



Enterprise Act 2002

2002 CHAPTER 40

PART 3

MERGERS

CHAPTER 2

PUBLIC INTEREST CASES

Power to make references

46 References under section 45: supplementary

- (1) No reference shall be made under section 45 if—
- (a) the making of the reference is prevented by section ^{F1} . . . 74(1) ^{F2}... or paragraph 4 of Schedule 7; [^{F3}or]
 - ^{F4}(b)
 - ^{F5}(c)
- ^{F6}(1A)
- (2) The Secretary of State, in deciding whether to make a reference under section 45, shall accept the decisions of the [^{F7}CMA] included in its report by virtue of subsection (4) of section 44 and any descriptions of undertakings as mentioned in subsection (5) of that section.
- (3) Where the decision to make a reference under section 45 is made at any time on or after the end of the period of 24 weeks beginning with the giving of the intervention notice concerned, the Secretary of State shall, in deciding whether to make such a reference, disregard any public interest consideration which is mentioned in the intervention notice but which has not been finalised before the end of that period.

Changes to legislation: There are currently no known outstanding effects for the Enterprise Act 2002, Section 46. (See end of Document for details)

- (4) Subject to subsection (5), where the decision to make a reference under section 45(2) or (4) is made at any time before the end of the period of 24 weeks beginning with the giving of the intervention notice concerned, the Secretary of State shall, in deciding whether to make such a reference, disregard any public interest consideration which is mentioned in the intervention notice but which has not been finalised if its effect would be to prevent, or to help to prevent, an anti-competitive outcome from being adverse to the public interest.
- (5) The Secretary of State may, if he believes that there is a realistic prospect of the public interest consideration mentioned in subsection (4) being finalised within the period of 24 weeks beginning with the giving of the intervention notice concerned, delay deciding whether to make the reference concerned until the public interest consideration is finalised or, if earlier, the period expires.
- (6) A reference under section 45 shall, in particular, specify—
- (a) the subsection of that section under which it is made;
 - (b) the date on which it is made; and
 - (c) the public interest consideration or considerations mentioned in the intervention notice concerned which the Secretary of State is not under a duty to disregard by virtue of subsection (3) above and which he believes are or may be relevant to a consideration of the relevant merger situation concerned.

Textual Amendments

- F1** Words in s. 46(1)(a) repealed (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), ss. 406(7), 411(2)(3), [Sch. 19\(1\)](#) (with transitional provisions in [Sch. 18](#) and with [Sch. 19 Note. 1](#)); S.I. 2003/3142, [art. 3\(1\)](#), [Sch. 1](#) (subject to [arts. 3\(3\)](#), 11)
- F2** Words in s. 46(1)(a) omitted (1.4.2014) by virtue of [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 15 para. 22](#); S.I. 2014/416, [art. 2\(1\)\(f\)](#) (with [Sch.](#))
- F3** Word in s. 46(1) ceased to have effect (1.5.2004) by virtue of [The EC Merger Control \(Consequential Amendments\) Regulations 2004 \(S.I. 2004/1079\)](#), reg. 2, [Sch. para. 2\(12\)\(a\)](#)
- F4** S. 46(1)(b) omitted (31.12.2020) by virtue of [The Competition \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/93\)](#), regs. 1(1), [43\(a\)](#) (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** S. 46(1)(c) omitted (31.12.2020) by virtue of [The Competition \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/93\)](#), regs. 1(1), [43\(a\)](#) (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** S. 46(1A) omitted (31.12.2020) by virtue of [The Competition \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/93\)](#), regs. 1(1), [43\(b\)](#) (with [Sch. 4 para. 28](#)) (as amended by S.I. 2020/1343, regs. 1(1), [35-59](#)); 2020 c. 1, [Sch. 5 para. 1\(1\)](#)
- F7** Words in s. 46(2) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 5 para. 86](#) (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 46.