



# Enterprise Act 2002

## 2002 CHAPTER 40

### <sup>F1</sup>PART 3

#### MERGERS

### CHAPTER 3

#### OTHER SPECIAL CASES

#### *Special public interest cases*

### **59 Intervention by Secretary of State in special public interest cases**

- (1) Subsection (2) applies where the Secretary of State has reasonable grounds for suspecting that it is or may be the case that a special merger situation has been created or arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a special merger situation.
- (2) The Secretary of State may give a notice to the [<sup>F1</sup>CMA] (in this Part “a special intervention notice”) if he believes that it is or may be the case that one or more than one consideration specified in section 58 is relevant to a consideration of the special merger situation concerned.
- [<sup>F2</sup>(3) For the purposes of this Part a special merger situation has been created if—
  - (a) the condition mentioned in subsection (3A) is satisfied; and
  - (b) immediately before the enterprises concerned ceased to be distinct—
    - [<sup>F3</sup>(i) .....
    - (ii) the condition mentioned in subsection (3C) was satisfied; or
    - (iii) the condition mentioned in subsection (3D) was satisfied.
- (3A) The condition mentioned in this subsection is that—
  - (a) no relevant merger situation has been created because of section 23(1)(b) and (2)(b); but

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- (b) a relevant merger situation would have been created if those enactments were disregarded.

<sup>F4</sup>(3B) .....

(3C) The condition mentioned in this subsection is that, in relation to the supply of newspapers of any description, at least one-quarter of all the newspapers of that description which were supplied in the United Kingdom, or in a substantial part of the United Kingdom, were supplied by the person or persons by whom one of the enterprises concerned was carried on.

(3D) The condition mentioned in this subsection is that, in relation to the provision of broadcasting of any description, at least one-quarter of all broadcasting of that description provided in the United Kingdom, or in a substantial part of the United Kingdom, was provided by the person or persons by whom one of the enterprises concerned was carried on.]

(5) For the purposes of deciding whether a relevant merger situation has been created or whether arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation, sections 23 [<sup>F5</sup>to 30] (read together with section 34) shall apply for the purposes of this Chapter as they do for the purposes of Chapter 1 but subject to subsection (6).

(6) In their application by virtue of subsection (5) sections 23 [<sup>F6</sup>to 30] shall have effect as if—

- (a) for paragraph (a) of section 23(9) there were substituted—
  - “(a) in relation to the giving of a special intervention notice, the time when the notice is given;
  - (aa) in relation to the making of a report by the [<sup>F7</sup>CMA] under section 61, the time of the making of the report;
  - (ab) in the case of a reference which is treated as having been made under section 62(2) by virtue of section 64(2), such time as the [<sup>F8</sup>CMA] may determine; and”;
- (b) the references to the [<sup>F7</sup>CMA] in section 24(2)(a) and (b) included references to the Secretary of State;
- (c) the references to the [<sup>F7</sup>CMA] in [<sup>F9</sup>section 25(1) to (3) <sup>F10</sup>...] included references to the Secretary of State;
- (d) the references to the [<sup>F7</sup>CMA] in section 25(4) and (5) were references to the Secretary of State;
- (e) the reference in section 25(4) to section 73 were a reference to paragraph 3 of Schedule 7;
- (f) the reference in section 25(12) to one extension were a reference to one extension by the [<sup>F7</sup>CMA] and one extension by the Secretary of State;
- (g) the powers to extend time-limits under section 25 as applied by subsection (5) above <sup>F11</sup>... were not exercisable by the [<sup>F7</sup>CMA] or the Secretary of State before the giving of a special intervention notice;

<sup>F12</sup>(h) .....

(i) in the case of the giving of special intervention notices, the references in sections 23 [<sup>F13</sup>to 30] to the making of a reference or a reference were, so far as necessary, references to the giving of a special intervention notice or a special intervention notice; <sup>F14</sup>...

<sup>F14</sup>(j) .....

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[<sup>F15</sup>(6A) The Secretary of State may by order amend the conditions mentioned in subsection (3) (b)(ii) and (iii).]

(7) No more than one special intervention notice shall be given under subsection (2) in relation to the same special merger situation.

<sup>F16</sup>(8) .....

<sup>F17</sup>(9) .....

### Textual Amendments

- F1** Word in s. 59(2) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), **Sch. 5 para. 101(2)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F2** S. 59(3)-(3D) substituted (29.12.2003) for s. 59(3)(4) by [Communications Act 2003 \(c. 21\)](#), **ss. 378(1), 411(2)(3)** (with transitional provisions in Sch. 18); S.I. 2003/3142, **art. 3(1)**, Sch. 1 (subject to arts. 3(3), 11)
- F3** S. 59(3)(b)(i) omitted (4.1.2022) by virtue of [National Security and Investment Act 2021 \(c. 25\)](#), s. 66(3), **Sch. 2 para. 8** (with s. 62); S.I. 2021/1465, regs. 2, 3 (with regs. 4, 5)
- F4** S. 59(3B) omitted (4.1.2022) by virtue of [National Security and Investment Act 2021 \(c. 25\)](#), s. 66(3), **Sch. 2 para. 8** (with s. 62); S.I. 2021/1465, regs. 2, 3 (with regs. 4, 5)
- F5** Words in s. 59(5) omitted (1.4.2014) by virtue of [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), **Sch. 15 para. 26(2)**; S.I. 2014/416, art. 2(1)(f) (with Sch.)
- F6** Words in s. 59(6) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), **Sch. 15 para. 26(3)**; S.I. 2014/416, art. 2(1)(f) (with Sch.)
- F7** Word in s. 59(6) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), **Sch. 5 para. 101(3)(a)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F8** Word in s. 59(6) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), **Sch. 5 para. 101(3)(b)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F9** Words in s. 59(6)(c) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), **Sch. 15 para. 26(4)**; S.I. 2014/416, art. 2(1)(f) (with Sch.)
- F10** Words in s. 59(6)(c) omitted (31.12.2020) by virtue of [The Competition \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/93\)](#), regs. 1(1), **46** (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** Words in s. 59(6)(g) omitted (1.4.2014) by virtue of [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), **Sch. 15 para. 26(5)**; S.I. 2014/416, art. 2(1)(f) (with Sch.)
- F12** S. 59(6)(h) omitted (1.4.2014) by virtue of [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), **Sch. 15 para. 26(6)**; S.I. 2014/416, art. 2(1)(f) (with Sch.)
- F13** Words in s. 59(6)(i) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), **Sch. 15 para. 26(7)**; S.I. 2014/416, art. 2(1)(f) (with Sch.)
- F14** S. 59(6)(j) and word omitted (1.4.2014) by virtue of [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), **Sch. 15 para. 26(8)**; S.I. 2014/416, art. 2(1)(f) (with Sch.)
- F15** S. 59(6A) inserted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), **ss. 378(2), 411(2)(3)** (with transitional provisions in Sch. 18); S.I. 2003/3142, **art. 3(1)**, Sch. 1 (subject to arts. 3(3), 11)
- F16** S. 59(8) omitted (4.1.2022) by virtue of [National Security and Investment Act 2021 \(c. 25\)](#), s. 66(3), **Sch. 2 para. 8** (with s. 62); S.I. 2021/1465, regs. 2, 3 (with regs. 4, 5)
- F17** S. 59(9) omitted (4.1.2022) by virtue of [National Security and Investment Act 2021 \(c. 25\)](#), s. 66(3), **Sch. 2 para. 8** (with s. 62); S.I. 2021/1465, regs. 2, 3 (with regs. 4, 5)

**Status:**

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**Changes to legislation:**

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