

JD Sports, The Enterprise Act and Enforcement Orders

2 Sep 2020 Nicola Sharp.

Nicola Sharp of Rahman Ravelli outlines how the sports retailer came to be given a £300,000 fine by the Competition and Markets Authority.

JD Sports and its largest shareholder Pentland have been ordered to pay £300,000 after the Competition and Markets Authority (CMA) said they had breached obligations relating to the investigation into JD Sports' takeover of rival Footasylum.

The fine is believed to be the biggest ever for a one-off infringement. The decision to impose a penalty upon JD Sports was made under section 94A of the Enterprise Act 2002, which gives the CMA the power to impose financial penalties where it considers that a person has, without reasonable excuse, failed to comply with an interim measure. The CMA may impose a penalty of a fixed amount as it considers appropriate, but this cannot exceed 5% of the merging parties' combined global turnover.

In issuing the fine in August 2020, the CMA said JD Sports had failed, without reasonable excuse, to comply with the requirements of an initial enforcement order (IEO), which was issued over JD Sports' acquisition of Footasylum. The IEO, which was issued by the CMA under section 72(2) of the Enterprise Act 2002, allows the CMA to impose certain restrictions and obligations, in order to prevent pre-emptive action.

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The IEO, issued in May 2019, ordered (among other things) that no Footasylum assets were to be sold without approval. Five months later, a trustee monitoring the process found out that Footasylum was planning to close its site in Wolverhampton. According to the CMA, Footasylum then served the break notice with its landlord without telling the trustee or asking for the watchdog's permission.

Footasylum told the CMA that it had been planning to close the site before the takeover happened, meaning it was not part of the IEO. But the CMA said it had not been told of this in advance.

The CMA said: "The CMA finds that JD Sports and Pentland failed to comply with the IEO by not procuring that: a) except with the CMA's prior written consent or in the ordinary course of business for the separate operation of the Pentland business and the Footasylum business, none of the assets of the Footasylum business were disposed of; and b) each of their subsidiaries (including Footasylum) complied with the IEO as if the IEO had been issued to each of them."

JD has said it disagreed with the CMA's decision and that the closure was made by Footasylum's "separate" management. The Competition Appeal Tribunal (CAT) granted JD Sports until 1 September 2020 to file a notice of appeal against the CMA's £300,000 fine.

This article was also featured on [Lexology.com](https://www.lexology.com).

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Nicola Sharp is a Legal Director at Rahman Ravelli whose expertise in international fraud, civil recovery and business crime has seen her highly rated in international legal guides. Her experience of leading the most involved and sizeable commercial and financial recoveries has led to her being in demand from corporates and large organisations.

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