STATUTORY INSTRUMENTS

1980 No. 979

COMPETITION

The Anti-Competitive Practices (Exclusions) Order 1980

Made - - - -	14*th July* 1980
Laid before Parliament	21*st July* 1980
Coming into Operation	12*th August* 1980

The Secretary of State, in exercise of the powers conferred upon him by section 2(3), (4) and (5) of the Competition Act 1980(**a**), and of all other powers enabling him in that behalf, hereby makes the following Order:—

1.—(1) This Order may be cited as the Anti-Competitive Practices (Exclusions) Order 1980 and shall come into operation on 12th August 1980.

(2) In this Order, "the Act" means the Competition Act 1980.

2. For the purposes of the Act, a course of conduct is excluded from constituting an anti-competitive practice if it is—

(*a*) a course of conduct described in Schedule 1 to this Order, or

(*b*) the course of conduct of a person (not being a local authority within the meaning of section 2(8) of the Act)—

(i) whose relevant annual turnover in the United Kingdom is less than £5 million, and

(ii) who enjoys less than one quarter of a relevant market, and

(iii) who is not a member of a group of inter-connected bodies corporate which has an aggregate annual turnover in the United Kingdom of £5 million or more or which enjoys one quarter or more of a relevant market;

and the provisions of Schedule 2 to this Order shall have effect for the purpose of determining whether a person is such a person as is described in sub-paragraph (*b*) above.

(**a**) 1980 c.21.

3. For the purposes of enabling the Director General of Fair Trading to establish whether any person's course of conduct is excluded by Article 2(*b*) above from constituting an anti-competitive practice, sections 44(2) and 46 of the Fair Trading Act 1973(**a**) (power of the Director to require information) shall apply, subject to the modifications that—

(*a*) the Director may exercise the power in section 44(2) in the circumstances mentioned in section 3(1) of the Act and for the purpose mentioned above instead of in the circumstances and for the purpose mentioned in section 44(1);

(*b*) where the Director exercises the said power for the purpose of establishing whether a person is one whose relevant annual turnover in the United Kingdom is less than £5 million, as mentioned in Article 2(*b*)(i) above, references in section 44(2) to any person shall be treated as references to that person and references in the said section to goods or services of a particular description shall be treated as references to any goods or services;

(*c*) where the Director exercises the said power for the purpose of establishing whether a person enjoys less than one quarter of a relevant market, as mentioned in Article 2(*b*)(ii) above, references in section 44(2) to goods or services of a particular description shall be treated as references to goods or services of a description in relation to which a person was or is pursuing a course of conduct in respect of which the question arises whether it is excluded by Article 2(*b*) above from being an anti-competitive practice;

(*d*) paragraphs (*b*) and (*c*) of section 44(2) shall not apply; and

(*e*) section 46(1) shall apply as if it related to the power conferred on the Director by section 44(2) as modified by this Article:

Provided that those sections shall not apply to enable the Director to establish whether a person is a member of such a group of interconnected bodies corporate as is described in Article 2(*b*)(iii) above, or whether a group is such a group as is so described.

Sally Oppenheim,
Minister of State,

14*th July* 1980.

Department of Trade.

(**a**) 1973 c.41.

Article 2 (a)

SCHEDULE 1

Excluded courses of conduct

1. Any course of conduct which consists of—

(*a*) the inclusion in contracts for the supply of goods of conditions relating solely to the supply of those goods outside the United Kingdom, or

(*b*) the refusal to supply goods except upon such conditions.

2. Any course of conduct required or envisaged by any provision of an agreement or arrangement made under section 24 of the Transport Act 1968(**a**) or section 1 or 3 of the Transport Act 1978(**b**), being a provision the inclusion of which in the agreement or arrangement was pursuant to a duty imposed by the provision of those Acts under which the agreement or arrangement was made.

3.—(1) Any course of conduct pursued by an operator of international sea transport services in respect of such services or in respect of the acquisition of any goods or the securing of any other services in connection with the operation of such services.

(2) Any course of conduct pursued by any person solely in respect of the securing by him of international sea transport services.

(3) In this paragraph, "international sea transport services" means the international carriage of passengers or goods wholly by sea or (where the carriage is not wholly by sea and the carriage by sea and the carriage otherwise than by sea form part of the same service) partly by sea, and includes carriage by hovercraft.

4.—(1) Any course of conduct pursued by an air transport undertaking solely in respect of international carriage by air.

(2) Any course of conduct required or envisaged by a restriction accepted under an agreement described in paragraph 3(2) of the Schedule to the Restrictive Trade Practices (Services) Order 1976(**c**), being a course of conduct pursued solely in respect of international carriage by air.

(3) In this paragraph, "air transport undertaking" has the same meaning as in the Air Navigation Order 1974(**d**).

5.—(1) Any course of conduct required or envisaged by any agreement entered into between the Treasury (or the Treasury and the Secretary of State) and building societies which relates solely to the raising of funds or the making of loans.

(2) In this paragraph, a "building society" means a society incorporated under the Building Societies Act 1962(**e**) or any enactment repealed by that Act (and includes a Northern Ireland society as defined in section 134 of that Act).

6. Any course of conduct required or envisaged by an agreement described in paragraph 6 of the Schedule to the said Order of 1976.

(**a**) 1968 c.73. (**b**) 1978 c.55. (**c**) S.I. 1976/98.
(**d**) S.I. 1974/1114. (**e**) 1962 c.37.

7.—(1) Any course of conduct pursued by a member of an association to which section 33 of the Restrictive Trade Practices Act 1976(**a**) applies, being a course of conduct required or envisaged by an agreement to which, by virtue of that section, the said Act does not apply.

(2) Any course of conduct pursued by such an association which is required or envisaged by such an agreement, not being an agreement made between the association and a person who is a member neither of the association nor of a constituent association.

