



Enterprise Act 2002

2002 CHAPTER 40

PART 3

MERGERS

CHAPTER 4

ENFORCEMENT

Powers exercisable before references under [F1 section 22, 33, 68B or 68C]

73 Undertakings in lieu of references under section [F1 22, 33, 68B or 68C]

- (1) Subsection (2) applies if the [F2 CMA] considers that it is under a duty to make a reference under section 22 or 33 (disregarding the operation of section 22(3)(b) or (as the case may be) 33(3)(b) but taking account of the power of the [F2 CMA] under section 22(2) or (as the case may be) 33(2) to decide not to make such a reference).
- (2) The [F2 CMA] may, instead of making such a reference and for the purpose of remedying, mitigating or preventing the substantial lessening of competition concerned or any adverse effect which has or may have resulted from it or may be expected to result from it, accept from such of the parties concerned as it considers appropriate undertakings to take such action as it considers appropriate.
- (3) In proceeding under subsection (2), the [F2 CMA] 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.

[F3(3A) Subsection (3B) applies if the CMA considers that it is under a duty to make a reference under section 68B or 68C; and for the purposes of this subsection it must—

- (a) disregard the operation of section 22(3)(b) or 33(3)(b) (as applied by section 68B or 68C), but

Changes to legislation: There are currently no known outstanding effects for the Enterprise Act 2002, Section 73. (See end of Document for details)

- (b) take account of its power under section 68B(2) or 68C(2) to decide not to make such a reference.
- (3B) The CMA may, instead of making such a reference and for the purpose of remedying, mitigating or preventing the prejudice to the ability of the Gas and Electricity Markets Authority described in section 68B(1) or 68C(1), accept from such of the parties concerned as it considers appropriate undertakings to take such action as it considers appropriate.
- (3C) In proceeding under subsection (3B), the CMA must, in particular, have regard to the need to achieve as comprehensive a solution as is reasonable and practicable to the prejudice.
- (3D) Before proceeding under subsection (3B), the CMA must—
- (a) ask the Gas and Electricity Markets Authority to give its opinion on the effect of the undertakings offered, and
 - (b) consider the Authority’s opinion.]
- (4) In proceeding under subsection (2) [^{F4}or (3B)], the [^{F2}CMA] 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.
- (5) An undertaking under this section—
- (a) shall come into force when accepted;
 - (b) may be varied or superseded by another undertaking; and
 - (c) may be released by the [^{F5}CMA].
- (6) An undertaking under this section which is in force in relation to a relevant merger situation shall cease to be in force if an order comes into force under section 75 or 76 in relation to that undertaking.
- (7) The [^{F6}CMA] shall, as soon as reasonably practicable, consider any representations received by it in relation to varying or releasing an undertaking under this section.

Textual Amendments

- F1** Words in s. 73 heading substituted (26.10.2023) by [Energy Act 2023 \(c. 52\), s. 334\(2\)\(j\)](#), **Sch. 16 para. 12(2)**
- F2** Word in s. 73(1)-(4)(5)(7) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\), s. 103\(3\), Sch. 5 para. 113 \(with s. 28\); S.I. 2014/416, art. 2\(1\)\(d\) \(with Sch.\)](#)
- F3** [S. 73\(3A\)-\(3D\)](#) inserted (26.10.2023) by [Energy Act 2023 \(c. 52\), s. 334\(2\)\(j\)](#), **Sch. 16 para. 12(3)**
- F4** Words in s. 73(4) inserted (26.10.2023) by [Energy Act 2023 \(c. 52\), s. 334\(2\)\(j\)](#), **Sch. 16 para. 12(4)**
- F5** Word in s. 73(5) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\), s. 103\(3\), Sch. 5 para. 113 \(with s. 28\); S.I. 2014/416, art. 2\(1\)\(d\) \(with Sch.\)](#)
- F6** Word in s. 73(7) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\), s. 103\(3\), Sch. 5 para. 113 \(with s. 28\); 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 73.