



Enterprise Act 2002

2002 CHAPTER 40

PART 4 **U.K.**

[^{F1}MARKET STUDIES AND] MARKET INVESTIGATIONS

CHAPTER 1 **U.K.**

[^{F1}MARKET STUDIES AND] MARKET INVESTIGATION REFERENCES

Determination of references

[^{F1}133A Functions to be exercised by CMA groups **U.K.**

- (1) Where a reference is made to the chair of the CMA under section 131, 132 or 140A for the constitution of a group under Schedule 4 to the Enterprise and Regulatory Reform Act 2013, the functions of the CMA under or by virtue of the following provisions of this Part in relation to the matter concerned are to be carried out on behalf of the CMA by the group so constituted—
- (a) sections 134 to 138B, except for section 135(1);
 - (b) sections 140B to 145, 148, 148A and 151;
 - (c) sections 157 and 158;
 - (d) section 159;
 - (e) section 160, except for subsection (6) of that section;
 - (f) section 161, except for subsection (5) of that section;
 - (g) section 162(4), so far as relating to an enforcement undertaking or enforcement order made on behalf of the CMA by the group;
 - (h) section 164(2)(b), so far as relating to an enforcement order made on behalf of the CMA by the group;
 - (i) section 167, so far as relating to an enforcement undertaking or enforcement order made on behalf of the CMA by the group;
 - (j) section 168;

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- (k) section 169, so far as relating to a decision mentioned in paragraph (a)(iii) of the definition of relevant decision in subsection (6) of that section;
 - (l) section 172, so far as relating to anything done on behalf of the CMA by the group;
 - (m) section 174, where the permitted purpose in question relates to a function that (by virtue of this section) is being or is to be carried out on behalf of the CMA by the group;
 - (n) sections 174A to 174D, so far as relating to a notice given under section 174 on behalf of the CMA by the group;
 - (o) section 179(5)(b), so far as relating to a decision of the group;
 - (p) Schedule 10, so far as relating to an enforcement undertaking or enforcement order which the group is considering accepting or making, or which the group has accepted or made, on behalf of the CMA.
- (2) Nothing in subsection (1) prevents the CMA Board from carrying out a function of the CMA under or by virtue of the following provisions of this Part where the group constituted as mentioned in subsection (1) has ceased to exist—
- (a) section 160 and Schedule 10, so far as relating to the making of an order under section 160;
 - (b) sections 159 to 161 and Schedule 10, so far as relating to the variation, supersession or release of enforcement undertakings or the variation or revocation of enforcement orders;
 - (c) section 162(4);
 - (d) section 164(2)(b);
 - (e) section 167.]

Textual Amendments

F1 S. 133A inserted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 5 para. 166](#) (with s. 28); [S.I. 2014/416](#), art. 2(1)(d) (with Sch.)

134 Questions to be decided on market investigation references **U.K.**

- (1) The [^{F2}CMA] shall, on [^{F3}an ordinary] reference, decide whether any feature, or combination of features, of each relevant market prevents, restricts or distorts competition in connection with the supply or acquisition of any goods or services in the United Kingdom or a part of the United Kingdom.
- [^{F4}(1A) The CMA shall, on a cross-market reference, decide in relation to each feature and each combination of the features specified in the reference, whether the feature or combination of features, as it relates to goods or services of one or more than one of the descriptions so specified, prevents, restricts or distorts competition in connection with the supply or acquisition of any goods or services in the United Kingdom or a part of the United Kingdom.]
- (2) For the purposes of this Part, in relation to [^{F5}an ordinary] reference, there is an adverse effect on competition if any feature, or combination of features, of a relevant market prevents, restricts or distorts competition in connection with the supply or acquisition of any goods or services in the United Kingdom or a part of the United Kingdom.

