



Enterprise Act 2002

2002 CHAPTER 40

PART 4

MARKET INVESTIGATIONS

CHAPTER 4

SUPPLEMENTARY

Regulated markets

168 Regulated markets

- (1) Subsection (2) applies where the Commission or the Secretary of State is considering for the purposes of this Part whether relevant action would be reasonable and practicable for the purpose of remedying, mitigating or preventing an adverse effect on competition or any detrimental effect on customers so far as resulting from such an effect.
- (2) The Commission or (as the case may be) the Secretary of State shall, in deciding whether such action would be reasonable and practicable, have regard to the relevant statutory functions of the sectoral regulator concerned.
- (3) In this section “relevant action” means—
 - (a) modifying the conditions of a licence granted under section 7 of the Telecommunications Act 1984 (c. 12);
 - (b) modifying conditions in force under Part 4 of the Airports Act 1986 (c. 31) other than any conditions imposed or modified in pursuance of section 40(3) or (4) of that Act;
 - (c) modifying the conditions of a licence granted under section 7 or 7A of the Gas Act 1986 (c. 44);
 - (d) modifying the conditions of a licence granted under section 6 of the Electricity Act 1989 (c. 29);

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- (e) modifying networking arrangements (within the meaning given by section 39(1) of the Broadcasting Act 1990 (c. 42));
- (f) modifying the conditions of a company's appointment under Chapter 1 of Part 2 of the Water Industry Act 1991 (c. 56);
- (g) modifying the conditions of a licence granted under article 10 of the Electricity (Northern Ireland) Order 1992 (S.I. 1992/231 (N.I. 1));
- (h) modifying the conditions of a licence granted under section 8 of the Railways Act 1993 (c. 43);
- (i) modifying an access agreement (within the meaning given by section 83(1) of the Act of 1993) or a franchise agreement (within the meaning given by section 23(3) of that Act);
- (j) modifying conditions in force under Part 4 of the Airports (Northern Ireland) Order 1994 (S.I. 1994/426 (N.I. 1)) other than any conditions imposed or modified in pursuance of article 40(3) or (4) of that Order;
- (k) modifying the conditions of a licence granted under article 8 of the Gas (Northern Ireland) Order 1996 (S.I. 1996/275 (N.I. 2));
- (l) modifying the conditions of a licence granted under section 11 of the Postal Services Act 2000 (c. 26); or
- (m) modifying the conditions of a licence granted under section 5 of the Transport Act 2000 (c. 38).

(4) In this section “relevant statutory functions” means—

- (a) in relation to any licence granted under section 7 of the Telecommunications Act 1984, the duties and obligations of the Director General of Telecommunications imposed on him by or in pursuance of any enactment or other provision mentioned in section 7(5)(a) of that Act;
- (b) in relation to conditions in force under Part 4 of the Airports Act 1986 (c. 31) other than any conditions imposed or modified in pursuance of section 40(3) or (4) of that Act, the duties of the Civil Aviation Authority under section 39(2) and (3) of that Act;
- (c) in relation to any licence granted under section 7 or 7A of the Gas Act 1986 (c. 44), the objectives and duties of the Gas and Electricity Markets Authority under section 4AA and 4AB(2) of that Act;
- (d) in relation to any licence granted under section 6 of the Electricity Act 1989 (c. 29), the objectives and duties of the Gas and Electricity Markets Authority under section 3A and 3B(2) of that Act;
- (e) in relation to any networking arrangements (within the meaning given by section 39(1) of the Broadcasting Act 1990 (c. 42)), the duties of the Independent Television Commission under section 2(2) of that Act;
- (f) in relation to a company's appointment under Chapter 1 of Part 2 of the Water Industry Act 1991 (c. 56), the duties of the Director General of Water Services under section 2 of that Act;
- (g) in relation to any licence granted under article 10 of the Electricity (Northern Ireland) Order 1992 (S.I. 1992/231 (N.I. 1)), the duty of the Director General of Electricity Supply for Northern Ireland under article 6 of that Order;
- (h) in relation to any licence granted under section 8 of the Railways Act 1993 (c. 43) where none of the conditions of the licence relate to consumer protection, the duties of the Rail Regulator under section 4 of that Act;
- (i) in relation to any licence granted under section 8 of the Act of 1993 where one or more than one condition of the licence relates to consumer protection, the

