



SUPPLEMENT No. 2
TO
THE SOVEREIGN BASE AREAS GAZETTE
No. 1221 of 20th September 2001
LEGISLATION

ORDINANCE 16 OF 2001

AN ORDINANCE
TO MAKE PROVISION ABOUT COMPETITION AND THE
ABUSE OF A DOMINANT POSITION IN THE MARKET
THE ESTABLISHMENT OF A COMMISSION FOR THE
PROTECTION OF COMPETITION AND
OTHER RELATED MATTERS

T.W. RIMMER
ADMINISTRATOR

6th September 2001.

BE it enacted by the Administrator of the Sovereign Base Areas of Akrotiri and Dhekelia as follows:-

PART I
PRELIMINARY PROVISIONS

1. This Ordinance may be cited as the Competition Ordinance 2001. Short title.
2. In this Ordinance, unless the context otherwise requires - Interpretation.
 - “agreement” means any arrangement between undertakings, under which one of the parties undertakes an obligation affecting its freedom to act with respect to the other party under the agreement;
 - “appropriate Republican law” means the Protection of Competition Law of the Republic No. 207/89 as amended or substituted from time to time and includes any regulations or orders made thereunder;
 - “association of undertakings” means any organisation of any nature, with or without legal personality representing the trade interests of other undertakings and capable of taking decisions or entering into agreements on behalf of undertakings for the promotion of such interests;
 - “authorised person” means a person authorised or appointed under section 8(2);

“Commission” means the Commission for the Protection of Competition established under the appropriate Republican law;

“concerted practice” means any positive activity which notwithstanding that it is not an agreement, nevertheless results in uniform activities of undertakings;

“consumer” means any person to whom a product is supplied;

“co-operation” means any formal or informal, written or unwritten, legally enforceable or not, agreement, or the concerted practice of two or more enterprises or the decision to unify enterprises:

Provided that for the purposes of this Ordinance the following descriptions of agreements or concerted practices shall not be deemed to be co-operation, that is to say –

- (a) those between or by a holding company and subsidiary company if –
 - (i) the two companies constitute a single economic entity within which the subsidiary company has no actual liberty to set its own way of acting; and
 - (ii) the agreement or the concerted practice relates exclusively to the apportionment of activities between the holding company and the subsidiary company;
- (b) those between or by two or more subsidiary companies, while they constitute a single economic entity with their common holding company;

“Court” means the Judge’s Court of the Sovereign Base Areas;

“dominant position”, with respect to any undertaking, means a position of economic power enjoyed by the undertaking, which enables it to impede effective competition in the market and to act to a significant degree unaffected by competitors, its customers or the interests of consumers;

“financial monopoly” means an undertaking which commands a monopoly on the market by reason of exclusive rights granted to it by the Republic or the Administration;

“goods” means any thing which can be evaluated in money and which is capable of being the object of a commercial transaction;

“person” in addition to the meaning given by the Interpretation Ordinance includes (if it otherwise would not) any undertaking;

“premises” include any vehicle but do not include domestic premises unless –

- (a) they are also used in connection with the affairs of an undertaking; or
- (b) documents relating to the affairs of an undertaking are kept there;

“product” means any goods or services;

“services” means the making available and carrying out for gain or remuneration, of functions of any nature, except the production and supply of goods, and includes any professional

services, with the exception of services provided by an employee under a contract of employment;

“supply” includes sale, exchange, renting and hire-purchase;

“trade” means any activity of an economic or commercial nature and includes the provision of goods and the provision of services.

“undertaking” means any person who carries on activities of an economic or commercial nature, irrespective of whether or not such activities are carried on for gain; and includes any private or public undertaking in which the Republic or the Crown may directly or indirectly exercise substantial control by reason of ownership, economic participation or by virtue of the rules governing such undertakings.

It shall be presumed that such substantial control is being exercised directly or indirectly when the Republic or the Crown –

- (a) is allotted the majority of the paid up shares of an undertaking, or
- (b) is allotted the majority voting rights under the rules of an undertaking, or
- (c) it may appoint over one half of the members of the board of directors, or other body controlling an undertaking;

PART II

PROHIBITIONS

3. - (1) Subject to section 7, agreements between undertakings, decisions by an association of undertakings or concerted practices which –

Prohibition of agreements etc preventing, restricting or distorting competition.

