

SCHEDULES

SCHEDULE 6

Section 129

MERGERS OF ENERGY NETWORK ENTERPRISES

- 1 Part 3 of EA 2002 (mergers) is amended as follows.
- 2 (1) Section 22 (duty to make references in relation to completed mergers) is amended
as follows.
- (2) In subsection (3)(c) omit “or 68B or 68C”.
- (3) In subsection (7)(a) omit “, 68B or 68C”.
- 3 In section 33(3) (circumstances in which references in relation to anticipated
mergers may not be made), in paragraph (c) omit “or 68B or 68C”.
- 4 In section 68B (further duty to make references in relation to completed mergers),
for subsection (3) substitute—
- “(3) The CMA may not make a reference under this section—
- (a) in any circumstances mentioned in section 22(3)(za) to (b) or (d), or
- (b) if the relevant merger situation concerned is being, or has been, dealt
with in connection with a reference made under section 68C.”
- 5 In section 68C (further duty to make references in relation to anticipated mergers),
for subsection (3) substitute—
- “(3) The CMA may not make a reference under this section—
- (a) in any circumstances mentioned in section 33(3)(za) to (b) or (d), or
- (b) if the arrangements concerned are being, or have been, dealt with in
connection with a reference under section 68B.”
- 6 (1) In section 72 (initial enforcement orders: completed or anticipated mergers),
subsection (6) is amended as follows.
- (2) For the words before paragraph (a) substitute “So far as made in relation to a
reference under section 22, 33, 68B or 68C, an order under this section which has
not previously ceased to be in force and which has not been adopted under paragraph
2 of Schedule 7 ceases to be in force in relation to the reference concerned—”.
- (3) In paragraph (a), in the words before sub-paragraph (i) omit “under section 22, 33,
68B or 68C”.
- 7 (1) Section 73 (undertakings in lieu of references under section 22, 33, 68B or 68C) is
amended as follows.
- (2) For subsection (3B) substitute—
- “(3B) The CMA may, instead of making such a reference and for the purpose of
remedying, mitigating or preventing—

Status: This is the original version (as it was originally enacted).

- (a) the prejudice to the ability of the Gas and Electricity Markets Authority described in section 68B(1) or 68C(1), or
 - (b) any adverse effect which has or may have resulted from it or may be expected to result from it,
- accept from such of the parties concerned as it considers appropriate undertakings to take such action as it considers appropriate.”
- (3) In subsection (3C), after “to the prejudice” insert “and any adverse effects resulting from it”.
- 8 In section 73A (time-limits for consideration of undertakings), in subsection (2)(a), after “73(2)” insert “or (3B)”.
- 9 (1) Section 74 (effect of undertakings under section 73) is amended as follows.
- (2) In subsection (1)—
- (a) in the words before paragraph (a), for “, 45, 68B or 68C” substitute “or 45”;
 - (b) in paragraph (a), for “section 73” substitute “section 73(2)”.
- (3) After subsection (1) insert—
- “(1A) The relevant authority may not make a reference under section 45, 68B or 68C in relation to the creation of a relevant merger situation if—
- (a) the CMA has accepted an undertaking or group of undertakings under section 73(3B), and
 - (b) the relevant merger situation is the situation by reference to which the undertaking or group of undertakings was accepted.”
- (4) In subsection (2), for “Subsection (1) does not” substitute “Subsections (1) and (1A) do not”.
- 10 (1) Section 75 (order-making power where undertakings under section 73 not fulfilled etc) is amended as follows.
- (2) In subsection (1), in paragraph (a), for “section 73” substitute “section 73(2) or (3B)”.
- (3) In subsection (2), after “73(2)” insert “or (3B) (as the case may be)”.
- (4) For subsection (3) substitute—
- “(3A) In proceeding under subsection (2) for the purposes mentioned in section 73(2) or (3B), the CMA must, in particular, have regard to the need to achieve as comprehensive a solution as is reasonable and practicable to—
- (a) in relation to the purpose mentioned in section 73(2), the substantial lessening of competition mentioned in that subsection and any adverse effects resulting from it;
 - (b) in relation to the purpose mentioned in section 73(3B), the prejudice mentioned in that subsection and any adverse effects resulting from it.
- (3B) In proceeding under subsection (2) for the purposes mentioned in section 73(2) or (3B), the CMA may, in particular, have regard to the effect of any action on any relevant customer benefits in relation to the creation of the relevant merger situation concerned.”
- 11 (1) Section 79 (sections 77 and 78: further interpretative provisions) is amended as follows.

Status: This is the original version (as it was originally enacted).

- (2) In subsection (1), for paragraphs (c) to (e) substitute—
- “(c) the report of the CMA under that section contains the decision that—
 - (i) in relation to a reference under section 22 or 33, there is not an anti-competitive outcome, or
 - (ii) in relation to a reference under section 68B or 68C, there is not a prejudicial outcome;
 - (d) the report of the CMA under that section contains the decision that—
 - (i) in relation to a reference under section 22 or 33, there is an anti-competitive outcome, or
 - (ii) in relation to a reference under section 68B or 68C, there is a prejudicial outcome, andthe CMA has decided under section 41(2) neither to accept an undertaking under section 82 nor to make an order under section 84;
 - (e) the report of the CMA under that section contains the decision that—
 - (i) in relation to a reference under section 22 or 33, there is an anti-competitive outcome, or
 - (ii) in relation to a reference under section 68B or 68C, there is a prejudicial outcome, andthe CMA has decided under section 41(2) to accept an undertaking under section 82 or to make an order under section 84.”
- (3) After subsection (5) insert—
- “(5A) References in subsection (1) to a prejudicial outcome are to a prejudicial outcome within the meaning of section 35 or 36 as those sections have effect by virtue of paragraphs 6 and 7 of Schedule 5A.”
- 12 (1) Schedule 5A (energy network mergers affecting comparative regulation: modifications of Chapter 1 of Part 3) is amended as follows.
- (2) After paragraph 1 insert—
- “*Meaning of “the decision-making authority”*”
- 1A Section 22(7)(a) (meaning of “the decision-making authority”) has effect as if after “section 33” there were inserted “, 68B or 68C”.”
- (3) In paragraph 5 (time limits for decisions about references)—
- (a) for paragraph (b) substitute—
 - “(b) the reference to section 22(3) were to section 68B(3);”;
 - (b) for paragraph (d) substitute—
 - “(d) the reference to section 33(3) were to section 68C(3).”
- 13 (1) Schedule 16 to the Energy Act 2023 (mergers of completed energy network enterprises) is amended as follows.
- (2) Omit paragraphs 5 and 6 (amendments to sections 22 and 33 of EA 2002).
- (3) Omit paragraph 14(2) (amendment to section 74(1) of EA 2002).