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## 2000 No. 309

### COMPETITION

#### The Competition Act 1998 (Determination of Turnover for Penalties) Order 2000

*Made* - - - - - *10th February 2000*

*Coming into force* - - - *1st March 2000*

Whereas the Secretary of State laid the draft of this Order before Parliament on 19th January 2000;

And whereas the said draft as so laid has been approved by resolution of each House of Parliament;

Now therefore the Secretary of State in exercise of the powers conferred on him by sections 36(8) and 71 of the Competition Act 1998(a) hereby makes the following Order:

#### **Citation and commencement**

1.—(1) This Order may be cited as the Competition Act 1998 (Determination of Turnover for Penalties) Order 2000 and shall come into force on 1st March 2000.

#### **Interpretation**

2.—(1) In this Order:

“the Act” means the Competition Act 1998;

“applicable turnover” means the turnover of an undertaking for a business year determined in accordance with the Schedule to this Order; and where a business year does not equal 12 months the applicable turnover shall be the amount which bears the same proportion to the applicable turnover during that business year as 12 months does to that period;

“business year” means a period of more than six months in respect of which an undertaking publishes accounts or, if no such accounts have been published for the period, prepares accounts;

“length of the infringement” means the period in a decision made under section 36 of the Act during which an undertaking is determined to have infringed the Chapter I or the Chapter II prohibition, and the “date when the infringement ended” means the end of that period.

#### **Determination of turnover for the purposes of section 36(8)**

3. The turnover of an undertaking for the purposes of section 36(8) is:

- (1) the applicable turnover for the business year preceding the date when the infringement ended;
- (2) where the length of the infringement is more than 12 months, in addition the amount of the applicable turnover for the business year preceding that identified under

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(a) 1998 c. 41.

paragraph (1) which bears the same proportion to the applicable turnover for that business year as the period by which the length of infringement exceeds 12 months bears to 12 months; and

- (3) where the length of the infringement is more than 24 months, in addition the amount of the applicable turnover for the business year preceding that identified under paragraph (2) which bears the same proportion to the applicable turnover for that business year as the period by which the length of infringement exceeds 24 months bears to 12 months;

save that the amount added under paragraph (2) or (3) shall not exceed the amount of the applicable turnover for the preceding business year in question.

4. Where in the application of article 3 there is any period in respect of which there is no preceding business year then the applicable turnover shall be the turnover for that period.

## SCHEDULE

Article 2

### Applicable turnover

#### Interpretation

- 1.—(1) In this Schedule:

“branch” means a place of business in the United Kingdom which forms a legally dependent part of a credit institution or financial institution and which conducts directly all or some of the operations inherent in the business of the undertaking and any number of branches set up in the United Kingdom shall for the purposes of this Order be regarded as a single branch;

“credit institution” means a credit institution for the purposes of Article 1 of Council Directive (EEC) No. 77/780 the First Council Directive on the co-ordination of laws, regulations and administrative provisions relating to the taking up and pursuit of the business of credit institutions(a);

“financial institution” means a financial institution for the purposes of Article 1(6) of Council Directive (EEC) No. 89/646 the Second Council Directive on the co-ordination of laws, regulations and administrative provisions relating to the taking up and pursuit of the business of credit institutions and amending Directive 77/780/EEC(b);

“insurance undertaking” means an insurance undertaking carrying on the business of direct insurance of a class set out in the Annex to Council Directive (EEC) 73/239 the First Council Directive on the co-ordination of laws, regulations and administrative provisions relating to the taking-up and pursuit of the business of direct insurance other than life assurance(c) or in Article 1 of Council Directive (EEC) 79/267 the First Council Directive on the co-ordination of laws, regulations and administrative provisions relating to the taking up and pursuit of the business of direct life assurance(d); and

terms used in this Schedule in respect of the determination of the applicable turnover of credit institutions, financial institutions and insurance undertakings shall (except where the contrary intention appears) have the same meaning as in the relevant Directive.

2. The provisions of this Schedule shall be interpreted in accordance with generally accepted accounting principles and practices.

#### General

3. The applicable turnover of an undertaking, other than a credit institution, financial institution, insurance undertaking, or an association of undertakings, shall be limited to the amounts derived by the undertaking from the sale of products and the provision of services falling within the undertaking's ordinary activities to undertakings or consumers in the United Kingdom after deduction of sales rebates, value added tax and other taxes directly related to turnover.

4. Where an undertaking consists of two or more undertakings that each prepare accounts then the applicable turnover shall be calculated by adding together the respective applicable turnover of each, save that no account shall be taken of any turnover resulting from the sale of products or the provision of services between them.

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(a) OJ No. L322, 17.12.77, p.30.

(b) OJ No. L386, 30.12.89, p.1.

(c) OJ No. L228, 16.8.73, p.3.

(d) OJ No. L63, 13.3.79, p.1.

**Credit institutions and financial institutions**

5. The applicable turnover of a credit institution or financial institution shall be limited to the sum of the following income as defined in Council Directive (EEC) 86/635(a) received by the branch or division of that institution established in the United Kingdom after deduction of value added tax and other taxes directly related to those items:

- (i) interest income and similar income;
- (ii) income from securities:
  - income from shares and other variable yield securities;
  - income from participating interests;
  - income from shares in affiliated undertakings;
- (iii) commissions receivable;
- (iv) net profit on financial operations;
- (v) other operating income.

**Insurance undertakings**

6. The applicable turnover of an insurance undertaking shall be limited to the value of gross premiums received from residents of the United Kingdom which shall comprise 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.

**Turnover of associations of undertakings**

7. The turnover of an association of undertakings shall be the aggregate applicable turnover of the undertakings that are members of the association.

**Aid granted to undertakings**

8. Any aid granted by a public body to an undertaking which relates to one of the undertaking's ordinary activities shall be included in the calculation of turnover if the undertaking is itself the recipient of the aid and if the aid is directly linked to the sale of products or the provision of services by the undertaking and is therefore reflected in the price.

10th February 2000

*Kim Howells*  
Parliamentary Under Secretary of State for  
Consumers and Corporate Affairs,  
Department of Trade and Industry

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(a) OJ No. L372, 31.12.86, p.1.

**EXPLANATORY NOTE**

*(This note is not part of the Order)*

This order specifies how the turnover of the undertaking is to be determined for the purposes of section 36(8) of the Competition Act 1998. Where an undertaking infringes either of the prohibitions contained in the Act the Director General of Fair Trading, or one of the regulators having concurrent powers, may impose on the undertaking a penalty of up to 10 per cent. of its turnover as so defined.

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