

## United Kingdom

### Enterprise Act 2002 (2002)

#### Note

The Investment Laws Navigator is based upon sources believed to be accurate and reliable and is intended to be up-to-date at the time it was generated. It is made available with the understanding that UNCTAD is not engaged in rendering legal or other professional services. To confirm that the information has not been affected or changed by recent developments, traditional legal research techniques should be used, including checking primary sources where appropriate. While every effort is made to ensure the accuracy and completeness of its content, UNCTAD assumes no responsibility for eventual errors or omissions in the data.

The year indicated in brackets after the title of the law refers to the year of publication in the Official Gazette or, when this is not available, the year of adoption of the law.

<https://investmentpolicy.unctad.org>

## Contents

- Part 1 The Office of Fair Trading
  - Establishment of OFT
  - General functions of OFT
- Part 3 Mergers

- Chapter 1 Duty to make references
  - Duty to make references: completed mergers
  - Duty to make references: anticipated mergers
- Chapter 2 Public interest cases
  - Power to make references
  - Reports on references
  - Decisions of the Secretary of State
  - Other
- Chapter 3 Other special cases
  - Special public interest cases
- Chapter 4 Enforcement
  - Powers exercisable before references under section 22 or 33
  - Public interest and special public interest cases
- Chapter 5 Supplementary

SCHEDULES

- SCHEDULE 7 Enforcement regime for public interest and special public interest cases

# Enterprise Act 2002

2002 CHAPTER 40

An Act to establish and provide for the functions of the Office of Fair Trading, the Competition Appeal Tribunal and the Competition Service; to make provision about mergers and market structures and conduct; to amend the constitution and functions of the Competition Commission; to create an offence for those entering into certain anti-competitive agreements; to provide for the disqualification of directors of companies engaging in certain anti-competitive practices; to make other provision about competition law; to amend the law relating to the protection of the collective interests of consumers; to make further provision about the disclosure of information obtained under competition and consumer legislation; to amend the Insolvency Act 1986 and make other provision about insolvency; and for connected purposes.

[7th November 2002]

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

## **Part 1 The Office of Fair Trading**

### **Establishment of OFT**

#### **1 The Office of Fair Trading**

(1) There shall be a body corporate to be known as the Office of Fair Trading (in this Act referred to as “the OFT”).

(2) The functions of the OFT are carried out on behalf of the Crown.

[...]

### **General functions of OFT**

#### **5 Acquisition of information etc.**

(1) The OFT has the function of obtaining, compiling and keeping under review information about matters relating to the carrying out of its functions.

(2) That function is to be carried out with a view to (among other things) ensuring that the OFT has sufficient information to take informed decisions and to carry out its other functions effectively.

[...]

#### **7 Provision of information and advice to Ministers etc.**

(1)

The OFT has the function of—

(a) making proposals, or

(b) giving other information or advice,

on matters relating to any of its functions to any Minister of the Crown or other public authority (including proposals, information or advice as to any aspect of the law or a proposed change in the law).

(2) A Minister of the Crown may request the OFT to make proposals or give other information or advice on any matter relating to any of its functions; and the OFT shall, so far as is reasonably practicable and consistent with its other functions, comply with the request.

[...]

## Part 3 Mergers

### Chapter 1 Duty to make references

#### Duty to make references: completed mergers

##### 22 Duty to make references in relation to completed mergers

(1) The OFT shall, subject to subsections (2) and (3), make a reference to the Commission if the OFT believes that it is or may be the case that—

(a) a relevant merger situation has been created; and

(b) the creation of that situation has resulted, or may be expected to result, in a substantial lessening of competition within any market or markets in the United Kingdom for goods or services.

(2) The OFT may decide not to make a reference under this section if it believes that—

(a) the market concerned is not, or the markets concerned are not, of sufficient importance to justify the making of a reference to the Commission; or

(b) any relevant customer benefits in relation to the creation of the relevant merger situation concerned outweigh the substantial lessening of competition concerned and any adverse effects of the substantial lessening of competition concerned.

[...]

(7) In this Part “the decision-making authority” means—

(a) in the case of a reference or possible reference under this section or section 33, the OFT or (as the case may be) the Commission; and

(b) in the case of a notice or possible notice under section 42(2) or 59(2) or a reference or possible reference under section 45 or 62, the OFT, the Commission or (as the case may be) the Secretary of State.

##### 23 Relevant merger situations

[amendments made by the Enterprise Act 2002 (Share of Supply Test) (Amendment) Order 2018 and the Enterprise Act 2002 (Turnover Test) (Amendment) Order 2018 are not incorporated; the relevant amending acts are available here:

<https://investmentpolicy.unctad.org/investment-laws/laws/273/the-enterprise-act-2002-turnover-test-amendment-order-2018> <https://investmentpolicy.unctad.org/investment-laws/laws/274/the-enterprise-act-2002-share-of-supply-test-amendment-order-2018> ]

(1) For the purposes of this Part, a relevant merger situation has been created if—

(a) two or more enterprises have ceased to be distinct enterprises at a time or in circumstances falling within section 24; and

(b) the value of the turnover in the United Kingdom of the enterprise being taken over exceeds £70 million,

(2) For the purposes of this Part, a relevant merger situation has also been created if—

(a) two or more enterprises have ceased to be distinct enterprises at a time or in circumstances falling within section 24; and

(b) as a result, one or both of the conditions mentioned in subsections (3) and (4) below prevails or prevails to a greater extent.

(3) The condition mentioned in this subsection is that, in relation to the supply of goods of any description, at least one-quarter of all the goods of that description which are supplied in the United Kingdom, or in a substantial part of the United Kingdom—

(a) are supplied by one and the same person or are supplied to one and the same person; or

(b) are supplied by the persons by whom the enterprises concerned are carried on, or are supplied to those persons.

(4) The condition mentioned in this subsection is that, in relation to the supply of services of any description, the supply of services of that description in the United Kingdom, or in a substantial part of the United Kingdom, is to the extent of at least one-quarter—

(a) supply by one and the same person, or supply for one and the same person; or

(b) supply by the persons by whom the enterprises concerned are carried on, or supply for those persons.

[...]

## **24 Time-limits and prior notice**

(1) For the purposes of section 23 two or more enterprises have ceased to be distinct enterprises at a time or in circumstances falling within this section if—

(a) the two or more enterprises ceased to be distinct enterprises before the day on which the reference relating to them is to be made and did so not more than four months before that day; or

(b) notice of material facts about the arrangements or transactions under or in consequence of which the enterprises have ceased to be distinct enterprises has not been given in accordance with subsection (2).

(2) Notice of material facts is given in accordance with this subsection if—

- (a) it is given to the OFT prior to the entering into of the arrangements or transactions concerned or the facts are made public prior to the entering into of those arrangements or transactions; or
  - (b) it is given to the OFT, or the facts are made public, more than four months before the day on which the reference is to be made.
- (3) In this section—
- “made public” means so publicised as to be generally known or readily ascertainable; and
- “notice” includes notice which is not in writing.
- [...]

