

Subsidiary Legislation made under ss.33(9) & 288.

Competition (Determination of Turnover for Penalties) Regulations 2021

LN.2021/033

Commencement

1.1.2021

ARRANGEMENT OF REGULATIONS.

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2020-15

Competition

**2021/033 Competition (Determination of Turnover for Penalties)
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In exercise of the powers conferred on him by sections 33(9) and 288 of the Competition Act 2020, and all other enabling powers, the Minister has made the following Regulations—

Title.

1. These Regulations may be cited as the Competition (Determination of Turnover for Penalties) Regulations 2021.

Commencement.

2. These Regulations come into operation on the day of publication.

Interpretation.

3.(1) In these Regulations—

“the Act” means the Competition Act 2020;

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

Determination of turnover for the purposes of section 33(9).

4. The turnover of an undertaking for the purposes of section 33(9) is the applicable turnover for the business year preceding the date on which the decision of the GCMA is taken or, if figures are not available for that business year, the one immediately preceding it.

Turnover: no preceding year.

5. Where in the application of regulation 4 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

APPLICABLE TURNOVER

Regulation 3

Interpretation.

1. In this Schedule-

“credit institution” means a credit institution for the purposes of Article 4(1)(1) of Regulation (EU) No. 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No. 648/2012;

“financial institution” means a financial institution for the purposes of Article 4(1)(26) of Regulation (EU) No. 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No. 648/2012 or any undertaking located outside Gibraltar which does not fall within the definition in that Article but which carries on equivalent activities;

“insurance undertaking” means-

- (a) an insurance undertaking carrying on the business of direct insurance of a class set out in Article 2 of, or Annex 1 to, Directive 2009/138/EC of the European Parliament and Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II);
- (b) a reinsurance undertaking; or
- (c) a third-country reinsurance undertaking;

“re-insurance undertaking” means an undertaking which-

- (a) has its head office in Gibraltar;
- (b) has permission under Part 7 of the Financial Services Act 2019 to carry on one or more regulated activities;
- (c) effects or carries out contracts of insurance that are limited to reinsurance contracts; and

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- (d) would require authorisation in accordance with Article 14 of Directive 2009/38/EC, if Gibraltar were a Member State;

“third-country reinsurance undertaking” means an undertaking which, if its head office were in Gibraltar-

- (a) would require permission under Part 7 of the Financial Services Act 2019 to carry out regulated activities relating to reinsurance; and
- (b) immediately before IP completion day, would have required authorisation as a reinsurance undertaking in accordance with Article 14 of Directive 2009/138/EC; 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 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.

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 items listed in Council Directive (EEC) 86/635 received by that institution after deductions of taxes directly related to those items:

- (a) interest income and similar income;

- (b) income from securities:
 - (i) income from shares and other variable yield securities,
 - (ii) income from participating interests,
 - (iii) income from shares in affiliated undertakings,
- (c) commissions receivable;
- (d) net profit on financial operations; and
- (e) other operating income.

Insurance undertakings.

6. The applicable turnover of an insurance undertaking shall be limited to the value of gross premiums received 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 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.