

1986 No. 1810

RESTRICTIVE TRADE PRACTICES

The Restrictive Trade Practices (Gas Supply and Connected Activities) Order 1986

Made - - - - - 23rd October 1986
Laid before Parliament 24th October 1986
Coming into Operation 14th November 1986

The Secretary of State, in exercise of the powers conferred on him by sections 62(2)(c) and (3) and 64 of the Gas Act 1986(a), and of all other powers enabling him in that behalf, hereby makes the following Order:—

1. This Order may be cited as the Restrictive Trade Practices (Gas Supply and Connected Activities) Order 1986 and shall come into operation on 14th November 1986.

2.—(1) In this Order—

“gas pipe-line” means a pipe or system of pipes for the conveyance of gas;
 “qualifying person” in relation to a petroleum production licence means a person having a connection with the supply of gas won or to be won under the authority of that licence of a kind specified in the Schedule hereto;

“the 1972 Act” means the Gas Act 1972(b);

“the 1976 Act” means the Restrictive Trade Practices Act 1976(c); and

“the 1986 Act” means the Gas Act 1986.

(2) Expressions which are used in the 1976 Act have the same meanings in this Order.

(3) For the purposes of this Order, a person is an associate of another if he and that other are connected with each other within the meaning of section 533 of the Income and Corporation Taxes Act 1970(d).

(4) For the purposes of Articles 5 to 8 of this Order, a supply of gas won, or to be won, under the authority of two or more petroleum production licences granted in respect of areas the relevant strata of which—

(a) form a single geological structure or gas field; or

(b) form more than one such structure or field, but which are, or are intended to be, developed together so that the gas won under the authority of those licences is, or is to be, transported through a gas

(a) 1986 c. 44.

(d) 1970 c. 10.

(b) 1972 c. 60.

(c) 1976 c. 34.

pipe-line constructed, or to be constructed, for the purpose of transporting that gas, or that gas and any other gas,

shall be deemed to be a supply of gas won, or to be won, under the authority of a single such licence, and a person who is a qualifying person in relation to any of those licences shall be deemed to be a qualifying person in relation to that single licence.

3. For the 1976 Act not to apply, and be deemed never to have applied, to an agreement which complies with paragraphs (a) and (b) of section 62(2) of the 1986 Act, the agreement must satisfy the conditions specified in one or more of the following Articles.

4. The agreement was made before 15th March 1986 and contains provisions relating to, or to activities connected with, the supply at a relevant place of gas won under the authority of a petroleum production licence, and every restriction or information provision accepted or made under the agreement as would (apart from section 62 of the 1986 Act and this Order) make the agreement subject to registration under the 1976 Act is or was a restriction or information provision relating exclusively to the supply at such a place of gas so won, or to activities connected with that supply, or to that supply and such activities.

5. The agreement contains provisions relating to, or to activities connected with, the supply of gas won under the authority of a single petroleum production licence and—

- (a) each restriction or information provision accepted or made under the agreement as would (apart from section 62 of the 1986 Act and this Order) make the agreement subject to registration under the 1976 Act is or was a restriction or information provision relating exclusively to the supply otherwise than under an authorisation granted under section 7 of the 1986 Act (or, in relation to a supply before the appointed day, a supply otherwise than in performance of any duty imposed by the 1972 Act) of that gas or to activities connected with that supply, or to that supply and such activities; and
- (b) all the persons who are for the time being or have been parties to the agreement, other than any person to whom any of that gas is to be supplied and any associate of such a person, are, or at the time they were parties to the agreement were, qualifying persons in relation to that licence.

6.—(1) The agreement contains provisions relating to, or to activities connected with, the supply of gas won, or to be won, under the authority of a single petroleum production licence (in this Article referred to as the “first licence”) and that supply is for any purpose connected with the production of oil or gas from an area in respect of which another single such licence has been granted (in this Article referred to as the “second licence”) and—

- (a) each restriction or information provision accepted or made under the agreement as would (apart from section 62 of the 1986 Act and this Order) make the agreement subject to registration under the 1976 Act is or was a restriction or information provision relating exclusively

to the supply otherwise than under an authorisation granted under section 7 of the 1986 Act (or, in relation to a supply before the appointed day, a supply otherwise than in performance of any duty imposed by the 1972 Act) of—

- (i) gas won, or to be won, under the authority of the first licence, or to activities connected with that supply, or to that supply and such activities, provided that the supply is for any purpose connected with the production of oil or gas from the area in respect of which the second licence has been granted or the restriction or information provision is or was accepted or made only as between qualifying persons in relation to the first licence or between such persons and any person to whom any of the gas won under the authority of that licence is to be supplied and any associate of such a person; or
- (ii) gas won, or to be won, under the authority of the second licence, or to activities connected with that supply, or to that supply and such activities, provided that the restriction or information provision is or was accepted or made only as between qualifying persons in relation to that licence, or between such persons and any person to whom any of the gas won under the authority of that licence is to be supplied and any associate of such a person; and

(b) all the persons who are for the time being or have been parties to the agreement, other than any person referred to in paragraph (2) below, are, or at the time they were parties to the agreement were, qualifying persons in relation to either or both of the licences referred to in this Article.

