



Enterprise Act 2002

2002 CHAPTER 40

PART 3

MERGERS

CHAPTER 5

SUPPLEMENTARY

Investigation powers

109 Attendance of witnesses and production of documents etc.

- (1) The Commission may, for the purpose of any investigation on a reference made to it under this Part, give notice to any person requiring him—
 - (a) to attend at a time and place specified in the notice; and
 - (b) to give evidence to the Commission or a person nominated by the Commission for the purpose.
- (2) The Commission may, for the purpose of any investigation on a reference made to it under this Part, give notice to any person requiring him—
 - (a) to produce any documents which—
 - (i) are specified or described in the notice, or fall within a category of document which is specified or described in the notice; and
 - (ii) are in that person's custody or under his control; and
 - (b) to produce them at a time and place so specified and to a person so specified.
- (3) The Commission may, for the purpose of any investigation on a reference made to it under this Part, give notice to any person who carries on any business requiring him—
 - (a) to supply to the Commission such estimates, forecasts, returns or other information as may be specified or described in the notice; and

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- (b) to supply it at a time and place, and in a form and manner, so specified and to a person so specified.
- (4) A notice under this section shall include information about the possible consequences of not complying with the notice.
- (5) The Commission or any person nominated by it for the purpose may, for the purpose of any investigation on a reference made to it under this Part, take evidence on oath, and for that purpose may administer oaths.
- (6) The person to whom any document is produced in accordance with a notice under this section may, for the purpose of any investigation on a reference made to the Commission under this Part, copy the document so produced.
- (7) No person shall be required under this section—
 - (a) to give any evidence or produce any documents which he could not be compelled to give or produce in civil proceedings before the court; or
 - (b) to supply any information which he could not be compelled to supply in evidence in such proceedings.
- (8) No person shall be required, in compliance with a notice under this section, to go more than 10 miles from his place of residence unless his necessary travelling expenses are paid or offered to him.
- (9) Any reference in this section to the production of a document includes a reference to the production of a legible and intelligible copy of information recorded otherwise than in legible form.
- (10) In this section “the court” means—
 - (a) in relation to England and Wales or Northern Ireland, the High Court; and
 - (b) in relation to Scotland, the Court of Session.

110 Enforcement of powers under section 109: general

- (1) Where the Commission considers that a person has, without reasonable excuse, failed to comply with any requirement of a notice under section 109, it may impose a penalty in accordance with section 111.
- (2) The Commission may proceed (whether at the same time or at different times) under subsection (1) and section 39(4) or (as the case may be) 51(4) (including that enactment as applied by section 65(3)) in relation to the same failure.
- (3) Where the Commission considers that a person has intentionally obstructed or delayed another person in the exercise of his powers under section 109(6), it may impose a penalty in accordance with section 111.
- (4) No penalty shall be imposed by virtue of subsection (1) or (3) if more than 4 weeks have passed since the publication of the report of the Commission on the reference concerned; but this subsection shall not apply in relation to any variation or substitution of the penalty which is permitted by virtue of this Part.
- (5) A person, subject to subsection (6), commits an offence if he intentionally alters, suppresses or destroys any document which he has been required to produce by a notice under section 109.

- (6) A person does not commit an offence under subsection (5) in relation to any act which constitutes a failure to comply with a notice under section 109 if the Commission has proceeded against that person under subsection (1) above in relation to that failure.
- (7) A person who commits an offence under subsection (5) shall be liable—
 - (a) on summary conviction, to a fine not exceeding the statutory maximum;
 - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.
- (8) The Commission shall not proceed against a person under subsection (1) in relation to an act which constitutes an offence under subsection (5) if that person has been found guilty of that offence.
- (9) In deciding whether and, if so, how to proceed under subsection (1) or (3) or section 39(4) or 51(4) (including that enactment as applied by section 65(3)), the Commission shall have regard to the statement of policy which was most recently published under section 116 at the time when the failure concerned or (as the case may be) the obstruction or delay concerned occurred.
- (10) The reference in this section to the production of a document includes a reference to the production of a legible and intelligible copy of information recorded otherwise than in legible form; and the reference to suppressing a document includes a reference to destroying the means of reproducing information recorded otherwise than in legible form.

