



Enterprise and Regulatory Reform Act 2013

2013 CHAPTER 24

PART 4

COMPETITION REFORM

CHAPTER 1

MERGERS

Investigation powers

29 Investigation powers: mergers

- (1) Section 109 of the Enterprise Act 2002 (“the 2002 Act”) (investigation powers in connection with attendance of witnesses etc.) is amended as follows.
- (2) Before subsection (1) insert—
 - “(A1) For the purposes of this section, the permitted purposes are the following—
 - (a) assisting the CMA in carrying out any functions, including enforcement functions, exercisable by it under or by virtue of this Part in connection with a matter that is or has been the subject of a reference or possible reference under section 22 or 33;
 - (b) assisting the CMA or the Secretary of State in carrying out any functions, including enforcement functions, of the CMA or (as the case may be) the Secretary of State under or by virtue of this Part in connection with a matter that is or has been the subject of a reference or possible reference under section 45 or 62.”
- (3) In subsection (1), for the words from the beginning to “under this Part,” substitute “The CMA may, for a permitted purpose,”.

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- (4) In subsection (2), for the words from the beginning to “under this Part,” substitute “The CMA may, for a permitted purpose, ”.
- (5) In subsection (3), for the words from the beginning to “under this Part,” substitute “The CMA may, for a permitted purpose, ”.
- (6) In subsection (4), after “shall” insert “—
- (a) specify the permitted purpose for which the notice is given, including the function or functions in question; and
 - (b) ”.
- (7) In subsection (5), for the words from the beginning to “under this Part,” substitute “The CMA, or any person nominated by it for the purpose, may for a permitted purpose ”.
- (8) In subsection (6), for the words from “for the purpose of” to “under this Part” substitute “ for a permitted purpose ”.
- (9) After subsection (8) insert—
- “(8A) In subsection (A1), “enforcement functions” means—
- (a) in relation to the CMA—
 - (i) functions conferred by virtue of section 87 on the CMA by enforcement orders;
 - (ii) functions of the CMA in relation to the variation, supersession or release of enforcement undertakings or the variation or revocation of enforcement orders;
 - (iii) functions of the CMA under or by virtue of section 75, 76, 83 or 92 in relation to enforcement undertakings or enforcement orders;
 - (b) in relation to the Secretary of State—
 - (i) functions conferred by virtue of section 87 on the Secretary of State by enforcement orders;
 - (ii) functions of the Secretary of State in relation to the variation, supersession or release of enforcement undertakings or the variation or revocation of enforcement orders;
 - (iii) functions of the Secretary of State under or by virtue of paragraph 5, 6 or 10 of Schedule 7 in relation to enforcement undertakings or enforcement orders.”
- (10) In section 110 (enforcement of powers under section 109: general), omit subsection (4).
- (11) After section 110 insert—

“110A Restriction on powers to impose penalties under section 110

- (1) No penalty shall be imposed by virtue of section 110(1) or (3) if more than 4 weeks have passed since the day which is the relevant day in the case in question; but this subsection shall not apply in relation to any variation or substitution of the penalty which is permitted by virtue of this Part.

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- (2) In the following provisions of this section, “the section 109 power” means the power under section 109 to which the failure or (as the case may be) the obstruction or delay in question relates.
- (3) Where the section 109 power is exercised in connection with an enforcement function (within the meaning of that section), the relevant day is the day when the enforcement undertaking concerned is superseded or released or (as the case may be) the enforcement order concerned is revoked.
- (4) Except where subsection (3) applies, the relevant day is the day determined in accordance with the following provisions of this section.
- (5) Where the section 109 power is exercised for the purpose mentioned in section 109(A1)(a) in connection with a matter that is the subject of a possible reference under section 22 or 33, the relevant day is the day when the CMA finally decides whether to make the reference.
- (6) Where the section 109 power is exercised for the purpose mentioned in section 109(A1)(a) in connection with a matter that is the subject of a reference under section 22 or 33, the relevant day is the day when the reference is finally determined (see section 79).
- (7) Where the section 109 power is exercised for the purpose mentioned in section 109(A1)(b) in connection with a matter that is the subject of a possible reference under section 45 or 62, the relevant day is the day when the Secretary of State finally decides whether to make the reference.
- (8) Where the section 109 power is exercised for the purpose mentioned in section 109(A1)(b) in connection with a matter that is the subject of a reference under section 45 or 62, the relevant day is the day when the reference is finally determined.