## **26 Enterprises ceasing to be distinct enterprises**

- (1) For the purposes of this Part any two enterprises cease to be distinct enterprises if they are brought under common ownership or common control (whether or not the business to which either of them formerly belonged continues to be carried on under the same or different ownership or control).
  - (2) Enterprises shall, in particular, be treated as being under common control if they are—
    - (a) enterprises of interconnected bodies corporate;
    - (b) enterprises carried on by two or more bodies corporate of which one and the same person or group of persons has control; or
    - (c) an enterprise carried on by a body corporate and an enterprise carried on by a person or group of persons having control of that body corporate.
  - (3) A person or group of persons able, directly or indirectly, to control or materially to influence the policy of a body corporate, or the policy of any person in carrying on an enterprise but without having a controlling interest in that body corporate or in that enterprise, may, for the purposes of subsections (1) and (2), be treated as having control of it.
  - (4) For the purposes of subsection (1), in so far as it relates to bringing two or more enterprises under common control, a person or group of persons may be treated as bringing an enterprise under his or their control if—
    - (a) being already able to control or materially to influence the policy of the person carrying on the enterprise, that person or group of persons acquires a controlling interest in the enterprise or, in the case of an enterprise carried on by a body corporate, acquires a controlling interest in that body corporate; or
    - (b) being already able materially to influence the policy of the person carrying on the enterprise, that person or group of persons becomes able to control that policy.
- [...]

## **Duty to make references: anticipated mergers**

### **33 Duty to make references in relation to anticipated mergers**

(1) The OFT shall, subject to subsections (2) and (3), make a reference to the Commission if the OFT believes that it is or may be the case that—

(a) arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation; and

(b) the creation of that situation may be expected to result in a substantial lessening of competition within any market or markets in the United Kingdom for goods or services.

(2) The OFT may decide not to make a reference under this section if it believes that—

(a) the market concerned is not, or the markets concerned are not, of sufficient importance to justify the making of a reference to the Commission;

(b) the arrangements concerned are not sufficiently far advanced, or are not sufficiently likely to proceed, to justify the making of a reference to the Commission; or

(c) any relevant customer benefits in relation to the creation of the relevant merger situation concerned outweigh the substantial lessening of competition concerned and any adverse effects of the substantial lessening of competition concerned.

[...]

## Chapter 2 Public interest cases

### Power to make references

#### 42 Intervention by Secretary of State in certain public interest cases

(1) Subsection (2) applies where—

(a) the Secretary of State has reasonable grounds for suspecting that it is or may be the case that a relevant merger situation has been created or that arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation;

(b) no reference under section 22 or 33 has been made in relation to the relevant merger situation concerned;

(c) no decision has been made not to make such a reference (other than a decision made by virtue of subsection (2)(b) of section 33 or a decision to accept undertakings under section 73 instead of making such a reference); and

(d) no reference is prevented from being made under section 22 or 33 by virtue of—

(i) section 22(3)(a) or (e) or (as the case may be) 33(3)(a) or (e); or

(ii) law or anything done under or in accordance with it.

(2) The Secretary of State may give a notice to the OFT (in this Part “an intervention notice”) if he believes that it is or may be the case that one or more than one public interest consideration is relevant to a consideration of the relevant merger situation concerned.

(3) For the purposes of this Part a public interest consideration is a consideration which, at the time of the giving of the intervention notice concerned, is specified in section 58 or is not so specified but, in the opinion of the Secretary of State, ought to be so specified.

(4) No more than one intervention notice shall be given under subsection (2) in relation to the same relevant merger situation.

(5) For the purposes of deciding whether a relevant merger situation has been created or whether arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation, sections 23 to 32 (read together with section 34) shall apply for the purposes of this Chapter as they do for the purposes of Chapter 1 but subject to subsection (6).

[...]

(7) Where the Secretary of State has given an intervention notice mentioning a public interest consideration which, at that time, is not finalised, he shall, as soon as practicable, take such action as is within his power to ensure that it is finalised.

(8) For the purposes of this Part a public interest consideration is finalised if—

(a) it is specified in section 58 otherwise than by virtue of an order under subsection (3) of that section; or

(b) it is specified in that section by virtue of an order under subsection (3) of that section and the order providing for it to be so specified has been laid before, and approved by, Parliament in accordance with subsection (7) of section 124 and within the period mentioned in that subsection.

#### **43 Intervention notices under section 42**

(1) An intervention notice shall state—

(a) the relevant merger situation concerned;

(b) the public interest consideration or considerations which are, or may be, relevant to a consideration of the relevant merger situation concerned; and

(c) where any public interest consideration concerned is not finalised, the proposed timetable for finalising it.

(2) Where the Secretary of State believes that it is or may be the case that two or more public interest considerations are relevant to a consideration of the relevant merger situation concerned, he may decide not to mention in the intervention notice such of those considerations as he considers appropriate.

(3) An intervention notice shall come into force when it is given and shall cease to be in force when the matter to which it relates is finally determined under this Chapter.

[...]

(6) In this Part “OFCOM” means the Office of Communications.

#### **44 Investigation and report by OFT**



- (1) Subsection (2) applies where the Secretary of State has given an intervention notice in relation to a relevant merger situation.
- (2) The OFT shall, within such period as the Secretary of State may require, give a report to the Secretary of State in relation to the case.
- (3) The report shall contain—
- (a) advice from the OFT on the considerations relevant to the making of a reference under section 22 or 33 which are also relevant to the Secretary of State's decision as to whether to make a reference under section 45; and
  - (b) a summary of any representations about the case which have been received by the OFT and which relate to any public interest consideration mentioned in the intervention notice concerned (other than a media public interest consideration) and which is or may be relevant to the Secretary of State's decision as to whether to make a reference under section 45.
- (4) The report shall, in particular, include decisions as to whether the OFT believes that it is, or may be, the case that—
- (a) a relevant merger situation has been created or arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation;
  - (b) the creation of that situation has resulted, or may be expected to result, in a substantial lessening of competition within any market or markets in the United Kingdom for goods or services;
  - (c) the market or markets concerned would not be of sufficient importance to justify the making of a reference to the Commission under section 22 or 33;
  - (d) in the case of arrangements which are in progress or in contemplation, the arrangements are not sufficiently far advanced, or not sufficiently likely to proceed, to justify the making of such a reference;
  - (e) any relevant customer benefits in relation to the creation of the relevant merger situation concerned outweigh the substantial lessening of competition and any adverse effects of the substantial lessening of competition; or
  - (f) it would be appropriate to deal with the matter (disregarding any public interest considerations mentioned in the intervention notice concerned) by way of undertakings under paragraph 3 of Schedule 7.
- (5) If the OFT believes that it is or may be the case that it would be appropriate to deal with the matter (disregarding any public interest considerations mentioned in the intervention notice concerned) by way of undertakings under paragraph 3 of Schedule 7, the report shall contain descriptions of the undertakings which the OFT believes are, or may be, appropriate.
- (5A) The report may, in particular, contain a summary of any representations about the case which have been received by the OFT and which relate to any media public interest consideration mentioned in the intervention notice concerned and which is or may be relevant to the Secretary of State's decision as to whether to make a reference under section 45.
- (6) The report may, in particular, include advice and recommendations on any public interest consideration mentioned in the intervention notice concerned and which is or may be relevant to the Secretary of State's decision as to whether to make a reference under section 45.