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- [^{F6}(2A) For the purposes of this Part, in relation to a cross-market reference, there is an adverse effect on competition if a feature or a combination of the features specified in the reference, as that feature or combination of features relates to goods or services of one or more than one of the descriptions so specified, prevents, restricts or distorts competition in connection with the supply or acquisition of any goods or services in the United Kingdom or a part of the United Kingdom.]
- (3) In subsections (1) and (2) “relevant market” means—
- (a) in the case of subsection (2) so far as it applies in connection with a possible reference, a market in the United Kingdom—
 - (i) for goods or services of a description to be specified in the reference; and
 - (ii) which would not be excluded from investigation by virtue of section 133(2); and
 - (b) in any other case, a market in the United Kingdom—
 - (i) for goods or services of a description specified in the reference concerned; and
 - (ii) which is not excluded from investigation by virtue of section 133(2).
- (4) The [^{F7}CMA] shall, if it has decided on a market investigation reference that there is an adverse effect on competition, decide the following additional questions—
- (a) whether action should be taken by it under section 138 for the purpose of remedying, mitigating or preventing the adverse effect on competition concerned or any detrimental effect on customers so far as it has resulted from, or may be expected to result from, the adverse effect on competition;
 - (b) whether it should recommend the taking of action by others for the purpose of remedying, mitigating or preventing the adverse effect on competition concerned or any detrimental effect on customers so far as it has resulted from, or may be expected to result from, the adverse effect on competition; and
 - (c) in either case, if action should be taken, what action should be taken and what is to be remedied, mitigated or prevented.
- (5) For the purposes of this Part, in relation to a market investigation reference, there is a detrimental effect on customers if there is a detrimental effect on customers or future customers in the form of—
- (a) higher prices, lower quality or less choice of goods or services in any market in the United Kingdom (whether or not the market [^{F8}or markets] to which the feature or features concerned relate); or
 - (b) less innovation in relation to such goods or services.
- (6) In deciding the questions mentioned in subsection (4), the [^{F9}CMA] shall, in particular, have regard to the need to achieve as comprehensive a solution as is reasonable and practicable to the adverse effect on competition and any detrimental effects on customers so far as resulting from the adverse effect on competition.
- (7) In deciding the questions mentioned in subsection (4), the [^{F9}CMA] may, in particular, have regard to the effect of any action on any relevant customer benefits of the feature or features of the market [^{F10}or markets] concerned.
- (8) For the purposes of this Part a benefit is a relevant customer benefit of a feature or features of a market if—
- (a) it is a benefit to customers or future customers in the form of—

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- (i) lower prices, higher quality or greater choice of goods or services in any market in the United Kingdom (whether or not the market [^{F11} or markets] to which the feature or features concerned relate); or
- (ii) greater innovation in relation to such goods or services; and
- (b) the [^{F12}CMA or (as the case may be) the Secretary of State] believes that—
 - (i) the benefit has accrued as a result (whether wholly or partly) of the feature or features concerned or may be expected to accrue within a reasonable period as a result (whether wholly or partly) of that feature or those features; and
 - (ii) the benefit was, or is, unlikely to accrue without the feature or features concerned.

Textual Amendments

- F2** Word in s. 134(1) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 167(2)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F3** Words in s. 134(1) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 9 para. 3(2)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F4** S. 134(1A) inserted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 9 para. 3(3)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F5** Words in s. 134(2) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 9 para. 3(4)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F6** S. 134(2A) inserted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 9 para. 3(5)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F7** Word in s. 134(4) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 167(2)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F8** Words in s. 134(5)(a) inserted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 9 para. 3(6)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F9** Word in s. 134(6)(7) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 167(2)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F10** Words in s. 134(7) inserted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 9 para. 3(7)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F11** Words in s. 134(8)(a)(i) inserted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 9 para. 3(8)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F12** Words in s. 134(8)(b) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 167(3)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)

Modifications etc. (not altering text)

- C1** Pt. 4 modified by 2012 c. 7, s. 73(3)(b) (as substituted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 189(4)(c)** (with art. 3))
- C2** Pt. 4 modified by 2000 c. 38, s. 86(4A) (as inserted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 154(6)** (with art. 3))
- C3** Pt. 4 modified (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 4 para. 57**; S.I. 2014/416, art. 2(1)(c) (with Sch.)
- C4** Pt. 4 modified by 2012 c. 19, s. 60(3A) (as inserted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 197(5)** (with art. 3))
- C5** Pt. 4 certain functions made exercisable concurrently (1.4.2014) by Financial Services (Banking Reform) Act 2013 (c. 33), s. **59(1)-(5)**, 148(5); S.I. 2014/823, art.

