

2005 No. 1454 (N.I. 9)

NORTHERN IRELAND

**The Company Directors Disqualification (Amendment)
(Northern Ireland) Order 2005**

Made - - - - - 7th June 2005

*Coming into operation in accordance with Article
1(2) and (3)*

ARRANGEMENT OF ORDER

1. Title and commencement
2. Interpretation
3. Disqualification of company directors for breaches of competition law
4. Supplementary

Company Directors Disqualification (Amendment)

Company Directors Disqualification (Amendment)

At the Court at Buckingham Palace, the 7th day of June 2005

Present,

The Queen's Most Excellent Majesty in Council

Whereas a draft of this Order in Council has been approved by resolution of each House of Parliament:

Now, therefore, Her Majesty, in exercise of the powers conferred by paragraph 1(1) of the Schedule to the Northern Ireland Act 2000 (c.1) and of all other powers enabling Her in that behalf, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:-

Title and commencement

1.—(1) This Order may be cited as the Company Directors Disqualification (Amendment) (Northern Ireland) Order 2005.

(2) This Article and Article 2 shall come into operation on the expiration of 7 days from the day on which this Order is made.

(3) Articles 3 and 4 shall come into operation on such day as the Department of Enterprise, Trade and Investment may by order appoint.

Interpretation

2. The Interpretation Act (Northern Ireland) 1954 (c. 33) applies to this Order as it applies to an Act of the Assembly.

Disqualification of company directors for breaches of competition law

3. After Article 13 of the Company Directors Disqualification (Northern Ireland) Order 2002 (NI 4) (matters for determining unfitness in certain cases), there shall be inserted—

“Disqualification for competition infringements

Competition disqualification order

13A.—(1) The High Court shall 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.

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(3) The second condition is that the High 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) Article 81 of the Treaty establishing the European Community (prohibition on agreements, etc. preventing, restricting or distorting competition);
- (d) Article 82 of that Treaty (prohibition on abuse of a dominant position).

(5) For the purpose of deciding under paragraph (3) whether a person is unfit to be concerned in the management of a company the High Court—

- (a) shall have regard to whether paragraph (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) shall not have regard to the matters mentioned in Schedule 1.

(6) This paragraph applies to a person if as a director of the company—

- (a) his conduct contributed to the breach of competition law mentioned in paragraph (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 paragraph (6)(a) it is immaterial whether the person knew that the conduct of the undertaking constituted the breach.

(8) For the purposes of paragraph (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 Article is 15 years.

(10) An application under this Article for a disqualification order may be made by the OFT or by a specified regulator.

(11) Section 60 of the Competition Act 1998 (c. 41) (consistent treatment of questions arising under United Kingdom and Community law) applies in relation to any question arising by virtue of paragraph (4)(a) or (b) as it applies in relation to any question arising under Part 1 of that Act.

Competition undertakings

13B.—(1) This Article applies if—

- (a) the OFT 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,
- (b) the OFT 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 OFT or the specified regulator (as the case may be) a disqualification undertaking.

(2) The OFT 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 paragraph (3)(a) to (c) does not apply if the person obtains the leave of the High 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 Order 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) Paragraphs (4) to (8) of Article 13A apply for the purposes of this Article as they apply for the purposes of that Article but in the application of paragraph (5) of that Article the reference to the High Court shall be construed as a reference to the OFT or a specified regulator (as the case may be).

Competition investigations

13C.—(1) If the OFT or a specified regulator has reasonable grounds for suspecting that a breach of competition law has occurred it may carry out an investigation for the purpose of deciding whether to make an application under Article 13A 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 OFT and the specified regulators as they apply to the OFT for the purposes of an investigation under section 25 of that Act.

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(3) Paragraph (4) applies if as a result of an investigation under this Article the OFT or a specified regulator proposes to apply under Article 13A for a disqualification order.

(4) Before making the application the OFT or regulator (as the case may be) shall—

- (a) give notice to the person likely to be affected by the application, and
- (b) give that person an opportunity to make representations.

