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INDICATIVE DRAFT - STATUTORY INSTRUMENTS

202X No. XXXX

COMPETITION

The Enterprise Act 2002 (Merger Fees and Determination of Turnover) (Amendment) Order 202X

Made - - - -

Laid before Parliament

Coming into force

The Secretary of State makes this Order in exercise of the powers conferred by sections 28, 121 and 124(2) of the Enterprise Act 2002(a).

Citation, commencement and extent

1.—(1) This Order may be cited as the Enterprise Act 2002 (Merger Fees and Determination of Turnover) (Amendment) Order 202X and comes into force on XXX.

(2) This Order extends to England and Wales, Scotland and Northern Ireland.

Amendments to the Enterprise Act 2002 (Merger Fees and Determination of Turnover) Order 2003

2. The Enterprise Act 2002 (Merger Fees and Determination of Turnover) Order 2003(b) is amended as follows.

3. In article 2(d) for “22 or 33” substitute “22, 33, 68B or 68C”.

4. In article 3(b) for “22 or 33” substitute “22, 33, 68B or 68C”.

5. In article 4(2) after “33(2)(b)” insert “or 68C(2)(a)”.

6. In article 5, after paragraph (3) insert—

“(3A) For the purpose of determining the amount of the fee payable under article 3(b) for decisions made in relation to a possible reference under section 68B or 68C of the Act or a combined reference described in section 68E(1) of the Act, paragraphs (1) to (3) of this article have effect as if references to the United Kingdom were to Great Britain.

(3B) The amount of fee payable under article 3(b) for a decision made in relation to a combined reference described in section 68E(1) of the Act is—

(a) 2002 c. 40.

(b) S.I. 2003/1370; relevant amending instruments are S.I. 2004/3204, 2012/1878, 2014/534.

- (a) in relation to a combined reference described in section 68E(1)(a) of the Act, the sum of the amounts that would have been payable under article 3(b) for—
 - (i) a decision made in relation to a possible reference under section 22 of the Act; and
 - (ii) a decision made in relation to a possible reference under section 68B of the Act;
- (b) in relation to a combined reference described in section 68E(1)(b) of the Act, the sum of the amounts that would have been payable under article 3(b) for—
 - (i) a decision made in relation to a possible reference under section 33 of the Act; and
 - (ii) a decision made in relation to a possible reference under section 68C of the Act.”

7. In article 11, after paragraph (4) insert—

“(5) For the purpose of determining the turnover of an enterprise which is subject to a possible reference under section 68B or 68C of the Act, this article and Schedule 1 have effect as if references to the United Kingdom were to Great Britain.”

Name
Parliamentary Under Secretary of State

Date Department for Business, Energy and Industrial Strategy

EXPLANATORY NOTE

(This note is not part of the Order)

The Order amends the Enterprise Act 2002 (Merger Fees and Determination of Turnover) Order 2003 (S.I. 2003/1370) (“the 2003 Order”). The 2003 Order provides for merger fees to be payable in respect of mergers that are assessed under Part 3 of the Enterprise Act 2002 (c. 40) (“the Act”). It also provides for the determination of turnover of the company being taken over.

As a result of the amendments and modifications made to Part 3 of the Act by the Energy Act 202X, a special regime applies to relevant mergers between energy network enterprises. Sections 68B and 68C of the Act place a duty on the Competition and Markets Authority (“the CMA”) to refer an energy network merger to a group established by the CMA (“CMA group”) if certain conditions are met.

This Order amends the definition of “merger reference” in article 2(d) such that a reference by the CMA under section 68B or 68C of the Act is included in this definition.

This Order amends article 3(b) so that a fee is payable to the CMA in relation to the making by the CMA of a reference to a CMA group under section 68B or 68C of the Act. A new article 5(3A) is included so that the fee payable is calculated by reference to the value of the turnover in Great Britain of the energy network enterprise being taken over. A new article 5(3B) is included so that, for combined references made as described in section 68E of the Act, a fee is payable in respect of the reference made under sections 22 or 33 of the Act and a separate fee is payable in respect of the reference made under sections 68B or 68C of the Act.

This Order also amends article 11 so that, in respect of references made by the CMA under sections 68B and 68C of the Act, the turnover relevant to the determination under article 11 and Schedule 1 is turnover in Great Britain.

An impact assessment completed for the Energy Bill, introduced to Parliament on 6th July 2022, contains an assessment of the impacts that the special merger regime will have on society,

including costs and benefits to businesses and consumers. The impact assessment is available at the following website <https://bills.parliament.uk/bills/3311/publications>.

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