



Enterprise Act 2002

2002 CHAPTER 40

PART 3

MERGERS

CHAPTER 3

OTHER SPECIAL CASES

Special public interest cases

59 Intervention by Secretary of State in special public interest cases

- (1) Subsection (2) applies where the Secretary of State has reasonable grounds for suspecting that it is or may be the case that a special merger situation has been created or arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a special merger situation.
- (2) The Secretary of State may give a notice to the [^{F1}CMA] (in this Part “a special intervention notice”) if he believes that it is or may be the case that one or more than one consideration specified in section 58 is relevant to a consideration of the special merger situation concerned.
- [^{F2}(3) For the purposes of this Part a special merger situation has been created if—
- (a) the condition mentioned in subsection (3A) is satisfied; and
 - (b) immediately before the enterprises concerned ceased to be distinct—
 - [^{F3}(i)
 - (ii) the condition mentioned in subsection (3C) was satisfied; or
 - (iii) the condition mentioned in subsection (3D) was satisfied.
- (3A) The condition mentioned in this subsection is that—
- (a) no relevant merger situation has been created because of section 23(1)(b) and (2)(b); but

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- (b) a relevant merger situation would have been created if those enactments were disregarded.

^{F4}(3B)

(3C) The condition mentioned in this subsection is that, in relation to the supply of newspapers of any description, at least one-quarter of all the newspapers of that description which were supplied in the United Kingdom, or in a substantial part of the United Kingdom, were supplied by the person or persons by whom one of the enterprises concerned was carried on.

(3D) The condition mentioned in this subsection is that, in relation to the provision of broadcasting of any description, at least one-quarter of all broadcasting of that description provided in the United Kingdom, or in a substantial part of the United Kingdom, was provided by the person or persons by whom one of the enterprises concerned was carried on.]

(5) 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 [^{F5}to 30] (read together with section 34) shall apply for the purposes of this Chapter as they do for the purposes of Chapter 1 but subject to subsection (6).

(6) In their application by virtue of subsection (5) sections 23 [^{F6}to 30] shall have effect as if—

- (a) for paragraph (a) of section 23(9) there were substituted—
 - “(a) in relation to the giving of a special intervention notice, the time when the notice is given;
 - (aa) in relation to the making of a report by the [^{F7}CMA] under section 61, the time of the making of the report;
 - (ab) in the case of a reference which is treated as having been made under section 62(2) by virtue of section 64(2), such time as the [^{F8}CMA] may determine; and”;
- (b) the references to the [^{F7}CMA] in section 24(2)(a) and (b) included references to the Secretary of State;
- (c) the references to the [^{F7}CMA] in [^{F9}section 25(1) to (3) ^{F10}...] included references to the Secretary of State;
- (d) the references to the [^{F7}CMA] in section 25(4) and (5) were references to the Secretary of State;
- (e) the reference in section 25(4) to section 73 were a reference to paragraph 3 of Schedule 7;
- (f) the reference in section 25(12) to one extension were a reference to one extension by the [^{F7}CMA] and one extension by the Secretary of State;
- (g) the powers to extend time-limits under section 25 as applied by subsection (5) above ^{F11}... were not exercisable by the [^{F7}CMA] or the Secretary of State before the giving of a special intervention notice;

^{F12}(h)

(i) in the case of the giving of special intervention notices, the references in sections 23 [^{F13}to 30] to the making of a reference or a reference were, so far as necessary, references to the giving of a special intervention notice or a special intervention notice; ^{F14}...

^{F14}(j)

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[^{F15}(6A) The Secretary of State may by order amend the conditions mentioned in subsection (3) (b)(ii) and (iii).]

(7) No more than one special intervention notice shall be given under subsection (2) in relation to the same special merger situation.

