



Enterprise Act 2002

2002 CHAPTER 40

PART 3

MERGERS

CHAPTER 1

DUTY TO MAKE REFERENCES

Duty to make references: completed mergers

23 Relevant merger situations

- (1) For the purposes of this Part, a relevant merger situation has been created if—
 - (a) two or more enterprises have ceased to be distinct enterprises at a time or in circumstances falling within section 24; and
 - (b) the value of the turnover in the United Kingdom of the enterprise being taken over exceeds £70 million.
- (2) For the purposes of this Part, a relevant merger situation has also been created if—
 - (a) two or more enterprises have ceased to be distinct enterprises at a time or in circumstances falling within section 24; and
 - (b) as a result, one or both of the conditions mentioned in subsections (3) and (4) below prevails or prevails to a greater extent.
- (3) The condition mentioned in this subsection is that, in relation to the supply of goods of any description, at least one-quarter of all the goods of that description which are supplied in the United Kingdom, or in a substantial part of the United Kingdom—
 - (a) are supplied by one and the same person or are supplied to one and the same person; or
 - (b) are supplied by the persons by whom the enterprises concerned are carried on, or are supplied to those persons.

Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Enterprise Act 2002. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)

- (4) The condition mentioned in this subsection is that, in relation to the supply of services of any description, the supply of services of that description in the United Kingdom, or in a substantial part of the United Kingdom, is to the extent of at least one-quarter—
- (a) supply by one and the same person, or supply for one and the same person; or
 - (b) supply by the persons by whom the enterprises concerned are carried on, or supply for those persons.
- (5) For the purpose of deciding whether the proportion of one-quarter mentioned in subsection (3) or (4) is fulfilled with respect to goods or (as the case may be) services of any description, the decision-making authority shall apply such criterion (whether value, cost, price, quantity, capacity, number of workers employed or some other criterion, of whatever nature), or such combination of criteria, as the decision-making authority considers appropriate.
- (6) References in subsections (3) and (4) to the supply of goods or (as the case may be) services shall, in relation to goods or services of any description which are the subject of different forms of supply, be construed in whichever of the following ways the decision-making authority considers appropriate—
- (a) as references to any of those forms of supply taken separately;
 - (b) as references to all those forms of supply taken together; or
 - (c) as references to any of those forms of supply taken in groups.
- (7) For the purposes of subsection (6) the decision-making authority may treat goods or services as being the subject of different forms of supply whenever—
- (a) the transactions concerned differ as to their nature, their parties, their terms or their surrounding circumstances; and
 - (b) the difference is one which, in the opinion of the decision-making authority, ought for the purposes of that subsection to be treated as a material difference.
- (8) The criteria for deciding when goods or services can be treated, for the purposes of this section, as goods or services of a separate description shall be such as in any particular case the decision-making authority considers appropriate in the circumstances of that case.
- (9) For the purposes of this Chapter, the question whether a relevant merger situation has been created shall be determined as at—
- (a) in the case of a reference which is treated as having been made under section 22 by virtue of section 37(2), such time as the Commission may determine; and
 - (b) in any other case, immediately before the time when the reference has been, or is to be, made.

Annotations:

Modifications etc. (not altering text)

- C1 Ss. 23-32 applied (with modifications) (20.6.2003) by [The Enterprise Act 2002 \(Protection of Legitimate Interests\) Order 2003 \(S.I. 2003/1592\)](#), [art. 2](#), Sch. 1

Changes to legislation:

There are outstanding changes not yet made by the legislation.gov.uk editorial team to Enterprise Act 2002. Any changes that have already been made by the team appear in the content and are referenced with annotations.

Changes and effects yet to be applied to the whole Act, associated Parts and Chapters:

- Blanket amendment text amended by [S.I. 2011/1043 art. 3 4](#)
- Blanket amendment text amended by [S.I. 2011/1043 art. 3 6](#)

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 218A inserted by [S.I. 2008/1277 reg. 27](#)

Commencement Orders yet to be applied to the Enterprise Act 2002:

Commencement Orders bringing provisions within this Act into force:

- [S.I. 2003/3340 art. 2 3](#) amendment to earlier commencing SI 2003/2093 Sch. 2

Commencement Orders bringing legislation that affects this Act into force:

- [S.I. 2008/831 art. 3](#) commences (2006 c. 14)
- [S.I. 2008/1653 art. 2](#) commences (2007 c. 15)
- [S.I. 2008/2550 art. 2 Sch.](#) commences (2007 c. 17)
- [S.I. 2008/2696 art. 2 5 6](#) commences (2007 c. 15)
- [S.I. 2008/2860 art. 3 4 Sch. 1](#) commences (2006 c. 46)
- [S.I. 2009/107 art. 2-5 Sch. 1-5](#) Commencement Order
- [S.I. 2009/1604 art. 2](#) commences (2005 c. 4)
- [S.I. 2009/3250 art. 2](#) commences (2007 c. 29)
- [S.I. 2009/3294 art. 2](#) commences (2008 c. 26)
- [S.I. 2011/2329 art. 2 3](#) commences (2011 c. 5)