
EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends section 23A of the Enterprise Act 2002 (c. 40) (“the Act”) which sets out the criteria for a merger to be a “relevant merger situation”, thereby qualifying it for investigation by the Competition and Markets Authority. The Secretary of State has the power under section 42 of the Act to intervene in a “relevant merger situation” on the grounds of specified public interest considerations, where appropriate.

A “relevant merger situation” is created if: two or more enterprises have ceased to be distinct at a time or in circumstances set out in section 24 of the Act, and either the turnover test (section 23(1)) or share of supply test (section 23(2)) is met.

Article 3 of this Order amends section 23A of the Act to add new categories of relevant enterprises concerning artificial intelligence, cryptographic authentication and advanced materials to which the share of supply test in section 23(4A) and (4B) may apply.

A separate Order made under section 28(6) of the Act and coming into force immediately after this Order amends the turnover test in section 23(1)(b) of the Act so that, in cases where the enterprise being taken over is a “relevant enterprise”, the test is met if that enterprise has turnover in the UK of over £1m instead of £70 million.

A full impact assessment has not been produced for this instrument as no significant impact on business activities is foreseen.