

1990 No. 501

MONOPOLIES AND MERGERS

The Merger (Prenotification) Regulations 1990

<i>Made</i> - - - -	<i>7th March 1990</i>
<i>Laid before Parliament</i>	<i>9th March 1990</i>
<i>Coming into force</i> -	<i>1st April 1990</i>

The Secretary of State for Trade and Industry, in exercise of the powers conferred upon him by sections 75A(1), 75C(1)(c), 75D(1), (2)(b), (c), (d), (e), (f), (g) and (h), (3) and (4) and 75E(a) of the Fair Trading Act 1973(b) hereby makes the following Regulations:—

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Merger (Prenotification) Regulations 1990 and shall come into force on 1st April 1990.

(2) In these Regulations—

“the Act” means the Fair Trading Act 1973;

“the Director” means the Director General of Fair Trading;

“working day” means any day which is not—

(a) Saturday, Sunday, Good Friday or Christmas Day, or

(b) a bank holiday in England and Wales.

(3) A reference in these Regulations to a person who does anything on behalf of a person who is authorised to give a merger notice or who has given such notice shall be construed as limited to a reference to a person who does so having been authorised so to act in accordance with regulation 13 of these Regulations.

Person authorised to give merger notice

2. A merger notice may be given under section 75A(1) of the Act by any person carrying on an enterprise to which the notified arrangements relate.

Time limit for disclosure of material information

3. The time specified for the purpose of section 75C(1)(c) of the Act (the time before the end of the period for considering a merger notice within which material information must be disclosed) is—

(a) where there has been no extension of that period, or only one such extension, five working days; and

(b) where there have been two such extensions, ten working days.

(a) See the definition of “regulations”.

(b) 1973 c.41; sections 75A to 75E of that Act were inserted by section 146 of the Companies Act 1989 (c.40).

Time and manner of the giving of a merger notice

4.—(1) A merger notice shall be given by being delivered in writing to the office of the Director by hand or by post.

(2) Subject to paragraph (3) below, a merger notice shall be treated as having been received at the office of the Director on the day on which it is in fact delivered to that office.

(3) Where a merger notice is delivered to the office of the Director on any day which is not a working day or after 5.00 p.m. on any working day, it shall be treated as having been received on the next working day.

(4) Section 7 of the Interpretation Act 1978(a) shall not apply to the giving of a merger notice in accordance with this regulation.

Rejection of a merger notice

5. A rejection of a merger notice under section 75B(7) of the Act shall be given in writing (including by facsimile or other form of electronic transmission) and such a notice shall be treated as having been rejected at the time when the rejection is sent to the person who gave the merger notice or a person acting on his behalf.

Withdrawal of a merger notice

6. A merger notice may be withdrawn by or on behalf of the person who gave the notice by a notice in writing delivered to the office of the Director (including a notice delivered by facsimile or other form of electronic transmission).

Provision of information to the Director

7.—(1) Any information which—

(a) is, or ought to be, known to the person who gave the merger notice or any connected person, and

(b) is material to the notified arrangements,

or any information requested by the Director under section 75B(4) of the Act shall be provided or disclosed in writing (including by facsimile or other form of electronic transmission).

(2) Subject to paragraph (3) below, any information provided or disclosed to the Director under this regulation shall be treated as having been so provided or disclosed on the day on which it is in fact delivered to the office of the Director.

(3) Where information is delivered to the office of the Director on any day, which is not a working day or after 5.00 p.m. on any working day, it shall be treated as having been provided or disclosed to the Director on the next working day.

(4) Section 7 of the Interpretation Act 1978 shall not apply to the provision or disclosure of any information under this regulation.

Notice to extend period for consideration of merger notice

8. A notice to extend the period mentioned in section 75B(2) of the Act (period for consideration of merger notice) may be given orally or in writing (including by facsimile or other form of electronic transmission).

