

OPERATIONAL SELECTION POLICY OSP 34

Restrictive Trade Practices 1956-2000

DRAFT

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1 Authority

- 1.1 The National Archives' Acquisition Policy announced the Archives' intention of developing Operational Selection Policies across government. These would apply the collection themes described in the Acquisition Policy to the records of individual departments and agencies.
- 1.2 Operational Selection Policies are intended to be working tools for those involved in the selection of public records.
- 1.3 If you have any comments on this policy please email

information.management@nationalarchives.gov.uk

or write to:

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- 1.4 Operational Selection Policies do not provide guidance on public access to selected records.

2 Scope

- 2.1 This Operational Selection Policy refers to the records created in the course of the administration of the Restrictive Trade Practices Acts and associated legislation from 1956 to 2000.
- 2.2 The records created under other competition legislation will be addressed in other future Operational Selection Policies.

3 The National Archives' acquisition policy themes

- 3.1 The records addressed in this operational selection policy fall within the scope of the Acquisition Policy theme 2.2.1.2:

- Management of the Economy

4 Legislative provision for the supervision of restrictive trade practices

4.1 The following legislation include(s/d) provisions relating to the supervision of restrictive trading agreements:

- Restrictive Trade Practices Act 1956
- Restrictive Trade Practices Act 1968
- Restrictive Trade Practices Act 1976
- Restrictive Trade Practices Court Act 1976
- Fair Trading Act 1973
- Competition Act 1980
- Financial Services Act 1986
- Gas Act 1956
- Channel Tunnel Act 1987
- Electricity Act 1989
- Deregulation and Contracting Out Act 1994
- Gas Act 1995

4.2 The 1956 Act s 1 provided for restrictive trading agreements for goods to be entered on a public register, and the 1976 Act extended this provision to include agreements for the provision of services. The Competition Act 1998 Schedule 13 paragraph 10(2) requires the Director General of Fair Trading to continue to maintain the Register.

4.3 The 1956 Act provided for the establishment of the Restrictive Trade Practices Court and for the Registrar to refer agreements to the Court for determination if they appeared to operate against the public interest, defined in sections 21 of the 1956 Act and 10(1) and 19(1) of the 1976 Act.

4.4 The 1976 Act sections 21(2), 21(3) 29 and 32 provided for certain matters to be directed and determined by the Secretary of State.

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- 4.5 The legislation prescribed time limits for the provision of the details of agreements. It was unlawful to operate restrictive agreements before the details had been provided to the Office of Fair Trading (OFT). Details of changes to registered agreements, and changes to unregistered agreements which had the effect of making them registrable, were required to be notified to OFT. The ending of a registered agreement was required to be notified, but the details remained on the Register.
- 4.6 The Secretary of State could direct that certain details of an agreement were to be entered in a special section of the register not open to public inspection.
- 4.7 The Competition Act 1998 s 1 provides for the prospective repeal of the Restrictive Trade Practices Court Act 1976 (and thus the abolition of the Court) by means of a commencement order, but no order has been laid at the time of publication of this Operational Selection Policy.
- 4.8 A fuller list of the Acts and Statutory Instruments having application in this area is at Appendix A in the Office of Fair Trading's own publication Restrictive Trade Practices (Nov 1996).

5 The Public Register

- 5.1 The Register of Restrictive Trading Agreements is a public register which may be examined on application to the OFT.
- 5.2 Not all agreements that contain restrictions were required to be furnished for registration.

Some were excluded because they did not fall within the legal definition of a registrable agreement, some because they were specifically excluded, and others because the only restrictions they contain could be disregarded. Some were excluded from the requirement to furnish even though they were registrable.

6 Published information

6.1 Court cases which have resulted in judgements clarifying the law are described in the reports of the Registrar of Restrictive Trading Agreements, for the years 1952-1972, and the annual reports of the Director General, from 1973, which were published for Parliament. These may be seen in good reference libraries. The cases to which these reports refer are reported in detail in the published law reports series:

- Reports of Restrictive Trade Practices Cases
- Industrial Cases Reports
- All England Law Reports
- Appeal Cases
- Scots Law Times

7 The records

7.1 Office of Fair Trading (OFT) records

7.1.1 Selection has been against the background of the general availability of the authoritative published material, as referred to above.

7.1.2 When the OFT received details of an agreement it first checked that they sufficiently and accurately recorded the agreement's provisions. In many instances it approached the parties for more information. The OFT then considered whether the agreement met the basic criteria to make it registrable, and if so entered it in the Register. The OFT then normally referred it to the Restrictive Trade Practices Court for a decision on whether the

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restrictions operated against the public interest. There were some strictly delimited situations in which reference to the Court was not required.

7.1.3 The OFT maintained the Public Register. The OFT Public Register comprises copies of the trading agreements and of notices of reference, or not, to the Court. At the time of writing the Register comprised approximately 20,000 files.

7.1.4 In addition the OFT had a series of working files, including copies of all the documents in the Public Register files: these are 'plain number' files. Additional material including formal and informal correspondence with the trade associations and firms which sponsored or were parties to the registrable agreements, formal and informal correspondence with consumers of the goods or services, proofs of expert evidence sought by the Registrar, and other associated papers, are in 'C suffix' files annexed to the plain number files. A further 'M suffix' subset of files contains memoranda of varying scope but generally rehearsing the scope of the industry, of the agreement, and of the restrictive trade practices issues arising, similarly annexed to the plain number files.

7.2 Restrictive Trade Practices court records

7.2.1 The Report of the Committee on Legal Records (Cmnd 3084, August 1966) made the following recommendation for disposal but noted that as the court was of such recent origin (at that time) the recommendations must be regarded as open to amendment in the light of longer experience:

- Registers of Proceedings - preserve permanently
- Court Books - preserve permanently
- Notes of Proceedings in Chambers - preserve permanently
- Final Orders - preserve permanently
- Other documents on Case Files - destroy 20 years after date of Order

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- 7.2.2 Court diaries and court notebooks accrued as separate series: diaries for 1957 to 1970 are in The National Archives records series J 155; note books for 1957 to 1995 are in J 163.
- 7.2.3 Court case files containing pleadings before, and orders of, the Court for 1957 to 1992 are in J 154.

7.3 Selection from the OFT and Court case file series

- 7.3.1 The term 'case' is used here in the widest sense, of all RTP agreements which came to the notice of the Registrar and the Director General, and on which files were therefore raised.

In some years, important cases (those that were referred to the RTP court) were noted in the Annual Reports for the Registrar and the Director-General. In other years, the reports noted all cases – regardless of whether the case established legal precedent or had an impact on the implementation and interpretation of the Restrictive Trade Practices Act and associated legislation.

- 7.3.2 There is very extensive duplication across the three series of case files (the OFT Public Register files, the OFT working files, and the Court case files).
- 7.3.3 As they document an important part of the work of the OFT, all case files that were submitted to the RTP court for arbitration by the OFT (File Reference 'P') will be preserved.

The OFT 'working office' files will not be selected as they do not establish legal precedent, and relate to cases that were not high profile.

8 Implementation

- 8.1 An implementation plan will be developed with the departments concerned once the public consultation has concluded.

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