110B Section 110A: supplementary provision

- (1) For the purpose of section 110A(5), the CMA finally decides whether to make a reference under section 22 or 33 if—
 - (a) the CMA decides that the duty to make such a reference applies;
 - (b) the CMA accepts an undertaking under section 73;
 - (c) the CMA decides not to make such a reference (otherwise than because it has accepted an undertaking under section 73);
 - (d) the initial period for the purposes of section 34ZA expires without the CMA having complied with the duty under subsection (1) of that section;
 - (e) the preliminary assessment period for the purposes of section 34A expires without the CMA having complied with the duty under subsection (2) of that section;
 - (f) the period permitted by section 73A for the CMA to make a decision required by subsection (2)(a) or (3) of that section expires without the CMA having made the decision.
- (2) For the purpose of section 110A(5), the time when the CMA finally decides whether to make a reference under section 22 or 33 is—

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- (a) in a case falling within subsection (1)(a), the making of the decision that the duty to make such a reference applies;
 - (b) in a case falling within subsection (1)(b), the acceptance of the undertaking;
 - (c) in a case falling within subsection (1)(c), the making of the decision not to make the reference;
 - (d) in a case falling within subsection (1)(d), the expiry of the initial period;
 - (e) in a case falling within subsection (1)(e), the expiry of the preliminary assessment period;
 - (f) in a case falling within subsection (1)(f), the expiry of the period in question.
- (3) For the purpose of section 110A(7), the Secretary of State finally decides whether to make a reference under section 45 or 62 if—
- (a) the Secretary of State makes such a reference;
 - (b) the Secretary of State accepts an undertaking under paragraph 3 of Schedule 7;
 - (c) the Secretary of State decides not to make such a reference (otherwise than because of the acceptance of an undertaking under paragraph 3 of Schedule 7);
 - (d) the preliminary assessment period for the purposes of section 46A expires without the CMA having complied with the duty under subsection (2) of that section.
- (4) For the purpose of section 110A(7), the time when the Secretary of State finally decides whether to make a reference under section 45 or 62 is—
- (a) in a case falling within subsection (3)(a), the making of the reference;
 - (b) in a case falling within subsection (3)(b), the acceptance of the undertaking;
 - (c) in a case falling within subsection (3)(c), the making of the decision not to make the reference;
 - (d) in a case falling within subsection (3)(d), the expiry of the preliminary assessment period.
- (5) Paragraph 7(8) to (10) of Schedule 7 applies for deciding if and when a reference under section 45(2) or (3) or 62(2) is finally determined for the purpose of section 110A(8) as it applies for deciding those questions for the purpose of paragraph 7 of Schedule 7.
- (6) Paragraph 8(7) to (9) of Schedule 7 applies for deciding if and when a reference under section 45(4) or (5) or 62(3) is finally determined for the purpose of section 110A(8) as it applies for deciding those questions for the purpose of the definition of “relevant period” in paragraph 8(6) of that Schedule.”
- (12) In section 111 (penalties), in subsection (5)(b)—
- (a) in sub-paragraph (i), omit “or (as the case may be) the obstruction or delay is removed”, and
 - (b) in sub-paragraph (ii), for the words from “the day” to the end of the sub-paragraph substitute “the day which is the relevant day in the case in question for the purposes of section 110A ”.

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Commencement Information

II S. 29 in force at 1.4.2014 by S.I. 2014/416, art. 2(1)(b) (with Sch.)

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