

Statutory Instrument 2000 No. 310

The Competition Act 1998 (Land and Vertical Agreements Exclusion) Order 2000

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STATUTORY INSTRUMENTS

2000 No. 310

COMPETITION

The Competition Act 1998 (Land and Vertical Agreements Exclusion) Order 2000

Made

10th February 2000

Coming into force

1st March 2000

Whereas the Secretary of State laid the draft of this Order before Parliament on 19th January 2000;

And whereas the said draft as so laid has been approved by resolution of each House of Parliament;

Now therefore the Secretary of State in exercise of the powers conferred on him by sections 50 and 71 of the Competition Act 1998^[1], hereby makes the following Order:

Citation and commencement

1. This Order may be cited as the Competition Act 1998 (Land and Vertical Agreements Exclusion) Order 2000 and shall come into force on 1st March 2000.

Definitions

2. In this Order -

"the Act" means the Competition Act 1998;

"interest in land" includes any estate, interest, easement, servitude or right in or over land (including any interest or right created by a licence), and in Scotland also includes any interest under a lease and other heritable right in or over land including a heritable security;

"land" includes buildings and other structures and land covered with water;

"land agreement" means an agreement between undertakings which creates, alters, transfers or terminates an interest in land, or an agreement to enter into such an agreement, together with any obligation and restriction to which Article 6 applies; and to the extent that an agreement is a vertical agreement it is not a land agreement;

"party to an agreement" in respect of a land agreement includes a successor in title to a party to the agreement;

"relevant land" means the land in respect of which a land agreement creates, alters, transfers or terminates an interest, or in respect of which it constitutes an agreement to do so; and "other relevant land" means other land in which a party to a land agreement has an interest; and

"vertical agreement" means an agreement between undertakings, each of which operates, for the purposes of the agreement, at a different level of the production or distribution chain, and relating to the conditions under which the parties may purchase, sell or resell certain goods or services and includes provisions contained in such agreements which relate to the assignment to the buyer or use by the buyer of intellectual property rights, provided that those provisions do not constitute the primary object of the agreement and are directly related to the use, sale or resale of goods or services by the buyer or its customers.

Exclusion of vertical agreements from the Chapter I prohibition

3. The Chapter I prohibition shall not apply to an agreement to the extent that it is a vertical agreement.

4. Article 3 shall not apply where the vertical agreement, directly or indirectly, in isolation or in combination with other factors under the control of the parties has the object or effect of restricting the buyer's ability to determine its sale price, without prejudice to the possibility of the supplier imposing a maximum sale price or recommending a sale price, provided that these do not amount to a fixed or minimum sale price as a result of pressure from, or incentives offered by, any of the parties.

Exclusion of land agreements from the Chapter I prohibition

5. The Chapter I prohibition shall not apply to an agreement to the extent that it is a land agreement.

Obligations and restrictions

6. - (1) This article applies to an obligation which is accepted by a party to a land agreement in his capacity as holder of an interest:

(a) in the relevant land or other relevant land and is for the benefit of another party to the agreement in his capacity as holder of an interest in the relevant land; or

(b) in other relevant land and relates to the imposition in respect of that land of:

(i) restrictions of a kind described in paragraph (2)(a) which correspond to those accepted by a party to the agreement in his capacity as holder of an interest in the relevant land; or

(ii) obligations which correspond to those accepted by a party to the agreement in his capacity as holder of an interest in the relevant land.

(2) This article applies to a restriction which:

(a) restricts the activity that may be carried out on, from, or in connection with the relevant land or other relevant land and is accepted by a party to the agreement in his capacity as holder of an interest in the relevant land or other relevant land and is for the benefit of another party to the agreement in his capacity as holder of an interest in the relevant land;

(b) is accepted by a party to the agreement in his capacity as holder of an interest in other relevant land and relates to the imposition of restrictions on the activity that may be carried out on, from, or in connection with the other relevant land which correspond to those accepted by a party to the agreement in his capacity as holder of an interest in the relevant land; or

(c) restricts the freedom of a party to the agreement to create or transfer an interest in the relevant land to another person.

Withdrawal of exclusion etc.

7. The power in paragraph 4 of Schedule 1 to the Act to withdraw the benefit of the exclusion from the Chapter I prohibition applies (with the exception of sub-paragraph (5)(b)) to the exclusion provided by Articles 3 and 5 as it applies to the exclusion provided by paragraph 1 of Schedule 1.

8. Articles 3 and 5 do not apply to an agreement to the extent that it takes effect between the same parties and is to the like object or effect as an agreement which has been the subject of a direction under Article 7.

Kim Howells,

Parliamentary Under Secretary of State for Consumers and Corporate Affairs, Department of Trade and Industry

10th February 2000

EXPLANATORY NOTE

(This note is not part of the Order)

This Order excludes land and vertical agreements, as defined in the Order, from the prohibition on anti-competitive agreements imposed by section 2 of the Competition Act 1998 (the Chapter I prohibition). The Order provides for power to withdraw the exclusion from a particular agreement, and that an agreement to the like object and effect between the same parties to an agreement from which the exclusion is withdrawn is not excluded.

A Regulatory Impact Assessment has been prepared in relation to this Order. A copy may be obtained from Competition Policy and Utilities Review Directorate, Bay 608, 1 Victoria Street SW1H 0ET, telephone 020-7215 2823.

Notes:

[1] 1998 c. 41.[back](#)

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