

*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

Final powers

Section 82: Final undertakings

235. This section allows the CC to accept final undertakings from the parties to remedy competition problems identified in its final report on a merger. This is based on the provisions on undertakings in section 88 FTA 1973.

Section 83: Order-making power where final undertakings not fulfilled

236. This section allows the CC to replace final undertakings with an order where the parties are not complying with the undertakings. Any order made under this section is limited to the matters set out in Schedule 8.

Section 84: Final orders

237. This section allows the CC to make an order to remedy any competition problem identified in its final report on a merger investigation. This final order may contain any of the matters set out in Schedule 8.

Schedule 8: Provision that may be contained in certain enforcement orders

238. This Schedule contains the list of matters that can be included in final orders for the purpose of remedying the adverse effects specified in the CC's report. This list is based on Schedule 8 of FTA 1973. It has been updated to reflect modern drafting conventions. Certain new remedies have also been added. These are remedies that experience has shown it would be useful to be able to call upon. The new remedies are as follows:

- paragraph 10 – the ability to require goods or services to be supplied to a particular standard or in a particular manner. This has been added to ensure that final orders can require parties to meet a certain quality of service or to continue to produce a certain range of goods. For example, it would allow an order to tell a bus company to maintain a certain frequency of service.
- paragraphs 13(3)(k) and 22 – these allow the OFT to approve the buyer of a divested business and also to approve other conduct or matters.
- paragraph 13(3)(l) – this allows for the appointment of a trustee to oversee the divestment of a business.

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- paragraph 18 – the ability to specify how certain information should be published. This has been added to ensure that orders can specify that information should be published on the Internet.
- paragraph 19(c) – this allows the OFT to publish information that it is given.
- paragraph 20 – this allows for provision to be made in the interests of national security.