(7) The OFT shall carry out such investigations as it considers appropriate for the purposes of producing a report under this section.

(8) In this Part “media public interest consideration” means any consideration which, at the time of the giving of the intervention notice concerned—

(a) is specified in section 58(2A) to (2C); or

(b) in the opinion of the Secretary of State, is concerned with broadcasting or newspapers and ought to be specified in section 58.

(9) In this Part “broadcasting” means the provision of services the provision of which—

(a) is required to be licensed under Part 1 or 3 of the Broadcasting Act 1990 or Part 1 or 2 of the Broadcasting Act 1996; or

(b) would be required to be so licensed if provided by a person subject to licensing under the Part in question.

(10) In this Part “newspaper” means a daily, Sunday or local (other than daily or Sunday) newspaper circulating wholly or mainly in the United Kingdom or in a part of the United Kingdom.

(11) The Secretary of State may by order amend subsections (9) and (10).

#### **44A Additional investigation and report by OFCOM: media mergers**

(1) Subsection (2) applies where—

(a) the Secretary of State has given an intervention notice in relation to a relevant merger situation; and

(b) the intervention notice mentions any media public interest consideration.

(2) OFCOM shall, within such period as the Secretary of State may require, give a report to the Secretary of State on the effect of the consideration or considerations concerned on the case.

(3) The report shall contain—

(a) advice and recommendations on any media public interest consideration mentioned in the intervention notice concerned and which is or may be relevant to the Secretary of State’s decision as to whether to make a reference under section 45; and

(b) a summary of any representations about the case which have been received by OFCOM and which relate to any such consideration.

(4) OFCOM shall carry out such investigations as they consider appropriate for the purposes of producing a report under this section.

#### **45 Power of Secretary of State to refer matter to Commission**

(1) Subsections (2) to (5) apply where the Secretary of State—

(a) has given an intervention notice in relation to a relevant merger situation; and

(b) has received a report of the OFT under section 44, and any report of OFCOM which is required by virtue of section 44A, in relation to the matter.

(2) The Secretary of State may make a reference to the Commission if he believes that it is or may be the case that—

(a) a relevant merger situation has been created;

(b) the creation of that situation has resulted, or may be expected to result, in a substantial lessening of competition within any market or markets in the United Kingdom for goods or services;

(c) one or more than one public interest consideration mentioned in the intervention notice is relevant to a consideration of the relevant merger situation concerned; and

(d) taking account only of the substantial lessening of competition and the relevant public interest consideration or considerations concerned, the creation of that situation operates or may be expected to operate against the public interest.

(3) The Secretary of State may make a reference to the Commission if he believes that it is or may be the case that—

(a) a relevant merger situation has been created;

(b) the creation of that situation has not resulted, and may be expected not to result, in a substantial lessening of competition within any market or markets in the United Kingdom for goods or services;

(c) one or more than one public interest consideration mentioned in the intervention notice is relevant to a consideration of the relevant merger situation concerned; and

(d) taking account only of the relevant public interest consideration or considerations concerned, the creation of that situation operates or may be expected to operate against the public interest.

(4) The Secretary of State may make a reference to the Commission if he believes that it is or may be the case that—

(a) arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation;

(b) the creation of that situation may be expected to result in a substantial lessening of competition within any market or markets in the United Kingdom for goods or services;

(c) one or more than one public interest consideration mentioned in the intervention notice is relevant to a consideration of the relevant merger situation concerned; and

(d) taking account only of the substantial lessening of competition and the relevant public interest consideration or considerations concerned, the creation of the relevant merger situation may be expected to operate against the public interest.

(5) The Secretary of State may make a reference to the Commission if he believes that it is or may be the case that—

(a) arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation;

- (b) the creation of that situation may be expected not to result in a substantial lessening of competition within any market or markets in the United Kingdom for goods or services;
  - (c) one or more than one public interest consideration mentioned in the intervention notice is relevant to a consideration of the relevant merger situation concerned; and
  - (d) taking account only of the relevant public interest consideration or considerations concerned, the creation of the relevant merger situation may be expected to operate against the public interest.
- (6) For the purposes of this Chapter any anti-competitive outcome shall be treated as being adverse to the public interest unless it is justified by one or more than one public interest consideration which is relevant.

[...]

#### **46 References under section 45: supplementary**

[...]

- (3) Where the decision to make a reference under section 45 is made at any time on or after the end of the period of 24 weeks beginning with the giving of the intervention notice concerned, the Secretary of State shall, in deciding whether to make such a reference, disregard any public interest consideration which is mentioned in the intervention notice but which has not been finalised before the end of that period.
- (4) Subject to subsection (5), where the decision to make a reference under section 45(2) or (4) is made at any time before the end of the period of 24 weeks beginning with the giving of the intervention notice concerned, the Secretary of State shall, in deciding whether to make such a reference, disregard any public interest consideration which is mentioned in the intervention notice but which has not been finalised if its effect would be to prevent, or to help to prevent, an anti-competitive outcome from being adverse to the public interest.
- (5) The Secretary of State may, if he believes that there is a realistic prospect of the public interest consideration mentioned in subsection (4) being finalised within the period of 24 weeks beginning with the giving of the intervention notice concerned, delay deciding whether to make the reference concerned until the public interest consideration is finalised or, if earlier, the period expires.

[...]

## **Reports on references**

#### **47 Questions to be decided on references under section 45**

- (1) The Commission shall, on a reference under section 45(2) or (3), decide whether a relevant merger situation has been created.
- (2) If the Commission decides that such a situation has been created, it shall, on a reference under section 45(2), decide the following additional questions—
- (a) whether the creation of that situation has resulted, or may be expected to result, in a substantial lessening of competition within any market or markets in the United Kingdom for goods or services; and

(b) whether, taking account only of any substantial lessening of competition and the admissible public interest consideration or considerations concerned, the creation of that situation operates or may be expected to operate against the public interest.

(3) If the Commission decides that a relevant merger situation has been created, it shall, on a reference under section 45(3), decide whether, taking account only of the admissible public interest consideration or considerations concerned, the creation of that situation operates or may be expected to operate against the public interest.

(4) The Commission shall, on a reference under section 45(4) or (5), decide whether arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation.

(5) If the Commission decides that such arrangements are in progress or in contemplation, it shall, on a reference under section 45(4), decide the following additional questions—

(a) whether the creation of that situation may be expected to result in a substantial lessening of competition within any market or markets in the United Kingdom for goods or services; and

(b) whether, taking account only of any substantial lessening of competition and the admissible public interest consideration or considerations concerned, the creation of that situation may be expected to operate against the public interest.

(6) If the Commission decides that arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation, it shall, on a reference under section 45(5), decide whether, taking account only of the admissible public interest consideration or considerations concerned, the creation of that situation may be expected to operate against the public interest.

