



Digital Markets, Competition and Consumers Act 2024

2024 CHAPTER 13

PART 1

DIGITAL MARKETS

CHAPTER 7

ENFORCEMENT AND APPEALS

Civil penalties

85 Penalties for failure to comply with competition requirements

- (1) Where the CMA considers that an undertaking has, without reasonable excuse, failed to comply with a requirement listed in [subsection \(2\)](#), it may impose a penalty on the undertaking.
- (2) The requirements are—
 - (a) a requirement imposed by virtue of an enforcement order under [section 31](#) or [section 32](#),
 - (b) a requirement imposed by virtue of a final offer order under [section 41](#) (including a requirement imposed in reliance on [section 42](#)),
 - (c) a requirement imposed by virtue of a pro-competition order under [section 46](#), and
 - (d) the requirement to comply with a commitment given under [section 36](#) or [56](#).
- (3) The CMA may impose a penalty on an undertaking where the CMA considers that the undertaking has, without reasonable excuse, failed to comply with a conduct requirement under [section 19](#).

- (4) The CMA may impose a penalty on an undertaking or, where the undertaking is part of a group, the group, where the CMA considers that the undertaking or any member of the group has, without reasonable excuse, failed to comply with a requirement in [Chapter 5](#) (mergers).

86 Amount of penalties under section 85

- (1) The amount of a penalty imposed on a person under section 85 may be such amount as the CMA considers appropriate, provided it does not exceed the amounts set out in subsection (4).
- (2) The amount of a penalty under section 85(1) must be—
- a fixed amount,
 - an amount calculated by reference to a daily rate, or
 - a combination of a fixed amount and an amount calculated by reference to a daily rate.
- (3) The amount of a penalty under section 85(3) or (4) must be a fixed amount.
- (4) The maximum amounts of a penalty that may be imposed are—
- in the case of a fixed amount, an amount equal to 10% of the total value of the turnover of the undertaking or, where the undertaking is part of a group, the turnover of the group;
 - in the case of an amount calculated by reference to a daily rate, for each day an amount equal to 5% of the total value of the daily turnover of the undertaking or, where the undertaking is part of a group, the daily turnover of the group;
 - in the case of a combination of a fixed amount and an amount calculated by reference to a daily rate, the amounts mentioned in paragraph (a), in relation to the fixed amount, and paragraph (b), in relation to the amount calculated by reference to a daily rate.
- (5) In subsection (4), references to the total value of the turnover or daily turnover of an undertaking or group are to the total value of the turnover or daily turnover of the undertaking or, as the case may be, group, both inside and outside the United Kingdom.

87 Penalties for failure to comply with investigative requirements

- (1) The CMA may impose a penalty on a person where it considers that the person has, without reasonable excuse—
- failed to comply with a requirement imposed by or under [Chapter 6](#),
 - given information which is false or misleading in a material particular in connection with any function of the CMA under this Part, or
 - given information which is false or misleading in a material particular to another person knowing that the information was to be used for the purpose of giving information to the CMA in connection with any function of the CMA under this Part.
- (2) The CMA may impose a penalty on an individual named as a senior manager under [section 70](#) as well as on the undertaking that names the individual where—
- the CMA considers that the individual has failed, without reasonable excuse, to prevent a failure or an action by the undertaking of a sort mentioned in subsection (1), and

- (b) the failure or action relates to an information notice in response to which the individual was named as a senior manager.
- (3) The CMA may impose a penalty on an individual who is appointed by an undertaking to be a nominated officer under [section 83](#) in relation to a digital markets requirement (within the meaning of that section), as well as on the undertaking that appoints the individual, where the CMA considers that the individual has failed, without reasonable excuse, to prevent the undertaking from failing to comply with a requirement in or under [section 84](#) (compliance reports) in relation to that digital markets requirement.
- (4) The CMA may impose a penalty on an individual where it considers that the individual has, without reasonable excuse, obstructed an officer of the CMA acting in the exercise of the officer's powers under—
 - (a) [section 74](#), or
 - (b) a warrant issued under [section 75](#).

