

## CLIENT MEMORANDUM

# First Company Director Disqualification Order Imposed by the UK Competition Authority

December 2, 2016

## AUTHORS

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On December 1, 2016 the UK Competition and Markets Authority (the “**CMA**”) announced that it had secured its first company director disqualification order against a director of a company which has been found to have infringed competition law in the UK.<sup>1</sup>

Under the order, Mr. Daniel Aston, the managing director of the online poster supplier Trod Ltd., has given a disqualification undertaking not to act as a director of any UK company for five years.

Under the Company Directors Disqualification Act 1986 (the “**CDDA**”), the CMA can apply to the High Court for an order disqualifying a director (which includes acting as a shadow director) from holding company directorships or performing certain roles in relation to a company for a specified period of up to 15 years. The Court must make such an order if the following conditions are satisfied:

- a company of which the individual is a director commits a breach of competition law; and

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<sup>1</sup> The CMA has previously secured a number of director disqualifications in the *Marine Hoses* cartel case. However, these were imposed in connection with the criminal conviction of these individuals. The present case is the first time that the CMA has secured a director disqualification in connection with a civil case against a company and where there are no parallel criminal prosecutions of implicated individuals.

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- the court considers that the individual's conduct as a director makes him unfit to be concerned in the management of the company.

The CDDA also empowers the CMA to accept a disqualification undertaking from a director instead of making an application to court. Such an undertaking has the same legal effect as a court order.

In June 2010, the UK competition authority (then the Office of Fair Trading (the “OFT”)) issued revised guidance on competition disqualification orders for company directors who are implicated in competition law breaches of their company, setting out the circumstances in which the authority will seek to disqualify a director who has infringed UK or EU competition law. This guidance has since been adopted by the OFT successor authority, the CMA.<sup>2</sup>

In addition to director disqualification orders, the CMA has the power to impose a range of other sanctions on individuals in cases involving serious infringements of EU and/or UK competition law. These include unlimited criminal fines and/or jail time of up to five years (under the Enterprise Act 2002) and the confiscation of assets (under the Proceeds of Crime Act 2002). All of these personal sanctions can be applied irrespective of the place of residence or nationality of the individual concerned.

The disqualification in the *Trod* case<sup>3</sup> relates to the CMA's investigation into anti-competitive conduct between Trod Ltd. and GB Eye Ltd. On July 21, 2016, the CMA announced that Trod Ltd. has admitted to agreeing with GB Eye Ltd. that they would not undercut each other's prices for licensed sports and entertainment posters and frames sold on Amazon's UK Marketplace website. The agreement was implemented using automated repricing software.

Trod agreed to a settlement with the CMA under which it accepted a fine of £163,371 (after a 20% discount for settlement). As Mr. Aston, who was a director of Trod at the time, personally contributed to the competition infringement, the CMA considered that this conduct made him unfit to be a director.

As noted above, the CMA is empowered to apply to the court to disqualify a director for up to 15 years. However, in this case, the CMA noted that taking into account Mr. Aston's conduct and the fact that Mr. Aston was willing to give an undertaking before court proceedings were commenced, the CMA agreed to reduce the period of disqualification it was prepared to accept to five years.

GB Eye, the other company involved in the infringement, applied for and obtained immunity, as it had reported the infringing conduct to the CMA. Under the CMA's leniency policy, in addition to granting the company immunity from penalties, the CMA will, as a general rule, not apply for director disqualification orders against the directors of the whistleblower.

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<sup>2</sup> Available at [https://www.gov.U.K./government/uploads/system/uploads/attachment\\_data/file/324978/oft510.pdf](https://www.gov.U.K./government/uploads/system/uploads/attachment_data/file/324978/oft510.pdf)

<sup>3</sup> *Online sales of posters and frames*, Case 50223.

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Announcing the director disqualification order, Michael Grenfell, Executive Director for Enforcement at the CMA, said: “The responsibility to ensure that companies don’t engage in illegal anti-competitive practices is an important one, and company directors should not shirk that responsibility”.

The case sends an important message to companies that the CMA will continue to use the full arsenal of its powers to seek to secure the imposition of personal sanctions where a company has breached competition law in the UK.

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