(7) The Commission shall, if it has decided on a reference under section 45 that the creation of a relevant merger situation operates or may be expected to operate against the public interest, decide the following additional questions—

(a) whether action should be taken by the Secretary of State under section 55 for the purpose of remedying, mitigating or preventing any of the effects adverse to the public interest which have resulted from, or may be expected to result from, the creation of the relevant merger situation;

(b) whether the Commission should recommend the taking of other action by the Secretary of State or action by persons other than itself and the Secretary of State for the purpose of remedying, mitigating or preventing any of the effects adverse to the public interest which have resulted from, or may be expected to result from, the creation of the relevant merger situation; and

(c) in either case, if action should be taken, what action should be taken and what is to be remedied, mitigated or prevented.

(8) Where the Commission has decided by virtue of subsection (2)(a) or (5)(a) that there is or will be a substantial lessening of competition within any market or markets in the United Kingdom for goods or services, it shall also decide separately the following questions (on the assumption that it is proceeding as mentioned in section 56(6))—

- (a) whether action should be taken by it under section 41 for the purpose of remedying, mitigating or preventing the substantial lessening of competition concerned or any adverse effect which has resulted from, or may be expected to result from, the substantial lessening of competition;
  - (b) whether the Commission should recommend the taking of action by other persons for the purpose of remedying, mitigating or preventing the substantial lessening of competition concerned or any adverse effect which has resulted from, or may be expected to result from, the substantial lessening of competition; and
  - (c) in either case, if action should be taken, what action should be taken and what is to be remedied, mitigated or prevented.
- (9) In deciding the questions mentioned in subsections (7) and (8) the Commission shall, in particular, have regard to the need to achieve as comprehensive a solution as is reasonable and practicable to—
- (a) the adverse effects to the public interest; or
  - (b) (as the case may be) the substantial lessening of competition and any adverse effects resulting from it.
- (10) In deciding the questions mentioned in subsections (7) and (8) in a case where it has decided by virtue of subsection (2)(a) or (5)(a) that there is or will be a substantial lessening of competition, the Commission may, in particular, have regard to the effect of any action on any relevant customer benefits in relation to the creation of the relevant merger situation concerned.
- (11) In this section “admissible public interest consideration” means any public interest consideration which is specified in the reference under section 45 and which the Commission is not under a duty to disregard.

#### **48 Cases where references or certain questions need not be decided**

[amendment by the Enterprise Act 2002 (Share of Supply Test) (Amendment) Order 2018 not incorporated]

- (1) The Commission shall cancel a reference under section 45(4) or (5) if it considers that the proposal to make arrangements of the kind mentioned in that reference has been abandoned.
- (2) In relation to the question whether a relevant merger situation has been created or the question whether a relevant merger situation will be created, a reference under section 45 may be framed so as to require the Commission to exclude from consideration—
  - (a) subsection (1) of section 23;
  - (b) subsection (2) of that section; or
  - (c) one of those subsections if the Commission finds that the other is satisfied.
- (3) In relation to the question whether any such result as is mentioned in section 23(2)(b) has arisen or the question whether any such result will arise, a reference under section 45 may be framed so as to require the Commission to confine its investigation to the supply of goods or services in a part of the United Kingdom specified in the reference.

[...]

## **50 Investigations and reports on references under section 45**

- (1) The Commission shall prepare a report on a reference under section 45 and give it to the Secretary of State within the period permitted by section 51.
- (2) The report shall, in particular, contain—
  - (a) the decisions of the Commission on the questions which it is required to answer by virtue of section 47;
  - (b) its reasons for its decisions; and
  - (c) such information as the Commission considers appropriate for facilitating a proper understanding of those questions and of its reasons for its decisions.
- (2A) Where the report relates to a reference under section 45 which has been made after a report of OFCOM under section 44A, the Commission shall give a copy of its report (whether or not published) to OFCOM.
- (3) The Commission shall carry out such investigations as it considers appropriate for the purpose of producing a report under this section.

## **51 Time-limits for investigations and reports by Commission**

- (1) The Commission shall prepare its report under section 50 and give it to the Secretary of State under that section within the period of 24 weeks beginning with the date of the reference concerned.

[...]
- (3) The Commission may extend, by no more than 8 weeks, the period within which a report under section 50 is to be prepared and given to the Secretary of State if it considers that there are special reasons why the report cannot be prepared and given to the Secretary of State within that period.
- (4) The Commission may extend the period within which a report under section 50 is to be prepared and given to the Secretary of State if it considers that a relevant person has failed (whether with or without a reasonable excuse) to comply with any requirement of a notice under section 109.
- (5) In subsection (4) “relevant person” means—
  - (a) any person carrying on any of the enterprises concerned;
  - (b) any person who (whether alone or as a member of a group) owns or has control of any such person; or
  - (c) any officer, employee or agent of any person mentioned in paragraph (a) or (b).
- (6) For the purposes of subsection (5) a person or group of persons able, directly or indirectly, to control or materially to influence the policy of a body of persons corporate or unincorporate, but without having a controlling interest in that body of persons, may be treated as having control of it.

[...]

### **53 Restrictions on action where public interest considerations not finalised**

- (1) The Commission shall cancel a reference under section 45 if—
  - (a) the intervention notice concerned mentions a public interest consideration which was not finalised on the giving of that notice or public interest considerations which, at that time, were not finalised;
  - (b) no other public interest consideration is mentioned in the notice;
  - (c) at least 24 weeks has elapsed since the giving of the notice; and
  - (d) the public interest consideration mentioned in the notice has not been finalised within that period of 24 weeks or (as the case may be) none of the public interest considerations mentioned in the notice has been finalised within that period of 24 weeks.
- (2) Where a reference to the Commission under section 45 specifies a public interest consideration which has not been finalised before the making of the reference, the Commission shall not give its report to the Secretary of State under section 50 in relation to that reference unless—
  - (a) the period of 24 weeks beginning with the giving of the intervention notice concerned has expired; or
  - (b) the public interest consideration concerned has been finalised; or
  - (c) the report must be given to the Secretary of State to ensure compliance with article 9(6) of the European Merger Regulations.
- (3) The Commission shall, in reporting on any of the questions mentioned in section 47(2)(b), (3), (5)(b), (6) and (7), disregard any public interest consideration which has not been finalised before the giving of the report.
- (4) The Commission shall, in reporting on any of the questions mentioned in section 47(2)(b), (3), (5)(b), (6) and (7), disregard any public interest consideration which was not finalised on the giving of the intervention notice concerned and has not been finalised within the period of 24 weeks beginning with the giving of the notice concerned.
- (5) Subsections (1) to (4) are without prejudice to the power of the Commission to carry out investigations in relation to any public interest consideration to which it might be able to have regard in its report.

## **Decisions of the Secretary of State**

### **54 Decision of Secretary of State in public interest cases**

- (1) Subsection (2) applies where the Secretary of State has received a report of the Commission under section 50 in relation to a relevant merger situation.
- (2) The Secretary of State shall decide whether to make an adverse public interest finding in relation to the relevant merger situation and whether to make no finding at all in the matter.
- (3) For the purposes of this Part the Secretary of State makes an adverse public interest finding in relation to a relevant merger situation if, in relation to that situation, he decides—



(a) in connection with a reference to the Commission under subsection (2) of section 45, that it is the case as mentioned in paragraphs (a) to (d) of that subsection or subsection (3) of that section;

(b) in connection with a reference to the Commission under subsection (3) of that section, that it is the case as mentioned in paragraphs (a) to (d) of that subsection;

(c) in connection with a reference to the Commission under subsection (4) of that section, that it is the case as mentioned in paragraphs (a) to (d) of that subsection or subsection (5) of that section; and

(d) in connection with a reference to the Commission under subsection (5) of that section, that it is the case as mentioned in paragraphs (a) to (d) of that subsection.

