

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

Time limits and procedure

Section 38: Market studies and market investigations: consultation and time-limits and Schedule 12: Markets: time-limits

297. Under the EA 2002 there are no time limits on the OFT undertaking a market study, or on the CC implementing remedies. There is a 24 month time limit for completion of a market investigation by the CC. This section and Schedule introduce statutory time limits for all stages of the markets process and specify circumstances in which extensions to those time limits are permitted. These are explained in more detail below. The introduction of time limits should be considered together with the extension of investigatory powers through section 36 and Schedule 11, and are also mirrored in a similar way for the mergers regime. Taken together, these sections limit the time period during which parties may be subject to markets work, but give the CMA a strengthened ability to gather information in order that the timescales can be met.
298. New section 130A, set out in paragraph 1 of Schedule 12, introduces a requirement on the CMA to publish a market study notice on commencement of a market study under section 5 of the EA 2002 and to set out the timescales in which that study will be completed, the scope of the study, and the period during which representations may be made to the CMA in relation to the matter (this is additional to any specific information requests the CMA makes to specific parties which will detail the particular requirements and timescales around which these requests are to be fulfilled). The publication of the market study notice triggers the start of a new statutory time period for completion of the market study, which is set out in new section 131B, in paragraph 2 of the Schedule. Information powers provided for by section 36 and Schedule 11 are triggered when a market study notice is published.
299. It should be noted that the CMA will continue to carry out a wider range of work under section 5 of the EA 2002 than just market studies – for example, economic research and calls for evidence. However, none of these will be termed a market study and will not trigger the market study notice requirement, statutory timeframes or information gathering powers under section 174.
300. Paragraph 2 of the Schedule sets out new section 131A which contains provisions for consulting on whether or not to make a reference. Section 169 of the EA 2002 currently

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

contains a duty on the OFT, CC, and Ministers to consult on ‘relevant decisions’, which include decisions on whether or not to make a market investigation reference. This paragraph varies the duty to consult so that it only applies to proposals to make a reference, or proposals not to make a market investigation reference where third parties request that such a reference be made during the period set out in the market study notice for representations.

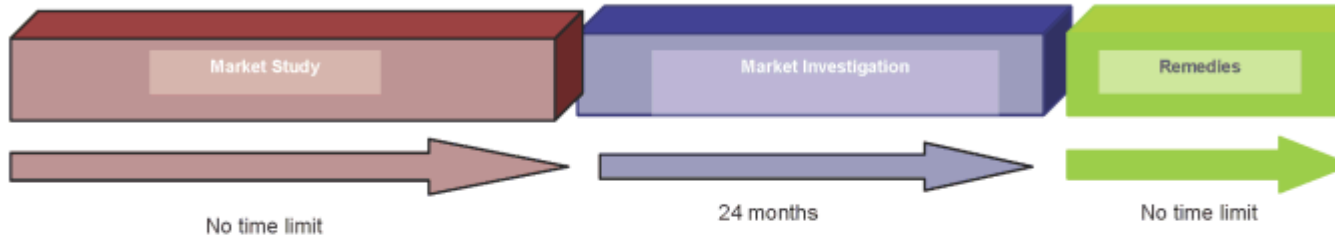
301. The intention is to ensure that representations are made in good time to enable the CMA to fully consider them as part of the market study, and to make clear to parties the timetable on which they are expected to make their representations. Where no representations are made during the specified period requesting that a reference be made, the CMA must, if it decides not to make a reference, publish its decision within 6 months of the market study notice being published, and it is not required to consult on this decision (see section 131B(2) and (3)).
302. Where the CMA is required to consult on its proposed decision around whether to make a reference or not, the new timescales state that it must publish its proposal within 6 months of a market study notice being published. At the same time it must also initiate a consultation on this proposed decision, although it is not required to complete this consultation within the 6 month period.
303. New section 131B requires the CMA to publish a market study report setting out its findings and actions (if any) which will be taken as a result of the study, within 12 months of the original market study notice being published. Any consideration required of actions to be taken, including completing the consultation described above and negotiating and agreeing any UILs, must be completed within this 12 month period and detailed in the market study report. In cases where a market investigation reference is to be made this should be made at the same time as the market study report is published, within the 12 month deadline.
304. In the case of a public interest intervention the timescales will still apply to the CMA in terms of its initial proposal on whether to make a reference or not after 6 months, and to prepare its market study report within 12 months. However, the CMA’s duty to make a reference within that period falls away in such a case (since in a public interest intervention it is the Secretary of State who makes a reference).
305. New section 131C provides for the Secretary of State, by order, to vary the timescales set out above. However, these cannot be increased beyond 6 months for the initial notice of whether or not the CMA intends to make a reference, and beyond 12 months for publication of the final market study report. Therefore the timescales can be reduced and subsequently increased back up to these limits only. Where the Secretary of State considers that, for example, the CMA ought to be tasked with completing market studies more quickly, s/he could use these powers.
306. Under section 137 of the EA 2002 a market investigation and its report must be completed within 2 years. Paragraph 3 of Schedule 12 reduces this to 18 months. It also allows for the CMA to extend this deadline by up to a further 6 months if there are special reasons why it cannot publish its report within the original 18 month period.
307. Paragraph 3(4) of the Schedule also provides for the Secretary of State, by order, to vary the timescales set out above. However, these cannot be increased to more than 18 months, for a market investigation, and more than 6 months for an extension where there are special reasons. Therefore the timescales can be reduced and increased back up to these limits only. Where the Secretary of State considers that, for example, the CMA ought to be tasked with completing Phase 2 market investigations more quickly, he/she could use these powers.
308. Paragraphs 4 and 5 of Schedule 12 introduce time limits for the CMA’s implementation of remedies to address findings from a market investigation. The amendments in the Schedule require the CMA to accept final undertakings or make a final order, within 6

months of the date of publication of its market investigation report. Consultation on the proposed remedies will need to happen during this 6 month period.

309. The CMA may extend this period by up to 4 months, but only if there are deemed to be special reasons for doing so. The CMA may also extend this period if it believes that a person has failed to adequately respond to any investigatory powers under section 174 of the EA 2002. The extension will last for the time it takes for the person to provide the information requested to the satisfaction of the CMA, or until the CMA publishes a notice to cancel it. These two extensions can be used together if circumstances allow, and the extension periods should be added together.
310. The Schedule also provides for the Secretary of State, by order, to vary the timescales set out above. However, these can not be increased to more than 6 months, for the original implementation of remedies phase, and more than 4 months for an extension where there are special reasons. Therefore the timescales can be reduced and increased back up to these limits only.
311. Paragraph 6 of Schedule 12 mirrors the amended 18 month timescale for market investigations in cases where there is a public interest intervention. It enables the CMA to extend for an additional 6 months in cases where there are special reasons why the original 18 month timescale cannot be met.
312. [Schedule 12](#) also makes various other amendments to Part 4 which are consequential on the new statutory timescales.

Figure 3 below sets out how the existing and new regimes will work.

How the regime works now



How the Act will change this

