



Enterprise Act 2002

2002 CHAPTER 40

PART 3

MERGERS

CHAPTER 2

PUBLIC INTEREST CASES

Other

56 Competition cases where intervention on public interest grounds ceases

- (1) Where the Secretary of State decides not to make a reference under section 45 on the ground that no public interest consideration to which he is able to have regard is relevant to a consideration of the relevant merger situation concerned, he shall by notice require the [F¹CMA] to deal with the matter otherwise than under this Chapter.
- (2) Where a notice is given to the [F¹CMA] in the circumstances mentioned in subsection (1), the [F¹CMA] shall decide whether to make a reference under section 22 [F², 33, 68B or 68C]; and any time-limits in relation to the Secretary of State's decision whether to make a reference under section 45 (including any remaining powers of extension) shall apply in relation to the decision of the [F¹CMA] whether to make a reference under section 22 [F², 33, 68B or 68C].
- (3) Where the [F³CMA] cancels under section 53(1) a reference under section 45 and [F⁴:its report] under section 44 contains the decision that it is or may be the case that there is an anti-competitive outcome in relation to the relevant merger situation concerned, the [F³CMA] shall proceed under this Part as if a reference under section 22 or (as the case may be) 33 had been made F⁵....
- (4) In proceeding by virtue of subsection (3) to prepare and publish a report under section 38, the [F⁶CMA] shall proceed as if—

Changes to legislation: There are currently no known outstanding effects for the Enterprise Act 2002, Cross Heading: Other. (See end of Document for details)

- (a) the reference under section 22 or 33 had been made at the same time as the reference under section 45;
 - (b) the timetable for preparing and giving its report under section 50 (including any remaining powers of extension and as extended by an additional period of 20 days) were the timetable for preparing and publishing its report under section 38; and
 - (c) in relation to the question whether a relevant merger situation has been created or the question whether arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation, the [F⁶CMA] were confined to the questions on the subject to be investigated by it under section 47.
- (5) In determining the period of 20 days mentioned in subsection (4) 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.
- (6) Where the Secretary of State decides under section 54(2) to make no finding at all in the matter in connection with a reference under section 45(2) or (4), the [F⁷CMA] shall proceed under this Part as if a reference under section 22 or (as the case may be) 33 had been made ^{F8}... instead of a reference under section 45 and as if its report to the Secretary of State under section 50 had been prepared and published by it under section 38 within the period permitted by section 39.
- (7) In relation to proceedings by virtue of subsection (6), the reference in section 41(3) to decisions of the [F⁹CMA] as included in its report by virtue of section 35(3) or 36(2) shall be construed as a reference to decisions which were included in the report of the [F⁹CMA] by virtue of section 47(8).
- (8) Where the [F¹⁰CMA] becomes under a duty to proceed as mentioned in subsection (3) or (6) [F¹¹—
- (a)] references in this Part to references under sections 22 and 33 shall, so far as may be necessary, be construed accordingly; and, in particular, sections 77 to 81 shall apply as if a reference has been made ^{F12}... under section 22 or (as the case may be) 33 [F¹³; and
 - (b) for the purposes of section 34C, the group constituted in consequence of the reference under section 45 is to be treated as if it were constituted in consequence of a reference under section 22 or (as the case may be) 33.]

Textual Amendments

- F1** Word in s. 56(1)(2) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 98(2)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F2** Words in s. 56(2) substituted (26.10.2023) by Energy Act 2023 (c. 52), s. 334(2)(j), **Sch. 16 para. 8**
- F3** Word in s. 56(3) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 98(3)(a)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F4** Words in s. 56(3) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 98(3)(b)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F5** Words in s. 56(3) omitted (1.4.2014) by virtue of Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 98(3)(c)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F6** Word in s. 56(4) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 98(4)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)

Changes to legislation: There are currently no known outstanding effects for the Enterprise Act 2002, Cross Heading: Other. (See end of Document for details)

- F7** Word in s. 56(6) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 98(5)(a)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F8** Words in s. 56(6) omitted (1.4.2014) by virtue of Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 98(5)(b)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F9** Word in s. 56(7) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 98(6)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F10** Word in s. 56(8) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 98(7)(a)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F11** Words in s. 56(8) inserted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 98(7)(b)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F12** Words in s. 56(8) omitted (1.4.2014) by virtue of Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 98(7)(c)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F13** S. 56(8)(b) and word inserted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 98(7)(d)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)

57 Duties of [F14CMA and OFCOM] to inform Secretary of State

- (1) The [F15CMA] shall, in considering whether to make a reference under [F16section 22, 33, 68B or 68C], bring to the attention of the Secretary of State any case which it believes raises any consideration specified in section 58 unless it believes that the Secretary of State would consider any such consideration immaterial in the context of the particular case.
- (2) The [F17CMA and OFCOM] shall bring to the attention of the Secretary of State any representations about exercising his powers under section 58(3) which have been made to the [F18CMA or (as the case may be) OFCOM].

Textual Amendments

- F14** Words in s. 57 heading substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 99(4)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F15** Word in s. 57(1) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 99(2)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F16** Words in s. 57(1) substituted (26.10.2023) by Energy Act 2023 (c. 52), s. 334(2)(j), **Sch. 16 para. 9**
- F17** Words in s. 57(2) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 99(3)(a)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F18** Words in s. 57(2) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 99(3)(b)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)

58 Specified considerations

[F19(1)

[F20(2)

[F21(2A) The need for—

- (a) accurate presentation of news; and
- (b) free expression of opinion;

in newspapers is specified in this section.