- duties of the Rail Regulator under section 4 of that Act and the duties of the Strategic Rail Authority under section 207 of the Transport Act 2000 (c. 38);
- (j) in relation to any access agreement (within the meaning given by section 83(1) of the Act of 1993), the duties of the Rail Regulator under section 4 of the Act of 1993;
 - (k) in relation to any franchise agreement (within the meaning given by section 23(3) of the Act of 1993), the duties of the Strategic Rail Authority under section 207 of the Act of 2000;
 - (l) in relation to conditions in force under Part 4 of the Airports (Northern Ireland) Order 1994 (S.I. 1994/426 (N.I. 1)) other than any conditions imposed or modified in pursuance of article 40(3) or (4) of that Order, the duties of the Civil Aviation Authority under article 30(2) and (3) of that Order;
 - (m) in relation to any licence granted under article 8 of the Gas (Northern Ireland) Order 1996 (S.I. 1996/275 (N.I. 2)), the duties of the Director General of Gas for Northern Ireland under article 5 of that Order;
 - (n) in relation to any licence granted under section 11 of the Postal Services Act 2000 (c. 26), the duties of the Postal Services Commission under sections 3 and 5 of that Act; and
 - (o) in relation to any licence granted under section 5 of the Transport Act 2000, the duties of the Civil Aviation Authority under section 87 of that Act.
- (5) In this section “sectoral regulator” means—
- (a) the Civil Aviation Authority;
 - (b) the Director General of Electricity Supply for Northern Ireland;
 - (c) the Director General of Gas for Northern Ireland;
 - (d) the Director General of Telecommunications;
 - (e) the Director General of Water Services;
 - (f) the Gas and Electricity Markets Authority;
 - (g) the Independent Television Commission;
 - (h) the Postal Services Commission;
 - (i) the Rail Regulator; or
 - (j) the Strategic Rail Authority.
- (6) Subsection (7) applies where the Commission or the Secretary of State is considering for the purposes of this Part whether modifying the conditions of a licence granted under section 7 or 7A of the Gas Act 1986 (c. 44) or section 6 of the Electricity Act 1989 (c. 29) would be reasonable and practicable for the purpose of remedying, mitigating or preventing an adverse effect on competition or any detrimental effect on customers so far as resulting from such an effect.
- (7) The Commission or (as the case may be) the Secretary of State may, in deciding whether modifying the conditions of such a licence would be reasonable and practicable, have regard to those matters to which the Gas and Electricity Markets Authority may have regard by virtue of section 4AA(4) of the Act of 1986 or (as the case may be) section 3A(4) of the Act of 1989.
- (8) The Secretary of State may by order modify subsection (3), (4), (5), (6) or (7).
- (9) Part 2 of Schedule 9 (which makes provision for functions under this Part to be exercisable by various sectoral regulators) shall have effect.

Consultation, information and publicity

169 Certain duties of relevant authorities to consult: Part 4

- (1) Subsection (2) applies where the relevant authority is proposing to make a relevant decision in a way which the relevant authority considers is likely to have a substantial impact on the interests of any person.
- (2) The relevant authority shall, so far as practicable, consult that person about what is proposed before making that decision.
- (3) In consulting the person concerned, the relevant authority shall, so far as practicable, give the reasons of the relevant authority for the proposed decision.
- (4) In considering what is practicable for the purposes of this section the relevant authority shall, in particular, have regard to—
 - (a) any restrictions imposed by any timetable for making the decision; and
 - (b) any need to keep what is proposed, or the reasons for it, confidential.
- (5) The duty under this section shall not apply in relation to the making of any decision so far as particular provision is made elsewhere by virtue of this Part for consultation before the making of that decision.
- (6) In this section—

“the relevant authority” means the OFT, the appropriate Minister or the Commission; and

“relevant decision” means—

 - (a) in the case of the OFT, any decision by the OFT—
 - (i) as to whether to make a reference under section 131 or accept undertakings under section 154 instead of making such a reference; or
 - (ii) to vary under section 135 such a reference;
 - (b) in the case of the appropriate Minister, any decision by the appropriate Minister—
 - (i) as to whether to make a reference under section 132; or
 - (ii) to vary under section 135 such a reference; and
 - (c) in the case of the Commission, any decision on the questions mentioned in section 134 or 141.

