

ENTERPRISE AND REGULATORY REFORM ACT 2013

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 3: the Competition and Markets Authority and Part 4: Competition Reform

Part 4: Competition Reform

Chapter 2: Markets

Cross-market investigations

Section 33: Power of Competition and Markets Authority to make cross-market references and Section 34: Ministerial power to make cross-market references

252. Currently under the EA 2002 the OFT is able to carry out market studies into features that are common to a number of markets using its section 5 powers. It cannot, however, make a reference to the CC to investigate those features, without also referring the whole of each market concerned. Upon a reference, the CC assesses competition in the market referred, as a whole.
253. These sections amend sections 131 and 132 of the EA 2002 to enable the CMA (section 131), or the appropriate Minister in certain circumstances (section 132), where the feature or features they are concerned about is or are types of conduct (as opposed to structural features), to refer a specific feature, or combination of features, which exist in more than one market to be investigated, without the CMA having to investigate competition across the whole of each of these markets. These changes are intended to enable a more targeted approach to recurring competition issues, and to provide the ability to investigate conduct which occurs within more than one market or sector, such as, for example, collective licensing of public performances and broadcasting rights in sound recording.
254. *Section 33* introduces new definitions for the two different types of reference that will now be possible. The form of reference currently permitted will be termed an ‘ordinary reference’ and the new reference covering a feature common to more than one market will be termed a ‘cross-market reference’.
255. It should be noted that while existing section 131(1) of the EA 2002 refers to features of ‘a market’, in practice this may constitute more than one economic market and is more akin to a description of goods or services. Section 133(1)(c) of the EA 2002 sets out that a reference under section 131 must include a description of the goods or services to which the feature concerned relates (as opposed to a description of the market). The new provisions do not make any change to these arrangements. Rather they provide for a reference of a feature which is common to the supply or acquisition of a number of different goods or services, each of which may, in fact, cover more than one economic market.