



Enterprise Act 2002

2002 CHAPTER 40

PART 4

[^{F1}MARKET STUDIES AND] MARKET INVESTIGATIONS

CHAPTER 1

[^{F1}MARKET STUDIES AND] MARKET INVESTIGATION REFERENCES

Making of references

131 Power of [^{F1}CMA] to make references

- (1) [^{F2}The CMA may, subject to subsection (4), make a reference to its chair for the constitution of a group under Schedule 4 to the Enterprise and Regulatory Reform Act 2013 if the CMA] has reasonable grounds for suspecting that any feature, or combination of features, of a market in the United Kingdom for goods or services prevents, restricts or distorts competition in connection with the supply or acquisition of any goods or services in the United Kingdom or a part of the United Kingdom.
 - (2) For the purposes of this Part any reference to a feature of a market in the United Kingdom for goods or services shall be construed as a reference to—
 - (a) the structure of the market concerned or any aspect of that structure;
 - (b) any conduct (whether or not in the market concerned) of one or more than one person who supplies or acquires goods or services in the market concerned; or
 - (c) any conduct relating to the market concerned of customers of any person who supplies or acquires goods or services.
- [^{F3}(2A) In a case where the feature or each of the features concerned falls within subsection (2) (b) or (c), a reference under subsection (1) may be made in relation to more than one market in the United Kingdom for goods or services.]

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- (3) In subsection (2) “conduct” includes any failure to act (whether or not intentional) and any other unintentional conduct.
- (4) No reference shall be made under this section if—
- (a) the making of the reference is prevented by [^{F4}section 156(A1) or (1)]; or
 - (b) a reference has been made under section 132 [^{F5}or 140A(6)] in relation to the same matter but has not been finally determined.
- (5) References in this Part to a market investigation reference being finally determined shall be construed in accordance with section 183(3) to (6).
- (6) In this Part—
- ^{F6}“cross-market reference” means a reference under this section which falls within subsection (2A) or a reference under section 132 which falls within subsection (3A) of that section (and see section 140A);]
- “market in the United Kingdom” includes—
- (a) so far as it operates in the United Kingdom or a part of the United Kingdom, any market which operates there and in another country or territory or in a part of another country or territory; and
 - (b) any market which operates only in a part of the United Kingdom;
- “market investigation reference” means a reference under this section or section 132 [^{F7}or 140A(6)];
- ^{F8}“ordinary reference” means a reference under this section or section 132 which is not a cross-market reference (and see section 140A);]
- and references to a market for goods or services include references to a market for goods and services.

Textual Amendments

- F1** Word in s. 131 heading substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\), s. 103\(3\), Sch. 5 para. 163\(3\)](#) (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F2** Words in s. 131(1) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\), s. 103\(3\), Sch. 5 para. 163\(2\)](#) (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F3** S. 131(2A) inserted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\), ss. 33\(2\), 103\(3\); S.I. 2014/416, art. 2\(1\)\(b\)](#) (with Sch.)
- F4** Words in s. 131(4)(a) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\), ss. 33\(3\), 103\(3\); S.I. 2014/416, art. 2\(1\)\(b\)](#) (with Sch.)
- F5** Words in s. 131(4)(b) inserted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\), s. 103\(3\), Sch. 10 para. 2\(2\); S.I. 2014/416, art. 2\(1\)\(d\)](#) (with Sch.)
- F6** Words in s. 131(6) inserted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\), ss. 33\(4\)\(a\), 103\(3\); S.I. 2014/416, art. 2\(1\)\(b\)](#) (with Sch.)
- F7** Words in s. 131(6) inserted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\), s. 103\(3\), Sch. 10 para. 2\(3\); S.I. 2014/416, art. 2\(1\)\(d\)](#) (with Sch.)
- F8** Words in s. 131(6) inserted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\), ss. 33\(4\)\(b\), 103\(3\); S.I. 2014/416, art. 2\(1\)\(b\)](#) (with Sch.)

