

Disqualification Orders for Directors Involved in Cartels

BACKGROUND

- The Competition Act 1998 and Enterprise Act 2002 marked a transformation in the UK's competition law enforcement regime: cartel conduct in the UK went from receiving a regulatory 'slap on the wrist' to attracting corporate fines of up to 10 per cent of annual turnover and prison sentences of up to five years for those responsible.
- Director disqualification provides a civil sanction against individuals involved in cartel practices, while circumventing the complexity and uncertainty of a criminal process.
- This sanction is gaining increasing importance in light of concerns that even very high levels of corporate fines are failing to deter cartels.
- Disqualification could be of particular significance in Europe because there are no criminal sanctions at the EU level. In addition, national criminal offences have failed to complement civil cartel enforcement, by the European Commission, of the most serious multi-jurisdictional infringements.

METHODOLOGY

- The author examines the importance of director disqualification to effective cartel enforcement.
- Competition Disqualification Orders in the UK are reviewed, setting out the justification for such orders. The main shortcomings of these orders are considered. The author asks if they would be a recommended practice for the European Commission.

KEY FINDINGS

- The continued frequency with which the European Commission is uncovering cartel infringements suggests that a fines-only approach is failing to achieve effective deterrence.
- Corporate fines - however high they may be - largely punish the wrong people. They are important in changing business attitudes and encouraging compliance efforts. Yet they do not directly punish the individual decision-makers responsible, many of whom may have left the firm or retired by the time the sanction is imposed.
- Competition Disqualification Orders could potentially have a significant deterrent effect, assuming the directors are not close to retirement. But for the deterrent effect to be felt, disqualifications must be applied and enforced effectively.
- There are reasons why the deterrent effect of a Competition Disqualification Order may be muted. But Competition Disqualification Orders provide the most realistic alternative to criminalisation in EU cartel policy.

POLICY ISSUES

- The European Commission needs to show greater leadership in acknowledging the need for a mixed approach to cartel enforcement which focuses on individuals as well as firms.
- Owing to the problems of adopting an EU Competition Disqualification Order, the Commission should work more closely with national competition authorities through the European Competition Network. They must encourage the adoption of disqualification orders and their harmonisation across the EU.

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- The Commission must also work more closely with national competition authorities to ensure that individuals involved in EU cartel infringements are as susceptible to Competition Disqualification Orders as those involved in domestic cases.
- The European Competition Network can play a key role in facilitating information exchange, to ensure that a disqualification from one member state has EU-wide effect.

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