



# Enterprise Act 2002

## 2002 CHAPTER 40

### <sup>F1</sup>PART 3

#### MERGERS

#### CHAPTER 1

##### DUTY TO MAKE REFERENCES

##### *Duty to make references: completed mergers*

### 23 Relevant merger situations

- [<sup>F1</sup>(1) For the purposes of this Part, a relevant merger situation has been created if—
- (a) two or more enterprises have ceased to be distinct enterprises at a time or in circumstances falling within section 24; and
  - (b) the value of the turnover in the United Kingdom of the enterprise being taken over exceeds £70 million.

- (2) For the purposes of this Part, a relevant merger situation has also been created if—
- (a) two or more enterprises have ceased to be distinct enterprises at a time or in circumstances falling within section 24; and
  - (b) as a result, one or both of the conditions mentioned in subsections (3) and (4) below prevails or prevails to a greater extent.]

<sup>F2</sup>(2A) .....

- (3) The condition mentioned in this subsection is that, in relation to the supply of goods of any description, at least one-quarter of all the goods of that description which are supplied in the United Kingdom, or in a substantial part of the United Kingdom—
- (a) are supplied by one and the same person or are supplied to one and the same person; or

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*Changes to legislation: There are currently no known outstanding effects for the Enterprise Act 2002, Section 23. (See end of Document for details)*

(b) are supplied by the persons by whom the enterprises concerned are carried on, or are supplied to those persons.

(4) The condition mentioned in this subsection is that, in relation to the supply of services of any description, the supply of services of that description in the United Kingdom, or in a substantial part of the United Kingdom, is to the extent of at least one-quarter—

- (a) supply by one and the same person, or supply for one and the same person; or
- (b) supply by the persons by whom the enterprises concerned are carried on, or supply for those persons.

<sup>F3</sup>(4A) .....

<sup>F4</sup>(4B) .....

(5) For the purpose of deciding whether the proportion of one-quarter mentioned in subsection [<sup>F5</sup>(3) or (4)] is fulfilled with respect to goods or (as the case may be) services of any description, the decision-making authority shall apply such criterion (whether value, cost, price, quantity, capacity, number of workers employed or some other criterion, of whatever nature), or such combination of criteria, as the decision-making authority considers appropriate.

(6) References in subsections [<sup>F6</sup>(3) and (4)] to the supply of goods or (as the case may be) services shall, in relation to goods or services of any description which are the subject of different forms of supply, be construed in whichever of the following ways the decision-making authority considers appropriate—

- (a) as references to any of those forms of supply taken separately;
- (b) as references to all those forms of supply taken together; or
- (c) as references to any of those forms of supply taken in groups.

(7) For the purposes of subsection (6) the decision-making authority may treat goods or services as being the subject of different forms of supply whenever—

- (a) the transactions concerned differ as to their nature, their parties, their terms or their surrounding circumstances; and
- (b) the difference is one which, in the opinion of the decision-making authority, ought for the purposes of that subsection to be treated as a material difference.

(8) The criteria for deciding when goods or services can be treated, for the purposes of this section, as goods or services of a separate description shall be such as in any particular case the decision-making authority considers appropriate in the circumstances of that case.

(9) For the purposes of this Chapter, the question whether a relevant merger situation has been created shall be determined as at—

- (a) in the case of a reference which is treated as having been made under section 22 by virtue of section 37(2), such time as the [<sup>F7</sup>CMA] may determine; and
- (b) in any other case, immediately before the time when the reference has been, or is to be, made.

<sup>F8</sup>(10) .....

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### Textual Amendments

- F1** S. 23(1)(2) substituted (4.1.2022) by National Security and Investment Act 2021 (c. 25), s. 66(3), **Sch. 2 para. 2(2)** (with s. 62); S.I. 2021/1465, regs. 2, 3 (with regs. 4, 5)
- F2** S. 23(2A) omitted (4.1.2022) by virtue of National Security and Investment Act 2021 (c. 25), s. 66(3), **Sch. 2 para. 2(3)** (with s. 62); S.I. 2021/1465, regs. 2, 3 (with regs. 4, 5)
- F3** S. 23(4A) omitted (4.1.2022) by virtue of National Security and Investment Act 2021 (c. 25), s. 66(3), **Sch. 2 para. 2(3)** (with s. 62); S.I. 2021/1465, regs. 2, 3 (with regs. 4, 5)
- F4** S. 23(4B) omitted (4.1.2022) by virtue of National Security and Investment Act 2021 (c. 25), s. 66(3), **Sch. 2 para. 2(3)** (with s. 62); S.I. 2021/1465, regs. 2, 3 (with regs. 4, 5)
- F5** Words in s. 23(5) substituted (4.1.2022) by National Security and Investment Act 2021 (c. 25), s. 66(3), **Sch. 2 para. 2(4)** (with s. 62); S.I. 2021/1465, regs. 2, 3 (with regs. 4, 5)
- F6** Words in s. 23(6) substituted (4.1.2022) by National Security and Investment Act 2021 (c. 25), s. 66(3), **Sch. 2 para. 2(5)** (with s. 62); S.I. 2021/1465, regs. 2, 3 (with regs. 4, 5)
- F7** Word in s. 23(9)(a) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 68** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F8** S. 23(10) omitted (4.1.2022) by virtue of National Security and Investment Act 2021 (c. 25), s. 66(3), **Sch. 2 para. 2(6)** (with s. 62); S.I. 2021/1465, regs. 2, 3 (with regs. 4, 5)

### Modifications etc. (not altering text)

- C1** Pt. 3 modified (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 4 para. 56**; S.I. 2014/416, art. 2(1)(c) (with Sch.)
- C2** Pt. 3 modified (31.12.2020) by The Competition (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/93), reg. 1(1), **Sch. 4 paras. 28-33**; 2020 c. 1, Sch. 5 para. 1(1)
- C3** Ss. 23-32 applied (with modifications) (20.6.2003) by The Enterprise Act 2002 (Protection of Legitimate Interests) Order 2003 (S.I. 2003/1592), **art. 2**, Sch. 1
- C4** Ss. 23-32 amendment to earlier affecting provision S.I. 2003/1592, Sch. 1 (1.4.2014) by The Enterprise Act 2002 (Protection of Legitimate Interests) (Amendment) Order 2014 (S.I. 2014/891), arts. 1, **16** (with arts. 20-23)
- C5** S. 23(9)(ab) modified by S.I. 2003/1592, art. 5A(c) (as inserted (1.4.2014) by The Enterprise Act 2002 (Protection of Legitimate Interests) (Amendment) Order 2014 (S.I. 2014/891), arts. 1, **7** (with arts. 20-23))

**Status:**

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**Changes to legislation:**

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