



Enterprise and Regulatory Reform Act 2013

2013 CHAPTER 24

PART 4

COMPETITION REFORM

CHAPTER 1

MERGERS

Interim measures

30 Interim measures: pre-emptive action: mergers

- (1) Omit section 71 of the 2002 Act (initial undertakings: completed mergers).
- (2) Section 72 of that Act (initial enforcement orders: completed mergers) is amended as follows.
- (3) For subsection (1) substitute—
 - “(1) Subsection (2) applies where—
 - (a) the CMA is considering whether to make a reference under section 22 or 33; and
 - (b) the CMA has reasonable grounds for suspecting that it is or may be the case that two or more enterprises have ceased to be distinct or that arrangements are in progress or in contemplation which, if carried into effect, will result in two or more enterprises ceasing to be distinct.”
- (4) Omit subsection (3).
- (5) Before subsection (4) insert—

“(3A) Subsection (3B) applies where—

- (a) subsection (1)(a) and (b) applies; and
- (b) the CMA also has reasonable grounds for suspecting that pre-emptive action has or may have been taken.

(3B) The CMA may by order, for the purpose of restoring the position to what it would have been had the pre-emptive action not been taken or otherwise for the purpose of mitigating its effects—

- (a) do anything mentioned in subsection (2)(b) to (d);
- (b) impose such other obligations, prohibitions or restrictions as it considers appropriate for that purpose.”

(6) After subsection (3B) insert—

“(3C) A person may, with the consent of the CMA, take action or action of a particular description where the action would otherwise constitute a contravention of an order under this section.”

(7) In subsection (6), in each of paragraphs (a) and (d), after “section 22” insert “or 33”.

(8) After subsection (7) insert—

“(8) In this section “pre-emptive action” means action which might prejudice the reference concerned or impede the taking of any action under this Part which may be justified by the CMA’s decisions on the reference.”

(9) In the heading for “completed mergers” substitute “completed or anticipated mergers”.

(10) Schedule 7 (which makes further provision about interim measures under Part 3 of the 2002 Act) has effect.

31 Interim measures: financial penalties: mergers

(1) After section 94 of the 2002 Act (rights to enforce undertakings and orders under Part 3) insert—

“94A Interim undertakings and orders under this Part: penalties

- (1) Where the appropriate authority considers that a person has, without reasonable excuse, failed to comply with an interim measure, it may impose a penalty of such fixed amount as it considers appropriate.
- (2) A penalty imposed under subsection (1) shall not exceed 5% of the total value of the turnover (both in and outside the United Kingdom) of the enterprises owned or controlled by the person on whom it is imposed.
- (3) For the purposes of subsection (2), the Secretary of State may by order make provision for determining—
 - (a) when an enterprise is to be treated as controlled by a person; and
 - (b) the turnover (both in and outside the United Kingdom) of an enterprise.
- (4) An order under subsection (3)(b) may, in particular, make provision as to—

- (a) the amounts which are, or which are not, to be treated as comprising an enterprise's turnover;
 - (b) the date or dates by reference to which an enterprise's turnover is to be determined.
- (5) An order under subsection (3) may, in particular, make provision enabling the appropriate authority to determine matters of a description specified in the order (including any of the matters mentioned in paragraphs (a) and (b) of subsection (4)).
- (6) The Secretary of State may by order amend subsection (2) so as to alter the percentage for the time being mentioned there to any percentage not exceeding 5%.
- (7) Sections 112 to 115 apply in relation to a penalty imposed under subsection (1) as they apply in relation to a penalty of a fixed amount imposed under section 110(1), with the modification that any reference in those provisions to the CMA is to be read as a reference to the person who imposed the penalty under this section.
- (8) In this section—
- “interim measure” means—
 - (a) an undertaking under section 80; or
 - (b) an order under section 72 or 81 or paragraph 2 of Schedule 7;
 - “appropriate authority” means—
 - (a) in relation to an interim measure which is an order made by the Secretary of State under paragraph 2 of Schedule 7, the Secretary of State;
 - (b) in relation to any other interim measure, the CMA.

94B Statement of policy in relation to powers under sections 94 and 94A

- (1) The CMA shall prepare and publish a statement of policy in relation to the use of its powers under—
- (a) section 94, insofar as they relate to interim measures; and
 - (b) section 94A.
- (2) The CMA shall, in particular, include a statement about the considerations relevant to the determination of the amount of any penalty imposed under section 94A.
- (3) The CMA may revise its statement of policy and, where it does so, it shall publish the revised statement.
- (4) The CMA shall consult the Secretary of State and such other persons as it considers appropriate when preparing or revising its statement of policy.
- (5) A statement or revised statement of policy may not be published under this section unless the Secretary of State approves the statement.
- (6) In this section, “interim measure” has the same meaning as in section 94A.”
- (2) In section 120 of that Act (review of decisions under Part 3), in subsection (2)(a), for “section 110(1) or (3)” substitute “section 94A(1) or 110(1) or (3)”.

Status: This is the original version (as it was originally enacted).

- (3) In section 124 of that Act (orders and regulations under Part 3)—
- (a) in subsection (4), before “or 102” insert “, 94A(6)”, and
 - (b) in subsection (5), before “111(4) or (6),” insert “94A(3) or (6),”.