



# Enterprise Act 2002

## 2002 CHAPTER 40

### PART 3

#### MERGERS

### CHAPTER 2

#### PUBLIC INTEREST CASES

##### *Power to make references*

#### **44 Investigation and report by OFT**

- (1) Subsection (2) applies where the Secretary of State has given an intervention notice in relation to a relevant merger situation.
- (2) The OFT shall, within such period as the Secretary of State may require, give a report to the Secretary of State in relation to the case.
- (3) The report shall contain—
  - (a) advice from the OFT on the considerations relevant to the making of a reference under section 22 or 33 which are also relevant to the Secretary of State's decision as to whether to make a reference under section 45; and
  - (b) a summary of any representations about the case which have been received by the OFT and which relate to any public interest consideration mentioned in the intervention notice concerned and which is or may be relevant to the Secretary of State's decision as to whether to make a reference under section 45.
- (4) The report shall, in particular, include decisions as to whether the OFT believes that it is, or may be, the case that—
  - (a) a relevant merger situation has been created or arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation;

---

*Status: This is the original version (as it was originally enacted).*

---

- (b) the creation of that situation has resulted, or may be expected to result, in a substantial lessening of competition within any market or markets in the United Kingdom for goods or services;
  - (c) the market or markets concerned would not be of sufficient importance to justify the making of a reference to the Commission under section 22 or 33;
  - (d) in the case of arrangements which are in progress or in contemplation, the arrangements are not sufficiently far advanced, or not sufficiently likely to proceed, to justify the making of such a reference;
  - (e) any relevant customer benefits in relation to the creation of the relevant merger situation concerned outweigh the substantial lessening of competition and any adverse effects of the substantial lessening of competition; or
  - (f) it would be appropriate to deal with the matter (disregarding any public interest considerations mentioned in the intervention notice concerned) by way of undertakings under paragraph 3 of Schedule 7.
- (5) If the OFT believes that it is or may be the case that it would be appropriate to deal with the matter (disregarding any public interest considerations mentioned in the intervention notice concerned) by way of undertakings under paragraph 3 of Schedule 7, the report shall contain descriptions of the undertakings which the OFT believes are, or may be, appropriate.
- (6) The report may, in particular, include advice and recommendations on any public interest consideration mentioned in the intervention notice concerned and which is or may be relevant to the Secretary of State's decision as to whether to make a reference under section 45.
- (7) The OFT shall carry out such investigations as it considers appropriate for the purposes of producing a report under this section.