Modifications etc. (not altering text)

- C1** Pt. 4 modified by 2012 c. 7, s. 73(3)(b) (as substituted (1.4.2014) by [The Enterprise and Regulatory Reform Act 2013 \(Competition\) \(Consequential, Transitional and Saving Provisions\) Order 2014 \(S.I. 2014/892\), art. 1\(1\), Sch. 1 para. 189\(4\)\(c\)](#) (with art. 3))

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- C2** Pt. 4 modified by 2000 c. 38, s. 86(4A) (as inserted (1.4.2014) by [The Enterprise and Regulatory Reform Act 2013 \(Competition\) \(Consequential, Transitional and Saving Provisions\) Order 2014 \(S.I. 2014/892\)](#), art. 1(1), **Sch. 1 para. 154(6)** (with art. 3))
- C3** Pt. 4 modified (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), **Sch. 4 para. 57**; S.I. 2014/416, art. 2(1)(c) (with Sch.)
- C4** Pt. 4 modified by 2012 c. 19, s. 60(3A) (as inserted (1.4.2014) by [The Enterprise and Regulatory Reform Act 2013 \(Competition\) \(Consequential, Transitional and Saving Provisions\) Order 2014 \(S.I. 2014/892\)](#), art. 1(1), **Sch. 1 para. 197(5)** (with art. 3))
- C5** Pt. 4 certain functions made exercisable concurrently (1.4.2014) by [Financial Services \(Banking Reform\) Act 2013 \(c. 33\)](#), s. 59(1)-(5), 148(5); S.I. 2014/823, art.
- C6** Pt. 4 modified by 1991 c. 56, s. 31(4) (as amended (1.4.2014) by [The Enterprise and Regulatory Reform Act 2013 \(Competition\) \(Consequential, Transitional and Saving Provisions\) Order 2014 \(S.I. 2014/892\)](#), art. 1(1), **Sch. 1 para. 84(5)(d)** (with art. 3))
- C7** Pt. 4 modified by 1989 c. 29, s. 43(2B) (as amended (1.4.2014) by [The Enterprise and Regulatory Reform Act 2013 \(Competition\) \(Consequential, Transitional and Saving Provisions\) Order 2014 \(S.I. 2014/892\)](#), art. 1(1), **Sch. 1 para. 65(4)(d)** (with art. 3))
- C8** Pt. 4 modified by 1986 c. 44, s. 36A (as amended (1.4.2014) by [The Enterprise and Regulatory Reform Act 2013 \(Competition\) \(Consequential, Transitional and Saving Provisions\) Order 2014 \(S.I. 2014/892\)](#), art. 1(1), **Sch. 1 para. 50(4)(d)** (with art. 3))
- C9** Pt. 4 modified by 1993 c. 43, s. 67(4)(d) (as amended (1.4.2014) by [The Enterprise and Regulatory Reform Act 2013 \(Competition\) \(Consequential, Transitional and Saving Provisions\) Order 2014 \(S.I. 2014/892\)](#), art. 1(1), **Sch. 1 para. 105(4)(d)** (with art. 3))

[^{F9}131A Decisions about references under section 131: consultation

- (1) This section applies to a case where the CMA has published a market study notice and—
 - (a) the CMA is proposing to make a reference under section 131 in relation to the matter specified in the notice; or
 - (b) a representation has been made to the CMA within the period specified in the notice under section 130A(3)(b) to the effect that such a reference should be made but the CMA is proposing not to make such a reference.
- (2) The CMA shall—
 - (a) publish notice of the proposal concerned; and
 - (b) consult the relevant persons about the proposal, in such manner as it considers practicable, before deciding whether to make a reference.
- (3) The CMA may, for the purposes of subsection (1), ignore any representation which it considers to be frivolous or vexatious.
- (4) For the purposes of subsection (2), a person is a “relevant person” if the CMA considers that its decision whether to make a reference is likely to have a substantial impact on the person's interests.
- (5) In consulting a person for the purposes of this section, the CMA shall, so far as practicable, give its reasons for the proposal.
- (6) In considering what is practicable for the purposes of this section, the CMA shall, in particular, have regard to—
 - (a) the restrictions imposed by the time-table for making the decision (see section 131B); and
 - (b) any need to keep what is proposed, or the reasons for it, confidential.