^{F16}(8)

^{F17}(9)

Textual Amendments

- F1** Word in s. 59(2) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 101(2)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F2** S. 59(3)-(3D) substituted (29.12.2003) for s. 59(3)(4) by Communications Act 2003 (c. 21), **ss. 378(1), 411(2)(3)** (with transitional provisions in Sch. 18); S.I. 2003/3142, **art. 3(1)**, Sch. 1 (subject to arts. 3(3), 11)
- F3** S. 59(3)(b)(i) omitted (4.1.2022) by virtue of National Security and Investment Act 2021 (c. 25), s. 66(3), **Sch. 2 para. 8** (with s. 62); S.I. 2021/1465, regs. 2, 3 (with regs. 4, 5)
- F4** S. 59(3B) omitted (4.1.2022) by virtue of National Security and Investment Act 2021 (c. 25), s. 66(3), **Sch. 2 para. 8** (with s. 62); S.I. 2021/1465, regs. 2, 3 (with regs. 4, 5)
- F5** Words in s. 59(5) omitted (1.4.2014) by virtue of Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 15 para. 26(2)**; S.I. 2014/416, art. 2(1)(f) (with Sch.)
- F6** Words in s. 59(6) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 15 para. 26(3)**; S.I. 2014/416, art. 2(1)(f) (with Sch.)
- F7** Word in s. 59(6) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 101(3)(a)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F8** Word in s. 59(6) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 101(3)(b)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F9** Words in s. 59(6)(c) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 15 para. 26(4)**; S.I. 2014/416, art. 2(1)(f) (with Sch.)
- F10** Words in s. 59(6)(c) omitted (31.12.2020) by virtue of The Competition (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/93), regs. 1(1), **46** (with Sch. 4 para. 28) (as amended by S.I. 2020/1343, regs. 1(1), **35-59**); 2020 c. 1, **Sch. 5 para. 1(1)**
- F11** Words in s. 59(6)(g) omitted (1.4.2014) by virtue of Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 15 para. 26(5)**; S.I. 2014/416, art. 2(1)(f) (with Sch.)
- F12** S. 59(6)(h) omitted (1.4.2014) by virtue of Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 15 para. 26(6)**; S.I. 2014/416, art. 2(1)(f) (with Sch.)
- F13** Words in s. 59(6)(i) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 15 para. 26(7)**; S.I. 2014/416, art. 2(1)(f) (with Sch.)
- F14** S. 59(6)(j) and word omitted (1.4.2014) by virtue of Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 15 para. 26(8)**; S.I. 2014/416, art. 2(1)(f) (with Sch.)
- F15** S. 59(6A) inserted (29.12.2003) by Communications Act 2003 (c. 21), **ss. 378(2), 411(2)(3)** (with transitional provisions in Sch. 18); S.I. 2003/3142, **art. 3(1)**, Sch. 1 (subject to arts. 3(3), 11)
- F16** S. 59(8) omitted (4.1.2022) by virtue of National Security and Investment Act 2021 (c. 25), s. 66(3), **Sch. 2 para. 8** (with s. 62); S.I. 2021/1465, regs. 2, 3 (with regs. 4, 5)
- F17** S. 59(9) omitted (4.1.2022) by virtue of National Security and Investment Act 2021 (c. 25), s. 66(3), **Sch. 2 para. 8** (with s. 62); S.I. 2021/1465, regs. 2, 3 (with regs. 4, 5)

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[^{F18}59A Construction of conditions in section 59(3C) and (3D)]

