

Penalty notice under section 40A of the Competition Act 1998

**Musical instruments and equipment:
suspected anti-competitive agreements**

Case: 50565-3


Addressed to:
Fender Musical Instruments Europe Limited

20 March 2019

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Confidential information and the names of individuals in the original version of this notice have been redacted from the published version. Redacted information in the text of the published version of the notice is denoted by .

Notice of a penalty

1. Pursuant to section 40A(9) of the Competition Act 1998 ('**CA98**') and section 112 of the Enterprise Act 2002 ('**EA02**'), the Competition and Markets Authority (the '**CMA**') hereby gives notice of the following:
 - (a) That on 20 March 2019, the CMA imposed a penalty on Fender Musical Instruments Europe Limited (company number 03127180) ('**Fender Europe**') under section 40A of the Competition Act 1998 ('**CA98**') (the '**penalty**') because Fender Europe, without reasonable excuse, failed to comply with a requirement to produce documents imposed on it pursuant to section 27(5)(b) CA98.
 - (b) The penalty is a fixed amount of £25,000.
 - (c) Fender Europe is required to pay this penalty in a single payment by close of banking business on 17 April 2019, by cheque or bank transfer, to an account specified to Fender Europe by the CMA.
 - (d) Fender Europe may pay the penalty earlier than the date by which it is required to be paid.
 - (e) Pursuant to section 112(3) EA02, Fender Europe has the right to apply to the CMA within 14 days of the date on which this penalty notice is served on Fender Europe for the CMA to specify different dates by which the penalty is to be paid.
 - (f) Pursuant to section 114 EA02, Fender Europe has the right to apply to the Competition Appeal Tribunal against any decision the CMA reaches in response to an application under section 112(3) EA02, within the period of 28 days starting with the day on which this penalty notice is served on Fender Europe.
 - (g) Pursuant to section 114 EA02, Fender Europe has the right to apply to the Competition Appeal Tribunal within the period of 28 days starting with the day on which this penalty notice is served on Fender Europe in relation to:
 - (i) the imposition or nature of the penalty;
 - (ii) the amount of the penalty; or
 - (iii) the date by which the penalty is required to be paid.
 - (h) Where a penalty, or any portion of such penalty, has not been paid by the date on which it is required to be paid and there is no pending appeal

against the decision, the CMA may recover the penalty and any interest which has not been paid; in England and Wales and Northern Ireland such penalty and interest may be recovered as a civil debt due to the CMA.

A. Factual background

2. On 17 April 2018 the CMA launched an investigation into Fender Europe and one or more other undertakings for suspected breaches of Chapter I CA98 and/or Article 101 of the Treaty on the Functioning of the European Union ('TFEU') in the musical instruments and music making equipment sector. The CMA simultaneously conducted a without notice inspection of Fender Europe's premises¹ between 17 and 19 April 2018 pursuant to the CMA's powers under section 27 CA98.
3. The investigating officer (authorised in writing by the CMA²) served a written notice addressed to Fender Europe and its associated group companies specifying the documents required to be produced pursuant to section 27(5)(b) CA98 (the '**Section 27 Notice**') upon arrival at Fender Europe's premises on the first day of the inspection (17 April 2018).³ The consequences for the undertakings under investigation of failing to comply with the requirement (including the potential imposition of financial penalties) were set out in writing in the Section 27 Notice.
4. Before the Section 27 Notice was served, the investigating officer spoke to [Senior Officer A]⁴, the most senior member of staff present when the CMA arrived at Fender Europe's premises. The investigating officer explained the reason for the inspection, the documents required to be produced (as specified in the Section 27 Notice) and the consequences of non-compliance.⁵
5. During the course of the same morning the investigating officer also spoke to:
 - (a) [Senior Officer B]⁶ and [Senior Officer C]⁷ upon their return to Fender Europe's premises from an external meeting. The investigating officer

¹ Fender Musical Instruments Europe Limited, Leo House, Birches Industrial Estate, East Grinstead, West Sussex, RH19 1QZ.

² Several members of CMA staff were each authorised as an 'investigating officer' and able to exercise the powers set out in section 27 CA98.

³ Section 27 Notice (Annex 1).

⁴ An 'officer' refers to an officer of a body corporate, as defined in section 1173, Companies Act 2006.

⁵ CMA contemporaneous log of the inspection, entry at 0931 for 17 April 2018 (Annex 2).

⁶ [REDACTED].