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

Textual Amendments

- F9** Ss. 131A-131C inserted (25.4.2013 for specified purposes, 1.4.2014 in so far as not already in force) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(1)(i)(3), [Sch. 12 para. 2](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)

131B Market studies and the making of decisions to refer: time-limits

- (1) Where the CMA has published a market study notice in a case to which section 131A applies, the CMA shall, within the period of 6 months beginning with the date on which it publishes the notice—
 - (a) publish the notice under section 131A(2)(a); and
 - (b) begin the process of consultation under section 131A(2)(b) (but the CMA need not complete the process within that period).
- (2) Subsection (3) applies where—
 - (a) the CMA has published a market study notice;
 - (b) no representation has been made to the CMA within the period specified in the notice under section 130A(3)(b) to the effect that a reference under section 131 should be made in relation to the matter specified in the notice; and
 - (c) the CMA has decided not to make such a reference.
- (3) The CMA shall, within the period of 6 months beginning with the date on which it publishes the market study notice, publish notice of the decision not to make a reference.
- (4) Where the CMA has published a market study notice it shall, within the period of 12 months beginning with the date on which it publishes the notice, prepare and publish a report (referred to in this Part as a “market study report”) which sets out—
 - (a) the findings of the CMA in relation to the matter specified in the notice; and
 - (b) the action (if any) which the CMA proposes to take in relation to the matter.
- (5) In a case to which section 131A applies, the market study report shall, in particular, contain—
 - (a) the decision of the CMA to make a reference under section 131 in relation to the matter specified in the market study notice, the decision to accept an undertaking under section 154 instead of making such a reference or (as the case may be) the decision otherwise not to make such a reference;
 - (b) the CMA's reasons for the decision; and
 - (c) such information as the CMA considers appropriate for facilitating a proper understanding of its reasons for the decision.
- (6) Where a market study report contains a decision of the CMA to make a reference under section 131 in relation to a matter, the CMA shall, at the same time as it publishes the report, make the reference.
- (7) This section is subject to section 140A (duty of Secretary of State to refer in public interest intervention cases).

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Textual Amendments

- F9** Ss. 131A-131C inserted (25.4.2013 for specified purposes, 1.4.2014 in so far as not already in force) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(1)(i)(3), **Sch. 12 para. 2**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

131C Time-limits under section 131B: supplementary

- (1) The Secretary of State may by order amend section 131B so as to alter one or more of the following periods—
 - (a) the period of 6 months mentioned in subsection (1) or (3) or any period for the time being mentioned in either of those subsections in substitution for that period;
 - (b) the period of 12 months mentioned in subsection (4) or any period for the time being there mentioned in substitution for that period.
- (2) But no alteration may be made by virtue of subsection (1) which results in—
 - (a) the period for the time being mentioned in subsection (1) or (3) exceeding 6 months; or
 - (b) the period for the time being mentioned in subsection (4) exceeding 12 months.
- (3) Before making an order under this section the Secretary of State shall consult the CMA and such other persons as the Secretary of State considers appropriate.]

Textual Amendments

- F9** Ss. 131A-131C inserted (25.4.2013 for specified purposes, 1.4.2014 in so far as not already in force) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(1)(i)(3), **Sch. 12 para. 2**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

132 Ministerial power to make references

- (1) Subsection (3) applies where, in relation to any goods or services^[F10]—
 - (a)] the appropriate Minister is not satisfied with a decision of the [F11CMA] not to make a reference under section 131^[F12]; and
 - (b) in a case in which the CMA has published a market study notice under section 130A, the period permitted by section 131B for the preparation and publication by the CMA of the market study report has expired.]
- (2) Subsection (3) also applies where, in relation to any goods or services, the appropriate Minister—
 - (a) has brought to the attention of the [F11CMA] information which the appropriate Minister considers to be relevant to the question of whether the [F11CMA] should make a reference under section 131; but
 - (b) is not satisfied that the [F11CMA] will decide, within such period as the appropriate Minister considers to be reasonable, whether [F13] to publish a market study notice in relation to the matter concerned].

