

**National Federation of Retail Newsagents (NFRN) Submission to the Competition and Markets  
Authority guidance: part 1 consultation**

**Introduction**

The National Federation of Retail Newsagents (NFRN) would like to thank the Competition and Markets Authority and the Department for Business, Innovation and Skills for the invitation to make a written submission on behalf of our members to the Competition and Markets Authority guidance: part 1 consultation.

The NFRN is one of Europe's largest trade associations, representing over 16,000 fee paying members from approximately 18,000 independent newsagents and convenience stores across the UK, Channel Islands and the Republic of Ireland. We are a membership led organisation that is democratically structured; policy is made by annual conference and its implementation is overseen by National Council.

The NFRN assists the independent retailer to compete more effectively in today's highly competitive market through the provision of practical help and assistance, commercial support, deals and buying opportunities, training, expertise and services, it also represents its members' interests at governmental and parliamentary level, as well as within the news and magazine industry.

We would be happy for our responses to this consultation to be made available on the CMA website.

**Guidance document:** Administrative Penalties: Statement of Policy on the CMA's approach

**1 Do you consider that there are any other roles or objectives that should be taken into account when considering the CMA's approach to administrative penalties?**

**Please give reasons for your views.**

We do not consider that any further roles or objectives should be taken into account when considering the CMA's approach to administrative penalties.

Further to this, the NFRN agrees strongly and feels that the following two objectives (paragraph 3.1, points 2 and 3) are of particular importance:

- to **prevent action which might prejudice any mergers or markets reference or impede the taking of action following such a reference**, such as to prevent detrimental and irreversible changes to market dynamics and to ensure the CMA can take effective and appropriate remedial action if it concludes that is necessary, and
- to ensure that the **threat of penalties will deter future non-compliance** with Investigatory Requirements, by those on whom penalties have been imposed and other persons who may be considering future non-compliance.

**2 Do you agree that the level of detail in the Statement is appropriate?  
Please give reasons for your views.**

On the whole, the NFRN feels that the level of detail in the Statement is appropriate.

However, in the section of the statement entitled ‘Factors affecting the level of penalty imposed’, one of the factors given includes the statement “whether the failure was intentional”.

It is not evident from reading the statement how it will be decided whether non-compliance is a result of willfulness or negligence and the NFRN believes that for purposes of clarity this needs to be explained in greater detail.

**3 Do you agree with the approach in the Statement to determining whether to impose a penalty, the level at which penalties should be set and the various factors to be taken into account?  
Please give reasons for your views.**

The NFRN agrees with the approach in the statement in determining whether to impose a penalty. However it would appreciate clarification regarding what the CMA would consider as a “significant” failure to comply as mentioned in paragraph 4.1 point 2.

We also agree with the approach in the determination of the level at which penalties should be set and the various factors which should be taken into account. In particular, it finds the points put forward in paragraph 4.10 as factors that may affect the level of penalty imposed as fair and valid as it considers this will help to ensure that penalties are appropriate and proportionate.

**Question 4 Do you agree with the approach in the Statement to use the material influence test when determining turnover only in cases where the business structure is such that only the material influence test would meaningfully capture P’s turnover?  
Please give reasons for your views.**

The NFRN does not have sufficient experience in this area to provide a comment.

**Question 5 Is the Statement sufficiently clear to assist you in understanding how the CMA will set administrative penalties for failure to comply with the relevant Investigatory Requirements?  
Please describe any areas that are not sufficiently clear, the reasons for this and any recommendations you may have.**

The NFRN found the practical examples in Annexe A useful in examining how administrative penalties might be set.

Aside from the areas requiring further clarity which have already been mentioned, the NFRN feels that the Statement is sufficiently clear regarding how the CMA will set administrative penalties.