



Enterprise Act 2002

2002 CHAPTER 40

PART 3

MERGERS

CHAPTER 2

PUBLIC INTEREST CASES

Power to make references

43 Intervention notices under section 42

- (1) An intervention notice shall state—
 - (a) the relevant merger situation concerned;
 - (b) the public interest consideration or considerations which are, or may be, relevant to a consideration of the relevant merger situation concerned; and
 - (c) where any public interest consideration concerned is not finalised, the proposed timetable for finalising it.
- (2) Where the Secretary of State believes that it is or may be the case that two or more public interest considerations are relevant to a consideration of the relevant merger situation concerned, he may decide not to mention in the intervention notice such of those considerations as he considers appropriate.
- (3) An intervention notice shall come into force when it is given and shall cease to be in force when the matter to which it relates is finally determined under this Chapter.
- (4) For the purposes of this Part, a matter to which an intervention notice relates is finally determined under this Chapter if—
 - (a) the time within which the [^{F1}CMA][^{F2}or (if relevant) OFCOM] is to report to the Secretary of State under section 44 [^{F3}or (as the case may be) 44A] has expired and no such report has been made;

Changes to legislation: There are currently no known outstanding effects for the Enterprise Act 2002, Section 43. (See end of Document for details)

- (b) the Secretary of State decides to accept an undertaking or group of undertakings under paragraph 3 of Schedule 7 instead of making a reference under section 45;
 - (c) the Secretary of State otherwise decides not to make a reference under that section;
 - (d) the [^{F4}CMA] cancels such a reference under section 48(1) or 53(1);
 - (e) the time within which the [^{F4}CMA] is to prepare a report under section 50 and give it to the Secretary of State has expired and no such report has been prepared and given to the Secretary of State;
 - (f) the time within which the Secretary of State is to make and publish a decision under section 54(2) has expired and no such decision has been made and published;
 - (g) the Secretary of State decides under section 54(2) to make no finding at all in the matter;
 - (h) the Secretary of State otherwise decides under section 54(2) not to make an adverse public interest finding;
 - (i) the Secretary of State decides under section 54(2) to make an adverse public interest finding but decides neither to accept an undertaking under paragraph 9 of Schedule 7 nor to make an order under paragraph 11 of that Schedule; or
 - (j) the Secretary of State decides under section 54(2) to make an adverse public interest finding and accepts an undertaking under paragraph 9 of Schedule 7 or makes an order under paragraph 11 of that Schedule.
- (5) For the purposes of this Part the time when a matter to which an intervention notice relates is finally determined under this Chapter is—
- (a) in a case falling within subsection (4)(a), (e) or (f), the expiry of the time concerned;
 - (b) in a case falling within subsection (4)(b), the acceptance of the undertaking or group of undertakings concerned;
 - (c) in a case falling within subsection (4)(c), (d), (g) or (h), the making of the decision concerned;
 - (d) in a case falling within subsection (4)(i), the making of the decision neither to accept an undertaking under paragraph 9 of Schedule 7 nor to make an order under paragraph 11 of that Schedule; and
 - (e) in a case falling within subsection (4)(j), the acceptance of the undertaking concerned or (as the case may be) the making of the order concerned.

[^{F5}(6) In this Part “OFCOM” means the Office of Communications.]

Textual Amendments

- F1** Word in s. 43(4)(a) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 5 para. 83\(2\)\(a\)](#) (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F2** Words in s. 43(4)(a) inserted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), ss. 389(1), 411(2)(3), [Sch. 16 para. 8\(2\)\(a\)](#) (with transitional provisions in [Sch. 18](#)); S.I. 2003/3142, [art. 3\(1\)](#), [Sch. 1](#) (subject to [arts. 3\(3\)](#), 11)
- F3** Words in s. 43(4)(a) inserted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), ss. 389(1), 411(2)(3), [Sch. 16 para. 8\(2\)\(b\)](#) (with transitional provisions in [Sch. 18](#)); S.I. 2003/3142, [art. 3\(1\)](#), [Sch. 1](#) (subject to [arts. 3\(3\)](#), 11)
- F4** Word in s. 43(4) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 5 para. 83\(2\)\(b\)](#) (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 43. (See end of Document for details)

- F5** S. 43(6) inserted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), ss. 389(1), 411(2)(3), [Sch. 16 para. 8\(3\)](#) (with transitional provisions in [Sch. 18](#)); [S.I. 2003/3142](#), [art. 3\(1\)](#), [Sch. 1](#) (subject to arts. 3(3), 11)

Changes to legislation:

There are currently no known outstanding effects for the Enterprise Act 2002, Section 43.