



Enterprise Act 2002

2002 CHAPTER 40

PART 3

MERGERS

CHAPTER 5

SUPPLEMENTARY

Information and publicity requirements

105 General information duties of OFT and Commission

- (1) Where the OFT decides to investigate a matter so as to enable it to decide whether to make a reference under section 22 or 33, or so as to make a report under section 44 or 61, it shall, so far as practicable, take such action as it considers appropriate to bring information about the investigation to the attention of those whom it considers might be affected by the creation of the relevant merger situation concerned or (as the case may be) the special merger situation concerned.
- (2) Subsection (1) does not apply in relation to arrangements which might result in the creation of a relevant merger situation if a merger notice has been given in relation to those arrangements under section 96.
- (3) The OFT shall give the Commission—
 - (a) such information in its possession as the Commission may reasonably require to enable the Commission to carry out its functions under this Part; and
 - (b) any other assistance which the Commission may reasonably require for the purpose of assisting it in carrying out its functions under this Part and which it is within the power of the OFT to give.
- (4) The OFT shall give the Commission any information in its possession which has not been requested by the Commission but which, in the opinion of the OFT, would be

Status: This is the original version (as it was originally enacted).

appropriate to give to the Commission for the purpose of assisting it in carrying out its functions under this Part.

- (5) The OFT and the Commission shall give the Secretary of State—
 - (a) such information in their possession as the Secretary of State may by direction reasonably require to enable him to carry out his functions under this Part; and
 - (b) any other assistance which the Secretary of State may by direction reasonably require for the purpose of assisting him in carrying out his functions under this Part and which it is within the power of the OFT or (as the case may be) the Commission to give.
- (6) The OFT shall give the Secretary of State any information in its possession which has not been requested by the Secretary of State but which, in the opinion of the OFT, would be appropriate to give to the Secretary of State for the purpose of assisting him in carrying out his functions under this Part.
- (7) The Commission shall have regard to any information given to it under subsection (3) or (4); and the Secretary of State shall have regard to any information given to him under subsection (5) or (6).
- (8) Any direction given under subsection (5)—
 - (a) shall be in writing; and
 - (b) may be varied or revoked by a subsequent direction.

106 Advice and information about references under sections 22 and 33

- (1) As soon as reasonably practicable after the passing of this Act, the OFT shall prepare and publish general advice and information about the making of references by it under section 22 or 33.
- (2) The OFT may at any time publish revised, or new, advice or information.
- (3) As soon as reasonably practicable after the passing of this Act, the Commission shall prepare and publish general advice and information about the consideration by it of references under section 22 or 33 and the way in which relevant customer benefits may affect the taking of enforcement action in relation to such references.
- (4) The Commission may at any time publish revised, or new, advice or information.
- (5) Advice and information published under this section shall be prepared with a view to—
 - (a) explaining relevant provisions of this Part to persons who are likely to be affected by them; and
 - (b) indicating how the OFT or (as the case may be) the Commission expects such provisions to operate.
- (6) Advice (or information) published by virtue of subsection (1) or (3) may include advice (or information) about the factors which the OFT or (as the case may be) the Commission may take into account in considering whether, and if so how, to exercise a function conferred by this Part.
- (7) Any advice or information published by the OFT or the Commission under this section shall be published in such manner as the OFT or (as the case may be) the Commission considers appropriate.

- (8) In preparing any advice or information under this section, the OFT shall consult the Commission and such other persons as it considers appropriate.
- (9) In preparing any advice or information under this section, the Commission shall consult the OFT and such other persons as it considers appropriate.

107 Further publicity requirements

- (1) The OFT shall publish—
 - (a) any reference made by it under section 22 or 33 or any decision made by it not to make such a reference (other than a decision made by virtue of subsection (2)(b) of section 33);
 - (b) any variation made by it under section 37 of a reference under section 22 or 33;
 - (c) such information as it considers appropriate about any decision made by it under section 57(1) to bring a case to the attention of the Secretary of State;
 - (d) any enforcement undertaking accepted by it under section 71;
 - (e) any enforcement order made by it under section 72 or 76 or paragraph 2 of Schedule 7;
 - (f) any variation, release or revocation of such an undertaking or order;
 - (g) any decision made by it as mentioned in section 76(6)(b); and
 - (h) any decision made by it to dispense with the requirements of Schedule 10.
- (2) The Commission shall publish—
 - (a) any cancellation by it under section 37(1) of a reference under section 33;
 - (b) any decision made by it under section 37(2) to treat a reference made under section 22 or 33 as if it had been made under section 33 or (as the case may be) 22;
 - (c) any extension by it under section 39 of the period within which a report under section 38 is to be prepared and published;
 - (d) any decision made by it to cancel an extension as mentioned in section 39(8)(b);
 - (e) any decision made by it under section 41(2) neither to accept an undertaking under section 82 nor to make an order under section 84;
 - (f) any decision made by it that there has been a material change of circumstances as mentioned in subsection (3) of section 41 or there is another special reason as mentioned in that subsection of that section;
 - (g) any cancellation by it under section 48(1) or 53(1) of a reference under section 45 or any cancellation by it under section 64(1) of a reference under section 62;
 - (h) any decision made by it under section 49(1) to treat—
 - (i) a reference made under subsection (2) or (3) of section 45 as if it had been made under subsection (4) or (as the case may be) (5) of that section; or
 - (ii) a reference made under subsection (4) or (5) of section 45 as if it had been made under subsection (2) or (as the case may be) (3) of that section;
 - (i) any extension by it under section 51 of the period within which a report under section 50 is to be prepared and published;
 - (j) any decision made by it under section 51(8)(b) to cancel such an extension;