Co-ordination

13D.—(1) The Secretary of State may make regulations for the purpose of co-ordinating the performance of functions under Articles 13A to 13C (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 Article as it applies to regulations made under that section and for that purpose in that section—

- (a) references to Part 1 functions shall be read as references to relevant functions;
- (b) references to a regulator shall be read as references to a specified regulator; and
- (c) a competent person also includes any of the specified regulators.

(3) Regulations made under this Article shall be subject to annulment in pursuance of a resolution of either House of Parliament and section 5 of the Statutory Instruments Act 1946 (c. 36) shall apply accordingly.

(4) Regulations may contain such incidental, supplemental, consequential and transitional provision as the Secretary of State thinks appropriate.

Interpretation

13E.—(1) This Article applies for the purposes of Articles 13A to 13D.

(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 it has a function—

- (a) the Office of Communications;
- (b) the Northern Ireland Authority for Energy Regulation;
- (c) the Civil Aviation Authority.

(3) Conduct includes omission.

(4) Director includes shadow director.”.

Supplementary

4.—(1) The Company Directors Disqualification (Northern Ireland) Order 2002 (NI 4) shall be amended as follows.

(2) In Article 2 (interpretation), in paragraph (2)—

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- (a) at the appropriate place in alphabetical order there shall be inserted—
 - “the OFT” means the Office of Fair Trading;’ and
- (b) for the definition of “regulations” there shall be substituted—
 - “”regulations” means—
 - (a) in Article 13D, regulations made by the Secretary of State, and
 - (b) in other provisions of this Order, regulations made by the Department subject (except in Article 23(3)) to negative resolution;”.
- (3) In Article 3 (general provision about disqualification orders), in paragraph (1) for “Article 9” there shall be substituted “Articles 9 and 13A”.
- (4) In Article 12 (variation etc. of disqualification undertaking), after paragraph (2) there shall be inserted the following paragraph—
 - “(3) Paragraph (2) does not apply to an application in the case of an undertaking given under Article 13B, and in such a case on the hearing of the application whichever of the OFT or a specified regulator (within the meaning of Article 13E) accepted the undertaking—
 - (a) shall appear and call the attention of the Court to any matters which appear to it to be relevant;
 - (b) may give evidence or call witnesses.”.
- (5) In Article 20 (application for a disqualification order), in paragraph (3) for “the Department or the official receiver or the liquidator” there shall be substituted “a person falling within paragraph (4)”.
- (6) After paragraph (3) of that Article there shall be inserted the following paragraph—
 - “(4) The following fall within this paragraph—
 - (a) the Department;
 - (b) the official receiver;
 - (c) the OFT;
 - (d) the liquidator;
 - (e) a specified regulator (within the meaning of Article 13E).”.
- (7) In Article 21 (applications for leave under an order or undertaking) the existing provision shall be numbered as paragraph (1) and after that paragraph there shall be inserted—
 - “(2) Paragraph (1) does not apply to an application for leave for the purposes of Article 3(1)(a) if the application for the disqualification order was made under Article 13A.
 - (3) In such a case and in the case of an application for leave for the purposes of Article 13B(4) on the hearing of the application whichever of the OFT or a specified regulator (within the meaning of Article 13E) applied for the order or accepted the undertaking (as the case may be)—
 - (a) must appear and draw the attention of the Court to any matters which appears to it to be relevant;
 - (b) may give evidence or call witnesses.”.

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(8) In Article 22 (register of disqualification orders and undertakings) for paragraph (3) there shall be substituted—

“(3) The Department shall include in the register such particulars as it considers appropriate of—

- (a) disqualification undertakings accepted by it under Article 10 or 11;
- (b) disqualification undertakings accepted by the OFT or a specified regulator under Article 13B;
- (c) cases in which leave has been granted as mentioned in paragraph (1)(d).”.

A. K. Galloway

Clerk of the Privy Council

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the Company Directors Disqualification (Northern Ireland) Order 2002. It empowers the High Court to disqualify a person for being a company director if a company of which he is a director commits a breach of competition law and the Court considers that his conduct as a director makes him unfit to be concerned in the management of a company.

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