

*These notes refer to the Enterprise Act 2002 (c.40)  
which received Royal Assent on 7 November 2002*

# ENTERPRISE ACT 2002

---

## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### **Part 3: Mergers**

#### **Summary and Background**

#### *Chapter 4: Enforcement*

#### **Interim restrictions and powers**

#### *Section 77: Restrictions on certain dealings: completed mergers*

230. This section applies an automatic prohibition on the parties to a completed merger, once it has been referred, to prevent them undertaking any further integration without the consent of the CC. This is a new provision, which applies only to completed mergers. It has been introduced because in almost all merger cases the authorities seek to prevent such further integration either by securing undertakings or by making an interim order.

#### *Section 78: Restrictions on certain share dealings: anticipated mergers*

231. This section applies an automatic prohibition on the parties to an anticipated merger to prevent them from acquiring any further shares in one another without the consent of the CC. This provision brings in the equivalent prohibition in section 75(4A) FTA 1973.

#### *Section 79: Sections 77 and 78: further interpretation provisions*

232. This section provides technical clarification on what constitutes an acquisition of an interest in shares for the purposes of section 78 and sets out certain common definitions for both sections.

#### *Section 80: Interim undertakings*

233. This section allows the CC to accept undertakings from one or more parties to a merger that they will not take any action that might prejudice the eventual outcome of the merger reference. This is a new provision. Section 74 FTA 1973 allowed for an interim order (see below) to be made during the course of a reference but made no provision for accepting interim undertakings. In practice, undertakings have been sought and accepted during this period, but on a non-statutory basis. This provision makes such undertakings legally-binding.

#### *Section 81: Interim orders*

234. This section allows the CC to make an order to prevent the parties to a merger from taking any action that might prejudice the eventual outcome of the merger reference. This provision is modelled on section 74 FTA 1973. It applies after a merger has been referred. An interim order can be made in respect of both completed and anticipated mergers.