- (a) may affect trade within the Areas or between the Areas and the Republic, and
- (b) have as their object or effect the prevention, restriction or distortion of competition within the Areas or between the Areas and the Republic,

are prohibited unless they are exempt in accordance with the provisions of this Ordinance.

(2) Subsection (1) applies, in particular, to agreements, decisions or concerted practices which –

- (a) directly or indirectly fix purchase or selling prices or any other trading conditions;
- (b) limit or control production, markets, technical development or investment;
- (c) share markets or sources of supply;
- (d) apply dissimilar conditions to equivalent transactions with other trading parties, thereby placing those other trading parties at a competitive disadvantage; or
- (e) make the conclusion of contracts subject to acceptance by other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

(3) Any agreement or decision which is prohibited by subsection (1) is void.

(4) Except where the context otherwise requires, any provision of this Ordinance which is expected to apply to, or in relation to, an agreement is to be construed as applying equally to, or in relation to, a decision by an association of undertakings or a concerted practice (but with any necessary modifications).

(5) The prohibition imposed by subsection (1) above is referred to in this Ordinance as "the prohibition of section 3".

Exemptions.

4. - (1) An agreement which would otherwise come within the scope of section 3 shall be exempt from the prohibition of section 3 if, in relation to the agreement, an individual exemption has been granted by the Commission or the agreement falls within a category of agreements in relation to which a block exemption has been granted by the Administrator under this section.

(2) If agreements which fall within a particular category of agreements are in the opinion of the Commission likely to be agreements to which section 5 applies, the Commission may by a reasoned opinion recommend that that category of agreements be exempt from the prohibition of section 3 whereupon the Administrator may make an order ("a block exemption order") giving effect to such recommendation.

(3) Agreements falling within a category of agreements in respect of which a block exemption order has been made shall not be required to be notified under and in accordance with section 14.

Criteria for individual and block exemptions.

5. Any reference in this Ordinance to an agreement to which this section applies is a reference to any agreement which -

(a) contributes to -

- (i) improving production or distribution, or
- (ii) promoting technical or economic progress,

while allowing consumers a fair share of the resulting benefit; but

(b) does not -

- (i) impose on the undertakings concerned restrictions which are not indispensable to the attainment of those objectives; or
- (ii) afford the undertakings concerned the possibility of eliminating competition in respect of a substantial part of the products in question.

Abuse of dominant position.

6. - (1) Subject to section 7, any conduct on the part of one or more undertakings which amounts to the abuse of a dominant position in a market is prohibited if it may affect trade within the Areas or between the Areas and the Republic.

(2) Conduct may, in particular, constitute such an abuse if it consists in -

- (a) directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions;
- (b) limiting production, markets or technical development to the prejudice of consumers;

- (c) applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;
- (d) making the conclusion of contracts subject to acceptance by the other parties of supplementary obligation which, by their nature or according to commercial usage, have no connection with the subject of the contracts.

(2) The exploitation by one or more undertakings of the financial dependence upon it or them by another undertaking being an exclusive customer, supplier, producer, representative, distributor or in a similar relationship with regard to a product or range of products shall be deemed to be an abuse of a dominant position for the purposes of subsection (1).

Such exploitation may in particular consist of the imposition of arbitrary transaction terms; the application of discriminatory treatment; the discontinuance of commercial relations by withdrawal or transfer of activities developing out of such relations in a manner which substantially affects competition; or the sudden and unjustified interruption of long-term commercial relations.

(4) The Commission may invite any undertaking which in its opinion possesses, whether alone or jointly with other undertakings, a dominant position in the market with regard to a product, to submit to it particulars regarding its activities and arrangements with other undertakings.

(5) The prohibition imposed by subsection (1) is referred to in this Ordinance as "the prohibition of section 6" and the prohibition of section 6 and the prohibition of section 3 are collectively referred to as "the prohibitions of sections 3 and 6".

