
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).

Article 3 of the Order 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”.

Article 4 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 5 makes minor consequential amendments. Article 6 makes transitional provision to the effect that the amendments made by the Order apply only in cases where enterprises cease to be distinct after the Order comes into force.

A separate Order made under section 28(6) of the Act and coming into force immediately after this Order amends the turnover test in section 23(1)(b) of the Act 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.

A full impact assessment of the effect that this Order and the Order amending the turnover test will 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 with an Explanatory Memorandum alongside this instrument on the UK Legislation website www.legislation.gov.uk.