art. 2, Sch. (with art. 3) (as amended (20.7.2007) by [S.I. 2007/1846](#), reg. 3(2), Sch.)

33 Directions in relation to conduct.

- (1) If the [^{F5}OFT] has made a decision that conduct infringes the Chapter II prohibition [^{F6}or that it infringes the prohibition in Article 82], [^{F5}it] may give to such person or persons as [^{F5}it] considers appropriate such directions as [^{F5}it] considers appropriate to bring the infringement to an end.
- (2) [^{F7}Subsection (1) applies whether the [^{F8}OFT's] decision is made on [^{F8}its] own initiative or on an application made to [^{F8}it] under this Part.]
- (3) A direction under this section may, in particular, include provision—
 - (a) requiring the person concerned to modify the conduct in question; or
 - (b) requiring him to cease that conduct.
- (4) A direction under this section must be given in writing.

Textual Amendments

- F5** Words in s. 33(1) substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, **Sch. 25 para. 38(25)(a)**; [S.I. 2003/766](#), art. 2, Sch. (with art. 3) (as amended (20.7.2007) by [S.I. 2007/1846](#), reg. 3(2), Sch.)
- F6** Words in s. 33(1) inserted (1.5.2004) by [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\)](#), reg. 1(a), **Sch. 1 para. 20(2)**
- F7** S. 33(2) ceased to have effect (1.5.2004) by virtue of [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\)](#), reg. 1(a), **Sch. 1 para. 20(3)** (with reg. 6(2))
- F8** Words in s. 33(2) substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, **Sch. 25 para. 38(25)(b)**; [S.I. 2003/766](#), art. 2, Sch. (with art. 3) (as amended (20.7.2007) by [S.I. 2007/1846](#), reg. 3(2), Sch.)

34 Enforcement of directions.

- (1) If a person fails, without reasonable excuse, to comply with a direction under section 32 or 33, the [^{F9}OFT] may apply to the court for an order—
 - (a) requiring the defaulter to make good his default within a time specified in the order; or
 - (b) if the direction related to anything to be done in the management or administration of an undertaking, requiring the undertaking or any of its officers to do it.
- (2) An order of the court under subsection (1) may provide for all of the costs of, or incidental to, the application for the order to be borne by—
 - (a) the person in default; or
 - (b) any officer of an undertaking who is responsible for the default.
- (3) In the application of subsection (2) to Scotland, the reference to “costs” is to be read as a reference to “expenses”.

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Textual Amendments

- F9** Word in s. 34 substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\), s. 279, Sch. 25 para. 38\(26\)](#); [S.I. 2003/766, art. 2, Sch.](#) (with [art. 3](#)) (as amended (20.7.2007) by [S.I. 2007/1846, reg. 3\(2\), Sch.](#))

35 Interim measures.

- [^{F10}(1) Subject to subsections (8) and (9), this section applies if the OFT has begun an investigation under section 25 and not completed it (but only applies so long as the OFT has power under section 25 to conduct that investigation).]
- (2) If the [^{F11}OFT] considers that it is necessary for [^{F11}it] to act under this section as a matter of urgency for the purpose—
- of preventing serious, irreparable damage to a particular person or category of person, or
 - of protecting the public interest,
- [^{F11}it] may give such directions as [^{F11}it] considers appropriate for that purpose.
- (3) Before giving a direction under this section, the [^{F11}OFT] must—
- give written notice to the person (or persons) to whom [^{F11}it] proposes to give the direction; and
 - give that person (or each of them) an opportunity to make representations.
- (4) A notice under subsection (3) must indicate the nature of the direction which the [^{F11}OFT] is proposing to give and [^{F11}its] reasons for wishing to give it.
- [^{F12}(5) A direction given under this section may if the circumstances permit be replaced by—
- a direction under section 32 or (as appropriate) section 33, or
 - commitments accepted under section 31A,
- but, subject to that, has effect while this section applies.]
- (6) In the [^{F13}cases mentioned in section 25(2), (3), (6) and (7)], sections 32(3) and 34 also apply to directions given under this section.
- (7) In the [^{F14}cases mentioned in section 25(4) and (5)], sections 33(3) and 34 also apply to directions given under this section.
- [^{F15}(8) In the case of an investigation conducted by virtue of section 25(2) or (6), this section does not apply if a person has produced evidence to the OFT in connection with the investigation that satisfies it on the balance of probabilities that, in the event of it reaching the basic infringement conclusion, it would also reach the conclusion that the suspected agreement is exempt from the Chapter I prohibition as a result of section 9(1); and in this subsection “the basic infringement conclusion” is the conclusion that there is an agreement which—
- may affect trade within the United Kingdom, and
 - has as its object or effect the prevention, restriction or distortion of competition within the United Kingdom.
- (9) In the case of an investigation conducted by virtue of section 25(3) or (7), this section does not apply if a person has produced evidence to the OFT in connection with the investigation that satisfies it on the balance of probabilities that, in the event of it reaching the basic infringement conclusion, it would also reach the conclusion that

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the suspected agreement is an agreement to which the prohibition in Article 81(1) is inapplicable because the agreement satisfies the conditions in Article 81(3); and in this subsection “the basic infringement conclusion” is the conclusion that there is an agreement which—

- (a) may affect trade between Member States, and
- (b) has as its object or effect the prevention, restriction or distortion of competition within the Community.]

