
International developments

From the United Kingdom

The Competition Act 1998

The United Kingdom's Competition Act 1998 received Royal Assent on 9 November 1998. It is intended that the new prohibitions should come into force on 1 March 2000.

The media release and summary material below was extracted from the Internet site of the UK Department of Trade and Industry (<http://www.dti.gov.uk/>).

The **Office of Fair Trading** Internet site (<http://www.offt.gov.uk>) has material on the new legislation. It also offers an electronic mailing list to inform interested parties on developments in the new law — such as publication of draft guidelines on its application and enforcement. To receive these mailings, e-mail majordomo@open.gov.uk and put the words *subscribe competition-bill* in the body text of the e-mail. It is not necessary to enter anything in the subject line of the e-mail.

Competition Bill receives Royal Assent

(DTI media release 9 November 1998)

The Government fulfilled one of its key manifesto commitments, to strengthen competition law, when the Competition Bill received Royal Assent today.

Secretary of State for Trade and Industry, Mr Peter Mandelson, said:

Competition law reform in this country has been long overdue, and this new legislation will give Britain a really modern and effective competition regime at last. This is good for consumers and gives more opportunities for enterprising and innovative British business to thrive. It is a key part of our strategy for modernising the British economy and helping us to become more competitive.

This new legislation will radically reform and strengthen the laws to deal with anti-competitive behaviour such as cartels and abuses of a dominant market position. It will introduce two prohibitions modelled on Articles 85 and 86 of the EC Treaty.

Mr Mandelson added:

Royal Assent today underlines the priority this Government has placed on moving quickly to introduce tough new competition legislation.

The Director General of Fair Trading, who will be responsible for enforcing this new legislation, will be given enhanced powers of investigation. Firms who act in an anti-competitive way will for the first time face serious penalties while interim measures will allow cartels and abuses of market power to be halted pending investigation rather than after the event. Both consumers and competitors who suffer will finally have effective rights to damages.

By adopting domestic prohibitions based on Articles 85 and 86, which can be interpreted consistently with the EC Treaty, we will keep the burden on business to a minimum.'

Notes to Editors

1. The Competition Act received Royal Assent today (9 November 1998). Copies are available from The Stationery Office, and will also shortly be available on the internet (<http://www.hmso.gov.uk/acts.htm>)

2. The Competition Bill was introduced originally in the House of Lords on 15 October 1997. The intention to legislate was announced in the Queen's speech on 14 May 1997.
3. The Act will introduce a new domestic competition regime in the UK prohibiting anti-competitive agreements and the abuse of a dominant position. The prohibitions are modelled on Articles 85 and 86 of the EC Treaty which apply to agreements and conduct which affect trade between EC Member States. Agreements may be exempted from the prohibition on anti-competitive agreements where they provide countervailing benefits, shared between consumers and business.
4. The Government intends that the prohibitions should come into force on 1 March 2000.
5. The Restrictive Trade Practices Act 1976, the Resale Prices Act 1976 and much of the Competition Act 1980 will be repealed when the prohibitions come into force.
6. The Director General of Fair Trading will be responsible for enforcing the new legislation. It is proposed that he will be given strong investigatory powers as well as the ability to impose penalties for infringement of the prohibition. The utility regulators will be able to exercise these powers concurrently within their special areas.
7. The Bill provides for a Competition Commission to replace the existing Monopolies and Mergers Commission (MMC). The new Commission will hear appeals against decisions under the prohibitions, as well as having transferred to it the existing functions of the MMC. The Government intends that the new Competition Commission should come into being, taking over from the MMC, on 1 April 1999. This will enable the new body to be fully prepared to reform its new functions once the prohibitions come into force.
8. Certain transitional provisions of the Bill come into force automatically at Royal Assent. In particular, the main burden of notification under the Restrictive Trade Practices Act is lifted, as almost all registrable

agreements made after Royal Assent become non-notifiable.

Summary material from DTI Internet site

What does the Competition Act 1998 do?

1. The Act reforms and strengthens UK competition law by prohibiting anti-competitive behaviour. It introduces two basic prohibitions:
 - a prohibition of anti-competitive agreements, based closely on Article 85 of the EC Treaty; and
 - a prohibition of abuse of a dominant position in a market, based closely on Article 86 of the EC Treaty.
2. The prohibitions will be enforced primarily by the Director General of Fair Trading. The utility regulators will have concurrent powers in their particular sectors. Companies breaching the prohibitions will be liable to financial penalties and third parties affected by anti-competitive behaviour in breach of the prohibitions will be entitled to seek compensation.
3. The prohibition approach of Articles 85 and 86 of the EC Treaty is directly effective in Member States where there is an impact on trade between Member States. The domestic regime under the Bill is closely aligned to the EC counterpart.
4. These prohibitions will replace the Restrictive Trade Practices Act 1976, the Resale Prices Act 1976, the majority of the Competition Act 1980 and related provisions in other legislation concerned with competition.

The prohibition of anti-competitive agreements (chapter I prohibition)

5. The Act will prohibit agreements which have the object or effect of preventing, restricting or distorting competition in the UK. Since anti-competitive behaviour between companies may occur without a clearly delineated agreement, the prohibition covers not only agreements but also decisions by associations of companies and concerted

practices. There is an illustrative list of practices which would infringe the prohibition.

