

Sports retailers fined almost £5m for breaching CMA order

- Breaches include the sharing of commercially sensitive information between JD Sports and Footasylum CEOs
- Failure to have proper safeguards in place made breaches 'almost inevitable'
- CEOs of both firms claimed they could not remember what had been discussed during meetings

It is standard practice for the Competition and Markets Authority (CMA) to issue an interim order during an in-depth phase 2 merger investigation. These orders prevent companies from integrating further and ensure they continue to compete against one another as they would have before the deal took place. The CMA imposed this type of [order on JD Sports and Footasylum in May 2021](#).

The order prohibited JD Sports and Footasylum from exchanging commercially sensitive information without prior consent, and required the companies to immediately alert the CMA of any chance that this information may have been shared.

Importantly, the order required that JD Sports and Footasylum put in place robust measures to prevent such breaches and ensure compliance with the order. Upon review, the CMA found that both companies had severely deficient safeguards in place – so much so that they created an environment where information exchanges were almost inevitable.

During 2 meetings, which took place on 5 July 2021 and 4 August 2021, Peter Cowgill, CEO of JD Sports, and Barry Bown, CEO of Footasylum, exchanged commercially sensitive information and then failed to alert or promptly alert the CMA. During these meetings, they discussed:

- Footasylum's issues with stock allocations from key brands
- information about Footasylum's financial performance
- the planned closure of 6 Footasylum stores, with the locations of at least 2 being revealed
- Footasylum's contract negotiations with its transport and delivery provider
- contract negotiations for the renewal of Footasylum's head office space

The sharing of this information had the potential to affect competition in the market and lead to anti-competitive behaviour. In addition, the companies' subsequent failure to report these breaches significantly impacted the CMA's ability to act swiftly to stop the information from being shared further, and increased the risk that it could impact future business decisions taken by the companies.

Kip Meek, Chair of the inquiry group investigating the merger, said:

There is a black hole when it comes to the meetings held between Footasylum and JD Sports. Both CEOs cannot recall crucial details about these meetings. On top of this, neither CEO or JD Sports' General Counsel can provide any documentation around the meetings – no notes, no agendas, no emails and poor phone records, some of which were deleted before they could be given to the CMA.

Had there been proper safeguards in place, we would have been alerted to these breaches in good time and would have had the necessary information to tackle them head on.

It jeopardised our ability to maintain the benefits of a competitive market for shoppers and ensure there is a level playing field for other businesses. This fine should act as a warning – if you break the rules there will be serious consequences.

Once the CMA was made aware of the meetings, it used its information gathering powers to try and develop a clearer picture of what had taken place. It requested details from both companies on the number of meetings that had occurred between the companies since July 2020; the topics discussed; any documents involved; and any steps that had been taken to prevent commercially sensitive information being exchanged.

Despite the firms being legally required to respond to these requests, both failed to provide the CMA with all the information it asked for by saying that, at one meeting in December 2020, no documents were exchanged, when this was in fact not true. This impacted the CMA's ability to conduct its investigation, for which each company have been fined £20,000.

The companies have been fined nearly £4.7 million for the collective breaches, which are split as follows: for failing to have safeguards in place, JD Sports must pay £2.5 million and Footasylum £200,000. For sharing commercially sensitive information, and then failing to alert the CMA, JD Sports will be fined £1.8 million and Footasylum £180,000.

1. The purpose of merger control is to regulate the impact of mergers on competition in markets. While companies cannot complete mergers during an investigation in most countries, the UK has a voluntary merger regime that requires IOs for completed mergers at phase 2. Such measures prevent companies integrating whilst an investigation is taking place and preserve competition in the market. The CMA has set out further detail on this in its published guidance [Interim measures in merger](#)

[investigations.](#)

2. An interim order (IO) is used in a Phase 2 investigation to prevent further integration between companies and ensure competition in the market as if the merger hadn't taken place while the CMA completed its merger review. An Initial enforcement order (IEO) is commonly put in place at the start of Phase 1 investigation for a similar purpose – to prevent further integration and make sure the companies involved continue to compete with one another as they would have before the deal took place.
3. The parties breached the CMA's interim order 3 times: The parties did not have effective policies and safeguards in place to avoid instances of information sharing; During 2 meetings, the companies' CEOs shared commercially sensitive information; Following these meetings, both parties failed to alert the CMA – in one instance, the parties failed to report the meeting and in the other they informed them after 15 days and only after the CMA began to probe the meetings between them;
4. The first meeting was only brought to the attention of the CMA via a video recording disclosed to it by a third party. This showed Mr Cowgill and General Counsel of JD Sports meeting in a car with the Mr Bown. JD Sports and Footasylum only alerted the CMA to the second meeting 2 weeks after it took place in a joint email and after prompting by the CMA.
5. The CMA sent JD Sports and Footasylum 2 Section 109 Notices (information notices) – the first on 10 August 2021 and the second on 24 September 2021. The first required the firms to detail all the meetings they had with each other from July 2020 and to provide any documents that had been discussed or exchanged at those meetings. The second required detailed accounts from the attendees at the July and August meetings; email, phone and any other records connected to the meetings and between Peter Cowgill (JD Sports CEO), Siobhan Mawdlsey (JD Sports' general counsel) and Barry Bown (Footasylum CEO); as well as records from other senior employees. It also asked for all the companies' compliance policies and documents and communications around compliance since the interim order had been in force.
6. Whilst JD Sports and Footasylum had safeguards in place, these were severely deficient – so much so that they created the environment wherein the sharing of commercially sensitive information was highly likely, if not inevitable.
7. The maximum penalty the CMA can impose on a company for not complying with its information notices is £30,000.