STATUTORY INSTRUMENTS

2024 No. 1235

COMPETITION

The Competition Act 1998 (Determination of Turnover for Penalties) Regulations 2024

Made - - - -	*25th November 2024*
Laid before Parliament	*29th November 2024*
Coming into force - -	*1st January 2025*

The Secretary of State makes these Regulations in exercise of the powers conferred by sections 35B(9) to (11) and 40A(10) to (12) of the Competition Act 1998(**a**).

Citation, commencement, extent and interpretation

1.—(1) These Regulations may be cited as the Competition Act 1998 (Determination of Turnover for Penalties) Regulations 2024 and come into force on 1st January 2025.

(2) These Regulations extend to England and Wales, Scotland and Northern Ireland.

(3) In these Regulations, "the Act" means the Competition Act 1998.

Determination of turnover and daily turnover

2.—(1) This regulation applies for the purposes of determining the turnover and daily turnover of an undertaking for the purposes of the following sections of the Act—

(a) section 35B(4) (amount of penalties under section 35A: breaches of commitments, directions and interim measures);

(b) section 40A(3A) (amount of penalties under section 40ZE: failure to comply with investigative requirements).

(2) Subject to paragraphs (3) to (6), the turnover of an undertaking is its turnover in—

(a) the last accounting period to end before the relevant date (its "relevant accounting period"), or

(b) if the undertaking has no accounting period that ends before the relevant date, the period beginning with the day on which the activities of the undertaking began to be carried on and ending with the last day of the month preceding the month in which the relevant date falls.

(**a**) 1998 c. 41. Section 35B is inserted by paragraph 6 of Schedule 11 to the Digital Markets, Competition and Consumers Act 2024 (c. 13) ("the 2024 Act") on a date to be appointed. Section 40A was inserted by section 40 of the Enterprise and Regulatory Reform Act 2013 (c. 24), and is amended by paragraph 9 of Schedule 10, and paragraph 11 of Schedule 28, to the 2024 Act on a date to be appointed, and by S.I. 2019/93. The regulation-making powers inserted by the 2024 Act were commenced, for limited purposes, by section 339(2)(c) of the 2024 Act on 24th May 2024.

(3) If the CMA(**a**) estimates on the relevant date that the turnover of the undertaking in the accounting period immediately preceding its relevant accounting period (the "preceding accounting period") was higher than the turnover of the undertaking in its relevant accounting period, the turnover is its turnover in the preceding accounting period.

(4) If the figures necessary to calculate turnover of the undertaking in its relevant accounting period are not available to the CMA on the relevant date, the turnover is (subject to paragraph (5)) its turnover in—

(a) the preceding accounting period, or

(b) if the undertaking has no preceding accounting period, the period beginning with the day on which the activities of the undertaking began to be carried on and ending with the day immediately preceding the date on which its relevant accounting period began.

(5) If the figures necessary to calculate the turnover of the undertaking under paragraph (4)(a) or (b) are not available to the CMA on the relevant date, the turnover of the undertaking is its turnover in the period beginning with the day after the last day of its relevant accounting period and ending with the last day of the month preceding the month in which the relevant date falls.

(6) Where the period by reference to which turnover is calculated does not equal 12 months, the turnover of the undertaking is the turnover in that period divided by the number of days in that period and multiplied by 365 or, if the period includes 29th February, 366.

(7) The daily turnover of the undertaking is the turnover divided by 365 or, if the period by reference to which turnover is calculated includes 29th February, 366.

(8) For the purposes of this regulation—

(a) an "accounting period" of an undertaking is a period of more than six months in respect of which accounts are prepared or required to be prepared in relation to the undertaking;

(b) the "relevant date" means the date on which the provisional penalty notice is issued pursuant to section 112(A1) of the Enterprise Act 2002(**b**) where the CMA is minded to impose a penalty under section 35A or 40ZE of the Act(**c**);

(c) the provisions of the Schedule apply in the determination of turnover.