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

- (k) any extension by it under section 51 as applied by section 65(3) of the period within which a report under section 65 is to be prepared and published;
 - (l) any decision made by it under section 51(8)(b) as applied by section 65(3) to cancel such an extension;
 - (m) any decision made by it under section 64(2) to 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;
 - (n) any decision made by it as mentioned in section 76(6)(b);
 - (o) any enforcement order made by it under section 76 or 81;
 - (p) any enforcement undertaking accepted by it under section 80;
 - (q) any variation, release or revocation of such an order or undertaking; and
 - (r) any decision made by it to dispense with the requirements of Schedule 10.
- (3) The Secretary of State shall publish—
- (a) any intervention notice or special intervention notice given by him;
 - (b) any report of the OFT under section 44 or 61 which has been received by him;
 - (c) any reference made by him under section 45 or 62 or any decision made by him not to make such a reference;
 - (d) any variation made by him under section 49 of a reference under section 45 or under section 64 of a reference under section 62;
 - (e) any report of the Commission under section 50 or 65 which has been received by him;
 - (f) any decision made by him neither to accept an undertaking under paragraph 9 of Schedule 7 nor to make an order under paragraph 11 of that Schedule;
 - (g) any notice given by him under section 56(1);
 - (h) any enforcement undertaking accepted by him under paragraph 1 of Schedule 7;
 - (i) any variation or release of such an undertaking;
 - (j) any decision made by him as mentioned in paragraph 6(6)(b) of Schedule 7; and
 - (k) any decision made by him to dispense with the requirements of Schedule 10.
- (4) Where any person is under a duty by virtue of subsection (1), (2) or (3) to publish the result of any action taken by that person or any decision made by that person, the person concerned shall, subject to subsections (5) and (6), also publish that person's reasons for the action concerned or (as the case may be) the decision concerned.
- (5) Such reasons need not, if it is not reasonably practicable to do so, be published at the same time as the result of the action concerned or (as the case may be) as the decision concerned.
- (6) Subsections (4) and (5) shall not apply in relation to any information published under subsection (1)(c).
- (7) The Secretary of State shall publish his reasons for—
- (a) any decision made by him under section 54(2) or 66(2); or
 - (b) any decision to make an order under section 58(3) or vary or revoke such an order.
- (8) Such reasons may be published after—
- (a) in the case of subsection (7)(a), the publication of the decision concerned; and

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

- (b) in the case of subsection (7)(b), the making of the order or of the variation or revocation;
if it is not reasonably practicable to publish them at the same time as the publication of the decision or (as the case may be) the making of the order or variation or revocation.
- (9) The Secretary of State shall publish—
 - (a) the report of the OFT under section 44 in relation to a matter no later than publication of his decision as to whether to make a reference under section 45 in relation to that matter; and
 - (b) the report of the Commission under section 50 in relation to a matter no later than publication of his decision under section 54(2) in relation to that matter.
- (10) The Secretary of State shall publish—
 - (a) the report of the OFT under section 61 in relation to a matter no later than publication of his decision as to whether to make a reference under section 62 in relation to that matter; and
 - (b) the report of the Commission under section 65 in relation to a matter no later than publication of his decision under section 66(2) in relation to that matter.
- (11) Where the Secretary of State has decided under section 55(2) or 66(6) to accept an undertaking under paragraph 9 of Schedule 7 or to make an order under paragraph 11 of that Schedule, he shall (after the acceptance of the undertaking or (as the case may be) the making of the order) lay details of his decision and his reasons for it, and the Commission's report under section 50 or (as the case may be) 65, before each House of Parliament.

108 Defamation

For the purposes of the law relating to defamation, absolute privilege attaches to any advice, guidance, notice or direction given, or decision or report made, by the OFT, the Commission or the Secretary of State in the exercise of any of their functions under this Part.