



Enterprise Act 2002 (repealed)

2002 CHAPTER 40

PART 3

MERGERS

CHAPTER 1

DUTY TO MAKE REFERENCES

Duty to make references: anticipated mergers

33 Duty to make references in relation to anticipated mergers

- (1) The OFT shall, subject to subsections (2) and (3), make a reference to the Commission if the OFT believes that it is or may be the case that—
- (a) arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation; and
 - (b) the creation of that situation may be expected to result in a substantial lessening of competition within any market or markets in the United Kingdom for goods or services.
- (2) The OFT may decide not to make a reference under this section if it believes that—
- (a) the market concerned is not, or the markets concerned are not, of sufficient importance to justify the making of a reference to the Commission;
 - (b) the arrangements concerned are not sufficiently far advanced, or are not sufficiently likely to proceed, to justify the making of a reference to the Commission; or
 - (c) any relevant customer benefits in relation to the creation of the relevant merger situation concerned outweigh the substantial lessening of competition concerned and any adverse effects of the substantial lessening of competition concerned.

Status: Point in time view as at 29/12/2003. This version of this provision has been superseded.

Changes to legislation: There are currently no known outstanding effects for the Enterprise Act 2002 (repealed), Section 33. (See end of Document for details)

- (3) No reference shall be made under this section if—
- (a) the making of the reference is prevented by section ^{F1} . . . 74(1) or 96(3) or paragraph 4 of Schedule 7;
 - (b) the OFT is considering whether to accept undertakings under section 73 instead of making such a reference;
 - (c) the arrangements concerned are being, or have been, dealt with in connection with a reference made under section 22;
 - (d) a notice under section 42(2) is in force in relation to the matter or the matter to which such a notice relates has been finally determined under Chapter 2 otherwise than in circumstances in which a notice is then given to the OFT under section 56(1); or
 - (e) the European Commission is considering a request made, in relation to the matter concerned, by the United Kingdom (whether alone or with others) under article 22(3) of the European Merger Regulations, is proceeding with the matter in pursuance of such a request or has dealt with the matter in pursuance of such a request.
- (4) A reference under this section shall, in particular, specify—
- (a) the enactment under which it is made; and
 - (b) the date on which it is made.

Textual Amendments

- F1** Words in s. 33(3)(a) repealed (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), ss. 406(7), 411(2)(3), [Sch. 19\(1\)](#) (with transitional provisions in [Sch. 18](#) and with [Sch. 19 Note 1](#)); [S.I. 2003/3142](#), [art. 3\(1\)](#), [Sch. 1](#) (subject to [arts. 3\(3\)](#), [11](#))

Textual Amendments applied to the whole legislation

- F1** Act: for the words "solicitor of the Supreme Court of Northern Ireland" wherever they occur there is substituted (prosp.) the words "solicitor of the Court of Judicature of Northern Ireland" by virtue of [Constitutional Reform Act 2005 \(c. 4\)](#), ss. 59, 148(1), [Sch. 11 para. 5](#) [Editorial Note: this amendment will be carried through into the text of the Act at the same time as any other effects on the Act for the year in which the relevant commencement order (or first such order) is made]

Status:

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Changes to legislation:

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