



Fair Trading Act 1973

1973 CHAPTER 41

PART V

MERGERS

Other merger references

75 Reference in anticipation of merger

- (1) A merger reference may be made to the Commission by the Secretary of State where it appears to him that it is or may be the fact that arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a merger situation qualifying for investigation.
- (2) Subject to the following provisions of this section, on a merger reference under this section the Commission shall proceed in relation to the prospective and (if events so require) the actual results of the arrangements proposed or made as, in accordance with the preceding provisions of this Part of this Act, they could proceed if the arrangements in question had actually been made, and the results in question had followed immediately before the date of the reference under this section.
- (3) A merger reference under this section may require the Commission, if they find that a merger situation qualifying for investigation has been created, or will be created if the arrangements in question are carried into effect, to limit their consideration thereafter to such elements in, or possible consequences of, the creation of that situation as may be specified in the reference, and to consider whether, in respect only of those elements or possible consequences, the situation might be expected to operate against the public interest.
- (4) In relation to a merger reference under this section, sections 66, 67, 69, 71, 72, 73 and 74 of this Act shall apply subject to the following modifications, that is to say—
 - (a) section 66 shall apply with the necessary adaptations in relation to enterprises which will or may cease to be distinct enterprises under or in consequence of arrangements not yet carried into effect or not yet fully carried into effect;

Status: This is the original version (as it was originally enacted).

- (b) in section 67(4) the reference to subsection (1) of section 66 shall be construed as a reference to that subsection as modified in accordance with the preceding paragraph;
 - (c) in section 69, subsection (1) shall be construed as modified by subsection (2) of this section; in subsections (2) and (3) any reference to the question whether a merger situation qualifying for investigation has been created, or whether a result mentioned in section 64(1)(a) of this Act has arisen, shall be construed as including a reference to the question whether such a situation will be created or such a result will arise if the arrangements in question are carried into effect; and subsection (4) of that section shall not apply;
 - (d) in section 71, in section 72(2) and in section 74(1), the references to section 69(4) of this Act shall be construed as references to subsection (3) of this section ; and
 - (e) in section 73(1), the reference to conclusions to the effect that a merger situation qualifying for investigation has been created shall be construed as including a reference to conclusions to the effect that such a situation will be created if the arrangements in question are carried into effect.
- (5) If, in the course of their investigations on a merger reference under this section, it appears to the Commission that the proposal to make arrangements such as are mentioned in the reference has been abandoned, the Commission—
- (a) shall, if the Secretary of State consents, lay the reference aside, but
 - (b) shall in that case furnish to the Secretary of State such information as he may require as to the results until then of the investigations.