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2006 Annual Report

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The Competition Authority
 An tÚdarás Iomaíochta

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Foreword *Bill Prasifka*

The output of the Competition Authority in 2006 is consistent with the output expected from a maturing government agency now entering its 16th year of operation.

2006 was the year that saw the first criminal conviction on indictment for offences against the Competition Act. By the end of the year, with multiple successful prosecutions in the home heating oil case in the west of Ireland, 15 criminal convictions in total were secured, including the first criminal conviction by jury trial for Competition Act offences in Europe. This represents a significant milestone not only in the development of the Competition Authority but more importantly, in the establishment of a competition culture in the State.

Enforcement action continued to consume a significant portion of the Competition Authority's resources, and a successful conclusion was brought to a variety of civil proceedings. In particular, the Competition Authority continued to ensure that consumers enjoyed the benefits of the single European market and that competition was brought to bear on the healthcare sector.

Increased merger activity reflected the growing pace of change in the economy as a whole and the Competition Authority issued 96 reasoned determinations. Of the 96 merger cases dealt with in 2006, 93 were cleared at the initial stage of the decision making process, demonstrating the Competition Authority's continued commitment to an efficient merger clearance regime.

Complementary to its enforcement activity, promoting the benefits of competition remained a core function of the Competition Authority. After a long advocacy campaign that encountered staunch resistance from producer interests, the Groceries Order was finally abolished in 2006. Consumers

were the big winners from the decision to scrap this misguided piece of legislation.

Official data from the Central Statistics Office indicated that since the abolition of the Groceries Order in March 2006, food prices have risen more slowly than general inflation and the rate of inflation on items formerly covered by the Groceries Order grew at a lower rate still. The Competition Authority assumed new responsibilities for the grocery sector, including undertaking a substantial monitoring project in the sector following the establishment of the new regulatory environment.

In addition, 2006 saw the publication of the long awaited Final Report of the Legal Profession. If implemented in full, the report's recommendations will create a more transparent and accountable legal system that is more responsive to clients' needs.

From a broader horizon, 2006 has seen competition issues in a wide range of sectors move towards the top of the policy agenda. By the end of 2006, the need for increased competition in public utilities (particularly electricity) and the provision of healthcare was more firmly established in Ireland. The Competition Authority now finds itself in the unprecedented position of having its long established positions on a range of public issues being taken more seriously than ever before.

This growing competition culture has long been needed in Ireland as many areas of the economy had been dominated by producer interests. The Competition Authority will continue to play its part in redressing this imbalance in favour of the consumer by recommending policy changes that are based on sound economic reasoning. Of course, others have contributed to this desirable state of affairs. Notable contributions were made by private advocates in civil society as well as public officials in



Section 1: **Enforcing Competition Law**

1. Enforcing Competition Law

The decision by the Department of Enterprise, Trade and Employment to provide the Competition Authority with extra resources for criminal investigations into hard-core cartel activity began to bear fruit in 2006 when Ireland became the first country in Europe to have a jury trial for a criminal competition offence. The Competition Authority also continued to bring a significant number of civil cases before the High Court.

Competition law is designed, primarily, to protect and benefit consumers who have a right to purchase goods and services at a competitive price. Greater competition provides good value for consumers, stimulates business and enhances the economy as a whole. Anti-competitive behaviour results in consumers paying higher prices without any extra benefits and undermines the competitiveness of the Irish economy.

Anti-competitive practices by cartels such as price-fixing and bid-rigging is nothing more than theft by people looking to make extra profits at the expense of consumers.

1.1 Use of Enforcement Powers

During 2006 the Competition Authority applied to the District Courts and was granted 9 search warrants in relation to on-going investigations into anti-competitive behaviour. These search warrants were executed by authorised officers of the Competition Authority. On a number of occasions assistance was provided by the Garda Bureau of Fraud Investigation and local members of An Garda Síochána around the country.

In addition, the Competition Authority issued 38 witness summonses during the year. The Competition Authority is entitled to issue summonses to compel witnesses to give evidence under oath and produce documents requested. Failure to comply with these summonses is an offence under the Competition Act, 2002.

Table 1.1: Use of Enforcement Power	2006	2005	2004	2003	2002	2001
Search Warrants	9	42	24	21	18	2
Summonses	38	46	58	69	56	11

1.2 Criminal Cases taken by the Director of Public Prosecutions

The Director of Public Prosecutions v Michael Flanagan trading as Flanagan Oil, Con Muldoon, Muldoon Oil Limited, James Kearney, Cloonan Oil Limited, Ruby Oil (Roscommon) Limited, Kevin Hester, Sean Hester, All Star Oil Limited, Alan Kearney, Mor Oil Limited, Pat Hegarty, Sweeney Oil Limited, Gort Oil, Declan Geraghty, Matt Geraghty Oil Limited, Michael McMahon, Fenmac Oil & Transport Limited, Tom Connolly, Eugene Dalton Snr., Corrib Oil Company Limited, Kevin Cunniffe, Hi-Way Oil (Galway) Limited, JP Lambe.

In April, May and June of 2004 the Director of Public Prosecutions (DPP) initiated proceedings against the 24 accused referred to above. The charges proffered against the various individuals and corporate undertakings related to allegations of fixing the retail price of heating oil, which is made up of either gas oil or kerosene. The prosecution of these 24 accused followed an investigation by the Competition Authority which referred a file on the matter to the DPP in 2003. All of the accused were sent forward for trial, on indictment to Galway Circuit Court.

In October 2004, the DPP indicated that he wished to proceed with an initial group of four defendants. In December 2004 counsel for three of the defendants (**Corrib Oil Company Limited, Eugene Dalton Snr & Tom Connolly**) made an application to Galway Circuit Court to move the trial to the Dublin Circuit Criminal Court on the grounds that they were unlikely to get a fair trial in Galway as potential jurors were likely to have been customers of one or more of the defendants and/or witnesses for the prosecution. The application was granted and the trial of the fourth defendant (**JP Lambe**) was also moved to Dublin Circuit Criminal Court. A trial date for all four

defendants was set for 14th November 2005.

On 14th November 2005 the trial of Corrib Oil Company Limited, Eugene Dalton Snr & Tom Connolly was adjourned until the 3rd of October 2006 by Judge Michael White because no court room was available for the trial.

In December 2005 the DPP indicated to Galway Circuit Criminal Court that he wished to proceed to trial with a further group of three accused, namely Michael Flanagan trading as Flanagan Oil, Con Muldoon and Muldoon Oil Limited. An application to move the trial to the Dublin Circuit Criminal Court on the grounds that they were unlikely to get a fair trial in Galway was refused by Galway Circuit Criminal Court on the 10th January 2006. A trial date of 28th February 2006 was set for these three accused.

On the morning of the 28th of February 2006, both Mr. Con Muldoon and Muldoon Oil Limited decided to be re-arraigned, changed their pleas and entered guilty pleas to one charge each on the Bill of Indictment. Con Muldoon pleaded guilty to the following charge:

Statement of Offence: Being a director of an undertaking which entered into an agreement which had as its object the prevention, restriction or distortion of competition contrary to Section 2 of the Competition (Amendment) Act 1996 as provided for by Section 3(4)(a) of the said Act.

Particulars of Offence: Conrad Muldoon between the 1st day of January 2001 and the 11th day of February 2002, both dates inclusive, in the County of Galway, was a director of Muldoon Oil Limited, an undertaking within the meaning of Section 3 of the Competition Act 1991, such company having committed an offence, did enter into an agreement with other undertakings, again within the meaning

of Section 3 of the Competition Act 1991, which had as its object the prevention, restriction or distortion of competition in the trade of gas oil in Galway City and County by directly or indirectly fixing the selling price of gas oil, and authorised or consented to the doing of the acts constituting that offence.

Con Muldoon had also been charged with a second count on the Bill of Indictment in identical terms to the above charge except that the product was kerosene instead of gas oil. The DPP indicated to the trial Judge, Mr. Justice Raymond Groarke that the DPP wished to enter a *nolle prosequi* in relation to the second charge before the court.

Muldoon Oil Limited pleaded guilty to the following charge:

Statement of Offence: Entering into an agreement which had as its object the prevention, restriction or distortion of competition contrary to Section 2(2) of the Competition (Amendment) Act 1996.

Particulars of Offence: Muldoon Oil Limited between the 1st day of January 2001 and the 11th day of February 2002, both dates inclusive, in the County of Galway, being an undertaking within the meaning of Section 3 of the Competition Act 1991, did enter into an agreement with other undertakings, within the meaning of Section 3 of the Competition Act 1991, which had as its object the prevention, restriction or distortion of competition in the trade of gas oil in Galway City and County by directly or indirectly fixing the selling price of gas oil.

As with Con Muldoon, Muldoon Oil Limited had also been charged with a second count on the Bill of Indictment in identical terms to the above charge but again the product was kerosene instead of gas oil. The DPP indicated to the trial Judge, Mr. Justice Raymond Groarke that the DPP wished to enter a *nolle prosequi* in relation to the second charge before the court.

Michael Flanagan, trading as Flanagan Oil, decided to contest the charges made out against him and a jury was empanelled. Mr. Denis Vaughan Buckley SC with Mr. Conor Fahy BL prosecuted the case, instructed by Mr. Seamus Cassidy, Solicitor of the Chief Prosecution Solicitor's Division of the DPP. The trial lasted three days. The jury was charged by Judge Groarke and retired to consider its verdict on Thursday the 2nd March. The jury deliberated for 2 hours and 4 minutes before returning unanimous guilty verdicts on both counts of the bill of indictment against Michael Flanagan trading as Flanagan Oil for his part in the price-fixing conspiracy. Judge Groarke fined Michael Flanagan trading as Flanagan Oil, €3,500 in total. In sentencing him judge Groarke commented:

"Those engaged in cartels and involved in the fixing of prices are doing so only with the motivation of greed, and with nothing to be gained but financial profit. That is why the legislature takes such a serious view of it...I could well see circumstances where persons convicted by a jury could be subjected to terms of imprisonment."

Judge Groarke acknowledged that Michael Flanagan, trading as Flanagan Oil, was a minnow surrounded by sharks in the oil distribution business and stated that he would take this into account when sentencing him.

Michael Flanagan, trading as Flanagan Oil, was convicted of the following charges:

Statement of Offence: Entering into an agreement which had as its object the prevention, restriction or distortion of competition contrary to Section 2(2) of the Competition (Amendment) Act 1996.

Particulars of Offence: Michael Flanagan, trading as Flanagan Oil, between the 1st day of January 2001 and the 11th day of February 2002, both dates inclusive, in the County of Galway, being an undertaking within the meaning of Section 3 of the Competition Act 1991, did enter into an agreement with other undertakings, within the meaning of Section 3 of the Competition Act 1991, which had as its object the prevention, restriction or distortion of competition in the trade of gas oil in Galway City and County by directly or indirectly fixing the selling price of gas oil.

The second count for which he was convicted was in identical terms to the above charge save for the fact that it was for the product Kerosene instead of gas oil.

J.P. Lambe had pleaded guilty in Dublin Circuit Criminal Court on the 27th October 2005 to both counts on the bill of indictment for aiding and abetting Corrib Oil Company Limited in price-fixing. He was sentenced on the 6th March 2006 by Judge Catherine Delahunty on one count on the Bill of Indictment to a period of 6 months imprisonment, suspended for a period of 12 months and fined €15,000. The second count on the Bill of Indictment was taken into account. Judge Delahunty in sentencing Lambe said that:

"Without your talent, acumen and knowledge of this business, the kind of distortion before the court today could not have functioned to any sort of significant level."

This is the first custodial sentence received by an individual in Ireland or Europe for a competition law offence. To date, Lambe's fine is the largest single fine levied by an Irish court on either an undertaking or individual for a competition law offence.

The cases against the remaining 17 defendants in the Heating Oil cartel were next listed for mention in Galway Circuit Court on March 9th 2006. On that date, 4 corporate undertakings and 2 directors were re-arraigned before Judge Raymond Groarke and pleaded guilty to one charge each of price-fixing in the sale of heating oil in the Galway City and County Area. The undertakings that pleaded guilty were; **All Star Oil Limited, Hi-Way Oil (Galway) Limited, Mor Oil Limited** and **Matt Geraghty Oil Limited**. The two directors who pleaded guilty were **Sean Hester** as director of All Star Oil Limited and **Kevin Cunniffe** as director of Hi-Way Oil (Galway) Limited. Each of the corporate undertakings pleaded guilty to charges of price-fixing in the sale of gas oil whilst a *nolle prosequi* was entered by the DPP for the remaining charge in relation to kerosene. The wording of the charges in each case was identical to the wording of the charge against Muldoon Oil Limited, referred to above. The two directors pleaded guilty to charges of price-fixing in the sale of gas oil whilst a *nolle prosequi* was entered by the prosecution for the remaining charge in relation to kerosene. Again, the wording of the charges was identical to that against Mr. Con Muldoon, referred to above. The DPP indicated that he would enter a *nolle prosequi* on the two charges against both Declan Geraghty, director of Matt Geraghty Oil Limited and Alan Kearney, director of Mor Oil Limited. Sentencing for each of these accused who pleaded guilty on the 9th March was put back to the following day, the 10th March when both Muldoon Oil Limited and Con Muldoon Oil were also in for sentencing.

On the 10th March 2006 Judge Raymond Groarke convicted and fined Muldoon Oil Limited €3,500 on the count to which that corporate undertaking had pleaded the previous week. Con Muldoon was convicted and fined €1,000 on the count on the Bill of Indictment for which he entered a guilty plea. The remaining corporate undertakings, namely All

Star Oil Limited, Hi-Way Oil (Galway) Limited, Mor Oil Limited and Matt Geraghty Oil Limited were each fined €7,500. Both Sean Hester and Kevin Cunniffe were fined €1,500 each.

Judge Groarke noted the early guilty plea entered by both Muldoon Oil Limited and Con Muldoon Oil, these pleas having been entered before the jury trial of Michael Flanagan, trading as Flanagan Oil. For that reason, both Muldoon Oil Limited and Con Muldoon received lower fines than the remaining undertakings and directors sentenced on that same date. In sentencing on the 10th March 2006, Judge Groarke described the actions of the 5 corporate undertakings and 3 directors as involved in the heating oil cartel as "stealing". Judge Groarke went on further to state:

"These businessmen went into this with their eyes wide open and knew that what they were doing was criminally illegal. It was about greed..."

On the 21st March 2006 in Galway Circuit Court, Fenmac Oil and Transport Company Limited, trading as McMahon Oil and its director Mr. Michael McMahon of Kinvarra, Co. Galway both pleaded guilty to one count each of price-fixing in the sale of gas oil. As with the other corporate undertakings in this case, a *nolle prosequi* was entered by the DPP on the remaining count for each of these two accused. Fenmac Oil and Transport Company Limited, trading as McMahon Oil was fined €7,500 by Judge Groarke and Michael McMahon was fined €1,500. Judge Groarke noted that both the accused had waited until the outcome of the trial in the Flanagan Oil case before entering their guilty pleas. Acknowledging that both the accused were "small fry" Judge Groarke noted that "...cartels only succeeded when the smallest people were involved." He then stated:

"The law applies to the small man just as much as for the bigger man."

On the 25th April 2006, Gort Oil Limited pleaded guilty in Galway Circuit Court to one of the two counts (gas oil) before the court, and as with the other accused parties, a *nolle prosequi* was entered in relation to the remaining charge (kerosene). That company was fined €7,500. No individual from that company had been prosecuted in relation to this investigation.

On the 18th May 2006, Cloonan Oil Limited and Ruby Oil (Roscommon) Limited, both entered pleas of guilty to one count each (gas oil) on the bill of indictment for their part in the heating oil cartel. A *nolle prosequi* was entered by the DPP on the remaining two charges (kerosene) against them. James Kearney had been prosecuted in his capacity as director of Ruby Oil (Roscommon) Limited and as manager of Cloonan Oil Limited, but the DPP entered *nolle prosequis* against all charges against him.

Cloonan Oil Limited and Ruby Oil (Roscommon) Limited were given slightly higher fines than the other corporate undertakings by Judge Groarke. Judge Groarke pointed out that these corporate undertakings were slightly bigger than the other undertakings fined up to that time. However, the judge reiterated his comments from previous sentencing's in this case pointing out that his views on this type of activity were now well known..."being involved in a cartel was theft".

The trial of Corrib Oil Company Limited, and two of that corporate undertaking's directors, Eugene Dalton Snr & Tom Connolly had been adjourned from November 2005 to October 3rd 2006 owing to the unavailability of a court room. On the 2nd October 2006 Corrib Oil Company Limited and Eugene Dalton Snr were re-arraigned in Court 8 of the Dublin Circuit Criminal Court and entered guilty pleas on one count each of price-fixing in the heating oil cartel. Sentencing was put back by the court to the 23rd January 2007. Mr. George Birmingham SC on behalf of the DPP indicated to the court the intention of the DPP to enter a *nolle prosequi* in relation to the charges against Tom Connolly.