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- C6 Pt. 4 modified by 1991 c. 56, s. 31(4) (as amended (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 84(5)(d)** (with art. 3))
- C7 Pt. 4 modified by 1989 c. 29, s. 43(2B) (as amended (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 65(4)(d)** (with art. 3))
- C8 Pt. 4 modified by 1986 c. 44, s. 36A (as amended (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 50(4)(d)** (with art. 3))
- C9 Pt. 4 modified by 1993 c. 43, s. 67(4)(d) (as amended (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 105(4)(d)** (with art. 3))
- C10 Ss. 35, 36, 47, 63, 134 and 141 extended (20.6.2003) by 1977 c. 37, s. 50A(6) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 8(2)**); S.I. 2003/1397 {art. 2(1)}, Sch. (with art. 8)

135 Variation of market investigation references **U.K.**

- (1) The [^{F13}CMA] or (as the case may be) the appropriate Minister may at any time vary a market investigation reference made [^{F14}by it under section 131 or (as the case may be) by the appropriate Minister under section 132].
- (2) The Office of Fair Trading^{F15}... appropriate Minister shall consult the [^{F16}CMA] before varying any such reference [^{F17}made by him].
- (3) Subsection (2) shall not apply if the [^{F18}CMA] has requested the variation concerned.
- ^{F19}(4)

Textual Amendments

- F13 Word in s. 135(1) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 168(2)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F14 Word in s. 135(1) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 10 para. 4**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F15 Words in s. 135(2) omitted (1.4.2014) by virtue of Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 168(3)(a)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F16 Word in s. 135(2) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 168(3)(b)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F17 Words in s. 135(2) inserted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 168(3)(c)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F18 Word in s. 135(3) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 168(4)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F19 S. 135(4) omitted (1.4.2014) by virtue of Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 12 para. 11**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

136 Investigations and reports on market investigation references **U.K.**

- (1) The [^{F20}CMA] shall prepare and publish a report on a market investigation reference within the period permitted by section 137.
- (2) The report shall, in particular, contain—

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- (a) the decisions of the [F20CMA] on the questions which it is required to answer by virtue of section 134;
 - (b) its reasons for its decisions; and
 - (c) such information as the [F20CMA] considers appropriate for facilitating a proper understanding of those questions and of its reasons for its decisions.
- (3) The [F20CMA] shall carry out such investigations as it considers appropriate for the purposes of preparing a report under this section.
- [F21(4) Where a reference has been made by the appropriate Minister under section 132 the CMA shall, at the same time as the report under this section is published, give it to the appropriate Minister.]
- (5) Where a reference has been made by the [F22CMA] under section 131 or by the appropriate Minister under section 132 in circumstances in which a reference could have been made by a relevant sectoral regulator under section 131 as it has effect by virtue of a relevant sectoral enactment, the [F23CMA] shall, at the same time as the report under this section is published, give a copy of it to the relevant sectoral regulator concerned.
- [F24(6)]
- (7) In this Part “relevant sectoral enactment” means—
- (a) [F25;in relation to the Director General of Telecommunications, section 50 of the Telecommunications Act 1984 (c. 12);]
 - (b) in relation to the Gas and Electricity Markets Authority, section 36A of the Gas Act 1986 (c. 44) [F26, section 43 of the Electricity Act 1989 or (as the case may be) section 36 of the Energy Act 2023;]
 - (c) in relation to [F27the Water Services Regulation Authority] , section 31 of the Water Industry Act 1991 (c. 56);
 - (d) [F28]
 - (e) in relation to the [F29Office of Rail and Road], section 67 of the Railways Act 1993 (c. 43);
 - [F30(ea) in relation to the Financial Conduct Authority, section 234I of the Financial Services and Markets Act 2000;]
 - (f) [F31]
 - (g) in relation to the Civil Aviation Authority, section 86 of the Transport Act 2000 (c. 38). [F32 or section 60 of the Civil Aviation Act 2012;]
 - [F33(h) in relation to the Office of Communications, sections 370 and 371 of the Communications Act 2003.]
 - [F34(h) in relation to the Northern Ireland Authority for Utility Regulation, Article 46 of the Electricity (Northern Ireland) Order 1992, Article 23 of the Gas (Northern Ireland) Order 1996 or Article 29 of the Water and Sewerage Services (Northern Ireland) Order 2006.]
 - [F35(i)]
 - [F36(j) in relation to the Payment Systems Regulator, section 59 of the Financial Services (Banking Reform) Act 2013.]
- (8) In this Part “relevant sectoral regulator” means [F37the Director General of Telecommunications] , the Gas and Electricity Markets Authority, [F27the Water Services Regulation Authority], [F38], the [F29Office of Rail and Road], [F39the Financial Conduct Authority], [F40], the Civil Aviation Authority or the Office of