7. There shall be excluded from the prohibitions of sections 3 and 6 the following -

- (a) agreements which relate to salaries and terms or conditions of employment and work;
- (b) undertakings entrusted by the Republic or the Administration with the operation of services of general economic interest or having the character of revenue producing monopolies in so far as the prohibition would obstruct the performance, in law and in fact, of the particular tasks assigned to such undertakings;
- (c) such other agreements, undertakings or conduct of undertakings as may be prescribed by an order made by the Administrator and published in the Gazette.

Exclusions from the prohibitions of sections 3 and 6.

PART III

THE COMMISSION FOR THE PROTECTION OF COMPETITION

8. - (1) Any power conferred by this Ordinance or by any regulations or orders made under it, on the Commission to do anything shall be exercised in accordance with the provisions of this Ordinance and of any such regulations and orders.

Commission and authorised persons.

(2) The Chief Officer shall appoint or authorise such persons as he deems appropriate to perform any duties or to exercise any powers or to do any other thing that may be necessary to ensure that the provisions of this Ordinance and of any regulations and orders made under it are complied with.

Individual negative certifications.

9. - (1) The Commission shall have the power to grant an individual negative certification ("a negative certification") in accordance with the following provisions of this section.

(2) On the application of an interested party the Commission shall, within a reasonable time of the date of the submission of the application, and if so satisfied on the basis of the particulars submitted and on the basis of its own knowledge, certify that no infringements of the prohibitions of sections 3 and 6 have taken place. Such negative certification may relate to a future agreement or to future conduct of an undertaking.

(3) Such an application shall be submitted in such form as may be specified under section 29 and shall include all the information that, in the opinion of the Commission, is necessary. Where two or more parties are involved, the application may be submitted by either of, or as the case may be, by any of the parties, without the consent of the other party, or as the case may be, without the consent of any one or more of the other parties.

(4) The Commission may, at any time, require from the applicant or from a third party supplementary particulars.

(5) The Commission shall publish in such manner as the Commission sees fit a summary of any application made to it, calling upon any interested third parties to submit within a stated period any observations regarding the application.

(6) In such publication the Commission shall take into consideration the interests of the undertakings concerned particularly as regards the protection of their trade secrets.

(7) The Commission may, at any time, revoke a negative certification granted under subsection (2) above, if by reason of subsequent information placed before it, the Commission considers that such negative certification is no longer justified.

(8) Until such time as the grant of a negative certification is revoked, the agreement or conduct of the undertakings in relation to which the negative certification was granted, shall be deemed not to infringe the prohibitions of sections 3 and 6, unless it is proved that at the time that the negative certification was granted the Commission was misled, by the provision of inaccurate information or by the concealment of relevant information. In such a case, the negative certification shall be declared, by the Commission, to be and always to have been, void.

(9) The intentional or negligent provision of inaccurate or misleading information on an application for the grant of a negative certification shall, by decision of the Commission, be punishable by a fine of not less than one hundred pounds (£100) and not more than two thousand pounds (£2,000).

10. The Commission, by notice published in the Gazette, may certify that a category of agreements does not infringe the prohibitions of sections 3 and 6.

Negative certification of category of agreements.

11. - (1) The Commission shall have the power to grant individual exemptions from the prohibitions of sections 3 and 6.

Power of
Commission to
grant individual
exemptions.

(2) Such an exemption may be granted on the application of interested parties provided that in the case of an application in relation to an agreement, the agreement in question has been notified under section 14.

(3) The application shall be submitted in such form as may be specified under section 29 and shall contain all the information that, in the opinion of the Commission, is necessary.

(4) The provisions of section 9 shall have effect with respect to applications for the grant of individual exemptions as those provisions have effect with respect to negative certifications.

(5) In the exercise of its powers under this section, the Commission shall take into consideration all relevant circumstances and shall grant an individual exemption if the agreement in question is an agreement to which section 5 applies.

(6) In granting an individual exemption the Commission -

- (a) shall specify the date from which the exemption shall take effect, which date shall not be earlier than the date of the submission of the notification under section 14;
- (b) shall specify the period of time for which the exemption is to be valid, which period shall not exceed five years; and
- (c) may require the agreement to meet criteria additional to those specified in section 5.