Table 1.2 Outcome of Proceedings as of Dec. 31st 2006 against 24 Defendants in the Heating Oil Case

Defendant	Current Status	Result if appropriate
Michael Flanagan	Found guilty by a jury in Galway Circuit Criminal Court (2nd March 2006)	€3,500 fine Sentenced 2nd March 2006
Con Muldoon	Pleaded guilty in Galway Circuit Criminal Court (28th February 2006)	€1,000 fine Sentenced 10th March 2006
Muldoon Oil	Pleaded guilty in Galway Circuit Criminal Court (28th February 2006)	€3,500 fine Sentenced 10th March 2006
James Kearney	Not prosecuted (25th April 2006)	Nolle prosequi
All Star Oil	Pleaded guilty in Galway Circuit Criminal Court (9th March 2006)	€7,500 fine Sentenced 10th March 2006
Kevin Hester	Not prosecuted (9th March 2006)	Nolle prosequi
Corrib Oil	Guilty plea entered on 2nd October 2006	Awaiting sentence on 23rd January 2007
Mor Oil	Pleaded guilty in Galway Circuit Criminal Court (9th March 2006)	€7,500 fine Sentenced 10th March 2006
Alan Kearney	Not prosecuted (9th March 2006)	Nolle prosequi
Sweeney Rabbitte Oil	Next hearing date in March 2007 in Galway Circuit Criminal Court	Awaiting trial
Pat Hegarty	Next hearing date in March 2007 in Galway Circuit Criminal Court	Awaiting trial
Cloonan Oil	Pleaded guilty in Galway Circuit Criminal Court (25th April 2006)	€12,500 fine Sentenced 18th May 2006
Ruby Oil	Pleaded guilty in Galway Circuit Criminal Court (25th April 2006)	€10,000 fine Sentenced 18th May 2006
Matt Geraghty Oil	Pleaded guilty in Galway Circuit Criminal Court (9th March 2006)	€7,500 fine Sentenced 10th March 2006
Declan Geraghty	Not prosecuted (9th March 2006)	Nolle prosequi
Fenmac Oil & Transport	Pleaded guilty in Galway Circuit Criminal Court (21st March 2006)	€7,500 fine Sentenced 21st March 2006
Michael McMahon	Pleaded guilty in Galway Circuit Criminal Court (21st March 2006)	€1,500 fine Sentenced 21st March 2006
Tom Connolly	Indication that Nolle Prosequi will be entered in due course	Awaiting sentencing
Eugene Dalton Snr.	Guilty plea entered on 2nd October 2006	Awaiting sentencing
JP Lambe	Pleaded guilty in Dublin Circuit Criminal Court (27th October 2005)	Six months in jail (suspended) and €15,000 fine Sentenced 6th March 2006
Sean Hester	Pleaded guilty in Galway Circuit Criminal Court (9th March 2006)	€1,500 fine Sentenced 10th March 2006
Hi-Way Oil	Pleaded guilty in Galway Circuit Criminal Court (9th March 2006)	€7,500 fine Sentenced 10th March 2006
Kevin Cunniffe	Pleaded guilty in Galway Circuit Criminal Court (9th March 2006)	€1,500 fine Sentenced 10th March 2006
Gort Oil	Pleaded guilty in Galway Circuit Criminal Court (25th April 2006)	€7,500 fine Sentenced 25th April 2006

The Director of Public Prosecutions v Denis Manning

In April 2006, the Director of Public Prosecutions initiated proceedings against Denis Manning in Cork District Court. Denis Manning was summonsed to court to answer two charges alleging that he aided and abetted the Irish Ford Dealers Association and its members in the implementation of agreements to fix the selling prices of Ford motor vehicles within the State between May 2001 and June 2003. The first of the two charges related to an alleged offence under the 1991 Act, as amended, and the second of the two charges related to an alleged offence under the 2002 Act.

On 21st June 2006, Mr. Manning was returned for trial from Cork District Court to the Central Criminal Court on both charges. He made his first appearance at the Central Criminal Court sitting in Dublin before Mr. Justice Paul Carney on the 26th June 2006. The case was adjourned to the 24th July 2006 when Mr. Justice Carney set the case against Mr. Manning down for trial on the 30th January 2007 in the Central Criminal Court to sit specially in Cork. The competition judge, Mr. Justice Liam McKechnie, was assigned to try the case.

Under Section 7 of the Criminal Law Act 1997, individuals who are found guilty of aiding and abetting the commission of an offence prohibited by Section 4 of the Competition Act are guilty in the same manner as if they committed the actual competition offence.

The Director of Public Prosecutions v Pat Morgan

As reported in the Competition Authority's Annual Report for 2005, the Competition Authority issued Mr. Pat Morgan, Managing Director of Tru Gas Limited, in 2004 with a witness summons under Section 31 of the Competition Act. Mr. Morgan

refused to attend for examination under oath on foot of that witness summons. The Competition Authority made a complaint to An Garda Síochána at Fitzgibbon Street Garda Station. On completion of their investigation of the Competition Authority's complaint, the Gardai forwarded their investigation file to the DPP who in turn decided to prosecute Pat Morgan for an offence under Section 31 (4)(a) of the Competition Act 2002 (failing to appear before the Competition Authority on foot of a witness summons). The case was heard in the Dublin Metropolitan District Court on the 22nd December 2005 and on completion of the case the Judge found the facts of the case proven.

However, at the request of the Competition Authority, the Judge agreed to adjourn sentencing of Mr. Morgan to the 6th February 2006 so as to allow Mr. Morgan time to comply with the Section 31 witness summons and provide the information that had originally been sought by the Competition Authority from him. Pursuant to this order of court, Mr. Morgan complied with the witness summons served on him by the Competition Authority and provided the Competition Authority with the information sought from him. On the 6th February 2006 Mr. Morgan was given the benefit of Section 1(1) of the Probation Act by the District Court Judge.

1.3 Civil cases taken by the Competition Authority

The Competition Authority v Beef Industry Development Society

In July 2006, the High Court found against the Competition Authority in proceedings against the Beef Industry Development Society (BIDS). These legal proceedings challenged an agreement to rationalise the beef processing industry which the Competition Authority believed would constitute



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a breach of Section 4 of the Competition Act and Article 81 of the Treaty establishing the European Union.

Mr. Justice McKechnie found that the Competition Authority had failed to produce credible evidence to show that the agreement, if implemented, would breach Article 81 (1) of the Treaty by preventing, restricting and distorting competition in the relevant markets. The High Court judge also found that one of the requirements of Article 81 (3) was not met. In particular, he expressed a view that BIDS had failed to adduce sufficient evidence to prove that consumers would receive a fair share of the cost savings which he found would result from rationalisation. The High Court's decision is now being appealed to the Supreme Court by the Competition Authority.

The Competition Authority v Irish Medical Organisation

On 3rd July 2006, the Competition Authority initiated proceedings in the High Court against the Irish Medical Organisation (IMO). The IMO is the national representative body for medical general practitioners (GPs) and non consultant hospital doctors. Following a complaint in February 2005, the Competition Authority began an investigation into possible price fixing in breach of Section 4(1) of the Competition Act 2002. This related to certain services provided by GPs to life insurance companies, namely Private Medical Attendant's Reports (PMARs) and medical examinations.

The Competition Authority's investigation concluded that the IMO, by coordinating their members activities through directing or recommending the fees GPs should charge for PMARs and medical examination reports, had the object or effect of preventing, restricting or distorting competition in contravention of Section 4(1) of the Competition Act 2002.

The Competition Authority is seeking from the High Court;

- A declaration that the IMO's conduct was in breach of the Competition Act, 2002;
- A permanent injunction preventing the IMO from engaging in similar conduct in the future; and,
- Costs of the proceedings.

The Competition Authority v Superquinn

Proceedings continued in the High Court against Superquinn over allegations concerning the fixing of the retail price of milk. In similar proceedings, settlements were reached with Tesco in December 2002, with Glanbia and Sligo Dairies in July 2003 and with Dairygold in March 2004. (High Court Record 1999 No. 6916P)

The Competition Authority v Soft Drinks Beer Bottlers Association

The Competition Authority initiated legal proceedings in 1999 against a total of six companies in relation to allegations of price-fixing in the sale of packaged beer and soft drinks. Legal proceedings continue in the High Court against the sole remaining defendant in this case, Nash Beverages Limited. (High Court Record 1998 No 12162P)

1.4 Cases taken against the Competition Authority

Irish League of Credit Unions v The Competition Authority

The hearing of the appeal against the High Court judgment delivered in October 2004 in the Irish League of Credit Unions (ILCU) case took place last November 2006. The hearing had two and a half days duration and the Supreme Court judges gave no directions as to when the judgment will be delivered.

The decision of the Competition Authority to initiate proceedings in this case goes back to 2003 and was focused on a breach of Section 5 of the Competition Act and/or Article 82 of the Treaty establishing the European Union. In particular, the Competition Authority believed that the ILCU was abusing its dominant position by refusing access to its Savings Protection Scheme to non-affiliated credit unions.

1.5 Significant investigations resolved without the need for court proceedings

TicketMaster Ireland

In March 2006 the Competition Authority published details of its investigation into alleged abuses of dominance by TicketMaster Ireland.

The Competition Authority's investigation focused on the market for outsourced ticketing services for events of national or international appeal in the island of Ireland. Following its investigation, which lasted over two years, the Competition Authority concluded that TicketMaster Ireland's conduct did not constitute an abuse of a dominant position (contrary to Section 5 of the Competition Act, 2002); nor do agreements between TicketMaster Ireland and the two largest event promoters prevent, restrict or distort competition (contrary to Section 4 of the Competition Act, 2002).

The Competition Authority's investigation did highlight one issue of potential concern relating to the degree of transparency in ticket price information. However an absence of transparency in price information is not a breach of competition law. Therefore, the Competition Authority brought this issue to the attention of the Office of the Director of Consumer Affairs and the National Consumer Agency.

The Competition Authority's investigation was prompted by complaints from thousands of consumers (including a complaint petition signed by in excess of 8,000 individuals) concerning:

- The price or face value of tickets sold by TicketMaster Ireland;
- The level of TicketMaster Ireland's booking fees. These fees are payable by the end consumer when purchasing a ticket. The booking fee depends on the method of purchase (i.e., Internet/telephone, event venue box office, or retail agent). In 2004, for example, TicketMaster Ireland's booking fees varied from zero to a maximum of €5.95 per ticket; and
- The alleged exclusive agreements between TicketMaster Ireland and the largest event promoters currently operating in the island of Ireland, MCD Productions Limited and Aiken Promotions.

The Competition Authority concluded that the promoter, in conjunction with the artist, sets the price or face value of the ticket sold by TicketMaster Ireland.

High-profile artists perform only a limited number of concerts worldwide each year. Promoters in the island of Ireland compete aggressively with promoters in other countries to convince high-profile artists to perform in Ireland by offering them sufficiently attractive terms. Therefore, high-profile artists have strong bargaining power in their negotiations with promoters and can command substantial appearance fees, which, in turn, are reflected in the ticket price that consumers pay.

TicketMaster Ireland currently accounts for 100% of the market for outsourced ticketing services for events of national or international appeal. However,

TicketMaster Ireland is constrained from exploiting this position because:

- MCD Promotions and Aiken Promotions have the incentive to minimise the booking fee charged by TicketMaster Ireland to the end consumer. Outsourced ticketing services are like any other input purchased or contracted by the promoters for the concert or other event package they put together for sale to the consumer; and
- MCD Promotions and Aiken Promotions have strong countervailing buyer power vis-à-vis their ticketing service provider, TicketMaster Ireland. If TicketMaster Ireland will not agree to the booking fees demanded by the two major promoters, they can credibly threaten to either switch to another ticketing service provider or set up their own ticketing facilities.

Based on its investigation, the Competition Authority concluded that competition takes place for the contracts awarded by MCD Promotions, Aiken Promotions and others, rather than on an event by event basis.

The full report on the Competition Authority's investigation of TicketMaster Ireland is available from the Competition Authority's website at www.tca.ie.

JC Bamford Excavators v Equipment Company of Ireland

The Competition Authority resolved its investigation in the market for supply of JC Bamford Excavators Limited (JCB) agricultural and industrial products in Ireland by accepting the settlement terms offered by Equipment Company of Ireland Limited (trading as ECI-JCB) and Kellys of Borris Limited.

ECI JCB and Kellys of Borris established an independent joint venture company Ronason Limited

(trading as ECI-JCB Agri (Kilkenny)) for the retail sales of JCB products in the south-east of Ireland. The Competition Authority had concerns that the arrangements involving ECI-JCB and Kellys of Borris, in relation to the operation of Ronason, breached Section 4 (1) of the Competition Act, 2002. The focus of the Competition Authority's investigation was the exchange of commercially sensitive information between independent businesses and the restriction on Ronason from selling equipment outside of its assigned territory even when approached directly by customers (also known as passive sales).

The Competition Authority was satisfied that the commitments offered by ECI JCB and Kellys of Borris addressed its concerns and therefore decided to resolve its investigation without the need for court proceedings.

Great Gas Petroleum Ireland v Esso Ireland Limited

The Competition Authority received a complaint from Great Gas Petroleum Ireland ("Great Gas") concerning Esso Ireland Limited ("Esso"). Esso's solicitors wrote to Great Gas in June 2006 alleging that the latter has been attempting to induce its dealers, who have exclusive motor fuel supply agreements with Esso, to breach their contract with Esso. Esso stated in its letter that unless it received an undertaking from Great Gas within seven days to desist from communicating its prices to Esso's dealers, Esso reserved the right to issue proceedings against Great Gas.

Great Gas responded to Esso in a letter dated 19th June 2006 stating that Great Gas always advises prospective members that they must deal with their obligations under their existing supply agreements. Great Gas further stated that it has not attempted to induce Esso's dealers to break their existing contracts.

The Competition Authority wrote to Esso in July 2006 seeking an explanation as to why Esso holds the view that Great Gas, in communicating its motor fuel prices to dealers who have motor fuel supply agreements with Esso, is attempting to induce the latter's dealers to breach their agreement with Esso. It also inquired as to whether Esso intends to issue proceedings against Great Gas.

Esso's solicitor responded by stating that Great Gas has been sending text messages to Esso's dealers setting out the prices at which Great Gas could supply fuel to those dealers. Esso's solicitor claims that because these text messages were frequent, it advised Esso that this appeared to be an attempt to persuade dealers to breach their contract with Esso. Esso considers repetitive communication of price an attempt to persuade dealers to breach their existing contract with Esso. Esso also stated that it is unlikely that the text messages sent by Great Gas contained a message that they must deal with their obligations under their existing supply agreements with Esso. Esso further states that it has no desire to bring legal proceedings against Great Gas and that it is evaluating the evidence and will decide based on legal advice, whether or not it is necessary to issue proceedings for attempting to induce a breach of contract.

The Competition Authority closed this complaint on the basis that Esso has not yet issued proceedings against Great Gas for attempting to induce Esso's dealers to break their existing contracts. The Competition Authority would have concerns if Esso were to issue proceedings against Great Gas because the latter is providing Esso dealers with price information pertaining to its product. There is no indication that Great Gas has been attempting to induce Esso's dealers to break their existing supply agreements. The Competition Authority would respect Esso's legal entitlement to exercise its right to have its motor fuel agreements honoured but

Esso must be careful not to go beyond this by, for example, issuing proceedings against Great Gas for attempting to induce a breach of contract when it would appear that the latter is only providing price information to Esso dealers.

Competition Authority investigation into alleged boycott by TEAMS

The Competition Authority has secured undertakings from Travelsavers Educational and Marketing Services Limited ("TEAMS")¹ that the company and its employees will comply with the provisions of the Competition Act 2002. These undertakings have been secured by the Competition Authority on foot of an investigation, commenced in January 2005, into an alleged boycott by travel agents of Budget Travel products in response to Budget Travel's decision to reduce the commission it paid to travel agents. The parties to the alleged boycott were all independent travel agent members of TEAMS.

To counteract the adverse effects of dropping its commission, Budget Travel undertook an aggressive advertising campaign in January 2005. As a consequence TEAMS' recommendation had at most a neutral effect on Budget Travel's business. (Budget Travel has since discontinued selling its products through independent travel agents.)

The evidence gathered by the Competition Authority in its investigation showed that the cited actions of TEAMS had been co-ordinated by a director of the company on his own initiative and without the knowledge of the parent company. (This fact was attested to in the course of separate High Court proceedings unrelated to the Competition Authority's investigation.)

On the basis that TEAMS had taken measures to address the behaviour uncovered by the Competition Authority's investigation, the Competition Authority

1. TEAMS is the Irish affiliate of a U.S. based company, Travelsavers International, Inc.

agreed to accept undertakings from the company that address its concerns to resolve matters. The undertakings provided to the Competition Authority provide that TEAMS will not engage in similar conduct again and TEAMS has written to its members informing them of each member's obligations under the Act.