170 General information duties

- (1) 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.
- (2) 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 appropriate to give to the Commission for the purpose of assisting it in carrying out its functions under this Part.

- (3) The OFT and the Commission shall give the Secretary of State or the appropriate Minister so far as he is not the Secretary of State acting alone—
 - (a) such information in their possession as the Secretary of State or (as the case may be) the appropriate Minister concerned 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 or (as the case may be) the appropriate Minister concerned 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.
- (4) The OFT shall give the Secretary of State or the appropriate Minister so far as he is not the Secretary of State acting alone any information in its possession which has not been requested by the Secretary of State or (as the case may be) the appropriate Minister concerned but which, in the opinion of the OFT, would be appropriate to give to the Secretary of State or (as the case may be) the appropriate Minister concerned for the purpose of assisting him in carrying out his functions under this Part.
- (5) The Commission shall have regard to any information given to it under subsection (1) or (2); and the Secretary of State or (as the case may be) the appropriate Minister concerned shall have regard to any information given to him under subsection (3) or (4).
- (6) Any direction given under subsection (3)—
 - (a) shall be in writing; and
 - (b) may be varied or revoked by a subsequent direction.

171 Advice and information: Part 4

- (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 131.
- (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 market investigation references 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 and information published by virtue of subsection (1) or (3) shall include such advice and information about the effect of Community law, and anything done under or in accordance with it, on the provisions of this Part as the OFT or (as the case may be) the Commission considers appropriate.

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- (7) 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.
- (8) 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.
- (9) In preparing any advice or information under this section, the OFT shall consult the Commission and such other persons as it considers appropriate.
- (10) In preparing any advice or information under this section, the Commission shall consult the OFT and such other persons as it considers appropriate.
- (11) In this section “Community law” means—
 - (a) all the rights, powers, liabilities, obligations and restrictions from time to time created or arising by or under the Community Treaties; and
 - (b) all the remedies and procedures from time to time provided for by or under the Community Treaties.

172 Further publicity requirements: Part 4

- (1) The OFT shall publish—
 - (a) any reference made by it under section 131;
 - (b) any variation made by it under section 135 of a reference under section 131;
 - (c) any decision of a kind mentioned in section 149(5)(b); and
 - (d) such information as it considers appropriate about any decision made by it under section 152(1) to bring a case to the attention of the Secretary of State.
- (2) The Commission shall publish—
 - (a) any decision made by it under section 138(2) neither to accept an undertaking under section 159 nor to make an order under section 161;
 - (b) any decision made by it that there has been a material change of circumstances as mentioned in section 138(3) or there is another special reason as mentioned in that section;
 - (c) any termination under section 145(1) of an investigation by it;
 - (d) such information as it considers appropriate about any decision made by it under section 152(2) to bring a case to the attention of the Secretary of State;
 - (e) any enforcement undertaking accepted by it under section 157;
 - (f) any enforcement order made by it under section 158; and
 - (g) any variation, release or revocation of such an undertaking or order.
- (3) The Secretary of State shall publish—
 - (a) any reference made by him under section 132;
 - (b) any variation made by him under section 135 of a reference under section 132;
 - (c) any intervention notice given by him;
 - (d) any decision made by him to revoke such a notice;
 - (e) any decision made by him under section 147(2) neither to accept an undertaking under section 159 nor to make an order under section 161;
 - (f) any enforcement undertaking accepted by him under section 157;

- (g) any variation or release of such an undertaking; and
 - (h) any direction given by him under section 170(3) in connection with the exercise by him of his functions under section 132(3).
- (4) The appropriate Minister (other than the Secretary of State acting alone) shall publish—
 - (a) any reference made by him under section 132;
 - (b) any variation made by him under section 135 of a reference under section 132; and
 - (c) any direction given by him under section 170(3) in connection with the exercise by him of his functions under section 132(3).
- (5) Where any person is under an obligation by virtue of subsection (1), (2), (3) or (4) 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 (6) and (7), also publish that person's reasons for the action concerned or (as the case may be) the decision concerned.
- (6) 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.
- (7) Subsections (5) and (6) shall not apply in relation to any case falling within subsection (1)(d) or (2)(d).
- (8) The Secretary of State shall publish his reasons for—
 - (a) any decision made by him under section 146(2); or
 - (b) any decision to make an order under section 153(3) or vary or revoke such an order.
- (9) Such reasons may be published after—
 - (a) in the case of subsection (8)(a), the publication of the decision concerned; and
 - (b) in the case of subsection (8)(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.
- (10) Where the Secretary of State has decided under section 147(2) to accept an undertaking under section 159 or to make an order under section 161, 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 142, before each House of Parliament.