- (1) For the purpose of deciding whether the proportion of one-quarter mentioned in section 59(3C) or (3D) is fulfilled with respect to—
 - (a) newspapers of any description, or
 - (b) broadcasting of any description,
 the decision-making authority shall apply such criterion (whether value, cost, price, quantity, capacity, number of workers employed or some other criterion, of whatever nature), or such combination of criteria, as the decision-making authority considers appropriate.
- (2) References in section 59(3C) to the supply of newspapers shall, in relation to newspapers of any description which are the subject of different forms of supply, be construed in whichever of the following ways the decision-making authority considers appropriate—
 - (a) as references to any of those forms of supply taken separately;
 - (b) as references to all those forms of supply taken together; or
 - (c) as references to any of those forms of supply taken in groups.
- (3) For the purposes of subsection (2) the decision-making authority may treat newspapers as being the subject of different forms of supply whenever—
 - (a) the transactions concerned differ as to their nature, their parties, their terms or their surrounding circumstances; and
 - (b) the difference is one which, in the opinion of the decision-making authority, ought for the purposes of that subsection to be treated as a material difference.
- (4) References in section 59(3D) to the provision of broadcasting shall, in relation to broadcasting of any description which is the subject of different forms of provision, be construed in whichever of the following ways the decision-making authority considers appropriate—
 - (a) as references to any of those forms of provision taken separately;
 - (b) as references to all those forms of provision taken together; or
 - (c) as references to any of those forms of provision taken in groups.
- (5) For the purposes of subsection (4) the decision-making authority may treat broadcasting as being the subject of different forms of provision whenever—
 - (a) the transactions concerned differ as to their nature, their parties, their terms or their surrounding circumstances; and
 - (b) the difference is one which, in the opinion of the decision-making authority, ought for the purposes of that subsection to be treated as a material difference.
- (6) The criteria for deciding when newspapers or broadcasting can be treated, for the purposes of section 59, as newspapers or broadcasting of a separate description shall be such as in any particular case the decision-making authority considers appropriate in the circumstances of that case.
- (7) In section 59 and this section “provision” and cognate expressions have the same meaning in relation to broadcasting as in Part 3 of the Communications Act 2003; but this subsection is subject to subsections (4) and (5) of this section.]

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Textual Amendments

F18 S. 59A inserted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), **ss. 378(3), 411(2)(3)** (with transitional provisions in [Sch. 18](#)); [S.I. 2003/3142](#), **art. 3(1)**, [Sch. 1](#) (subject to [arts. 3\(3\), 11](#))

60 Special intervention notices under section 59

- (1) A special intervention notice shall state—
 - (a) the special merger situation concerned; and
 - (b) the consideration specified in section 58 or considerations so specified which are, or may be, relevant to the special merger situation concerned.
- (2) Where the Secretary of State believes that it is or may be the case that two or more considerations specified in section 58 are relevant to a consideration of the special merger situation concerned, he may decide not to mention in the special intervention notice such of those considerations as he considers appropriate.
- (3) A special intervention notice shall come into force when it is given and shall cease to be in force when the matter to which it relates is finally determined under this Chapter.
- (4) For the purposes of this Part, a matter to which a special intervention notice relates is finally determined under this Chapter if—
 - (a) the time within which the [^{F19}CMA][^{F20}or (if relevant) OFCOM] is to report to the Secretary of State under section 61 [^{F21}or (as the case may be) 61A] has expired and no such report has been made;
 - (b) the Secretary of State decides to accept an undertaking or group of undertakings under paragraph 3 of Schedule 7 instead of making a reference under section 62;
 - (c) the Secretary of State otherwise decides not to make a reference under that section;
 - (d) the [^{F22}CMA] cancels such a reference under section 64(1);
 - (e) the time within which the [^{F22}CMA] is to prepare a report under section 65 and give it to the Secretary of State has expired and no such report has been prepared and given to the Secretary of State;
 - (f) the time within which the Secretary of State is to make and publish a decision under section 66(2) has expired and no such decision has been made and published;
 - (g) the Secretary of State decides under subsection (2) of section 66 otherwise than as mentioned in subsection (5) of that section;
 - (h) the Secretary of State decides under subsection (2) of section 66 as mentioned in subsection (5) of that section but decides neither to accept an undertaking under paragraph 9 of Schedule 7 nor to make an order under paragraph 11 of that Schedule; or
 - (i) the Secretary of State decides under subsection (2) of section 66 as mentioned in subsection (5) of that section and accepts an undertaking under paragraph 9 of Schedule 7 or makes an order under paragraph 11 of that Schedule.
- (5) For the purposes of this Part the time when a matter to which a special intervention notice relates is finally determined under this Chapter is—
 - (a) in a case falling within subsection (4)(a), (e) or (f), the expiry of the time concerned;

Changes to legislation: There are currently no known outstanding effects for the Enterprise Act 2002, Cross Heading: Special public interest cases. (See end of Document for details)

- (b) in a case falling within subsection (4)(b), the acceptance of the undertaking or group of undertakings concerned;
- (c) in a case falling within subsection (4)(c), (d) or (g), the making of the decision concerned;
- (d) in a case falling within subsection (4)(h), the making of the decision neither to accept an undertaking under paragraph 9 of Schedule 7 nor to make an order under paragraph 11 of that Schedule; and
- (e) in a case falling within subsection (4)(i), the acceptance of the undertaking concerned or (as the case may be) the making of the order concerned.