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[^{F41}Communications,] the Northern Ireland Authority for Utility Regulation ^{F42}[^{F43}... or the Payment Systems Regulator.]

(9) The Secretary of State may by order modify subsection (7) or (8).

[^{F44}(10) In this section “the Payment Systems Regulator” means the body established under section 40 of the Financial Services (Banking Reform) Act 2013.]

Textual Amendments

- F20** Word in s. 136(1)-(3) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (2013 c. 24), s. 26(3), **Sch. 5 para. 169(2)** (with s. 28); S.I. 2014/416, **art. 2(1)(d) Sch.**
- F21** S. 136(4) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 169(3)** (with s. 28); S.I. 2014/416, **art. 2(1)(d)** (with Sch.)
- F22** Word in s. 136(5) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 169(4)(a)** (with s. 28); S.I. 2014/416, **art. 2(1)(d)** (with Sch.)
- F23** Word in s. 136(5) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 169(4)(b)** (with s. 28); S.I. 2014/416, **art. 2(1)(d)** (with Sch.)
- F24** S. 136(6) omitted (1.4.2014) by virtue of Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 169(5)** (with s. 28); S.I. 2014/416, **art. 2(1)(d)** (with Sch.)
- F25** S. 136(7)(a) repealed (25.7.2003 for certain purposes and 29.12.2003 for certain further purposes) by Communications Act 2003 (c. 21), ss. 406(1), 411(2)(3), **Sch. 19(1)** (with transitional provisions in Sch. 18 and with Sch. 19 Note 1); S.I. 2003/1900, arts. 1(2), **2(1)**, 3(1), Sch. 1 (with arts. 3-6 (as amended (8.12.2003) by S.I. 2003/3142, **art. 1(3)**)); S.I. 2003/3142, **art. 3(1)(2)** (with art. 11)
- F26** Words in s. 136(7)(b) substituted (26.12.2023) by Energy Act 2023 (c. 52), s. 334(3)(a), **Sch. 5 para. 7**
- F27** Words in s. 136(7)(c)(8) substituted (1.4.2006) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 7 para. 36(2)**; S.I. 2005/2714, **art. 4(f)**
- F28** S. 136(7)(d) repealed (N.I.) (1.4.2007) by The Water and Sewerage Services (Northern Ireland) Order 2006 (S.I. 2006/3336 (N.I. 21)), arts. 1(2)(3), 308, **Sch. 13** (arts. 8(9), 121(3), 307); S.R. 2007/194, **art. 2(2)**, Sch. 1 Pt II (subject to art. 3, Sch. 2)
- F29** Words in s. 136(7)(e)(8) substituted (16.10.2015) by The Office of Rail Regulation (Change of Name) Regulations 2015 (S.I. 2015/1682), reg. 1(2), **Sch. para. 4(q)(i)**
- F30** S. 136(7)(ea) inserted (1.4.2015) by Financial Services (Banking Reform) Act 2013 (c. 33), s. 148(5), **Sch. 8 para. 10(2)**; S.I. 2014/2458, **art. 3(b)(v)**
- F31** S. 136(7)(f) repealed (N.I.) (1.4.2007) by The Water and Sewerage Services (Northern Ireland) Order 2006 (S.I. 2006/3336 (N.I. 21)), arts. 1(2)(3), 308, **Sch. 13** (arts. 8(9), 121(3), 307); S.R. 2007/194, **art. 2(2)**, Sch. 1 Pt II (subject to art. 3, Sch. 2)
- F32** Words in s. 136(7)(g) inserted (6.4.2013) by Civil Aviation Act 2012 (c. 19), **ss. 61(11)**, 110(1) (with s. 77(1)-(3), Sch. 10 paras. 12, 17); S.I. 2013/589, **art. 2(1)-(3)**
- F33** S. 136(7)(h) inserted (25.7.2003 for certain purposes and 29.12.2003 for certain further purposes) by Communications Act 2003 (c. 21), ss. 406(1), 411(2)(3), **Sch. 17 para. 174(4)(a)** (with transitional provisions in Sch. 18); S.I. 2003/1900, arts. 1(2), **2(1)**, 3(1), Sch. 1 (with arts. 3-6 (as amended (8.12.2003) by S.I. 2003/3142, **art. 1(3)**)); S.I. 2003/3142, **art. 3(1)(2)** (with art. 11)
- F34** S. 136: para. (h) added "at the end" of s. 136(7) (N.I.) (1.4.2007) by virtue of The Water and Sewerage Services (Northern Ireland) Order 2006 (S.I. 2006/3336 (N.I. 21)), arts. 1(2)(3), 408, **Sch. 12 para. 46(1)** (with arts. 8(9), 121(3), 307); S.R. 2007/194, **art. 2(2)**, Sch. 1 Pt II (subject to art. 3, Sch. 2)
- F35** S. 136(7)(i) omitted (1.7.2022) by virtue of Health and Care Act 2022 (c. 31), s. 186(6), **Sch. 12 para. 3(2)**; S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)
- F36** S. 136(7)(j) inserted (1.4.2014) by Financial Services (Banking Reform) Act 2013 (c. 33), **ss. 67(3)(a)**, 148(5); S.I. 2014/823, **art. 2(g)**
- F37** S. 136(8): words "the Director of Telecommunications" are repealed (25.7.2003 for certain purposes and 29.12.2003 for certain further purposes) by virtue of Communications Act 2003 (c. 21), ss. 406(1), 411(2)(3), **Sch. 19(1)** (with transitional provisions in Sch. 18 and with Sch. 19 Note 1); S.I. 2003/1900,

