



Collusive and Competitive Behaviour

by

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What is meant by collusion?

✦ Was Adam Smith right?

- “People of the same trade meet together, even for merriment and diversion, but the conversation ends in conspiracy against the public, or in some contrivance to raise prices.”

Today we see

- ✦ Cartels.
- ✦ Controls
- ✦ Tacit Collusion

How can we explain such behaviour?



The Prisoner's Dilemma

		Prisoner 2	
		Confession	No Confession
Prisoner 1	Confession	$(-5, -5)$	$(-0.5, -10)$
	No Confession	$(-10, -0.5)$	$(-1, -1)$



Bertrand Duopoly Game

		Firm 2	
		High Price	Low Price
Firm 1	High Price	(100, 100)	(-10, 140)
	Low Price	(140, -10)	(0, 0)



Tolerating Cheating in a Prisoner's Dilemma Game

		Kuwait Production	
		1 m barrels per day	Low Price
Saudi Arabia Oil Production	4 m barrels per day	(64,16)	(48,24)
	5 m barrels per day	(60,12)	(40, 16)

Source: Dixit and Nalebuff (1991)



What factors facilitate (and thus limit the extent of) collusion?

- ◆ Clearly, it is possible to resolve the Prisoner's Dilemma Game, although there are immense forces operating against it.
- ◆ Are there any clues as to when collusion may or may not occur?
- ◆ Concentration and fewness
- ◆ Costs
- ◆ Demand
- ◆ Focal Points
- ◆ Non-price competition



Some Current Cases in 1997 -98

- ◆ Replacement Car Panels
- ◆ Hi-Tech Laboratory filters
- ◆ Paint makers

- ◆ **Failures of the Restrictive Practices System and the discrepancy with the EC Art. 85 approach have led the UK government to reform.**
- ◆ **The Competition Act 1998**



Figure 1: Key differences between the current and new regimes

CURRENT REGIME	
Anti-competitive agreements	
<i>Basis</i>	* Restrictive Trade Practices Act 1976 (RTPA), Resale Prices Act 1976 (RPA), for restrictive agreements, cartels etc
<i>Process</i>	* Agreements filed under the RTPA placed on a public register (subject to any confidentiality granted by Secretary of State). DGFT asks SoS to agree insignificant cases should not go to Court. Significant cases referred to Court * Provisions in breach of RPA are prohibited, unless exempted
Abuse of market power	
<i>Basis</i>	* Competition Act 1980 * Scale and complex monopoly provisions of Fair Trading Act 1973 (FTA)
<i>Process</i>	* Alleged anti-competitive behaviour (abuse of market power) can be referred to MMC. MMC decide if against public interest or not. SoS makes final decision on remedies if MMC find against public interest
Both	
<i>Criteria</i>	* Public interest test
<i>Investigation</i>	* Limited investigatory powers
<i>Fines</i>	* No penalties for past behaviour
<i>Third Parties</i>	* Limited rights. Damages possible for breach of RPA or filing out of time under RTPA
<i>Interim measures prior to completion of investigation</i>	* Only available under RTPA



Source: DTI (1997)

