

1989 No. 2258

MONOPOLIES AND MERGERS

The Supply of Beer (Loan Ties, Licensed Premises and Wholesale Prices) Order 1989

<i>Made - - - -</i>	<i>1st December 1989</i>
<i>Laid before Parliament</i>	<i>4th December 1989</i>
<i>Coming into force</i>	
<i>for the purposes of articles 2(2) (a) and</i> <i>3(2) (a)</i>	<i>1st January 1990</i>
<i>for all other purposes</i>	<i>1st May 1990</i>

Whereas the Secretary of State, in accordance with section 91(2) of the Fair Trading Act 1973(a), published on 22nd, 25th and 26th August 1989 a notice stating his intention to make this Order, indicating the nature of the provisions to be embodied in it and stating that any person whose interests were likely to be affected by it and who was desirous of making representations in respect of it should do so in writing before 10th October 1989;

And whereas the Secretary of State has considered the representations made to him in accordance with that notice:

Now, therefore, the Secretary of State, being the appropriate Minister within the meaning of section 56 of the said Act, in exercise of the powers conferred by sections 56(2) and 90(2), (3) and (4) of, and paragraphs 1, 2, 4, 8 and 9 of Schedule 8 to, the said Act, and for the purpose of remedying or preventing adverse effects specified in a report of the Monopolies and Mergers Commission entitled "The Supply of Beer—a report on the supply of beer for retail sale in the United Kingdom" (b), hereby makes the following Order:—

1.—(1) This Order may be cited as the Supply of Beer (Loan Ties, Licensed Premises and Wholesale Prices) Order 1989 and shall come into force—

- (a) for the purposes of articles 2(2) (a) and 3(2) (a) below, on 1st January 1990, and
- (b) for all other purposes, on 1st May 1990.

(2) In this Order—

"beer" includes any beverage of an alcoholic strength (within the meaning of the Alcoholic Liquor Duties Act 1979(c)) exceeding 1·2 per cent which is made with beer;

"brewer" means a person who carries on business in the manufacture of beer which is supplied by retail in the United Kingdom;

"brewery group" means a group which is

- (a) a group of interconnected bodies corporate, or
- (b) a group consisting of a body corporate, or a group of interconnected bodies corporate, all other bodies corporate in which it, or any of them, has a substantial minority holding, and all subsidiaries of those other bodies corporate,

and at least one member of which is a brewer;

(a) 1973 c.41.
(b) Cm 651.
(c) 1979 c.4.

“licensed premises” means—

- (a) in England and Wales, premises for which a justices’ on-licence (within the meaning of the Licensing Act 1964(a)), other than a Part IV licence (within the meaning of that Act), is in force, or in respect of which a club is registered within the meaning of that Act;
- (b) in Scotland, premises in respect of which a public house licence, a hotel licence or a refreshment licence (within the meaning of the Licensing (Scotland) Act 1976(b)) is in force or which are occupied by a registered club within the meaning of that Act;
- (c) in Northern Ireland, premises in which the sale of intoxicating liquor is authorised by a licence granted under the Licensing Act (Northern Ireland) 1971(c), being premises of a kind mentioned in paragraph (a) or (f) of section 3(1) of that Act, or in respect of which a club is registered within the meaning of the Registration of Clubs (Northern Ireland) Order 1987(d);

“relevant purchase”, in the context of an agreement to which a brewer or a member of a brewery group is a party, means purchase by any other person who is not a member of the same group, for retail sale on licensed premises, of beer or other drink manufactured or supplied by any person not a party to the agreement;

“subsidiary” has the same meaning as in section 736 of the Companies Act 1985(e);

“substantial minority holding” means a holding by a body corporate of fifteen per cent or more, or an interest in shares conferring fifteen per cent or more, of the voting rights in another body corporate, other than its subsidiary; and for that purpose—

- (a) an “interest in shares” includes an entitlement, by a person who is not the registered holder, to exercise any right conferred by the holding of the shares in question or an entitlement to control the exercise of any such right, and
- (b) “voting rights” means rights conferred on shareholders in respect of their shares, either at all times or for the time being, to vote at general meetings of the body corporate in question on all, or substantially all, matters.