It is important to note that TEAMS could be held liable for the actions of its director under Section 6(6) of the 2002 Act even though they were not aware of his actions on the basis that he was acting within the scope of his employment with TEAMS.

1.6 Guidance on the application of Competition Law

Guidance in respect of Collective Negotiations relating to the Setting of Medical Fees

In September 2005, the Competition Authority concluded an investigation into the way in which fees for consultants' services are negotiated between consultants and private health insurers. The Competition Authority's view from that investigation was that the actions of the consultants' representative body, namely the Irish Hospital Consultants Association ("the IHCA"), in the context of those negotiations, amounted to price fixing in breach of Section 4(1)(a) of the Competition Act, 2002 ("the Competition Act").

The Competition Authority published a consultation document in January 2006 to determine the scope of guidance that could be provided in respect of collective negotiations relating to the setting of medical fees. The consultation arose as a consequence of the Agreement and Undertaking furnished by the Irish Hospital Consultants Association to the Competition Authority in 2005 as the IHCA had requested additional guidance

on compliance as part of the settlement. The aim of the Consultation Document was to get a better understanding of the way in which fees for consultants' services are negotiated between consultants and private health insurers.

The Competition Authority is concerned that within the discussions that take place between hospital consultants (and their representative bodies such as the IHCA and IMO) and private health insurers, there may be conduct amongst consultants which breaches the Competition Act.

The objective of the Competition Authority issuing guidance is to ensure that consultants are aware of the prohibitions contained in the Competition Act, 2002, as they apply to them, and to assist them in complying with the Competition Act, 2002.



Table 1.3 Investigation & Enforcement Powers of the Competition Authority	
Investigation & Enforcement Powers	Description
Types of Investigations carried out	<ul style="list-style-type: none"> • Criminal investigations • Civil investigations • Assessment of Mergers • Formal Studies
Power of Entry and Search	Authorised officers of the Competition Authority can enter or search any premises or dwelling with a warrant issued by the District Court
Power to Seize Documents and Records	Authorised officers of the Competition Authority can seize documents/records on foot of a warrant issued by the District Court
Power to Summon Witnesses	<p>The Competition Authority can summon a witness to attend before it and to be examined under oath.</p> <p>Witnesses have the same immunities and privileges as a witness before the High Court.</p>
Power to require production of Records and Information	<p>The Competition Authority has the power to require production of records and information.</p> <p>Non-compliance is a criminal offence.</p>
Power to require information from third parties	The Competition Authority can obtain information from third parties, including professional advisors and financial institutions
Potential Routes to Settlement	<ul style="list-style-type: none"> • Criminal prosecution (on indictment) – Brought by the DPP in Central Criminal Court (or the Circuit Criminal Court under the 1991 Act) following an investigation by the Competition Authority • Criminal prosecution (summary) – Brought in the District Court by the Competition Authority • Civil Action - Brought in the High Court by the Competition Authority in order to halt suspected anti-competitive behaviour • Settlement without court action – Where the parties involved recognise and remedy potential breaches of competition law
Maximum Level of Fines & Penalties	<ul style="list-style-type: none"> • Criminal (on indictment in the Central Criminal Court) - €4 million or 10% of turnover, whichever is the greater, and/or up to five years in prison • Criminal (summary in the District Court) - €3,000 and/or up to six months in prison • Civil Action (by the Competition Authority) – none • Civil Action (by injured parties) – Damages at the discretion of the Court
Appeal on use of Powers	The use of these powers by the Competition Authority can be challenged by way of judicial review in the High Court

Enforcement Divisions in the Competition Authority

The Cartels and Monopolies Divisions have primary responsibility within the Competition Authority for enforcing competition law, specifically the Competition Act, 2002. In addition, the Mergers Division has an enforcement role which is outlined in the next chapter.

The role of the Cartels Division

The focus of the Cartels Division is on the investigation and prosecution of criminal hard-core cartels such as those involved in price-fixing, bid-rigging and market-allocation among competitors. These are often complex crimes that require specialist investigative skills. The Cartels Division employs a number of ex-members of An Garda Síochána, the Criminal Assets Bureau and other law enforcement agencies with backgrounds in complex white-collar investigations. In addition, two Detective Sergeants from the Garda Bureau of Fraud Investigation (GBFI) are seconded to work full-time with the staff of the Competition Authority and are Authorised Officers of the Competition Authority.

Where it obtains evidence of a cartel, the Competition Authority will submit a file to the Director of Public Prosecutions (DPP) with a recommendation that the parties involved be prosecuted. In other cases the Competition Authority may itself bring a summary prosecution in the District Court. From time to time the Competition Authority may also settle cases without recourse to Court proceedings where the offending parties recognise and remedy their anti-competitive behaviour.

The role of the Monopolies Division

The Monopolies Division mainly investigates allegations that individuals or companies have abused a dominant position in various sectors of the economy. Abusing a dominant position is illegal under Section 5 of the Competition Act, 2002. However, holding a dominant position does not break the law. For an offence to occur, an individual or company must abuse that position. The Monopolies Division is also responsible for investigating non-cartel agreements that may be anti-competitive. These may be between sellers in the same market (horizontal agreements) or between firms at different stages in the manufacturing, distribution, or retail chain (vertical agreements).

Where the Competition Authority forms the view that there has been a breach of the Competition Act, it can initiate legal proceedings in order to compel the parties to stop what is considered to be illegal activity. Such proceedings are generally civil (through the High Court), although criminal proceedings may be appropriate depending on the circumstances of each case. To fulfill its investigative role, the Monopolies Division comprises a multi-disciplinary team of four economists and three lawyers.

Frequently a solution acceptable to the Competition Authority is reached after extensive negotiations with the parties. In addition, the Competition Authority may also settle cases without recourse to the courts where the offending parties recognise and remedy their anti-competitive behaviour.

Working with other State agencies

During 2006, the Competition Authority worked very closely with a number of other law enforcement agencies in the State to promote compliance with competition law.

The Director of Public Prosecutions

When the Competition Authority has completed a criminal investigation a file may be forwarded to the Director of Public Prosecutions (DPP) with a recommendation for trial on indictment.

When the DPP feels there is a justifiable case, his office takes over full responsibility for any further enforcement action. In such cases the Chief Prosecution Solicitor's Office takes charge of proceedings on behalf of the DPP and prepares a Book of Evidence to be served on the accused.

An Garda Síochána

Two Detective Sergeants from the Garda Bureau of Fraud Investigation (GBFI) have been seconded to work in the Cartels Division as Authorised Officers of the Competition Authority since March 2002. An Garda Síochána continues to provide significant assistance to the Competition Authority at crucial times, such as, the execution of search warrants.

Other Law Enforcement Agencies

In order to carry out its investigative functions, the Competition Authority works in co-operation with law enforcement agencies, such as, the Office of the Director of Corporate Enforcement, the Criminal Assets Bureau and the Revenue Commissioners.

Regulators

The Competition Authority will often be asked to examine situations in sectors of the economy for which an independent regulator has been appointed by the Government, e.g., communications, energy and aviation. While public enforcement of the Competition Act rests with the Competition Authority at all times, in some circumstances it is appropriate for the Authority to liaise with the relevant regulatory agency to resolve such matters.

By exercising its regulatory powers a regulator may be able to achieve a satisfactory outcome more quickly than the Competition Authority could in legal proceedings. In this way the Competition Authority can ensure that consumers are guaranteed a timely and effective result. The Competition Authority has entered into co-operation agreements with the Broadcasting Commission of Ireland, the Commission for Energy Regulation, the Commission for Aviation Regulation, and the Office of the Director of Consumer Affairs.



Making a complaint to the Competition Authority

Complaints about anti-competitive behaviour

Complaints come to the attention of the Competition Authority from numerous sources including members of the public, individual businesses, trade organisations, public representatives, as well as Government Departments and agencies.

When the information provided through complaints is sufficient to give the Competition Authority reasonable grounds for suspicion of an offence under the Competition Act, 2002, a formal investigation may be launched. Where the details of a complaint indicate the existence of laws or regulations, or administration by a Government Department or agency, which impose unnecessary restrictions on competition, the issue is brought to the attention of the Advocacy Division.

As a first step the Competition Authority will check that the complaint can be dealt with under competition law. The Competition Authority has a Complaints Screening System where a team of staff members meets weekly to assess every request for information and complaint. The Competition Authority's Complaint Screening System focuses resources on the most substantive cases while ensuring that complaints, which have little or no supporting evidence, are dealt with expeditiously but fairly.

The Competition Authority's Complaint Screening System is made up of three steps:

- Preliminary Screening;
- Detailed Evaluation; and,
- Investigation.

In the most serious cases a complaint can result in a full investigation leading to a number of possible actions by the Competition Authority, including:

- Sending a file to the Director of Public Prosecutions (DPP) with a recommendation that criminal charges be brought;
- Taking a court proceeding in the High Court in order to stop anti-competitive behaviour;
- Receiving out-of-court settlements with companies and organisations who agree not to engage in anti-competitive behaviour and in some instances, change their behaviour so as to cure any competitive harm; and,
- Making recommendations to Government concerning changes in anti-competitive regulations.

Resolving complaints without legal action

The vast majority of complaints made to the Competition Authority do not reveal a breach of competition law or are resolved at an early stage without the need for legal action.

Following a preliminary screening many complaints are resolved because:

- The complaint is really a request for information;
- The complaint does not involve a competition law matter;
- The complaint arises from a business facing legitimate competition in their local market; and,
- The complaint concerns similar prices with no evidence or suggestion of an agreement between companies.

Some complaints receive a more detailed evaluation in order to assess their significance and determine whether a full investigation should be opened. This detailed evaluation may involve background research, taking formal statements from complainants, third parties and an examination of the legal parameters of the case. The main reasons complaints are resolved following such an evaluation include:

- The complaint cannot be substantiated;
- The complaint concerns a private or contractual dispute without any competition significance;
- Another regulatory agency also has jurisdiction and can remedy the situation in a more timely manner through the exercise of its functions; and
- The complaint involves issues and facts similar to those previously examined and resolved by the Competition Authority.

Complaints Screening Process

	2006	2005	2004	2003
Total Received	419	413	293	200
Resolved at Preliminary Screening	247	328	212	169
Detailed Evaluation	72	61	25	26
Ongoing	31	27	-	-
Resolved	41	34	25	-
Added to current investigations/work	23	19	42	-
Full Investigations	5	6	14	5

How to contact the Competition Authority

Web complaints form:	www.tca.ie/complaints.html
Email:	complaints@tca.ie
Phone:	LoCall: 1890 220 224 (intl.:+353-1-8045400)
Fax:	+353-1-8045401
Written Complaints:	The Competition Authority, Parnell House, 14 Parnell Square, Dublin 1.



Section 2: Evaluation of Mergers and Acquisitions

Evaluation of Mergers and Acquisitions

Mergers and acquisitions in the Irish economy remained at a consistently high level during 2006. As a consequence, the number of mergers notified to the Competition Authority continues to grow. 98 merger notifications² were received in 2006 compared with 84 in 2005 and 81 in 2004.

Most mergers can be beneficial to consumers, when they lead to greater efficiency and a reduction of unnecessary costs. However, some mergers can lead to a substantial lessening of competition to the detriment of consumers. It is therefore vital that an effective and timely merger enforcement procedure permits beneficial mergers, while prohibiting ones that substantially lessen competition.

2.1 Merger Notifications during 2006

The Competition Authority took over the function of evaluating mergers and acquisitions on 1st January 2003. Previously, mergers had primarily been the responsibility of the Department of Enterprise, Trade & Employment.

Only mergers in which the parties involved meet specific thresholds specified in the Competition Act, 2002 must be notified for evaluation by the Competition Authority.³ No notification thresholds apply to transactions that are deemed to be media mergers and so all media mergers must be notified.

The mergers notified to the Competition Authority in 2006 demonstrate the important areas of the Irish economy which are affected, sectors such as retail, construction, telecommunications, energy, financial services, media and IT. Inefficiency or high prices resulting from a lack of competition in such sectors could negatively affect all Irish consumers.

See Appendix B for a full list of mergers notified to the Competition Authority in 2006.

Some of the highlights of the Competition Authority's evaluation of mergers and acquisitions in 2006 include:

- The number of mergers notified to the Competition Authority increased to 98⁴ in 2006 in comparison to 84 notifications in 2005 and 81 notifications in 2004;
- During the year the Competition Authority also finalised its work on 7 transactions which were notified in 2005 and whose deadlines extended into 2006;
- All transactions were analysed within the statutory time period with the exception of M/06/044 – Topaz/Statoil which is discussed in Section 2.3 below;
- 93 of the 96 determinations delivered by the Competition Authority during 2006 were cleared during the initial (Phase 1) investigation;
- In 2006 the Competition Authority initiated 4 full investigations (Phase 2 investigations), of which: one was blocked; two were cleared; and one was carried over into 2007;
- In 2006 there were no transactions cleared at Phase 1 which required specific measures to address concerns raised by the Competition Authority during the preliminary (Phase 1) investigation; and,
- 2006 saw a slight decrease in activity in media mergers and acquisitions in Ireland with 22 media mergers notified to the Competition Authority compared to the 23 notified in 2005.

2. Two of these notifications were subsequently withdrawn after the Competition Authority published its revised "Notice in respect of certain terms used in Part 3 of the Competition Act, 2002" (N/02/003). In this Notice the amended interpretation of "carries on business" meant that in both of these cases at least one of the undertakings did not pass the threshold test set out in Section 18(1)(a) (ii) of the Competition Act, 2002.
3. In July 2006 a Case Officer of the Mergers Division had a practice note published in the Law Society Gazette outlining the circumstances, specified in the Competition Act 2002, in which companies are required to notify the Competition Authority of proposed mergers and describing in detail the consequences for the parties involved of a failure to notify. Where a transaction that is the subject of a mandatory notification is not notified to the Competition Authority, and is subsequently implemented by the parties, the merger or acquisition is void. This removes all legal certainty for any actions taken following the merger, including any contracts entered into, or appointments of personnel that are made and furthermore there may be criminal penalties for failure to notify, as well as possible negligence claims against a solicitor for failure to properly advise. For details see Rosemary O'Loughlin, "All Together Now", Law Society Gazette, July 2006, pp26-29.
4. See Footnote 2.

The Competition Authority took over the review of mergers and acquisitions in Ireland from the Department of Enterprise Trade and Employment in 2003. Over the period 2003 to end 2006 the Competition Authority:

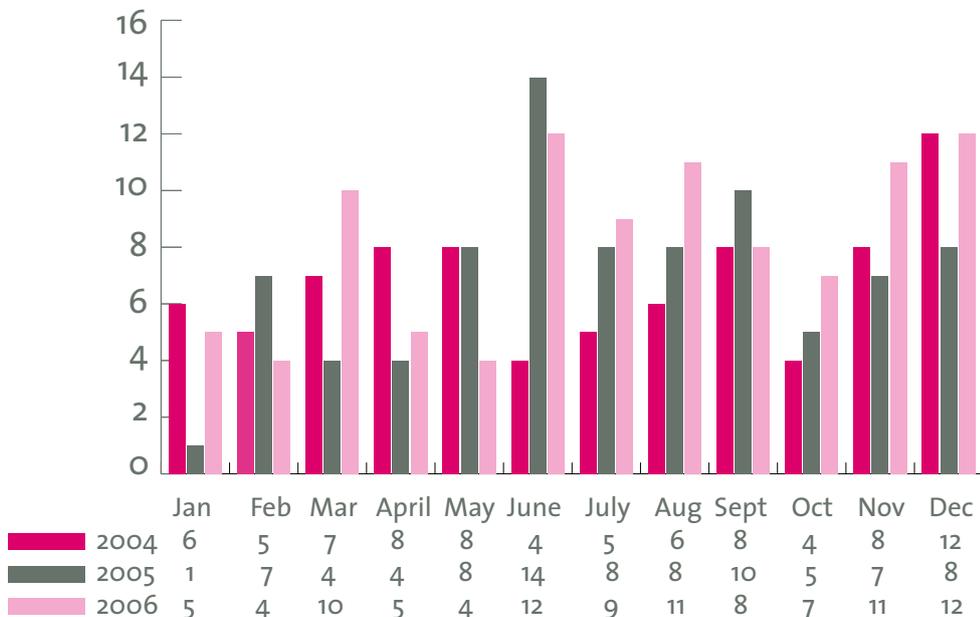
- was notified of 310 mergers and acquisitions (47 in 2003, 81 in 2004, 84 in 2005 and 98 in 2006).
- had made determinations in respect of 297 of these notifications, 4 were withdrawn⁵ and 9 were still under investigation.

