Draft Order laid before Parliament under section 124(6) of the Enterprise Act 2002, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2018 No.

COMPETITION

The Enterprise Act 2002 (Share of Supply Test) (Amendment) Order 2018

Made - - - - ***

Coming into force in accordance with article 1(2)

The Secretary of State makes this Order in exercise of the powers conferred by sections 123(1) and 124(2) and (3) of the Enterprise Act 2002(**1**).

In accordance with section 124(6) of that Act, a draft of this instrument was laid before Parliament and approved by a resolution of each House of Parliament.

In accordance with section 123(3) of that Act, in exercising the power under section 123(1) to amend or replace the condition mentioned in section 23(2)(b) of that Act, the Secretary of State had regard, in particular, to the desirability of ensuring that any amended or new condition continues to operate by reference to the degree of commercial strength which results from the enterprises concerned having ceased to be distinct.

Before making this Order the Secretary of State consulted the Competition and Markets Authority in accordance with section 123(4) of that Act(**2**).

Citation and commencement

1.—(1) This Order may be cited as the Enterprise Act 2002 (Share of Supply Test) (Amendment) Order 2018.

(2) This Order comes into force 28 days after the day on which it is made.

Amendment of the Enterprise Act 2002

2. The Enterprise Act 2002 is amended in accordance with articles 3 to 5 of this Order.

(**1**) 2002 c. 40; section 124(3) was amended by paragraph 24(1) and (2) of Schedule 16 to the Communications Act 2003 c.21.
(**2**) Section 123(4) was amended by paragraphs 59 and 158 of Part 2 of Schedule 5 to the Enterprise and Regulatory Reform Act 2013 c. 24.

Relevant merger situations

3.—(1) Section 23(**3**) (relevant merger situations) is amended as follows.

(2) For subsection (2)(b) substitute—

"(b) the share of supply test is met.".

(3) After subsection (2) insert—

"(2A) The share of supply test is met if—

(a) as a result of the enterprises ceasing to be distinct enterprises, one or both of the conditions mentioned in subsections (3) and (4) below prevails or prevails to a greater extent; or

(b) in the course of the enterprises ceasing to be distinct a person or group of persons has brought a relevant enterprise under the ownership or control of the person or group and one or both of the conditions mentioned in subsections (4A) and (4B) below was satisfied in relation to the relevant enterprise before it ceased to be a distinct enterprise.".

(4) After subsection (4) insert—

"(4A) The condition mentioned in this subsection is that, in relation to the supply of goods of any description—

(a) at least one-quarter of all goods of that description which were supplied in the United Kingdom, or in a substantial part of the United Kingdom, were supplied by or to the person or persons by whom the enterprise was carried on, and

(b) that supply was made in connection with activities of the enterprise by virtue of which it was a relevant enterprise.

(4B) The condition mentioned in this subsection is that, in relation to the supply of services of any description—

(a) the supply of services of that description in the United Kingdom, or in a substantial part of the United Kingdom, was to the extent of at least one-quarter of all the services of that description, supply by or for the person or persons by whom the enterprise is carried on, and

(b) that supply was made in connection with activities of the enterprise by virtue of which it was a relevant enterprise.".

(5) In subsection (5), for "or (4)" substitute ", (4), (4A) or (4B)".

(6) In subsection (6), for "and (4)" substitute ", (4), (4A) and (4B)".

(7) After subsection (9) insert—

"(10) Subsections (2) to (4) of section 26 apply for the purposes of this section as they apply for the purposes of that section.".

Relevant enterprises

4. After section 23 insert—

"**Relevant enterprises**

23A.—(1) In section 23 "relevant enterprise" means an enterprise the activities of which consist in or include—

(**3**) Section 23(9) was amended by paragraphs 59 and 68 of Part 2 of Schedule 5 to the Enterprise and Regulatory Reform Act 2013 c. 24.

(a) developing or producing restricted goods;

(b) holding information (including but not limited to information comprised in software and documents such as blueprints, manuals, diagrams and designs) that —

(i) is capable of use in connection with the development or production of restricted goods; and

(ii) is responsible for achieving or exceeding the performance levels, characteristics or functions of the restricted goods that are specified in the relevant export control legislation;

(c) owning, creating or supplying intellectual property relating to the functional capability of—

(i) computer processing units;

(ii) the instruction set architecture for such units;

(iii) computer code that provides low level control for such units;

(d) designing, maintaining or providing support for the secure provisioning or management of—

(i) roots of trust of computer processing units;

(ii) computer code that provides low level control for such units;

(e) research into—

(i) quantum computing or simulation;

(ii) quantum imaging, sensing, timing or navigation;

(iii) quantum communications; or

(iv) quantum resistant cryptography;

(f) developing or producing anything designed for use in—

(i) quantum computing or simulation;

(ii) quantum imaging, sensing, timing or navigation;

(iii) quantum communications; or

(iv) quantum resistant cryptography;

(g) supplying services employing—

(i) quantum computing or simulation;

(ii) quantum imaging, sensing, timing or navigation;

(iii) quantum communications; or

(iv) quantum resistant cryptography.

(2) In this section—

"intellectual property" means—

(a) any patent, trade mark, registered design, copyright or design right,

(b) any right under the law of a country or territory outside the United Kingdom corresponding to, or similar to, a right within paragraph (a), or

(c) any information or technique not protected by a right within paragraph (a) or (b) but having industrial, commercial or other economic value;

"quantum communications"—