111 Penalties

- (1) A penalty imposed under section 110(1) or (3) shall be of such amount as the Commission considers appropriate.
- (2) The amount may, in the case of a penalty imposed under section 110(1), 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 shall, in the case of a penalty imposed under section 110(3), be a fixed amount.
- (4) No penalty imposed under section 110(1) shall—
 - (a) in the case of a fixed amount, exceed such amount as the Secretary of State may by order specify;
 - (b) in the case of an amount calculated by reference to a daily rate, exceed such amount per day as the Secretary of State may so specify; and
 - (c) in the case of a fixed amount and an amount calculated by reference to a daily rate, exceed such fixed amount and such amount per day as the Secretary of State may so specify.
- (5) In imposing a penalty by reference to a daily rate—
 - (a) no account shall be taken of any days before the service of the notice under section 112 on the person concerned; and
 - (b) unless the Commission determines an earlier date (whether before or after the penalty is imposed), the amount payable shall cease to accumulate at the beginning of—

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- (i) the day on which the requirement of the notice concerned under section 109 is satisfied or (as the case may be) the obstruction or delay is removed; or
 - (ii) if earlier, the day on which the report of the Commission on the reference concerned is published (or, in the case of a report under section 50 or 65, given) or, if no such report is published (or given) within the period permitted for that purpose by this Part, the latest day on which the report may be published (or given) within the permitted period.
- (6) No penalty imposed under section 110(3) shall exceed such amount as the Secretary of State may by order specify.
- (7) An order under subsection (4) or (6) shall not specify—
- (a) in the case of a fixed amount, an amount exceeding £30,000;
 - (b) in the case of an amount calculated by reference to a daily rate, an amount per day exceeding £15,000; and
 - (c) in the case of a fixed amount and an amount calculated by reference to a daily rate, a fixed amount exceeding £30,000 and an amount per day exceeding £15,000.
- (8) Before making an order under subsection (4) or (6) the Secretary of State shall consult the Commission and such other persons as he considers appropriate.

112 Penalties: main procedural requirements

- (1) As soon as practicable after imposing a penalty under section 110(1) or (3), the Commission shall give notice of the penalty.
- (2) The notice shall state—
- (a) that the Commission has imposed a penalty on the person concerned;
 - (b) whether the penalty is of a fixed amount, of an amount calculated by reference to a daily rate or of both a fixed amount and an amount calculated by reference to a daily rate;
 - (c) the amount or amounts concerned and, in the case of an amount calculated by reference to a daily rate, the day on which the amount first starts to accumulate and the day or days on which it might cease to accumulate;
 - (d) the failure or (as the case may be) the obstruction or delay which the Commission considers gave it the power to impose the penalty;
 - (e) any other facts which the Commission considers justify the imposition of a penalty and the amount or amounts of the penalty;
 - (f) the manner in which, and place at which, the penalty is required to be paid to the Commission;
 - (g) the date or dates, no earlier than the end of the relevant period beginning with the date of service of the notice on the person concerned, by which the penalty or (as the case may be) different portions of it are required to be paid;
 - (h) that the penalty or (as the case may be) different portions of it may be paid earlier than the date or dates by which it or they are required to be paid; and
 - (i) that the person concerned has the right to apply under subsection (3) below or to appeal under section 114 and the main details of those rights.

- (3) The person against whom the penalty was imposed may, within 14 days of the date of service on him of a notice under subsection (1), apply to the Commission for it to specify a different date or (as the case may be) different dates by which the penalty or (as the case may be) different portions of it are to be paid.
- (4) A notice under this section shall be given by—
 - (a) serving a copy of the notice on the person on whom the penalty was imposed; and
 - (b) publishing the notice.
- (5) In this section “relevant period” means the period of 28 days mentioned in subsection (3) of section 114 or, if another period is specified by the Secretary of State under that subsection, that period.

113 Payments and interest by instalments

- (1) If the whole or any portion of a penalty is not paid by the date by which it is required to be paid, the unpaid balance from time to time shall carry interest at the rate for the time being specified in section 17 of the Judgments Act 1838 (c. 110).
- (2) Where an application has been made under section 112(3), the penalty shall not be required to be paid until the application has been determined, withdrawn or otherwise dealt with.
- (3) If a portion of a penalty has not been paid by the date required for it, the Commission may, where it considers it appropriate to do so, require so much of the penalty as has not already been paid (and is capable of being paid immediately) to be paid immediately.
- (4) Any sums received by the Commission in or towards the payment of a penalty, or interest on a penalty, shall be paid into the Consolidated Fund.

