

Order made by the Secretary of State, laid before Parliament under section 124(7) of the Enterprise Act 2002, for approval by resolution of each House of Parliament within twenty-eight days beginning with the day on which the Order was made, subject to extension for periods of dissolution, prorogation or adjournment for more than four days.

STATUTORY INSTRUMENTS

2008 No. 2645

COMPETITION

The Enterprise Act 2002 (Specification of Additional Section 58 Consideration) Order 2008

<i>Made</i>	- - - -	<i>6th October 2008</i>
<i>Laid before Parliament</i>		<i>7th October 2008</i>
<i>Coming into force</i>	- -	<i>24th October 2008</i>

In exercise of the powers conferred by sections 58(3) and 58(4) and 124(2) and 124(4) of the Enterprise Act 2002(1), the Secretary of State makes the following Order:

Citation, commencement and transitional provision

1.—(1) This Order may be cited as the Enterprise Act 2002 (Specification of Additional Section 58 Consideration) Order 2008 and shall come into force on 24th October 2008.

(2) This Order shall apply in relation to cases under consideration by the OFT, OFCOM, the Commission or the Secretary of State before the making of this Order as well as cases under consideration on or after the making of this Order.

Amendment of section 58 of the Enterprise Act 2002

2. In section 58 of the Enterprise Act 2002 (specified considerations), after subsection (2C) insert—

“(2D) The interest of maintaining the stability of the UK financial system is specified in this section (other than for the purposes of sections 67 and 68 or references made, or deemed to be made, by the European Commission to the OFT under article 4(4) or 9 of the EC Merger Regulation).”

Amendment of sections 129 and 130 of the Enterprise Act 2002

3.—(1) In section 129(1) of that Act (definitions), after the definition of “supply” and before the word “and” which follows it insert—

““the UK financial system” means the financial system in the United Kingdom;”.

(2) In section 130 of that Act (index of defined expressions), in the table, after the entry for “The turnover in the United Kingdom of an enterprise” insert the following entry—

- (a) in the first column, “The UK financial system”, and
- (b) in the second column “Section 129(1)”.

Amendment of Schedule 8 to the Enterprise Act 2002

4. In Schedule 8 of that Act (provision that may be contained in certain enforcement orders), after paragraph 20A insert—

“Maintaining the stability of the UK financial system

20B.—(1) This paragraph applies for the purposes of a relevant order under paragraph 5, 10 or 11 of Schedule 7 (enforcement orders in cases relating to the stability of the UK financial system) but not for any other purposes of Part 3 or 4 or any other enactment.

(2) The order may make such provision as the person making the order considers to be appropriate in the interest of maintaining the stability of the UK financial system.

(3) Such provision may, in particular, include provision requiring a person to do, or not to do, particular things.

(4) This paragraph is without prejudice to the operation of the other paragraphs of this Schedule in relation to the order.

(5) In this paragraph “relevant order” means an order—

- (a) which is to be made following the giving of an intervention notice or special intervention notice which mentions the consideration specified in section 58(2D) (including, in the case of a notice given before the consideration was so specified, an intervention notice which mentions the consideration as a consideration which ought to be specified in section 58); and
- (b) to which the consideration is still relevant.”.

Baroness Vadera
Parliamentary Under Secretary of State for
Business and Competitiveness
Department for Business, Enterprise and
Regulatory Reform

6th October 2008

EXPLANATORY NOTE

(This note is not part of the Order)

Where a relevant merger situation has been created or arrangements are in progress which, if carried into effect, will result in the creation of a relevant merger situation, as defined in section 23 of the Enterprise Act 2002 (the “Act”), the Secretary of State has the power to give a notice to the Office of Fair Trading if he believes that it is or may be the case that one or more than one public interest consideration is relevant to a consideration of the relevant merger situation. Section 59 provides the Secretary of State with a similar power to issue an intervention notice in a special merger situation, as defined in section 59(3) of the Act.

A public interest consideration is defined as one which, at the time of the giving of the intervention notice, is specified in section 58 of the Act or is not so specified but, in the opinion of the Secretary of State ought to be so specified. The Secretary of State has the power, under section 58(3), to modify section 58 for the purpose of specifying a new consideration.

This Order also inserts a new paragraph 20B into Schedule 8 to the Act. Paragraph 20B gives the Secretary of State the power to use orders to specify the new public interest consideration of the interest of maintaining the stability of the UK financial system. The new public interest consideration will be available in the case of a relevant merger but not in the case of a concentration with a Community dimension. The Secretary of State will have the power, under paragraph 20B of Schedule 8 to the Act, to use orders made under paragraph 5, 10 or 11 of Schedule 7 to the Act to make such provision as he considers to be appropriate in the interest of maintaining the stability of the UK financial system. Paragraph 5 enables the Secretary of State to make an order where undertakings, which have been accepted by him, are not being fulfilled and paragraphs 10 and 11 enable the Secretary of State to make final orders.

A full impact assessment of the effect this Order will have on the costs and benefits for business has been prepared by the Department for Business, Enterprise and Regulatory Reform and is available from the Consumer and Competition Policy Directorate, 1 Victoria Street, London SW1H 0ET and can also be found at <http://www.berr.gov.uk/ccp/topics2/pdf2/pomccria.pdf>.