

Land Agreements – A New Chapter?

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What is a land agreement?

The definition has a wide scope and includes any contract which creates, alters, transfers or terminates an interest in land. This affects among other things transfers, leases and options to purchase. Examples of relevant agreements would be covenants in commercial property agreements relating to rent, rent review or service charge.

Restrictions relating to other matters such as shop opening hours, shop signs, advertising and the type and quality of goods to be sold from premises may also fall under the remit of "land agreement." The key point here is that the relationship between the parties should be solely based on the "creation, alteration, transfer or termination of the interest in land." It should be noted however that agreements of a different nature, for example, among landlords in an attempt to fix rent in a certain area will not fall under the category of "land agreement" and it is likely that they will be held to be anti-competitive.

What is going to change?

The Competition Act 1998 prohibits unfair anti-competitive agreements in the UK. These are agreements which "have as their object or effect the prevention, restriction or distortion of competition within the United Kingdom." An example would be a coffee shop owner agreeing a higher rent with the owner of a shopping centre in return for prohibiting the establishment of other coffee shops in the centre. This would be obviously anti-competitive as consumers would inevitably be forced to pay higher prices. Land agreements currently enjoy an automatic exemption from the Competition Act due to the Land Agreements Exclusion Order.

The government is currently considering repealing the Land Agreements Exclusion Order on 6 April 2011. This will likely have a significant effect on new agreements, rendering them open to the full force of competition law. It will no longer be possible to draft an agreement with the comfort of knowing that it will be exempt by virtue of the Order. The Office of Fair Trading will publish guidelines on the type of agreements which will be anti-competitive and those which will pass scrutiny. Those who may be affected by the repeal will have one year to review all of their land agreements to ensure they comply with the guidelines. Many solicitors have already begun this process. Failure to comply will result in fines and resulting adverse publicity.

How will the groceries sector be affected?

In 2008 the Competition Commission launched a report into the UK groceries sector. The report highlighted concerns that large grocery retailers can pass to their suppliers high costs and risks. These came from high concentration in grocery retail markets and the difficulties for new parties which are attempting to break into the market. One of the steps the government is planning to take to combat this problem is to require grocery retailers to release existing land covenants.

The date is drawing close for the repeal of the Order and time will tell of the effects on UK retailers and the economy in general.

Please note: The content of this article is for information purposes only and further advice should be sought from a professional advisor before any action is taken.