Justin Madders
Parliamentary Under Secretary of State
Department for Business and Trade

25th November 2024

(**a**) Section 59(1) of the Competition Act 1998 defines "the CMA" as the Competition and Markets Authority.
(**b**) 2002 (c. 40). Section 112(A1) is inserted by paragraph 18 of Schedule 10 to the 2024 Act. Section 112(A1) requires the CMA to issue a provisional penalty notice before a penalty can be imposed under section 35A (per section 35B(6)) or section 40ZE (per section 40ZE(5)) of the Competition Act 1998.
(**c**) Section 35A is inserted by paragraph 6 of Schedule 11 to the 2024 Act. Section 40ZE is inserted by paragraph 8 of Schedule 10 to the 2024 Act and is further amended by section 121 of that Act.

SCHEDULE

Regulation 2

Turnover of an undertaking

Interpretation

1.—(1) In this Schedule—

"credit institution" means a credit institution as defined in section 417 of the Financial Services and Markets Act 2000 (definitions)(**a**);

"financial institution" means a financial institution as defined in Article 4(1)(26) of Regulation (EU) No. 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No. 648/2012 (definitions)(**b**), or any undertaking located outside the United Kingdom which does not fall within that definition but which carries on equivalent activities;

"insurance undertaking" means—

(a) an insurance undertaking as defined in section 417 of the Financial Services and Markets Act 2000,

(b) a reinsurance undertaking as defined in section 417 of the Financial Services and Markets Act 2000,

(c) an overseas insurance undertaking, or

(d) an overseas reinsurance undertaking;

"overseas insurance undertaking" means an undertaking—

(a) with a head office located in a country or territory other than the United Kingdom, and

(b) which effects or carries out contracts of insurance as principal;

"overseas reinsurance undertaking" means an undertaking—

(a) with a head office located in a country or territory other than the United Kingdom, and

(b) which effects or carries out contracts of insurance that are limited to reinsurance contracts as principal.

(2) The provisions of this Schedule are to be interpreted in accordance with generally accepted accounting principles and practices.

Turnover of an undertaking

2.—(1) The turnover of an undertaking is the sum of all amounts derived directly or indirectly by the undertaking from its sale of products and provision of services, after the deduction of sales rebates, value added tax and other taxes directly related to turnover.

(2) Paragraphs 5 and 6 also apply to determine the turnover of an undertaking.

(**a**) 2000 c. 8. The definition of "credit institution" was inserted into section 417 by S.I. 2019/632.
(**b**) EUR 575/2013 was amended by paragraph 2 of Schedule 1 to the Financial Services Act 2021 (c. 22) and S.I. 2019/1232.

(3) But where all or any of the activities of an undertaking are the activities of a credit institution, a financial institution or an insurance undertaking, paragraph 3 or (as the case may be) paragraph 4 applies instead of this paragraph to determine the turnover of the undertaking in respect of those activities.

Turnover in respect of activities as a credit institution or financial institution

3.—(1) The turnover of an undertaking in respect of its activities as a credit institution or financial institution is the sum of the following income items received by the undertaking, after the deduction of value added tax and other taxes directly related to those items—

(a) interest income and similar income;

(b) the following income from securities—

(i) income from shares and other variable yield securities;

(ii) income from participating interests;

(iii) income from shares in affiliated undertakings;

(c) commissions receivable;

(d) net profit on financial operations;

(e) other operating income.

(2) Expressions used in sub-paragraph (1) have the meanings given by Council Directive (EEC) 86/635 of 8 December 1986 on the annual accounts and consolidated accounts of banks and other financial institutions(**a**).

(3) Paragraphs 5 and 6 also apply to determine the turnover of an undertaking in respect of its activities as a credit institution or financial institution.

Turnover in respect of activities as an insurance undertaking

4.—(1) The turnover of an undertaking in respect of its activities as an insurance undertaking is the total value of gross premiums received, comprising all amounts received and receivable in respect of insurance contracts issued by or on behalf of the undertaking, including outgoing reinsurance premiums, and after deduction of taxes and parafiscal contributions or levies charged by reference to the amounts of individual premiums or the total volume of premiums.

(2) Paragraphs 5 and 6 also apply to determine the turnover of an undertaking in respect of its activities as an insurance undertaking.