173 Defamation: Part 4

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, by the Secretary of State, by the appropriate Minister (other than the Secretary of State acting alone) or by the Commission in the exercise of any of their functions under this Part.

Investigation powers

174 Investigation powers of OFT

- (1) The OFT may exercise any of the powers in subsections (3) to (5) for the purpose of assisting it in deciding whether to make a reference under section 131 or to accept undertakings under section 154 instead of making such a reference.
- (2) The OFT shall not exercise any of the powers in subsections (3) to (5) for the purpose of assisting it as mentioned in subsection (1) unless it already believes that it has power to make such a reference.
- (3) The OFT may give notice to any person requiring him—
 - (a) to attend at a time and place specified in the notice; and
 - (b) to give evidence to the OFT or a person nominated by the OFT for the purpose.
- (4) The OFT may give notice to any person requiring him—
 - (a) to produce any documents which—
 - (i) are specified or described in the notice, or fall within a category of document which is specified or described in the notice; and
 - (ii) are in that person's custody or under his control; and
 - (b) to produce them at a time and place so specified and to a person so specified.
- (5) The OFT may give notice to any person who carries on any business requiring him—
 - (a) to supply to the OFT such estimates, forecasts, returns or other information as may be specified or described in the notice; and
 - (b) to supply it at a time and place, and in a form and manner, so specified and to a person so specified.
- (6) A notice under this section shall include information about the possible consequences of not complying with the notice.
- (7) The person to whom any document is produced in accordance with a notice under this section may, for the purpose mentioned in subsection (1), copy the document so produced.
- (8) No person shall be required under this section—
 - (a) to give any evidence or produce any documents which he could not be compelled to give or produce in civil proceedings before the court; or
 - (b) to supply any information which he could not be compelled to supply in evidence in such proceedings.
- (9) No person shall be required, in compliance with a notice under this section, to go more than 10 miles from his place of residence unless his necessary travelling expenses are paid or offered to him.
- (10) Any reference in this section to the production of a document includes a reference to the production of a legible and intelligible copy of information recorded otherwise than in legible form.
- (11) In this section “the court” means—
 - (a) in relation to England and Wales or Northern Ireland, the High Court; and
 - (b) in relation to Scotland, the Court of Session.

175 Enforcement of powers under section 174: offences

- (1) A person commits an offence if he, intentionally and without reasonable excuse, fails to comply with any requirement of a notice under section 174.
- (2) A person commits an offence if he intentionally and without reasonable excuse alters, suppresses or destroys any document which he has been required to produce by a notice under section 174.
- (3) A person who commits an offence under subsection (1) or (2) shall be liable—
 - (a) on summary conviction, to a fine not exceeding the statutory maximum;
 - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.
- (4) A person commits an offence if he intentionally obstructs or delays—
 - (a) the OFT in the exercise of its powers under section 174; or
 - (b) any person in the exercise of his powers under subsection (7) of that section.
- (5) A person who commits an offence under subsection (4) shall be liable—
 - (a) on summary conviction, to a fine not exceeding the statutory maximum;
 - (b) on conviction on indictment, to a fine.

