



## CMA digital director disqualification seen as deterrent amid stronger enforcement – analysis

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- Directors of UK companies can be disqualified for up to 15 years under Bill
- Compliance seen as best strategy to protect against risk of CDOs
- Competition disqualification periods getting longer, lawyers note

Powers granted to the Competition and Markets Authority (CMA) to disqualify directors for corporate infractions of the new Digital Markets Bill will deter Big Tech companies and incentivise compliance as the agency redoubles its pursuit of disqualification orders, lawyers have told PaRR.

In its Annual Report and Accounts 2021 and 2022, the CMA stated that 25 director disqualifications have been secured since 2016, holding directors personally responsible for non-compliance.

The Digital Markets, Competition and Consumer (DMCC) Bill inserts a clause extending the agency's remit to disqualify directors as a consequence of their involvement in infringements related to conduct requirements for firms designated with Strategic Market Status under the Bill, and other competition interventions.

“The CMA’s power to seek disqualification is widened to include breaches of these interventions or orders that can be made under the Bill, but it is not a complete departure from the current enforcement toolbox,” said Charles Livingstone, a partner and head of competition at Brodies LLP.

“I think it exists primarily to focus minds, it’s there as a deterrent that is intended to make sure the directors of these companies are prioritising compliance... by giving them a personal stake in their company’s compliance,” he added.

Actions by the CMA to disqualify directors related to the breach of conduct requirements or pro-competitive interventions are fairly unlikely in the shorter term, according to Matthew Hall, partner at McGuire Woods.

He observed that the first SMS designations are “some way off” and that it was possible that the CMA will likely not enforce against individuals while the regime establishes itself. The CMA did not begin active enforcement of competition disqualification until 2016, he added.

“And when you’re talking about the types of businesses that have SMS status, you’re going to be a very big business and have lots of compliance resources at your disposal,” Livingstone said.

PROPRIETARY

**Sector:** Government  
**Topics:** Cartels & Horizontal Agreements, Policy Developments

**Grade:** Confirmed

#### Agencies

UK Competition Appeal Tribunal (CAT)  
UK Competition And Markets Authority (CMA)

There are no files associated with this Intelligence

“The best way to mitigate the risk of [competition disqualification orders] under the DMCC is to have an effective top-down compliance strategy in place,” said Francesco Liberatore, a partner at Squire Patton Boggs in London.

“If the company has a UK subsidiary, it will be included in the SMS designation and if there is an infringement, it will therefore be covered,” Hall said.

Under the new law, directors could be disqualified for breaches relating to conduct requirements or pro-competitive interventions for up to 15 years, in line with existing company disqualification legislation.

“It seems over the top,” Hall said, noting that the 1986 Act currently applies to misconduct such as fraud, unfitness and involvement in competition infringements. “Provisions under the SMS rules do not seem to be in the same category and it doesn’t seem that the public needs protection from individuals involved in an infringement related to those rules,” he said.

Lawyers noted that the CMA has ramped up its pursuit of competition disqualification orders in the last few years, an approach which Livingstone described as “aggressive”.

The agency announced earlier this year that it secured the disqualification of four directors as part of a wider investigation fining 10 companies in construction services for cover bidding. Paul Cluskey, a director of Cantillon Services, obtained permission from the High Court to continue to act as a director, subject to conditions imposed by the court.

Liberatore said that the CMA is “sending clear warning shots” to directors of UK companies as disqualification terms for competition law infringements are getting longer.

The Competition Appeal Tribunal (CAT) is currently hearing various appeals against the CMA’s prochlorperazine decision. The agency is also pursuing competition disqualification orders against directors of pharma companies involved, which have been transferred from the High Court. The hearing will resume on 26 July.

Livingstone noted that, as the underlying decision is under appeal, the outcome of competition disqualifications sought will depend on the CAT’s ruling.

The CMA did not comment, but its advice for company directors pages states that they have a personal responsibility for ensuring that their companies comply with competition law and should be aware that director disqualification action from the CMA may follow if they fail to do so.

by Aicha Marhfour in London

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