(2) The persons to be disregarded for the purposes of sub-paragraph (b) of paragraph (1) of this Article are—

- (a) any person who prior to the agreement being entered into had a right to be supplied with any of the gas won, or to be won, under the authority of the first licence;
- (b) any person to be supplied with any of the gas won, or to be won, under the authority of the second licence; and
- (c) any associate of any such person as is referred to in sub-paragraph (a) or (b) of this paragraph.

7.—(1) The agreement contains provisions relating to, or to activities connected with, the supply of gas won, or to be won, under the authority of one or more petroleum production licences (in this Article referred to as the “relevant licence or licences”) which is to be supplied for the purpose of satisfying an obligation to supply gas won, or to be won, under the authority of another single such licence (in this Article referred to as the “second licence”) and—

- (a) each restriction or information provision accepted or made under the agreement as would (apart from section 62 of the 1986 Act and this Order) make the agreement subject to registration under the 1976 Act is or was a restriction or information provision relating exclusively

to the supply otherwise than under an authorisation granted under section 7 of the 1986 Act (or, in relation to a supply before the appointed day, a supply otherwise than in performance of any duty imposed by the 1972 Act) of—

- (i) gas won, or to be won, under the authority of the relevant licence or licences, or to activities connected with that supply, or to that supply and such activities, provided that any such restriction or information provision so accepted or made which relates to a supply of gas (or to activities connected with that supply, or to that supply and such activities) which is not in satisfaction of the obligation to supply gas won under the authority of the second licence, is or was accepted or made only as between qualifying persons in relation to a single relevant licence, or between such qualifying persons and any person to whom any of the gas won under the authority of that licence is to be supplied and any associate of such a person; or
 - (ii) gas won, or to be won, under the authority of the second licence, or to activities connected with that supply, or to that supply and such activities, provided that the restriction or information provision is or was accepted or made only as between qualifying persons in relation to the second licence, or between such persons and any person to whom any of the gas won under the authority of that licence is to be supplied and any associate of such a person; and
- (b) all the persons who are for the time being or have been parties to the agreement, other than any person referred to in paragraph (2) below, are, or at the time they were parties to the agreement were, qualifying persons in relation to any of the licences referred in this Article.
- (2) The persons to be disregarded for the purposes of sub-paragraph (b) of paragraph (1) of this Article are—
- (a) any person who prior to the agreement being entered into had a right to be supplied with any of the gas won, or to be won, under the authority of the relevant licence or licences;
 - (b) any person to whom any of the gas won, or to be won, under the authority of the second licence was to have been supplied; and
 - (c) any associate of any such person as is referred to in sub-paragraph (a) or (b) of this paragraph.

8.—(1) The agreement contains provisions relating to the transport through a gas pipe-line of gas won, or to be won, under the authority of two or more petroleum production licences, or to the treatment of gas so won, or to be won, and—

- (a) each restriction or information provision accepted or made under the agreement as would (apart from section 62 of the 1986 Act and this Order) make the agreement subject to registration under the 1976 Act is or was a restriction or information provision—
 - (i) relating exclusively to the supply otherwise than under an authorisation granted under section 7 of the 1986 Act (or, in

- relation to a supply before the appointed day, a supply otherwise than in performance of any duty imposed by the 1972 Act) of gas won, or to be won, under the authority of one of those licences, or to activities connected with that supply, or to that supply and such activities, and which is or was accepted or made only as between qualifying persons in relation to that licence, or between such persons and any person to whom any of the gas won under the authority of that licence is to be supplied and any associate of such a person; or
- (ii) in the case of an agreement containing provisions relating to the treatment of gas, relating exclusively to any of the matters referred to in paragraph (2) below; or
 - (iii) in the case of an agreement not containing such treatment provisions, relating exclusively to any of the matters referred to in paragraph (3) below; and
- (b) all the persons who are for the time being or have been parties to the agreement, other than any person to whom any of the gas won under the authority of any of those licences is to be supplied and any associate of such a person, are, or at the time they were parties to the agreement were, qualifying persons in relation to any of those licences.
- (2) The matters referred to in paragraph (1)(a)(ii) above are—
- (a) the quantity and quality of gas won, or to be won, under the authority of each such licence to be treated pursuant to that agreement;
 - (b) the transport of that gas to the place at which it is to be treated;
 - (c) the treatment of that gas;
 - (d) the priority to be given to the transport or treatment of that gas as against any gas to be transported through the pipe-line or treated at that place pursuant to any agreement made after the date of the agreement to which this Article applies;
 - (e) the allocation of that gas after treatment between or among the licensed areas from which it was won; and
 - (f) the transport of the gas so treated and allocated to any person to whom it is to be supplied.
- (3) The matters referred to in paragraph (1)(a)(iii) above are—
- (a) the quantity and quality of gas won, or to be won, under the authority of each such licence to be transported through the pipe-line pursuant to the agreement;
 - (b) the transport of that gas through the pipe-line;
 - (c) the priority to be given to the transport of that gas through the pipe-line as against any gas to be so transported pursuant to an agreement made after the date of the agreement to which this Article applies; and
 - (d) the allocation of that gas after it has been transported through the pipe-line between or among the licensed areas from which it was won.

