

2004 No. 1259

COMPETITION

The Competition Act 1998 (Determination of Turnover for Penalties) (Amendment) Order 2004

Made - - - - - *30th April 2004*

Coming into force - - - - - *1st May 2004*

Whereas the Secretary of State laid a draft of this Order before Parliament on 31st March 2004;

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 her by sections 36(8) and 71 of the Competition Act 1998(a), hereby makes the following Order:

Citation and commencement

1. This Order may be cited as the Competition Act 1998 (Determination of Turnover for Penalties) (Amendment) Order 2004 and shall come into force on 1st May 2004.

Amendment of the 2000 Order

2.—(1) The Competition Act 1998 (Determination of Turnover for Penalties) Order 2000(b) is amended as follows.

(2) In article 2(1), the definition of “length of the infringement” shall cease to have effect.

(3) For article 3, substitute the following—

“The turnover of an undertaking for the purposes of section 36(8) is the applicable turnover for the business year preceding the date on which the decision of the OFT is taken or, if figures are not available for that business year, the one immediately preceding it.”.

(4) In the Schedule—

(a) in paragraph 1(1), the definition of “branch” shall cease to have effect;

(b) in paragraph 3, the words “to undertakings or consumers in the United Kingdom” shall cease to have effect;

(c) in paragraph 5—

(i) for the words “as defined” there is substituted “items listed”;

(ii) the words “the branch or division of” shall cease to have effect; and

(a) 1998 c. 41.

(b) S.I. 2000/309 (as amended by S.I. 2000/2952 and S.I. 2002/765).

- (iii) the words “established in the United Kingdom” shall cease to have effect; and
- (d) in paragraph 6, the words “from residents of the United Kingdom” shall cease to have effect.

Gerry Sutcliffe,
Parliamentary Under Secretary of State for Employment
Relations, Competition and Consumers,
Department of Trade and Industry

30th April 2004

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the Competition Act 1998 (Determination of Turnover for Penalties) Order 2000 (S.I. 2000/309 (as amended by S.I. 2000/2952 and S.I. 2002/765): “the Turnover Order”). The Turnover Order specifies how the turnover of an undertaking is to be determined for the purposes of section 36(8) of the Competition Act 1998 (c.41: “the 1998 Act”).

Council Regulation (EC) No. 1/2003 of 16th December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty (OJ L 001, 04.1.03, p.1-25: “the EC Competition Regulation”) amends the procedural regime for the implementation of Articles 81 and 82 of the treaty establishing the European Community (“the Treaty”) with effect from 1 May 2004. The Competition Act 1998 and Other Enactments (Amendment) Regulations 2004 (“the Regulations”) amend the 1998 Act in order to implement the EC Competition Regulation and to align the domestic competition regime in the 1998 Act and the new European competition regime provided for in the EC Competition Regulation.

Subject to the possibility of satisfying the conditions set out in Article 81(3) of the Treaty, Article 81(1) of the Treaty prohibits agreements between undertakings which have as their object or effect the prevention, restriction or distortion of competition within the common market and which may affect trade between Member States. Article 82 of the Treaty prohibits the abuse by one or more undertakings of a dominant position within the common market or in a substantial part of it in so far as it may affect trade between Member States.

Section 36 of the 1998 Act, which provides for the imposition of penalties under Part I of that Act for infringements of the Chapter I prohibition and Chapter II prohibition, is extended by the Regulations to apply to infringements of the prohibitions in Articles 81(1) and 82.

The Turnover Order, as amended by this Order, provides that where an undertaking infringes the prohibition in Article 81(1) or Article 82 of the Treaty and/or the Chapter I prohibition or the Chapter II prohibition in Part I of the 1998 Act, the Office of Fair Trading (“the OFT”), or one of the regulators having concurrent powers, may impose on an undertaking a maximum penalty of up to 10 per cent of its worldwide turnover. The turnover of an undertaking for these purposes is the applicable turnover, as defined, for the business year preceding the date on which the decision of the OFT or regulator having concurrent powers is taken or, if figures are not available for that business year, the one immediately preceding it.

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