Figure 2.1 below, shows the monthly comparisons of the notifications received by the Competition Authority for the period 2004 to 2006. December and June 2005 continue to be the months with the highest number of notifications received by the Competition Authority. In 2006, 12 notifications were received in each of these months.⁶ December remains the busiest month with an average of 11 notifications over the last three years.

2.2 Mergers which required a Full Investigation (Phase 2)

The Competition Authority may carry out a detailed examination (Phase 2 investigation) of a transaction if after a preliminary investigation (Phase 1) the Authority has been unable to conclude that the transaction would not "substantially lessen competition". In 2006 the Competition Authority initiated four Phase 2 investigations – one of which was carried over into 2007;

- M/06/027 - the proposed acquisition by the Tetra Laval Group of certain of the businesses of Carlisle Process Systems was unconditionally cleared on 10th August 2006.
- M/06/039 - the proposed acquisition of Leanort Group (Xtratherm) by Kingspan Group plc (Kingspan) was prohibited on 25th October 2006.



5. See Footnote 2 for an explanation of the 2 merger notifications that were withdrawn in 2005.

6. As explained above two of the 14 notifications received in December were withdrawn – see Footnote 2.

- M/06/057 - the proposed acquisition by the Coillte Teoranta of Weyerhaeuser Europe Limited was unconditionally cleared on 10th November 2006.
- M/06/087 – on 21st December 2006 the Competition Authority announced that it had decided to carry out a full investigation in relation to the proposed acquisition by Applied Materials Inc. of certain assets and businesses of Brooks Automation. This investigation was carried over into 2007.

Acquisition Tetra Laval Group of certain of the businesses of Carlisle Process Systems

The Competition Authority announced on 10th August 2006 that it had unconditionally approved the proposed acquisition by the Tetra Laval Group of certain of the businesses of Carlisle Process Systems. The Competition Authority received notification of the proposed acquisition on 10th May 2006. On 9th June 2006, the Competition Authority announced its decision to carry out a full (Phase 2) investigation in relation to the proposed acquisition. This decision came after a preliminary investigation (Phase 1), where the Competition Authority had been unable to conclude without further investigation that the transaction would not substantially lessen competition.

The Competition Authority's investigation of the proposed acquisition examined the effect on competition in the manufacture and supply of limited purpose equipment used in the processing of cheese products. Four areas of product overlap in the activities of the undertakings involved were identified: heat exchangers, cheese vats, cheddaring machines and block formers. However, the only potential competition concern was in relation to block formers.

Since block formers are an essential element in cheddar cheese production, the lack of a second source of block former supply, post-merger, would potentially have a detrimental impact on the ability of a competitor(s) to compete with respect to full-line customer requirements. While the merger naturally gives rise to the removal of a competitor from the bidding markets, the Competition Authority's investigation revealed that customers' views were that the existence of two bidders in the market is sufficient for their purposes and that the merger did not eliminate all the alternative sources of supply of block formers.

This transaction was also investigated by the Office of Fair Trading (OFT) in the UK. Given the different competitive conditions in the UK the OFT found that the transaction raised serious competition problems which could only be assuaged by the implementation of a remedy package. From the perspective of customers in the State, the OFT remedy package ensured that customers have, compared to the post-merger alternative, a greater choice of offering in respect of block formers.

Nevertheless, post-merger and without the need to take into account the positive impact of the OFT remedy package on the relevant markets of concern in the State, the Competition Authority concluded that the proposed transaction would not lead to a substantial lessening of competition and it was cleared unconditionally on 10th August, 2006.

Acquisition Leanort Group (Xtratherm) by Kingspan Group plc (Kingspan)

The Competition Authority announced on 26th October, 2006 that it had decided to block the proposed acquisition of Leanort Group (Xtratherm) by Kingspan Group plc (Kingspan) on the grounds that such a transaction would substantially lessen

competition in the economy

consumers and value for all consumers in the economy

innovate



competition in the manufacture and provision of insulation materials in the State⁷.

This decision of the Competition Authority follows four months of economic analysis and market inquiries by the Mergers Division (the proposed transaction was initially notified to the Authority on 26th June, 2006). The Competition Authority's conclusions following its investigation are as follows:

- (i) The relevant market is the market for PU/PIR insulation materials.
- (ii) The merging parties are the two largest providers of PU/PIR insulation materials in the State, and compete directly and closely against each other.
- (iii) This market is characterized by:
 - a homogenous product;
 - high concentration;
 - high market share by the proposed merged entity;
 - limited growth potential in the market;
 - limited import competition; and,
 - sufficient excess capacity among industry operators to prevent entry.

The merger would, therefore, lead to a significant lessening of competition through the removal from the market of a vigorous competitor to Kingspan and with the major competitor to the merged entity likely to accommodate any price rises instigated by the merged entity.

Acquisition of Weyerhaeuser Europe Limited by Coillte Teoranta

The Competition Authority announced on 10th November, 2006 that it had unconditionally approved the proposed acquisition by the Coillte Teoranta of Weyerhaeuser Europe Limited. The

Competition Authority received notification of the proposed acquisition on 22nd August, 2006. On 21st September, 2006, the Competition Authority announced its decision to carry out a full (Phase 2) investigation in relation to the proposed acquisition.

The investigation and analysis conducted by the Mergers Division of the Competition Authority in this particular case was undertaken with the following parameters and caveats:

- the analysis of the merger was concerned with the specific competitive effects that flow from the merger. These would appear to be primarily a combination that, as a result of the merger, Coillte is likely to have increased monopsony power in the purchase of pulpwood, combined with its existing market power in upstream markets such as roundwood. The fact that it has market power in these upstream markets is not a result of the merger⁸;
- while the Competition Authority's Merger Guidelines typically use a two year time horizon in considering the competitive effects of a merger, a longer time horizon – up to 20 to 25 years - was used in examining the impact of this merger, reflecting the production cycle of growing and harvesting trees;
- in examining each of these theories of consumer harm, the Competition Authority considered whether post-merger there is both the incentive and the ability for the merged entity to exploit its augmented portfolio of activities in a way that would harm consumers. This reflects that it is consumers that the SLC is concerned with not competitors or suppliers of the merger entity;
- when constructing a counterfactual in a merger case, it is usual to consider a scenario under

7. Both parties are involved in the manufacture and supply of building insulation materials.
 8. Nevertheless, the Competition Authority did note in its Determination of this merger that if it is incorrect in its analysis and competition problems occur as a result of the merger, then the Competition Authority has the power to investigate behaviour which it believes raises concern under the Act. Thus, for example, if a large number of private forestry growers in the future were to enter into long-term agreements with Coillte that tie sawlog and pulpwood, the Competition Authority has the power to investigate whether such agreements raise any concerns under the relevant provisions of the Act.

which the merged entity has the potential to raise prices because of the merger. In this merger the situation is different since the operation of the existing Timber Sales System (TSS) will, on the balance of probabilities, result in the maximum price being realised and the alleged impact of the merger is to allow this situation to continue rather than for the merger to result in a higher price compared to the present.

While both parties are involved in the manufacture and supply of wood products in the State, the Competition Authority's investigation of the proposed acquisition examined the effect on competition across a range of vertically related markets in the sector.

During its investigation the Competition Authority investigated in detail three alternative possible theories of consumer harm potentially caused by the proposed transaction:

- Tying theory - post-acquisition, Coillte could tie the sale of sawlog to pulpwood through long-term agreements with private forestry growers with the effect that the price of sawlog in the future is higher than it otherwise would be. Thus, final consumers will be denied the benefit of the expected reduction in the price of the outputs of the sawmills;
- Margin Squeeze theory - Coillte, post-acquisition, could squeeze the margins of sawmills by driving up the price of sawlog and driving down the price of woodchips. This increase in sawlog prices would be passed on to final consumers by way of increased prices for the output of sawmills;
- Disincentive to entry theory - as a result of becoming a monopsony buyer of pulpwood post-merger, Coillte becomes a self sufficient supplier of pulpwood. Consequently, potential private

forestry growers may be dissuaded from planting forests (or may postpone planting for a few years to see if alternative outlets for pulpwood develop in the meantime). The effect will be a reduction in the level of competition in the market for roundwood in 30-40 years time as Coillte's market power will be larger than it would otherwise have been had entry taken place. This increased market power may translate into higher sawlog prices and, therefore, higher domestic processed timber prices.

The Competition Authority's investigation found that none of the three theories of consumer harm stood up to serious scrutiny and as a result the merger would not lead to a significant lessening of competition.

2.3 M/06/044 Topaz/Statoil Ireland Merger

The Competition Authority failed to make a determination in the Topaz/Statoil merger within the prescribed time period under the Competition Act, 2002. Accordingly, the parties were legally permitted to complete the merger. In this section we outline how the error occurred; the consequences of the error from a competition perspective; and what the Competition Authority has done to ensure that such an error does not occur again.

How the Error Occurred

The Competition Act, 2002 sets out the procedures the Competition Authority must observe in processing proposals for merger which fall within its jurisdiction. The Act prescribes that the Competition Authority must take action within certain time limits. Deadlines under the Act may be reset by certain action taken either by the Competition Authority or by the parties.

The Competition Authority has "one month" within which to make a determination following the satisfactory fulfillment of a formal request for information issued under Section 20(2) of the Act. This period is substituted by a new period of 45 days (from the date of compliance with the request for information) if the parties submit a proposal to address competition concerns raised by the Competition Authority during its initial investigation.

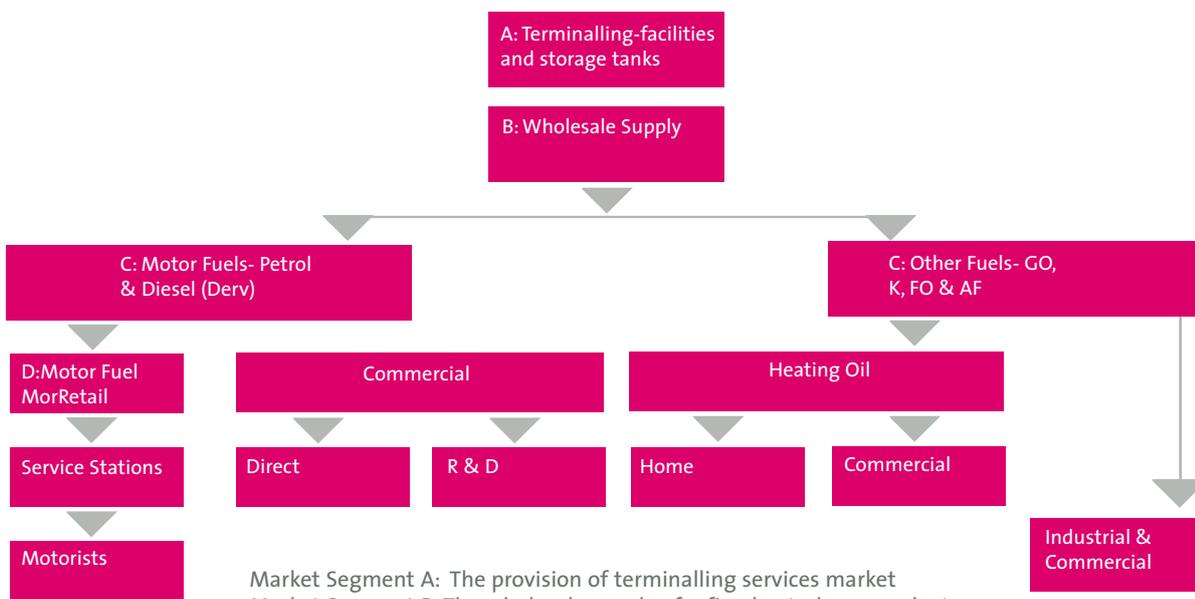
The error arose when the team conducting the mergers investigation calculated the due date by adding 15 days to the one month deadline rather than recalculating 45 days from the original date. The consequence of adding 15 days was fatal to the processes of the Competition Authority as the one month period (spanning August and September) had 31 days. Following the initial mistake, the calculation of the date was not rechecked. The original error was not discovered until the time within which the Competition Authority has to act had expired.

The Consequences of the Error from a Competition Perspective

- Prior to the discovery of the error, the Competition Authority had conducted an extensive evaluation of the proposed Topaz/Statoil merger that included:
- (i) the issuing of formal requests for information to both Topaz and Statoil;
 - (ii) the assessment of third party submissions;
 - (iii) the issuing of questionnaires to competitors and customers of both Topaz and Statoil, and the assessment of the responses to those questionnaires;
 - (iv) site visits to the oil terminals in Dublin and Galway;
 - (v) discussions with other government agencies; and
 - (vi) an extensive research of the oil industry-from terminalling to the operation of motor fuels retail stations;

The Competition Authority's investigation revealed the following market structure:

Figure 2.2: Relevant Markets for Analysis in the Topaz/Statoil Ireland Merger



Market Segment A: The provision of terminalling services market
 Market Segment B: The wholesale supply of refined petroleum products
 Market Segment C: The commercial distribution of refined petroleum products
 Market Segment D: The operation of motor fuels retail service stations

Table 2.1: Market Segments in which Competition Concerns were Identified by the Competition Authority

Market Segments	Geographic Region		
	Leinster	Munster	Connacht
Terminalling & Wholesale	X	X	✓
Retail Motor Fuels	✓ (in local markets)	X	X
[] ⁹	[]	[]	[]

As a result of the analysis of these market segments the investigation conducted by the Competition Authority identified three areas in which proposed acquisition would lead to competition concerns. These are outlined in table 2.1.

These concerns were discussed with the parties prior to 9 October 2006, the date by which the Competition Authority was to have made its determination under the merger provisions of the Competition Act and proposals under Section 20(4) of the Act were received from Topaz to address any effects of the proposed acquisition on competition in the areas identified by the Authority. The details are as follows:

The provision of terminalling services and wholesale supply of refined petroleum products:

Competition Problem

The Competition Authority's investigation found that the proposed acquisition would reduce the number of terminalling services providers from 3 (Topaz, Texaco & Statoil) to 2 (Topaz & Statoil) and the number of wholesale suppliers from 6 to 5 in the Galway area. The Authority's investigation showed that there are significant barriers to enter this market segment and entry was not likely to be timely consistent with the Authority's Guidelines for Merger Analysis¹⁰. An assessment of this market

showed that terminals in other regions will not place a competitive constraint on the merged entity in the Connacht region. Therefore, given the high barriers to entry into this market segment and the likelihood of a unilateral effect (i.e., a price increase post merger) by the merged entity, the Competition Authority expressed the preliminary view that the proposed transaction would lead to serious competition concerns in the provision of terminalling services and wholesale supply of refined petroleum products in the Connacht region.

Competition Solution

To address the Competition Authority's concern, Topaz committed that, within a reasonable period of time after the completion of the acquisition, it would undertake a terminalling and throughput agreement, for a substantial term, at its existing Galway terminal with a major independent oil importer. This will be done on terms and conditions that the Competition Authority believes will facilitate competition in wholesale supply and will ultimately benefit consumers in the Connacht region. It will also have the effect of maintaining three independent operators in this region, which was the situation pre-merger.

The Operation of Motor Fuels Retail Service Stations

Both Topaz and Statoil operated a network of motor fuels retail outlets in the State. In previous cases (e.g. Maxol/

9. Another concern was identified in a separate market segment which does not materially affect the scope of the transaction. This issue has been resolved by Topaz in discussions with the Competition Authority. More details are not given at this stage on grounds of commercial sensitivity.

10. See Decision No. N/002/04.

Busselle) the Authority decided that there is a localised motor fuels retail market, in the main, consisting of both petrol and diesel. The Competition Authority thus decided that there was no reason to deviate from its previous definition of this market segment.

The vast majority of motor fuels retail service stations under each of the Topaz and Statoil brands were operated or owned by dealers. As a result of the proposed transaction, there would be 307 (out of at least 2100 in the State) motor fuels retail service stations operating under the merged entity.

In order to identify competition concerns where Statoil and Topaz stations overlap, the following analysis was undertaken:

- Topaz and Statoil submitted data, using a 2-mile radius in urban areas and a 5-mile radius in rural areas, pivoting around the Topaz's sites (i.e., Topaz-centric analysis). The Topaz-centric analysis produced 13 areas of overlap in which the merged entity will face competition from two or fewer fascias.¹¹ and
- consistent with best international practice¹², that have used this methodology in delineating retail markets, the Competition Authority requested the parties to conduct the analysis pivoting around the retail outlets to be acquired, that is, the Statoil sites (the Statoil-centric analysis). The result of the Statoil-centric analysis produced overlaps in all but three areas identified in the Topaz-centric analysis.