⁷ [REDACTED].

explained the requirement to produce documents (as specified in the Section 27 Notice) and the consequences of non-compliance;⁸ and

(b) Fender Europe's legal representation, Baker McKenzie, by telephone, and confirmed that a Section 27 Notice had been served on Fender Europe. Representatives from Baker McKenzie arrived in the afternoon.⁹

6. On the morning of the second day of the inspection (18 April 2018), the investigating officer met with [Senior Officer B] and a representative from Baker McKenzie to discuss the process for the inspection for that day. In this meeting, the investigating officer reminded Fender Europe to provide the CMA with any hard copy documents including notebooks belonging to Fender Europe staff (as had been specified in the Section 27 Notice).¹⁰ During the course of the day, Fender Europe provided the CMA with notebooks and diaries of Fender Europe staff (including the diary of [Senior Officer B]. The investigating officer examined the notebooks provided and recorded entries that he considered related to a matter relevant to the CMA's investigation.¹¹
7. [Senior Officer B] also provided the CMA with his notebook. The investigating officer examined the notebook and concluded that none of the entries related to a matter relevant to the CMA's investigation (as specified in the Section 27 Notice).¹² The investigating officer asked [Senior Officer B] if he had any earlier notebooks, as the entries from the notebook provided began only a few weeks before the inspection, on 18 March 2018. [Senior Officer B] told the investigating officer that:
 - (a) his previous notebooks 'only contained Human Resources notes etc.'; and
 - (b) when his notebooks became full he transferred all ongoing material to his new notebook and disposed of the old notebook.¹³
8. The CMA understood from this that all previous notebooks had been destroyed.
9. On 11 May 2018 (just over three weeks after the inspection), Baker McKenzie notified the CMA by email that [Senior Officer B], in fact, had ten further notebooks that Fender Europe had not provided to the CMA (in other words,

⁸ CMA contemporaneous log of the inspection, entry at 1057 and 1114 for 17 April 2018 (Annex 2).

⁹ CMA contemporaneous log of the inspection, entry at 1102 and 1341 for 17 April 2018 (Annex 2).

¹⁰ CMA contemporaneous log of the inspection, entry at 0930 for 18 April 2018 (Annex 2).

¹¹ CMA contemporaneous log of the inspection, entry at 1149, 1230 and 1312 for 18 April 2018 (Annex 2).

¹² CMA contemporaneous log of the inspection, entry at 1501 for 18 April 2018 (Annex 2).

¹³ Ibid.

they had not been ‘disposed of’). Baker McKenzie explained that the notebooks were not provided during the inspection because [Senior Officer B] thought the notebooks did not contain relevant material.¹⁴ No explanation was offered as to why [Senior Officer B] had told the CMA that the notebooks had been disposed of.

10. Baker McKenzie provided the CMA with the ten notebooks on the same date. When the CMA reviewed the notebooks, four entries relevant to the CMA’s investigation (as specified in the Section 27 Notice) were identified.
11. On 1 August 2018 (almost four months after the inspection), Fender Europe’s new legal advisors, Gibson, Dunn & Crutcher UK LLP (**‘Gibson Dunn’**), informed the CMA that the notebooks had been removed by [Senior Officer B] during the CMA’s inspection.¹⁵ Gibson Dunn explained in an email to the CMA that:
 - (a) without Fender Europe’s knowledge, [Senior Officer B] had removed the notebooks from Fender Europe’s premises during the inspection and asked a junior Fender Europe employee to store them off-site;
 - (b) Fender Europe became aware of [Senior Officer B’s] actions when [Senior Officer B] made a passing remark to a member of the [redacted] department that he had removed notebooks during the CMA’s inspection. [Senior Officer B] told the [redacted] department that the notebooks did not contain relevant material and that they had been destroyed;
 - (c) Fender Europe investigated the matter further and spoke to the Fender Europe employee who [Senior Officer B] had entrusted with the notebooks. The relevant junior employee confirmed that the notebooks had not been destroyed and were stored at his flat; and
 - (d) Baker McKenzie took immediate steps to take custody of the notebooks before notifying the CMA on 11 May 2018.¹⁶
12. [redacted].

¹⁴ Email from Baker McKenzie to the CMA dated 11 May 2018 (Annex 3).

¹⁵ [redacted].

¹⁶ Email from Gibson Dunn to the CMA dated 1 August 2018 (Annex 4). See paragraph 10 for an explanation of what action Baker McKenzie took.

