
STATUTORY INSTRUMENTS

1990 No. 1715

MONOPOLIES AND MERGERS

**The EEC Merger Control (Distinct
Market Investigations) Regulations 1990**

Made - - - - 20th August 1990
Laid before Parliament 22nd August 1990
Coming into force - - 21st September 1990

The Secretary of State being designated⁽¹⁾ for the purposes of section 2(2) of the European Communities Act 1972⁽²⁾ in relation to measures relating to the control of concentrations between undertakings, in exercise of the powers conferred on him by the said section 2(2) hereby makes the following Regulations:

1.—(1) These Regulations may be cited as the EEC Merger Control (Distinct Market Investigations) Regulations 1990 and shall come into force on 21st September 1990.

(2) In these Regulations, “the Merger Control Regulation” means Council Regulation (EEC) No. 4064/89 on the control of concentrations between undertakings⁽³⁾, and expressions used in that Regulation shall bear the same meaning in these Regulations.

2. At any time after the Commission has transmitted to the competent authorities of the United Kingdom a copy of the notification to the Commission of a concentration with a Community dimension, the Director General of Fair Trading (“the Director”) may, for the purpose of furnishing information to the Commission under the second sentence of Article 19(2) of the Merger Control Regulation, and by notice in writing signed by him—

- (a) require any person to produce, at a time and place specified in the notice, to the Director or to any person appointed by him for the purpose, any documents which are specified or described in the notice and which are documents in his custody or under his control and relating to any matter relevant to the furnishing of information as aforesaid, or
- (b) require any person carrying on any business to furnish to the Director such estimates, returns or other information as may be specified or described in the notice, and specify the time, the manner and the form in which such estimates, returns or information are to be furnished;

(1) S.I.1990/1304.

(2) 1972 c. 68.

(3) O.J. No. L395, 30.12.89, p.1

but no person shall be compelled by virtue of this regulation to produce any documents which he could not be compelled to produce in civil proceedings before the High Court or, in Scotland, the Court of Session or, in complying with any requirement for the furnishing of information, to give any information which he could not be compelled to give in evidence in such proceedings.

3.—(1) Subsections (6) to (8) of section 85 of the Fair Trading Act 1973⁽⁴⁾ (enforcement provisions relating to notices under subsection (1) of that section requiring production of documents etc) shall, subject to paragraph (2) below, apply in relation to a notice under regulation 2 above as they apply in relation to a notice under subsection (1) of that section, but as if—

- (a) the reference in subsection (6) of that section to a fine not exceeding the prescribed sum⁽⁵⁾ were a reference to a fine not exceeding an amount equal to level 5 on the standard scale, and
- (b) in subsection (7) of that section, for the words from “any one” to “the Commission” there were substituted “the Director”.

(2) In punishing a defaulter under subsection (7A) of the said section 85, the court shall not impose any penalty which could not be imposed on summary conviction for an offence created in exercise of the powers conferred by section 2(2) of the European Communities Act 1972.

4. Sections 93B (furnishing false or misleading information to the Director) and 133 (restrictions on disclosure of information) of the Fair Trading Act 1973⁽⁶⁾ shall apply as if these Regulations were contained in Part V of that Act and the references in—

- (a) subsection (3)(a) of the said section 93B to a fine not exceeding the statutory maximum, and
- (b) subsection (5)(a) of the said section 133 to a fine not exceeding the prescribed sum

were references to a fine not exceeding an amount equal to level 5 on the standard scale.

20th August 1990

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

(4) 1973 c. 41; section 85 was amended by paragraph 13 of Schedule 20 to the Companies Act 1989 (c. 40).

(5) Subsection (6) was amended by insertion of a reference to the prescribed sum by section 32(2) of the Magistrates' Courts Act 1980 (c. 43).

(6) Section 133(5) (a) was amended by insertion of a reference to the prescribed sum by section 32(2) of the Magistrates' Courts Act 1980 (c. 43).

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations confer investigative powers (based on section 3(7) of the Competition Act 1980) upon the Director General of Fair Trading for the purpose of furnishing information to the European Commission under Council Regulation ([EEC](#)) No. 4064/89 (on the control of concentrations between undertakings) when a concentration with a Community dimension (as defined in that Regulation) may impede competition in a distinct market within the United Kingdom. The enforcement provisions of section 85(6) to (8) of the Fair Trading Act 1973 apply. Sections 93B and 133 of that Act also apply.