

ENTERPRISE ACT 2002

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 3: Mergers

Summary and Background

Chapter 1: Duty to make references

Determination of references

Section 39: Time-limits for investigations and reports

141. *Section 70* FTA 1973 currently requires the Secretary of State to set a timetable within which the CC has to report. That timetable cannot exceed 6 months. The period set is extendable for one further period of up to 3 months where the Secretary of State is satisfied that there are special reasons why the report cannot be made within the initial period.
142. *Section 39* replaces section 70 FTA 1973. It requires the CC to publish its report on a reference within a statutory maximum period of 24 weeks from the date of reference. A shorter period applies if that is needed to comply with Article 9(6) of the ECMR in circumstances where a merger has been referred back for consideration by the UK domestic competition authorities.
143. The section permits the CC to extend the 24-week period for the report for one further period of no more than 8 weeks where it is satisfied that there are special reasons for a delay. The section does not further define ‘special reasons’, but it is anticipated that they would include matters such as the illness or incapacity of members of a reporting group that has seriously impeded its work, and an unexpected event such as a merger of competitors.
144. An important difference between the current FTA 1973 timetable and the proposed new timetable is that the CC’s report will have to contain not only its decisions on the substantive question of whether there is expected to be a substantial lessening of competition, but also its decisions on remedies. At present, the CC makes the substantive finding against a public interest test, but only makes recommendations to the Secretary of State about the remedies that might be appropriate. The Secretary of State has an unlimited period within which to take final decisions on remedies.
145. *Subsection (4)* gives the CC a discretion that it does not have in the current regime to extend the period within which it has to report where one of the parties to a merger (but not third parties) has failed to comply with a formal notice (see section 109) requiring the provision of information or documents, or the appearance of witnesses. Any such extension continues until the information is provided, or the CC decides to cancel the extension.