(7) The period of validity of an individual exemption may be extended, if the conditions on the basis of which the original grant was made continue to exist. The extension shall be granted on the application of the interested party which shall be submitted to the Commission no later than two months before the expiration of the period for which the exemption is valid. The Commission may extend the period of validity of the exemption under the same terms as those under which the exemption was originally granted, or on different terms.

(8) The Commission may cancel or vary the terms of the grant of an individual exemption if -

- (a) there has been a material change of circumstances since the grant;
- (b) any condition subject to which the grant was given has not been observed;
- (c) the information on which the Commission based its decision to grant an individual exemption was incomplete, false or misleading in a material particular; or
- (d) there has been an abuse of the exemption by the undertaking concerned.

(9) Where a cancellation or variation is made due to the occurrence of a cause referred to in paragraph (b), (c) or (d) of subsection (8) above, the Commission may direct that the cancellation or variation shall have retrospective effect as from the occurrence of such cause.

Notification of old agreements.

12. - (1) This section applies to an agreement (“an old agreement”) made before the date of the commencement of this Ordinance.

(2) If an individual exemption in relation to an old agreement is applied for under section 11, notification of the old agreement shall be submitted to the Commission in accordance with the provisions of section 14, no later than three months after the day that this Ordinance comes into force.

(3) If the Commission deems that the old agreement is an agreement to which section 5 applies it shall grant an exemption in accordance with the provisions of section 11, with retrospective effect to the date of the making of the agreement; if the Commission does not so deem the old agreement, it shall direct or recommend to the interested undertaking or association of undertakings that, within a specified period of time, the agreement be terminated or be amended as necessary in order that the agreement as amended will be one that does not infringe the section 3 prohibition.

(4) An old agreement which has been notified as described in subsection (2) above and in respect of which an application for an individual exemption has been made shall be deemed not to have infringed the prohibition of section 3 at any time before the decision on the application is made by the Commission (and accordingly the Commission may not impose any fine under this Ordinance in relation to an old agreement that has been notified in accordance with section 14 in relation to any period falling before the date of the Commission’s decision on the application).

Notification of new agreements.

13. - (1) This section applies to an agreement (“a new agreement”) made on or after the date of commencement of this Ordinance.

(2) If an individual exemption in relation to a new agreement is applied for under section 11, notification of the agreement shall be submitted to the Commission in accordance with the provisions of section 14.

(3) If the Commission deems that the new agreement is an agreement to which section 5 applies, it shall grant an exemption in accordance with the provisions of section 11, with retrospective effect to the date of such notification, and accordingly the agreement shall be deemed not to have infringed the prohibition of section 3 at any time before the individual exemption relating to it is granted.

(2) If the Commission deems that the new agreement is not an agreement to which section 5 applies, the grant of an individual exemption shall be refused.

(3) The Commission may not impose a fine under this Ordinance in respect of a new agreement which has been notified to the Commission, in relation to the period commencing with the time that the new agreement is notified to the Commission and ending at the time that the Commission makes its decision with respect to the application for an individual exemption.

Form and content of notification.

14. - (1) Any notification of an agreement required under this Ordinance shall be submitted to the Commission. The procedure of notification shall be completed on the date that the notification is received by the Commission or if the notification is submitted to the Commission by means of registered post, on the date that it is registered as having been posted.

(2) The notification may be made either by all the interested undertakings, or by any of them acting on behalf of all, or by duly authorised third parties; where the notification is not made by all the interested undertakings, it shall be communicated to all other interested undertakings by the undertaking making the notification.

(3) The Commission shall be notified of any significant amendment made to the agreement subsequent to the notification.

(4) The notification shall be full and accurate and contain all the necessary and relevant information.

(5) The intentional or negligent giving of inaccurate or misleading information in a notification, shall render the notification void and shall, by decision of the Commission be punishable by a fine of not less than one hundred pounds (£100) and not more than two thousand pounds (£2.000).

15. - (1) The Commission shall have the power to investigate infringements of the prohibitions of sections 3 and 6.

Powers of Commission on ascertaining infringements of sections 3 and 6.

