

The Restriction on Conduct (Specialist Advertising Services)
Order 1988

Advice to the Secretary of State by Sir John Vickers, Chairman
of the OFT

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ISSUE

1. Section 88(5) of the Fair Trading Act 1973 (FTA) requires the OFT to keep under review Orders given as a consequence of a Monopolies and Mergers Commission (MMC) monopoly report and to advise you if we believe that changes are appropriate.
2. This advice relates to The Restriction on Conduct (Specialist Advertising Services) Order 1988 ('the Order').¹

RECOMMENDATION

3. That you revoke the Order.

TIMING

4. Routine.

BACKGROUND

5. The Order has been reviewed as a part of our programme of reviews of Orders and undertakings.

¹ SI 1988 No. 1017.

6. In 1988 MMC reported on the supply of advertising services in specialist outdoor magazines.^{2,3} The report found that manufacturers and retailers of outdoor goods were concerned at the publication in specialist outdoor magazines of advertisements of certain mail order firms which advertised prices for goods which were significantly lower than prices in retail shops. Because manufacturers and retailers provided most of the advertising revenue for the magazines, and some retailers stocked the magazines in their outlets, they successfully exerted pressure on publishers to change their advertising policies.
7. The MMC concluded that a complex monopoly situation existed among the four main publishers.
8. The MMC also concluded that the advertising policy of these publishers was against the public interest as it had:
 - a. hindered or prevented readers from making an informed choice of goods and where to buy them;
 - b. restricted competition between specialist retailers and mail order companies; and
 - c. narrowed the range of prices at which particular goods are offered and increased the average price level.
9. The Order made under section 56 of the Fair Trading Act 1973 makes it unlawful for publishers of specialist magazines to withhold, or threaten or agree to withhold, advertising services from persons seeking to place adverts containing information on the price of the goods being advertised. It also prohibits discriminating against price-bearing advertisements in the prices charged and other terms and conditions for advertising services.
10. It was intended to facilitate more effective price competition between mail order suppliers and manufacturers or retailers of outdoor goods.

ASSESSMENT

11. We have been told that the number of mail order companies has increased from around 30 in the late 1980s to over 50 today and that there is a trend of convergence between them and traditional retail outlets. A number

² MMC 1988, *Specialist Advertising Services: A report on the existence or possible existence of a monopoly situation in relation to the supply in the United Kingdom of the services of accepting advertisements for publication in specialised magazines intended for campers, climbers and walkers*, Cm 280.

³ 'Specialist outdoor magazines' means magazines primarily aimed at campers, climbers and walkers.

of high street retailers, especially the larger ones, now have mail order or Internet order facilities.

12. However, publishers consider that for specialist magazines the overall proportion of advertisements containing prices has not increased over the past decade. Nor has the proportion of specialist magazines sold in specialist retail shops. Publishers say this is currently around 11 per cent and similar to the level in 1986.
13. But we have been told that prices are instead now advertised in a variety of different ways. For example, catalogues or brochures which are inserted into magazines commonly publish prices.
14. Publishers have told us that it is unlikely that they would face pressure from retailers or manufacturers if the Order were revoked.
15. Since the Order was made the Competition Act 1998 has come into force. Horizontal agreements between retailers and/or manufacturers to boycott or otherwise penalise magazine publishers who include price advertising in their magazines could be caught under the Competition Act 1998. The new legislation, and the possibility of fines for breach of the prohibitions, is likely to be a significant deterrent to making such agreements in future.

CONCLUSION

16. We consider that the Order is no longer necessary and should be revoked. The nature of competition and the advertisement of prices in the supply of outdoor goods has changed. Further, any reversion to the old practices is likely to be subject to the Competition Act 1998.