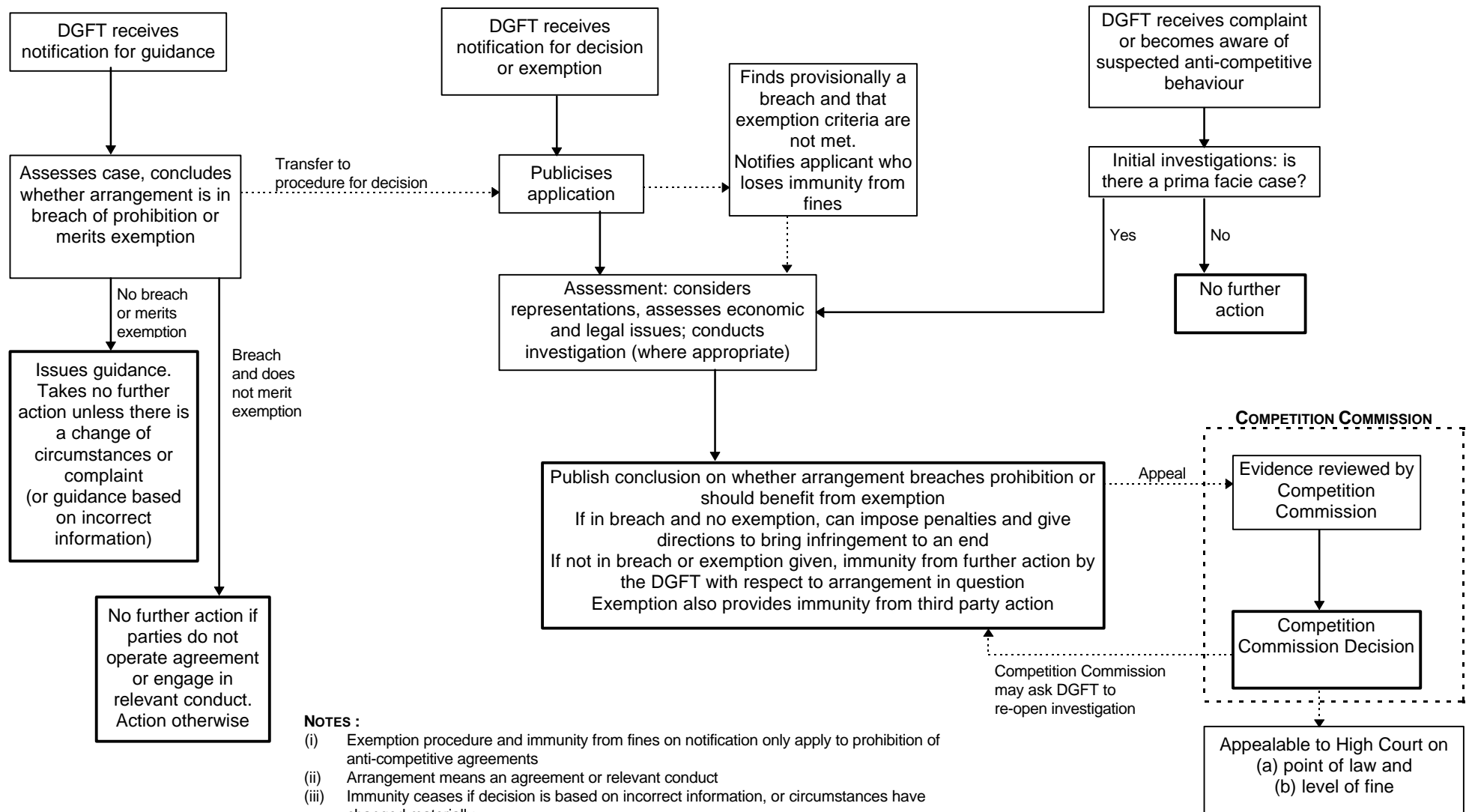
Figure 1: Key differences between the current and new regimes

PROPOSED NEW REGIME	
Anti-competitive agreements	
<i>Basis</i>	* Repeal of RTPA and RPA (and winding down of Restrictive Practices Court). Introduction of prohibition based on Article 85
<i>Process</i>	* DGFT decides if prohibitions infringed and, if so, level of fines etc. * Beneficial effects assessed by DGFT for exemption * Appeal to new Competition Commission
Abuse of market power	
<i>Basis</i>	* Repeal of (most of) Competition Act 1980 * Retention of complex and scale monopoly provisions of FTA * Scale references only for tackling market power after proven abuse under prohibition * Introduction of prohibition based on Article 86
<i>Process</i>	* DGFT decides if prohibitions infringed and, if so, level of fines etc. * Appeal to new Competition Commission
Both	
<i>Criteria</i>	* Test based on effect on competition
<i>Investigation</i>	* Strong investigatory powers, including forcible entry/search powers
<i>Fines</i>	* Penalties of up to 10% of UK turnover including for past behaviour
<i>Third Parties</i>	* Third party rights to challenge companies and seek damages
<i>Interim measures prior to completion of investigation</i>	* Alleged anti-competitive behaviour may be halted during investigation



Source: DTI (1997)

Figure 2: The decision making process (Source: DTI (1997))



NOTES :

- (i) Exemption procedure and immunity from fines on notification only apply to prohibition of anti-competitive agreements
- (ii) Arrangement means an agreement or relevant conduct
- (iii) Immunity ceases if decision is based on incorrect information, or circumstances have changed materially
- (iv) Sector regulators will also apply the prohibitions in the same manner as the DGFT