(2) The Commission shall consider such infringements either of its own volition or on a complaint lodged by an authorised person or by third parties under and in accordance with the provisions of section 21.

(3) If the Commission finds an infringement of the prohibition of section 3 or of section 6, it shall have power -

- (a) to direct or recommend to the undertaking or association of undertakings concerned to terminate within a specified period of time the infringement, and to refrain from any future repetition of such infringement or, in the case where such infringement has ceased, to censure the undertaking or association of undertakings concerned for such infringement;
- (b) to direct the imposition of a daily fine not exceeding five thousand pounds (£5.000) for each day that a continuing infringement is continued;
- (c) to impose a fine in the light of the gravity and duration of the infringement not exceeding ten percent (10%) of the greater of the gross income of the undertaking or association of undertakings -
 - (i) in the year in which the infringement took place; or
 - (ii) in the immediately preceding year;
- (d) to direct that interim measures be taken in accordance with section 16.

16. - (1) Pending the completion of an investigation for an infringement of the prohibition of section 3 or of section 6, the Commission shall have power to direct that interim measures shall be taken and to impose such interim conditions as it deems necessary. Such measures shall be of a temporary nature and shall be limited to what is reasonably necessary in the particular circumstances of the case.

Interim measures.

(2) The Commission may act in accordance with the provisions of this section either of its own volition or on the application of interested parties, provided that all the following conditions are present -

- (a) there is made out a prima facie case that an infringement has occurred or is occurring;
- (b) the need for interim measures is urgent;
- (c) there exists a serious risk of irreparable harm to the interests of the person making the application or of the public if the interim measures are not taken.

(3) The application for interim measures shall be considered only if it is accompanied by a complaint made under the provisions of section 21 or follows such complaint or if it is submitted during an investigation by the Commission of an infringement of the prohibition of section 3 or section 6. The required interim measures shall be specified in the application, and the applicant may be required by the Commission to lodge a guarantee to cover damages which may be suffered by the undertaking involved, in the event that at the conclusion of the investigation the Commission finds that there has been no infringement.

PART V

POWERS OF THE COMMISSION TO OBTAIN INFORMATION AND TO CARRY OUT INQUIRIES

Power of
Commission to
request
information

17. - (1) The Commission shall have power to obtain information necessary for the exercise of its functions under this Ordinance, by means of requests in writing to undertakings or other persons.

(2) In such written requests the Commission shall specify the required information, the provisions of this Ordinance relied upon, the reasons for the request, a reasonable period of time of not less than twenty days for the provision of the information, and the possible sanctions in the event of a failure to provide the information requested within the period of time specified.

(3) If the information requested is not protected from disclosure, the person to whom such a request is addressed shall provide the information accurately and completely within the period of time specified.

(4) In the case of a failure to provide the information requested within the period of time specified, the Commission shall have power to impose a fine not exceeding five thousand pounds (£5,000) for each day that the failure continues following the end of that period.

(5) In the case of an intentional or negligent provision of inaccurate or misleading information, the Commission shall have the power to impose a fine not exceeding five thousand pounds (£5,000).

(6) The information provided to the Commission in the exercise of its powers under this section may be used only for the purpose for which such information was requested by the Commission under this section.

Power of
Commission to
conduct inquiry at
premises of
undertakings.

18. - (1) The Commission shall have power, in the exercise of its functions under this Ordinance, to conduct all necessary inquiries at any premises occupied by an undertaking or association of undertakings and for this purpose to –

- (a) inspect books and other documents;
- (b) take copies of, or extracts from, books or documents;
- (c) require persons to explain or clarify entries in books or documents;
- (d) enter any premises.

(2) Inquiries under subsection (1) above shall be conducted by authorised persons at the direction of the Commission. Where the Commission deems it necessary, such persons may be accompanied by officers of the Republic or Administration, or by persons with specialist knowledge duly authorised by the Commission for the purposes of the inquiry.

(3) The Commission shall state in writing the object and purpose of any inquiry, fix the date of the commencement of the inquiry, state the provision on which the inquiry is based and the possible sanctions in the event that the undertaking or association of undertakings being investigated fails to comply with any request or directions of the Commission.

