The Competition and Markets Authority (CMA) has used its powers for the first time under the Company Directors Disqualification Act 1986 to disqualify a director for breaches of competition law.

The disqualification follows the CMA’s decision that Trod Ltd breached competition law by agreeing with one of its competing online sellers that they would not undercut each other’s prices for posters and frames sold on Amazon. The CMA found that the agreement was implemented using automated re-pricing software. The CMA fined Trod £163,371.

The managing director of Trod was found to have personally contributed to the breach of competition law and that his conduct made him unfit to be a company director for a specified period.

Michael Grenfell, Executive Director for Enforcement at the CMA, commented that:

“Breaking competition law can harm consumers, businesses and overall economic performance. In this case, people shopping online were entitled to believe retailers were competing on price, whereas, unknown to them, the companies had colluded not to undercut each other’s prices”.

“The responsibility to ensure that companies don’t engage in illegal anti-competitive practices is an important one, and company directors should not shirk that responsibility. The business community should be clear that the CMA will continue to look at the conduct of directors of companies that have broken competition law, and, where appropriate, we are absolutely prepared to use this this power again”.
Businesses need to consider the following legal issues when dealing with competitors:

**Breaching competition law**

- Competition law is designed to ensure that companies compete fairly with each other;
- Failure to comply with competition law can have serious implications for a business, including large fines;
- Certain serious breaches of competition law may also expose an individual to the risk of criminal prosecution; and
- Businesses can be exposed to claims that may exceed any fines imposed on them.

**Cartels**

All forms of cartel activity are strictly prohibited. A “cartel” describes any organisation or arrangement between at least two competitors that is designed to reduce competition between them and so increase prices or profitability beyond the level that could be achieved competitively. The main examples of cartel activity are:

- **Price fixing.** Any understanding or agreement about price levels or increases can constitute price fixing. Even a statement to a competitor like “we intend to increase prices next year”, can constitute unlawful price fixing. Unlawful price fixing includes:
  - setting minimum or target prices for particular customers or sales in general;
  - co-ordination of the timing of price increases; or
  - agreeing any aspects of trading conditions such as discounts, margins, rebates, credit terms, advance payments, minimum prices and list prices.

- **Bid rigging.** This is when businesses agree the outcome of a tender or pitch process amongst themselves, either by:
  - deciding in advance which company will bid;
  - who will bid the best price; or
  - what the tender process should be.

"Breaking competition law can harm consumers, businesses and overall economic performance."
Bid-rigging eliminates fair competition from a tender or pitch process and so removes the customer’s free choice. It will almost certainly lead to the customer paying higher prices.

+ **Market sharing.** This may involve an agreement to allocate particular customers or sales territories to individual cartel members.

+ **Information exchange.** A business must not agree to share confidential or commercially sensitive information with competitors, for example:
  - prices;
  - margins;
  - customers; or
  - sales information

This could lead to co-ordinated commercial behaviour and is therefore illegal.

+ Other forms of information exchange may be permissible. For example, if the information provided is historical (and has no value in predicting future commercial behaviour), anonymised, aggregated, independently compiled and public.

+ **Limiting output or sales.** Sales or production quotas are often used to control the market position of cartel participants and maintain artificially high prices.

If you become aware that your business is involved in any cartel activity or you are approached by a competitor to participate, you should take legal advice immediately.

**Other forms of co-operation**

Several other forms of co-operation with competitors may breach competition law. To be safe, consider your legal position before doing any of the following:

+ Joint purchasing agreements;
+ Research and development agreements;
+ Specialisation agreements (where competitors agree to specialise in the production of certain types of goods);
+ Standardisation agreements (for example, where companies agree basic technical standards for products);
+ Joint advertising; and
+ Joint sales.

Each of these can be prohibited if the objective or effect is to reduce competition. However, they may be permissible if, for example, there are customer benefits that outweigh any anti-competitive effect.

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