
STATUTORY INSTRUMENTS

2003 No. 1370

**The Enterprise Act 2002 (Merger Fees and
Determination of Turnover) Order 2003**

PART 2

MERGER FEES

Matters in respect of which fees are payable

- 3.** A fee of the amount specified in Article 5 shall be payable in respect of—
- (a) the giving of a merger notice under section 96 of the Act;
 - (b) subject to article 4(1) and (2), the decision by the OFT in relation to a possible reference under section 22 or 33 of the Act that it is or may be the case that a relevant merger situation has been created or (as the case may be) that arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation;
 - (c) subject to article 4(1), the decision by the Secretary of State in relation to a possible reference under section 45 of the Act that it is or may be the case that a relevant merger situation has been created or (as the case may be) that arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation.

Circumstances in which certain fees are not payable

- 4.—(1)** A fee shall not be payable under article 3(b) or (c)—
- (a) where a fee has been paid under article 3(a) in respect of a merger notice given in relation to proposed arrangements and either—
 - (i) the merger reference or, as the case may be, the OFT's or Secretary of State's decision not to make a merger reference is made in relation to those arrangements; or
 - (ii) if the fee under article 3(a) became due within the previous six months, the result of carrying those arrangements into effect is the creation or possible creation of a relevant merger situation which is the subject of the merger reference or, as the case may be, the OFT's or the Secretary of State's decision not to make a merger reference;
 - (b) where the creation or possible creation of the relevant merger situation depends or would depend on the operation of section 26(3) or (4)(b) of the Act.
- (2) A fee shall not be payable under article 3(b) in relation to arrangements that are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation, where the OFT decides that the arrangements concerned are not sufficiently far advanced, or are not sufficiently likely to proceed, to justify the making of a reference to the Commission pursuant to section 33(2)(b) of the Act.

Amount of fees

5.—(1) The amount of the fee payable under article 3 shall be—

- (a) where the value of the turnover in the United Kingdom of the enterprise which has been taken over or (as the case may be) which it is proposed or contemplated should be taken over, does not exceed £20 million, £5,000;
- (b) where the value of such turnover exceeds £20 million but does not exceed £70 million, £10,000;
- (c) where the value of such turnover exceeds £70 million, £15,000.

(2) For the purposes of this article the value of the turnover in the United Kingdom of the enterprise which has been taken over or (as the case may be) which it is proposed or contemplated should be taken over, shall be determined by taking the total value of the turnover in the United Kingdom of the enterprises which cease to be distinct enterprises and deducting—

- (a) the turnover in the United Kingdom of any enterprise which continues to be carried on under the same ownership and control; or
- (b) if no enterprise continues to be carried on under the same ownership and control, the turnover in the United Kingdom which, of all the turnovers concerned, is the turnover of the highest value.

(3) For the purposes of this article the turnover in the United Kingdom of an enterprise shall be determined in accordance with article 11(2) to (4).

Person by whom fees are payable

6.—(1) In a case falling within article 3(a), the fee shall be payable by the person who gives the merger notice.

(2) Subject to article 7, in a case falling within article 3(b) or (c), the fee shall be payable by the acquirer.

(3) For the purposes of this article and article 7 “the acquirer” means the person, or group of persons, who has or have acquired or will, if those arrangements are carried into effect, acquire either—

- (a) a controlling interest in one of the enterprises which was or is involved in the creation or possible creation of a relevant merger situation which is the subject of the merger reference or, as the case may be, the OFT’s or the Secretary of State’s decision not to make such a merger reference, and in which he or they did not previously have such an interest; or
- (b) in the case of such an enterprise carried on by a body corporate in which he or they did not previously have a controlling interest, a controlling interest in that body corporate.

(4) In a case where paragraph (3) applies to more than one person, whether by virtue of them being treated as associated persons, as defined in section 127 of the Act, or otherwise, the persons to whom it applies shall be jointly and severally liable for the fee in that case.

(5) Where a fee is payable under article 3(b) or (c) but the acquirer is not—

- (a) a United Kingdom national; or
- (b) a body corporate incorporated under the law of the United Kingdom or of a part of the United Kingdom; or
- (c) a person carrying on business in the United Kingdom, either alone or in partnership with one or more persons,

he shall not be liable to pay the fee unless the creation or possible creation of a relevant merger situation which is the subject of the merger reference or, as the case may be, the OFT’s or the

Secretary of State's decision not to make such a merger reference, results wholly or partially from anything done by him within the United Kingdom.

Exemption for acquisitions by small and medium sized enterprises

7.—(1) In a case falling within article 3(a) no fee shall be payable by the person who gives the merger notice where—

- (a) that person is the acquirer;
- (b) the notified arrangements relate to the enterprise that will be taken over by the acquirer; and
- (c) the acquirer qualifies as small or medium sized.

(2) In a case falling within article 3(b) or (c) no fee shall be payable by the acquirer where the acquirer qualifies as small or medium sized.

(3) For the purpose of paragraphs (1) and (2) an enterprise qualifies as small or medium sized if, immediately before the time at which the fee would otherwise become payable—

- (a) it satisfies the requirements to be small or medium sized set out in subsections (3) to (6) of section 247 of the Companies Act 1985⁽¹⁾ (“the 1985 Act”) in its most recent financial year, whether or not the enterprise is a company; and
- (b) where it is a member of a group as defined in section 262 of the 1985 Act (whether or not the enterprise is a company), that group qualifies as small or medium sized within the meaning of subsection (3) to (5) of section 249 of the 1985 Act in its most recent financial year.

Person to whom fees are payable

8. In a case falling within article 3 the fee shall be payable to the OFT.

Time when fees are payable

9.—(1) In a case falling within article 3(a), the fee shall be payable at the time when the merger notice is given.

(2) In a case falling within article 3(b), the fee shall be payable when the OFT publishes the merger reference or, as the case may be, publishes its decision not to make such a merger reference.

(3) In a case falling with article 3(c), the fee shall be payable when the Secretary of State publishes the merger reference or, as the case may be, publishes her decision not to make such a merger reference.

Repayment of fees

10. In a case falling within article 3(a)—

- (a) the OFT shall repay the whole of the fee where the notified arrangements would not, if they were carried into effect, result in the creation of a relevant merger situation;
- (b) the OFT shall repay the whole of the fee where it rejects the merger notice under section 99(5)(d) of the Act (rejection of merger notice where the notified arrangements are or would result in a concentration with a Community dimension);
- (c) the OFT may repay the whole of the fee in any case to which section 22(3)(e) or section 33(3)(e) of the Act applies (request to European Commission pursuant to article 22(3) of the European Merger Regulations).

(1) 1985 c. 6.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.
