

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

Schedule 9: Markets: cross-market references

256. [Schedule 9](#) contains amendments which are consequential to the introduction of a cross-market reference.
257. [Paragraph 2](#) of the Schedule amends section 133 of the EA 2002 to specify the content of a cross-market reference, in particular that this type of reference needs to set out each description of goods and services to which it relates and the feature or features concerned. Consistent with the existing provisions on ordinary references, it also enables a cross-market reference to be framed in such a way as to focus the CMA's investigation into the effects of the conduct concerned in relation to supplies or acquisitions of goods or services by reference to persons or places.
258. [Paragraphs 3](#) and [5](#) contain amendments to sections 134 and 141 of the EA 2002 to make provision for the questions which the CMA must answer following a cross-market reference (including where such a reference has been made in a public interest intervention case). These questions are consistent with those the CMA must answer in relation to an ordinary reference, save that the CMA must limit itself to considering whether the feature identified in the cross-market reference, or any combination of the features identified, prevents, restricts or distorts competition, rather than (in the case of an ordinary reference) considering whether 'any' feature or combination of features prevents, restricts or distorts competition.
259. [Paragraph 8](#) contains amendments to section 156 of the EA 2002. Section 156 currently prevents (what will now be known as) an ordinary reference being made where UILs have already been accepted by the OFT in relation to the same goods or services in the past 12 months. The amendments to section 156(1) set out in paragraph 8 clarify that, where UILs have been accepted in lieu of an ordinary reference in relation to goods of a particular description, no reference can be made relating to any feature relating to those goods in the following 12 months. So, for example, if UILs are accepted in lieu of an ordinary reference relating to feature A in market Z, then no ordinary reference can be made relating to any features (e.g. A, B or C) in relation to market Z in the following 12 months.

*These notes refer to the Enterprise and Regulatory Reform Act
2013 (c.24) which received Royal Assent on 25 April 2013*

260. New subsection (A1) of section 156 provides for the following:
- i). where UILs have been accepted instead of a cross-market reference being made in relation to feature A in market Z, no ordinary reference can be made in the next 12 months relating to feature A in market Z;
 - ii). where UILs have been accepted instead of a cross-market reference being made in relation to feature A in market Z, no cross-market reference can be made in the next 12 months which includes feature A in relation to market Z;
 - iii). where UILs have been accepted instead of an ordinary reference being made in relation to feature A in market Z, no cross-market reference can be made in the next 12 months which includes feature A in relation to market Z.
261. However, these provisions do not prevent cross-market references being made within the 12 months following the acceptance of undertakings relating to another cross-market reference, unless both the feature(s) and goods and/or services to which they relate are the same. So, for instance, if the CMA considers making a cross-market reference in relation to feature A in markets X and Y, but instead accepts UILs which address these issues, the CMA would still be able to make a cross-market reference in relation to feature A in markets P and Q within the next 12 months. Equally the CMA will still be able to make either an ordinary reference of market X or Y (relating to any feature(s) other than feature A), or a cross-market reference in relation to any other features (e.g. B and C) of markets X and/or Y in those 12 months.
262. [Schedule 9](#) also makes a number of other consequential amendments to ensure consistency between the two types of references under Part 4.