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## EXPLANATORY NOTE

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

The new EC Merger Regulation - Council Regulation (EC) No 139/2004 of 20th January 2004 on the control of concentrations between undertakings (OJ No L24, 29.01.04, p.1-22) - comes into force on 1st May 2004. It replaces Council Regulation (EEC) No 4064/89 on the control of concentrations between undertakings, as amended by Council Regulation (EC) No 1310/97.

Under the EC Merger Regulation, if a merger satisfies certain jurisdictional thresholds, that is, it is a concentration with a “Community dimension”, it must be notified to the European Commission (EC) before it can proceed and the EC generally has sole jurisdiction over competition issues.

These Regulations make consequential amendments, primarily to the Enterprise Act 2002, which are necessary in light of the new EC Merger Regulation. Member States, both under the repealed and the new EC Merger Regulation, may request that certain cases be referred to them under article 9 of that Regulation for competition assessment, notwithstanding the fact that the EC has sole jurisdiction to examine the case, or request that the EC consider a particular case under article 22 of that Regulation, notwithstanding the fact that the EC does not have jurisdiction to do so because the relevant thresholds have not been satisfied. The new EC Merger Regulation also allows the parties to the merger to request referrals to and from the EC before notification by submitting reasoned submissions. Parties can make an article 4(4) request requesting that a Member State examine the merger and can make an article 4(5) request asking the EC to consider the merger where the merger could be subject to review in three or more Member States. In the latter case, if the request is successful, the merger will be deemed to have a “Community dimension”.

The amendments in paragraphs 2(3) and 2(7) of the Schedule ensure that the OFT is not under a duty to refer a case where parties are in the process of making an article 4(5) request. If the request is not successful, OFT’s duty would then apply again pursuant to the amendments in paragraphs 2(4) and 2(8). The amendments in paragraphs 2(13) and 2(14) of the Schedule make similar amendments in relation to the public interest regime to ensure that the domestic public interest regime cannot be used in such cases, as intervention under this regime would require the OFT to report on competition, unless the merger had been subsequently referred back for consideration under national competition law under article 4(4) and 9 of the EC Merger Regulation. If the Secretary of State wanted to intervene on public interest grounds in cases referred to the EC under article 4(5), she could do so under section 67 of the Enterprise Act 2002.

Where a case is referred back to the United Kingdom under article 4(4) or article 9, the new EC Merger Regulation does not require the publication of any report or the announcement of the findings of the examination of the merger to be effected within 4 months of the EC’s referral as was the case under the repealed Regulation. The amendments in paragraphs 10, 11, 16, 17 and 18 of the Schedule reflect this change. Instead, the new EC Merger Regulation obliges the competent authority of a Member State where a case has been referred back to it to provide the parties with the results of the preliminary competition assessment within 45 working days after the EC’s referral. The amendments in paragraph 2(9) of the Schedule therefore impose a duty on the OFT to decide in such cases whether or not to refer the matter to the Competition Commission, or whether to seek undertakings in lieu of reference, within this time period. The amendments also enable the OFT to suspend the 45 working day time-limit where information has not been provided to it by the undertakings concerned, as provided for in article 9 of the EC Merger Regulation. The amendments in paragraph 2(15) apply to cases where the Secretary of State decides to intervene on public interest grounds in a case referred back under article 4(4) or article 9. In such cases the 45 working day time-limit will apply to her

**Changes to legislation:** *There are outstanding changes not yet made by the legislation.gov.uk editorial team to The EC Merger Control (Consequential Amendments) Regulations 2004. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

decision whether or not to refer the matter to the Competition Commission, or whether to seek undertakings in lieu of reference. The same provisions for the suspension of time-limits will apply in such cases.

A full regulatory impact assessment has not been produced for this instrument as it amends an existing regime and has no identifiable impact on the costs of business.

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**Changes and effects yet to be applied to :**

- Sch. para. 1 revoked by [S.I. 2023/1143 Sch. 2 Pt. 1](#)
- Sch. para. 2(2)(b) revoked by [S.I. 2023/1143 Sch. 2 Pt. 1](#)
- Sch. para. 2(3)-(5) revoked by [S.I. 2023/1143 Sch. 2 Pt. 1](#)
- Sch. para. 2(6)(b) revoked by [S.I. 2023/1143 Sch. 2 Pt. 1](#)
- Sch. para. 2(7)-(9) revoked by [S.I. 2023/1143 Sch. 2 Pt. 1](#)
- Sch. para. 2(12)(b) revoked by [S.I. 2023/1143 Sch. 2 Pt. 1](#)
- Sch. para. 2(13)-(15) revoked by [S.I. 2023/1143 Sch. 2 Pt. 1](#)
- Sch. para. 2(19)-(24) revoked by [S.I. 2023/1143 Sch. 2 Pt. 1](#)
- Sch. para. 2(25)(b) revoked by [S.I. 2023/1143 Sch. 2 Pt. 1](#)
- Sch. para. 2(26)(b) revoked by [S.I. 2023/1143 Sch. 2 Pt. 1](#)
- Sch. para. 2(27) revoked by [S.I. 2023/1143 Sch. 2 Pt. 1](#)
- Sch. para. 3 revoked by [S.I. 2023/1143 Sch. 2 Pt. 1](#)
- Sch. para. 5 revoked by [S.I. 2023/1143 Sch. 2 Pt. 1](#)