(3) For the purpose of determining whether a body corporate has a substantial minority holding in another body corporate—

- (a) it is immaterial whether a holding is direct or through a nominee or trustee,
- (b) the holdings of the subsidiaries of a body corporate shall be treated as its own,
- (c) where one body corporate has a holding in a second body corporate (not being its subsidiary) and the second body corporate has a holding in a third body corporate (not being its subsidiary), the first body corporate shall be treated as having a holding in the third equivalent to the product of the two actual holdings expressed as percentages, and
- (d) where a body corporate has, in consequence of the application of subparagraphs (a), (b) and (c) above, more than one holding in another body corporate, the holdings shall be aggregated and treated as a single holding.

(4) In the case of a body corporate which is both a brewer and a member of a brewery group, the provisions of this Order shall apply in relation to that body corporate both as a brewer and as a member of a brewery group.

(5) For the purpose of determining whether an agreement is an agreement to which article 2 or 3 below applies, a person shall be regarded as a brewer or a member of a brewery group if he is for the time being a brewer or a member of a brewery group, and it is immaterial that he may not have been such a person when the agreement was made.

(6) For the purposes of this Order—

- (a) a person shall not be treated as carrying out an agreement by reason only that he refrains from doing something the doing of which is the subject of a prohibition or restriction imposed by the agreement; and
- (b) an agreement precludes or restricts a relevant purchase whether it does so wholly or only in part, whether that is the object or merely the effect of the agreement, and whether the provisions in question are expressed as negative or positive obligations.

(a) 1964 c.26.

(b) 1976 c.66.

(c) 1971 c.13 (N.I.).

(d) S.I. 1987/1278 (N.I. 14).

(e) 1985 c.6.

(7) This Order shall extend so as to prohibit the carrying out of agreements already in existence on the date on which this Order is made as it prohibits the carrying out of agreements made subsequently.

(8) In the case of a person falling within paragraph (a), (b) or (c) of section 90(3) of the Fair Trading Act 1973, this Order (except for article 5 below) shall extend to his acts and omissions outside the United Kingdom.

2.—(1) This article applies to—

- (a) any agreement under which a brewer or a member of a brewery group makes a loan or gives any other financial assistance to another person (except a member of the same group), and
- (b) any agreement relating to any such agreement as is mentioned in subparagraph (a) above,

if (in either case) it precludes or restricts relevant purchases.

(2) Subject to paragraph (4) and article 6 below—

- (a) the parties to any agreement to which this article applies shall terminate it before 1st May 1990 to the extent that it is not consistent with paragraph (3) below, and
- (b) it shall be unlawful for any person to make or carry out an agreement to which this article applies except to the extent that it is consistent with paragraph (3) below.

(3) An agreement is consistent with this paragraph only if—

- (a) the person to whom the loan is made or other financial assistance is given may at any time repay the loan or make such payment as may be due in respect of the financial assistance, having given not more than three months' notice of the repayment or payment, and
- (b) relevant purchases are no longer precluded or restricted once the loan is repaid or payment made, including payment of all interest due;

but it shall not be inconsistent with this paragraph for an agreement to provide that if interest is payable at one rate for an initial period of one year or less and a higher rate for a subsequent period and the loan is repaid or payment made before the end of the initial period, interest at the higher rate is due in respect of all or part of the initial period.

(4) Nothing in paragraph (2) above shall be taken either to advance the time at which any payment under the agreement is due from the person to whom the loan is made or other financial assistance is given, or to relieve that person from any obligation to make payments under the agreement as they fall due.

3.—(1) This article applies to any agreement under which—

- (a) a brewer or a member of a brewery group ceases to hold an interest in licensed premises or in premises which have been licensed premises at any time since 1st January 1990, or
- (b) a member of a brewery group one or more members of which hold interests in licensed premises ceases to be a member of the group,

and to any agreement relating to any such agreement.