(4) The Secretary of State may make no finding at all in the matter only if he decides that there is no public interest consideration which is relevant to a consideration of the relevant merger situation concerned.

(5) The Secretary of State shall make and publish his decision under subsection (2) within the period of 30 days beginning with the receipt of the report of the Commission under section 50.

(6) In making a decision under subsections (2) to (4), the Secretary of State shall disregard any public interest consideration not specified in the reference under section 45 and any public interest consideration disregarded by the Commission for the purposes of its report.

(7) In deciding whether to make an adverse public interest finding under subsection (2), the Secretary of State shall accept—

(a) in connection with a reference to the Commission under section 45(2) or (4), the decision of the report of the Commission under section 50 as to whether there is an anti-competitive outcome; and

(b) in connection with a reference to the Commission under section 45(3) or (5)—

(i) the decision of the report of the Commission under section 50 as to whether a relevant merger situation has been created or (as the case may be) arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation; and

(ii) the decision of the report of the OFT under section 44 as to the absence of a substantial lessening of competition.

[...]

## **55 Enforcement action by Secretary of State**

(1) Subsection (2) applies where the Secretary of State has decided under subsection (2) of section 54 within the period required by subsection (5) of that section to make an adverse public interest finding in relation to a relevant merger situation and has published his decision within the period so required.

(2) The Secretary of State may take such action under paragraph 9 or 11 of Schedule 7 as he considers to be reasonable and practicable to remedy, mitigate or prevent any of the effects adverse to the public interest which have resulted from, or may be expected to result from, the creation of the relevant merger situation concerned.

(3) In making a decision under subsection (2) the Secretary of State shall, in particular, have regard to the report of the Commission under section 50.

(4) In making a decision under subsection (2) in any case of a substantial lessening of competition, the Secretary of State may, in particular, have regard to the effect of any action on any relevant customer benefits in relation to the creation of the relevant merger situation concerned.

## **Other**

### **56 Competition cases where intervention on public interest grounds ceases**

(1) Where the Secretary of State decides not to make a reference under section 45 on the ground that no public interest consideration to which he is able to have regard is relevant to a consideration of the relevant merger situation concerned, he shall by notice require the OFT to deal with the matter otherwise than under this Chapter.

[...]

### **57 Duties of OFT and Commission to inform Secretary of State**

(1) The OFT shall, in considering whether to make a reference under section 22 or 33, bring to the attention of the Secretary of State any case which it believes raises any consideration specified in section 58 unless it believes that the Secretary of State would consider any such consideration immaterial in the context of the particular case.

(2) The OFT, OFCOM and the Commission shall bring to the attention of the Secretary of State any representations about exercising his powers under section 58(3) which have been made to the OFT, OFCOM or (as the case may be) the Commission.

### **58 Specified considerations**

(1) The interests of national security are specified in this section.

(2) In subsection (1) “national security” includes public security; and in this subsection “public security” has the same meaning as in article 21(4) of the EC Merger Regulation.

(2A) The need for—

(a) accurate presentation of news; and

(b) free expression of opinion;

in newspapers is specified in this section.

(2B) The need for, to the extent that it is reasonable and practicable, a sufficient plurality of views in newspapers in each market for newspapers in the United Kingdom or a part of the United Kingdom is specified in this section.

(2C) The following are specified in this section—

- (a) the need, in relation to every different audience in the United Kingdom or in a particular area or locality of the United Kingdom, for there to be a sufficient plurality of persons with control of the media enterprises serving that audience;
- (b) the need for the availability throughout the United Kingdom of a wide range of broadcasting which (taken as a whole) is both of high quality and calculated to appeal to a wide variety of tastes and interests; and
- (c) the need for persons carrying on media enterprises, and for those with control of such enterprises, to have a genuine commitment to the attainment in relation to broadcasting of the standards objectives set out in section 319 of the Communications Act 2003.

(2D) The interest of maintaining the stability of the UK financial system is specified in this section (other than for the purposes of sections 67 and 68 or references made, or deemed to be made, by the European Commission to the OFT under article 4(4) or 9 of the EC Merger Regulation).

(3) The Secretary of State may by order modify this section for the purpose of specifying in this section a new consideration or removing or amending any consideration which is for the time being specified in this section.

(4) An order under this section may, in particular—

- (a) provide for a consideration to be specified in this section for a particular purpose or purposes or for all purposes;
- (b) apply in relation to cases under consideration by the OFT, OFCOM, the Commission or the Secretary of State before the making of the order as well as cases under consideration on or after the making of the order.

[...]

## Chapter 3 Other special cases

### Special public interest cases

#### **59 Intervention by Secretary of State in special public interest cases**

(1) Subsection (2) applies where the Secretary of State has reasonable grounds for suspecting that it is or may be the case that a special merger situation has been created or arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a special merger situation.

(2) The Secretary of State may give a notice to the OFT (in this Part “a special intervention notice”) if he believes that it is or may be the case that one or more than one consideration specified in section 58 is relevant to a consideration of the special merger situation concerned.

(3) For the purposes of this Part a special merger situation has been created if—

- (a) the condition mentioned in subsection (3A) is satisfied; and

(b) immediately before the enterprises concerned ceased to be distinct—

- (i) the conditions mentioned in subsection (3B) were satisfied;
- (ii) the condition mentioned in subsection (3C) was satisfied; or
- (iii) the condition mentioned in subsection (3D) was satisfied.

(3A) The condition mentioned in this subsection is that—

- (a) no relevant merger situation has been created because of section 23(1)(b) and (2)(b); but
- (b) a relevant merger situation would have been created if those enactments were disregarded.

(3B) The conditions mentioned in this subsection are that—

- (a) at least one of the enterprises concerned was carried on in the United Kingdom or by or under the control of a body corporate incorporated in the United Kingdom; and
- (b) a person carrying on one or more of the enterprises concerned was a relevant government contractor.

(3C) The condition mentioned in this subsection is that, in relation to the supply of newspapers of any description, at least one-quarter of all the newspapers of that description which were supplied in the United Kingdom, or in a substantial part of the United Kingdom, were supplied by the person or persons by whom one of the enterprises concerned was carried on.

(3D) The condition mentioned in this subsection is that, in relation to the provision of broadcasting of any description, at least one-quarter of all broadcasting of that description provided in the United Kingdom, or in a substantial part of the United Kingdom, was provided by the person or persons by whom one of the enterprises concerned was carried on.

(5) For the purposes of deciding whether a relevant merger situation has been created or whether arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation, sections 23 to 32 (read together with section 34) shall apply for the purposes of this Chapter as they do for the purposes of Chapter 1 but subject to subsection (6).

[...]