176 Investigation powers of the Commission

- (1) The following sections in Part 3 shall apply, with the modifications mentioned in subsections (2) and (3) below, for the purposes of references under this Part as they apply for the purposes of references under that Part—
 - (a) section 109 (attendance of witnesses and production of documents etc.);
 - (b) section 110 (enforcement of powers under section 109: general);
 - (c) section 111 (penalties);
 - (d) section 112 (penalties: main procedural requirements);
 - (e) section 113 (payments and interest by instalments);
 - (f) section 114 (appeals in relation to penalties);
 - (g) section 115 (recovery of penalties); and
 - (h) section 116 (statement of policy).
- (2) Section 110 shall, in its application by virtue of subsection (1) above, have effect as if—
 - (a) subsection (2) were omitted; and
 - (b) in subsection (9) the words from “or section” to “section 65(3)” were omitted.
- (3) Section 111(5)(b)(ii) shall, in its application by virtue of subsection (1) above, have effect as if—
 - (a) for the words “section 50 or 65, given” there were substituted “section 142, published or given under section 143(1) or (3)”; and
 - (b) for the words “(or given)”, in both places where they appear, there were substituted “(or published or given)”.

Reports

177 Excisions from reports: Part 4

- (1) Subsection (2) applies where the Secretary of State is under a duty to publish a report of the Commission under section 142.
- (2) The Secretary of State may exclude a matter from the report if he considers that publication of the matter would be inappropriate.
- (3) In deciding what is inappropriate for the purposes of subsection (2) the Secretary of State shall have regard to the considerations mentioned in section 244.
- (4) The Commission shall advise the Secretary of State as to the matters (if any) which it considers should be excluded by him under subsection (2).
- (5) References in sections 136(4) to (6), 143(2) and (5) to (7), 148(3) to (5) and 172(10) to the giving or laying of a report of the Commission shall be construed as references to the giving or laying of the report as published.

178 Minority reports of Commission: Part 4

- (1) Subsection (2) applies where, on a market investigation reference, a member of a group constituted in connection with the reference in pursuance of paragraph 15 of Schedule 7 to the Competition Act 1998 (c. 41), disagrees with any decisions contained in the report of the Commission under this Part as the decisions of the Commission.
- (2) The report shall, if the member so wishes, include a statement of his disagreement and of his reasons for disagreeing.

Other

179 Review of decisions under Part 4

- (1) Any person aggrieved by a decision of the OFT, the appropriate Minister, the Secretary of State or the Commission in connection with a reference or possible reference under this Part may apply to the Competition Appeal Tribunal for a review of that decision.
- (2) For this purpose “decision”—
 - (a) does not include a decision to impose a penalty under section 110(1) or (3) as applied by section 176; but
 - (b) includes a failure to take a decision permitted or required by this Part in connection with a reference or possible reference.
- (3) Except in so far as a direction to the contrary is given by the Competition Appeal Tribunal, the effect of the decision is not suspended by reason of the making of the application.
- (4) In determining such an application the Competition Appeal Tribunal shall apply the same principles as would be applied by a court on an application for judicial review.
- (5) The Competition Appeal Tribunal may—
 - (a) dismiss the application or quash the whole or part of the decision to which it relates; and

- (b) where it quashes the whole or part of that decision, refer the matter back to the original decision maker with a direction to reconsider and make a new decision in accordance with the ruling of the Competition Appeal Tribunal.
- (6) An appeal lies on any point of law arising from a decision of the Competition Appeal Tribunal under this section to the appropriate court.
- (7) An appeal under subsection (6) requires the permission of the Tribunal or the appropriate court.
- (8) In this section—
 - “the appropriate court” means the Court of Appeal or, in the case of Tribunal proceedings in Scotland, the Court of Session; and
 - “Tribunal rules” has the meaning given by section 15(1).

180 Offences

- (1) Sections 117 (false or misleading information) and 125 (offences by bodies corporate) shall apply, with the modifications mentioned in subsection (2) below, for the purposes of this Part as they apply for the purposes of Part 3.
- (2) Section 117 shall, in its application by virtue of subsection (1) above, have effect as if references to the Secretary of State included references to the appropriate Minister so far as he is not the Secretary of State acting alone.