Initially, the Competition Authority's assessment of the proposed transaction appears to raise competition concerns in 4 areas, namely:

City West: post submission, the Competition Authority (however) learned that: (i) the Statoil dealer station in this area was using a new brand

name, Discount Fuel Deals, and (ii) one of the Texaco dealer stations was operating under the Applegreen brand. Therefore, the Competition Authority's view was that the proposed transaction did not raise competition concerns as there would remain a sufficient number of competitors in this area; and,

- The conurbation area of **Hartstown, Coolmine and Castleknock:** the Authority considered that a service station located in Hartstown would be competing with one in Coolmine but would not be competing with a station in Castleknock. As a result of the proposed transaction, the number of fascias in Hartstown and Coolmine would reduce from 3 to 2, while the number of fascias in Castleknock would reduce from 4 to 3. Therefore, the Competition Authority expressed the preliminary view that the proposed transaction would lead to a reduction in choice and an increased concentration of the company owned stations in this area. To address this concern, Topaz committed to divest itself of one of the company owned stations in the Coolmine/Hartstown area, by not renewing the lease when it expired later in 2006. The lease of the Shell retail motor fuel outlet at Clonsilla held by Topaz expired at the end of 2006. In accordance with its commitment, Topaz did not seek to renew the lease. The Competition Authority understands that the retail motor fuel outlet in question is now operated by Applegreen.

Conclusion

Despite the passing of the statutory deadline, Topaz agreed to implement the proposals it had proffered to the Competition Authority prior to this. In the view of the Competition Authority, the ongoing implementation of these proposals, as outlined, will address the competition concerns raised by the merger and identified by the Competition Authority's analysis with the result that the markets of refined petroleum products will work well for consumers.

11. Fascias refer to the number of competing brands. Competition assessment on the basis of fascias, rather than outlet, assumes that branded sites are controlled by that oil company, and so ignores the possibility of intra-brand competition between a CO and a DO.

12. See, UK Competition Commission's Safeway Merger Enquiry, 2003.

What the Competition Authority Has Done to Ensure that an Error Does Not Occur Again

Following the discovery of the error, the Competition Authority acted swiftly to rectify the situation:

1. new procedures were put in place in the immediate aftermath of the error to ensure that all merger deadlines are subject to more robust internal procedures that require checking and rechecking of all relevant dates;
2. an internal inquiry was conducted by a senior officer (who was unconnected with the work which gave rise to the error) to determine the precise sequence of events which lead to the error. This inquiry was completed in October 2006 and the results reported to the Members of the Authority;
3. a review of the merger database, in terms of what critical dates should be included in the database and how such dates should be defined led to a re-examination of the interpretation of the phrase "within 1 month" as contained in Sections 18(1) and 21(2) of the Act;
4. the Mergers Division completed a workshop with one of the Competition Authority's legal advisers in December 2006 which discussed in detail the procedures to be followed in merger review and in particular focused on the calculation of time limits and deadlines;
5. an internal review is ongoing to better integrate our procedures with our IT systems to minimise the possibility of human error in the calculation of dates. The software requirements have been identified and are under construction for deployment by the end of January 2007; and,

6. the Competition Authority has submitted its procedures in this area for review by its own external auditors to ensure that they meet the highest industry standards. This is scheduled to begin in January 2007 and includes:

- a review of the current internal and external procedures of the Authority when assessing notified mergers and acquisitions;
- suggestions regarding improvements to the Competition Authority's procedures; and,
- an assessment of the compliance by the Competition Authority and the Mergers Division with the current procedures and suggestions on how this could be improved.

2.4 Media Mergers

On 1st January 2003, the removal of turnover thresholds for media mergers came into effect by Ministerial Order. This means that any merger in which one of the parties is involved in media business (including, but not limited to newspapers, radio or broadcasting) must be notified to the Competition Authority.

The Competition Act, 2002 allows for the possibility that a media merger cleared by the Competition Authority on competition grounds after a full investigation may still be prevented from being put into effect by the Minister for Enterprise, Trade and Employment on public interest grounds.

In 2006, 22 merger notifications to the Authority were considered media mergers compared with 23 media mergers notified in 2005 and 14 in 2004. Of the 22 media mergers notified in 2006;

- 2 involved the acquisition of radio stations;
- 11 involved the acquisition of print or online publications;
- 6 involved the acquisition of broadcasting platforms and/or broadcasting content;
- 3 involved the acquisition of non-media targets (these are covered by the Competition Act 2002 when one or more of the notifying parties is involved in media business);
- 19 were cleared by the Competition Authority by the end of the year and 3 were carried over into 2007; and
- No order was made by the Minister for Enterprise, Trade and Employment during 2006 either to carry out a full investigation under Section 22 of the Competition Act 2002 or prohibiting a media merger from being put into effect.

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consumers

innovation

competition

vigorous competition drives productivity

growth, innovation and value

for all consumers in the economy

consumers innovation drives productivity growth, innovation and value for all consumers in the economy

consumers innovation drives productivity growth, innovation and value for all consumers in the economy

productivity

Table 2.2: Media Mergers notified to the Competition Authority in 2006

Notification	Date of Notification	Economic Sector	Status and Date of Decision
M/06/094 - BSKyB/365	22 December 2006	Remote Gambling Services/ Editorial Services	11 January 2007
M/06/090 – ESPN Global Limited/ NASN Limited	11 December 2006	Television broadcasting and syndication of programme material	3 January 2007
M/06/089 - Doughty Hanson/ Setanta	8 December 2006	TV Broadcasting	5 January 2007
M/06/079 - Guardian Media Group plc/ Century Radio Limited/ Century Radio 105 Limited	17 November 2006	Radio Broadcasting in the United Kingdom	6 December 2006
M/06/071 - JA Trading/ River Newspapers	27 October 2006	Media	23 November 2006
M/06/067 - Connaught Tribune/ Galway Bay FM	25 September 2006	Newspaper and Radio	24 October 2005
M/06/062 - Euromoney / Metal Bulletin	1 September 2006	Financial and Business Information Services	21 September 2006
M/06/061 - D'Olier / Gloss	1 September 2006	Media and Publishing	22 September 2006
M/06/059 - The Irish Times / MyHome	25 August 2006	Property advertising	25 September 2006
M/06/054 - Pearson (FT) / Mergermarket	16 August 2006	Electronic business news and intelligence products	14 September 2006
M/06/053 – GE / Memphis	14 August 2006	Aviation components	04 September 2006
M/06/049 - Newsread / Wholesale Newspapers	24 July 2006	Media: newspaper publication and distribution	4 October 2006
M/06/043 - General Electric / Biacore	6 July 2006	Vehicle Management	25 July 2006
M/06/040 - Ken Peterson / Leap	30 June 2006	Broadband	25 July 2006
M/06/032 - Trinity Mirror / Email 4 Property	08 June 2006	Internet	16 June 2006
M/06/028 - Doughty Hanson / TV3	23 May 2006	Broadcasting	1 June 2006
M/06/023 - GE / Zenon	12 April 2006	Water and Wastewater Treatment	8 May 2006
M/06/021 - Independent / PropertyNews	6 April 2006	Media-Publishing	5 May 2006
M/06/014 - Magnet / Netsource	8 March 2006	Media - Broadband connection	5 April 2006
M/06/008 - Thomas Crosbie / Wexford Echo	24 February 2006	Media / Newspaper Publishing	21 March 2006
M/06/007 - Disney / Pixar	20 February 2006	Motion Picture	16 March 2006
M/06/005 - Emap / Cafeslim	23 January 2006	Media and online weight management solutions	23 February 2006

By way of an order made by the Minister for Enterprise, Trade and Employment under Section 18(5) of the Competition Act 2002, Statutory Instrument (S.I.) No. 622 of 2002 specifies all media mergers as a "class" of merger that is compulsorily notifiable, even if any such media merger does not meet the financial thresholds for mandatory notification set out in Section 18(1) of the Competition Act 2002.

However, the class of media mergers specified in the Order has had the effect of causing many mergers to be notified that have no nexus with the State, and in some cases, no practical link with media businesses at all because:

1. "media merger" is defined in the Act as a merger in which one or more of the undertakings involved carries on a media business in the State; and
2. in identifying the "undertaking involved" the Competition Authority follows the European Commission's practice of considering the undertaking involved to be the whole group, rather than just the company that is the purchaser or target.

Furthermore, this has created the illogical situation in which the Minister must also evaluate all of these mergers as media mergers. Under Section 23(2) of the Competition Act 2002 the Competition Authority is obliged to forward a copy of the notification to the Minister, and the Minister is obliged to consider whether or not to direct the Competition Authority to carry out an investigation under Section 22 of the Competition Act 2002. It is not clear that this is a sensible use of the Minister's and the Competition Authority's resources as such transactions would not be mandatorily notifiable were it not for the provisions of S.I. No. 622 of 2002.¹³

The Competition Authority has made suggestions to the Department of Enterprise Trade and Employment in an attempt to resolve these difficulties through the appropriate amendment of S.I. No. 622 which would help remedy the matter, if not entirely, at least in very large part. This process is ongoing.

2.5 Mergers below notification thresholds

Mergers below the notification turnover thresholds may also have the potential to limit competition. In particular, they may breach Sections 4 and/or 5 of the Competition Act which ensures companies do not act to the detriment of consumers.

After investigating a number of such mergers, on 30 September 2003, the Competition Authority issued a Notice (N/03/001) stating its policy with regard to such transactions. This Notice gives parties clarity about how the Competition Authority will treat non-notifiable mergers and states the Authority's policy of ensuring that such deals do not harm competition and consumers.

In essence, if after a preliminary examination the Competition Authority considers the transaction may raise competition concerns, it will contact the parties to determine whether they wish to notify voluntarily. If the transaction has not yet been put into effect, the parties have an opportunity to make a voluntary notification. Where the parties fail to make a voluntary notification, the Competition Authority may issue legal proceedings seeking an injunction to restrain the implementation of the merger. If the transaction has already been put into effect, the Competition Authority will conduct an investigation as to whether or not there has been a breach of Sections 4 and/or 5 of the Competition Act 2002.

13. The following examples illustrate the difficulty: 1) in M/05/061 Trader Publishing/Webzone, the acquirer was a classified advertiser of automobiles and the target was a provider of IT services. Because the acquirer was part of the Guardian Newspaper Group, which sells newspapers in the State, the transaction amounted to a media merger within the meaning of the Act; 2) General Electric Company, by virtue of its acquisition of the CNBC news broadcasting network, is now deemed to carry on a media business in the State. Thus, its recent acquisition of Zenon Inc. (a water treatment facility) amounted to a media merger within the meaning of the Act (see M/06/023 GE/Zenon).

During 2006, the Competition Authority carried out 1 preliminary assessment of a below notification threshold merger which was subsequently closed when the investigation revealed no serious competition issues arising as a result of the merger.

2.6 Mergers Procedures

In 2005, the Competition Authority published two consultation documents seeking comments from interested parties on specific aspects of its merger procedures: (Relating to procedures for the review of mergers and acquisitions and procedures for access to the merger review file by notifying parties.)

The Competition Authority received 2 submissions relating to both consultation documents. After finalising its review of the submissions and other policy considerations, the Competition Authority published the following two new sets of procedures on its website and these became applicable from 1 March 2006:

- **Revised Procedures for the Review of Mergers and Acquisitions:** This document outlines the procedures for dealing with mergers and acquisitions notified to the Authority and updates the pre-existing procedures in light of the Competition Authority's experience since 2003.
- **Procedures for Access to the File in Merger Cases:** This document provides guidance to businesses and legal practitioners on the Competition Authority's policy in relation to access to its file by the merging parties in the course of the Competition Authority's review of mergers and acquisitions; and

On 12 December, 2006, the Competition Authority amended Notice N/02/003 ("Notice in respect of

certain terms used in Section 18(1) of the Competition Act 2002").

Two amendments have been made to Notice N/02/003 now entitled "Notice in respect of certain terms used in Part 3 of the Competition Act, 2002".

First, Article 3 has been amended to clarify the Competition Authority's understanding of the term "carries on business," after a consultation with external stakeholders. The Authority now understands that term as including undertakings that either (a) have a physical presence in the island of Ireland and make sales or supply services to customers in the island of Ireland, **OR that**, without having a physical presence in the island of Ireland, have made sales into the island of Ireland of at least €2 million in the most recent financial year.

Second, a new Article 5 has been inserted, to give the Competition Authority's understanding of the phrase "within 1 month after" as used in Section 18(1) and Section 21(2) of the Competition Act. The Article provides in essence that where that phrase is used in either section, the month will be calculated by including the date after which the month is expressed to run. Thus, where notification must be made "within 1 month after" the date on which an agreement has been concluded, the date of conclusion of the agreement will be counted as the first day of the calendar month. The month will then expire on the day before the corresponding date in the following month.¹⁴

The amended Notice came into immediate effect on 12 December, 2006. However, in respect of Article 5, the Competition Authority has allowed notifying parties a period of grace, expiring on 1 March 2007, to amend their practice accordingly.

14. For example, if an agreement is concluded, a bid is made, or the "appropriate date" falls on 12 April, one calendar month after will end on 11 May.

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2.7 International Mergers and Merger Policy

Case M.4439 – Ryanair/Aer Lingus

The proposed acquisition of Aer Lingus by Ryanair was notified to the European Commission under the EC merger Regulation ("ECMR") on 30th October, 2006 and a copy of the Form CO was received by the Competition Authority on 1st, November, 2006.

The Competition Authority undertook a preliminary assessment of the notification with specific regard to the potential impact of the concentration on competition in the Republic of Ireland ("the State") and considered whether it should issue a "request for referral" under Article 9 European Community Merger Regulation (ECMR).

In coming to its decision the Competition Authority, while recognising the potential impact of the proposed transaction on competition in the State, considered,¹⁵ whether or not:

1. it was the more appropriate body than the Commission, having regard to the specific characteristics of the case?
2. did it have more appropriate tools and expertise in regard to the particular transaction than the Commission?
3. was the likely locus of the impact on competition greater than Ireland?

The Competition Authority came to the view that the Commission is the more appropriate body, in particular given its previous experience and expertise in airline mergers and the design and implementation of remedies to "deal" with potential competition issues, and given that the locus of competition is spread throughout a large number of Member States by the nature of the activities of the merging parties.

The Competition Authority continues to liaise with the EU Commission in its investigation of this proposed merger.

European Commission

Advisory Committee on Concentrations

As part of its international obligations the Competition Authority participated on the Advisory Committee on Concentrations in respect of two proposed mergers at the European level:

- Case No. Comp/M.3796 – Omya/JM Huber; and,
- Case No. Comp/M.4000- Inco/Falconbridge

European Commission Reviews of Procedures and Notices

The Competition Authority participated on several European Commission review panels including those which examined:

- Draft Commission Consolidated Jurisdictional Notice – due for publication in 2007;
- Draft Non Horizontal Merger Guidelines – due for public consultation in 2007 ; and,
- Working Arrangements for the Functioning of the Advisory Committee on Concentrations – finalised in 2006.

15. Consistent with procedures laid out in the ECMR and in accordance with the EU Commission Notice on Case Referral in Respect of Concentrations (2005/C 56/02).

Merger Procedures in Ireland (Competition Act, 2002)

Merger Test: Substantial lessening of competition

The test used to decide whether a merger should be allowed or not is whether it will "substantially lessen competition" in the markets for goods or services in the State. This is the test used in the UK, and a similar version was recently adopted by the European Commission. It allows for a focus purely on how competition and consumers are affected by the transaction.

Notification thresholds

The thresholds for notification are derived from the company's turnover. Both companies must have annual financial turnover of €40 million worldwide. Both of them must also carry on business in the island of Ireland, and at least one of them must generate €40 million turnover within the State. If these thresholds are triggered, then a notification must be made.

Mergers below threshold

Mergers that are below these thresholds may still give rise to anti-competitive effects which hurt consumers. The Competition Act, 2002, allows for such mergers to be notified voluntarily to the Competition Authority, so as to gain legal certainty. This is partly because below-threshold mergers are still subject to enforcement action under Sections 4 and 5 of the Act, and the Competition Authority has conducted investigations of such transactions.

Media Mergers

Mergers that are below threshold that involve a media business must be notified to the Competition Authority – this is due to a Ministerial Order made on 1st January, 2003. Here, the Competition Act defines a media business quite widely, including any business that has interests in, for example, newspapers, radio, television or broadcasting platforms. The Competition Act also specifies that a media merger that has been cleared by the Competition Authority can be prohibited by the Minister on public interest grounds.

Preliminary investigation (Phase 1)

Phase 1 is a one month initial examination of the merger, which is generally sufficient for it to be cleared. The one month review period can be extended where the Competition Authority formally requests additional information from the parties or where the parties submit proposals with specific measures designed to address concerns raised by the Competition Authority. Over 98% of mergers notified in 2005 were cleared in Phase 1.

Full investigation (Phase 2)

The Competition Authority may carry out a full investigation (Phase 2 investigation) where it is unable to determine after a preliminary examination that a merger will not lead to a "substantially lessening of competition". Phase 2 is an additional three month period where a detailed examination of the transaction and the market(s) in which the parties operate in is conducted.