Textual Amendments

- F19** Word in s. 60(4)(a) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 5 para. 102\(2\)\(a\)](#) (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F20** Words in s. 60(4)(a) inserted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), ss. 389(1), 411(2)(3), [Sch. 16 para. 13\(a\)](#) (with transitional provisions in [Sch. 18](#)); S.I. 2003/3142, [art. 3\(1\)](#), [Sch. 1](#) (subject to arts. 3(3), 11)
- F21** Words in s. 60(4)(a) inserted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), ss. 389(1), 411(2)(3), [Sch. 16 para. 13\(b\)](#) (with transitional provisions in [Sch. 18](#)); S.I. 2003/3142, [art. 3\(1\)](#), [Sch. 1](#) (subject to arts. 3(3), 11)
- F22** Word in s. 60(4) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 5 para. 102\(2\)\(b\)](#) (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)

61 Initial investigation and report by ^{F23}CMA]

- (1) Subsection (2) applies where the Secretary of State has given a special intervention notice in relation to a special merger situation.
 - (2) The ^{F24}CMA] shall, within such period as the Secretary of State may require, give a report to the Secretary of State in relation to the case.
 - (3) The report shall contain—
 - (a) advice from the ^{F24}CMA] on the considerations relevant to the making of a reference under section 22 or 33 which are also relevant to the Secretary of State's decision as to whether to make a reference under section 62; and
 - (b) a summary of any representations about the case which have been received by the ^{F24}CMA] and which relate to any consideration mentioned in the special intervention notice concerned ^{F25}(other than a consideration which, at the time of the giving of the notice, was specified in section 58(2A) to (2C)) and which is or may be relevant to the Secretary of State's decision as to whether to make a reference under section 62.
 - (4) The report shall include a decision as to whether the ^{F24}CMA] believes (disregarding section ^{F26}59(3B)(b)) that it is, or may be, the case that a special merger situation has been created or (as the case may be) arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a special merger situation.
- ^{F27}(4A) The report may, in particular, contain a summary of any representations about the case which have been received by the ^{F24}CMA] and which relate to any consideration which—
- (a) is mentioned in the special intervention notice concerned and, at the time of the giving of that notice, was specified in section 58(2A) to (2C); and

Changes to legislation: There are currently no known outstanding effects for the Enterprise Act 2002, Cross Heading: Special public interest cases. (See end of Document for details)

- (b) is or may be relevant to the Secretary of State’s decision as to whether to make a reference under section 62.]
- (5) The report may, in particular, include advice and recommendations on any consideration mentioned in the special intervention notice concerned and which is or may be relevant to the Secretary of State’s decision as to whether to make a reference under section 62.
- (6) The [^{F28}CMA] shall carry out such investigations as it considers appropriate for the purposes of producing a report under this section.

Textual Amendments

- F23** Word in s. 61 heading substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 5 para. 103\(3\)](#) (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F24** Word in s. 61(2)-(4A) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 26(3), [Sch. 5 para. 103\(2\)](#) (with s. 28), S.I. 2014/416, [art. 2\(1\)\(d\)](#) (with Sch.)
- F25** Words in s. 61(3)(b) inserted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), [ss. 379\(2\)](#), 411(2)(3) (with transitional provisions in [Sch. 18](#)); S.I. 2003/3142, [art. 3\(1\)](#), Sch. 1 (subject to arts. 3(3), 11)
- F26** Words in s. 61(4) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), [ss. 379\(3\)](#), 411(2)(3) (with transitional provisions in [Sch. 18](#)); S.I. 2003/3142, [art. 3\(1\)](#), Sch. 1 (subject to arts. 3(3), 11)
- F27** S. 61(4A) inserted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), [ss. 379\(4\)](#), 411(2)(3) (with transitional provisions in [Sch. 18](#)); S.I. 2003/3142, [art. 3\(1\)](#), Sch. 1 (subject to arts. 3(3), 11)
- F28** Word in s. 61(6) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 5 para. 103\(2\)](#) (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)

