



Enterprise Act 2002

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) [^{F1}The CMA shall, subject to subsections (2) and (3), make a reference to its chair for the constitution of a group under Schedule 4 to the Enterprise and Regulatory Reform Act 2013 if the CMA 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 [^{F2}CMA] 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 ^{F3}...;
 - (b) the arrangements concerned are not sufficiently far advanced, or are not sufficiently likely to proceed, to justify the making of a reference ^{F4}...; 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.

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

- (3) No reference shall be made under this section if—
- [^{F5}(za) the period within which the CMA is required by section 34ZA to decide whether the duty to make the reference applies has expired without such a decision having been made;]
 - (a) the making of the reference is prevented by section ^{F6} . . . 74(1) ^{F7} ... or paragraph 4 of Schedule 7;
 - (b) the [^{F8}CMA] 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 [^{F9}or 68B or 68C]; [^{F10}or]
 - (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 [^{F8}CMA] under section 56(1); [^{F11}or]
 - ^{F12}(e)
 - ^{F13}(f)
- ^{F14}(3A)
- (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(1) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 72(2)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F2** Word in s. 33(2) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 72(3)(a)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F3** Words in s. 33(2)(a) omitted (1.4.2014) by virtue of Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 72(3)(b)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F4** Words in s. 33(2)(b) omitted (1.4.2014) by virtue of Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 72(3)(c)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F5** S. 33(3)(za) inserted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 8 para. 3(a)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F6** 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)
- F7** Words in s. 33(3)(a) omitted (1.4.2014) by virtue of Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 8 para. 3(b)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F8** Word in s. 33(3)(3A) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 72(4)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F9** Words in s. 33(3)(c) inserted (26.10.2023) by Energy Act 2023 (c. 52), s. 334(2)(j), **Sch. 16 para. 6**
- F10** Word in s. 33(3)(c) inserted (31.12.2020) by The Competition (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/93), regs. 1(1), **36(2)(a)** (with Sch. 4 para. 28) (as amended by S.I. 2020/1343, regs. 1(1), **35-59**); 2020 c. 1, **Sch. 5 para. 1(1)**
- F11** Word in s. 33(3) ceased to have effect (1.5.2004) by virtue of The EC Merger Control (Consequential Amendments) Regulations 2004 (S.I. 2004/1079), reg. 2, **Sch. para. 2(6)(a)**
- F12** S. 33(3)(e) omitted (31.12.2020) by virtue of The Competition (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/93), regs. 1(1), **36(2)(b)** (with Sch. 4 para. 28) (as amended by S.I. 2020/1343, regs. 1(1), **35-59**); 2020 c. 1, **Sch. 5 para. 1(1)**

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- F13** S. 33(3)(f) omitted (31.12.2020) by virtue of The Competition (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/93), regs. 1(1), **36(2)(b)** (with Sch. 4 para. 28) (as amended by S.I. 2020/1343, regs. 1(1), **35-59**); 2020 c. 1, **Sch. 5 para. 1(1)**
- F14** S. 33(3A) omitted (31.12.2020) by virtue of The Competition (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/93), regs. 1(1), **36(3)** (with Sch. 4 para. 28) (as amended by S.I. 2020/1343, regs. 1(1), **35-59**); 2020 c. 1, **Sch. 5 para. 1(1)**

Modifications etc. (not altering text)

- C1** Pt. 3 modified (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 4 para. 56**; S.I. 2014/416, art. 2(1)(c) (with Sch.)
- C2** Pt. 3 modified (31.12.2020) by The Competition (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/93), reg. 1(1), **Sch. 4 paras. 28-33**; 2020 c. 1, Sch. 5 para. 1(1)

Changes to legislation:

There are currently no known outstanding effects for the Enterprise Act 2002, Section 33.