Assessment

During a Phase 2 investigation, if the Mergers Division of the Competition Authority has serious competition concerns, it may issue a written Assessment of the transaction to the parties during the period. This sets out the Merger Division's concerns, and allows the parties to respond to them.

Clearance by Minister for Enterprise, Trade & Employment

In media mergers, if the Competition Authority clears the merger at Phase 1, it is sent to the Minister for Enterprise, Trade and Employment, who has 10 days to decide if he wants to request the Competition Authority to conduct a full investigation (Phase 2).

Where the Competition Authority clears a media merger after a Phase 2 investigation, the Minister has 30 days within which to allow the merger, clear it with conditions or prohibit it. The basis on which the Minister arrives at his decision relates not to competition criteria, but to one or more of the public interest grounds as set out in the Competition Act (known as "relevant criteria"). The relevant criteria include such matters as; diversity of ownership, strength of indigenous media and cross-ownership of different forms of media.

Appeal to the Courts

If a merger is prohibited, the parties have one month to decide if they wish to make a full appeal to the High Court. If the parties appeal, then the Court will decide on whether the determination of the Competition Authority is justified.

The role of the Mergers Division in the Competition Authority

The main role of the Mergers Division is to perform the statutory task of reviewing and making determinations on notified mergers within the specified time-period. The Mergers Division also investigates below notification threshold mergers under Sections 4 and 5 of the Competition Act 2002. Finally, it represents Ireland at European Commission meetings on merger cases and merger policy.

The Mergers Division comprises a Director, a Legal Adviser, a Division Manager and four Case Officer positions, one of which is currently unfilled.

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Section 3: Promoting Competition in Ireland

Promoting Competition in Ireland

In addition to its law enforcement and merger regulation functions, the Competition Authority has a duty to promote competition in the economy in a number of ways:

- (i) Identifying and commenting on the effects on competition of existing laws or administrative practices;
- (ii) Advising the Government, its Ministers and agencies, about the implications for competition of proposed legislation or regulation;
- (iii) Studying and publicising how competition operates in the economy; and
- (iv) Advising and informing the general public, as well as public authorities, about competition issues.

3.1 Identifying public restrictions on competition

The Competition Authority continued in 2006 to raise awareness and call for the removal of anti-competitive laws and regulations. Public restrictions on competition may manifest themselves in many different, and often very subtle, ways. Excessive restrictions on entry to a business or profession, legislation conferring monopoly rights on a particular firm and prohibitions on advertising, are just some examples of public restrictions on commercial freedom to compete on level terms for the custom of consumers. They are distinguished from private restrictions which are more relevant to the Competition Authority's enforcement and merger review functions. The end result is the same however, less value for money and less choice for consumers.

Appendix D contains a full list of formal submissions made by the Competition Authority during 2006. These include a number of submissions made to Government Departments and State bodies in response to public consultation processes.

For example the Competition Authority made submissions to the Minister for Health and Children on the Draft Medical Practitioners Bill and to the Minister for the Environment, Heritage and Local Government on the regulation of the Waste Management sector. Each submission is available from the Competition Authority's website www.tca.ie. A summary of one of these submissions, on the regulation of the Waste Management sector, is outlined below.

Consultation Paper on the Regulation of the Waste Management Sector: Submission to the Department of the Environment, Heritage and Local Government.

On 5th October 2006 the Competition Authority submitted its response to the Consultation Paper "*Regulation of the Waste Management Sector*", published by the Department of the Environment, Heritage and Local Government.

The purpose of the Consultation Paper was to "*provide an opportunity for interested parties to comment on the need for a regulatory framework in the waste management sector and if such a need is identified, to identify the most appropriate form of regulation which should be applied.*"¹⁶

In its submission, the Competition Authority expressed the view that there was no clear need for a waste regulator and pointed to international evidence that competitive tendering is the best way to achieve lower per unit operating costs for the service provider and lower prices for the consumer. The Competition Authority recommended that:

- The current system of competition in the market should be replaced by a system of competition for the market;
- Clear guidelines should be laid out as part of the

Draft Waste Management (Facility Permit and Registration) Regulations for the appropriate authorities detailing how permit applications should be evaluated and what timescales should be attached to the evaluation and renewal process;

- Local authorities should be given advice and guidance on how best to design their tendering processes in the event of the introduction of local authority-run competitive tendering for waste collection services; and
- In the event that a Waste Regulator is appointed the regulator should not have responsibility for price setting, either on a national or a regional basis.

3.2 Advice on proposed legislation and regulation and competition issues

The Competition Authority regularly advises Government Departments and agencies on the effect on competition, if any, of new legislation or policy proposals under consideration. The Competition Act 2002 gives the Competition Authority the specific function of advising the Government, Ministers and Ministers of State about implications for competition of proposed legislation. In carrying out this function the Competition Authority seeks to highlight competition concerns and pre-empt any negative consequences for consumers.

In addition to making formal submissions and commenting on specific draft legislation, the Competition Authority also provides advice to Government Departments and public agencies in other ways and in various formats such as meetings, written communications or combinations of both. In 2006 the Competition Authority responded on 19

occasions to requests for advice from Government Departments and public bodies covering a wide range of economic sectors and issues including for example:

- The Competition Authority advised the Irish Auditing and Accounting Supervisory Authority (IAASA) that there was not a public interest case to require the legal protection of the title "Accountant" and that introducing such a restriction would impose increased costs on both accountants and consumers;
- The Competition Authority advised the Joint Oireachtas Committee on Communications, Marine and Natural Resources on the draft Broadcasting Bill 2006, in relation to the proposed Broadcasting Authority of Ireland's role, and the collection and use of television licence fees;
- The Competition Authority advised the Casino Review Group that proportionate regulation of casinos should emphasise eligibility criteria and consequently it would not be necessary to establish an upper limit on the number of casinos.

Staff of the Competition Authority also participated in the work of the following external working groups:

- Better Regulation Group (Department of the Taoiseach); and
- Better Regulation Sub-Group – Appeals & Penalties (Department of the Taoiseach).

3.3 Studying how competition operates in particular sectors

Professions Study

For the last number of years the Competition Authority has been engaged in a major study on Competition in Professional Services, examining eight different professions. The Competition Authority is using this study to examine regulations and practices that potentially restrict competition, and seeks to have anti-competitive restrictions abolished or replaced. The Competition Authority is also seeking to study how competition works in the profession concerned, and to identify behaviour which, although not necessarily breaching competition law, nevertheless inhibits competition.

The following reports were published in 2006 as part of the Professions Study:

1. Final Report on Architects.
2. Final Report on Optometrists.
3. Final Report on Solicitors and Barristers.

These reports are available from the Competition Authority's website www.tca.ie.

During 2007, the Competition Authority will continue its study of the professions and intends to publish its final report on the dental profession and commence work on reports on the medical and veterinary professions.

Architects: Final Report

The Competition Authority published its final report on competition issues associated with the architectural profession on 7th March, 2006. The

Competition Authority found that competition generally works well for consumers and for the economy as a whole.

The Competition Authority expressed concerns about negative consequences for consumers, and also some members of the profession, that would arise from some of the changes to the regulation of the architectural profession as outlined in the Building Control Bill 2005.

The Competition Authority's primary concern centred on the proposed role for the Royal Institute of the Architects of Ireland (RIAI), the representative organisation for the vast majority of architects in Ireland. As initially proposed, the Building Control Bill, 2005 would have established in law a conflict of interest. The RIAI would have the function of representing the interests of its members while at the same time being responsible for designing and implementing rules and practices to protect the public interest.

To avoid the conflict of interest the RIAI would face as both a representative and regulatory organisation, the Competition Authority recommended the establishment of an independent, transparent and accountable agency, an Architects Council of Ireland, to regulate the architectural profession.

The Competition Authority further recommended that, if the RIAI was to be responsible for the registration and regulation of architects, then the chairperson and the majority of members of the boards and committees outlined in the Building Control Bill, 2005 should be from outside the profession, and that the chairpersons of the boards and committees should be appointed by the Minister for Environment, Heritage and Local Government. The RIAI's role in creating a Code of Conduct for the profession also gave cause for concern.

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In October, 2006, the Minister for the Environment, Heritage and Local Government proposed amendments to the Select Committee on Environment and Local Government so that the chairperson and the majority of members of the boards and committees should be from outside the profession, and the chairpersons of the boards and committees should be appointed by the Minister for Environment, Heritage and Local Government. These amendments were agreed to by the Committee for inclusion in the legislation.

The Competition Authority also made recommendations relating to a few areas where competition in architectural services was unnecessarily restricted:

- The eligibility of practically-trained architects to enter architectural competitions for public sector projects;
- The limits of the Law Society’s list on who can provide Opinions on Compliance with Building Regulations;
- The lack of flexibility in the levels of professional indemnity insurance recommended by the Irish Public Bodies Mutual Insurances Limited; and
- The need for flexibility in architectural education through the provision of part time and modular courses.

In its final report the Competition Authority also noted that various concerns, identified in its preliminary report, published in November 2003, have been addressed.

- The rules of the RIAI which unnecessarily restricted advertising by architects were removed in May 2004;

- The RIAI no longer publishes information showing percentage fees for different project types. The only fee information now published by the RIAI is contained in an independent survey which includes information on percentage, fixed and time based fees;
- There has been a significant increase in the number of architecture training places in Ireland with the opening of new schools of architecture in Waterford and Limerick in 2005. Another new school opened in Cork in 2006.

Optometrists: Final Report

The Competition Authority published its final report on competition issues associated with optometrists (commonly known as opticians) on 22nd June, 2006.

The report found that the optometry profession is an example of a profession where competition is generally working well. However, the Competition Authority raised a number of minor concerns relating to rules and practices which may inhibit competition in the supply of optometry services. The Competition Authority made five recommendations designed to enhance and protect competition in optometry services. Implementation of these recommendations will:

- Reduce waiting times for certain school children who require eye examinations;
- Make it easier for new optometry practices to offer services to consumers;
- Make it easier for consumers to compare the price and range of optometry services on offer;

- Bring the composition of the Opticians Board into line with other regulators of health professions and the principles of better regulation; and
- Ensure a sufficient supply of optometrists to meet long-term demand for optometry services.
- Abolition of the King's Inns and the Law Society's control of professional legal education which facilitates their educational monopolies;
- The introduction of a profession of specialist conveyancers to bring down the price and increase the quality of service in conveyancing;

Solicitors and Barristers: Final Report

The Competition Authority published its final report on the legal profession on 11th December, 2006. The Competition Authority found that, despite some recent reforms, the legal profession is permeated with unjustified and disproportionate restrictions on competition. These restrictions emanate primarily from the regulatory rules and practices of the Law Society, the Bar Council and King's Inns but also from relevant legislation.

The Competition Authority recommended comprehensive new legislation – a Legal Services Bill – to address the competition concerns identified in the report. The legislation would establish an independent Legal Services Commission with overall responsibility for regulating the legal profession and the market for legal services. The Legal Services Commission would be an independent, transparent and accountable body, involving a wider group of stakeholders than the current model of self-regulation. The Law Society and the Bar Council would continue to have a role in the day-to-day regulation of the profession but would be required to separate their representative and regulatory functions.

The Competition Authority made a further 28 recommendations in the report, designed to remedy the problems it had identified in the legal profession. The most significant of these proposals include:

- Empowering consumers, by requiring the Law Society and the Bar Council to actively provide useful and accessible information to consumers about their rights and about key features of legal services, such as how legal fees are determined;
- Extending access to barristers for legal advice, which is currently the privilege of an elite, to all members of the public;
- Allowing barristers to form partnerships;
- Requiring solicitors, whose clients wish to switch to another solicitor, to hand over the client's file to the new solicitor;
- Removal of unnecessary restrictions on barrister and solicitor advertising;
- Allowing employed barristers to represent their employers in court, as employed solicitors do;
- Abolition of the practice by which Junior Counsel's fees are set at two-thirds that of Senior Counsel;
- The establishment of a transparent and effective scheme for the awarding of the title of Senior Counsel, together with the opening up of the title to solicitors.

Prior to the publication of the final report on solicitors and barristers, a number of welcome initiatives took place – such as the Government's

proposals to create a Legal Services Ombudsman and initiatives to reform the area of legal costs. All who have looked at this profession have reached a similar conclusion – that the legal profession needs to move towards a more modern, transparent and accountable system. The recommendations in the Competition Authority’s final report complement these recent initiatives.

The root and branch reform recommended by the Competition Authority reflects the important and urgent need to create a modern system of regulation of the legal profession that is proportionate, accountable, transparent, flexible and responsive to the needs of consumers.

Study of the Private Health Insurance Market

In 2006 the Minister for Health and Children requested the Competition Authority and the Health Insurance Authority to report on *“further measures to encourage competition in the health insurance market and the strategy or strategies which might be adopted in order to create greater balance in the share of the market held by competing insurers”*.

The Competition Authority, having researched and analysed the health insurance market in depth, is due to report its findings to the Minister for Health and Children in early 2007.

3.4 Raising awareness of competition

The Competition Authority continues to raise awareness of the positive role of competition. Through a wide range of methods, Members and staff of the Competition Authority promote awareness of the role of competition in Ireland’s economy and continue to draw attention to identified specific problems. Channels used to raise awareness include public speaking opportunities, hosting seminars, giving presentations at conferences and through the media. For example, Members and staff of the Competition Authority gave a number of media interviews in conjunction with the publication of the three Professions reports published in 2006.

Members and staff of the Competition Authority gave speeches or presentations to a wide range of audiences throughout 2006. Appendix D contains the full list of speeches and presentations made by Members and staff of the Competition Authority.

The Competition Authority’s Seminar Series, which was launched in 2005 to promote a better understanding of current issues in competition law and economics, continued in 2006. The Competition Authority hosts public seminars with a distinguished list of Irish and international guest speakers. Details of the seminars hosted in 2006 are set out below.

Table 3.2

The Competition Authority Seminar Series 2006		
Date	Speaker	Title
8 February 2006	Svend Albaek	Article 82 Discussion Paper
15 March 2006	Dr. Patrick Paul Wash	Measuring Consumer Harm in Cartel Cases
10 April 2006	Fazleen Ismail and Heather Sharp	Competition and Public Sector Procurement: Some Lessons from the UK
14 November 2006	Hubert de Broca	The new Commission Guidelines for setting fines in Antitrust Cases

3.5 Appearance before Oireachtas Committees

The Chairperson of the Competition Authority appeared before the Joint Oireachtas Committee on Environment and Local Government on 26th April 2006. The Committee invited the Chairperson to discuss the Building Control Bill 2005, particularly in relation to the recommendations regarding the regulation of architects, as outlined in the Competition Authority's final report on the architectural profession of 7th March 2006.

The Chairperson of the Competition Authority appeared before the Joint Oireachtas Committee on Enterprise and Small Business on 25th October 2006. The Committee invited the Chairperson to *inter alia* provide an overview of the operations of the Competition Authority, and particularly the Mergers Division, and to discuss the impact of the abolition of the Groceries Order as enacted in March 2006, in the Competition Amendment Act 2006.

3.6 Previous reports and recommendations of the Competition Authority

As part of its advocacy function, the Competition Authority continually provides advice, advocates for change and makes recommendations to Government Departments and agencies through participation in public consultation processes, in response to requests for advice, following the receipt of information from a concerned business or consumer or by means of formal market studies.

Over time, there have been some welcome changes in a number of areas. The Health and Social Care Professionals Act 2005, which provides a new model for professional regulation, has an open and transparent system of registration with a strong public interest representation. Elements of this

model, including a majority of members of the regulatory board coming from outside the profession, have been adopted for other professions such as the medical profession and architects.

Since 1998 the Competition Authority has carried out studies on a number of different sectors of the economy. The role of the Competition Authority is to study the market concerned and make recommendations on the basis of its findings. The Competition Authority's recommendations are designed to be consistent with the six principles of good regulation as set out in the Government's White Paper "*Regulating Better*"¹⁷ i.e. necessity, effectiveness, proportionality, transparency, accountability and consistency. The Competition Authority does not itself have the power to reform the sectors which it examines as part of its studies. This is the role of Government and the public authorities regulating a sector.

Below is a brief summary of the outcome of the various formal studies conducted by the Competition Authority since 1998.

