

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

Investigatory powers

Section 36: Investigation powers: markets

280. Currently under the EA 2002 the OFT has powers to require persons to give evidence and provide specific documents and information, but can only require information where it already believes it has power to make a market investigation reference. This criterion prevents the OFT requiring the information during the early stages of a market study. The introduction of statutory time limits for market studies and implementation of remedies will mean that the CMA will require appropriate investigatory powers throughout the entire markets process.
281. This section extends the CC's existing investigatory powers so that the CMA will have a single set of powers that can be used consistently across the whole of the end to end markets process.
282. *Subsection (2)* amends section 174 of the EA 2002 to set out the range of permitted purposes for which the CMA can use the information gathering powers. These are: assisting the CMA in undertaking a market study (amended 174(1)(a)); assisting the CMA in carrying out any functions relating to a case which the CMA or Secretary of State is either considering referring, including any period of considering UILs, or where a reference has been made i.e. to assist the CMA during the market investigation (amended 174(1)(b)). Amended 174(1)(c) enables the CMA or the Secretary of State to use the powers to assist in any functions relating to a restricted or full PI reference, including any period considering UILs instead of any PI reference.
283. New subsections (1)(b) and (c) of section 174 also enable the CMA, or the Secretary of State where relevant, to exercise the investigatory powers during any period of monitoring and enforcement relating to any remedies implemented either following a market investigation, or UILs implemented instead of a reference. New subsection (9A) of section 174 sets out the enforcement functions that are covered by these powers.
284. The CMA will not be able to use these investigation powers before publishing a market study notice. It will not be able to use the powers in relation to its other functions under section 5, if these are not a market study and no market study notice has been published.

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

285. The CC's existing investigatory powers set out in section 176 of the EA 2002 will be repealed and replaced with these amendments to section 174 of the EA 2002 to provide harmonised information gathering powers across the markets process.
286. A similar extension of investigatory powers will operate in mergers inquiries (see section 29).