114 Appeals in relation to penalties

- (1) This section applies if a person on whom a penalty is imposed under section 110(1) or (3) is aggrieved by—
 - (a) the imposition or nature of the penalty;
 - (b) the amount or amounts of the penalty; or
 - (c) the date by which the penalty is required to be paid or (as the case may be) the different dates by which portions of the penalty are required to be paid.
- (2) The person aggrieved may apply to the Competition Appeal Tribunal.
- (3) If a copy of the notice under section 112(1) was served on the person on whom the penalty was imposed, the application to the Competition Appeal Tribunal shall, subject to subsection (4), be made within—
 - (a) the period of 28 days starting with the day on which the copy was served on the person concerned; or
 - (b) such other period as the Secretary of State may by order specify.
- (4) If the application relates to a decision of the Commission on an application by the person on whom the penalty was imposed under section 112(3), the application to the Competition Appeal Tribunal shall be made within—

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- (a) the period of 28 days starting with the day on which the person concerned is notified of the decision; or
 - (b) such other period as the Secretary of State may by order specify.
- (5) On an application under this section, the Competition Appeal Tribunal may—
- (a) quash the penalty;
 - (b) substitute a penalty of a different nature or of such lesser amount or amounts as the Competition Appeal Tribunal considers appropriate; or
 - (c) in a case falling within subsection (1)(c), substitute for the date or dates imposed by the Commission an alternative date or dates;
- if it considers it appropriate to do so.
- (6) The Competition Appeal Tribunal shall not substitute a penalty of a different nature under subsection (5)(b) unless it considers that the person on whom the penalty is imposed will, or is likely to, pay less under the substituted penalty than he would have paid under the original penalty.
- (7) Where an application has been made under this section—
- (a) the penalty shall not be required to be paid until the application has been determined, withdrawn or otherwise dealt with; and
 - (b) the Commission may agree to reduce the amount or amounts of the penalty in settlement of the application.
- (8) Where the Competition Appeal Tribunal substitutes a penalty of a different nature or of a lesser amount or amounts it may require the payment of interest on the substituted penalty at such rate or rates, and from such date or dates, as it considers appropriate.
- (9) Where the Competition Appeal Tribunal specifies as a date by which the penalty, or a portion of the penalty, is to be paid a date before the determination of the application under this section it may require the payment of interest on the penalty, or portion, from that date at such rate as it considers appropriate.
- (10) An appeal lies to the appropriate court—
- (a) on a point of law arising from a decision of the Tribunal in proceedings under this section; or
 - (b) from a decision of the Tribunal in such proceedings as to the amount or amounts of a penalty.
- (11) An appeal under subsection (10)—
- (a) may be brought by a party to the proceedings before the Tribunal; and
 - (b) requires the permission of the Tribunal or the appropriate court.
- (12) In this section “the appropriate court” means the Court of Appeal or, in the case of Tribunal proceedings in Scotland, the Court of Session.

115 Recovery of penalties

Where a penalty imposed under section 110(1) or (3), or any portion of such a penalty, has not been paid by the date on which it is required to be paid and—

- (a) no application relating to the penalty has been made under section 114 during the period within which such an application may be made, or
- (b) any such application which has been made has been determined, withdrawn or otherwise dealt with,

the Commission may recover from the person on whom the penalty was imposed any of the penalty and any interest which has not been paid; and in England and Wales and Northern Ireland such penalty and interest may be recovered as a civil debt due to the Commission.

116 Statement of policy

- (1) The Commission shall prepare and publish a statement of policy in relation to the enforcement of notices under section 109.
- (2) The statement shall, in particular, include a statement about the considerations relevant to the determination of the nature and amount of any penalty imposed under section 110(1) or (3).
- (3) The Commission may revise its statement of policy and, where it does so, it shall publish the revised statement.
- (4) The Commission shall consult such persons as it considers appropriate when preparing or revising its statement of policy.

117 False or misleading information

- (1) A person commits an offence if—
 - (a) he supplies any information to the OFT, the Commission or the Secretary of State in connection with any of their functions under this Part;
 - (b) the information is false or misleading in a material respect; and
 - (c) he knows that it is false or misleading in a material respect or is reckless as to whether it is false or misleading in a material respect.
- (2) A person commits an offence if he—
 - (a) supplies any information to another person which he knows to be false or misleading in a material respect; or
 - (b) recklessly supplies any information to another person which is false or misleading in a material respect;knowing that the information is to be used for the purpose of supplying information to the OFT, the Commission or the Secretary of State in connection with any of their functions under this Part.
- (3) A person who commits an offence under subsection (1) or (2) shall be liable—
 - (a) on summary conviction, to a fine not exceeding the statutory maximum;
 - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.