



Enterprise Act 2002

2002 CHAPTER 40

PART 3

MERGERS

CHAPTER 3

OTHER SPECIAL CASES

European mergers

68 Scheme for protecting legitimate interests

- (1) The Secretary of State may by order provide for the taking of action, where a European intervention notice has been given, to remedy, mitigate or prevent effects adverse to the public interest which have resulted from, or may be expected to result from, the creation of a European relevant merger situation.
- (2) In subsection (1) “European relevant merger situation” means a relevant merger situation—
 - (a) which has been created or will be created if arrangements which are in progress or in contemplation are carried into effect;
 - (b) by virtue of which a concentration with a Community dimension (within the meaning of the [^{F1}EC Merger Regulation]), or a part of such a concentration, has arisen or will arise; and
 - (c) in relation to which a reference ^{F2}. . . was prevented from being made under [^{F3}section 22 or 33 (whether or not there would otherwise have been a duty to make such a reference)] by virtue of [^{F4}EU] law or anything done under or in accordance with it.
- (3) Provision made under subsection (1) shall include provision ensuring that considerations which are not public interest considerations mentioned in the European

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Changes to legislation: There are currently no known outstanding effects for the Enterprise Act 2002, Section 68. (See end of Document for details)

intervention notice concerned may not be taken into account in determining whether anything operates, or may be expected to operate, against the public interest.

- (4) Provision made under subsection (1) shall include provision—
- (a) applying with modifications sections 23 [^{F5}to 30] for the purposes of deciding for the purposes of this section whether a relevant merger situation has been created or whether arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation;
 - (b) requiring the [^{F6}CMA] to make a report to the Secretary of State before a reference is made;
 - (c) enabling the Secretary of State to make a reference [^{F7}to the chair of the CMA for the constitution of a group under Schedule 4 to the Enterprise and Regulatory Reform Act 2013];
 - (d) requiring [^{F8}the CMA, acting through a group so constituted,] to investigate and report to the Secretary of State on such a reference;
 - (e) enabling the taking of interim and final enforcement action.
- (5) An order under this section may include provision (including provision for the creation of offences and penalties, the payment of fees and the delegation of functions) corresponding to any provision made in, or in connection with, this Part in relation to intervention notices or special intervention notices and the cases to which they relate.
- (6) In this section “European intervention notice” has the same meaning as in section 67.

Textual Amendments

- F1** Words in s. 68(2)(b) substituted (1.5.2004) by [The EC Merger Control \(Consequential Amendments\) Regulations 2004 \(S.I. 2004/1079\)](#), reg. 2, **Sch. para. 2(21)**
- F2** Words in s. 68(2)(c) repealed (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), ss. 389(1), 406(7), 411(2)(3), **Sch. 16 para. 17(a)**, **Sch. 19(1)** (with transitional provisions in **Sch. 18** and with **Sch. 19** Note 1); S.I. 2003/3142, **art. 3(1)**, **Sch. 1** (subject to arts. 3(3), 11)
- F3** Words in s. 68(2)(c) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), ss. 389(1), 411(2)(3), **Sch. 16 para. 17(b)** (with transitional provisions in **Sch. 18**); S.I. 2003/3142, **art. 3(1)**, **Sch. 1** (subject to arts. 3(3), 11)
- F4** Word in Act substituted (22.4.2011) by [The Treaty of Lisbon \(Changes in Terminology\) Order 2011 \(S.I. 2011/1043\)](#), arts. 2, 3, 6 (with art. 3(2)(3), 4(2), 6(4)(5))
- F5** Words in s. 68(4)(a) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), **Sch. 15 para. 29**; S.I. 2014/416, art. 2(1)(f) (with **Sch.**)
- F6** Word in s. 68(4)(b) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), **Sch. 5 para. 111(a)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with **Sch.**)
- F7** Words in s. 68(4)(c) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), **Sch. 5 para. 111(b)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with **Sch.**)
- F8** Words in s. 68(4)(d) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), **Sch. 5 para. 111(c)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with **Sch.**)

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