(4) The inquiry shall be conducted without prior notice being given to the undertaking or association of undertakings concerned, unless the Commission deems that such notice will assist in the conduct of the inquiry.

(5) The undertaking or association of undertakings in respect of which the inquiry is being carried out may seek legal advice in the course of the inquiry, but the absence during the inquiry of a legal adviser or representative of the undertaking or association of undertakings concerned, shall not affect the validity of the inquiry.

(6) Subject to section 33 no authorised person may enter any premises as part of an inquiry by the Commission under this Ordinance without a warrant of the Court.

(7) The Commission shall have power to impose on an undertaking or association of undertakings a fine not exceeding fifty thousand pounds (£50,000), where such undertaking or association of undertakings intentionally or negligently fails to furnish all requested books or other documents or refuses to comply with any direction of the Commission regarding the conduct of an inquiry.

(8) The Commission shall also have power to impose on the undertaking or association of undertakings concerned a fine not exceeding fifty thousand pounds (£50,000) for each day that such undertaking or association of undertakings fails to comply with any direction of the Commission regarding the conduct of an inquiry.

(9) Any information or evidence acquired by the Commission in the exercise of its powers under this section shall be used only for the purposes for which the inquiry has been carried out.

19. - (1) The Chairman and the other members of the Commission, authorised persons and any other person who, by reason of their position or performance of their functions and duties under this Ordinance, obtain information of a confidential nature, shall not disclose such information except where such disclosure is necessary for the purposes of this Ordinance.

Duty not to
disclose
information.

(2) Any infringement of this section by a public servant shall constitute a disciplinary offence punishable in accordance with any relevant disciplinary provisions applicable to that public servant.

PART VI

FURNISHING OF INFORMATION AND COMPLAINTS OF INFRINGEMENTS

Duty of public servants to communicate information.

20. - (1) Authorised persons and officers of the Administration shall have a duty forthwith to inform the Commission of any infringement of this Ordinance which becomes known to them in or in the course of performing their official duties.

(2) The furnishing of such information under subsection (1) above shall be deemed to be a performance of an official duty, and an omission so to furnish such information shall constitute a disciplinary offence punishable in accordance with any relevant applicable disciplinary provisions.

Complaint of infringements of sections 3 and 6.

21. - (1) Any person having a legitimate interest in so doing, may lodge a complaint an infringement of the prohibitions of sections 3 and 6.

(2) A person is deemed to have a legitimate interest if he can show that he has suffered, or that there is a serious or possible risk that he will suffer, a substantial financial loss or be placed at a competitive disadvantage, as a direct result of the infringement.

(3) The complaint, which shall be in writing and be lodged with the Commission shall specify the legitimate interest, state the facts on which the alleged infringement is based and the effect or possible effect on the complainant; the complainant shall request the Commission to investigate the alleged infringement, to act in accordance with the provisions of section 16 and to exercise the powers conferred upon it by this Ordinance. The complaint may be lodged in the form specified under section 29.

(4) The Commission shall investigate any complaint lodged in accordance with the provisions of this section, if, after a preliminary inquiry conducted by an authorised person, it is established that the complaint raises a prima facie case of an infringement of the prohibition of section 3 or 6.

PART VII

CRIMINAL PROVISIONS

Offence of continuing infringements of the sections 3 and 6 prohibitions.

22. Any person who continues to infringe the prohibition of section 3 or 6, in contravention of a decision of the Commission directing the termination of such infringement, shall be guilty of an offence punishable with imprisonment not exceeding one year or with a fine or with both such penalties.

Offence of providing false etc information or withholding information.

23. Any person who, knowingly and for the purpose of misleading the Commission, furnishes false, inaccurate or incomplete information, or who withholds information, shall be guilty of an offence punishable with imprisonment not exceeding one year or with a fine or with both such penalties.

24. Any person who, intentionally and for the purpose of gain or other benefit discloses information contrary to section 19, shall be guilty of an offence punishable with imprisonment not exceeding one year or with a fine or with both such penalties.

Offence of unlawfully disclosing information.