6. Under the prohibition, the anti-competitive nature of the agreement is to be judged according to its effects or intended effects on competition. This is in contrast to the form-based approach in the current restrictive trade practices legislation which is limited to cover agreements which are registrable because they meet certain specified form-based criteria.

The prohibition of abuse of dominant position (chapter II prohibition)

7. The second prohibition introduced by the Act is the prohibition of abuse of a dominant position in the UK or part of it, where this affects trade within the UK. Again there is an illustrative list of the kind of conduct which may constitute an abuse, such as limiting production, markets or technical development to the detriment of the consumer. Behaviour which infringes the prohibition will be unlawful and subject to penalties.
8. The prohibition of abuse of a dominant market position will become the principal tool for dealing with anti-competitive conduct by monopolists. The monopoly provisions of the Fair Trading Act will, however, continue to have some value, albeit in strictly limited circumstances, in the future. The complex monopoly powers of the Fair Trading Act fill a gap between the two prohibitions. They allow investigation of markets where there is parallel behaviour by companies but no actual agreement. The scale monopoly powers provide structural remedies but would only be used where there has been a prior finding of abuse and the DGFT believes that there is a real prospect of further abuses by the same firm. This policy does not apply to the regulated utility sectors. The Utilities Green Paper, 'A Fair Deal for Consumers', makes clear that full use of the scale monopoly provisions is to be retained for these sectors.

The Competition Commission

9. The Competition Commission will come into being on 1 April 1999. The Commission will take on the existing functions of the MMC. It will also house an Appeals Tribunal, which will hear appeals against the Director General's decisions.

How will the Act affect business/consumers

- The new prohibition regime is intended to be applied across the economy at large.
- Only behaviour that has an appreciable effect on competition will be caught under the Act.
- Financial penalties — up to 10% of UK turnover may be imposed on firms found to be in breach of the prohibition regime.
- The DGFT will be responsible for applying and enforcing the new regime.
- Utility sector regulators will be given concurrent powers to apply and enforce the prohibitions in their sectors.
- The domestic prohibitions are intended to be interpreted, and develop, consistently with the EC prohibition system.
- Consumer rights will be strengthened by the Act. Third parties will be able to appeal decisions of the DGFT. There will also be new rights for individuals and businesses at the receiving end of anti-competitive behaviour to seek damages in the courts.
- Transitional arrangements are designed to help businesses with the shift from the RTPA regime to the Chapter I prohibition. From the outset, they lift the main burden of notification under the RTPA by making most registrable agreements made after Royal Assent non-notifiable. And, when the prohibition comes into force on 1 March 2000, they provide that most existing agreements will be excluded for a limited period — usually one year — if they are not excluded altogether as the result of a direction under section 21(2) of the RTPA.

Issues for consultation

Orders to exclude land and vertical agreements

The Act provides that vertical agreements (e.g. an agreement between a supplier and a distributor) may be excluded by order from the prohibition of anti-competitive agreements (the

chapter I prohibition). Land agreements may be also be excluded by order — i.e. agreements that create or transfer interests in land.

The terms of the exclusions will be the subject of consultation by the DTI. Draft Orders and accompanying consultation documents will be placed on this website shortly.

Key differences between the current and new UK competition regimes

	Current regime	Proposed new regime
<i>Anti-competitive agreements</i>		
Basis	Restrictive Trade Practices Act 1976 (RTPA), Resale Prices Act 1976 (RPA), for restrictive agreements, cartels etc.	Repeal of RTPA and RPA (and winding down of Restrictive Practices Court). Introduction of prohibition based on Article 85
Process	Agreements filed under the RTPA placed on a public register (subject to any confidentiality granted by Secretary of State). DGFT asks SoS to agree insignificant cases should not go to Court. Significant cases referred to Court. Provisions in breach of RPA are prohibited, unless exempted.	DGFT decides if prohibitions infringed and, if so, level of fines etc. Beneficial effects assessed by DGFT for exemption. Appeal to new Competition Commission.
<i>Abuse of market power</i>		
Basis	Competition Act 1980. Scale and complex monopoly provisions of Fair Trading Act 1973 (FTA).	Repeal of (most of) Competition Act 1980. Retention of complex and scale monopoly provisions of FTA. Scale references only for tackling market power after proven abuse under prohibition. Introduction of prohibition based on Article 86.
Process	Alleged anti-competitive behaviour (abuse of market power) can be referred to MMC. MMC decide if against public interest or not. SoS makes final decision on remedies if MMC find against public interest.	DGFT decides if prohibitions infringed and, if so, level of fines etc. Appeal to new Competition Commission.
<i>Both</i>		
Criteria	Public interest	Test based on effect on competition.
Investigation	Limited investigatory powers	Strong investigatory powers, including forcible entry/search powers.
Fines	No penalties for past behaviour.	Penalties of up to 10% of UK turnover including for past behaviour.
Third parties	Limited rights. Damages possible for breach of RPA or filing out of time under RTPA.	Third party rights to challenge companies and seek damages.
Interim measures prior to completion of investigation	Only available under RTPA.	Alleged anti-competitive agreements and behaviour may be halted during investigation.