(6A) The Secretary of State may by order amend the conditions mentioned in subsection (3)(b)(ii) and (iii).

(7) No more than one special intervention notice shall be given under subsection (2) in relation to the same special merger situation.

(8) In this section “relevant government contractor” means—

(a) a government contractor—

(i) who has been notified by or on behalf of the Secretary of State of information, documents or other articles relating to defence and of a confidential nature which the government contractor or an employee of his may hold or receive in connection with being such a contractor; and

(ii) whose notification has not been revoked by or on behalf of the Secretary of State; or

(b) a former government contractor who was so notified when he was a government contractor and whose notification has not been revoked by or on behalf of the Secretary of State.

(9) In this section—

“defence” has the same meaning as in section 2 of the Official Secrets Act 1989 (c. 6); and

“government contractor” has the same meaning as in the Act of 1989 and includes any sub-contractor of a government contractor, any sub-contractor of that sub-contractor and any other sub-contractor in a chain of sub-contractors which begins with the sub-contractor of the government contractor.

[...]

## **60 Special intervention notices under section 59**

(1) A special intervention notice shall state—

(a) the special merger situation concerned; and

(b) the consideration specified in section 58 or considerations so specified which are, or may be, relevant to the special merger situation concerned.

(2) Where the Secretary of State believes that it is or may be the case that two or more considerations specified in section 58 are relevant to a consideration of the special merger situation concerned, he may decide not to mention in the special intervention notice such of those considerations as he considers appropriate.

(3) A special intervention notice shall come into force when it is given and shall cease to be in force when the matter to which it relates is finally determined under this Chapter.

[...]

## **61 Initial investigation and report by OFT**

(1) Subsection (2) applies where the Secretary of State has given a special intervention notice in relation to a special merger situation.

(2) The OFT shall, within such period as the Secretary of State may require, give a report to the Secretary of State in relation to the case.

(3) The report shall contain—

(a) advice from the OFT on the considerations relevant to the making of a reference under section 22 or 33 which are also relevant to the Secretary of State’s decision as to whether to make a reference under section 62; and

(b) a summary of any representations about the case which have been received by the OFT and which relate to any consideration mentioned in the special intervention notice concerned (other than a consideration which, at the time of the giving of the notice, was specified in section 58(2A) to (2C)) and which is or may be relevant to the Secretary of State’s decision as to whether to make a reference under section 62.

(4) The report shall include a decision as to whether the OFT believes (disregarding section 59(3B)(b)) that it is, or may be, the case that a special merger situation has been created or (as the case may be) arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a special merger situation.

(4A) The report may, in particular, contain a summary of any representations about the case which have been received by the OFT and which relate to any consideration which—

(a) is mentioned in the special intervention notice concerned and, at the time of the giving of that notice, was specified in section 58(2A) to (2C); and

(b) is or may be relevant to the Secretary of State's decision as to whether to make a reference under section 62.

(5) The report may, in particular, include advice and recommendations on any consideration mentioned in the special intervention notice concerned and which is or may be relevant to the Secretary of State's decision as to whether to make a reference under section 62.

(6) The OFT shall carry out such investigations as it considers appropriate for the purposes of producing a report under this section.

#### **61A Additional investigation and report by OFCOM: certain media mergers**

(1) Subsection (2) applies where—

(a) the Secretary of State has given a special intervention notice in relation to a special merger situation; and

(b) the special intervention notice mentions any consideration which, at the time of the giving of the notice, was specified in section 58(2A) to (2C).

(2) OFCOM shall, within such period as the Secretary of State may require, give a report to the Secretary of State on the effect of the consideration or considerations concerned on the case.

(3) The report shall contain—

(a) advice and recommendations on any consideration which—

(i) is mentioned in the special intervention notice concerned and, at the time of the giving of that notice, was specified in section 58(2A) to (2C); and

(ii) is or may be relevant to the Secretary of State's decision as to whether to make a reference under section 62; and

(b) a summary of any representations about the case which have been received by OFCOM and which relate to any such consideration.

(4) OFCOM shall carry out such investigations as they consider appropriate for the purposes of producing a report under this section.

#### **62 Power of Secretary of State to refer the matter**

(1) Subsection (2) applies where the Secretary of State—

(a) has given a special intervention notice in relation to a special merger situation; and

(b) has received a report of the OFT under section 61, and any report of OFCOM which is required by virtue of section 61A, in relation to the matter.

(2) The Secretary of State may make a reference to the Commission if he believes that it is or may be the case that—

(a) a special merger situation has been created;

(b) one or more than one consideration mentioned in the special intervention notice is relevant to a consideration of the special merger situation concerned; and

(c) taking account only of the relevant consideration or considerations concerned, the creation of that situation operates or may be expected to operate against the public interest.

(3) The Secretary of State may make a reference to the Commission if he believes that it is or may be the case that—

(a) arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a special merger situation;

(b) one or more than one consideration mentioned in the special intervention notice is relevant to a consideration of the special merger situation concerned; and

(c) taking account only of the relevant consideration or considerations concerned, the creation of that situation may be expected to operate against the public interest.

(4) No reference shall be made under this section if the making of the reference is prevented by F60. . . paragraph 4 of Schedule 7.

(5) The Secretary of State, in deciding whether to make a reference under this section, shall accept the decision of the OFT included in its report under section 61 by virtue of subsection (4) of that section.

(6) A reference under this section shall, in particular, specify—

(a) the subsection of this section under which it is made;

(b) the date on which it is made; and

(c) the consideration or considerations mentioned in the special intervention notice which the Secretary of State believes are, or may be, relevant to a consideration of the special merger situation concerned.

### **63 Questions to be decided on references under section 62**

(1) The Commission shall, on a reference under section 62(2), decide whether a special merger situation has been created.

(2) The Commission shall, on a reference under section 62(3), decide whether arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a special merger situation.

(3) If the Commission decides that a special merger situation has been created or that arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a special merger situation, it shall, on a reference under section 62, decide whether, taking account only of the consideration or considerations mentioned in the reference, the creation of that situation operates or may be expected to operate against the public interest.

(4) The Commission shall, if it has decided on a reference under section 62 that the creation of a special merger situation operates or may be expected to operate against the public interest, decide the following additional questions—

(a) whether action should be taken by the Secretary of State under section 66 for the purpose of remedying, mitigating or preventing any of the effects adverse to the public interest which have resulted from, or may be expected to result from, the creation of the special merger situation concerned;

(b) whether the Commission should recommend the taking of other action by the Secretary of State or action by persons other than itself and the Secretary of State for the purpose of remedying, mitigating or preventing any of the effects adverse to the public interest which have resulted from, or may be expected to result from, the creation of the special merger situation concerned; and

(c) in either case, if action should be taken, what action should be taken and what is to be remedied, mitigated or prevented.

[...]

## **65 Investigations and reports on references under section 62**

(1) The Commission shall prepare a report on a reference under section 62 and give it to the Secretary of State within the period permitted by virtue of this section.

(2) The report shall, in particular, contain—

(a) the decisions of the Commission on the questions which it is required to answer by virtue of section 63;

(b) its reasons for its decisions; and

(c) such information as the Commission considers appropriate for facilitating a proper understanding of those questions and of its reasons for its decisions.