(2) Subject to article 6 below—

- (a) the parties to any agreement to which this article applies made on or after 1st January 1990 and before 1st May 1990 shall terminate it before the latter date to the extent that it imposes any prohibition or restriction on the use as licensed premises of any such premises as are mentioned in paragraph (1) (a) above, and
- (b) it shall be unlawful for any person to make an agreement to which this article applies, or to carry out such an agreement if it was made on or after 1st January 1990, except (in either case) to the extent that it does not impose any such prohibition or restriction.

4.—(1) Every brewer and every member of a brewery group who (in either case) sells beer for resale on licensed premises shall publish a list of the prices charged by him therefor, together with information about any discount allowed where the beer is delivered to the purchaser at a place of business of the seller or an agent of his.

(2) Where a brewer or a member of a brewery group charges prices for sales to tied tenants or tied customers which differ from those charged to purchasers who are not tied tenants or tied customers, the list of prices provided for in paragraph (1) above shall indicate the prices charged to each such class of purchaser.

(3) It shall be unlawful for any brewer or member of a brewery group to charge prices for the sale of beer for resale on licensed premises which differ, except to the extent of any discount which he may allow, from those in the list published by him in accordance with paragraph (1) above.

(4) For the purposes of this article—

- (a) a “tied tenant” is a person who, not being a member of the group in question (if any), occupies licensed premises pursuant to an agreement which is, or has the effect of, a lease or a licence granted by the brewer in question or a member of the group in question, as the case may be, and is precluded or restricted, under that agreement or another agreement made with the brewer or a member of the group, as the case may be, from making relevant purchases;
- (b) a “tied customer” is a person who, not being a tied tenant or a member of the group in question (if any), is precluded or restricted, under an agreement made with the brewer in question or a member of the group in question, as the case may be, from making relevant purchases; and
- (c) beer is sold for resale on licensed premises whether such resale is by the purchaser or by a subsequent acquirer of the beer.

5.—(1) It shall be unlawful, except to the extent provided in paragraph (2) below, for any brewer or member of a brewery group to withhold any supplies of beer for resale from any other person (except a member of the same group).

(2) It shall not be unlawful so to withhold such supplies where the person withholding the supplies has reasonable cause to believe—

- (a) that the price for the supplies may not be duly paid, or
- (b) that any containers of his, or of which he is bailee, in which the supplies would be made may not be duly returned to him or to such other person as might be appropriate, or
- (c) that any beer which would be supplied may not be handled or kept properly.

6.—(1) This Order shall not apply in respect of an agreement—

- (a) so far as it is or, if made, would be an agreement to which the Restrictive Trade Practices Act 1976(a) applies or, as the case may be, would apply, or
- (b) so long as none of the parties to it is a brewer and every member of a brewery group party to it—
 - (i) is a body corporate, or a subsidiary of a body corporate, in which another member of the group has a substantial minority holding, and
 - (ii) would not be a member of a brewery group if the holding did not exist.

(2) Articles 4 and 5 above shall impose no obligation on any member of a brewery group which—

- (a) is not a brewer,
- (b) is a body corporate, or a subsidiary of a body corporate, in which another member of the group has a substantial minority holding, and
- (c) would not be a member of a brewery group if the holding did not exist.

1st December 1989.

John Redwood
Parliamentary Under Secretary of State,
Department of Trade and Industry

(a) 1976 c.34.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order provides that where a brewer makes a loan or gives other financial assistance in return for a tie to his products, the recipient of the loan or assistance must be able to repay it or make whatever other payment may be due upon giving not more than three months' notice, and the tie must then cease. If interest is due at a lower rate during an initial period of up to one year and the loan is repaid during that period, the subsequent higher rate may be charged.

The Order also provides that brewers may not impose any prohibition on the use of premises as licensed premises when they dispose of them.

The Order requires brewers to publish wholesale price lists for beer and not charge higher prices. Discounts for collection must be shown. Prices may differ for tied tenants, other tied purchasers and purchasers who are not tied.

Brewers may not withhold wholesale beer supplies except where there are reasonable doubts about credit-worthiness, the return of containers or the handling or keeping of the beer.

The Order does not apply in respect of agreements so far as they are agreements to which the Restrictive Trade Practices Act 1976 applies.

Copies of the report of the Monopolies and Mergers Commission on which the Order is based (Cm 651) may be obtained from Her Majesty's Stationery Office.