
DRAFT STATUTORY INSTRUMENTS

2003 No.

**The Enterprise Act 2002 (Protection
of Legitimate Interests) Order 2003**

Cancellation or variation of references under article 5

7.—(1) The Commission shall cancel a reference under article 5(3) if it considers that the proposal to make arrangements of the kind mentioned in the reference has been abandoned.

(2) In relation to the question whether a European relevant merger situation has been created or the question whether a European relevant merger situation will be created, a reference under article 5 may be framed so as to require the Commission to exclude from consideration—

- (a) subsection (1) of section 23 of the Act;
- (b) subsection (2) of that section; or
- (c) one of those subsections if the Commission finds that the other is satisfied.

(3) In relation to the question whether any such result as is mentioned in section 23(2)(b) of the Act has arisen or the question whether any such result will arise, a reference under article 5 may be framed so as to require the Commission to confine its investigation to the supply of goods or services in a part of the United Kingdom specified in the reference.

(4) The Commission 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 paragraph (2) or (3) of article 5 as if it had been made under paragraph (3) or (as the case may be) (2) of that article; and, in such cases, references in this Order to references under those enactments shall, so far as may be necessary, be construed accordingly.

(5) Where by virtue of paragraph (4), the Commission treats a reference made under paragraph (2) or (3) of article 5 as if it had been made under paragraph (3) or (as the case may be) (2) of that article, paragraphs 1, 2, 7 and 8 of Schedule 2, in particular, apply as if the reference had been made under paragraph (3) or (as the case may be) (2) of that article instead of under paragraph (2) or (3) of that article.

(6) Paragraph (7) applies in relation to any undertaking accepted under paragraph 1 of Schedule 2, or any order made under paragraph 2 of that Schedule, which is in force immediately before the Commission, by virtue of paragraph (4), treats a reference made under paragraph (2) or (3) of article 5 as if it had been made under paragraph (3) or (as the case may be) (2) of that article.

(7) The undertaking or order shall, so far as applicable, continue in force as if it were—

- (a) in the case of an undertaking or order which relates to a reference under paragraph (2) of article 5, accepted or made in relation to a reference made under paragraph (3) of that article; and
- (b) in the case of an undertaking or order which relates to a reference made under paragraph (3) of that article, accepted or made in relation to a reference made under paragraph (2) of that article;

and the undertaking or order concerned may be varied, superseded, released or revoked accordingly.

(8) The Secretary of State may at any time vary a reference under article 5.

(9) The Secretary of State shall consult the Commission before varying any such reference.

(10) Paragraph (9) shall not apply if the Commission has requested the variation concerned.

(11) No variation by the Secretary of State under this article shall be capable of altering the public interest consideration or considerations specified in the reference or the period permitted by virtue of article 8 within which the report of the Commission under that article is to be prepared and given to the Secretary of State.