

2018 No. 593

COMPETITION

**The Enterprise Act 2002 (Turnover Test) (Amendment) Order
2018**

Made - - - - - *14th May 2018*

Laid before Parliament *14th May 2018*

Coming into force in accordance with article 1(2)

The Secretary of State makes this Order in exercise of the powers conferred by sections 28(6) and 124(2) of the Enterprise Act 2002(a).

Citation and commencement

1.—(1) This Order may be cited as the Enterprise Act 2002 (Turnover Test) (Amendment) Order 2018.

(2) This Order comes into force immediately after the commencement of the Enterprise Act 2002 (Share of Supply Test) (Amendment) Order 2018(b).

Amendment of the Enterprise Act 2002

2.—(1) Section 23 of the Enterprise Act 2002(c) is amended as follows.

(2) In subsection (1)(b), after “exceeds” insert—

“(i) £1 million, if in the course of the enterprises ceasing to be distinct, a person or group of persons has brought a relevant enterprise (see section 23A) under the ownership or control of the person or group; or

(ii) £70 million, in any other case.”.

Transitional provision

3. The amendments made by article 2 apply only in relation to cases where enterprises cease to be distinct after the commencement of this Order.

(a) 2002 c. 40; section 28 was amended by paragraphs 59 and 71 of Part 2 of Schedule 5 to the Enterprise and Regulatory Reform Act 2013 c. 24 and section 124(3) was amended by paragraph 24(1) and (2) of Schedule 16 to the Communications Act 2003 c. 21.

(b) S.I. 2018/578.

(c) Section 23 was amended by paragraphs 59 and 68 of Part 2 of Schedule 5 to the Enterprise and Regulatory Reform Act 2013 c. 24 and by S.I. 2018/578. Section 23A was inserted into the Enterprise Act 2002 by S.I. 2018/578.

14th May 2018

Richard Harrington
Parliamentary Under Secretary of State for Business and Industry
Department for Business, Energy and Industrial Strategy

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends section 23 of the Enterprise Act 2002 (c. 40) (the Act) which sets out the criteria for a merger to be a “relevant merger situation”, thereby qualifying it for investigation by the Competition and Markets Authority. The Secretary of State has the power under section 42 of the Act to intervene in a “relevant merger situation” on the grounds of specified public interest considerations, where appropriate.

A “relevant merger situation” is created if: two or more enterprises have ceased to be distinct at a time or in circumstances set out in section 24 of the Act, and at least one of the following thresholds is met:

- (a) the value of the turnover in the UK of the enterprise being taken over exceeds £70m (the “turnover test”); or
- (b) the merger would result in the creation or enhancement of at least a 25% share of supply of goods or services in the UK, or in a substantial part of the UK (the “share of supply” test).

This Order comes into force immediately after the Enterprise Act 2002 (Share of Supply Test) (Amendment) Order 2018 (S.I. 2018/578) (the Share of Supply Test Order). The Share of Supply Test Order which comes into force on 11th June 2018 amends the share of supply test so that, in cases where the enterprise being taken over is a “relevant enterprise” that test is additionally met if the relevant enterprise has a 25% share of supply of goods or services in the UK before the merger. The relevant goods or services for this purpose are those by virtue of which it qualifies as a “relevant enterprise”. The Share of Supply Test Order also inserts a new section 23A into the Act which defines a “relevant enterprise”. The definition covers enterprises which are involved in specified activities in connection with the following: military or dual-use goods which are subject to export control, computer processing units and quantum technology.

Article 2 of this Order amends the turnover test so that, in cases where the enterprise being taken over is a “relevant enterprise”, the test is met if that enterprise has turnover in the UK of over £1m instead of £70 million.

Article 3 makes transitional provision to the effect that the amendments made by this Order apply only in cases where enterprises cease to be distinct after the Order comes into force.

A separate impact assessment has not been prepared for this instrument but a full impact assessment of the effect that the Share of Supply Test Order and this Order will together have on the costs to business and the public sector is available from the Department for Business, Energy and Industrial Strategy, 1 Victoria Street, London SW1H 0ET and is also published alongside the Share of Supply Test Order on the UK Legislation website www.legislation.gov.uk.

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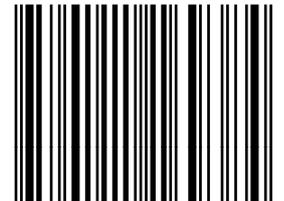
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