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- arts. 1(2), **2(1)**, 3(1), Sch. 1 (with arts. 3-6 (as amended (8.12.2003) by S.I. 2003/3142, art. 1(3))); S.I. 2003/3142, **art. 3(1)(2)** (with art. 11)
- F38** Words in s. 136(8) repealed (N.I.) (1.4.2007) by [The Water and Sewerage Services \(Northern Ireland\) Order 2006 \(S.I. 2006/3336 \(N.I. 21\)\)](#), arts. 1(2)(3), 308, **Sch. 13** (arts. 8(9), 121(3), 307); S.R. 2007/194, **art. 2(2)**, Sch. 1 Pt. II (subject to art. 3, Sch. 2)
- F39** Words in s. 136(8) inserted (1.4.2015) by [Financial Services \(Banking Reform\) Act 2013 \(c. 33\)](#), s. 148(5), **Sch. 8 para. 10(3)**; S.I. 2014/2458, art. 3(b)(v)
- F40** Words in s. 136(8) repealed (N.I.) (1.4.1007) by [The Water and Sewerage Services \(Northern Ireland\) Order 2006 \(S.I. 2006/3336 \(N.I. 21\)\)](#), arts. 1(2)(3), 308, **Sch. 13** (arts. 8(9), 121(3), 307); S.R. 2007/194, **art. 2(2)**, Sch. 1 Pt. II (subject to art. 3, Sch. 2)
- F41** Words in s. 136(8) substituted (1.4.2013) by [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 74(6)(b)**, 306(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)
- F42** Word in s. 136(8) omitted (1.7.2022) by virtue of [Health and Care Act 2022 \(c. 31\)](#), s. 186(6), **Sch. 12 para. 3(3)**; S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)
- F43** Words in s. 136(8) substituted (1.4.2014) by [Financial Services \(Banking Reform\) Act 2013 \(c. 33\)](#), **ss. 67(3)(b)**, 148(5); S.I. 2014/823, art. 2(g)
- F44** S. 136(10) inserted (1.4.2014) by [Financial Services \(Banking Reform\) Act 2013 \(c. 33\)](#), **ss. 67(3)(c)**, 148(5); S.I. 2014/823, art. 2(g)

