



# Enterprise Act 2002

## 2002 CHAPTER 40

### PART 3

#### MERGERS

### CHAPTER 5

#### SUPPLEMENTARY

#### *Miscellaneous*

#### **123 Power to alter share of supply test**

- (1) The Secretary of State may by order amend or replace the conditions which determine for the purposes of this Part whether a relevant merger situation has been created.
- (2) The Secretary of State shall not exercise his power under subsection (1)—
  - (a) to amend or replace the conditions mentioned in paragraphs (a) and (b) of subsection (1) of section 23;
  - (b) to amend or replace the condition mentioned in paragraph (a) of subsection (2) of that section.
- (3) In exercising his power under subsection (1) to amend or replace the condition mentioned in paragraph (b) of subsection (2) of section 23 or any condition which for the time being applies instead of it, the Secretary of State shall, in particular, have regard to the desirability of ensuring that any amended or new condition continues to operate by reference to the degree of commercial strength which results from the enterprises concerned having ceased to be distinct.
- (4) Before making an order under this section the Secretary of State shall consult the OFT and the Commission.
- (5) An order under this section may provide for the delegation of functions to the decision-making authority.