

2014 No. 559

COMPETITION

The Competition and Markets Authority (Penalties) Order 2014

Made - - - - *6th March 2014*

Laid before Parliament *10th March 2014*

Coming into force - - *1st April 2014*

The Secretary of State makes the following Order in exercise of the powers conferred by section 111(4) and (6) and section 124(2)(b) and section 174D(4) and (5) of the Enterprise Act 2002(a) and section 40A(3) of the Competition Act 1998(b), including those subsections as applied by—

- (a) section 11B(1) of the Competition Act 1980(c),
- (b) section 41EB(1) of the Gas Act 1986(d),
- (c) section 56CB(1) of the Electricity Act 1989(e),
- (d) sections 16B(6), including that section as applied by section 12(3B), 14B(1), 17M(1) and 17Q(6) of and paragraph 1 of Schedule 4ZA to the Water Industry Act 1991(f),
- (e) article 15B(1) of the Electricity (Northern Ireland) Order 1992(g),
- (f) sections 13B(1) and 15C(2D) of, and paragraphs 10A(1) and 15(2D) of Schedule 4A to, the Railways Act 1993(h),
- (g) article 15B(1) of the Gas (Northern Ireland) Order 1996(i),

(a) 2002 c.40; section 174A was inserted by the Enterprise and Regulatory Reform Act 2013 (c.24), schedule 11, paragraph (1).

(b) 1998 c.41; section 40A was inserted by the Enterprise and Regulatory Reform Act 2013, section 40.

(c) 1980 c.21; section 11B was inserted by the Enterprise Act 2002, Schedule 25, paragraph 10(3).

(d) 1986 c.44; section 41EB was inserted by the Enterprise Act 2002, Schedule 25, paragraph 15(12); subsection (4) was amended by the Communications Act 2003 (c.21), Schedule 16, paragraph 2.

(e) 1989 c.29; section 56CB was inserted by the Enterprise Act 2002, Schedule 25, paragraph 20(12); subsection (4) had words substituted by the Communications Act 2003 (c.21), Schedule 16, paragraph 3.

(f) 1991 c.56; section 12(3B) was inserted by section 54(2) of the Water Act 2003 (c.37); section 14B(1) was added by the Enterprise Act 2002, Schedule 25, paragraph 25(5); sections 17M and 17Q were inserted by paragraphs 1 and 2 of Schedule 4 to the Water Act 2003; Schedule 4ZA was inserted by section 70 of, and Schedule 6, paragraph 1 to, the Enterprise Act 2002.

(g) S.I. 1992/231 (N.I. 1); article 15B was inserted by the Enterprise Act 2002, Schedule 25, paragraph 28(3).

(h) 1993 c.43; section 13B(1) was inserted by the Enterprise Act 2002, Schedule 25, paragraph 30(4); section 13B(4) had words substituted by the Communications Act 2003, Schedule 16, paragraph 4(2); section 15C was inserted by the Transport Act 2000 (c.38), section 242(2); section 15C(2D) was inserted by the Enterprise Act 2002, Schedule 25, paragraph 30(6); section 15C(2F) and section 15C(3) were amended by the Railways and Transport Safety Act 2003 (c.20), Schedule 2(1), paragraph 3; section 15C(2G) had words substituted by the Communications Act 2003, Schedule 16, paragraph 4(3); section 15C(3) had words repealed by the Railways Act 2005 (c.14), Schedule 13(1), paragraph 1 and by the Railways and Transport Safety Act 2003, Schedule 8, paragraph 1; paragraph 10A to Schedule 4A was inserted by the Enterprise Act 2002, Schedule 25, paragraph 30(15)(a) and had words substituted in sub-paragraph (4) by the Communications Act 2003, Schedule 16, paragraph 4(4); paragraph 15 of Schedule 4A was inserted by the Transport Act 2000 (c.38), Schedule 24, paragraph 1; paragraph 15(2D) of Schedule 4A was inserted by the Enterprise Act 2002, Schedule 25, paragraph 30(15)(c); paragraph 15(2F) and paragraph 15(3) of Schedule 4A had words substituted by the Railways and Transport Safety Act 2003, Schedule 2(1), paragraph 3; paragraph 15(2G) of Schedule 4A had words substituted by the Communications Act 2003, Schedule 16, paragraph 4(4); paragraph 15(3) of Schedule 4A had words inserted by the Railways Act 2005, Schedule 4, paragraph 10(1); paragraph 15(4)(a)-(b) was substituted for words in paragraph 15(4) of Schedule 4A by the Railways Act 2005, Schedule 4, paragraph 10(2).