B. The CMA's provisional decision

The CMA's findings

13. On 7 February 2019 the CMA provisionally concluded that Fender Europe had, without reasonable excuse, failed to comply with a requirement to produce documents pursuant to section 27(5)(b) CA98 and that it was appropriate in this case to impose a penalty on Fender Europe.
14. In accordance with paragraph 5.2 of *Administrative penalties: Statement of Policy on the CMA's Approach* (CMA4, the '**Guidance**'), the CMA gave Fender Europe notice of its intention to impose a penalty of £25,000 under section 40A CA98, including the reasons and the level of the proposed penalty (the '**Provisional Decision**'). The CMA informed Fender Europe that should it wish to make representations on the Provisional Decision, such representations should be submitted by 5pm on 14 February 2019. Fender Europe requested an extension and submitted its response on 17 February 2019.

Fender Europe's representations

15. Fender Europe's representations consisted of:
 - (a) a letter to the CMA dated 17 February 2019 setting out (i) its substantive representations on the Provisional Decision, and (ii) additional drafting and/or smaller comments on the Provisional Decision (set out in an Annex to the letter); and
 - (b) an email dated 12 March 2019 clarifying one aspect of the 17 February 2019 letter at the request of the CMA,(together, the '**Representations**').
16. The CMA has carefully considered the Representations. The Representations included the following substantive submissions in relation to the reasoning of the Provisional Decision:
 - (a) Fender Europe requested that the CMA reconsider its decision to impose a penalty on it. Fender Europe was concerned that it would be criticised for the actions of [Senior Officer B], who Fender Europe considered had acted outside his authority and against Fender Europe's company policy. Fender Europe described [Senior Officer B's] actions as those of a 'rogue employee' and noted that it had not and does not condone his actions. Fender Europe noted that it had acted appropriately upon becoming aware of the actions by reporting the breach to the CMA. The CMA

understands Fender Europe's submission to be that, because the breach was committed by someone who in Fender Europe's view was a 'rogue employee', either Fender Europe is not liable for the breach or it would not be appropriate to impose a penalty on Fender Europe in these circumstances.

- (b) Fender Europe submitted that the level of the proposed penalty was too high. Fender Europe cited two reasons for this view:
- (i) First, the breach was as a result of the actions of one individual acting in breach of Fender Europe's policy and the CMA should recognise this when assessing the level of penalty; and
 - (ii) Second, when assessing the level of the penalty, greater weight should be placed on the fact that Fender Europe took immediate steps to rectify the breach.

17. Following the Provisional Decision, the CMA has considered the Representations, and sets out its conclusions in paragraphs 19 to 46 below.
18. In accordance with paragraphs 5.2 and 5.9 of its Guidance, the CMA has consulted with the CMA's General Counsel's Office on the reasons for, and level of, the penalty.

Legal assessment

19. Section 40A CA98 provides that where the CMA considers that a person has, without reasonable excuse, failed to comply with a requirement imposed on the person under section 27 CA98, it may impose a penalty of such amount as it considers appropriate.¹⁷ Person includes 'any undertaking'.¹⁸
20. The CMA concludes that:
- (a) the statutory requirements for imposing a penalty under section 40A CA98 are met – see paragraphs 21 to 29 below; and
 - (b) the imposition of a penalty of £25,000 is appropriate and proportionate in this case – see paragraphs 30 to 46 below.

¹⁷ The power to impose a penalty under section 40A relates also to section 26, 26A, 28 and 28A.

¹⁸ Section 59(1) CA98.

Statutory requirements for imposing a penalty under s.40A CA98

Failure to comply with the investigating officer's requirement to produce documents

21. The CMA finds that Fender Europe is a person within the meaning of section 40A(1) CA98 and section 59(1) CA98. The investigating officer, duly authorised by the CMA, required Fender Europe to produce documents that related to matters relevant to the CMA's investigation pursuant to section 27(5)(b) CA98, as specified in writing in the Section 27 Notice.
22. By virtue of [Senior Officer B's] actions, Fender Europe failed to comply with the CMA's requirement to produce documents. Documents which related to matters relevant to the CMA's investigation (as specified in the Section 27 Notice) were not provided during the inspection. Fender Europe has acknowledged that those documents were not produced during the inspection.¹⁹ The documents were provided just over three weeks after the inspection, on 11 May 2018.
23. As noted at paragraph 16(a) above, the CMA understands one of Fender Europe's submissions to be that Fender Europe is not liable for [Senior Officer B's] actions on the grounds that he was a 'rogue employee'.
24. The CMA does not accept this submission. The requirement to produce documents pursuant to section 27(5)(b) CA98 (as specified in the Section 27 Notice) was addressed to Fender Europe, one of the undertakings under investigation.²⁰ The investigating officer's engagement with [Senior Officer B] was in his capacity as an officer and employee of Fender Europe. Employees and officers form part of the same undertaking as their corporate employer and therefore an employee's actions are attributable to the undertaking.²¹

¹⁹ Email from Baker McKenzie to the CMA dated 11 May 2018 (Annex 3) and email from Gibson Dunn to the CMA dated 1 August 2018 (Annex 4).

