



Enterprise Act 2002

2002 CHAPTER 40

PART 3

MERGERS

CHAPTER 1

DUTY TO MAKE REFERENCES

Duty to make references: anticipated mergers

33 Duty to make references in relation to anticipated mergers

- (1) The OFT shall, subject to subsections (2) and (3), make a reference to the Commission if the OFT believes that it is or may be the case that—
 - (a) arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation; and
 - (b) the creation of that situation may be expected to result in a substantial lessening of competition within any market or markets in the United Kingdom for goods or services.
- (2) The OFT may decide not to make a reference under this section if it believes that—
 - (a) the market concerned is not, or the markets concerned are not, of sufficient importance to justify the making of a reference to the Commission;
 - (b) the arrangements concerned are not sufficiently far advanced, or are not sufficiently likely to proceed, to justify the making of a reference to the Commission; or
 - (c) any relevant customer benefits in relation to the creation of the relevant merger situation concerned outweigh the substantial lessening of competition concerned and any adverse effects of the substantial lessening of competition concerned.

Status: This is the original version (as it was originally enacted).

- (3) No reference shall be made under this section if—
- (a) the making of the reference is prevented by section 69(1), 74(1) or 96(3) or paragraph 4 of Schedule 7;
 - (b) the OFT is considering whether to accept undertakings under section 73 instead of making such a reference;
 - (c) the arrangements concerned are being, or have been, dealt with in connection with a reference made under section 22;
 - (d) a notice under section 42(2) is in force in relation to the matter or the matter to which such a notice relates has been finally determined under Chapter 2 otherwise than in circumstances in which a notice is then given to the OFT under section 56(1); or
 - (e) the European Commission is considering a request made, in relation to the matter concerned, by the United Kingdom (whether alone or with others) under article 22(3) of the European Merger Regulations, is proceeding with the matter in pursuance of such a request or has dealt with the matter in pursuance of such a request.
- (4) A reference under this section shall, in particular, specify—
- (a) the enactment under which it is made; and
 - (b) the date on which it is made.

34 Supplementary provision in relation to anticipated mergers

- (1) The Secretary of State may by order make such provision as he considers appropriate about the operation of sections 27 and 29 in relation to—
- (a) references under this Part which relate to arrangements which are in progress or in contemplation; or
 - (b) notices under section 42(2), 59(2) or 67(2) which relate to such arrangements.
- (2) An order under subsection (1) may, in particular—
- (a) provide for sections 27(5) to (8) and 29 to apply with modifications in relation to such references or notices or in relation to particular descriptions of such references or notices;
 - (b) enable particular descriptions of events, arrangements or transactions which have already occurred—
 - (i) to be taken into account for the purposes of deciding whether to make such references or such references of a particular description or whether to give such notices or such notices of a particular description;
 - (ii) to be dealt with under such references or such references of a particular description or under such notices or such notices of a particular description.