17 See <http://www.betterregulation.ie/index.asp>

Report (date)	Recommendations and outcome
Liquor Licensing (1998)	Four recommendations were directed at the Minister for Justice, Equality and Law Reform. These recommendations were designed to ensure that only issues directly relevant to the social dimension of the sale of alcohol, such as the suitability of the applicant and premises and compliance with fire and health and safety regulations, would be taken into account when considering an application for a licence. One recommendation, the removal of the "one mile rule" was implemented in the Intoxicating Liquor Act, 2000.
Transport (1999)	A number of recommendations were made regarding the re-structuring and re-regulation of the rail and bus passenger transport market in the State. The report recommended that regulation should be minimal, proportionate, linked to clearly defined objectives and located as closely as possible to the market being regulated. The Government has signalled its intention to open the Dublin bus market to competition.
Insurance (2005)	The report contained 47 recommendations, to the Financial Regulator (IFSRA) (36), the Department of Transport (4), the Department of Finance (1), the Motor Insurance Bureau of Ireland (4), the Courts Service/Department of Justice, Equality and Law Reform (1) and insurance intermediaries generally (1). The Financial Regulator has implemented 3 of the recommendations.
Banking (2005)	The report contained 25 recommendations to the Financial Regulator (IFSRA) (3), the Department of Finance (6), the Irish Payment Services Organisation (IPSO) (10), the Irish Bankers Federation (IBF) (4) and banks (2). A total of 8 recommendations have been implemented by the Financial Regulator, the Department of Finance, the IBF, and IPSO. These include the introduction of switching codes for current accounts and changes to the governance of Ireland's payments systems.
Professions: 1. Engineers (2004)	The Competition Authority found that competition in general was working well and made only 2 recommendations. The Institute of Engineers Ireland (now Engineers Ireland) has implemented the recommendation directed at it while no action is required at this time in relation to the recommendation directed at the Minister for the Environment, Heritage and Local Government.
2. Architects (2006)	The report contained 11 recommendations. Six were directed at the Minister for the Environment, Heritage and Local Government, the Royal Institute of the Architects of Ireland (RIAI) (2), the Law Society (1), Irish Public Bodies Mutual Insurances Ltd (1) and the Higher Education Authority (1). The Minister for the Environment, Heritage and Local Government implemented three recommendations to make the proposed system for the regulation of architects more appropriate, by means of amendments to the Building Control Bill, 2005. The Higher Education Authority and the RIAI implemented the recommendations directed at them prior to the publication of the final report.
3. Optometrists (2006)	The report contained 11 recommendations. Two were directed at the Minister for Health and Children (2), the Health Service Executive (1), the Opticians Board/Association of Optometrists Ireland (1) and the Higher Education Authority (1). Most of these require legislation to be implemented.
4. Solicitors and Barristers	The report contained 29 recommendations. Thirteen were directed at the Minister for (2006) Justice, Equality and Law Reform (13), the Law Society (3), the Bar Council (13) and Taxing Masters and County Registrars (2). The Bar Council implemented 4 of the recommendations prior to the publication of the final report. A comprehensive Legal Services Bill is needed to provide the root and branch reform recommended in this report. In the meantime, there is much the profession could do, in 2007, to reform itself.

The Competition Authority constantly reviews progress in relation to the implementation of recommendations from its studies. As part of this ongoing review, the Authority engages continually with those to whom recommendations are directed with a view to ensuring that the recommendations are implemented.

The role of the Advocacy Division in the Competition Authority

The Advocacy Division identifies public restrictions on competition, advocates reform of anti-competitive restrictions, and promotes pro-competition policy making, as required by Section 30 of the Competition Act, 2002.

Public restrictions on competition may arise from laws, regulations or administrative practice. The Competition Authority advocates reform where competition is restricted more than is necessary to protect consumers, and where the adverse effects of restricting competition are more than necessary to pursue another public policy goal.

The Advocacy Division regularly advises Government Departments and public agencies on the effects on competition of legislation being proposed or under review, and makes recommendations to Government, its Departments and agencies, on anti-competitive restrictions identified in the course of a Study or a complaint received by the Competition Authority.

The Competition Authority also promotes the case for competition generally, through speeches, presentations and representation.

The Abolition of the Groceries Order

The Competition Authority advocated the removal of the Groceries Order in its submission to the

Department of Enterprise, Trade and Employment in July, 2005, pointing out that Ireland had become one of the most expensive countries in the Euro zone for food shopping. The Groceries Order was abolished in March, 2006.

Following the abolition of the Groceries Order, the Minister for Enterprise, Trade and Employment asked the Competition Authority "to review and monitor the structure and operation of the grocery trade for the foreseeable future to see how it responds to the new legislative environment". Reference to the Grocery Monitor Project is also made in *Towards 2016: Ten Year Framework Social Partnership Agreement 2006-2015*. During 2006 the Competition Authority formulated the structure and scope of the Grocery Monitor Project. The Competition Authority is due to report on developments in the grocery sector in 2007.

Irish electricity market must be opened up

By Bill Prasifka

Comment: Calls for reform of Ireland's flawed electricity market are growing ever louder and must be addressed if we are to avoid, as one leading business figure put it this week, "sleepwalking our way into an energy crisis".

Failure to face up to the underlying flaws of the current electricity industry has left a legacy of rising prices, excessive labour costs and a network straining to meet rising demand for power in a growing economy. Reform of the electricity sector is urgently needed, and immediate structural separation of the ESB is the best place to start. Yesterday's announcement by the Commission for Energy Regulation that the ESB is to dispose of some of its smaller plants is a welcome first step.

The recent damning report by Deloitte estimated that inefficiencies in the Irish electricity sector add €100 million per annum to our bills when compared to international benchmarks.

Ireland cannot consolidate its position as an internationally competitive economy if it continues to rely on an uncompetitive electricity sector propped up by obsolete, unreliable plants.

The recent Green Paper on energy contains many welcome proposals, such as creating a landbank of potential generation sites, strengthening interconnectivity, and introducing an all-island wholesale electricity market in November 2007.

But these plans will take time to deliver and are insufficient to ease the rising cost of electricity that consumers are having to bear at present.

Last Tuesday, the OECD announced that competition in electricity must be boosted as a matter of urgency as electricity prices contribute disproportionately to inflation. The American Chamber of Commerce has stated that electricity costs for US firms in Ireland - the Dells, Microsofts and Intels - have increased by well over 40 per cent since 2000.

At a time when Irish exporters are facing ever intensifying competition, higher costs resulting from a sheltered non-traded sector set them at an instant disadvantage. High electricity prices are also hurting Irish households, especially the 17 per cent of households afflicted by fuel poverty; the poor, the elderly and infirm, and those on low fixed incomes. Meanwhile, Deloitte reports that the average wage at the Poolbeg plants is €102,742, even though one of the Poolbeg plants has not generated a watt of electricity since last January. ESB customers are paying for these inefficiencies.

There is simply not enough competition in the Irish market. High prices have coincided with the gradual liberalisation of the Irish market that began in 1999. Despite liberalisation, real competition has not been given a fighting chance. The ESB remains the dominant force in generation and in domestic electricity supply. This dominance renders the Irish market unattractive to investors and has led to firms such as ePower and Ireland Power exiting the market in recent years.

Owing to its ownership of a diverse plant portfolio, the ESB effectively sets the market price of electricity 99 per cent of the time. Non-ESB plants just aren't at the races when it comes to price-setting ability. Without a rival of similar size in generation, the ESB will be free to build more new plants to ensure the lights won't go out, but this process will only copperfasten its dominance.

Ireland can best assure its continued international competitiveness by creating the structures for real competition in the electricity market.

Promoting vigorous competition in generation and supply will reduce barriers to entry and promote the innovation and efficiency benefits that deliver low prices. The Competition Authority has consistently argued that this can be achieved only by splitting up the ESB into a handful of sustainable, competitive energy companies. No other option will work as quickly to address the lack of competition and high prices.

Other bodies recommending structural reform include the OECD, the International Energy Agency, the European Commission and the Department of Enterprise, Trade and Employment, as well as Deloitte consultants. Deloitte, for instance, recommends the sale by auction of two generation plant portfolios and three supply packages.

Regardless of the specifics, any structural solution must ensure that no single entity continues to control the vast majority of price-setting plants.

Alternative solutions do not work. Heavy-handed price regulation can only achieve so much; it cannot mimic the dynamism of competition, nor is it designed to address the underlying causes of high prices and dominance. Moreover, the high and growing costs of regulation dissipate what few benefits have accrued from the liberalisation process so far.

Splitting up the ESB will promote competition, lead to lower prices and increase security of supply by increasing the number of players in the market, lowering barriers to entry, promoting efficiencies and innovation in generation and dispersing control of price-setting plants.

Any strategy to promote competition which does not involve structural separation of the ESB will be a second-best solution. The ESB is justly proud of its track record in providing electricity to industrial and domestic consumers alike. However, the time when ESB could be used as an instrument of industrial policy is past, and EU legislation prevents a retreat back to the old days of cosy monopoly.

The interests of consumers and competitiveness are now best served by delivering on structural reform of the electricity market rather than persisting with the illusion of competition.

Bill Prasifka is chairman of the Competition Authority

This article first appeared in The Irish Times on Friday, December 1st, 2006.



Section 4: **Policy and Corporate Services**

Policy & Corporate Services

Finance

The Competition Authority is funded by way of an annual grant from the Department of Enterprise, Trade and Employment. In 2006 the Competition Authority's grant was €5.8m. The Competition Authority's accounts are subject to audit by the Comptroller & Auditor General and the audit of the 2006 accounts is unlikely to be completed until the second quarter of 2007. However, at time of writing, the provisional unaudited outturn for 2006 was expenditure of €4.8m.

Freedom of Information

The Competition Authority received two requests under the Freedom of Information Act(s) in 2006, one less than 2005. Both requests were of a non-personal nature. One of the requests was refused while the other was part granted. In the latter case the decision in respect of the documents to which access was refused was appealed but the decision was upheld. While the low level of requests to the Competition Authority is probably partly due to the general decrease in freedom of information requests to public bodies, the Competition Authority attributes the low level of requests more to its proactive policy of openness and transparency as demonstrated by the huge volume and variety of documents that it publishes, particularly on its website www.tca.ie.

Recruitment

The Competition Authority carries out its own recruitment of staff. The Competition Authority conducted three public recruitment competitions in 2006 from which it made ten appointments. Some of these appointments arose from the Government's decision in December, 2005, to increase the resources of the Competition Authority with seven new posts

for its Cartels Division. The other appointments arose from vacancies that arose during the year.

The recruitment to fill the three Member posts vacated in 2005 was a matter for the Civil Service Commissioners pursuant to Section 35(3) of the Competition Act, 2002. Following competitions held by the Public Appointments Commission, the Minister for Enterprise, Trade and Employment appointed Mr. William Prasifka as Chairperson of the Competition Authority and Dr. Stanley Wong and Ms. Carolyn Galbreath as Members of the Authority. Dr. Wong took up his appointment in February 2006 and Mr. Prasifka and Ms. Galbreath took up their appointments in April.

Mr. Prasifka previously worked as the Commissioner for Aviation Regulation and was a Member of the Competition Authority between 1996 and 1999. Prior to 1996, Mr. Prasifka was in private law practice, first in New York and then in Dublin, advising in the areas of Irish, European and American competition law.

Dr. Wong was, prior to joining the Competition Authority, a Partner and head of the competition law practice in Canadian law firm Davis & Company LLP. He is qualified as an economist and a lawyer. Prior to entering the practice of law in 1984, he was Associate Professor of Economics at Carleton University, Ottawa.

Ms. Galbreath has experience in U.S. and European competition law. As a trial attorney at the Antitrust Division of the U.S. Department of Justice she prosecuted international criminal cartel cases and litigated corporate mergers.

Information Technology

Having established its own independent Information and Communication Technology (ICT) function in 2005, the Competition Authority devoted much of

its IT time and resources in 2006 to sourcing and developing its IT forensic capabilities to assist with its investigations and in developing a business recovery plan to cater for a total ICT system failure. The Competition Authority also completed the redevelopment of its website, www.tca.ie, and relaunched it in September. The intention behind the redevelopment of the site was to make it more user friendly by better categorising the increased amount of material published on the site.

International Commitments

The Policy division became responsible for the co-ordination of the Competition Authority's international commitments in 2006.

European Competition Network (ECN)

The ECN was established, on foot of Regulation 1/2003 to ensure that European Union (EU) competition law is applied consistently across all Member States. The objective of the ECN, is to build an effective legal framework to challenge companies who engage in cross-border business practices which restrict competition and are anti-consumer. Membership of the ECN is compulsory for all Member States.

During 2006, the Competition Authority was active in all nine of the ECN Working Groups and eight out of thirteen of the ECN Sectoral Subgroups. In addition to the activities of the ECN the Competition Authority also attended Oral Hearings and Advisory Committee meetings relating to breaches of EU competition law.

Organisation for Economic Co-operation and Development (OECD)

Ireland is a member of the OECD by governmental agreement. The OECD provides a setting for its thirty member governments to discuss economic, social and governance policy issues and experience. The OECD also acts as an independent source for policy research and analysis. The OECD consists of Committees which focus on a wide range of policy issues. The Committee responsible for competition policy is the Competition Committee. The Competition Committee promotes market-oriented reform by actively encouraging and assisting decision-makers in government to tackle anti-competitive practices and regulations. The Competition Authority attends the meetings of the Competition Committee of the OECD and its two associated working parties: Working Party 2 on Competition and Regulation and Working Party 3 on Cooperation and Enforcement.

During 2006 the Competition Authority made two roundtable submissions to Working Party 2 on *Increasing Competition between Payments Cards and Competition and Regulation in Retail Banking*. The Competition Authority made four roundtable submissions to Working Party 3 on *Private Remedies* (two submissions), *Techniques and Evidentiary Issues in Proving Dominance/Monopoly Power* and *Plea Bargaining/Settlement of Cartel Cases*.

European Competition Authorities (ECA)

The Competition Authority is a member of the ECA. The ECA provides a forum for discussion between National Competition Authorities in the European Economic Area. Members of the ECA include competition authorities from EU Member States, the European Commission, Member States of European

Free Trade Area and the EFTA Surveillance Authority. The ECA seeks to improve co-operation between competition authorities and contribute to the efficient enforcement of national and European law. During 2006, the Competition Authority participated in the Air Traffic Working Group which published a paper on *Code-sharing agreements in scheduled passenger air transport*. Going forward, the group will be assessing competition issues in the air transport sector. The Competition Authority was also active in the Financial Services Working Group which published a final report on *Competition Issues in Retail Banking and Payments Systems Markets in the EU*. In 2006 a new Working Group on Sanctions was established.

International Competition Network (ICN)

The Competition Authority is a member of the International Competition Network. The ICN seeks to provide competition authorities with a specialised yet informal venue for maintaining regular contacts and addressing practical competition concerns. The Irish Competition Authority sits on the ICN steering group and is active in three of the network's working groups: the Unilateral Conduct Working Group (UCWG), the Merger Working Group (MWG) and the Cartels Working Group (CWG).

During 2006, the UCWG was established to examine the challenges faced by competition authorities when seeking to address anti-competitive unilateral conduct of dominant firms, both domestically and internationally. The Competition Authority chairs the Merger Investigation and Analysis Subgroup of the MWG.

At the 2006 ICN Annual Conference the subgroup published the ICN Merger Guidelines Workbook, a product of two years of work and cooperation among

several agencies. The Competition Authority is active in two subgroups of the CWG: General Framework Subgroup and Enforcement Techniques Subgroup. The Competition Authority took part to the ICN Cartel Workshop held in The Hague, The Netherlands, in November, 2006.

Code of Practice for the Governance of State Bodies

The Code of Practice for the Governance of State Bodies (2001) issued by the Department of Finance sets out the principles of corporate governance which State bodies are required to adopt. The Code requires each State body to comply with the relevant provisions and to confirm annually when reporting to the relevant Minister that this is being done.

As reported in the 2005 Annual Report, the Competition Authority developed a Code of Conduct which sets out in written form the agreed standards of principle and practice which inform the conduct and governance of the Authority. The code was reviewed in 2006 and some minor amendments were made in light of experience of its operation.

The Competition Authority appointed Helm Group of Companies as its internal auditors on a two year contract covering 2006 and 2007. During 2006, Helm conducted 5 internal audits of the Authority's compliance with a variety of procedures, ranging from budgetary control to strategic and business planning.

Human Resource Management

The Competition Authority commenced a development of its human resource management systems in 2006. The Competition Authority has grown steadily in terms of staff numbers by almost 200% since 2000. With up to 60 people working in

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the Competition Authority, the importance to the Authority of having appropriate human resource management structures and systems in place has become a priority so as to enable it, not alone, to meet its statutory responsibilities and obligations under employment law, health and safety law etc., but to assist it in the development of its staff.

Informing the public about the work of the Competition Authority and about competition policy in general continues to be a priority for the organisation. The Competition Authority's website (www.tca.ie) is constantly updated to ensure that it provides the most comprehensive information possible on areas such as merger notifications, enforcement decisions, studies and news releases.

The media plays a vital role in communicating the activities of the Competition Authority to the general public.

In addition Members and staff of the Competition Authority contributed to numerous debates in the print and broadcast media on a variety of competition-related issues.

