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*Changes to legislation: There are currently no known outstanding effects for the Energy Act 2023, Paragraph 3. (See end of Document for details)*

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## SCHEDULES

### SCHEDULE 16

#### MERGERS OF ENERGY NETWORK ENTERPRISES

##### PART 1

##### FURTHER DUTIES OF COMPETITION AND MARKETS AUTHORITY TO MAKE REFERENCES

3 After Schedule 5 insert—

“SCHEDULE 5A

Section 68F

##### ENERGY NETWORK MERGERS AFFECTING COMPARATIVE REGULATION: MODIFICATION OF CHAPTER 1 OF PART 3

##### General modifications

- 1 (1) Chapter 1 (other than sections 22 and 33) has effect as if—
  - (a) references to a reference or possible reference under section 22 were references to a reference or possible reference under section 68B, and
  - (b) references to a reference or possible reference under section 33 were references to a reference or possible reference under section 68C.
- (2) The references in sub-paragraph (1) to a reference under a section include a reference treated as made under that section.

##### Turnover

- 2 Section 23 (relevant merger situations) has effect as if—
  - (a) in subsection (1), for paragraph (b) there were substituted—
    - “(b) the value of the turnover in Great Britain of the enterprise being taken over exceeds £70 million.”;
  - (b) subsections (2) to (8) were omitted.
- 3 Section 28 (turnover test) has effect as if—
  - (a) references to the United Kingdom were to Great Britain;
  - (b) in subsection (5), for “The CMA shall” there were substituted “The CMA and the Gas and Electricity Markets Authority shall each”;
  - (c) the reference in subsection (6) to section 23(1)(b) included a reference to that provision as modified by paragraph 2 of this Schedule.

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### Relevant customer benefits

- 4 Section 30 (relevant customer benefits) has effect as if—
- (a) in subsection (1)(a)(i), for “lessening of competition concerned” there were substituted “prejudice to the Gas and Electricity Markets Authority”;
  - (b) in subsections (2)(b) and (3)(b), for “a similar lessening of competition” there were substituted “a similar prejudice to the Gas and Electricity Markets Authority”.

### Time limits for decisions about references

- 5 Section 34ZA(1)(a) (time-limits for decisions about references) has effect as if—
- (a) the reference to section 22(2) were to section 68B(2);
  - (b) the reference to section 22(3) were to—
    - (i) that provision as applied by section 68B(4), and
    - (ii) section 68B(3);
  - (c) the reference to section 33(2) were to section 68C(2);
  - (d) the reference to section 33(3) were to—
    - (i) that provision as applied by section 68C(4), and
    - (ii) section 68C(3).

### Questions to be decided in relation to completed mergers

- 6 Section 35 (questions to be decided in relation to completed mergers) has effect as if—
- (a) in subsection (1)(a), after “situation” there were inserted “involving an energy network merger”;
  - (b) in subsection (1)(b), for the words from “has resulted” to the end there were substituted “has caused, or may be expected to cause, substantial prejudice to the ability of the Gas and Electricity Markets Authority to make comparisons between energy network enterprises of the type involved in the energy network merger”;
  - (c) for subsection (2) there were substituted—
 

“(2) For the purposes of this section there is a prejudicial outcome if there is a situation described in subsection (1)(a) which has, or may be expected to have, the effect described in subsection (1)(b).”;
  - (d) in subsection (3), for “an anti-competitive outcome (within the meaning given by subsection (2)(a))” there were substituted “a prejudicial outcome”;
  - (e) in subsections (3)(a) and (b) and (4), for “lessening of competition” (in each place it appears) there were substituted “prejudice”.

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### Questions to be decided in relation to anticipated mergers

- 7 Section 36 (questions to be decided in relation to anticipated mergers) has effect as if—
- (a) in subsection (1)(a), after “situation” there were inserted “involving an energy network merger”;
  - (b) in subsection (1)(b), for the words from “result” to the end there were substituted “cause substantial prejudice to the ability of the Gas and Electricity Markets Authority to make comparisons between energy network enterprises of the type involved in the energy network merger”;
  - (c) after subsection (1) there were inserted—

“(1A) For the purposes of this section there is a prejudicial outcome if there are arrangements described in subsection (1)(a) which may be expected to have the effect described in subsection (1)(b).”;
  - (d) in subsection (2), for “an anti-competitive outcome (within the meaning given by section 35(2)(b))” there were substituted “a prejudicial outcome”;
  - (e) in subsections (2)(a) and (b) and (3), for “lessening of competition” (in each place it appears) there were substituted “prejudice”.

### Duty to remedy effects of completed or anticipated mergers

- 8 Section 41 (duty to remedy effects of completed or anticipated mergers) has effect as if—
- (a) in subsection (1), for “an anti-competitive outcome” there were substituted “a prejudicial outcome (within the meaning of section 35(2) or 36(1A))”;
  - (b) in subsection (2)(a) and (b), for “lessening of competition” there were substituted “prejudice”;
  - (c) in subsection (4), for “lessening of competition” there were substituted “prejudice”.

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#### Commencement Information

**II** Sch. 16 para. 3 in force at Royal Assent, see [s. 334\(2\)\(j\)](#)

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