

FIRST DIRECTOR DISQUALIFICATION FOR A BREACH OF COMPETITION LAW OBTAINED IN THE UK



Action taken by the Competition and Markets Authority (CMA) that resulted in a company director being disqualified highlights the importance of company directors understanding competition law principles.

Whilst the possibility under UK law of a director of a company which has breached competition law being disqualified has existed since June 2003, no such disqualifications had occurred. This changed on 1 December 2016, when the CMA announced that it had accepted a competition disqualification undertaking (CDU) from Daniel Aston, in which he undertook, amongst other things, not to act as a director of any UK company, or take part in the promotion, formation or management of a company (without leave of a Court) for a period of five years.

Daniel Aston is¹ the managing director of Trod Limited (in administration) (Trod). On 12 August 2016 the CMA found that Trod had breached competition law by agreeing with GB Eye Limited (GBE) not to undercut each other on prices for the sale of certain posters when there was no cheaper third party seller on amazon.co.uk². Such a price-fixing agreement between competitors contravened the prohibition on anti-competitive agreements set out in Chapter I of the Competition Act 1998. The agreement lasted between 24 March 2011 (at the latest) and 1 July 2015 (at the earliest), and Mr Aston was a director of Trod throughout the duration of the agreement. The agreement resulted in Trod being fined £163,371, whereas GBE, which reported the cartel to the CMA, received leniency and was not fined.

1 According to the text of the Disqualification Undertaking, which is available at <https://www.gov.uk/cma-cases/online-sales-of-posters-and-frames-director-disqualification>, the period of disqualification will not commence until 21 December 2016.

2 <https://www.gov.uk/government/news/cma-issues-final-decision-in-online-cartel-case>



Where a company has been found to have contravened competition law, the CMA may apply to court for a competition disqualification order (CDO) against any director of that company, and in certain circumstances against a director of its parent company, under Section 9A(10) of the Company Directors Disqualification Act 1986 (CDDA).

If the court considers that the relevant director's conduct as a director makes him/her unfit to be concerned in the management of a company it must make a CDO for a period of up to 15 years. Notably, the court may impose a CDO in circumstances where a director:

1. Did not contribute to a breach of competition law, but had reasonable grounds to suspect that the conduct of the relevant company breached competition law, and took no steps to prevent such conduct; or
2. Did not know but ought to have known that the conduct of the relevant company breached competition law.

As a result it is vital that company directors are aware of competition law principles, and are proactive in ensuring the compliance of their companies with them.

The CMA may also accept a CDU from a director instead of applying for a CDO or continuing an application for a CDO under Section 9B of the CDDA, as it did in Mr Aston's case. Whilst CDUs may also result in a disqualification period of up to 15 years, the CMA has stated that "where a disqualification undertaking is offered, this will normally result in some discount to the period of



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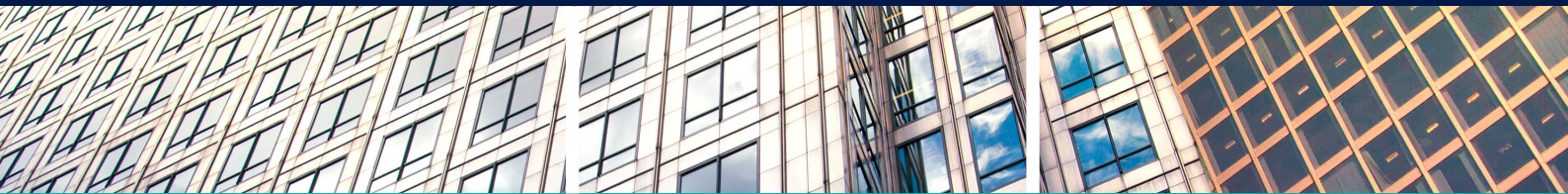
disqualification that the CMA is prepared to accept³. As a result, it may be beneficial for a director which has been informed by the CMA it intends to apply for a CDO against him/her to offer to make a CDU at the earliest stage possible.

It is important to note that the CMA will not apply for a CDO against any current director of a company which benefitted from formal leniency because the company provided important information about a cartel in which it was participating. This policy is intended to prevent any chilling effect on the incentives that exist to encourage cartel members to report the existence of a cartel. However, the CMA may still apply for a CDO against the director of a company which benefitted from leniency where:

1. The director is removed or ceases to act as a director owing to his/her role in the relevant breach of competition law and/or because he/she opposed the relevant leniency application; or
2. The director failed to cooperate fully with the leniency process.

The willingness of the CMA to use its director disqualification powers is evidence that it is willing to use its full armoury – which also includes the possibility of fines and criminal prosecutions – to discourage breaches of competition law, and emphasises the consequences that a breach of competition law can have on individuals involved in the breach.

3 <https://www.gov.uk/government/news/cma-secures-director-disqualification-for-competition-law-breach>



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