
The Monopolies and Restrictive Practices (Dental Goods) Order 1951

The Monopolies and Restrictive Practices (Imported Hardwood and Softwood Timber) Order 1960

Advice to the Secretary of State for Trade and Industry by Sir John Vickers, Chairman of the OFT

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ISSUE

1. Section 88(5) and Schedule 11(10) of the Fair Trading Act 1973 (FTA) require the OFT to keep under review Orders given as a consequence of a Monopolies and Mergers Commission (MMC) or Monopolies and Restrictive Practices Commission (MRPC) monopoly report, and to advise you if we believe that changes are appropriate.¹
2. This advice relates to the Monopolies and Restrictive Practices (Dental Goods) Order 1951 (the dental goods Order) and the Monopolies and Restrictive Practices (Imported Hardwood and Softwood Timber) Order 1960 (the imported timber Order).

RECOMMENDATION

3. That you revoke both Orders.

TIMING

4. Routine.

BACKGROUND

5. The **dental goods** Order was made following a 1950 MRPC report on the supply of dental goods.²

¹ This duty remains in force by virtue of paragraph 14 of Schedule 24 of the Enterprise Act 2002.

² MRPC 1950, Report on the supply of dental goods.

6. The report found that the main trade association, the Association of Dental Manufacturers and Traders, acted against the public interest by using its members to enforce resale price maintenance and by limiting entry to the industry. It also found a number of practices of one company, the largest supplier of dental goods, were expected to act against the public interest.
7. The Order makes it unlawful (among other things) for suppliers of dental goods to make agreements to withhold supply to some persons on the grounds that they did not retail the goods at the price indicated by the supplier. It also makes it unlawful for suppliers to make or carry out any agreement which is intended to, or likely to have the effect of, limiting the number of persons carrying out the business of supplying dental goods in the UK. In addition, it makes it unlawful for any person to procure the making or carrying out of agreements of this kind.
8. The **imported timber** Order was made following a 1953 MRPC report.^{3,4}
9. The MRPC found that traders in imported hardwood timber and imported softwood timber formed 'approved lists' of importers and agents. Those on the lists would only deal with each other and they controlled any entry on to the lists.⁵ The agreements by traders on the lists to deal only with each other was seen to restrict the ability of some merchants to deal effectively in imported timber and was found to be against the public interest. The Order makes it unlawful to make or carry out the same or similar agreements (or those which have similar effects).

ASSESSMENT

10. Both Orders are very old and relate to markets from another era when the legislative framework was extremely different from what we have today.
11. The trade association named as acting against the public interest in the report on **dental goods** is now the British Dental Trade Association. The one company named in the 1950 report as acting against the public interest was dissolved in 1996.
12. The main **timber** trade body from the time, the Timber Trade Federation (TTF), still exists but others from that time have either been dissolved or amalgamated with the TTF.
13. The TTF has told us that it no longer maintains approved lists of importers and agents and that there are no restrictions on with whom agents and importers can deal. Not all imported timber passes through an agent and some shipments bypass the importer and sell directly to merchants. Importers and agents are not necessarily members of the TTF.

³ MRPC 1953, Report on the supply of imported timber.

⁴ In 1958 the MRPC released a follow-up report to the 1953 report (Imported Timber: report on whether and to what extent the recommendation of the Commission has been complied with). This report found the agreements and arrangements that the 1953 report found to be against the public interest had been replaced by other arrangements with similar effects.

⁵ All the traders on the approved lists were members of the Timber Trade Federation which helped underpin the carrying out of the practice.

14. Since the Orders were made the Competition Act 1998 has come into force. The practices which both Orders address, as far as they have anti-competitive objects or effects, are now likely to be subject to the Competition Act 1998 which deals adequately with them. The possibility of fines for breach of the Competition Act 1998 is likely to be a significant deterrent to any reversion to past practices.

CONCLUSION

15. We consider that neither Order is necessary any longer and both should be revoked. Any reversion to the old practices is likely to be subject to the Competition Act 1998.