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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations are made under section 2(2) of the European Communities Act 1972 and make provision for the investigation of, and the making and enforcement of decisions in respect of, agreements or conduct on which it appears to the Director General of Fair Trading (“the Director”) the United Kingdom has a duty to rule under Article 84 of the Treaty. These Regulations revoke and replace the EC Competition Law (Articles 88 and 89) Enforcement Regulations 1996.

References in these Regulations to Articles of the Treaty are to Articles of the Treaty establishing the European Community as renumbered by the Treaty of Amsterdam.

Article 84 applies to cases where the Council of Ministers of the European Community has not made regulations under Article 83 giving effect to Articles 81 and 82 of the EC Treaty. Subject to the possibility of exemption under Article 81(3), Article 81 prohibits agreements between undertakings which have as their object or effect the prevention, restriction or distortion of competition within the common market and which may affect trade between Member States.

Article 82 prohibits the abuse by one or more undertakings of a dominant position in the common market or in a substantial part of it in so far as it may affect trade between Member States.

No implementing regulation has been made under Article 83 in respect of air transport services between Member States of the European Community and countries outside the European Community, or in respect of international maritime tramp vessel services.

The procedures in the Regulations are modelled on the Competition Act 1998 (“the Act”). They enable the Director to start an investigation on his own initiative, if he thinks there are reasonable grounds for suspecting that there is or has been in existence an agreement which may infringe the prohibition in Article 81(1), or if there are reasonable grounds for suspecting that the prohibition in Article 82 has been infringed. They also provide for the Director to investigate if a party to an agreement applies for an agreement to be considered under regulation 7 or if a person applies for conduct to be considered under regulation 10.

The Regulations provide that, when carrying out investigations, the Director has similar powers to those he has when investigating under the Act (including power to enter premises and power to require production of documents). The Regulations also include offences similar to those in the Act.

Under regulation 4, the Director can grant an exemption from the prohibition in Article 81(1) with respect to a particular agreement if he is requested to do so and the conditions for application of Article 81(3) are met. The exemption may be granted subject to such conditions and obligations as the Director considers it appropriate to impose. Regulation 5 makes provision in relation to cancellation etc. of exemptions.

If the Director decides that an agreement infringes the prohibition in Article 81(1) or that conduct infringes the prohibition in Article 82, he can give directions to bring the infringement to an end (regulations 18 and 19).

The Director can also give directions if he is authorised by the European Commission, following a reasoned decision recording an infringement of Article 81(1) or Article 82, to take measures needed to remedy the situation pursuant to Article 85.

There are also provisions concerning interim measures (regulation 21), appeals (regulations 25 to 28 and Schedule 2), disclosure of information (regulations 29 and 30), findings of fact by the Director (regulation 32) and Crown application (regulation 34) which are modelled on the provisions in the Act.

Schedule 1 sets out the procedural rules to be followed by the Director and by applicants and the form (form ERN) to be used if an application is made under regulation 7 or regulation 10.

**Changes to legislation:** *There are outstanding changes not yet made by the legislation.gov.uk editorial team to The EC Competition Law (Articles 84 and 85) Enforcement Regulations 2001. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details) [View outstanding changes](#)*

These are modelled on the Director's rules as set out in the Schedule to the Competition Act 1998 (Director's rules) Order 2000 (S.I. 2000/293) and Form N (Annex 1 to those rules).  
These Regulations come into force on the day after they are laid before Parliament.

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[View outstanding changes](#)

**Changes and effects yet to be applied to :**

- Sch. 2 para. 1 words substituted by S.I. 2003/767 art. 3(c)(i)
- Regulations revoked by S.I. 2007/1846 reg. 2Sch.
- reg. 2 words substituted by S.I. 2003/767 art. 3(a)(i)
- reg. 2 words substituted by S.I. 2003/767 art. 3(a)(ii)
- reg. 2 words substituted by S.I. 2003/767 art. 3(a)(iii)
- reg. 20(1) words substituted by S.I. 2002/42 reg. 4
- reg. 25(3)(g) revoked by S.I. 2003/1398 Sch. para. 41(2)
- reg. 26 substituted by S.I. 2003/1398 Sch. para. 41(3)
- reg. 27 words substituted by S.I. 2003/767 art. 3(b)
- reg. 29 revoked by S.I. 2003/1400 Sch. 5
- reg. 32(1)(b) word substituted by S.I. 2003/1398 Sch. para. 41(4)
- reg. 33(1) words revoked by S.I. 2003/1400 Sch. 5
- reg. 35(1)(2) revoked by 2002 c. 40 Sch. 26

**Changes and effects yet to be applied to the whole Instrument associated Parts and Chapters:**

Whole provisions yet to be inserted into this Instrument (including any effects on those provisions):

- Sch. 1 rule 18(1)(d) revoked by S.I. 2003/1398 Sch. para. 41(5)(a)(iii)
- Sch. 1 rule 18(2) revoked by S.I. 2003/1398 Sch. para. 41(5)(b)
- Sch. 1 rule 20 revoked by S.I. 2003/1398 Sch. para. 41(5)(c)
- Sch. 1 rule 18(1)(b) word inserted by S.I. 2003/1398 Sch. para. 41(5)(a)(i)
- Sch. 1 rule 21(1)(b)(i) word inserted by S.I. 2003/1398 Sch. para. 41(5)(d)(i)
- Sch. 1 rule 21(1)(b)(ii) word inserted by S.I. 2003/1398 Sch. para. 41(5)(e)(i)
- Sch. 1 rule 18(1)(c) word revoked by S.I. 2003/1398 Sch. para. 41(5)(a)(ii)
- Sch. 1 rule 21(1)(b)(i) words revoked by S.I. 2003/1398 Sch. para. 41(5)(d)(ii)
- Sch. 1 rule 21(1)(b)(ii) words revoked by S.I. 2003/1398 Sch. para. 41(5)(e)(ii)
- Sch. 1 rule 13(2) words substituted by S.I. 2002/42 reg. 6
- Sch. 2 para. 5(a)(b) substituted by S.I. 2003/767 art. 3(c)(ii)
- reg. 4(5)-(7) inserted by S.I. 2002/42 reg. 3
- reg. 25(3)(d)(iv) inserted by S.I. 2002/42 reg. 5(1)
- reg. 25(3A) inserted by S.I. 2002/42 reg. 5(2)

**Commencement Orders yet to be applied to the The EC Competition Law (Articles 84 and 85) Enforcement Regulations 2001**

Commencement Orders bringing legislation that affects this Instrument into force:

- S.I. 2003/766 art. 2Sch. commences (2002 c. 40)
- S.I. 2003/1397 art. 2(1)Sch. commences (2002 c. 40)