

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends section 23 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 at least one of the following thresholds is met:

- (a) the “turnover test” (section 23(1)(b) of the Act) or
- (b) the “share of supply test” (section 23(2) of the Act).

This Order comes into force immediately after the Enterprise Act 2002 (Share of Supply) (Amendment) Order 2020 (S.I. 748) (“the Share of Supply Order”). The Share of Supply Order amends section 23A of the Act to add three categories of relevant enterprises to which the share of supply test will apply.

Article 2 of this Order amends the turnover test so that in order for a relevant merger situation to have been created the value of the turnover of the enterprise being taken over must exceed £70 million or, £1 million where the turnover does not exceed £70 million and the enterprise ceasing to be distinct is a relevant enterprise as set out in section 23A of the Act.

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