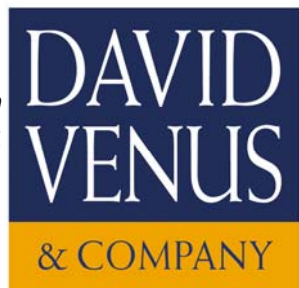


David Venus & Company Practice Note

Director Disqualification Orders in Competition Cases

On 29 June 2010 the Office of Fair Trading (OFT) published its revised guidance on Competition Disqualification Orders (*Director disqualification orders in competition cases - an OFT guidance document*). The document can be found at

http://www.offt.gov.uk/shared_offt/business_leaflets/enterprise_act/oft510.pdf.



The OFT stated that the guidance should be taken as a clear message that it will actively seek to disqualify directors found to have been responsible for, or ought to have known of, anti-competitive behaviour. Ignorance of what is going on in the company will be no excuse. Accordingly, directors will want to ensure that adequate compliance measures are in place and that management are fully aware of the company's and their own responsibilities under the Competition Act 1998 ("the Act"). The Guidance emphasises the need for directors to:

- have knowledge of the principles of competition law;
- act quickly if they have any concerns;
- have in place an appropriate policy, including training and audit; and
- encourage a culture of openness and awareness.

Earlier consultation responses flagged the need for additional help so further straightforward guidelines for directors on their responsibilities under the Act are expected in due course.

The Guidance provides clarification on a number of details of the policy including:

- **Lack of Awareness** - The OFT will be just as concerned with directors who ought to have known of competition law breaches at a company as those who are personally involved in an infringement.
- **Immunity** - The OFT will continue to offer immunity from disqualification orders for any director who cooperates with the OFT's investigation and whose company benefits from leniency in respect of the same activities.
- **No Breach Established** - There may be exceptional cases where the OFT believes it is appropriate to apply for a disqualification order where there is no prior decision or judgment

on the infringement. However, as with all cases, the OFT would still have to satisfy the court that there had been an infringement of competition law.

Under the Company Directors Disqualification Act a director can be disqualified from acting as a director for up to 15 years if their company is involved in a breach of competition law and the court considers they are unfit to be concerned in the management of a company as a result.

If you have any questions or require further information in relation to the requirements of your Company's website please contact Chloe Higgins by email (chloe.higgins@davidvenus.com) or by telephone on 01372 465330.

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