Subsidies

5.—(1) The turnover of an undertaking includes any subsidy given to the undertaking, determined in accordance with this paragraph.

(2) For the purposes of sub-paragraph (1), "subsidy" means financial assistance which—

(a) is given, directly or indirectly, from public resources by a public authority,

(b) confers an economic advantage on one or more undertakings, and

(c) is specific such that it benefits one or more undertakings over one or more other undertakings with respect to the production and sale of products and the provision of services.

(**a**) OJ No. L372, 31.12.86, p.1, amended by Directives 2001/65/EC (OJ No. L 283, 27.10.01, p. 28), 2003/51/EC (OJ No. L178, 17.7. 03, p. 16), and 2006/46/EC (OJ No. L224, 16.8.06, p. 1).

(3) For the purposes of sub-paragraph (2), the means by which financial assistance may be given include—

(a) a direct transfer of funds (such as grants or loans);

(b) a contingent transfer of funds (such as guarantees);

(c) the forgoing of revenue that is otherwise due;

(d) the sale of products;

(e) the provision of services;

(f) the purchase of products and services.

(4) For the purposes of sub-paragraph (2)(a), "public authority" means a person who exercises functions of a public nature.

(5) Financial assistance given by a person who is not a public authority is to be treated for the purposes of sub-paragraph (2)(a) as financial assistance given from public resources by a public authority if the involvement of a public authority in the decision to give financial assistance is such that the decision is, in substance, the decision of the public authority.

(6) For the purposes of sub-paragraph (5), the factors which may be taken into account when considering the involvement of a public authority in the decision of a person to give financial assistance include, in particular, factors relating to—

(a) the control exercised over that person by that public authority, or

(b) the relationship between that person and that public authority.

(7) For the purposes of this paragraph, financial assistance is to be treated as given to an undertaking if the undertaking has an enforceable right to the financial assistance.

Further provisions about determining turnover

6.—(1) Where an undertaking consists of two or more undertakings that each prepare accounts, the turnover is to be calculated by adding together the respective turnover of each, save that no account is to be taken of any turnover resulting from the sale of products and provision of services between them.

(2) Where in the accounts or other information used by the CMA to determine turnover of an undertaking any figure is expressed in a currency other than sterling, the CMA may determine the equivalent in sterling, applying whatever rate or rates of exchange the CMA considers appropriate and rounding the resulting figure up or down as the CMA considers appropriate.

(3) Where an acquisition, divestment or other transaction or event has occurred since the end of the period by reference to which the turnover of the undertaking is determined in accordance with regulation 2 which the CMA considers may have a significant impact on the turnover of the undertaking, the CMA may take account of that acquisition, divestment or transaction or event if the CMA considers it appropriate to do so and accordingly increase or (as the case may be) reduce by such amount as the CMA considers appropriate the amount which would otherwise constitute the turnover of the undertaking.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision for the purposes of sections 35B(4) and 40A(3A) of the Competition Act 1998 (c. 41) for determining the turnover of an undertaking.

The Digital Markets, Competition and Consumers Act 2024 (c. 13) amends Part 1 of the Competition Act 1998 in respect of enforcement, including the calculation of penalties. Section 35B of the Competition Act 1998 sets out the maximum penalties that the Competition and Markets Authority ("the CMA") may impose under section 35A of that Act. Section 40A of the Competition Act 1998 sets out the maximum penalties that the CMA may impose under section 40ZE of that Act.

Those sections provide for maximum penalties for a person who is an undertaking by reference to the turnover and daily turnover of the undertaking on whom the penalty is imposed.

Regulation 2 and the Schedule make provision for determining the turnover and daily turnover of an undertaking.

The impact assessments completed for the Digital Markets, Competition and Consumers Bill, introduced to Parliament on 25th April 2023, contain an assessment of the effect that the reforms to the competition regime will have on the costs of business, the voluntary sector and the public sector. They are available at: https://bills.parliament.uk/bills/3453/publications. Printed copies can be obtained from the Department for Business and Trade, Old Admiralty Building, Admiralty Place, London SW1A 2DY.

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