(4) Where the agreement referred to in paragraph (1) above also contains provisions of a kind described in paragraph (1) of Article 7, the agreement may also contain restrictions or information provisions relating exclusively to a supply of the kind described in sub-paragraph (a)(i) or (ii) of that paragraph provided that—

- (a) each such restriction or information provision satisfies, where relevant, the proviso specified in the appropriate sub-paragraph; and
- (b) all the persons who are for the time being or have been parties to the agreement, other than any person to whom any of the gas won under the authority of any of the licences referred to in paragraph (1) above is to be supplied and any associate of such a person, are, or at the time they were parties to the agreement were—
 - (i) qualifying persons in relation to any of the licences referred to in paragraph (1) above; or
 - (ii) qualifying persons in relation to any of the licences described in paragraph (1) of Article 7; or
 - (iii) persons of a kind described in paragraph (2) of that Article.

9. The agreement is an agreement in respect of which the Secretary of State, following consultation with the Director General of Fair Trading on the question of whether the agreement has, or would be likely to have, to any significant extent, the effect of restricting, distorting or preventing competition, has determined that the 1976 Act should not apply to that agreement.

Alick Buchanan-Smith,
Minister of State,
Department of Energy.

23rd October 1986.

Article 2(1)

SCHEDULE

PERSONS HAVING A CONNECTION WITH THE SUPPLY
OF GAS WON UNDER THE AUTHORITY OF A PETROLEUM
PRODUCTION LICENCE

1. Any person who is for the time being entitled to win gas under the authority of the petroleum production licence.
 2. Any person who has been appointed in accordance with that licence to exercise functions of organising or supervising all or any of the operations authorised by the licence.
 3. Any person by whom, or for whose benefit, or in accordance with whose directions, any rights granted by that licence, or any rights derived from rights so granted, have become exercisable.
 4. Any person having an interest in any gas pipe-line through which gas won under the authority of that licence is or is to be transported, and any person operating such a pipe-line.
 5. Any person having an interest in any facilities used, or to be used, for the treatment of gas won under the authority of that licence, and any person operating such facilities.
 6. Any associate of a person specified in the preceding paragraphs of this Schedule.
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EXPLANATORY NOTE

(This Note is not part of the Order.)

This Order specifies the further conditions which must be satisfied for an agreement which complies with paragraphs (a) and (b) of section 62(2) of the Gas Act 1986 to be excluded from the provisions of the Restrictive Trade Practices Act 1976. Section 62 and this Order will come into force on the same day. (Section 62 is brought into force by the Gas Act 1986 (Commencement No. 2) Order 1986 (S.I. 1986/1809 (C. 65)).)

The Order provides that for the 1976 Act not to apply, and be deemed never to have applied, an agreement must fall within one or more of six categories of agreement, and satisfy the conditions specified in relation to the category into which it falls, which relate to the restrictions or information provisions which may be accepted or made under the agreement, and the persons who may be a party to it.

The six categories are as follows:—

- (i) an agreement made before 15th March 1986 which contains provisions relating to, or to activities connected with, the supply at a relevant place of gas won under the authority of a petroleum production licence (*Article 4* of the Order);
- (ii) an agreement containing provisions relating to, or to activities connected with, the supply of gas won under the authority of a single petroleum production licence, which, by virtue of Article 2(4), also includes the supply of gas won under the authority of more than one petroleum production licence, if the relevant strata of the areas of those licences form a single geological structure or gas field, or the strata are, or are intended to be, developed together so that the gas is transported through a common pipe-line (*Article 5*);
- (iii) an agreement containing provisions relating to, or to activities connected with, the supply of gas won under the authority of a single such licence which is supplied for any purpose connected with the production of oil or gas from an area in respect of which another single such licence has been granted (*Article 6*);
- (iv) an agreement containing provisions relating to, or to activities connected with, the supply of gas won under the authority of one or more such licences, which is to be supplied for the purpose of satisfying an obligation to supply gas won, or to be won, under the authority of another single such licence (commonly known as a “substitution agreement”) (*Article 7*);
- (v) an agreement containing provisions relating to the transport through a gas pipe-line of gas won under the authority of two or more such licences, or to the treatment of gas so won (*Article 8*); and
- (vi) an agreement in respect of which the Secretary of State has determined, following consultation with the Director General of Fair Trading, that the 1976 Act should not apply (*Article 9*).

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