
STATUTORY INSTRUMENTS

2003 No. 1369

COMPETITION

**The Enterprise Act 2002 (Merger
Prenotification) Regulations 2003**

Made - - - - 23rd May 2003

Coming into force - - 20th June 2003

The Secretary of State in exercise of the powers conferred on her by sections 101 and 124(2) of the Enterprise Act 2002⁽¹⁾, hereby makes the following Regulations:

Citation and commencement

1. This Order may be cited as the Enterprise Act 2002 (Merger Prenotification) Regulations 2003 and shall come into force on 20th June 2003.

Interpretation

2.—(1) In these Regulations

“the Act” means the Enterprise Act 2002; and

“working day” means any day which is not—

(a) Saturday, Sunday, Good Friday or Christmas Day; or

(b) a bank holiday in England and Wales.

(2) A reference in these Regulations to a person who does anything on behalf of a person who is authorised to give a merger notice or who has given such notice shall be construed as limited to a reference to a person who does so having been authorised so to act in accordance with regulation 14 of these Regulations.

Person authorised to give a merger notice

3. A merger notice may be given under section 96(1) of the Act by any person carrying on an enterprise to which the notified arrangements relate.

Time limit for disclosure of material information

4. The time specified for the purpose of section 100(1)(c) of the Act (the time before the end of the period for considering a merger notice within which material information must be disclosed) is five working days.

Time at which a merger notice is to be treated as received

5. A merger notice given under section 96(1) of the Act shall be treated as having been received by the OFT—

- (a) subject to paragraph (b), on the day on which it is in fact received by the OFT;
- (b) where it is received by the OFT on any day which is not a working day or after 5.00 pm on any working day, on the next working day,

and section 7 of the Interpretation Act 1978(2) shall not apply.

Rejection of a merger notice

6. A rejection of a merger notice under section 99(5) of the Act shall be given in writing and such a notice shall be treated as having been rejected at the time when the rejection is sent to the person who gave the merger notice or a person acting on his behalf.

Withdrawal of a merger notice

7. A merger notice may be withdrawn by or on behalf of the person who gave the notice by a notice in writing sent to the OFT.

Provision of information to the OFT

8.—(1) Any information which—

- (a) is, or ought to be, known to the person who gave the merger notice or any connected person, and
- (b) is material to the notified arrangements,

or any information requested by the OFT under section 99(2) of the Act, shall be provided or disclosed in writing.

(2) Subject to paragraph (3), any information provided or disclosed to the OFT under this regulation shall be treated as having been so provided or disclosed on the day on which it is in fact received by the OFT.

(3) Where information provided or disclosed to the OFT under this regulation is received by the OFT on any day which is not a working day or after 5.00 pm on any working day, it shall be treated as having been provided or disclosed to the OFT on the next working day.

(4) Section 7 of the Interpretation Act 1978 shall not apply to the provision or disclosure of any information under this regulation.

(5) Any information requested by the OFT under section 99(2) of the Act shall be treated as provided to the satisfaction of the OFT, for the purposes of section 97(6) of the Act, on the day on which the OFT informs the person who gave the merger notice, or a person acting on his behalf, of the fact that it is satisfied as to the provision of the information requested by it.

Extension of period for consideration of a merger notice for failure to provide information requested under section 99(2)

9. In the circumstances in which section 97(6) of the Act applies, the OFT shall inform the person who gave the merger notice, or a person acting on his behalf—

- (a) of the fact that it is satisfied as to the provision of the information requested by it or (as the case may be) of its decision to cancel the extension; and
- (b) of the time at which it is to be treated as so satisfied or (as the case may be) of the time at which the cancellation is to be treated as having effect.

Extension of period for consideration of a merger notice to seek undertakings

10. In the circumstances in which section 97(8) of the Act applies, the OFT shall inform the person who gave the merger notice, or a person acting on his behalf—

- (a) of any decision by it to cancel the extension; and
- (b) of the time at which such a cancellation is to be treated as having effect.

Time at which notices relating to undertakings are to be treated as received

11. A notice given to the OFT under section 97(8)(b) of the Act shall be treated as having been received by it—

- (a) subject to paragraph (b), on the day on which it is in fact received by the OFT;
- (b) where it is received by the OFT on any day which is not a working day or after 5.00 pm on any working day, on the next working day,

and section 7 of the Interpretation Act 1978 shall not apply.

Time at which section 97(7), (11) or (13) notices are to be treated as received

12. A notice given to the person who gave the merger notice, or a person acting on his behalf, under section 97(7), (11) or (13) of the Act shall be treated as having been received by that person—

- (a) subject to paragraph (b), on the day on which it is in fact received by that person;
- (b) where it is received by that person on any day which is not a working day or after 5.00 pm on any working day, on the next working day,

and section 7 of the Interpretation Act 1978 shall not apply.

Time at which fees are to be treated as paid

13.—(1) Subject to paragraphs (2) and (3), any fee payable in accordance with a merger notice shall be treated as having been paid on the day on which a valid cheque or other instrument for the correct amount is received by the OFT.

(2) Where a cheque or other instrument received as payment for a fee referred to in paragraph (1) is dishonoured on presentation, the fee shall, subject to paragraph (3), nevertheless be treated as having been paid on the day on which that cheque or other instrument is received if the condition specified in paragraph (4) is subsequently satisfied.

(3) Where a cheque or other instrument in respect of a fee referred to in paragraph (1) is received by the OFT on any day which is not a working day or after 5.00 pm on any working day, it shall be treated as having been received on the next working day.

(4) The condition referred to in paragraph (2) is that, within the period of 20 working days beginning with the first day after the merger notice is, in accordance with regulation 5 of these

Regulations, treated as having been received by the OFT, the correct amount of the fee has been properly paid by a valid cheque or other instrument.

(5) Section 7 of the Interpretation Act 1978 shall not apply to the giving or sending of a cheque or other instrument in respect of a fee referred to in paragraph (1).

Circumstances in which a person is or is not to be treated as acting on behalf of the giver of a merger notice

14.—(1) A person shall be treated as acting on behalf of a person who is authorised to give a merger notice or who has given such a notice only if the person on whose behalf he is to be treated as acting has authorised him so to act in accordance with paragraph (2).

(2) An authorisation to act on behalf of another person for the purposes of paragraph (1) shall be given to the OFT in writing and an authorisation to act on behalf of a company shall be signed by a director or other officer of that company.

(3) A person who has given an authorisation in accordance with paragraph (1) may revoke it by a notice in writing given to the OFT and, where that person is a company, the notice shall be signed by a director or other officer of that company.

23rd May 2003

Brian Wilson,
Minister of State for Energy and Construction,
Department of Trade and Industry

EXPLANATORY NOTE

(This note is not part of the Regulations)

Sections 96 to 100 of the Enterprise Act 2002 enable mergers that qualify for investigation under that Act to be prenotified to the OFT. If such a merger notice is given to the OFT by one of the parties to the merger, a decision regarding reference must be made within certain time limits. These Regulations make further provision in relation to the operation of the merger notice procedures. They provide, *inter alia*, for the time at which a merger notice is to be treated as received; for the manner in which such a notice can be rejected and withdrawn and the time at which any notice is to be treated as rejected; for the manner in which information requested by the OFT is to be provided or disclosed; for the time at which any merger notice fee is to be treated as paid and the circumstances in which a person is or is not to be treated as acting on behalf of the person giving a merger notice.