Textual Amendments

- F10** S. 35(1) substituted (1.5.2004) by [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\)](#), reg. 1(a), [Sch. 1 para. 21\(2\)](#)
- F11** Words in s. 35 substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, [Sch. 25 para. 38\(27\)](#); [S.I. 2003/766](#), art. 2, [Sch.](#) (with art. 3) (as amended (20.7.2007) by [S.I. 2007/1846](#), reg. 3(2), [Sch.](#))
- F12** S. 35(5) substituted (1.5.2004) by [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\)](#), reg. 1(a), [Sch. 1 para. 21\(3\)](#)
- F13** Words in s. 35(6) substituted (1.5.2004) by [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\)](#), reg. 1(a), [Sch. 1 para. 21\(4\)](#)
- F14** Words in s. 35(7) substituted (1.5.2004) by [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\)](#), reg. 1(a), [Sch. 1 para. 21\(5\)](#)
- F15** S. 35(8)(9) inserted (1.5.2004) by [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\)](#), reg. 1(a), [Sch. 1 para. 21\(6\)](#)

36 ^[F16]Penalties].

- (1) On making a decision that an agreement has infringed the Chapter I prohibition ^[F17]or that it has infringed the prohibition in Article 81(1)], the ^[F18]OFT may require an undertaking which is a party to the agreement to pay ^[F19]the OFT a penalty in respect of the infringement.
- (2) On making a decision that conduct has infringed the Chapter II prohibition ^[F20]or that it has infringed the prohibition in Article 82], the ^[F18]OFT may require the undertaking concerned to pay ^[F19]the OFT a penalty in respect of the infringement.
- (3) The ^[F18]OFT may impose a penalty on an undertaking under subsection (1) or (2) only if ^[F21]the OFT is satisfied that the infringement has been committed intentionally or negligently by the undertaking.
- (4) Subsection (1) is subject to section 39 and does not apply ^[F22]in relation to a decision that an agreement has infringed the Chapter I prohibition] if the ^[F18]OFT is satisfied that the undertaking acted on the reasonable assumption that that section gave it immunity in respect of the agreement.
- (5) Subsection (2) is subject to section 40 and does not apply ^[F23]in relation to a decision that conduct has infringed the Chapter II prohibition] if the ^[F18]OFT is satisfied that the undertaking acted on the reasonable assumption that that section gave it immunity in respect of the conduct.
- (6) Notice of a penalty under this section must—
 - (a) be in writing; and
 - (b) specify the date before which the penalty is required to be paid.

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- (7) The date specified must not be earlier than the end of the period within which an appeal against the notice may be brought under section 46.
- (8) No penalty fixed by the [F18OFT] under this section may exceed 10% of the turnover of the undertaking (determined in accordance with such provisions as may be specified in an order made by the Secretary of State).
- (9) Any sums received by the [F18OFT] under this section are to be paid into the Consolidated Fund.

Textual Amendments

- F16** Word in s. 36 sidenote substituted (1.5.2004) by [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\)](#), reg. 1(a), [Sch. 1 para. 22\(6\)](#)
- F17** Words in s. 36(1) inserted (1.5.2004) by [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\)](#), reg. 1(a), [Sch. 1 para. 22\(2\)](#)
- F18** Word in s. 36 substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, [Sch. 25 para. 38\(28\)\(a\)](#); [S.I. 2003/766](#), art. 2, [Sch.](#) (with art. 3) (as amended (20.7.2007) by [S.I. 2007/1846](#), reg. 3(2), [Sch.](#))
- F19** Words in s. 36(1)(2) substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, [Sch. 25 para. 38\(28\)\(b\)](#); [S.I. 2003/766](#), art. 2, [Sch.](#) (with art. 3) (as amended (20.7.2007) by [S.I. 2007/1846](#), reg. 3(2), [Sch.](#))
- F20** Words in s. 36(2) inserted (1.5.2004) by [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\)](#), reg. 1(a), [Sch. 1 para. 22\(3\)](#)
- F21** Words in s. 36(3) substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, [Sch. 25 para. 38\(28\)\(c\)](#); [S.I. 2003/766](#), art. 2, [Sch.](#) (with art. 3) (as amended (20.7.2007) by [S.I. 2007/1846](#), reg. 3(2), [Sch.](#))
- F22** Words in s. 36(4) inserted (1.5.2004) by [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\)](#), reg. 1(a), [Sch. 1 para. 22\(4\)](#)
- F23** Words in s. 36(5) inserted (1.5.2004) by [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\)](#), reg. 1(a), [Sch. 1 para. 22\(5\)](#)