²⁰ Section 27(5)(b) CA98 and section 40A CA98 are aimed at a 'person', the definition of which includes undertakings, natural and legal persons (section 59(1) CA98). See also the Section 27 Notice (Annex 1).

²¹ See *VM Remonts C 542/14* [2016] 5 CMLR 13, paragraph 23-24, in which the Court of Justice cited *Jean Claude Becu C-22/98* [1999] ECR I 5665, paragraph 26. See also *Tesco Stores Limited and others v OFT* [2012] CAT 31, citing *Suiker Unie* [1976] 1 CMLR 295 in which the Court of Justice stated that employees are 'auxiliary organs forming an integral part of the principal's undertaking'. The CAT stated at paragraph 62 of its judgement that '[s]ince an undertaking comprising a body corporate can only act through the individuals employing by it, the acts or conduct of an undertaking are inevitably performed by those individuals. It follows that any act by any employee could, potentially, lead to an infringement attributable to their corporate employer, with whom they comprise the same undertaking'.

Without reasonable excuse

25. For the reasons set out below, the CMA concludes that Fender Europe has no reasonable excuse for failing to comply with the requirement to produce documents imposed on it pursuant to section 27(5)(b) CA98.
26. The CMA may impose a penalty under section 40A CA98 where the failure to comply is 'without reasonable excuse'. In this respect, the Guidance notes that:
- ‘the CMA will consider whether a significant and genuinely unforeseeable or unusual event and/or an event beyond [the party’s] control has caused the failure and the failure would not otherwise have taken place. For example, a significant and demonstrable IT failure (which could not reasonably have been foreseen or avoided) which prevented P from meeting a deadline might, depending on the circumstances, amount to a reasonable excuse.’²²
27. The CMA finds that Fender Europe has no reasonable excuse for its failure to produce documents required by the investigating officer pursuant to section 27(5)(b) CA98 (and as specified in the Section 27 Notice) because:
- (a) **Fender Europe was aware of the requirement to produce the documents.** The requirement to produce documents pursuant to section 27(5)(b) CA98 was clearly explained by the investigating officer and the request was set out in writing in the Section 27 Notice (as explained at paragraphs 2 to 12 above).
- (b) **The documents were concealed during the inspection.** There is no reasonable excuse for Fender Europe, through the actions of [Senior Officer B], concealing responsive documents and misleading the CMA as to their existence.
28. Fender Europe did not advance arguments in the Representations that it had a reasonable excuse for the breach.
29. For completeness, the CMA has also considered whether there may be a reasonable excuse on the basis of [Senior Officer B’s] stated belief (as reported by Baker McKenzie on 11 May 2018) that the documents did not contain material relevant to the CMA’s investigation.²³ The CMA considers,

²² Guidance, paragraph 4.4.

²³ Email from Baker McKenzie to the CMA dated 11 May 2018 (Annex 3).

however, that [Senior Officer B's] claim is inconsistent with his conduct in concealing the documents during the CMA's inspection, which suggests that he knew that the documents were relevant to the CMA's investigation (and indeed potentially probative of an infringement). This would not, therefore, constitute a reasonable excuse for failing to produce the documents.

The appropriateness of imposing the penalty

30. Having had regard to its statutory duties and the Guidance, and having carefully considered the Representations, the CMA considers that the imposition of a penalty of £25,000 is appropriate and proportionate in this case.

