



Company Directors Disqualification Act 1986

1986 CHAPTER 46

[^{F1}Disqualification for competition infringements

Textual Amendments

F1 Ss. 9A-9E and cross-heading inserted (20.6.2003) by 2002 c. 40, ss. 204(2), 279; S.I. 2003/1397, art. 2, Sch.

9A Competition disqualification order

- (1) The court must make a disqualification order against a person if the following two conditions are satisfied in relation to him.
- (2) The first condition is that an undertaking which is a company of which he is a director commits a breach of competition law.
- (3) The second condition is that the court considers that his conduct as a director makes him unfit to be concerned in the management of a company.
- (4) An undertaking commits a breach of competition law if it engages in conduct which infringes any of the following—
 - (a) the Chapter 1 prohibition (within the meaning of the Competition Act 1998) (prohibition on agreements, etc. preventing, restricting or distorting competition);
 - (b) the Chapter 2 prohibition (within the meaning of that Act) (prohibition on abuse of a dominant position);
 - (c) [^{F2}Article 101 of the Treaty on the Functioning of the European Union] (prohibition on agreements, etc. preventing, restricting or distorting competition);
 - (d) [^{F3}Article 102] of that Treaty (prohibition on abuse of a dominant position).

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- (5) For the purpose of deciding under subsection (3) whether a person is unfit to be concerned in the management of a company the court—
- (a) must have regard to whether subsection (6) applies to him;
 - (b) may have regard to his conduct as a director of a company in connection with any other breach of competition law;
 - (c) must not have regard to the matters mentioned in Schedule 1.
- (6) This subsection applies to a person if as a director of the company—
- (a) his conduct contributed to the breach of competition law mentioned in subsection (2);
 - (b) his conduct did not contribute to the breach but he had reasonable grounds to suspect that the conduct of the undertaking constituted the breach and he took no steps to prevent it;
 - (c) he did not know but ought to have known that the conduct of the undertaking constituted the breach.
- (7) For the purposes of subsection (6)(a) it is immaterial whether the person knew that the conduct of the undertaking constituted the breach.
- (8) For the purposes of subsection (4)(a) or (c) references to the conduct of an undertaking are references to its conduct taken with the conduct of one or more other undertakings.
- (9) The maximum period of disqualification under this section is 15 years.
- (10) An application under this section for a disqualification order may be made by the [^{F4}Competition and Markets Authority] or by a specified regulator.
- (11) Section 60 of the Competition Act 1998 (c. 41) (consistent treatment of questions arising under United Kingdom and [^{F5}EU] law) applies in relation to any question arising by virtue of subsection (4)(a) or (b) above as it applies in relation to any question arising under Part 1 of that Act.

Textual Amendments

- F2** Words in s. 9A(4)(c) substituted (1.8.2012) by [The Treaty of Lisbon \(Changes in Terminology or Numbering\) Order 2012 \(S.I. 2012/1809\)](#), art. 2(1), **Sch. Pt. 1** (with art. 2(2))
- F3** Words in s. 9A(4)(d) substituted (1.8.2012) by [The Treaty of Lisbon \(Changes in Terminology or Numbering\) Order 2012 \(S.I. 2012/1809\)](#), art. 2(1), **Sch. Pt. 1** (with art. 2(2))
- F4** Words in s. 9A(10) substituted (1.4.2014) by [The Enterprise and Regulatory Reform Act 2013 \(Competition\) \(Consequential, Transitional and Saving Provisions\) Order 2014 \(S.I. 2014/892\)](#), art. 1(1), **Sch. 1 para. 53(b)** (with art. 3)
- F5** Words in s. 9A(11) substituted (22.4.2011) by [The Treaty of Lisbon \(Changes in Terminology\) Order 2011 \(S.I. 2011/1043\)](#), arts. 3, **6(2)**

9B Competition undertakings

- (1) This section applies if—
- (a) the [^{F6}Competition and Markets Authority] or a specified regulator thinks that in relation to any person an undertaking which is a company of which he is a director has committed or is committing a breach of competition law,

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- (b) the [^{F6}Competition and Markets Authority] or the specified regulator thinks that the conduct of the person as a director makes him unfit to be concerned in the management of a company, and
 - (c) the person offers to give the [^{F6}Competition and Markets Authority] or the specified regulator (as the case may be) a disqualification undertaking.
- (2) The [^{F6}Competition and Markets Authority] or the specified regulator (as the case may be) may accept a disqualification undertaking from the person instead of applying for or proceeding with an application for a disqualification order.
- (3) A disqualification undertaking is an undertaking by a person that for the period specified in the undertaking he will not—
- (a) be a director of a company;
 - (b) act as receiver of a company's property;
 - (c) in any way, whether directly or indirectly, be concerned or take part in the promotion, formation or management of a company;
 - (d) act as an insolvency practitioner.
- (4) But a disqualification undertaking may provide that a prohibition falling within subsection (3)(a) to (c) does not apply if the person obtains the leave of the court.
- (5) The maximum period which may be specified in a disqualification undertaking is 15 years.
- (6) If a disqualification undertaking is accepted from a person who is already subject to a disqualification undertaking under this Act or to a disqualification order the periods specified in those undertakings or the undertaking and the order (as the case may be) run concurrently.
- (7) Subsections (4) to (8) of section 9A apply for the purposes of this section as they apply for the purposes of that section but in the application of subsection (5) of that section the reference to the court must be construed as a reference to the [^{F7}Competition and Markets Authority] or a specified regulator (as the case may be).

