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STATUTORY INSTRUMENTS

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**1990 No. 1715**

**MONOPOLIES AND MERGERS**

**The EEC Merger Control (Distinct  
Market Investigations) Regulations 1990**

*Made* - - - - *20th August 1990*  
*Laid before Parliament* *22nd August 1990*  
*Coming into force* - - *21st September 1990*

The Secretary of State being designated<sup>(1)</sup> for the purposes of section 2(2) of the European Communities Act 1972<sup>(2)</sup> in relation to measures relating to the control of concentrations between undertakings, in exercise of the powers conferred on him by the said section 2(2) hereby makes the following Regulations:

**1.—(1)** These Regulations may be cited as the EEC Merger Control (Distinct Market Investigations) Regulations 1990 and shall come into force on 21st September 1990.

(2) In these Regulations, “the Merger Control Regulation” means Council Regulation [<sup>F1</sup>(EC) No 139/2004] on the control of concentrations between undertakings, and expressions used in that Regulation shall bear the same meaning in these Regulations.

**Textual Amendments**

**F1** Words in [reg. 1\(2\)](#) substituted (1.5.2004) by [The EC Merger Control \(Consequential Amendments\) Regulations 2004 \(S.I. 2004/1079\)](#), [reg. 1](#), [Sch. para. 3\(2\)](#)

**Commencement Information**

**I1** [Reg. 1](#) in force at 21.9.1990, see [reg. 1\(1\)](#)

**2.** At any time after the Commission has transmitted to the competent authorities of the United Kingdom a copy of the notification to the Commission of a concentration with a Community dimension, the [<sup>F2</sup>Office of Fair Trading (“the OFT”)] may, for the purpose of furnishing information to the Commission under the second sentence of Article 19(2) of the Merger Control Regulation, and by notice in writing signed [<sup>F2</sup>on behalf of the OFT]—

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(1) S.I.1990/1304.  
(2) 1972 c. 68.

*Status: Point in time view as at 22/04/2011.*

*Changes to legislation: There are currently no known outstanding effects for the The EEC Merger Control (Distinct Market Investigations) Regulations 1990. (See end of Document for details)*

- (a) require any person to produce, at a time and place specified in the notice, to the [<sup>F3</sup>OFT] or to any person appointed by [<sup>F4</sup>the OFT] for the purpose, any documents which are specified or described in the notice and which are documents in his custody or under his control and relating to any matter relevant to the furnishing of information as aforesaid, or
- (b) require any person carrying on any business to furnish to the [<sup>F3</sup>OFT] such estimates, returns or other information as may be specified or described in the notice, and specify the time, the manner and the form in which such estimates, returns or information are to be furnished;

but no person shall be compelled by virtue of this regulation to produce any documents which he could not be compelled to produce in civil proceedings before the High Court or, in Scotland, the Court of Session or, in complying with any requirement for the furnishing of information, to give any information which he could not be compelled to give in evidence in such proceedings.

#### Textual Amendments

- F2** Words in reg. 2 substituted (20.6.2003) by [The Enterprise Act 2002 \(Consequential and Supplemental Provisions\) Order 2003 \(S.I. 2003/1398\)](#), art. 1, **Sch. para. 17(2)(a)**
- F3** Word in reg. 2(a)(b) substituted (20.6.2003) by [The Enterprise Act 2002 \(Consequential and Supplemental Provisions\) Order 2003 \(S.I. 2003/1398\)](#), art. 1, **Sch. para. 17(2)(b)**
- F4** Words in reg. 2(a) substituted (20.6.2003) by [The Enterprise Act 2002 \(Consequential and Supplemental Provisions\) Order 2003 \(S.I. 2003/1398\)](#), art. 1, **Sch. para. 17(2)(c)**

#### Commencement Information

- I2** [Reg. 2](#) in force at 21.9.1990, see [reg. 1\(1\)](#)

[<sup>F5</sup>3.—(1) The court may, on an application by the OFT, enquire into whether any person (“the defaulter”) has refused or otherwise failed, without reasonable excuse, to comply with a notice under regulation 2.

(2) An application under paragraph (1) shall include details of the possible failure which the OFT considers has occurred.

(3) In enquiring into a case under paragraph (1), the court shall hear any witness who may be produced against or on behalf of the defaulter and any statement which may be offered in defence.

(4) Paragraphs (5) and (6) apply where the court is satisfied, after hearing any witnesses and statements as mentioned in paragraph (3), that the defaulter has refused or otherwise failed, without reasonable excuse, to comply with a notice under regulation 2.

(5) The court may punish the defaulter as it would have been able to punish him had he been guilty of contempt of court but in punishing the defaulter the court shall not impose any penalty which could not be imposed on summary conviction for an offence created in exercise of the powers conferred by section 2(2) of the European Communities Act 1972.

(6) Where the defaulter is a body corporate or is a partnership constituted under the law of Scotland, the court may punish any director, officer or (as the case may be) partner of the defaulter as it would have been able to punish that director, officer or partner had he been guilty of contempt of court.

(7) In this regulation “the court”—

- (a) in relation to England and Wales or Northern Ireland, means the High Court, and
- (b) in relation to Scotland, means the Court of Session.]

**Textual Amendments**

**F5** Reg. 3 substituted (20.6.2003) by [The Enterprise Act 2002 \(Consequential and Supplemental Provisions\) Order 2003 \(S.I. 2003/1398\)](#), art. 1, **Sch. para. 17(3)**

[<sup>F6</sup>4.—(1) A person commits an offence if he intentionally alters, suppresses or destroys a document which he has been required to produce by a notice under regulation 2.

(2) A person who commits an offence under paragraph (1) shall be liable—

(a) on summary conviction, to a fine not exceeding the statutory maximum;

(b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.]

**Textual Amendments**

**F6** Reg. 4 substituted (20.6.2003) by [The Enterprise Act 2002 \(Consequential and Supplemental Provisions\) Order 2003 \(S.I. 2003/1398\)](#), art. 1, **Sch. para. 17(4)**

[<sup>F7</sup>5. Section 117 (false or misleading information) and Part 9 (information) of the Enterprise Act 2002 shall apply as if these Regulations were contained in Part 3 of that Act.]

**Textual Amendments**

**F7** Reg. 5 inserted (20.6.2003) by [The Enterprise Act 2002 \(Consequential and Supplemental Provisions\) Order 2003 \(S.I. 2003/1398\)](#), art. 1, **Sch. para. 17(5)**

*John Redwood*  
Parliamentary Under Secretary of State,  
Department of Trade and Industry

**Status:** Point in time view as at 22/04/2011.

**Changes to legislation:** There are currently no known outstanding effects for the The EEC Merger Control (Distinct Market Investigations) Regulations 1990. (See end of Document for details)

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations confer investigative powers (based on section 3(7) of the Competition Act 1980) upon the Director General of Fair Trading for the purpose of furnishing information to the European Commission under Council Regulation (EEC) No. 4064/89 (on the control of concentrations between undertakings) when a concentration with a Community dimension (as defined in that Regulation) may impede competition in a distinct market within the United Kingdom. The enforcement provisions of section 85(6) to (8) of the Fair Trading Act 1973 apply. Sections 93B and 133 of that Act also apply.

**Status:**

Point in time view as at 22/04/2011.

**Changes to legislation:**

There are currently no known outstanding effects for the The EEC Merger Control (Distinct Market Investigations) Regulations 1990.