[^{F29}61A Additional investigation and report by OFCOM: certain media mergers

- (1) Subsection (2) applies where—
 - (a) the Secretary of State has given a special intervention notice in relation to a special merger situation; and
 - (b) the special intervention notice mentions any consideration which, at the time of the giving of the notice, was specified in section 58(2A) to (2C).
- (2) OFCOM shall, within such period as the Secretary of State may require, give a report to the Secretary of State on the effect of the consideration or considerations concerned on the case.
- (3) The report shall contain—
 - (a) advice and recommendations on any consideration which—
 - (i) is mentioned in the special intervention notice concerned and, at the time of the giving of that notice, was specified in section 58(2A) to (2C); and
 - (ii) is or may be relevant to the Secretary of State’s decision as to whether to make a reference under section 62; and
 - (b) a summary of any representations about the case which have been received by OFCOM and which relate to any such consideration.
- (4) OFCOM shall carry out such investigations as they consider appropriate for the purposes of producing a report under this section.]

Changes to legislation: There are currently no known outstanding effects for the Enterprise Act 2002, Cross Heading: Special public interest cases. (See end of Document for details)

Textual Amendments

F29 S. 61A inserted (29.12.2003) by **Communications Act 2003 (c. 21), ss. 380, 411(2)(3)** (with transitional provisions in **Sch. 18**); **S.I. 2003/3142, art. 3(1), Sch. 1** (subject to **arts. 3(3), 11**)

62 Power of Secretary of State to refer the matter

- (1) Subsection (2) applies where the Secretary of State—
 - (a) has given a special intervention notice in relation to a special merger situation; and
 - (b) has received a report of the [^{F30}CMA] under section 61 [^{F31}, and any report of OFCOM which is required by virtue of section 61A,] in relation to the matter.
- (2) The Secretary of State may make a reference [^{F32}to the chair of the CMA for the constitution of a group under Schedule 4 to the Enterprise and Regulatory Reform Act 2013] if he believes that it is or may be the case that—
 - (a) a special merger situation has been created;
 - (b) one or more than one consideration mentioned in the special intervention notice is relevant to a consideration of the special merger situation concerned; and
 - (c) taking account only of the relevant consideration or considerations concerned, the creation of that situation operates or may be expected to operate against the public interest.
- (3) The Secretary of State may make a reference [^{F32}to the chair of the CMA for the constitution of a group under Schedule 4 to the Enterprise and Regulatory Reform Act 2013] if he 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 special merger situation;
 - (b) one or more than one consideration mentioned in the special intervention notice is relevant to a consideration of the special merger situation concerned; and
 - (c) taking account only of the relevant consideration or considerations concerned, the creation of that situation may be expected to operate against the public interest.
- (4) No reference shall be made under this section if the making of the reference is prevented by ^{F33} . . . paragraph 4 of Schedule 7.
- (5) The Secretary of State, in deciding whether to make a reference under this section, shall accept the decision of the [^{F34}CMA] included in its report under section 61 by virtue of subsection (4) of that section.
- (6) A reference under this section shall, in particular, specify—
 - (a) the subsection of this section under which it is made;
 - (b) the date on which it is made; and
 - (c) the consideration or considerations mentioned in the special intervention notice which the Secretary of State believes are, or may be, relevant to a consideration of the special merger situation concerned.