(i) S.I. 1996/275 (N.I. 2); article 15B was inserted by the Enterprise Act 2002, Schedule 25, paragraph 36(3).

- (h) section 140D of the Financial Services Markets Act 2000(a),
- (i) sections 12B(1) and 18(6) of the Transport Act 2000(b),
- (j) paragraph 1(1)(q) of Schedule 3 to the Enterprise Act 2002 (Protection of Legitimate Interests) Order 2003(c),
- (k) article 5 of the Water Services (Scotland) Act 2005 (Consequential Provisions and Modifications) Order 2005(d),
- (l) article 23 Water and Sewerage Services (Northern Ireland) Order 2006(e),
- (m) section 57 and 60 of the Legal Services Act 2007(f),
- (n) section 60 of the Postal Services Act 2011(g),
- (o) Article 3 of the Postal Services (Appeals to the CMA) (Investigations and Extension of Time Limits) Order 2011(h), and
- (p) paragraph 10 of Schedule 10 of the Health and Social Care Act 2012(i),

In accordance with section 111(8) and 174D(7) of the Enterprise Act 2002(j) and section 40A(8) of the Competition Act 1998(k) the Secretary of State has consulted the Competition and Markets Authority and such other persons as he considers appropriate and has considered the representations received.

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Competition and Markets Authority (Penalties) Order 2014 and is to come into force on 1st April 2014.

(2) In this Order—

- (a) “the EA 2002” means the Enterprise Act 2002; and
- (b) “the CA 1998” means the Competition Act 1998.

The Specified Amounts: Mergers

2.—(1) For the purposes of section 111(4)(a) of the EA 2002 the fixed amount specified is £30,000.

(2) For the purposes of section 111(4)(b) of the EA 2002 the amount per day specified is £15,000.

(3) For the purposes of section 111(4)(c) of the EA 2002 the fixed amount specified is £30,000 and the amount per day specified is £15,000.

(4) For the purposes of section 111(6) of the EA 2002 the fixed amount specified is £30,000.

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- (a) 2000 c.8; Part 9A (sections 137A-141A) substituted for Part X (sections 138-164), by the Financial Services Act 2012, section 24(1)
 - (b) 2000 c.38; section 12B was inserted by the Enterprise Act 2002, Schedule 25, paragraph 44(3); section 12B(4) had words substituted by the Communications Act 2003, Schedule 16, paragraph 7(2); section 18 was substituted by the Enterprise Act 2002, Schedule 25, paragraph 44(5); section 18(9) had words substituted by the Communications Act 2003, Schedule 16, paragraph 7(3).
 - (c) S.I. 2003/1592; paragraph 1(20A) of Schedule 3 was inserted by the Enterprise Act 2002 and Media Mergers (Consequential Amendments) Order 2003/3180, Schedule 1, paragraph 10(15).
 - (d) S.I. 2005/3172.
 - (e) S.I. 2006/3336 (N.I. 21).
 - (f) 2007 c.29; sections 57 and 60 was amended by the Enterprise and Regulatory Reform Act 2013, Schedule 6, paragraphs 108, 109 and 112.
 - (g) 2011 c.5.
 - (h) S.I. 2011/2749.
 - (i) 2012 c.7; paragraph 10 of Schedule 10 had words substituted by the Enterprise and Regulatory Reform Act 2013, Schedule 6, paragraphs 127 and 138.
 - (j) 2002 c.40; section 111(8) was amended by the Enterprise and Regulatory Reform Act 2013, Schedule 5, paragraph 145; section 111(5) was amended by section 29(12) of the same Act; section 174D was inserted by Schedule 11, paragraph 1 of the same Act.
 - (k) 1998 c.41; section 40A was inserted by the Enterprise and Regulatory Reform Act 2013, section 40(2).

The Specified Amounts: Markets

3.—(1) For the purposes of section 174D(4)(a) of the EA 2002 the fixed amount specified is £30,000.

(2) For the purposes of section 174D(4)(b) of the EA 2002 the amount per day specified is £15,000.

(3) For the purposes of section 174D(4)(c) of the EA 2002 the fixed amount specified is £30,000 and the amount per day specified is £15,000.

(4) For the purposes of section 174D(5) of the EA 2002 the amount specified is £30,000.

The Specified Amounts: Anti-trust

4.—(1) For the purposes of section 40A(3)(a) of the CA 1998 the fixed amount specified is £30,000.