88 Amount of penalties under [section 87](#)

- (1) The amount of a penalty imposed on a person under [section 87](#) may be such amount as the CMA considers appropriate, provided it does not exceed the amounts set out in subsections [\(3\)](#) and [\(5\)](#).
- (2) The amount of a penalty under [section 87](#) must be—
 - (a) a fixed amount,
 - (b) an amount calculated by reference to a daily rate, or
 - (c) a combination of a fixed amount and an amount calculated by reference to a daily rate.
- (3) The maximum amounts of a penalty that may be imposed on an undertaking that is not an individual are—
 - (a) in the case of a fixed amount, an amount equal to 1% of the total value of the person's turnover (both inside and outside the United Kingdom);
 - (b) in the case of an amount calculated by reference to a daily rate, for each day an amount equal to 5% of the total value of the person's daily turnover (both inside and outside the United Kingdom);
 - (c) in the case of a combination of a fixed amount and an amount calculated by reference to a daily rate, the amounts mentioned in paragraph (a), in relation to the fixed amount, and paragraph (b), in relation to the amount calculated by reference to a daily rate.
- (4) Where a person is an undertaking that is part of a group, references in subsection [\(3\)](#) to the person's turnover are to the turnover of that group.
- (5) The maximum amounts of a penalty that may be imposed on an individual or a person that is not an undertaking are—
 - (a) in the case of a fixed amount, £30,000,
 - (b) in the case of an amount calculated by reference to a daily rate, £15,000 per day, or
 - (c) in the case of a combination of a fixed amount and an amount calculated by reference to a daily rate, the amounts mentioned in paragraph (a), in relation to the fixed amount, and paragraph (b), in relation to the amount calculated by reference to a daily rate.

Status: This is the original version (as it was originally enacted).

- (6) The Secretary of State may by regulations amend the amounts mentioned in paragraphs (a) and (b) of subsection (5).
- (7) The Secretary of State must consult the CMA and such other persons as the Secretary of State considers appropriate before making regulations under subsection (6).
- (8) Regulations under subsection (6) are subject to the affirmative procedure.

89 Procedure and appeals etc

- (1) Sections 112 (penalties: main procedural requirements), 113 (payments and interest by instalments), 114 (appeals), and 115 (recovery of penalties) of EA 2002 apply in relation to a penalty imposed under section 85 or 87 as they apply in relation to a penalty imposed under section 110(1) of that Act.
- (2) For the purposes of this section—
 - (a) sections 112 to 115 of EA 2002 are to be read as if references to “the appropriate authority” were references to “the CMA” only;
 - (b) section 114(5A) of that Act is to be read as if the words “In the case of a penalty imposed on a person by the CMA or OFCOM,” were omitted;
 - (c) section 114(12) of that Act is to be read as if, for paragraph (b), there were substituted—
 - “(b) “the relevant guidance” means the statement of policy which was most recently published under section 91 of the Digital Markets, Competition and Consumers Act 2024 at the time of the act or omission giving rise to the penalty.”

90 Calculation of daily rates and turnover

- (1) In imposing a penalty by reference to a daily rate—
 - (a) no account is to be taken of any days before the service on the person concerned of the provisional penalty notice under section 112(A1) of EA 2002 (as applied by section 89), and
 - (b) unless the CMA determines an earlier day (whether before or after the penalty is imposed), the amount payable ceases to accumulate at the beginning of—
 - (i) the day on which the person first complies with the requirement in question, or
 - (ii) if earlier, where the requirement was imposed in connection with the provision by the CMA of assistance to an overseas regulator (see section 319 (provision of investigative assistance to overseas regulators)), the day on which the overseas regulator no longer requires that assistance.
- (2) The Secretary of State may by regulations make provision for determining the turnover (both inside and outside the United Kingdom) of a person for the purposes of this Chapter.
- (3) The regulations may (among other things)—
 - (a) make provision about amounts which are, or are not, to be included in a person’s turnover;
 - (b) make provision about the date or dates by reference to which a person’s turnover is to be determined;

- (c) confer on the CMA the power to determine and make provision about matters specified in the regulations (including the matters mentioned in paragraphs (a) and (b)).
- (4) Regulations under subsection (2) are subject to the negative procedure.

91 Statement of policy on penalties

- (1) The CMA must prepare and publish a statement of policy in relation to the exercise of powers to impose a penalty under sections 85 and 87.
- (2) The statement must include a statement about the considerations relevant to the determination of—
 - (a) whether to impose a penalty under section 85 or 87;
 - (b) the nature and amount of any such penalty.
- (3) The CMA may revise its statement of policy and, where it does so, must publish the revised statement.
- (4) In preparing or revising its statement of policy the CMA must consult—
 - (a) the Secretary of State, and
 - (b) such other persons as the CMA considers appropriate.
- (5) A statement of policy, or revised statement, may not be published under [this section](#) without the approval of the Secretary of State.
- (6) Subsection (7) applies where the CMA proposes to impose a penalty on a person.
- (7) The CMA must have regard to the statement of policy most recently published under this section at the time of the act or omission giving rise to the penalty when deciding—
 - (a) whether to impose the penalty, and
 - (b) if so, the amount of the penalty.

92 Monetary penalties: criminal proceedings and convictions

- (1) The CMA may not impose a penalty on a person under section 87 in relation to an act or omission which constitutes an offence under section 93, 94 or 95 if the person has, in relation to that act or omission, been found guilty of that offence.
- (2) A person may not be found guilty of an offence under section 93, 94 or 95 by virtue of an act or omission if the person has paid a penalty imposed under section 87 in relation to that act or omission.