



# Enterprise Act 2002

## 2002 CHAPTER 40

### PART 3

#### MERGERS

### CHAPTER 2

#### PUBLIC INTEREST CASES

##### *Power to make references*

## 42 Intervention by Secretary of State in certain public interest cases

(1) Subsection (2) applies where—

- (a) the Secretary of State has reasonable grounds for suspecting that it is or may be the case that a relevant merger situation has been created or that arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation;
- (b) no reference under [<sup>F1</sup>section 22, 33, 68B or 68C] has been made in relation to the relevant merger situation concerned;
- (c) no decision has been made not to make such a reference (other than a decision made by virtue of subsection (2)(b) of section 33 [<sup>F2</sup>or subsection (2)(a) of section 68C] or a decision to accept undertakings under section 73 instead of making such a reference); and
- (d) no reference is prevented from being made under [<sup>F3</sup>section 22, 33, 68B or 68C] by virtue of—
  - (i) [<sup>F4</sup>section 22(3)(za) or (a)] or (as the case may be) [<sup>F5</sup>33(3)(za) or (a)] [<sup>F6</sup>(including those provisions as applied by sections 68B and 68C)]; <sup>F7</sup>...

<sup>F7</sup>(ii) .....

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- (2) The Secretary of State may give a notice to the [F<sup>8</sup>CMA] (in this Part “an intervention notice”) if he believes that it is or may be the case that one or more than one public interest consideration is relevant to a consideration of the relevant merger situation concerned.
- (3) For the purposes of this Part a public interest consideration is a consideration which, at the time of the giving of the intervention notice concerned, is specified in section 58 or is not so specified but, in the opinion of the Secretary of State, ought to be so specified.
- (4) No more than one intervention notice shall be given under subsection (2) in relation to the same relevant merger situation.
- (5) For the purposes of deciding whether a relevant merger situation has been created or whether arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation, sections 23 [F<sup>9</sup> to 30] (read together with section 34) shall apply for the purposes of this Chapter as they do for the purposes of Chapter 1 but subject to subsection (6).
- (6) In their application by virtue of subsection (5) sections 23 [F<sup>10</sup> to 30] shall have effect as if—
- (a) for paragraph (a) of section 23(9) there were substituted—
    - “(a) in relation to the giving of an intervention notice, the time when the notice is given;
    - (aa) in relation to the making of a report by the [F<sup>11</sup>CMA] under section 44, the time of the making of the report;
    - (ab) in the case of a reference which is treated as having been made under section 45(2) or (3) by virtue of section 49(1), such time as the [F<sup>12</sup>CMA] may determine; and”;
  - (b) the references to the [F<sup>11</sup>CMA] in [F<sup>13</sup>section 25(1) to (3) F<sup>14</sup>...] included references to the Secretary of State;
  - (c) the references to the [F<sup>11</sup>CMA] in section 25(4) and (5) were references to the Secretary of State;
  - (d) the reference in section 25(4) to section 73 were a reference to paragraph 3 of Schedule 7;
  - (e) after section 25(5) there were inserted—
 

“(5A) The Secretary of State may by notice to the persons carrying on the enterprises which have or may have ceased to be distinct enterprises extend the four month period mentioned in section 24(1)(a) or (2) (b) if, by virtue of section 46(5) or paragraph 3(6) of Schedule 7, he decides to delay a decision as to whether to make a reference under section 45.

(5B) An extension under subsection (5A) shall be for the period of the delay.”;
  - (f) in section 25(10)(b) [F<sup>15</sup>for “ and (4) ” there were substituted “, (4) and (5A)”];
  - (g) the reference in section 25(12) to one extension were a reference to one extension by the [F<sup>11</sup>CMA] and one extension by the Secretary of State;
  - (h) the powers to extend time-limits under section 25 as applied by subsection (5) above F<sup>16</sup>... were not exercisable by the [F<sup>11</sup>CMA] or the Secretary of State before the giving of an intervention notice but the existing time-limits [F<sup>17</sup>by

