



# Enterprise Act 2002

## 2002 CHAPTER 40

### PART 4

#### [<sup>F1</sup>MARKET STUDIES AND] MARKET INVESTIGATIONS

### CHAPTER 3

#### ENFORCEMENT

##### *Undertakings and orders*

#### **155 Undertakings in lieu: procedural requirements**

- (1) Before accepting an undertaking under section 154 (other than an undertaking under that section which varies an undertaking under that section but not in any material respect), the [<sup>F1</sup>CMA] shall—
  - (a) publish notice of the proposed undertaking; and
  - (b) consider any representations made in accordance with the notice and not withdrawn.
- (2) A notice under subsection (1) shall state—
  - (a) that the [<sup>F1</sup>CMA] proposes to accept the undertaking;
  - (b) the purpose and effect of the undertaking;
  - (c) the situation that the undertaking is seeking to deal with;
  - (d) any other facts which the [<sup>F1</sup>CMA] considers justify the acceptance of the undertaking;
  - (e) a means of gaining access to an accurate version of the proposed undertaking at all reasonable times; and
  - (f) the period (not less than 15 days starting with the date of publication of the notice) within which representations may be made in relation to the proposed undertaking.

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*Changes to legislation: There are currently no known outstanding effects for the Enterprise Act 2002, Section 155. (See end of Document for details)*

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- (3) The matters to be included in a notice under subsection (1) by virtue of subsection (2) shall, in particular, include—
- (a) the terms of the reference under section 131 which the [<sup>F1</sup>CMA] considers that it has power to make and which it otherwise intends to make [<sup>F2</sup>or (but for the effect of section 140A(3)) it would have had power to make and which it would otherwise have intended to make]; and
  - (b) the adverse effect on competition, and any detrimental effect on customers so far as resulting from the adverse effect on competition, which the [<sup>F1</sup>CMA] has identified.
- (4) The [<sup>F1</sup>CMA] shall not accept the undertaking with modifications unless it—
- (a) publishes notice of the proposed modifications; and
  - (b) considers any representations made in accordance with the notice and not withdrawn.
- (5) A notice under subsection (4) shall state—
- (a) the proposed modifications;
  - (b) the reasons for them; and
  - (c) the period (not less than 7 days starting with the date of the publication of the notice under subsection (4)) within which representations may be made in relation to the proposed modifications.
- (6) If, after publishing notice under subsection (1) or (4), the [<sup>F3</sup>CMA] decides—
- (a) not to accept the undertaking concerned; and
  - (b) not to proceed by virtue of subsection (8) or (9);
- it shall publish notice of that decision.
- (7) As soon as practicable after accepting an undertaking to which this section applies, the [<sup>F3</sup>CMA] shall—
- (a) serve a copy of the undertaking on any person by whom it is given; and
  - (b) publish the undertaking.
- (8) The requirements of subsection (4) (and those of subsection (1)) shall not apply if the [<sup>F3</sup>CMA]—
- (a) has already published notice under subsection (1) but not subsection (4) in relation to the proposed undertaking; and
  - (b) considers that the modifications which are now being proposed are not material in any respect.
- (9) The requirements of subsection (4) (and those of subsection (1)) shall not apply if the [<sup>F3</sup>CMA]—
- (a) has already published notice under subsections (1) and (4) in relation to the matter concerned; and
  - (b) considers that the further modifications which are now being proposed do not differ in any material respect from the modifications in relation to which notice was last given under subsection (4).
- (10) Paragraphs 6 to 8 (but not paragraph 9) of Schedule 10 (procedural requirements before terminating undertakings) shall apply in relation to the proposed release of undertakings under section 154 (other than in connection with accepting an undertaking under that section which varies or supersedes an undertaking under that

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section) as they apply in relation to the proposed release of undertakings under section 73.

#### **Textual Amendments**

- F1** Word in s. 155(1)-(4) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 5 para. 188](#) (with s. 28); [S.I. 2014/416](#), art. 2(1)(d) (with Sch.)
- F2** Words in s. 155(3)(a) inserted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 10 para. 23](#); [S.I. 2014/416](#), art. 2(1)(d) (with Sch.)
- F3** Word in s. 155(6)-(9) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 5 para. 188](#) (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, Section 155.