137 Time-limits for market investigations and reports U.K.

- (1) The [^{F45}CMA] shall prepare and publish its report under section 136 within the period of [^{F46}18 months] beginning with the date of the market investigation reference concerned.
- (2) Subsection (1) is subject to section 151(3) and (5).
- [^{F47}(2A) The CMA may extend, by no more than 6 months, the period within which its report under section 136 is to be prepared and published if it considers that there are special reasons for doing so.
- (2B) An extension under subsection (2A) shall come into force when published under section 172.
- (2C) No more than one extension is possible under subsection (2A).]
- [^{F48}(3) The Secretary of State may by order amend this section so as to alter one or more of the following periods—
- (a) the period of 18 months mentioned in subsection (1) or any period for the time being there mentioned in substitution for that period;
 - (b) the period of 6 months mentioned in subsection (2A) or any period for the time being there mentioned in substitution for that period.]

[^{F49}(4) But no alteration shall be made by virtue of subsection (3) which results in—

 - (a) the period for the time being mentioned in subsection (1) exceeding 18 months; or
 - (b) the period for the time being mentioned in subsection (2A) exceeding 6 months.]

(5) An order under subsection (3) shall not affect any period of time within which the [^{F50}CMA] is under a duty to prepare and publish its report under section 136 in relation to a market investigation reference if the [^{F50}CMA] is already under that duty in relation to that reference when the order is made.

Changes to legislation: There are currently no known outstanding effects for the Enterprise Act 2002, Cross Heading: Determination of references. (See end of Document for details)

- (6) Before making an order under subsection (3) the Secretary of State shall consult the [F51CMA] and such other persons as he considers appropriate.
- (7) References in this Part to the date of a market investigation reference shall be construed as references to the date specified in the reference as the date on which it is made.

Textual Amendments

- F45** Word in s. 137(1) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 170** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F46** Words in s. 137(1) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 12 para. 3(2)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F47** S. 137(2A)-(2C) inserted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 12 para. 3(3)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F48** S. 137(3) substituted (25.4.2013 for specified purposes, 1.4.2014 in so far as not already in force) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(1)(i)(3), **Sch. 12 para. 3(4)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F49** S. 137(4) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 12 para. 3(5)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F50** Word in s. 137(5) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 170** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F51** Word in s. 137(6) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 170** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)

138 Duty to remedy adverse effects **U.K.**

- (1) Subsection (2) applies where a report of the [F52CMA] has been prepared and published under section 136 within the period permitted by section 137 and contains the decision that there is one or more than one adverse effect on competition.
- (2) The [F52CMA] shall, [F53within the period permitted by section 138A,] in relation to each adverse effect on competition, take such action under section 159 or 161 as it considers to be reasonable and practicable—
 - (a) to remedy, mitigate or prevent the adverse effect on competition concerned; and
 - (b) to remedy, mitigate or prevent any detrimental effects on customers so far as they have resulted from, or may be expected to result from, the adverse effect on competition.
- (3) The decisions of the [F52CMA] under subsection (2) shall be consistent with its decisions as included in its report by virtue of section 134(4) unless there has been a material change of circumstances since the preparation of the report or the [F52CMA] otherwise has a special reason for deciding differently.
- (4) In making a decision under subsection (2), the [F52CMA] shall, in particular, have regard to the need to achieve as comprehensive a solution as is reasonable and practicable to the adverse effect on competition concerned and any detrimental effects on customers so far as resulting from the adverse effect on competition.
- (5) In making a decision under subsection (2), the [F52CMA] may, in particular, have regard to the effect of any action on any relevant customer benefits of the feature or features of the market [F54or markets] concerned.

Changes to legislation: There are currently no known outstanding effects for the Enterprise Act 2002, Cross Heading: Determination of references. (See end of Document for details)

- (6) The [^{F52}CMA] shall take no action under subsection (2) to remedy, mitigate or prevent any detrimental effect on customers so far as it may be expected to result from the adverse effect on competition concerned if—
- (a) no detrimental effect on customers has resulted from the adverse effect on competition; and
 - (b) the adverse effect on competition is not being remedied, mitigated or prevented.