Changes to legislation: There are currently no known outstanding effects for the Enterprise Act 2002, Cross Heading: Other. (See end of Document for details)

(2B) The need for, to the extent that it is reasonable and practicable, a sufficient plurality of views in newspapers in each market for newspapers in the United Kingdom or a part of the United Kingdom is specified in this section.

(2C) The following are specified in this section—

- (a) the need, in relation to every different audience in the United Kingdom or in a particular area or locality of the United Kingdom, for there to be a sufficient plurality of persons with control of the media enterprises serving that audience;
- (b) the need for the availability throughout the United Kingdom of a wide range of broadcasting which (taken as a whole) is both of high quality and calculated to appeal to a wide variety of tastes and interests; and
- (c) the need for persons carrying on media enterprises, and for those with control of such enterprises, to have a genuine commitment to the attainment in relation to broadcasting of the standards objectives set out in section 319 of the Communications Act 2003.]

[^{F22}(2D) The interest of maintaining the stability of the UK financial system is specified in this section ^{F23}....]

[^{F24}(2E) The need to maintain in the United Kingdom the capability to combat, and to mitigate the effects of, public health emergencies is specified in this section.]

(3) The Secretary of State may by order modify this section for the purpose of specifying in this section a new consideration or removing or amending any consideration which is for the time being specified in this section.

(4) An order under this section may, in particular—

- (a) provide for a consideration to be specified in this section for a particular purpose or purposes or for all purposes;
- (b) apply in relation to cases under consideration by the [^{F25}CMA, OFCOM] or the Secretary of State before the making of the order as well as cases under consideration on or after the making of the order.

Textual Amendments

- F19** S. 58(1) omitted (4.1.2022) by virtue of National Security and Investment Act 2021 (c. 25), s. 66(3), **Sch. 2 para. 7** (with s. 62); S.I. 2021/1465, regs. 2, 3 (with regs. 4, 5)
- F20** S. 58(2) omitted (4.1.2022) by virtue of National Security and Investment Act 2021 (c. 25), s. 66(3), **Sch. 2 para. 7** (with s. 62); S.I. 2021/1465, regs. 2, 3 (with regs. 4, 5)
- F21** S. 58(2A)-(2C) inserted (29.12.2003) by Communications Act 2003 (c. 21), **ss. 375(1)**, 411(2)(3) (with transitional provisions in Sch. 18); S.I. 2003/3142, **art. 3(1)**, Sch. 1 (subject to arts. 3(3), 11)
- F22** S. 58(2D) inserted (24.10.2008) (with application in accordance with art. 1(2) of the amending S.I.) by The Enterprise Act 2002 (Specification of Additional Section 58 Consideration) Order 2008 (S.I. 2008/2645), arts. 1(1), **2**
- F23** Words in s. 58(2D) omitted (31.12.2020) by virtue of The Competition (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/93), regs. 1(1), **45(b)** (with Sch. 4 para. 28) (as amended by S.I. 2020/1343, regs. 1(1), **35-59**); 2020 c. 1, **Sch. 5 para. 1(1)**
- F24** S. 58(2E) inserted (23.6.2020) by The Enterprise Act 2002 (Specification of Additional Section 58 Consideration) Order 2020 (S.I. 2020/627), arts. 1(1), **2**
- F25** Words in s. 58(4)(b) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 100** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)

Changes to legislation: There are currently no known outstanding effects for the Enterprise Act 2002, Cross Heading: Other. (See end of Document for details)

[^{F26}**58A Construction of consideration specified in section 58(2C)**

- (1) For the purposes of section 58 and this section an enterprise is a media enterprise if it consists in or involves broadcasting.
- (2) In the case of a merger situation in which at least one of the enterprises ceasing to be distinct consists in or involves broadcasting, the references in section 58(2C)(a) or this section to media enterprises include references to newspaper enterprises.
- (3) In this Part “newspaper enterprise” means an enterprise consisting in or involving the supply of newspapers.
- (4) Wherever in a merger situation two media enterprises serving the same audience cease to be distinct, the number of such enterprises serving that audience shall be assumed to be more immediately before they cease to be distinct than it is afterwards.
- (5) For the purposes of section 58, where two or more media enterprises—
 - (a) would fall to be treated as under common ownership or common control for the purposes of section 26, or
 - (b) are otherwise in the same ownership or under the same control,they shall be treated (subject to subsection (4)) as all under the control of only one person.
- (6) A reference in section 58 or this section to an audience shall be construed in relation to a media enterprise in whichever of the following ways the decision-making authority considers appropriate—
 - (a) as a reference to any one of the audiences served by that enterprise, taking them separately;
 - (b) as a reference to all the audiences served by that enterprise, taking them together;
 - (c) as a reference to a number of those audiences taken together in such group as the decision-making authority considers appropriate; or
 - (d) as a reference to a part of anything that could be taken to be an audience under any of paragraphs (a) to (c) above.
- (7) The criteria for deciding who can be treated for the purposes of this section as comprised in an audience, or as comprised in an audience served by a particular service—
 - (a) shall be such as the decision-making authority considers appropriate in the circumstances of the case; and
 - (b) may allow for persons to be treated as members of an audience if they are only potentially members of it.
- (8) In this section “audience” includes readership.
- (9) The power under subsection (3) of section 58 to modify that section includes power to modify this section.]

Textual Amendments

F26 S. 58A inserted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), [ss. 375\(2\)](#), [411\(2\)\(3\)](#) (with transitional provisions in [Sch. 18](#)); [S.I. 2003/3142](#), [art. 3\(1\)](#), [Sch. 1](#) (subject to [arts. 3\(3\)](#), [11](#))

Changes to legislation:

There are currently no known outstanding effects for the Enterprise Act 2002, Cross Heading:
Other.