



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);

Status: This is the original version (as it was originally enacted).

- (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

Status: This is the original version (as it was originally enacted).

- 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.