181 Orders under Part 4

- (1) Any power of the Secretary of State to make an order under this Part shall be exercisable by statutory instrument.
- (2) Any power of the Secretary of State to make an order under this Part—
 - (a) may be exercised so as to make different provision for different cases or different purposes;
 - (b) includes power to make such incidental, supplementary, consequential, transitory, transitional or saving provision as the Secretary of State considers appropriate.
- (3) The power of the Secretary of State under section 136(9), 137(3), 144(2), 153(3) or 168(8) as extended by subsection (2) above may be exercised by modifying any enactment comprised in or made under this Act, or any other enactment.
- (4) An order made by the Secretary of State under section 137(3), 144(2), 158, 160 or 161, or under section 111(4) or (6) or 114(3)(b) or (4)(b) as applied by section 176, shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (5) No order shall be made by the Secretary of State under section 136(9) or 168(8), or section 128(6) as applied by section 183(2), unless a draft of it has been laid before, and approved by a resolution of, each House of Parliament.
- (6) An order made by the Secretary of State under section 153(3) shall be laid before Parliament after being made and shall cease to have effect unless approved, within the period of 28 days beginning with the day on which it is made, by a resolution of each House of Parliament.

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- (7) In calculating the period of 28 days mentioned in subsection (6), no account shall be taken of any time during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than four days.
- (8) If an order made by the Secretary of State ceases to have effect by virtue of subsection (6), any modification made by it of an enactment is repealed (and the previous enactment revived) but without prejudice to the validity of anything done in connection with that modification before the order ceased to have effect and without prejudice to the making of a new order.
- (9) If, apart from this subsection, an order made by the Secretary of State under section 153(3) would be treated for the purposes of the standing orders of either House of Parliament as a hybrid instrument, it shall proceed in that House as if it were not such an instrument.
- (10) References in this section to an order made under this Part include references to an order made under section 111(4) or (6) or 114(3)(b) or (4)(b) as applied by section 176 and an order made under section 128(6) as applied by section 183(2).

182 Service of documents: Part 4

Section 126 shall apply for the purposes of this Part as it applies for the purposes of Part 3.

183 Interpretation: Part 4

- (1) In this Part, unless the context otherwise requires—

“action” includes omission; and references to the taking of action include references to refraining from action;

“business” includes a professional practice and includes any other undertaking which is carried on for gain or reward or which is an undertaking in the course of which goods or services are supplied otherwise than free of charge;

“change of circumstances” includes any discovery that information has been supplied which is false or misleading in a material respect;

“consumer” means any person who is—

- (a) a person to whom goods are or are sought to be supplied (whether by way of sale or otherwise) in the course of a business carried on by the person supplying or seeking to supply them; or
- (b) a person for whom services are or are sought to be supplied in the course of a business carried on by the person supplying or seeking to supply them;

and who does not receive or seek to receive the goods or services in the course of a business carried on by him;

“customer” includes a customer who is not a consumer;

“enactment” includes an Act of the Scottish Parliament, Northern Ireland legislation and an enactment comprised in subordinate legislation, and includes an enactment whenever passed or made;

“goods” includes buildings and other structures, and also includes ships, aircraft and hovercraft;

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“Minister of the Crown” means the holder of an office in Her Majesty’s Government in the United Kingdom and includes the Treasury;

“modify” includes amend or repeal;

“notice” means notice in writing;

“subordinate legislation” has the same meaning as in the Interpretation Act 1978 (c. 30) and also includes an instrument made under an Act of the Scottish Parliament and an instrument made under Northern Ireland legislation; and

“supply”, in relation to the supply of goods, includes supply by way of sale, lease, hire or hire-purchase, and, in relation to buildings or other structures, includes the construction of them by a person for another person.

(2) Sections 127(1)(b) and (4) to (6) and 128 shall apply for the purposes of this Part as they apply for the purposes of Part 3.

(3) For the purposes of this Part a market investigation reference is finally determined if—

(a) where no intervention notice under section 139(1) has been given in relation to it—

(i) the period permitted by section 137 for preparing and publishing a report under section 136 has expired and no such report has been prepared and published;

(ii) such a report has been prepared and published within the period permitted by section 137 and contains the decision that there is no adverse effect on competition;

(iii) the Commission has decided under section 138(2) neither to accept undertakings under section 159 nor to make an order under section 161; or

(iv) the Commission has accepted an undertaking under section 159 or made an order under section 161;

(b) where an intervention notice under section 139(1) has been given in relation to it—

(i) the period permitted by section 144 for the preparation of the report of the Commission under section 142 and for action to be taken in relation to it under section 143(1) or (3) has expired while the intervention notice is still in force and no such report has been so prepared or no such action has been taken;

