

2020 No. 763

COMPETITION

**The Enterprise Act 2002 (Turnover Test) (Amendment) Order
2020**

Made - - - - at 1.15 p.m. on 20th July 2020

Laid before Parliament at 2.45 p.m. on 20th July 2020

Coming into force in accordance with article 1(2)

The Secretary of State makes this Order in exercise of the powers conferred by sections 28(6) and 124(2) of the Enterprise Act 2002(a).

Citation, commencement and application

1.—(1) This Order may be cited as the Enterprise Act 2002 (Turnover Test) (Amendment) Order 2020.

(2) This Order comes into force immediately after the commencement of the Enterprise Act 2002 (Share of Supply) (Amendment) Order 2020(b).

(3) The amendments made by article 2 apply only in relation to cases where enterprises cease to be distinct after the commencement of this Order.

Amendment of the Enterprise Act 2002

2.—(1) Section 23 of the Enterprise Act 2002(c) is amended as follows.

(2) For paragraph (b) of subsection (1) and the words following that paragraph substitute—

“(b) the value of the turnover in the United Kingdom of the enterprise being taken over exceeds—

(i) £70 million; or

(ii) £1 million, where the value of the turnover does not exceed £70 million and in the course of the enterprises ceasing to be distinct, a person or group of persons has brought a relevant enterprise (within the meaning of either subsection (2) or (3) of section 23A) under the ownership or control of the person or group.”.

(a) 2002 c. 40; section 28 was amended by paragraphs 59 and 71 of Part 2 of Schedule 5 to the Enterprise and Regulatory Reform Act 2013 (c. 24) and section 124(3) was amended by paragraph 24(1) and (2) of Schedule 16 to the Communications Act 2003 (c. 21).

(b) S.I. 2020/748.

(c) Section 23 was amended by paragraphs 59 and 68 of Part 2 of Schedule 5 to the Enterprise and Regulatory Reform Act 2013 c. 24 and by S.I. 2018/578. Section 23A was inserted into the Enterprise Act 2002 by S.I. 2018/578 and amended by S.I. 2020/748.

Consequential amendment

3. In article 7(3) of the Enterprise Act 2002 (Protection of Legitimate Interests) Order 2003(a), for the words from “any such result as is mentioned in section 23(2)(b)” to “will arise” substitute, “for the purpose of section 23(2)(b), the share of supply test is or will be met”.

Nadhim Zahawi

Parliamentary Under Secretary of State

At 1.15 p.m. on 20th July 2020

Department for Business, Energy and Industrial Strategy

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.

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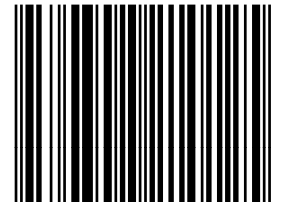
(a) S.I. 2003/1592, to which there are amendments not relevant to this Order.

£4.90

UK202007201010 07/2020 19585

<http://www.legislation.gov.uk/id/uksi/2020/763>

ISBN 978-0-34-821012-5



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