Changes to legislation: There are currently no known outstanding effects for the Enterprise Act 2002, Cross Heading: Special public interest cases. (See end of Document for details)

Textual Amendments

- F30** Word in s. 62(1)(b) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 5 para. 104\(2\)](#) (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F31** Words in s. 62(1)(b) inserted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), ss. 389(1), 411(2)(3), [Sch. 16 para. 14](#) (with transitional provisions in [Sch. 18](#)); S.I. 2003/3142, [art. 3\(1\)](#), [Sch. 1](#) (subject to arts. 3(3), 11)
- F32** Words in s. 62(2)(3) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 5 para. 104\(3\)](#) (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F33** Words in s. 62(4) repealed (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), ss. 406(7), 411(2)(3), [Sch. 19\(1\)](#) (with transitional provisions in [Sch. 18](#) and with [Sch. 19 Note 1](#)); S.I. 2003/3142, [art. 3\(1\)](#), [Sch. 1](#) (subject to arts. 3(3), 11)
- F34** Word in s. 62(5) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 5 para. 104\(4\)](#) (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)

[^{F35} 62A Functions to be exercised by CMA groups

Where a reference is made to the chair of the CMA under section 62 for the constitution of a group under Schedule 4 to the Enterprise and Regulatory Reform Act 2013, the functions of the CMA under or by virtue of the following provisions of this Part in relation to the matter concerned are to be carried out on behalf of the CMA by the group so constituted—

- (a) sections 63 to 65;
- (b) where a reference is treated by virtue of section 64(2) as having been made under section 62(2), section 23(9)(ab) (as it has effect by virtue of section 59(6));
- (c) sections 104, so far as relating to any decision mentioned in paragraph (a) (iii) of the definition of relevant decision in subsection (6) of that section, and 104A;
- (d) section 107, so far as relating to anything done on behalf of the CMA by the group;
- (e) section 109, where the permitted purpose relates to a function that (by virtue of this section) is being or is to be carried out on behalf of the CMA by the group;
- (f) sections 110 to 115, so far as relating to a notice given under section 109 on behalf of the CMA by the group;
- (g) section 118(4);
- (h) section 120(5)(b), so far as relating to a decision of the group.]

Textual Amendments

- F35** S. 62A inserted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 5 para. 105](#) (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)

Modifications etc. (not altering text)

- C1** S. 62A modified (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 4 para. 47\(2\)](#); S.I. 2014/416, art. 2(1)(c) (with Sch.)

Changes to legislation: There are currently no known outstanding effects for the Enterprise Act 2002, Cross Heading: Special public interest cases. (See end of Document for details)

63 Questions to be decided on references under section 62

- (1) The [F³⁶CMA] shall, on a reference under section 62(2), decide whether a special merger situation has been created.
- (2) The [F³⁶CMA] shall, on a reference under section 62(3), decide whether arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a special merger situation.
- (3) If the [F³⁶CMA] decides that a special 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 special merger situation, it shall, on a reference under section 62, decide whether, taking account only of the consideration or considerations mentioned in the reference, the creation of that situation operates or may be expected to operate against the public interest.
- (4) The [F³⁶CMA] shall, if it has decided on a reference under section 62 that the creation of a special merger situation operates or may be expected to operate against the public interest, decide the following additional questions—
 - (a) whether action should be taken by the Secretary of State under section 66 for the purpose of remedying, mitigating or preventing any of the effects adverse to the public interest which have resulted from, or may be expected to result from, the creation of the special merger situation concerned;
 - (b) whether the [F³⁶CMA] should recommend the taking of other action by the Secretary of State or action by persons other than itself and the Secretary of State for the purpose of remedying, mitigating or preventing any of the effects adverse to the public interest which have resulted from, or may be expected to result from, the creation of the special merger situation concerned; and
 - (c) in either case, if action should be taken, what action should be taken and what is to be remedied, mitigated or prevented.

Textual Amendments

F36 Word in s. 63(1)-(4) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 26(3), Sch. 5 para. 106 (with s. 28), [S.I. 2014/416](#), art. 2(1)(d) (with Sch.)