PART VIII

MISCELLANEOUS PROVISIONS

25. - (1) Any person who suffers damage in consequence of an infringement of a prohibition of section 3 or 6, shall have a right of action against the undertaking concerned for the recovery of damages suffered.

Right of action for damages.

(2) Any person who brings an action under subsection (1) above, shall have a right to request the Court to issue an injunction restraining the continuation of the infringement in question.

26. The Commission may impose fines under this Ordinance only within the following time limits -

Time limits for the imposition of fines by the Commission.

(a) in the case of fines under -

(i) section 9(9) (relating to negative certificates),

(ii) section 14(5) (relating to notifications of agreements),

(iii) section 17(4) and (5) (relating to providing information to the Commission), and

(iv) section 18(7) and (8) (relating to the production of documents to, or complying with directions of, the Commission),

within three years of the infringement giving rise to the imposition of the fine; and

(b) in the case of fines under section 15(3)(b) or (c), (relating to infringements of the prohibitions of sections 3 and 6), within five years of the Commission's decision that there has been an infringement of the prohibition of section 3, or as the case may be, section 6.

27. In imposing a fine under this Ordinance the Commission shall give its reason for so doing.

Commission to give reasons for imposing fines.

28. Fines imposed by the Commission under this Ordinance shall be payable to the Commission and shall be collected in the same manner as fines imposed by a Court in respect of a criminal offence.

Payment and collection of fines.

29. - (1) The Chief Officer shall on the recommendation of the Commission make an order published in the Gazette specifying the form, content and manner of lodging and submitting -

Form of applications, notifications and complaints.

(a) applications for individual negative certifications or individual exemptions under sections 9(3) and 11(3);

(b) notifications under section 14(1);

(c) complaints lodged under section 21(3),

and any other matter relating to the above applications, notifications or complaints.

(2) The manner of publication of decisions or other documents of the Commission shall be specified by order made in accordance with subsection (1) above.

Service of
Commission
documents.

30. Court rules for service, summonses or documents shall apply with necessary modifications to any summonses to appear before the Commission, or to any decisions or other documents of the Commission.

Report of activities
of Commission.

31. - (1) The Commission shall prepare and submit to the Chief Officer an annual report on its activities.

(2) The said report of the Commission shall be submitted by the Chief Officer to the Administrator.

Regulations.

32. - (1) The Administrator may make regulations in relation to any matter which may be prescribed under this Ordinance and generally for the effective application of this Ordinance and for putting it into effect and without prejudice to the generality of the foregoing may make regulations prescribing the fees payable on applications –

- (a) for the grant of negative certifications by the Commission, under the provisions of section 9;
- (b) for the grant of individual exemptions under the provisions of section 11.

(2) Regulations made under this section may provide for offences punishable with a fine not exceeding fifty thousand pounds (£50,000).

(3) Any regulations made under this Ordinance may make different provision for different cases or classes of case and may contain such incidental, consequential, transitional and supplementary provisions as appear to the Administrator to be necessary or expedient for the purposes of the Ordinance or the regulations.

Application to the
Crown.

33. - (1) This Ordinance and any orders or regulations made under it bind the Crown except that –

- (a) the Crown shall not be criminally liable as a result of any provision of this Ordinance or of any regulations or orders made under it, and
- (b) the Crown shall not be liable for any penalty by way of fine or otherwise under any such provision.

(2) Subsection (1)(a) does not affect the application of any provision of this Ordinance in relation to persons in the public service of the Crown.

(3) If in respect of a suspected infringement of the prohibition of section 3 or 6 other than a suspected infringement by the Crown an investigation is conducted by the Commission under section 15, the powers conferred by section 18(1)(d) may not be exercised in relation to premises which are occupied by the Administration or otherwise for the purposes of the Crown without the written consent of the Chief Officer.

(4) If the Chief Officer certifies that it appears to him to be in the interests of security that the powers of entry conferred by section

18(1)(d) or that may be conferred by a warrant under section 18(6) should not be exercisable in relation to premises held, or used by or on behalf of the Crown and which are specified in the certificate, those powers shall not be exercisable in relation to those premises.

6th September 2001
(128/64)

D.J. BONNER,
Chief Officer