37 Recovery of penalties.

- (1) If the specified date in a penalty notice has passed and—
 - (a) the period during which an appeal against the imposition, or amount, of the penalty may be made has expired without an appeal having been made, or
 - (b) such an appeal has been made and determined,the [F24OFT] may recover from the undertaking, as a civil debt due to [F24the OFT], any amount payable under the penalty notice which remains outstanding.
- (2) In this section—

“penalty notice” means a notice given under section 36; and

“specified date” means the date specified in the penalty notice.

Textual Amendments

- F24** Words in s. 37 substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, [Sch. 25 para. 38\(29\)](#); [S.I. 2003/766](#), art. 2, [Sch.](#) (with art. 3) (as amended (20.7.2007) by [S.I. 2007/1846](#), reg. 3(2), [Sch.](#))

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38 The appropriate level of a penalty.

(1) The [F²⁵OFT] must prepare and publish guidance as to the appropriate amount of any penalty under this Part.

[F²⁶(1A) The guidance must include provision about the circumstances in which, in determining a penalty under this Part, the OFT may take into account effects in another Member State of the agreement or conduct concerned.]

(2) The [F²⁵OFT] may at any time alter the guidance.

(3) If the guidance is altered, the [F²⁵OFT] must publish it as altered.

(4) No guidance is to be published under this section without the approval of the Secretary of State.

(5) The [F²⁵OFT] may, after consulting the Secretary of State, choose how [F²⁵it] publishes [F²⁵its] guidance.

(6) If the [F²⁵OFT] is preparing or altering guidance under this section [F²⁵it] must consult such persons as [F²⁵it] considers appropriate.

(7) If the proposed guidance or alteration relates to a matter in respect of which a regulator exercises concurrent jurisdiction, those consulted must include that regulator.

(8) When setting the amount of a penalty under this Part, the [F²⁵OFT] must have regard to the guidance for the time being in force under this section.

(9) If a penalty or a fine has been imposed by the Commission, or by a court or other body in another Member State, in respect of an agreement or conduct, the [F²⁵OFT], an appeal tribunal or the appropriate court must take that penalty or fine into account when setting the amount of a penalty under this Part in relation to that agreement or conduct.

(10) In subsection (9) “the appropriate court” means—

- (a) in relation to England and Wales, the Court of Appeal;
- (b) in relation to Scotland, the Court of Session;
- (c) in relation to Northern Ireland, the Court of Appeal in Northern Ireland;
- (d) the House of Lords.

Textual Amendments

F25 Words in s. 38 substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\), s. 279, Sch. 25 para. 38\(30\)](#); [S.I. 2003/766, art. 2, Sch.](#) (with [art. 3](#)) (as amended (20.7.2007) by [S.I. 2007/1846, reg. 3\(2\), Sch.](#))

F26 S. 38(1A) inserted (1.5.2004) by [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\), reg. 1\(a\), Sch. 1 para. 23\(2\)](#)

Commencement Information

II S. 38 wholly in force; s. 38 not in force at Royal Assent see s. 76(3); s. 38(1)-(7) in force at 11.1.1999 by [S.I. 1998/3166, art. 2, Sch.](#); s. 38(8)-(10) in force at 1.3.2000 by [S.I. 2000/344, art. 2, Sch.](#)

39 [F²⁷Limited immunity in relation to the Chapter I prohibition].

(1) In this section “small agreement” means an agreement—

- (a) which falls within a category prescribed for the purposes of this section; but

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- (b) is not a price fixing agreement.
- (2) The criteria by reference to which a category of agreement is prescribed may, in particular, include—
- (a) the combined turnover of the parties to the agreement (determined in accordance with prescribed provisions);
 - (b) the share of the market affected by the agreement (determined in that way).
- (3) A party to a small agreement is immune from the effect of section 36(1) [F28] so far as that provision relates to decisions about infringement of the Chapter I prohibition]; but the [F29]OFT] may withdraw that immunity under subsection (4).
- (4) If the [F29]OFT] has investigated a small agreement, [F29]it] may make a decision withdrawing the immunity given by subsection (3) if, as a result of [F29]its] investigation, [F29]it] considers that the agreement is likely to infringe the Chapter I prohibition.
- (5) The [F29]OFT] must give each of the parties in respect of which immunity is withdrawn written notice of [F29]its] decision to withdraw the immunity.
- (6) A decision under subsection (4) takes effect on such date (“the withdrawal date”) as may be specified in the decision.
- (7) The withdrawal date must be a date after the date on which the decision is made.
- (8) In determining the withdrawal date, the [F29]OFT] must have regard to the amount of time which the parties are likely to require in order to secure that there is no further infringement of the Chapter I prohibition with respect to the agreement.
- (9) In subsection (1) “price fixing agreement” means an agreement which has as its object or effect, or one of its objects or effects, restricting the freedom of a party to the agreement to determine the price to be charged (otherwise than as between that party and another party to the agreement) for the product, service or other matter to which the agreement relates.