Modifications etc. (not altering text)

C2 Ss. 35, 36, 47, 63, 134 and 141 extended (20.6.2003) by [1977 c. 37, s. 50A\(6\)](#) (as inserted by [Enterprise Act 2002 \(c. 40\)](#), ss. 278, 279, [Sch. 25 para. 8\(2\)](#)); [S.I. 2003/1397](#) {art. 2(1)}, Sch. (with art. 8)

64 Cancellation and variation of references under section 62

- (1) The [F³⁷CMA] shall cancel a reference under section 62(3) if it considers that the proposal to make arrangements of the kind mentioned in that reference has been abandoned.
- (2) The [F³⁷CMA] may, if it considers that doing so is justified by the facts (including events occurring on or after the making of the reference concerned), treat a reference made under subsection (2) or (3) of section 62 as if it had been made under subsection (3) or (as the case may be) (2) of that section; and, in such cases, references in this Part to references under those enactments shall, so far as may be necessary, be construed accordingly.

Changes to legislation: There are currently no known outstanding effects for the Enterprise Act 2002, Cross Heading: Special public interest cases. (See end of Document for details)

- (3) Where, by virtue of subsection (2), the [F37CMA] treats a reference made under subsection (2) or (3) of section 62 as if it had been made under subsection (3) or (as the case may be) (2) of that section, paragraphs F38... 2, 7 and 8 of Schedule 7 shall, in particular, apply as if the reference had been made under subsection (3) or (as the case may be) (2) of that section instead of under subsection (2) or (3) of that section.
- (4) Subsection (5) applies in relation to F39... any order made under paragraph 2 of [F40Schedule 7], which is in force immediately before the [F37CMA], by virtue of subsection (2), treats a reference made under subsection (2) or (3) of section 62 as if it had been made under subsection (3) or (as the case may be) (2) of that section.
- (5) The F41... order shall, so far as applicable, continue in force as if—
 - (a) in the case of an F41... order which relates to a reference under subsection (2) of section 62 F42... made in relation to a reference made under subsection (3) of that section; and
 - (b) in the case of an F41... order which relates to a reference made under subsection (3) of that section F42... made in relation to a reference made under subsection (2) of that section;and the F41... order concerned may be varied F43... or revoked accordingly.
- (6) The Secretary of State may at any time vary a reference under section 62.
- (7) The Secretary of State shall consult the [F37CMA] before varying any such reference.
- (8) Subsection (7) shall not apply if the [F37CMA] has requested the variation concerned.
- (9) No variation by the Secretary of State under this section shall be capable of altering the consideration or considerations specified in the reference or the period permitted by virtue of section 65 within which the report of the [F37CMA] under that section is to be prepared and given to the Secretary of State.

Textual Amendments

- F37** Word in s. 64(1)-(4)(7)-(9) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 5 para. 107](#) (with s. 28); S.I. 2014/416, [art. 2\(1\)\(d\)](#) (with Sch.)
- F38** Word in s. 64(3) omitted (1.4.2014) by virtue of [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 15 para. 27\(2\)](#); S.I. 2014/416, [art. 2\(1\)\(f\)](#) (with Sch.)
- F39** Words in s. 64(4) omitted (1.4.2014) by virtue of [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 15 para. 27\(3\)\(a\)](#); S.I. 2014/416, [art. 2\(1\)\(f\)](#) (with Sch.)
- F40** Words in s. 64(4) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 15 para. 27\(3\)\(b\)](#); S.I. 2014/416, [art. 2\(1\)\(f\)](#) (with Sch.)
- F41** Words in s. 64(5) omitted (1.4.2014) by virtue of [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 15 para. 27\(4\)\(a\)](#); S.I. 2014/416, [art. 2\(1\)\(f\)](#) (with Sch.)
- F42** Words in s. 64(5) omitted (1.4.2014) by virtue of [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 15 para. 27\(4\)\(b\)](#); S.I. 2014/416, [art. 2\(1\)\(f\)](#) (with Sch.)
- F43** Words in s. 64(5) omitted (1.4.2014) by virtue of [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 15 para. 27\(4\)\(c\)](#); S.I. 2014/416, [art. 2\(1\)\(f\)](#) (with Sch.)