Notice requesting further information

9. Any notice under section 75B(4) of the Act requesting information from the person who gave a merger notice may be given in writing (including by facsimile or other form of electronic transmission).

Time at which notices relating to undertakings are to be treated as received

10. A notice given to the Director under section 75B(5)(a) of the Act shall be treated as having been received by him—

(a) 1978 c.30.

- (a) subject to paragraph (b) below, on the day on which it is in fact delivered to his office (including by facsimile or other form of electronic transmission);
 - (b) where it is delivered to his office on any day which is not a working day or after 5.00 p.m. on any working day, on the next working day,
- and section 7 of the Interpretation Act 1978 shall not apply.

Address to be treated as a person's proper address

11.—(1) For the purposes of section 75B(6) and of these Regulations, the address provided or disclosed in writing to the Director as a person's proper address by or on behalf of the person giving a merger notice shall, subject to paragraph (2) below, be treated as that person's proper address.

(2) Where an address is provided or disclosed in writing to the Director as a person's proper address by or on behalf of a person in respect of whom a different address has previously been provided or disclosed in accordance with paragraph (1) above, the new address shall be treated as that person's proper address with effect from 9.00 a.m. on the working day following the day on which it is delivered to the office of the Director.

Time at which fees are to be treated as paid

12.—(1) Subject to paragraphs (2) and (3) below, any fee payable in accordance with a merger notice shall be treated as having been paid on the day on which a valid cheque or other instrument for the correct amount is received at the office of the Director.

(2) Where a cheque or other instrument received as payment for a fee referred to in paragraph (1) above is dishonoured on presentation, the fee shall, subject to paragraph (3) below, nevertheless be treated as having been paid on the day on which that cheque or other instrument is received if the condition specified in paragraph (4) below is subsequently satisfied.

(3) Where a cheque or other instrument in respect of a fee referred to in paragraph (1) above is delivered to the office of the Director on any day which is not a working day or after 5.00 p.m. on any working day, it shall be treated as having been received on the next working day.

(4) The condition referred to in paragraph (2) above is that, within the period of 20 days determined in accordance with section 75B(9) of the Act and beginning with the first day after the merger notice is, in accordance with regulation 4 of these Regulations, treated as having been received at the office of the Director, the correct amount of the fee has been properly paid by a valid cheque or other instrument.

(5) Section 7 of the Interpretation Act 1978 shall not apply to the giving or sending of a cheque or other instrument in respect of a fee referred to in paragraph (1) above.

Circumstances in which a person is or is not to be treated as acting on behalf of the giver of a merger notice

13.—(1) A person shall be treated as acting on behalf of a person who is authorised to give a merger notice or who has given such a notice only if the person on whose behalf he is to be treated as acting has authorised him so to act in accordance with paragraph (2) below.

(2) An authorisation to act on behalf of another person for the purposes of paragraph (1) above shall be given to the Director in writing and an authorisation to act on behalf of a company shall be signed by a director or other officer of that company.

(3) A person who has given an authorisation in accordance with paragraph (1) above may revoke it by a notice in writing given to the Director and, where that person is a company, the notice shall be signed by a director or other officer of that company.

John Redwood
Parliamentary Under Secretary
of State for Corporate Affairs,
Department of Trade and Industry

7th March 1990

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made under the Fair Trading Act 1973 ("the 1973 Act") as amended by the Companies Act 1989. The 1973 Act as amended includes provisions in sections 75A to 75E to enable a prospective merger to be prenotified to the Director General of Fair Trading by means of a merger notice. Unless the merger is referred to the Monopolies and Mergers Commission within the period for considering the notice, no reference may be made.

The Regulations provide for the person by whom a merger notice is to be given; the time at which notices (including merger notices) are treated as received or rejected; the manner in which they are to be given, rejected or withdrawn; which address is to be treated as a person's proper address; the time at which fees are to be treated as paid and the circumstances in which a person is to be treated as acting on behalf of a person entitled to give a merger notice.

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