

ENTERPRISE AND REGULATORY REFORM ACT 2013

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 3: the Competition and Markets Authority and Part 4: Competition Reform

The competition framework

143. The legislative framework for the UK competition regime is set out, principally, in the Competition Act 1998 (“CA 1998”) and the Enterprise Act 2002 (“EA 2002”). The main elements of the current statutory competition functions which are to be reformed by Part 4 of this Act are:
- Merger control: powers and duties to identify and protect or mitigate against anti-competitive consequences of mergers or acquisitions;
 - Market studies and market investigations: powers and duties to examine markets which may not be working well and to address adverse features of markets; and
 - Anti-trust enforcement: powers to enforce against undertakings legal prohibitions on anti-competitive business agreements, including cartels, and the abuse of a dominant market position. There is also a specific criminal cartel offence for individuals who engage in certain forms of price-fixing and other forms of ‘hard core’ cartel activity.
144. These functions are currently carried out by the UK’s main competition institutions as follows:
- the OFT is responsible in particular for initial investigation of merger and markets cases (referred to as “Phase 1” in these explanatory notes), including in appropriate cases agreeing voluntary undertakings with parties to address any anti-competitive effects; for investigating and deciding on infringements of anti-trust prohibitions; and for prosecuting the criminal cartel offence. These functions will be transferred to the CMA;
 - the CC is responsible in particular for in-depth investigation of merger and market cases referred to it by other relevant competition authorities and, in appropriate cases, remedying any anti-competitive effects (referred to as “Phase 2” in these explanatory notes). The CC also hears appeals against licence and energy code modifications and price determinations in certain regulated sectors. These functions will be transferred to the CMA;
 - regulators for sectors such as energy, water and telecommunications, have concurrent powers in relation to the anti-trust prohibitions and to refer markets to the CC. These concurrent powers are retained by the sector regulators but the concurrency arrangements are modified by Part 4, Chapter 5 of this Act; and

*These notes refer to the Enterprise and Regulatory Reform Act
2013 (c.24) which received Royal Assent on 25 April 2013*

- the Competition Appeals Tribunal (the “CAT”), a specialised judicial body, hears appeals in merger, markets and anti-trust cases and decides certain sectoral cases involving competition or economic regulatory issues. The functions and powers of the CAT are not altered by this Act except for the changes being made by sections 41 and 48 which would enable the CAT to issue warrants in relation to investigations of anti-trust breaches and the cartel offence.
145. In addition, the EA 2002 confers on the Secretary of State the ability to intervene in a merger or market case on public interest grounds. The powers of the Secretary of State to intervene in markets cases are altered by section 35.
146. The OFT and the CC have certain other ancillary functions which will, in general, be transferred to the CMA by secondary legislation. The OFT’s current duty under the Financial Services and Markets Act 2000, to keep under review the regulating provisions and practices of the Financial Services Authority, is modernised by the Financial Services Act 2012.