65 Investigations and reports on references under section 62

- (1) The [F44CMA] shall prepare a report on a reference under section 62 and give it to the Secretary of State within the period permitted by virtue of this section.

Changes to legislation: There are currently no known outstanding effects for the Enterprise Act 2002, Cross Heading: Special public interest cases. (See end of Document for details)

- (2) The report shall, in particular, contain—
- (a) the decisions of the [F44CMA] on the questions which it is required to answer by virtue of section 63;
 - (b) its reasons for its decisions; and
 - (c) such information as the [F44CMA] considers appropriate for facilitating a proper understanding of those questions and of its reasons for its decisions.
- [F45(2A) Where the report relates to a reference under section 62 which has been made after a report of OFCOM under section 61A, the [F44CMA] shall give a copy of its report (whether or not published) to OFCOM.]
- (3) Sections 51 and 52 (but not section 53) shall apply for the purposes of a report under this section as they apply for the purposes of a report under section 50.
- (4) The [F46CMA] shall carry out such investigations as it considers appropriate for the purpose of producing a report under this section.

Textual Amendments

- F44** Word in s. 65(1)-(2A) (4) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\), s. 103\(3\), Sch. 5 para. 107](#) (with s. 28); S.I. 2014/416, [art. 2\(1\)\(d\)](#) (with Sch.)
- F45** S. 65(2A) inserted (29.12.2003) by [Communications Act 2003 \(c. 21\), ss. 389\(1\), 411\(2\)\(3\), Sch. 16 para. 15](#) (with transitional provisions in [Sch. 18](#)); S.I. 2003/3142, [art. 3\(1\)](#), [Sch. 1](#) (subject to [arts. 3\(3\), 11](#))
- F46** Word in s. 65(4) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\), s. 103\(3\), Sch. 5 para. 108](#) (with s. 28); S.I. 2014/416, [art. 2\(1\)\(d\)](#) (with Sch.)

66 Decision and enforcement action by Secretary of State

- (1) Subsection (2) applies where the Secretary of State has received a report of the [F47CMA] under section 65 in relation to a special merger situation.
- (2) The Secretary of State shall, in connection with a reference under section 62(2) or (3), decide the questions which the [F47CMA] is required to decide by virtue of section 63(1) to (3).
- (3) The Secretary of State shall make and publish his decision under subsection (2) within the period of 30 days beginning with the receipt of the report of the [F47CMA] under section 65; and subsection (8) of section 54 shall apply for the purposes of this subsection as it applies for the purposes of subsection (5) of that section.
- (4) In making his decisions under subsection (2), the Secretary of State shall accept the decisions of the report of the [F47CMA] under section 65 as to whether a special 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 special merger situation.
- (5) Subsection (6) applies where the Secretary of State has decided under subsection (2) that—
- (a) a special merger situation has been created or arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a special merger situation;

Changes to legislation: There are currently no known outstanding effects for the Enterprise Act 2002, Cross Heading: Special public interest cases. (See end of Document for details)

- (b) at least one consideration which is mentioned in the special intervention notice concerned is relevant to a consideration of the special merger situation concerned; and
 - (c) taking account only of the relevant consideration or considerations concerned, the creation of that situation operates or may be expected to operate against the public interest;
- and has so decided, and published his decision, within the period required by subsection (3).
- (6) The Secretary of State may take such action under paragraph 9 or 11 of Schedule 7 as he considers to be reasonable and practicable to remedy, mitigate or prevent any of the effects adverse to the public interest which have resulted from, or may be expected to result from, the creation of the special merger situation concerned.
- (7) In making a decision under subsection (6), the Secretary of State shall, in particular, have regard to the report of the [^{F48}CMA] under section 65.

Textual Amendments

- F47** Word in s. 66(1)-(4) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 109** (with s. 28); S.I. 2014/416, **art. 2(1)(d)** (with Sch.)
- F48** Word in s. 66(7) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 109** (with s. 28); S.I. 2014/416, **art. 2(1)(d)** (with Sch.)

Changes to legislation:

There are currently no known outstanding effects for the Enterprise Act 2002, Cross Heading: Special public interest cases.