



Enterprise Act 2002

2002 CHAPTER 40

PART 3

MERGERS

CHAPTER 4

ENFORCEMENT

Powers exercisable before references under section 22 or 33

73 Undertakings in lieu of references under section 22 or 33

- (1) Subsection (2) applies if the OFT considers that it is under a duty to make a reference under section 22 or 33 (disregarding the operation of section 22(3)(b) or (as the case may be) 33(3)(b) but taking account of the power of the OFT under section 22(2) or (as the case may be) 33(2) to decide not to make such a reference).
- (2) The OFT may, instead of making such a reference and for the purpose of remedying, mitigating or preventing the substantial lessening of competition concerned or any adverse effect which has or may have resulted from it or may be expected to result from it, accept from such of the parties concerned as it considers appropriate undertakings to take such action as it considers appropriate.
- (3) In proceeding under subsection (2), the OFT shall, in particular, have regard to the need to achieve as comprehensive a solution as is reasonable and practicable to the substantial lessening of competition and any adverse effects resulting from it.
- (4) In proceeding under subsection (2), the OFT may, in particular, have regard to the effect of any action on any relevant customer benefits in relation to the creation of the relevant merger situation concerned.
- (5) An undertaking under this section—
 - (a) shall come into force when accepted;

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- (b) may be varied or superseded by another undertaking; and
 - (c) may be released by the OFT.
- (6) An undertaking under this section which is in force in relation to a relevant merger situation shall cease to be in force if an order comes into force under section 75 or 76 in relation to that undertaking.
- (7) The OFT shall, as soon as reasonably practicable, consider any representations received by it in relation to varying or releasing an undertaking under this section.