(ii) the Commission has terminated under section 145(1) its investigation and the reference is finally determined under paragraph (a) above (disregarding the fact that the notice was given);

(iii) the report of the Commission has been prepared under section 142 and published under section 143(1) within the period permitted by section 144;

(iv) the intervention notice was revoked and the reference is finally determined under paragraph (a) above (disregarding the fact that the notice was given);

(v) the Secretary of State has failed to make and publish a decision under subsection (2) of section 146 within the period permitted by subsection (3) of that section and the reference is finally determined under paragraph (a) above (disregarding the fact that the notice was given);

(vi) the Secretary of State has decided under section 146(2) that no eligible public interest consideration is relevant and the reference is finally

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- determined under paragraph (a) above (disregarding the fact that the notice was given);
- (vii) the Secretary of State has decided under 146(2) that a public interest consideration is relevant but has decided under section 147(2) neither to accept an undertaking under section 159 nor to make an order under section 161; or
- (viii) the Secretary of State has decided under section 146(2) that a public interest consideration is relevant and has accepted an undertaking under section 159 or made an order under section 161.
- (4) For the purposes of this Part the time when a market investigation reference is finally determined is—
- (a) in a case falling within subsection (3)(a)(i) or (b)(i), the expiry of the time concerned;
 - (b) in a case falling within subsection (3)(a)(ii) or (b)(iii), the publication of the report;
 - (c) in a case falling within subsection (3)(a)(iv) or (b)(viii), the acceptance of the undertaking concerned or (as the case may be) the making of the order concerned; and
 - (d) in any other case, the making of the decision or last decision concerned or the taking of the action concerned.
- (5) The references in subsection (4) to subsections (3)(a)(i), (ii) and (iv) include those enactments as applied by subsection (3)(b)(ii), (iv), (v) or (vi).
- (6) In subsection (4)(c) the reference to the acceptance of the undertaking concerned or the making of the order concerned shall, in a case where the enforcement action concerned involves the acceptance of a group of undertakings, the making of a group of orders or the acceptance and making of a group of undertakings and orders, be treated as a reference to the acceptance or making of the last undertaking or order in the group; but undertakings or orders which vary, supersede or revoke earlier undertakings or orders shall be disregarded for the purposes of subsections (3)(a)(iv) and (b)(viii) and (4)(c).
- (7) Any duty to publish which is imposed on a person by this Part shall, unless the context otherwise requires, be construed as a duty on that person to publish in such manner as that person considers appropriate for the purpose of bringing the matter concerned to the attention of those likely to be affected by it.

184 Index of defined expressions: Part 4

In this Part, the expressions listed in the left-hand column have the meaning given by, or are to be interpreted in accordance with, the provisions listed in the right-hand column.

<i>Expression</i>	<i>Provision of this Act</i>
Action (and the taking of action)	Section 183(1)
Adverse effect on competition	Section 134(2)
Appropriate Minister	Section 132(5)
Business	Section 183(1)
Change of circumstances	Section 183(1)

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

<i>Expression</i>	<i>Provision of this Act</i>
The Commission	Section 273
Consumer	Section 183(1)
Customer	Section 183(1)
Date of market investigation reference	Section 137(7)
Detrimental effect on customers	Section 134(5)
Enactment	Section 183(1)
Enforcement order	Section 162(8)
Enforcement undertaking	Section 162(8)
Feature of a market	Section 131(2)
Final determination of market investigation reference	Section 183(3) to (6)
Goods	Section 183(1)
Intervention notice	Section 139(3)
Market for goods or services	Section 131(6)
Market in the United Kingdom	Section 131(6)
Market investigation reference	Section 131(6)
Minister of the Crown	Section 183(1)
Modify	Section 183(1)
Notice	Section 183(1)
The OFT	Section 273
Public interest consideration	Section 139(5)
Public interest consideration being finalised	Section 139(7)
Publish	Section 183(7)
Relevant customer benefit	Section 134(8)
Relevant sectoral enactment	Section 136(7)
Relevant sectoral regulator	Section 136(8)
Reports of the Commission	Section 177(5)
Subordinate legislation	Section 183(1)
Supply (in relation to the supply of goods)	Section 183(1)
The supply of services (and a market for services etc.)	Section 183(2)