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- virtue of section 24 (as so applied)] in relation to possible references under section 22 or 33 were applicable for the purposes of the giving of that notice;
- (i) the existing time-limits [<sup>F18</sup>by virtue of section 24 (as so applied)] in relation to possible references under section 22 or 33 (except for extensions under section 25(4)) remained applicable on and after the giving of an intervention notice as if any extensions were made under section 25 as applied by subsection (5) above but subject to further alteration by the [<sup>F11</sup>CMA] or the Secretary of State under section 25 as so applied;
- <sup>F19</sup>(j) .....
- (k) in the case of the giving of intervention notices, the references in sections 23 [<sup>F20</sup>to 30] to the making of a reference or a reference were, so far as necessary, references to the giving of an intervention notice or an intervention notice;
- <sup>F21</sup>...
- <sup>F21</sup>(l) .....
- (7) Where the Secretary of State has given an intervention notice mentioning a public interest consideration which, at that time, is not finalised, he shall, as soon as practicable, take such action as is within his power to ensure that it is finalised.
- (8) For the purposes of this Part a public interest consideration is finalised if—
- (a) it is specified in section 58 otherwise than by virtue of an order under subsection (3) of that section; or
- (b) it is specified in that section by virtue of an order under subsection (3) of that section and the order providing for it to be so specified has been laid before, and approved by, Parliament in accordance with subsection (7) of section 124 and within the period mentioned in that subsection.

#### Textual Amendments

- F1** Words in s. 42(1)(b) substituted (26.10.2023) by Energy Act 2023 (c. 52), s. 334(2)(j), **Sch. 16 para. 7(2)**
- F2** Words in s. 42(1)(c) inserted (26.10.2023) by Energy Act 2023 (c. 52), s. 334(2)(j), **Sch. 16 para. 7(3)**
- F3** Words in s. 42(1)(d) substituted (26.10.2023) by Energy Act 2023 (c. 52), s. 334(2)(j), **Sch. 16 para. 7(4)(a)**
- F4** Words in s. 42(1)(d)(i) substituted (31.12.2020) by The Competition (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/93), regs. 1(1), **42(2)(a)(i)** (with Sch. 4 para. 28) (as amended by S.I. 2020/1343, regs. 1(1), **35-59**); 2020 c. 1, **Sch. 5 para. 1(1)**
- F5** Words in s. 42(1)(d)(i) substituted (31.12.2020) by The Competition (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/93), regs. 1(1), **42(2)(a)(ii)** (with Sch. 4 para. 28) (as amended by S.I. 2020/1343, regs. 1(1), **35-59**); 2020 c. 1, **Sch. 5 para. 1(1)**
- F6** Words in s. 42(1) inserted (26.10.2023) by Energy Act 2023 (c. 52), s. 334(2)(j), **Sch. 16 para. 7(4)(b)**
- F7** S. 42(1)(d)(ii) and word omitted (31.12.2020) by virtue of The Competition (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/93), regs. 1(1), **42(2)(b)** (with Sch. 4 para. 28) (as amended by S.I. 2020/1343, regs. 1(1), **35-59**); 2020 c. 1, **Sch. 5 para. 1(1)**
- F8** Word in s. 42(2) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 82(2)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F9** Words in s. 42(5) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 15 para. 21(3)**; S.I. 2014/416, art. 2(1)(f) (with Sch.)
- F10** Words in s. 42(6) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 15 para. 21(4)**; S.I. 2014/416, art. 2(1)(f) (with Sch.)
- F11** Word in s. 42(6) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 82(3)(a)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)

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- F12** Word in s. 42(6) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 82(3)(b)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F13** Words in s. 42(6)(b) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 15 para. 21(5)**; S.I. 2014/416, art. 2(1)(f) (with Sch.)
- F14** Words in s. 42(6)(b) omitted (31.12.2020) by virtue of The Competition (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/93), regs. 1(1), **42(3)(a)** (with Sch. 4 para. 28) (as amended by S.I. 2020/1343, regs. 1(2), **35-59**); 2020 c. 1, **Sch. 5 para. 1(1)**
- F15** Words in s. 42(6)(f) substituted (31.12.2020) by The Competition (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/93), regs. 1(1), **42(3)(b)** (with Sch. 4 para. 28) (as amended by S.I. 2020/1343, regs. 1(1), **35-59**); 2020 c. 1, **Sch. 5 para. 1(1)**
- F16** Words in s. 42(6)(h) omitted (1.4.2014) by virtue of Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 15 para. 21(6)(a)**; S.I. 2014/416, art. 2(1)(f) (with Sch.)
- F17** Words in s. 42(6)(h) inserted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 15 para. 21(6)(b)**; S.I. 2014/416, art. 2(1)(f) (with Sch.)
- F18** Words in s. 42(6)(i) inserted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 15 para. 21(7)**; S.I. 2014/416, art. 2(1)(f) (with Sch.)
- F19** S. 42(6)(j) omitted (1.4.2014) by virtue of Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 15 para. 21(8)**; S.I. 2014/416, art. 2(1)(f) (with Sch.)
- F20** Words in s. 42(6)(k) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 15 para. 21(9)**; S.I. 2014/416, art. 2(1)(f) (with Sch.)
- F21** S. 42(6)(l) and word omitted (1.4.2014) by virtue of Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 15 para. 21(10)**; S.I. 2014/416, art. 2(1)(f) (with Sch.)

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