(2A) Where the report relates to a reference under section 62 which has been made after a report of OFCOM under section 61A, the Commission shall give a copy of its report (whether or not published) to OFCOM.

(3) Sections 51 and 52 (but not section 53) shall apply for the purposes of a report under this section as they apply for the purposes of a report under section 50.

(4) The Commission shall carry out such investigations as it considers appropriate for the purpose of producing a report under this section.

## **66 Decision and enforcement action by Secretary of State**



- (1) Subsection (2) applies where the Secretary of State has received a report of the Commission under section 65 in relation to a special merger situation.
- (2) The Secretary of State shall, in connection with a reference under section 62(2) or (3), decide the questions which the Commission is required to decide by virtue of section 63(1) to (3).
- (3) The Secretary of State shall make and publish his decision under subsection (2) within the period of 30 days beginning with the receipt of the report of the Commission under section 65; and subsection (8) of section 54 shall apply for the purposes of this subsection as it applies for the purposes of subsection (5) of that section.
- (4) In making his decisions under subsection (2), the Secretary of State shall accept the decisions of the report of the Commission under section 65 as to whether a special merger situation has been created or whether arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a special merger situation.
- (5) Subsection (6) applies where the Secretary of State has decided under subsection (2) that—
- (a) a special merger situation has been created or arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a special merger situation;
- (b) at least one consideration which is mentioned in the special intervention notice concerned is relevant to a consideration of the special merger situation concerned; and
- (c) taking account only of the relevant consideration or considerations concerned, the creation of that situation operates or may be expected to operate against the public interest; and has so decided, and published his decision, within the period required by subsection (3).
- (6) The Secretary of State may take such action under paragraph 9 or 11 of Schedule 7 as he considers to be reasonable and practicable to remedy, mitigate or prevent any of the effects adverse to the public interest which have resulted from, or may be expected to result from, the creation of the special merger situation concerned.
- (7) In making a decision under subsection (6), the Secretary of State shall, in particular, have regard to the report of the Commission under section 65.
- [...]

## **Chapter 4 Enforcement**

### **Powers exercisable before references under section 22 or 33**

[...]

#### **73 Undertakings in lieu of references under section 22 or 33**

- (1) Subsection (2) applies if the OFT considers that it is under a duty to make a reference under section 22 or 33 (disregarding the operation of section 22(3)(b) or (as the case may be) 33(3)(b) but taking account of the power of the OFT under section 22(2) or (as the case may be) 33(2) to decide not to make such a reference).

(2) The OFT may, instead of making such a reference and for the purpose of remedying, mitigating or preventing the substantial lessening of competition concerned or any adverse effect which has or may have resulted from it or may be expected to result from it, accept from such of the parties concerned as it considers appropriate undertakings to take such action as it considers appropriate.

(3) In proceeding under subsection (2), the OFT shall, in particular, have regard to the need to achieve as comprehensive a solution as is reasonable and practicable to the substantial lessening of competition and any adverse effects resulting from it.

(4) In proceeding under subsection (2), the OFT may, in particular, have regard to the effect of any action on any relevant customer benefits in relation to the creation of the relevant merger situation concerned.

(5) An undertaking under this section—

(a) shall come into force when accepted;

(b) may be varied or superseded by another undertaking; and

(c) may be released by the OFT.

(6) An undertaking under this section which is in force in relation to a relevant merger situation shall cease to be in force if an order comes into force under section 75 or 76 in relation to that undertaking.

(7) The OFT shall, as soon as reasonably practicable, consider any representations received by it in relation to varying or releasing an undertaking under this section.

[...]

## **Public interest and special public interest cases**

### **85 Enforcement regime for public interest and special public interest cases**

(1) Schedule 7 (which provides for the enforcement regime in public interest and special public interest cases) shall have effect.

(2) The OFT may advise the Secretary of State in relation to the taking by him of enforcement action under Schedule 7.

[...]

## **Chapter 5 Supplementary**

[...]

### **107 Further publicity requirements**

[...]

(3) The Secretary of State shall publish—

(a) any intervention notice or special intervention notice given by him;

(b) any report of the OFT under section 44 or 61 which has been received by him;

- (ba) any report of OFCOM under section 44A or 61A which has been received by him;
  - (c) any reference made by him under section 45 or 62 or any decision made by him not to make such a reference;
  - (d) any variation made by him under section 49 of a reference under section 45 or under section 64 of a reference under section 62;
  - (e) any report of the Commission under section 50 or 65 which has been received by him;
  - (f) any decision made by him neither to accept an undertaking under paragraph 9 of Schedule 7 nor to make an order under paragraph 11 of that Schedule;
  - (g) any notice given by him under section 56(1);
  - (h) any enforcement undertaking accepted by him under paragraph 1 of Schedule 7;
  - (i) any variation or release of such an undertaking;
  - (j) any decision made by him as mentioned in paragraph 6(6)(b) of Schedule 7; and
  - (k) any decision made by him to dispense with the requirements of Schedule 10.
- [...]

#### **117 False or misleading information**

- (1) A person commits an offence if—
    - (a) he supplies any information to the OFT, OFCOM, the Commission or the Secretary of State in connection with any of their functions under this Part;
    - (b) the information is false or misleading in a material respect; and
    - (c) he knows that it is false or misleading in a material respect or is reckless as to whether it is false or misleading in a material respect.
  - (2) A person commits an offence if he—
    - (a) supplies any information to another person which he knows to be false or misleading in a material respect; or
    - (b) recklessly supplies any information to another person which is false or misleading in a material respect;

knowing that the information is to be used for the purpose of supplying information to the OFT, OFCOM, the Commission or the Secretary of State in connection with any of their functions under this Part.
  - (3) A person who commits an offence under subsection (1) or (2) shall be liable—
    - (a) on summary conviction, to a fine not exceeding the statutory maximum;
    - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.
- [...]

## **125 Offences by bodies corporate**

(1) Where an offence under this Part committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of—

(a) a director, manager, secretary or other similar officer of the body corporate, or

(b) a person purporting to act in such a capacity,

he as well as the body corporate commits the offence and shall be liable to be proceeded against and punished accordingly.

(2) Where the affairs of a body corporate are managed by its members, subsection (1) applies in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

(3) Where an offence under this Part is committed by a Scottish partnership and is proved to have been committed with the consent or connivance of a partner, or to be attributable to any neglect on the part of a partner, he as well as the partnership commits the offence and shall be liable to be proceeded against and punished accordingly.

(4) In subsection (3) “partner” includes a person purporting to act as a partner.

[...]

# **SCHEDULES**

[...]

## **SCHEDULE 7 Enforcement regime for public interest and special public interest cases**

### **Pre-emptive undertakings and orders**

[...]

2 (1) Sub-paragraph (2) applies where an intervention notice or special intervention notice is in force.