Textual Amendments

- F27** Words in s. 39 sidenote substituted (1.5.2004) by [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\)](#), reg. 1(a), **Sch. 1 para. 24(3)**
- F28** Words in s. 39(3) inserted (1.5.2004) by [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\)](#), reg. 1(a), **Sch. 1 para. 24(2)**
- F29** Words in s. 39 substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, **Sch. 25 para. 38(31)**; [S.I. 2003/766](#), art. 2, **Sch.** (with art. 3) (as amended (20.7.2007) by [S.I. 2007/1846](#), reg. 3(2), **Sch.**)

40 Limited immunity in relation to the Chapter II prohibition.

- (1) In this section “conduct of minor significance” means conduct which falls within a category prescribed for the purposes of this section.
- (2) The criteria by reference to which a category is prescribed may, in particular, include—
- (a) the turnover of the person whose conduct it is (determined in accordance with prescribed provisions);
 - (b) the share of the market affected by the conduct (determined in that way).

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- (3) A person is immune from the effect of section 36(2)^[F30], so far as that provision relates to decisions about infringement of the Chapter II prohibition,] if ^{[F31]its} conduct is conduct of minor significance; but the ^{[F32]OFT} may withdraw that immunity under subsection (4).
- (4) If the ^{[F32]OFT} has investigated conduct of minor significance, ^{[F33]it} may make a decision withdrawing the immunity given by subsection (3) if, as a result of ^{[F33]its} investigation, ^{[F33]it} considers that the conduct is likely to infringe the Chapter II prohibition.
- (5) The ^{[F32]OFT} must give the person, or persons, whose immunity has been withdrawn written notice of ^{[F31]its} decision to withdraw the immunity.
- (6) A decision under subsection (4) takes effect on such date (“the withdrawal date”) as may be specified in the decision.
- (7) The withdrawal date must be a date after the date on which the decision is made.
- (8) In determining the withdrawal date, the ^{[F32]OFT} must have regard to the amount of time which the person or persons affected are likely to require in order to secure that there is no further infringement of the Chapter II prohibition.

Textual Amendments

- F30** Words in s. 40(3) inserted (1.5.2004) by [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\)](#), reg. 1(a), **Sch. 1 para. 25(2)**
- F31** Word in s. 40(5) substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, **Sch. 25 para. 38(32)(c)**; [S.I. 2003/766](#), art. 2, Sch. (with art. 3) (as amended (20.7.2007) by [S.I. 2007/1846](#), reg. 3(2), Sch.)
- F32** Word in s. 40 substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, **Sch. 25 para. 38(32)(a)**; [S.I. 2003/766](#), art. 2, Sch. (with art. 3) (as amended (20.7.2007) by [S.I. 2007/1846](#), reg. 3(2), Sch.)
- F33** Words in s. 40(4) substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, **Sch. 25 para. 38(32)(b)**; [S.I. 2003/766](#), art. 2, Sch. (with art. 3) (as amended (20.7.2007) by [S.I. 2007/1846](#), reg. 3(2), Sch.)

41 Agreements notified to the Commission.

- ^[F34](1) This section applies if a party to an agreement which may infringe the Chapter I prohibition has notified the agreement to the Commission for a decision as to whether an exemption will be granted under Article 85 with respect to the agreement.
- (2) A penalty may not be required to be paid under this Part in respect of any infringement of the Chapter I prohibition after notification but before the Commission determines the matter.
 - (3) If the Commission withdraws the benefit of provisional immunity from penalties with respect to the agreement, subsection (2) ceases to apply as from the date on which that benefit is withdrawn.
 - (4) The fact that an agreement has been notified to the Commission does not prevent the ^{[F35]OFT} from investigating it under this Part.
 - (5) In this section “provisional immunity from penalties” has such meaning as may be prescribed.]

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Textual Amendments

- F34** S. 41 ceased to have effect (1.5.2004) by virtue of [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\)](#), reg. 1(a), **Sch. 1 para. 26** (with reg. 6(2))
- F35** Word in s. 41 substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, **Sch. 25 para. 38(33)**; [S.I. 2003/766](#), art. 2, Sch. (with art. 3) (as amended (20.7.2007) by [S.I. 2007/1846](#), reg. 3(2), Sch.)

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