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- (3) The appropriate Minister may, subject to subsection (4), make a reference to the ^{F14}chair of the CMA for the constitution of a group under Schedule 4 to the Enterprise and Regulatory Reform Act 2013] if he has reasonable grounds for suspecting that any feature, or combination of features, of a market in the United Kingdom for goods or services prevents, restricts or distorts competition in connection with the supply or acquisition of any goods or services in the United Kingdom or a part of the United Kingdom.
- ^{F15}(3A) In a case where the feature or each of the features concerned falls within section 131(2) (b) or (c), a reference under subsection (3) may be made in relation to more than one market in the United Kingdom for goods or services.]
- (4) No reference shall be made under this section if^{F16}—
- (a) the making of the reference is prevented by ^{F17}section 156(A1) or (1)]^{F18}; or
 - (b) a reference has been made under section 140A(6) in relation to the same matter but has not been finally determined.]
- (5) In this Part “the appropriate Minister” means—
- (a) the Secretary of State; ^{F19}...
 - (b) the Secretary of State and one or more than one other Minister of the Crown acting jointly;
 - ^{F20}(c) the Scottish Ministers and the Secretary of State acting jointly; or
 - (d) the Scottish Ministers, the Secretary of State and one or more than one other Minister of the Crown, acting jointly.]

Textual Amendments

- F10** Word in s. 132(1) inserted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\), s. 103\(3\), Sch. 12 para. 10\(2\)\(a\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F11** Word in s. 132(1)(2) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\), s. 103\(3\), Sch. 5 para. 164\(2\)](#) (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F12** S. 132(1)(b) and word inserted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\), s. 103\(3\), Sch. 12 para. 10\(2\)\(b\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F13** Words in s. 132(2)(b) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\), s. 103\(3\), Sch. 12 para. 10\(3\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F14** Words in s. 132(3) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\), s. 103\(3\), Sch. 5 para. 164\(3\)](#) (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F15** S. 132(3A) inserted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\), ss. 34\(2\), 103\(3\)](#); S.I. 2014/416, art. 2(1)(b) (with Sch.)
- F16** Words in s. 132(4) inserted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\), s. 103\(3\), Sch. 10 para. 3\(a\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F17** Words in s. 132(4) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\), ss. 34\(3\), 103\(3\)](#); S.I. 2014/416, art. 2(1)(b) (with Sch.)
- F18** Words in s. 132(4) inserted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\), s. 103\(3\), Sch. 10 para. 3\(b\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F19** Word in s. 132(5) omitted (23.5.2016) by virtue of [Scotland Act 2016 \(c. 11\), ss. 63\(a\), 72\(7\)](#)
- F20** S. 132(5)(c)(d) inserted (23.5.2016) by [Scotland Act 2016 \(c. 11\), ss. 63\(b\), 72\(7\)](#)

133 Contents of references

- (1) A market investigation reference shall, in particular, specify—

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- (a) the enactment under which it is made;
 - (b) the date on which it is made; ^{F21}...
 - (c) [^{F22}in the case of an ordinary reference,] the description of goods or services to which the feature or combination of features concerned relates^{F23}, and
 - (d) in the case of a cross-market reference, the feature or features concerned and the descriptions of goods or services to which it or they relate.]
- (2) A market investigation reference may be framed so as to require the [^{F24}group constituted by the chair of the CMA in respect of the reference] to confine its investigation into the effects of features of markets in the United Kingdom for goods or services of a description specified in the reference to the effects of features of such of those markets as exist in connection with—
- (a) a supply [^{F25}or, in the case of a cross-market reference, supplies], of a description specified in the reference, of the goods or services concerned; or
 - (b) an acquisition [^{F26}or, in the case of a cross-market reference, acquisitions], of a description specified in the reference, of the goods or services concerned.
- (3) A description of the kind mentioned in subsection (2)(a) or (b) may, in particular, be by reference to—
- (a) the place where the goods or services are supplied or acquired; or
 - (b) the persons by or to whom they are supplied or by or from whom they are acquired.

Textual Amendments

- F21** Word in s. 133(1) omitted (1.4.2014) by virtue of [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 9 para. 2\(2\)\(a\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F22** Words in s. 133(1)(c) inserted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 9 para. 2\(2\)\(b\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F23** S. 133(1)(d) and word inserted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 9 para. 2\(2\)\(c\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F24** Words in s. 133(2) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 5 para. 165](#) (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F25** Words in s. 133(2)(a) inserted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 9 para. 2\(3\)\(a\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F26** Words in s. 133(2)(b) inserted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 9 para. 2\(3\)\(b\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)

Changes to legislation:

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