



Enterprise Act 2002

2002 CHAPTER 40

PART 3

MERGERS

CHAPTER 2

PUBLIC INTEREST CASES

Power to make references

45 Power of Secretary of State to refer matter to [^{F1}CMA]

- (1) Subsections (2) to (5) apply where the Secretary of State—
- (a) has given an intervention notice in relation to a relevant merger situation; and
 - (b) has received a report of the [^{F2}CMA] under section 44^[F3], and any report of OFCOM which is required by virtue of section 44A,] in relation to the matter.
- (2) The Secretary of State may make a reference [^{F4}to the chair of the CMA for the constitution of a group under Schedule 4 to the Enterprise and Regulatory Reform Act 2013] if he believes that it is or may be the case that—
- (a) a relevant merger situation has been created;
 - (b) 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;
 - (c) one or more than one public interest consideration mentioned in the intervention notice is relevant to a consideration of the relevant merger situation concerned; and
 - (d) taking account only of the substantial lessening of competition and the relevant public interest consideration or considerations concerned, the creation of that situation operates or may be expected to operate against the public interest.

Changes to legislation: There are currently no known outstanding effects for the Enterprise Act 2002, Section 45. (See end of Document for details)

- (3) The Secretary of State may make a reference [^{F4}to the chair of the CMA for the constitution of a group under Schedule 4 to the Enterprise and Regulatory Reform Act 2013] if he believes that it is or may be the case that—
- (a) a relevant merger situation has been created;
 - (b) the creation of that situation has not resulted, and may be expected not to result, in a substantial lessening of competition within any market or markets in the United Kingdom for goods or services;
 - (c) one or more than one public interest consideration mentioned in the intervention notice is relevant to a consideration of the relevant merger situation concerned; and
 - (d) taking account only of the relevant public interest consideration or considerations concerned, the creation of that situation operates or may be expected to operate against the public interest.
- (4) The Secretary of State may make a reference [^{F4}to the chair of the CMA for the constitution of a group under Schedule 4 to the Enterprise and Regulatory Reform Act 2013] if he believes that it is or may be the case that—
- (a) arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation;
 - (b) 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;
 - (c) one or more than one public interest consideration mentioned in the intervention notice is relevant to a consideration of the relevant merger situation concerned; and
 - (d) taking account only of the substantial lessening of competition and the relevant public interest consideration or considerations concerned, the creation of the relevant merger situation may be expected to operate against the public interest.
- (5) The Secretary of State may make a reference [^{F4}to the chair of the CMA for the constitution of a group under Schedule 4 to the Enterprise and Regulatory Reform Act 2013] if he believes that it is or may be the case that—
- (a) arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation;
 - (b) the creation of that situation may be expected not to result in a substantial lessening of competition within any market or markets in the United Kingdom for goods or services;
 - (c) one or more than one public interest consideration mentioned in the intervention notice is relevant to a consideration of the relevant merger situation concerned; and
 - (d) taking account only of the relevant public interest consideration or considerations concerned, the creation of the relevant merger situation may be expected to operate against the public interest.
- (6) For the purposes of this Chapter any anti-competitive outcome shall be treated as being adverse to the public interest unless it is justified by one or more than one public interest consideration which is relevant.
- (7) This section is subject to section 46.

Changes to legislation: There are currently no known outstanding effects for the Enterprise Act 2002, Section 45. (See end of Document for details)

Textual Amendments

- F1** Words in s. 45 heading substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 5 para. 85\(4\)](#) (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F2** Word in s. 45(1)(b) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 5 para. 85\(2\)](#) (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F3** Words in s. 45(1)(b) inserted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), ss. 389(1), 411(2)(3), [Sch. 16 para. 9](#) (with transitional provisions in [Sch. 18](#)); S.I. 2003/3142, [art. 3\(1\)](#), Sch. 1 (subject to arts. 3(3), 11)
- F4** Words in s. 45(2)-(5) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 26(3), [Sch. 5 para. 85\(3\)](#) (with s. 28), S.I. 2014/416, art. 2(1)(d)

Changes to legislation:

There are currently no known outstanding effects for the Enterprise Act 2002, Section 45.