The imposition of a penalty

31. As set out in the Guidance, the CMA may be more likely to impose a penalty where it considers that one or more of the following factors are present:
- (a) the failure to comply is likely to have an adverse impact on the CMA's investigation;
 - (b) the failure to comply is significant and/or flagrant (whether committed intentionally or negligently);
 - (c) there is an element of 'recidivism';
 - (d) the imposition of a penalty is required to encourage (swift) compliance; and/or
 - (e) the party sought to obtain an advantage or derive benefit from the failure.²⁴
32. The CMA considers that Fender Europe's breach of section 27(5)(b) CA98 through the actions of [Senior Officer B], was flagrant and was committed intentionally. As explained at paragraph 29, [Senior Officer B's] conduct in concealing documents and misleading the CMA as to their existence implies that he was aware that the documents were relevant to the CMA's investigation (as indeed they were) and potentially probative of an infringement. The CMA therefore considers that [Senior Officer B] must have been aware that his conduct was such as would lead to a failure to comply with the requirement to produce documents under section 27(5)(b) CA98, and

²⁴ Guidance, paragraph 4.2.

that Fender Europe's failure through the actions of [Senior Officer B] to produce the documents was therefore intentional.²⁵

33. As noted at paragraph 16(a) above, the CMA understands one of Fender Europe's submissions to be that it is not appropriate to impose a penalty on a company where the breach was as a result of the actions of a 'rogue employee', acting contrary to company policy.
34. The CMA does not accept this submission. Rather, the CMA considers that it is important that companies are held to account for the conduct of their officers and employees when responding to CMA investigatory requirements and that companies are thereby motivated to ensure that their officers and employees comply with such requirements. As noted at paragraph 24 above, Fender Europe is accountable for the actions of its officers and employees, which form part of the same undertaking. The CMA considers that it would not, therefore, be appropriate to allow companies to absolve themselves of liability for the actions of their officers and employees, particularly where, as in this case, the breach was committed by [a Senior Officer]. [✂].
35. The CMA has therefore concluded that the imposition of a fixed penalty is appropriate.²⁶

The level of the penalty

36. Having had regard to its statutory duties and the Guidance, and having carefully considered all relevant facts and the Representations, the CMA considers that, on balance, it is appropriate and proportionate to impose a penalty of £25,000 on Fender Europe in these circumstances.
37. When assessing the appropriate level of penalty, the CMA will consider all the relevant circumstances of the case in the round to evaluate the seriousness of the breach. The CMA may also consider the non-exhaustive list of factors provided in the Guidance.²⁷
38. In particular, the CMA has had regard to the egregious nature of the breach:
 - (a) **The breach was flagrant and intentional.** Fender Europe was aware of the requirement to produce documents which the investigating officer considered related to matters relevant to the CMA's investigation (as

²⁵ See paragraph 24 above; the actions and state of mind of an employee are attributable to the undertaking employing them (*Tesco Stores Limited and others v OFT* [2012] CAT 31, paragraphs 60 to 63).

²⁶ In this case, a daily penalty is not applicable as Fender Europe has rectified the breach by providing the CMA with the concealed documents. See Guidance, paragraph 4.10.

²⁷ Guidance, paragraph 4.11.

specified in the Section 27 Notice); the obligation was carefully explained by the investigating officer at the outset of the inspection. [Senior Officer B] misled the CMA as to the existence of the documents and took active steps to conceal the documents during the CMA's inspection by removing them from the premises and requesting a junior employee to store them. He must have been aware, or could not have been unaware, that his actions were of such a nature as to lead to Fender Europe's failure to comply. These actions frustrated the CMA's inspection, the clear purpose of which was to preserve and effect the production of documents relevant to the CMA's investigation.

- (b) **The potential for significant harm to the CMA's investigation.** Failing to provide documents pursuant to a section 27(5)(b) CA98 requirement has the potential to undermine fundamentally the purpose of an inspection, leave the CMA with an incorrect or incomplete understanding of the facts, and may mean that the CMA is ultimately unable to take effective enforcement action. It is not uncommon for companies to be careful about the extent to which they document conduct that may be in breach of competition law. In this context, therefore, the concealment of relevant documents during an inspection is particularly egregious.
- (c) **The involvement of [a Senior Officer].** The failure to comply with the investigating officer's requirement to produce documents pursuant to section 27(5)(b) CA98 is as a direct result of the actions of [a Senior Officer] within Fender Europe. Non-compliance at the top of Fender Europe is of particular concern, especially because [Senior Officer B] also used his position as [a Senior Officer] to request a junior employee to store the documents, thereby concealing them. The CMA considers that [Senior Officers] within an undertaking have a special responsibility to establish a culture of compliance with competition law for all employees to follow. Indeed, this is why the CMA's Guidance notes that the involvement of senior management is a relevant factor in assessing the seriousness of a breach.²⁸

39. The CMA finds, however, that a penalty at the maximum level possible (£30,000) is not appropriate for the following reasons:

