



Enterprise Act 2002

2002 CHAPTER 40

PART 4

[^{F1}MARKET STUDIES AND] MARKET INVESTIGATIONS

CHAPTER 1

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

Determination of references

134 Questions to be decided on market investigation references

- (1) The [^{F1}CMA] shall, on [^{F2}an ordinary] reference, decide whether any feature, or combination of features, of each relevant market 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.
- [^{F3}(1A) The CMA shall, on a cross-market reference, decide in relation to each feature and each combination of the features specified in the reference, whether the feature or combination of features, as it relates to goods or services of one or more than one of the descriptions so specified, 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, in relation to [^{F4}an ordinary] reference, there is an adverse effect on competition if any feature, or combination of features, of a relevant market 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.
- [^{F5}(2A) For the purposes of this Part, in relation to a cross-market reference, there is an adverse effect on competition if a feature or a combination of the features specified in the reference, as that feature or combination of features relates to goods or services of one or more than one of the descriptions so specified, prevents, restricts or distorts

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competition in connection with the supply or acquisition of any goods or services in the United Kingdom or a part of the United Kingdom.]

- (3) In subsections (1) and (2) “relevant market” means—
- (a) in the case of subsection (2) so far as it applies in connection with a possible reference, a market in the United Kingdom—
 - (i) for goods or services of a description to be specified in the reference; and
 - (ii) which would not be excluded from investigation by virtue of section 133(2); and
 - (b) in any other case, a market in the United Kingdom—
 - (i) for goods or services of a description specified in the reference concerned; and
 - (ii) which is not excluded from investigation by virtue of section 133(2).
- (4) The [^{F6}CMA] shall, if it has decided on a market investigation reference that there is an adverse effect on competition, decide the following additional questions—
- (a) whether action should be taken by it under section 138 for the purpose of remedying, mitigating or preventing the adverse effect on competition concerned or any detrimental effect on customers so far as it has resulted from, or may be expected to result from, the adverse effect on competition;
 - (b) whether it should recommend the taking of action by others for the purpose of remedying, mitigating or preventing the adverse effect on competition concerned or any detrimental effect on customers so far as it has resulted from, or may be expected to result from, the adverse effect on competition; and
 - (c) in either case, if action should be taken, what action should be taken and what is to be remedied, mitigated or prevented.
- (5) For the purposes of this Part, in relation to a market investigation reference, there is a detrimental effect on customers if there is a detrimental effect on customers or future customers in the form of—
- (a) higher prices, lower quality or less choice of goods or services in any market in the United Kingdom (whether or not the market [^{F7}or markets] to which the feature or features concerned relate); or
 - (b) less innovation in relation to such goods or services.
- (6) In deciding the questions mentioned in subsection (4), the [^{F8}CMA] shall, in particular, have regard to the need to achieve as comprehensive a solution as is reasonable and practicable to the adverse effect on competition and any detrimental effects on customers so far as resulting from the adverse effect on competition.
- (7) In deciding the questions mentioned in subsection (4), the [^{F8}CMA] may, in particular, have regard to the effect of any action on any relevant customer benefits of the feature or features of the market [^{F9}or markets] concerned.
- (8) For the purposes of this Part a benefit is a relevant customer benefit of a feature or features of a market if—
- (a) it is a benefit to customers or future customers in the form of—
 - (i) lower prices, higher quality or greater choice of goods or services in any market in the United Kingdom (whether or not the market [^{F10}or markets] to which the feature or features concerned relate); or
 - (ii) greater innovation in relation to such goods or services; and

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- (b) the [F11CMA or (as the case may be) the Secretary of State] believes that—
- (i) the benefit has accrued as a result (whether wholly or partly) of the feature or features concerned or may be expected to accrue within a reasonable period as a result (whether wholly or partly) of that feature or those features; and
 - (ii) the benefit was, or is, unlikely to accrue without the feature or features concerned.

Textual Amendments

- F1** Word in s. 134(1) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\), s. 103\(3\), Sch. 5 para. 167\(2\)](#) (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F2** Words in s. 134(1) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\), s. 103\(3\), Sch. 9 para. 3\(2\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F3** S. 134(1A) inserted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\), s. 103\(3\), Sch. 9 para. 3\(3\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F4** Words in s. 134(2) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\), s. 103\(3\), Sch. 9 para. 3\(4\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F5** S. 134(2A) inserted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\), s. 103\(3\), Sch. 9 para. 3\(5\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F6** Word in s. 134(4) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\), s. 103\(3\), Sch. 5 para. 167\(2\)](#) (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F7** Words in s. 134(5)(a) inserted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\), s. 103\(3\), Sch. 9 para. 3\(6\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F8** Word in s. 134(6)(7) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\), s. 103\(3\), Sch. 5 para. 167\(2\)](#) (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F9** Words in s. 134(7) inserted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\), s. 103\(3\), Sch. 9 para. 3\(7\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F10** Words in s. 134(8)(a)(i) inserted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\), s. 103\(3\), Sch. 9 para. 3\(8\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F11** Words in s. 134(8)(b) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\), s. 103\(3\), Sch. 5 para. 167\(3\)](#) (with s. 28); S.I. 2014/416, art. 2(1)(d) (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))
- 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))

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- 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))
- C10** Ss. 35, 36, 47, 63, 134 and 141 extended (20.6.2003) by 1977 c. 37, s. 50A(6) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 8(2)**); S.I. 2003/1397 {art. 2(1)}, Sch. (with art. 8)

Changes to legislation:

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