(2) The Secretary of State or the OFT may by order, for the purpose of preventing pre-emptive action—

(a) prohibit or restrict the doing of things which the Secretary of State or (as the case may be) the OFT considers would constitute pre-emptive action;

(b) impose on any person concerned obligations as to the carrying on of any activities or the safeguarding of any assets;

(c) provide for the carrying on of any activities or the safeguarding of any assets either by the appointment of a person to conduct or supervise the conduct of any activities (on such terms and with such powers as may be specified or described in the order) or in any other manner;

(d) do anything which may be done by virtue of paragraph 19 of Schedule 8.

(2A) Sub-paragraph (2B) applies where—

(a) an intervention notice or special intervention notice is in force, and

(b) the Secretary of State or the CMA has reasonable grounds for suspecting that pre-emptive action has or may have been taken.

(2B) The Secretary of State or (as the case may be) 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 sub-paragraph (2)(b) to (d);

(b) impose such other obligations, prohibitions or restrictions as it considers appropriate for that purpose.

[...]

#### **Statutory restrictions following reference under section 45 or 62**

7 (1) Sub-paragraphs (2) and (3) apply where—

(a) a reference has been made under section 45(2) or (3) or 62(2) but not finally determined; and

(b) no undertakings under paragraph 1 are in force in relation to the relevant merger situation concerned or (as the case may be) the special merger situation concerned and no orders under paragraph 2 are in force in relation to that situation.

(2) No relevant person shall, without the consent of the Secretary of State—

(a) complete any outstanding matters in connection with any arrangements which have resulted in the enterprises concerned ceasing to be distinct enterprises;

(b) make any further arrangements in consequence of that result (other than arrangements which reverse that result); or

(c) transfer the ownership or control of any enterprises to which the reference relates.

(3) No relevant person shall, without the consent of the Secretary of State, assist in any of the activities mentioned in paragraphs (a) to (c) of sub-paragraph (2).

(4) The prohibitions in sub-paragraphs (2) and (3) do not apply in relation to anything which the person concerned is required to do by virtue of any enactment.

(5) The consent of the Secretary of State under sub-paragraph (2) or (3)—

(a) may be general or specific;

(b) may be revoked by the Secretary of State; and

(c) shall be published in such manner as the Secretary of State considers appropriate for bringing it to the attention of any person entitled to the benefit of it.

(6) Paragraph (c) of sub-paragraph (5) shall not apply if the Secretary of State considers that publication is not necessary for the purpose mentioned in that paragraph.

(7) Sub-paragraphs (2) and (3) shall apply to a person's conduct outside the United Kingdom if (and only if) he is—

(a) a United Kingdom national;

(b) a body incorporated under the law of the United Kingdom or of any part of the United Kingdom; or

(c) a person carrying on business in the United Kingdom.

(8) For the purpose of this paragraph a reference under section 45(2) or (3) is finally determined if—

(a) the time within which the Commission is to prepare a report under section 50 in relation to the reference and give it to the Secretary of State has expired and no such report has been so prepared and given;

(b) the Commission decides to cancel the reference under section 53(1);

(c) the time within which the Secretary of State is to make and publish a decision under section 54(2) has expired and no such decision has been made and published;

(d) the Secretary of State decides under section 54(2) to make no finding at all in the matter;

(e) the Secretary of State otherwise decides under section 54(2) not to make an adverse public interest finding;

(f) the Secretary of State decides under section 54(2) to make an adverse public interest finding but decides neither to accept an undertaking under paragraph 9 of this Schedule nor to make an order under paragraph 11 of this Schedule; or

(g) the Secretary of State decides under section 54(2) to make an adverse public interest finding and accepts an undertaking under paragraph 9 of this Schedule or makes an order under paragraph 11 of this Schedule.

(9) For the purpose of this paragraph a reference under section 62(2) is finally determined if—

(a) the time within which the Commission is to prepare a report under section 65 in relation to the reference and give it to the Secretary of State has expired and no such report has been so prepared and given;

(b) the time within which the Secretary of State is to make and publish a decision under section 66(2) has expired and no such decision has been made and published;

(c) the Secretary of State decides under subsection (2) of section 66 otherwise than as mentioned in subsection (5) of that section;

(d) the Secretary of State decides under subsection (2) of section 66 as mentioned in subsection (5) of that section but decides neither to accept an undertaking under paragraph 9 of this Schedule nor to make an order under paragraph 11 of this Schedule; or

(e) the Secretary of State decides under subsection (2) of section 66 as mentioned in subsection (5) of that section and accepts an undertaking under paragraph 9 of this Schedule or makes an order under paragraph 11 of this Schedule.

(10) For the purposes of this paragraph the time when a reference under section 45(2) or (3) or (as the case may be) 62(2) is finally determined is—

- (a) in a case falling within sub-paragraph (8)(a) or (c) or (as the case may be) (9)(a) or (b), the expiry of the time concerned;
- (b) in a case falling within sub-paragraph (8)(b), (d) or (e) or (as the case may be) (9)(c), the making of the decision concerned;
- (c) in a case falling within sub-paragraph (8)(f) or (as the case may be) (9)(d), the making of the decision neither to accept an undertaking under paragraph 9 of this Schedule nor to make an order under paragraph 11 of this Schedule; and
- (d) in a case falling within sub-paragraph (8)(g) or (as the case may be) (9)(e), the acceptance of the undertaking concerned or (as the case may be) the making of the order concerned.

(11) In this paragraph “relevant person” means—

- (a) any person who carries on any enterprise to which the reference relates or who has control of any such enterprise;
- (b) any subsidiary of any person falling within paragraph (a); or
- (c) any person associated with any person falling within paragraph (a) or any subsidiary of any person so associated.

8 (1) Sub-paragraph (2) applies where—

- (a) a reference has been made under section 45(4) or (5) or 62(3); and
- (b) no undertakings under paragraph 1 are in force in relation to the relevant merger situation concerned or (as the case may be) special merger situation concerned and no orders under paragraph 2 are in force in relation to that situation.

(2) No relevant person shall, without the consent of the Secretary of State, directly or indirectly acquire during the relevant period an interest in shares in a company if any enterprise to which the reference relates is carried on by or under the control of that company.

(3) The consent of the Secretary of State under sub-paragraph (2)—

- (a) may be general or specific;
- (b) may be revoked by the Secretary of State; and
- (c) shall be published in such manner as the Secretary of State considers appropriate for bringing it to the attention of any person entitled to the benefit of it.

(4) Paragraph (c) of sub-paragraph (3) shall not apply if the Secretary of State considers that publication is not necessary for the purpose mentioned in that paragraph.

(5) Sub-paragraph (2) shall apply to a person’s conduct outside the United Kingdom if (and only if) he is—

- (a) a United Kingdom national;
- (b) a body incorporated under the law of the United Kingdom or of any part of the United Kingdom; or

(c) a person carrying on business in the United Kingdom.

(6) In this paragraph—

“company” includes any body corporate;

“relevant period” means the period beginning with the publication of the decision of the Secretary of State to make the reference concerned and ending when the reference is finally determined;

“relevant person” means—

(a) any person who carries on any enterprise to which the reference relates or who has control of any such enterprise;

(b) any subsidiary of any person falling within paragraph (a); or

(c) any person associated with any person falling within paragraph (a) or any subsidiary of any person so associated; and

“share” means share in the capital of a company, and includes stock.

[...]

\* \* \*