



Enterprise Act 2002

2002 CHAPTER 40

PART 3

MERGERS

CHAPTER 2

PUBLIC INTEREST CASES

Decisions of the Secretary of State

54 Decision of Secretary of State in public interest cases

- (1) Subsection (2) applies where the Secretary of State has received a report of the Commission under section 50 in relation to a relevant merger situation.
- (2) The Secretary of State shall decide whether to make an adverse public interest finding in relation to the relevant merger situation and whether to make no finding at all in the matter.
- (3) For the purposes of this Part the Secretary of State makes an adverse public interest finding in relation to a relevant merger situation if, in relation to that situation, he decides—
 - (a) in connection with a reference to the Commission under subsection (2) of section 45, that it is the case as mentioned in paragraphs (a) to (d) of that subsection or subsection (3) of that section;
 - (b) in connection with a reference to the Commission under subsection (3) of that section, that it is the case as mentioned in paragraphs (a) to (d) of that subsection;
 - (c) in connection with a reference to the Commission under subsection (4) of that section, that it is the case as mentioned in paragraphs (a) to (d) of that subsection or subsection (5) of that section; and

Status: This is the original version (as it was originally enacted).

- (d) in connection with a reference to the Commission under subsection (5) of that section, that it is the case as mentioned in paragraphs (a) to (d) of that subsection.
- (4) The Secretary of State may make no finding at all in the matter only if he decides that there is no public interest consideration which is relevant to a consideration of the relevant merger situation concerned.
- (5) 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 Commission under section 50.
- (6) In making a decision under subsections (2) to (4), the Secretary of State shall disregard any public interest consideration not specified in the reference under section 45 and any public interest consideration disregarded by the Commission for the purposes of its report.
- (7) In deciding whether to make an adverse public interest finding under subsection (2), the Secretary of State shall accept—
 - (a) in connection with a reference to the Commission under section 45(2) or (4), the decision of the report of the Commission under section 50 as to whether there is an anti-competitive outcome; and
 - (b) in connection with a reference to the Commission under section 45(3) or (5)—
 - (i) the decision of the report of the Commission under section 50 as to whether a relevant 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 relevant merger situation; and
 - (ii) the decision of the report of the OFT under section 44 as to the absence of a substantial lessening of competition.
- (8) In determining for the purposes of subsection (5) the period of 30 days no account shall be taken of—
 - (a) Saturday, Sunday, Good Friday and Christmas Day; and
 - (b) any day which is a bank holiday in England and Wales.