Textual Amendments

- F52** Word in s. 138(1)-(6) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(2013 c. 24\)](#), s. 26(3), [Sch. 5 para. 171](#) (with s. 28); S.I. 2014/416, [art. 2\(1\)\(d\) Sch.](#)
- F53** Words in s. 138(2) inserted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 12 para. 4](#); S.I. 2014/416, [art. 2\(1\)\(d\)](#) (with Sch.)
- F54** Words in s. 138(5) inserted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 9 para. 4](#); S.I. 2014/416, [art. 2\(1\)\(d\)](#) (with Sch.)

[^{F55}138A Time-limits for discharging duty under section 138 **U.K.**

- (1) The CMA shall discharge its duty under section 138(2) within the period of 6 months beginning with the date on which it publishes the report concerned under section 136.
- (2) The CMA may extend, by no more than 4 months, the period within which its duty under section 138(2) is required to be discharged if it considers that there are special reasons for doing so.
- (3) The CMA may extend the period within which its duty under section 138(2) is required to be discharged if it considers that—
 - (a) a person has failed (whether with or without reasonable excuse) to comply with any requirement of a notice under section 174 which was given in relation to the reference; and
 - (b) the failure is preventing the CMA from properly discharging its duty under section 138(2).
- (4) An extension under subsection (2) or (3) shall come into force when published under section 172.
- (5) An extension under subsection (3) continues in force until—
 - (a) the person concerned provides the information or documents to the satisfaction of the CMA or (as the case may be) appears as a witness in accordance with the requirements of the CMA; or
 - (b) the CMA publishes its decision to cancel the extension.

Textual Amendments

- F55** Ss. 138A, 138B inserted (25.4.2013 for specified purposes, 1.4.2014 in so far as not already in force) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(1)(i)(3), [Sch. 12 para. 5](#); S.I. 2014/416, [art. 2\(1\)\(d\)](#) (with Sch.)

Changes to legislation: There are currently no known outstanding effects for the Enterprise Act 2002, Cross Heading: Determination of references. (See end of Document for details)

138B Section 138A: supplementary **U.K.**

- (1) A period extended under section 138A(2) may also be extended under section 138A(3), and a period extended under section 138A(3) may also be extended under section 138A(2).
- (2) No more than one extension is possible under section 138A(2).
- (3) Where a period is extended or further extended under section 138A(2) or (3), the period as extended or (as the case may be) further extended shall, subject to subsections (4) and (5), be calculated by taking the period being extended and adding to it the period of the extension (whether or not those periods overlap in time).
- (4) Subsection (5) applies where—
 - (a) the period within which the CMA shall discharge its duty under section 138(2) is further extended;
 - (b) the further extension and at least one previous extension is made under section 138A(3); and
 - (c) the same days or fractions of days are included in or comprise the further extension and are included in or comprise at least one such previous extension.
- (5) In calculating the period of the further extension, any days or fractions of days of the kind mentioned in subsection (4)(c) shall be disregarded.
- (6) The Secretary of State may by order amend section 138A so as to alter one or more of the following periods—
 - (a) the period of 6 months mentioned in subsection (1) or any period for the time being there mentioned in substitution for that period;
 - (b) the period of 4 months mentioned in subsection (2) or any period for the time being there mentioned in substitution for that period.
- (7) But no alteration shall be made by virtue of subsection (6) which results in—
 - (a) the period for the time being mentioned in section 138A(1) exceeding 6 months; or
 - (b) the period for the time being mentioned in section 138A(2) exceeding 4 months.
- (8) Before making an order under subsection (6) the Secretary of State shall consult the CMA and such other persons as the Secretary of State considers appropriate.]

Textual Amendments

F55 Ss. 138A, 138B inserted (25.4.2013 for specified purposes, 1.4.2014 in so far as not already in force) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(1)(i)(3), [Sch. 12 para. 5](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)

Changes to legislation:

There are currently no known outstanding effects for the Enterprise Act 2002, Cross Heading:
Determination of references.