



Enterprise Act 2002

2002 CHAPTER 40

PART 3

MERGERS

CHAPTER 3

OTHER SPECIAL CASES

European mergers

67 Intervention to protect legitimate interests

- (1) Subsection (2) applies where—
- (a) the Secretary of State has reasonable grounds for suspecting that it is or may be the case that—
 - (i) a relevant merger situation has been created or that arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation; and
 - (ii) a concentration with a Community dimension (within the meaning of the European Merger Regulations), or a part of such a concentration, has thereby arisen or will thereby arise;
 - (b) a reference which would otherwise be possible under section 22 or 33 is prevented from being made under that section in relation to the relevant merger situation concerned by virtue of Community law or anything done under or in accordance with it; and
 - (c) the Secretary of State is considering whether to take appropriate measures to protect legitimate interests as permitted by article 21(3) of the European Merger Regulations.
- (2) The Secretary of State may give a notice to the OFT (in this section “a European intervention notice”) if he believes that it is or may be the case that one or more than

Status: This is the original version (as it was originally enacted).

one public interest consideration is relevant to a consideration of the relevant merger situation concerned.

- (3) A European intervention notice shall state—
 - (a) the relevant merger situation concerned;
 - (b) the public interest consideration or considerations which are, or may be, relevant to a consideration of the relevant merger situation concerned; and
 - (c) where any public interest consideration concerned is not finalised, the proposed timetable for finalising it.
- (4) Where the Secretary of State believes that it is or may be the case that two or more public interest considerations are relevant to a consideration of the relevant merger situation concerned, he may decide not to mention in the intervention notice such of those considerations as he considers appropriate.
- (5) No more than one European intervention notice shall be given under subsection (2) in relation to the same relevant merger situation.
- (6) Where the Secretary of State has given a European intervention notice mentioning a public interest consideration which, at that time, is not finalised, he shall, as soon as practicable, take such action as is within his power to ensure that it is finalised.
- (7) For the purposes of deciding whether a relevant merger situation has been created or whether arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation, sections 23 to 32 (read together with section 34) shall apply for the purposes of this section as they do for the purposes of Chapter 1 but subject to subsection (8).
- (8) In their application by virtue of subsection (7) sections 23 to 32 shall have effect as if—
 - (a) references in those sections to the decision-making authority were references to the Secretary of State;
 - (b) for paragraphs (a) and (b) of section 23(9) there were substituted “, in relation to the giving of a European intervention notice, the time when the notice is given”;
 - (c) the references to the OFT in section 24(2)(a) and (b) included references to the Secretary of State;
 - (d) sections 25, 31 and 32 were omitted; and
 - (e) the references in sections 23 to 29 to the making of a reference or a reference were, so far as necessary, references to the giving of a European intervention notice or a European intervention notice.
- (9) Section 42(3) shall, in its application to this section and section 68, have effect as if for the words “intervention notice” there were substituted “European intervention notice”.

68 Scheme for protecting legitimate interests

- (1) The Secretary of State may by order provide for the taking of action, where a European intervention notice has been given, to remedy, mitigate or prevent effects adverse to the public interest which have resulted from, or may be expected to result from, the creation of a European relevant merger situation.
- (2) In subsection (1) “European relevant merger situation” means a relevant merger situation—

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

- (a) which has been created or will be created if arrangements which are in progress or in contemplation are carried into effect;
 - (b) by virtue of which a concentration with a Community dimension (within the meaning of the European Merger Regulations), or a part of such a concentration, has arisen or will arise; and
 - (c) in relation to which a reference which would otherwise have been possible under section 22 or 33 was prevented from being made under that section by virtue of Community law or anything done under or in accordance with it.
- (3) Provision made under subsection (1) shall include provision ensuring that considerations which are not public interest considerations mentioned in the European intervention notice concerned may not be taken into account in determining whether anything operates, or may be expected to operate, against the public interest.
- (4) Provision made under subsection (1) shall include provision—
- (a) applying with modifications sections 23 to 32 for the purposes of deciding for the purposes of this section whether a relevant merger situation has been created or whether arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation;
 - (b) requiring the OFT to make a report to the Secretary of State before a reference is made;
 - (c) enabling the Secretary of State to make a reference to the Commission;
 - (d) requiring the Commission to investigate and report to the Secretary of State on such a reference;
 - (e) enabling the taking of interim and final enforcement action.
- (5) An order under this section may include provision (including provision for the creation of offences and penalties, the payment of fees and the delegation of functions) corresponding to any provision made in, or in connection with, this Part in relation to intervention notices or special intervention notices and the cases to which they relate.
- (6) In this section “European intervention notice” has the same meaning as in section 67.