Enterprise Act 2002

2002 CHAPTER 40

PART 3

MERGERS

CHAPTER 1

DUTY TO MAKE REFERENCES

Duty to make references: completed mergers

28 Turnover test

(1) For the purposes of section 23 the value of the turnover in the United Kingdom of the enterprise being taken over shall be determined by taking the total value of the turnover in the United Kingdom of the enterprises which cease to be distinct enterprises and deducting—

    (a) the turnover in the United Kingdom of any enterprise which continues to be carried on under the same ownership and control; or

    (b) if no enterprise continues to be carried on under the same ownership and control, the turnover in the United Kingdom which, of all the turnovers concerned, is the turnover of the highest value.

(2) For the purposes of this Part (other than section 121(4)(c)(ii)) the turnover in the United Kingdom of an enterprise shall be determined in accordance with such provisions as may be specified in an order made by the Secretary of State.

(3) An order under subsection (2) may, in particular, make provision as to—

    (a) the amounts which are, or which are not, to be treated as comprising an enterprise's turnover;

    (b) the date or dates by reference to which an enterprise's turnover is to be determined;

  (c) the connection with the United Kingdom by virtue of which an enterprise's turnover is turnover in the United Kingdom.

(4) An order under subsection (2) may, in particular, make provision enabling the decision-making authority to determine matters of a description specified in the order (including any of the matters mentioned in paragraphs (a) to (c) of subsection (3)).

(5) The OFT shall—

  (a) keep under review the sum for the time being mentioned in section 23(1)(b); and

  (b) from time to time advise the Secretary of State as to whether the sum is still appropriate.

(6) The Secretary of State may by order amend section 23(1)(b) so as to alter the sum for the time being mentioned there.