(2) For the purposes of section 40A(3)(b) of the CA 1998 the amount per day specified is £15,000.

(3) For the purposes of section 40A(3)(c) of the CA 1998 the fixed amount is £30,000 and the amount per specified is £15,000.

Revocation

5. The following Orders are revoked—

- (a) Competition Commission (Penalties) Order 2003(a) and
- (b) the Competition Commission (Water Industry) Penalties Order 2007(b).

Transitional provision

6.—(1) The amounts specified in Article 2 do not apply in relation to a notice given under section 109 of the EA 2002(c) (and section 109 as applied by any other enactment) before 1st April 2014.

(2) Despite the revocation of the Competition Commission (Penalties) Order 2003 by article 5, that Order (which specifies the maximum penalties that apply) shall continue to apply to a notice given under section 109 (and section 109 as applied by any other enactment) before 1st April 2014.

Jenny Willott

Parliamentary Under Secretary of State for Employment relations and Consumer Affairs
6th March 2014

Department for Business, Innovation and Skills

(a) S.I. 2003/1371.

(b) S.I. 2007/461.

(c) 2002 c.40; section 109 was amended by the Enterprise and Regulatory Reform Act 2013, section 29.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order specifies the maximum amounts that the Competition and Markets Authority (“the CMA”) may impose as a penalty under section 110(1) or (3) of the Enterprise Act 2002 (“EA 2002”). Section 110(1) of the EA 2002 permits the CMA to impose a penalty where a person has failed without reasonable excuse to comply with a notice under section 109 of the EA 2002. Section 110(3) of the Act permits the CMA to impose such a penalty where it considers that a person has intentionally obstructed or delayed another person in the exercise of his powers under section 109(6) EA 2002.

A penalty imposed under section 110(1) of the EA 2002 may be a fixed amount, an amount calculated by reference to a daily rate, or a combination of the two. Where the penalty comprises or includes a fixed amount, the maximum fixed amount is £30,000. Where the penalty comprises or includes an amount calculated by reference to a daily rate, the maximum rate at which the penalty may increase is £15,000 per day.

A penalty imposed under section 110(3) of the EA 2002 must be a fixed amount. The maximum amount of such a penalty is £30,000.

Sections 110 and 111 of the EA 2002 apply for the purposes of references to the CMA or investigations by the CMA for the purpose of exercising functions under a number of other statutory provisions.

This Order also specifies the maximum amounts that the CMA may impose as a penalty under section 174A(1) or (3) EA 2002. Section 174A(1) of the EA 2002 permits the CMA to impose a penalty where a person has failed, without reasonable excuse, to comply with a notice under section 174 of the EA 2002. Section 174A(3) of the EA 2002 permits the CMA to impose such a penalty where it considers that a person has intentionally obstructed or delayed another person in the exercise of his powers under section 174(7) of the EA 2002.

A penalty imposed under section 174D(4) of the EA 2002 may be a fixed amount, an amount calculated by reference to a daily rate, or a combination of the two. Where the penalty comprises or includes a fixed amount, the maximum fixed amount is £30,000. Where the penalty comprises or includes an amount calculated by reference to a daily rate, the maximum rate at which the penalty may increase is £15,000 per day.

A penalty imposed under section 174D(5) of the EA 2002 must be a fixed amount. The maximum amount of such a penalty is £30,000.

This Order also specifies the maximum amounts that the CMA may impose as a penalty under sections 26, 26A, 27, 28 and 28A of the Competition Act 1998 (“CA 1998”). Section 40A(1) of the CA 1998 permits the CMA to impose a penalty where a person has failed to comply with a requirement imposed on the person under those sections. A penalty imposed under section 40A(3) of the Act may be a fixed amount, an amount calculated by reference to a daily rate, or a combination of the two. Where the penalty comprises or includes a fixed amount, the maximum fixed amount is £30,000. Where the penalty comprises or includes an amount calculated by reference to a daily rate, the maximum rate at which the penalty may increase is £15,000 per day.

Article 6 makes transitional provisions.

The impact assessment completed for Parts 3 and 4 of the Enterprise and Regulatory Reform Bill, introduced to Parliament on 23rd May 2012, contains an assessment of the effect that the reforms to the competition regime will have on the costs of business and the public and voluntary sector and can be found at the website:

<https://www.gov.uk/government/publications/strengthening-competition-and-creating-a-single-market-authority>.

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£4.00

UK2014030731 03/2014 19585

<http://www.legislation.gov.uk/id/uksi/2014/559>

ISBN 978-0-11-111157-4



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