- (a) **Fender Europe took steps to remedy the breach.** Upon becoming aware of the breach, Fender Europe immediately investigated the issue, located the documents that had been concealed and provided them to the CMA. [REDACTED]. The CMA has considered Fender Europe's submission that a

²⁸ Ibid.

penalty of £25,000 is excessive, given Fender Europe's actions to remedy the breach. The CMA does not accept this. While the CMA recognises Fender Europe's steps to rectify the breach (steps which the CMA would in any event expect a company to follow having identified a breach of a CMA investigatory requirement), the CMA has balanced this against the egregious nature of the breach (as explained at paragraph 38 above). Indeed, had it not been for Fender Europe's prompt actions to rectify the breach, the CMA would have been minded to impose a penalty at the maximum level.

(b) Limited adverse effects on the investigation. Fender Europe provided the CMA with the documents just over three weeks after the inspection. While the breach necessarily caused duplication of work and the need for additional resource (CMA staff members had to make themselves available on short notice to review the notebooks, work which should have been completed during the inspection, and assess the impact of the documents), the impact on the investigation was less serious than it otherwise could have been.²⁹

40. The CMA has considered Fender Europe's submission that a lower penalty would be more appropriate on the basis that the wrongdoing is limited to the actions of one individual.
41. The CMA disagrees with this submission. As noted at paragraph 38(c), the breach was as a result of the actions of [a Senior Officer]. Although the wrongdoing was limited to one person, the CMA considers that a breach committed by a senior officer within a company is particularly egregious; senior officers have a particular responsibility for ensuring compliance with CMA investigatory requirements (and competition law more generally) and should set an example for all company employees.
42. In reaching the figure of £25,000, the CMA has also borne in mind the need to achieve deterrence, a stated policy objective of administrative penalties in the Guidance.³⁰

(a) The CMA's investigatory powers are there to support its work investigating suspected illegal anti-competitive conduct. It is vital for the CMA to be able to take decisions based on information that is accurate

²⁹ The Representations challenged the extent to which the breach had a material impact on the investigation, although without submitting that the CMA should consider a lower penalty as a result. As explained in this paragraph the CMA notes that, while the breach caused some duplication of work, the breach could have been more serious.

³⁰ Guidance, paragraph 3.1.

and complete. Therefore, the CMA takes any failure to comply with its investigatory powers very seriously.

- (b) Deterrence is particularly important in this case in light of the seriousness of Fender Europe's breach. Relevant documents were concealed from the CMA. The breach was caused by the actions of [a Senior Officer]. As [Senior Officer B] had a particular responsibility for setting a culture of competition law compliance, he should not have used his position of authority to request a junior employee to store the documents, thereby taking action to facilitate the breach. Had the factors in paragraph 39 not been present the CMA would have been minded to set a penalty at the maximum level possible.
- (c) Therefore, the CMA considers that it is fully justified in the interests of ensuring the efficacy of its investigation powers and the effective enforcement of competition law to impose a penalty of £25,000 on Fender Europe to impress both on Fender Europe, and on undertakings more widely, the importance of complying with the CMA's investigatory requirements.

43. In its Representations, Fender Europe submitted that deterrence was not required in respect of Fender Europe as Fender Europe had taken extensive steps to improve compliance.³¹ The CMA notes Fender Europe's steps to instigate a culture of compliance; however, these steps are no more than what the CMA would expect of a responsible company and do not mean deterrence against potential future non-compliance by Fender Europe, or by other undertakings under investigation, is not required. The CMA considers that the penalty will impress upon Fender Europe, and others, the importance of future compliance.
44. The CMA has additionally had regard to the following key indicators relating to the financial resources available to Fender Europe:
- (a) profit after tax – £1,223,000;
 - (b) net assets with dividends added – £17,617,000; and
 - (c) turnover – £35,811,000.³²

³¹ Although Fender Europe, did not submit that the level of penalty should be adjusted as a result.

³² Fender Musical Instruments Europe Limited Annual Report and financial statements up to 31 December 2017.

45. These indicators show that Fender Europe has significant financial resources available and a penalty of £25,000 is not, therefore, disproportionate.
46. Considering the factors listed at paragraphs 38 and 39 in the round, the need to achieve deterrence and the financial resources available to Fender Europe, the CMA has therefore concluded that a penalty of £25,000 is appropriate and proportionate in this case.

Ann Pope

Senior Director, Antitrust, Competition and Markets Authority

20 March 2019

[✂].