



Enterprise and Regulatory Reform Act 2013

2013 CHAPTER 24

PART 4

COMPETITION REFORM

CHAPTER 1

MERGERS

Interim measures

31 Interim measures: financial penalties: mergers

- (1) After section 94 of the 2002 Act (rights to enforce undertakings and orders under Part 3) insert—

“94A Interim undertakings and orders under this Part: penalties

- (1) Where the appropriate authority considers that a person has, without reasonable excuse, failed to comply with an interim measure, it may impose a penalty of such fixed amount as it considers appropriate.
- (2) A penalty imposed under subsection (1) shall not exceed 5% of the total value of the turnover (both in and outside the United Kingdom) of the enterprises owned or controlled by the person on whom it is imposed.
- (3) For the purposes of subsection (2), the Secretary of State may by order make provision for determining—
- (a) when an enterprise is to be treated as controlled by a person; and

Status: This is the original version (as it was originally enacted).

- (b) the turnover (both in and outside the United Kingdom) of an enterprise.
- (4) An order under subsection (3)(b) may, in particular, make provision as to—
- (a) the amounts which are, or which are not, to be treated as comprising an enterprise’s turnover;
 - (b) the date or dates by reference to which an enterprise’s turnover is to be determined.
- (5) An order under subsection (3) may, in particular, make provision enabling the appropriate authority to determine matters of a description specified in the order (including any of the matters mentioned in paragraphs (a) and (b) of subsection (4)).
- (6) The Secretary of State may by order amend subsection (2) so as to alter the percentage for the time being mentioned there to any percentage not exceeding 5%.
- (7) Sections 112 to 115 apply in relation to a penalty imposed under subsection (1) as they apply in relation to a penalty of a fixed amount imposed under section 110(1), with the modification that any reference in those provisions to the CMA is to be read as a reference to the person who imposed the penalty under this section.
- (8) In this section—
- “interim measure” means—
 - (a) an undertaking under section 80; or
 - (b) an order under section 72 or 81 or paragraph 2 of Schedule 7;
 - “appropriate authority” means—
 - (a) in relation to an interim measure which is an order made by the Secretary of State under paragraph 2 of Schedule 7, the Secretary of State;
 - (b) in relation to any other interim measure, the CMA.

94B Statement of policy in relation to powers under sections 94 and 94A

- (1) The CMA shall prepare and publish a statement of policy in relation to the use of its powers under—
- (a) section 94, insofar as they relate to interim measures; and
 - (b) section 94A.
- (2) The CMA shall, in particular, include a statement about the considerations relevant to the determination of the amount of any penalty imposed under section 94A.
- (3) The CMA may revise its statement of policy and, where it does so, it shall publish the revised statement.
- (4) The CMA shall consult the Secretary of State and such other persons as it considers appropriate when preparing or revising its statement of policy.
- (5) A statement or revised statement of policy may not be published under this section unless the Secretary of State approves the statement.

- (6) In this section, “interim measure” has the same meaning as in section 94A.”
- (2) In section 120 of that Act (review of decisions under Part 3), in subsection (2)(a), for “section 110(1) or (3)” substitute “section 94A(1) or 110(1) or (3)”.
- (3) In section 124 of that Act (orders and regulations under Part 3)—
- (a) in subsection (4), before “or 102” insert “, 94A(6)”, and
 - (b) in subsection (5), before “111(4) or (6),” insert “94A(3) or (6),”.