

# **ENTERPRISE AND REGULATORY REFORM ACT 2013**

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## **EXPLANATORY NOTES**

### **COMMENTARY ON SECTIONS**

#### ***Part 3: the Competition and Markets Authority and Part 4: Competition Reform***

#### **Part 4: Competition Reform**

#### ***Chapter 1: Mergers***

#### **Investigatory powers**

#### ***Section 29: Investigation powers: mergers***

225. Currently under the EA 2002 the OFT and CC have some powers to require persons to give evidence and provide specified documents and information needed for the purposes of a merger inquiry, but these do not extend across the whole mergers process. The introduction of statutory time limits in section 32 and Schedule 8 will mean that the CMA will require appropriate investigatory powers during all phases of its investigation to be able to carry out its functions within the statutory time scale.
226. This section extends these investigatory powers so that the CMA will have a single set of powers that can be used consistently across the whole of the merger investigation process.
227. [Section 29\(2\)](#) amends section 109 of the EA 2002 to set out the permitted purposes for which the CMA can use the information gathering powers. These are: assisting the CMA in carrying out any functions relating to a matter which is the subject of, or is the possible subject of, a reference under section 22 or 33 of the EA 2002 (completed or anticipated mergers) i.e. to assist the CMA during Phase 1 and Phase 2 merger investigations (new 109(A1)(a)); and assisting the CMA or the Secretary of State to undertake any functions relating to a matter which is the subject of, or is the possible subject of, a reference under section 45 or 62 of the EA 2002 i.e. investigations where public interest issues are relevant (new 109(A1)(b)).
228. New section 109(A1) also enables the CMA to exercise the investigatory powers during any period of monitoring and enforcement relating to any remedies implemented following an investigation, including UILs implemented instead of a reference. New subsection 109(8A) sets out the enforcement functions that are covered by these powers.
229. The CMA will be able to use these investigation powers before it begins a Phase 1 merger investigation (i.e. before the initial period, set out in Schedule 8 paragraph 4, begins) if the functions for which it is exercising the powers fall into the permitted purposes outlined above. For example, if the CMA has reason to believe that a merger may be in the process of being completed and it is preparing to launch an investigation it

*These notes refer to the Enterprise and Regulatory Reform Act  
2013 (c.24) which received Royal Assent on 25 April 2013*

may want to exercise its information powers for the purposes of preventing pre-emptive action being taken by the parties. The CMA will have to use the powers proportionately.

230. A similar extension of investigatory powers will operate in market investigations (see section 36 and Schedule 11).
231. *Subsection (11)* of section 29 provides for when the powers cease to become exercisable. It amends section 110 of the EA 2002 to align enforcement provisions for the investigation powers with the changes described above. It enables the CMA to enforce the investigatory powers up to 4 weeks after the investigatory powers cease to operate.