

Merger undertakings and orders register

Explanatory note

Merger remedies and interim measures

When the Competition and Markets Authority (CMA) investigates a merger, it assesses whether the merger could lead to a substantial lessening of competition (SLC) in one or more markets in the UK. Remedies aim to address the competition concerns identified by the CMA. They can also address certain public interest concerns identified by the Secretary of State, such as in the case of certain mergers involving defence companies.

Interim measures are aimed at holding merged businesses separate during the CMA's investigation in order to preserve the CMA's ability to seek a remedy where necessary.

During phase 1 of a merger investigation, the CMA will establish whether the merger gives rise to a realistic prospect of an SLC. If so, the CMA must refer the merger for an in-depth phase 2 investigation (subject to certain exceptions), or obtain suitable undertakings in lieu (UILs) of such a reference. More information on UILs is in [Mergers: Exceptions to the duty to refer and undertakings in lieu of reference guidance](#) (OFT1122, adopted by the CMA).

If UILs are not agreed at phase 1 and the case is referred to phase 2, a CMA panel of **independent members** will conduct an in-depth investigation. If an SLC is found, the CMA will decide on the remedies required. These may include preventing the merger from taking place or requiring the sale of parts of the business. More information on phase 2 merger remedies is in [Merger remedies guidance](#), (CC8 adopted by the CMA).

Interim measures during a phase 1 investigation are imposed by means of an order, while during a phase 2 investigation the merging parties may give undertakings to the CMA or the CMA may impose an order. Final merger remedies (ie remedies at the end of a phase 2 investigation) are often in the form of undertakings given by merging parties. In rare cases, remedies may be imposed by the CMA (or undertakings enforced) by means of an order.

More information about the CMA's merger investigation process, including interim measures, is in [Mergers: Guidance on the CMA's jurisdiction and procedure](#) (CMA2).

Mergers register

[Section 91 of the Enterprise Act 2002](#) (EA02) requires the CMA to maintain a register of undertakings and orders relating to merger investigations, ie merger remedies and interim measures.

When the merger control regime under the EA02 came into force on 20 June 2003, it replaced the regime under the Fair Trading Act 1973 (FTA73). The CMA does not have a duty to maintain a register of merger undertakings accepted under the FTA73. However, the FTA73 merger undertakings have nevertheless been included in the register to provide a complete list of merger remedies.

The register is arranged into seven sections:

- Live EA02 remedies
- Lapsed EA02 remedies
- Released EA02 remedies
- EA02 interim measures
- Live FTA73 undertakings
- Lapsed FTA73 undertakings
- Released FTA73 undertakings

Most of the remedies under the EA02, and all of the remedies under the FTA73, are in the form of undertakings rather than orders.

It should be noted that a number of the remedies listed in the register as EA02 remedies were originally accepted under the FTA73, but these remedies are now subject to certain provisions of the EA02 relating to enforcement, variation and release of remedies by the CMA.¹

Below is a key to the types of remedy covered by the register:

¹ Pursuant to the Enterprise Act 2002 (Enforcement Undertakings and Orders) Order 2004 (SI 2004/2181), the Enterprise Act 2002 (Enforcement Undertakings) Order 2006 (SI 2006/354), the Enterprise Act 2002 (Enforcement Undertakings and Orders) Order 2006 (SI 2006/355) and the Enterprise Act 2002 (Enforcement Undertakings) (No.2) Order 2006 (SI 2006/3095).

- IEO = initial enforcement order. These are imposed in phase 1 to prevent pre-emptive action by the merger parties that could prejudice a potential remedy. Section 72 of EA02.
- UILs = undertakings in lieu of reference to a phase 2 investigation (currently by the CMA; prior to April 2014, by the Competition Commission (CC), and prior to April 1999, by the Monopolies and Mergers Commission (MMC)). Section 73 of EA02 or section 75G of FTA73.
- Interim unds = interim hold separate undertakings. These are undertakings given during a CMA (or CC/MMC prior to April 2014) phase 2 investigation to ensure that merging parties are kept separate until the investigation is completed and it is confirmed whether or not the merger may proceed. Section 80 of EA02.
- Interim order = order imposed during a CMA (or CC/MMC prior to April 2014) phase 2 investigation to ensure that merging parties are kept separate until the investigation is completed and it is confirmed whether or not the merger may proceed. Section 81 of EA02.
- Final unds = final undertakings given following a CMA (or CC/MMC prior to April 2014) phase 2 investigation. Section 82 of EA02.
- Final orders = orders made following a CMA (or CC/MMC prior to April 2014) phase 2 investigation. Section 84 of EA02.
- Enf order = enforcement order made by the CMA (or its predecessor) – used to enforce a remedy that has been breached. Sections 75 or 83 of EA02.

There are other types of merger orders and undertakings available to the CMA (and its predecessors) and the Secretary of State which, as yet, have not been used. Details of any future cases where they are used will be recorded in the register.

Initial undertakings accepted by the Office of Fair Trading (OFT) under section 71 of EA02, which was repealed as of 1 April 2014, can be found on [the OFT's archived pages](#).

May 2016