8. Any course of conduct pursued by a parish or community council within the meaning of the Local Government Act 1972(**b**) or a community council established under Part IV of the Local Government (Scotland) Act 1973(**c**).

(**a**) 1976 c.34. (**b**) 1972 c.70. (**b**) 1973 c.65.

Article 2

SCHEDULE 2

Provisions for determining whether a person is such a person as is described in Article 2(*b*) of this Order

1. In this Schedule—

"relevant date" means—

(*a*) in a case in which notice has been given under section 3(2)(*a*) of the Act to the person in respect of whose course of conduct the question arises whether it is excluded by Article 2(*b*) above from constituting an anti-competitive practice—

(i) the first day of April last preceding the day on which notice was so given if that day was not the first day of April in any year, or

(ii) the day on which notice was so given if that day was the first day of April in any year, and

(*b*) in a case in which no notice has been given to the said person under the said section—

(i) the first day of April last preceding the day on which the said question arises if that day is not the first day of April in any year, or

(ii) the day on which the said question arises if that day is the first day of April in any year;

"relevant goods or services" means, in any particular case, goods or services of the description in relation to which the person in respect of whose course of conduct the question arises whether it is excluded by Article 2(*b*) above from constituting an anti-competitive practice was or is pursuing that course of conduct;

"relevant period" means, in relation to any particular person—

(*a*) where that person has, within the two years ending immediately before the relevant date, completed an accounting period of more than six months, the last such period so to be completed, or

(*b*) where that person has not so completed such a period but has, within the six months ending immediately before the relevant date, completed an accounting period of six months or less, so much of the period of twelve months ending on the last day of the last such period so to be completed as during which that person was carrying on a business of supplying goods or services in the United Kingdom or otherwise carrying on business in the United Kingdom, or

(*c*) in any other case, so much of the period of twelve months ending immediately before the relevant date as during which that person was carrying on a business of supplying goods or services in the United Kingdom or otherwise carrying on business in the United Kingdom; and

"turnover in the United Kingdom" during any particular period means the total amount charged for the supply of goods and services in the United Kingdom during that period in the ordinary course of a person's business, after deduction—

(*a*) of trade discounts, rebates and other allowances;

(*b*) of Value Added Tax and other taxes directly related to turnover; and

(*c*) of any amount charged for any such supply where both the person supplying the goods or services and the person to whom they were supplied were members of one and the same group of interconnected bodies corporate at the time of supply:

Provided that in a case in which the total amount of revenue receivable by a person during any particular period in the ordinary course of his business in the United Kingdom, after deduction—

(i) of amounts receivable in respect of the supply by him of goods or services;

(ii) of trade discounts, rebates and other allowances;

(iii) of Value Added Tax and other taxes directly related to turnover; and

(iv) of any amount receivable from any other person where both he and that other person were members of one and the same group of interconnected bodies corporate when payment fell due,

equals one third or more of the total amount charged for the supply of goods and services in the United Kingdom during the said period in the ordinary course of his business, after the deductions mentioned in sub-paragraphs (*a*), (*b*) and (*c*) above, "turnover in the United Kingdom" during that period means the aggregate of the two said total amounts after the aforementioned respective deductions.

2. For the purposes of Article 2(*b*)(i) above, the relevant annual turnover in the United Kingdom of a person in any particular case is—

(*a*) where the relevant period equals twelve months, the turnover in the United Kingdom of that person during that period, and

(*b*) where the relevant period does not equal twelve months, the amount which bears the same proportion to the turnover in the United Kingdom of that person during that period as twelve months does to that period.

3. For the purposes of Article 2(*b*)(ii) above, a person enjoys less than one quarter of a relevant market unless, during the relevant period, he supplied, or there were supplied to him, at least one quarter (whether determined by value, by cost, by price or by quantity) of all the relevant goods or services supplied in the United Kingdom or any part of it during that period, no account being taken of any goods or services supplied when both the person supplying the goods or services and the person to whom they were supplied were members of one and the same group of interconnected bodies corporate at the time of supply.

4. For the purposes of Article 2(*b*)(iii) above, a person is a member of a group of interconnected bodies corporate if he is a member of the group on the relevant date.

5. For the purposes of Article 2(*b*)(iii) above, the aggregate annual turnover in the United Kingdom of a group of interconnected bodies corporate in any particular case is the aggregate of the relevant annual turnover in the United Kingdom (within the meaning of paragraph 2 above) of each person who is a member of the group on the relevant date.

6. For the purposes of Article 2(*b*)(iii) above, a group of interconnected bodies corporate enjoys one quarter or more of a relevant market if, during the relevant period, the persons who are members of the group on the relevant date supplied in total, or there were supplied to such persons in total, at least one quarter (whether determined by value, by cost, by price or by quantity) of all the relevant goods or services supplied in the United Kingdom or any part of it during that period, no account being taken of any goods or services supplied when both the person supplying the goods or services and the person to whom they were supplied were members of one and the same group of interconnected bodies corporate at the time of supply.

EXPLANATORY NOTE

(*This Note is not part of the Order.*)

This Order excludes from being anti-competitive practices under the Competition Act 1980 certain types of conduct described in Schedule 1 to the Order, and the conduct of any person (other than local authorities) with an annual turnover in the United Kingdom of less than £5 million if he enjoys less than one quarter of a relevant market and if he is not a member of a group of interconnected bodies corporate with an annual turnover in the United Kingdom of £5 million or more or which enjoys one quarter or more of the relevant market.

For the purpose of enabling the Director General of Fair Trading to establish whether a person's conduct is so excluded, section 44 (which gives him a power to obtain information) and section 46 (which makes it an offence not to provide the information) of the Fair Trading Act 1973 are applied, with modifications.