



Enterprise Act 2002

2002 CHAPTER 40

PART 3

MERGERS

CHAPTER 1

DUTY TO MAKE REFERENCES

Determination of references

35 Questions to be decided in relation to completed mergers

- (1) Subject to subsections (6) and (7) and section 127(3), the [^{F1}CMA] shall, on a reference under section 22, decide the following questions—
 - (a) whether a relevant merger situation has been created; and
 - (b) if so, whether the creation of that situation has resulted, or may be expected to result, in a substantial lessening of competition within any market or markets in the United Kingdom for goods or services.
- (2) For the purposes of this Part there is an anti-competitive outcome if—
 - (a) a relevant merger situation has been created and the creation of that situation has resulted, or may be expected to result, in a substantial lessening of competition within any market or markets in the United Kingdom for goods or services; or
 - (b) arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation and the creation of that situation may be expected to result in a substantial lessening of competition within any market or markets in the United Kingdom for goods or services.
- (3) The [^{F2}CMA] shall, if it has decided on a reference under section 22 that there is an anti-competitive outcome (within the meaning given by subsection (2)(a)), decide the following additional questions—

Changes to legislation: There are currently no known outstanding effects for the Enterprise Act 2002, Section 35. (See end of Document for details)

- (a) whether action should be taken by it under section 41(2) for the purpose of remedying, mitigating or preventing the substantial lessening of competition concerned or any adverse effect which has resulted from, or may be expected to result from, the substantial lessening of competition;
 - (b) whether it should recommend the taking of action by others for the purpose of remedying, mitigating or preventing the substantial lessening of competition concerned or any adverse effect which has resulted from, or may be expected to result from, the substantial lessening of 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.
- (4) In deciding the questions mentioned in subsection (3) the [F²CMA] shall, in particular, have regard to the need to achieve as comprehensive a solution as is reasonable and practicable to the substantial lessening of competition and any adverse effects resulting from it.
- (5) In deciding the questions mentioned in subsection (3) the [F²CMA] may, in particular, have regard to the effect of any action on any relevant customer benefits in relation to the creation of the relevant merger situation concerned.
- (6) In relation to the question whether a relevant merger situation has been created, a reference under section 22 may be framed so as to require the [F²CMA] to exclude from consideration—
- (a) subsection (1) of section 23;
 - (b) subsection (2) of that section; or
 - (c) one of those subsections if the [F²CMA] finds that the other is satisfied.
- (7) In relation to the question whether [F³any such result as is mentioned in section 23(2) (b) has arisen,] a reference under section 22 may be framed so as to require the [F²CMA] to confine its investigation to the supply of goods or services in a part of the United Kingdom specified in the reference.

Textual Amendments

- F1** Word in s. 35(1) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 5 para. 75](#) (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F2** Word in s. 35(3)-(7) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 26(3), [Sch. 5 para. 75](#) (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F3** Words in s. 35(7) substituted (4.1.2022) by [National Security and Investment Act 2021 \(c. 25\)](#), s. 66(3), [Sch. 2 para. 4](#) (with s. 62); S.I. 2021/1465, regs. 2, 3 (with regs. 4, 5)

Modifications etc. (not altering text)

- C1** Pt. 3 modified (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 4 para. 56](#); S.I. 2014/416, art. 2(1)(c) (with Sch.)
- C2** 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:

There are currently no known outstanding effects for the Enterprise Act 2002, Section 35.