Textual Amendments

- F6** Words in s. 9B(1)(2) substituted (1.4.2014) by [The Enterprise and Regulatory Reform Act 2013 \(Competition\) \(Consequential, Transitional and Saving Provisions\) Order 2014 \(S.I. 2014/892\)](#), art. 1(1), [Sch. 1 para. 53\(c\)](#) (with art. 3)
- F7** Words in s. 9B(7) substituted (1.4.2014) by [The Enterprise and Regulatory Reform Act 2013 \(Competition\) \(Consequential, Transitional and Saving Provisions\) Order 2014 \(S.I. 2014/892\)](#), art. 1(1), [Sch. 1 para. 53\(c\)](#) (with art. 3)

9C Competition investigations

- (1) If the [^{F8}Competition and Markets Authority] or a specified regulator has reasonable grounds for suspecting that a breach of competition law has occurred it or he (as the case may be) may carry out an investigation for the purpose of deciding whether to make an application under section 9A for a disqualification order.
- (2) For the purposes of such an investigation sections 26 to 30 of the Competition Act 1998 (c. 41) apply to the [^{F8}Competition and Markets Authority] and the specified

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regulators as they apply to the [^{F8}Competition and Markets Authority] for the purposes of an investigation under section 25 of that Act.

- (3) Subsection (4) applies if as a result of an investigation under this section the [^{F8}Competition and Markets Authority] or a specified regulator proposes to apply under section 9A for a disqualification order.
- (4) Before making the application the [^{F8}Competition and Markets Authority] or regulator (as the case may be) must—
 - (a) give notice to the person likely to be affected by the application, and
 - (b) give that person an opportunity to make representations.

Textual Amendments

- F8** Words in s. 9C(1)-(4) substituted (1.4.2014) by [The Enterprise and Regulatory Reform Act 2013 \(Competition\) \(Consequential, Transitional and Saving Provisions\) Order 2014 \(S.I. 2014/892\)](#), art. 1(1), [Sch. 1 para. 53\(d\)](#) (with art. 3)

9D Co-ordination

- (1) The Secretary of State may make regulations for the purpose of co-ordinating the performance of functions under sections 9A to 9C (relevant functions) which are exercisable concurrently by two or more persons.
- (2) Section 54(5) to (7) of the Competition Act 1998 (c. 41) applies to regulations made under this section as it applies to regulations made under that section and for that purpose in that section—
 - (a) references to Part 1 functions must be read as references to relevant functions;
 - (b) references to a regulator must be read as references to a specified regulator;
 - ^{F9}(ba) [the reference in subsection (6A)(b) to notice under section 31(1) of the Competition Act 1998 that the regulator proposes to make a decision within the meaning given by section 31(2) of that Act is to be read as notice under section 9C(4) that the specified regulator proposes to apply under section 9A for a disqualification order;]
 - (c) a competent person also includes any of the specified regulators.
- (3) The power to make regulations under this section must be exercised by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.
- (4) Such a statutory instrument may—
 - (a) contain such incidental, supplemental, consequential and transitional provision as the Secretary of State thinks appropriate;
 - (b) make different provision for different cases.

Textual Amendments

- F9** S. 9D(2)(ba) inserted (1.4.2014) by [The Enterprise and Regulatory Reform Act 2013 \(Competition\) \(Consequential, Transitional and Saving Provisions\) Order 2014 \(S.I. 2014/892\)](#), art. 1(1), [Sch. 1 para. 54](#) (with art. 3)

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9E Interpretation

- (1) This section applies for the purposes of sections 9A to 9D.
- (2) Each of the following is a specified regulator for the purposes of a breach of competition law in relation to a matter in respect of which he or it has a function—
 - [^{F10}(a) the Office of Communications;]
 - (b) the Gas and Electricity Markets Authority;
 - [^{F11}(c) the Water Services Regulation Authority;]
 - (d) [^{F12}Office of Rail Regulation];
 - (e) the Civil Aviation Authority[^{F13};
 - (f) Monitor.]
- (3) The court is the High Court or (in Scotland) the Court of Session.
- (4) Conduct includes omission.
- (5) Director includes shadow director.]

Textual Amendments

- F10** S. 9E(2)(a) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), ss. 406(1), 411(2), [Sch. 17 para. 83](#) (with transitional provisions in [Sch. 18](#)); S.I. 2003/3142, [art. 3\(1\)](#), [Sch. 1](#)
- F11** S. 9E(2)(c) substituted (1.4.2006) by [Water Act 2003 \(c. 37\)](#), ss. 101(1), 105(3), [Sch. 7 para. 25](#); S.I. 2005/2714, [art. 4\(f\)](#) (with [Sch. para. 8](#))
- F12** Words in s. 9E(2)(d) substituted (5.7.2004) by [Railways and Transport Safety Act 2003 \(c. 20\)](#), ss. 16(5), 120(1), [Sch. 2 para. 19\(j\)](#); S.I. 2004/827, [art. 4\(g\)](#)
- F13** S. 9E(2)(f) and punctuation inserted (1.4.2013) by [Health and Social Care Act 2012 \(c. 7\)](#), [ss. 74\(4\)](#), 306(4); S.I. 2013/160, [art. 2\(2\)](#) (with [arts. 7-9](#))

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