Strategy Statement

The Competition Authority is required under Section 33 of The Competition Act 2002 to produce a Strategy Statement outlining the specific strategies and performance indicators it expects to meet over the short to medium term. The current Strategy Statement covers the period from 1 January 2006 to 31 December 2008. While the Competition Authority looks forward to continued incremental expansion, the focus of its strategy is no longer on building capacity, but rather about discharging its functions in the most timely, efficient and effective way possible.

The Competition Authority's 2006-2008 Strategy

The Competition Authority's 2006-2008 Strategy Statement outlines the next stage in the development of the organisation. It is a strategic plan which looks forward to continued incremental expansion of the Competition Authority. The focus of the Strategy Statement is on discharging the Competition Authority's functions in the most timely, efficient and effective way possible.

The Competition Authority's Strategy Statement was developed following extensive consultation with internal and external stakeholders. As a maturing agency the Competition Authority has moved away from building up its capacity to concentrating on improving the quantity and quality of its 'outputs' and their delivery.

The Strategy Statement outlines the Competition Authority's strategic plan in three stages:

- **Stage 1** addresses the question – '**What are the Competition Authority's objectives?**' Accordingly, this section begins with a statement of the Competition Authority's *Mission Statement and Goals*. This section also includes a description of the Competition Authority's roles, as conferred by statute.
- **Stage 2** addresses the question – '**What factors, internal or external, affect how the Competition Authority might achieve its objectives?**' This section considers first the internal environment and accordingly describes the Competition Authority's structure and resources. The external environment is then considered and anticipated future developments are outlined. *Critical Success Factors* are then described.
- **Stage 3** addresses the question – '**Given the environmental factors that the Competition Authority operates in, how best might the Competition Authority achieve its objectives?**' This section outlines the Competition Authority's specific strategies for the period 2006 – 2008. Key performance indicators designed to allow the

Competition Authority to assess how successful its strategies are in achieving its goals, are also described.

The Competition Authority's Mission Statement and Goals are derived in large part from the functions of the Competition Authority as set out in the Competition Act 2002. These functions include the enforcement of competition law, the review of mergers and competition advocacy.

The Competition Authority's Mission is:

"To ensure that competition works for the benefit of consumers throughout the Irish economy"

Making competition work for the benefit of consumers means ensuring that markets can increase consumer welfare and consumer choice, through efficient pricing, innovation, and greater product quality and variety. Since businesses are often 'consumers' themselves, making competition work well for consumers also means making competition work well for businesses.

The Competition Authority's Goals are:

Goal 1: Ensure the fullest possible compliance with competition law;

Goal 2: Promote competition where it is absent, limited or restricted;

Goal 3: Raise awareness and understanding of the benefits of competition among policy makers, businesses and consumers;

Goal 4: Provide an effective and timely service to stakeholders, both internal and external; and,

Goal 5: Fulfil international obligations as well as contribute to the development of, and convergence to, international best practice in competition policy and enforcement.

Organisation Structure of the Competition Authority (reflects staff positions on December 31st, 2006)

Division	Advocacy	Mergers	Corporate Services	Cartels	Monopolies	Policy
Members	Declan Purcell	Paul Gorecki	Bill Prasifka	Carolyn Galbreath	Stanley Wong	Bill Prasifka
Functions	Study, analysis and advocacy of competition in markets where the State restricts competition and liberalising markets	Merger notifications and enforcement	Coordination, administrative services, public relations and external/international representation	Investigation and prosecution of and enforcement against hard-core cartels under Section 4	Investigations and enforcement in abuse of dominance cases and non-cartel (horizontal and vertical) agreements under Sections 4 and 5	Analytical support for other divisions, principally the Mergers Division. Management and Co-ordination of international work. Development of information and training structures. Development and implementation of policies and strategy.
Divisional Managers	Carol Boate	Cormac Keating	Ciaran Quigley	Ray Leonard	Vivienne Ryan Patrick Kenny	John Evans
Legal Advisors			Noreen Mackey David McFadden			
Communications Manager			Mark Garrett* Cathal Hanley			
Case Officers	Brian Devine Jacinta McDonnell Maureen O'Sullivan Andrew Rae Dave O'Connell	Ibrahim Bah Linda Ni Chualladh Brendan O'Connor		Derek Charles Michael Downey Colette Hegarty* Catherine Kilcullen Eksteen Maritz †Tony Mulligan †Michael Prendergast Elisa Ryan TJ Fitzpatrick John Burke Kenneth McGreevy	Victoria Balaguer Kate Renda Vanessa Fenton* Han Nie Barry O'Donnell Rosemary O'Loughlin Kieran Coleman	Ann Ribault O'Reilly Janet McCoy Kathryn Mac Guill David Boyle Michel Pacillo
Higher Executive Officers			Olive O'Malley (Finance Officer) James Plunkett (IT Manager)			
Executive Officers			Sandra Rafferty Stephen Lalor Pat Downey			
Clerical Officers			Elizabeth Heffernan Laraine Cooper Catherine Cuthbert Robert Holmes Sandra Brennan			

* Vanessa Fenton, Mark Garret and Colette Hegarty are currently on career breaks.

† Detective Sergeants Tony Mulligan and Michael Prendergast are on secondment to the Competition Authority from the Garda Bureau of Fraud Investigation.



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Appendices

Appendix A: Statistics on Mergers Evaluated 2004-2006

	2006	2005	2004
Notified Mergers	98	84	81
required notifications (Section 18(1))	97	84	81
voluntary notifications (Section 18(3))	1	0	0
Carried from previous year	7	11	13
carried as Phase 1	7	10	11
carried as Phase 2	0	1	2
Referred from the EU Commission (ECMR Art 9)	0	0	0
TOTAL CASES	105	95	94
of which media mergers	22	23	14
of which entered Phase 2 in year of notification	4	1	3
of which entered Phase 2 in year previous to notification	0	1	2
Cases Withdrawn	2	1	1
Withdrawn at Phase 1	2	1	0
Withdrawn at Phase 2	0	0	1
Determinations Delivered	96	87	82
Phase 1 Determinations cleared without proposals	93	80	78
Phase 1 Determination with proposals	0	5	1
Phase 2 Determination without conditions	2	0	1
Phase 2 Determination with conditions	0	2	1
Phase 2 Prohibition	1	0	1
Referral to EU Commission (ECMR Art 22)	0	0	0
Carried to next year	7	7	11
Carried as Phase 1	6	7	10
Carried as Phase 2	1	0	1

Appendix B: Mergers Notified to the Competition Authority in 2006

Notification	Economic Sector	Date of Notification	Status
M/06/001 - Carillion/Mowlem	Construction	06 January 2006	Completed
M/06/002 - IBM / Micromuse	IT Network Management Services	16 January 2006	Completed
M/06/003 - Honeywell / First Technology	Financial Services	19 January 2006	Completed
M/06/004 - Morgan Stanley / Lloyds TSB (The Goldfish Business)	Financial Services	20 January 2006	Completed
M/06/005 - Emap / Cafeslim	Media and online weight management solutions	23 January 2006	Completed
M/06/006 - Jabil / Celetronix	Provision of electronic components to OEMs	09 February 2006	Completed
M/06/007 - Disney / Pixar	Motion Picture	20 February 2006	Completed
M/06/008 - Thomas Crosbie / Wexford Echo	Media / Newspaper Publishing	24 February 2006	Completed
M/06/009 - Hachette / Time Warner Book Group	Publishing	28 February 2006	Completed
M/06/010 - DuPont / Syngenta	Manufacture and sale of cereal fungicides	03 March 2006	Completed
M/06/011 - Sony / Konica	Manufacture and distribution of digital single lens reflex	03 March 2006	Completed
M/06/012 - CRH (SKS) / Halfen	Construction accessory products	03 March 2006	Completed
M/06/013 - Honeywell / Gardiner	Security and fire alarm systems	06 March 2006	Completed
M/06/014 - Magnet / Netsource	Media - Broadband connection	08 March 2006	Completed
M/06/015 - ABN Amro / Rémy Cointreau	Production and bottling of spirit brands	10 March 2006	Completed
M/06/016 - Agamemnon / Schuberth	Manufacture and sale of protective helmets	15 March 2006	Completed
M/06/017 - CRH Deutschland / Syncotec	Construction accessory products	15 March 2006	Completed
M/06/018 - Dell / Alienware	Computing devices and peripherals	29 March 2006	Completed
M/06/019 - Mars MAV / S&M NuTec	Pet foods-snacks and Treats	31 March 2006	Completed
M/06/020 - Societe Generale / Pioneer Global	Financial services	04 April 2006	Completed
M/06/021 - Independent / PropertyNews	Media-Publishing	06 April 2006	Completed
M/06/022 - Micron Technology / Lexar Media	Semiconductor solutions and storage devices	07 April 2006	Completed
M/06/023 - GE / Zenon	Water and Wastewater Treatment	12 April 2006	Completed
M/06/024 - CVC / Allsport	Corporate hospitality	12 April 2006	Completed
M/06/025 - KKR / Flextronics	Communications software services	04 May 2006	Completed
M/06/026 - Goldman Sachs / AS Arovit	Pet foods-snacks and treats	05 May 2006	Completed
M/06/027 - Tetra Laval / Carlisle	Liquid Food Processing Equipment	10 May 2006	Completed
M/06/028 - Doughty Hanson / TV3	Broadcasting	23 May 2006	Completed
M/06/029 - Quantum / ADIC	IT Recovery	02 June 2006	Completed
M/06/030 - 3i / Mayborn	Baby care and household products	06 June 2006	Completed
M/06/031 - Saint Gobain / JP Corry	Builders Merchants and Building Supply Products	07 June 2006	Completed
M/06/032 - Trinity Mirror / Email 4 Property	Internet	08 June 2006	Completed
M/06/033 - Screen / Applied Materials- JV	Semiconductor track systems	12 June 2006	Completed
M/06/034 - Warburg Pincus / Tornier	Design and manufacture of reconstructive orthopedic implants	13 June 2006	Completed
M/06/035 - Babcock & Brown (BCM) / ESOT / eircon	Telecommunications	13 June 2006	Completed
M/06/036 - Caisse Regionale / Taittinger et Viticole	Champagne Distribution	22 June 2006	Completed
M/06/037 - Sagard / Olympia	Investment Banking	23 June 2006	Completed
M/06/038 - Motorola / TTP Communications plc	Application Software for Mobile Devices	23 June 2006	Completed

Notification	Economic Sector	Date of Notification	Status
M/o6/o39 - Kingspan / Xtratherm	Insulation materials	26 June 2006	Completed
M/o6/o40 - Ken Peterson / Leap	Broadband	30 June 2006	Completed
M/o6/o41 - Resolution / Abbey National	Life Insurance	06 July 2006	Completed
M/o6/o42 - ABN AMRO / Volution	Heating systems and cable management solutions	06 July 2006	Completed
M/o6/o43 - General Electric / Biacore	Vehicle Management	06 July 2006	Completed
M/o6/o44 - Topaz / Statoil Ireland	Importation, Storage, and supply of oil and petroleum products	12 July 2006	Completed
M/o6/o45 - Ing Groep / Appleyard	Vehicle Management	17 July 2006	Completed
M/o6/o46 - CD&R / New Sally	Distribution of hair care products, cosmetics, styling appliances and other beauty items	19 July 2006	Completed
M/o6/o47 - ABN AMRO / Amtico	Laminated vinyl tile flooring	20 July 2006	Completed
M/o6/o48 - Warburg Pincus / Somera	Telecommunications Equipment	24 July 2006	Completed
M/o6/o49 - Newsread / Wholesale Newspapers	Media: newspaper publication and distribution	24 July 2006	Completed
M/o6/o50 - EMC / RSA SECURITY	Information technology security	02 August 2006	Completed
M/o6/o51 - Largo / Tayto	Savoury Snacks	04 August 2006	Completed
M/o6/o52 - Debenhams / Roches Stores	Retail sales	09 August 2006	Completed
M/o6/o53 - GE / Memphis	Aviation components	14 August 2006	Completed
M/o6/o54 - Pearson (FT) / Mergermarket	Electronic business news and intelligence products	16 August 2006	Completed
M/o6/o55 - ThyssenKrupp / Alcoa (ENAAS Business Activities)	Aerospace service	17 August 2006	Completed
M/o6/o56 - Flextronics / Eastman Kodak	Design, manufacture and distribution of digital cameras	18 August 2006	Completed
M/o6/o57 - Coillte / Weyerhaeuser	Forestry Products	22 August 2006	Completed
M/o6/o58 - AXA / Eliokem	Chemicals	23 August 2006	Completed
M/o6/o59 - The Irish Times / MyHome	Property advertising	25 August 2006	Completed
M/o6/o60 - BNY Holdings / AIB/BNY Securities Services (Ireland) Limited	Fund administration and trustee/ custodial services	31 August 2006	Completed
M/o6/o61 - D'Olier / Gloss	Media and Publishing	01 September 2006	Completed
M/o6/o62 - Euromoney / Metal Bulletin	Financial and Business Information Services	01 September 2006	Completed
M/o6/o63 - 3i / Selective Beauty	Cosmetics	04 September 2006	Completed
M/o6/o64 - Kelido (Westcoast) / Clarity Computer	IT	07 September 2006	Completed
M/o6/o65 - IBM / Filenet	IT / Software Solutions	08 September 2006	Completed
M/o6/o66 - Mosaic / Rubicon	Retail sales	11 September 2006	Completed
M/o6/o67 - Connaught Tribune/Galway Bay FM	Newspaper and Radio	25 September 2006	Completed
M/o6/o68 - PCP ONE / Champion Sports	Retail	25 September 2006	Completed
M/o6/o69 - GE Fanuc - Radstone	Information Technology	06 October 2006	Completed
M/o6/o70 - ABN AMRO - Saunatec	Financial services, Sauna and Steam Bath Equipment	06 October 2006	Completed
M/o6/o71 - JA Trading/ River Newspapers	Media	27 October 2006	Completed
M/o6/o72 - Apax Partners/ Incisive Media	Provision of business information	27 October 2006	Completed
M/o6/o73 - Bord na Mona/ Edenderry Power	Energy	27 October 2006	Completed
M/o6/o74 - Deutsche Bank AG / Tilney Group Limited	Financial services	27 October 2006	Completed

Notification	Economic Sector	Date of Notification	Status
M/06/075 - Arcapita/ Viridian	Energy	27 October 2006	Completed
M/06/076 - Oracle/Metasolv	Telecommunications software	06 November 2006	Completed
M/06/077 - Banca Intesa/ Sanpaolo	Banking, financial and insurance services	07 November 2006	Completed
M/06/078 - Spotless Group (AXA)/ Punch Industries/ Glanmire	Fabric care, home care and personal care sectors	16 November 2006	Completed
M/06/079 - Guardian Media Group plc/ Century Radio Limited/ Century Radio 105 Limited	Radio Broadcasting in the United Kingdom	17 November 2006	Completed
M/06/080 - LINPAC Materials Handling Limited/ Allibert Buckhorn	Production and supply of certain categories of RTPs	20 November 2006	Completed
M/06/081 - AXA Investment Managers Private Equity S.A./ CABB GmbH	Chemical products	22 November 2006	Completed
M/06/082 - Bernard McNamara/Derek Quinlan /DDDA/ South Wharf plc	Property sector	23 November 2006	Completed
M/06/083 - Deutsche Post/TSO	Document Business Process Outsourcing	15 November 2006	Completed
M/06/084 - British Telecommunications plc/ Plusnet plc	Provision of electronic communications services	27 November 2006	Completed
M/06/085 - Regent Acquisitions Limited (Royal Bank of Scotland Group plc)/ Winset Investments Limited (TTT Moneycorp)	Foreign exchange services	28 November 2006	Completed
M/06/086 - R.R. Donnelley & Sons Company/ Banta Corporation	Supply chain management business, printing services and document business process outsourcing	30 November 2006	Completed
M/06/087 - Applied Materials, Inc./ Brooks Software	Factory automation & associated software products	01 December 2006	Active
M/06/088 - Barclays Private Equity France SAS/ APEM Group SA	Manufacture of switches, industrial joysticks and keyboards	05 December 2006	Completed
M/06/089 - Doughty Hanson/ Setanta Sport	Television broadcasting	08 December 2006	Completed
M/06/090 - ESPN Global Limited/ NASN Limited	Television broadcasting and syndication of programme material	11 December 2006	Completed
M/06/091 - Barclays Private Equity France/ N.V. De Smet	Engineering and supply of industrial plants for the: (i) oil and fats; (ii) detergent-surfactants and related chemicals; and (iii) oleochemicals and biodiesel industries	13 December 2006	Completed
M/06/092 - Citibank Investments/ Quilter Holdings	Wealth management services	13 December 2006	Completed
M/06/093 - Abbot/ Kos Pharmaceutical	Pharmaceutical sector	14 December 2006	Completed
M/06/094 - BSKyB/365 Media	Gambling and media	22 December 2006	Active
M/06/095 - Barclays/ Worldmark	Product identification solutions for electronic devices	22 December 2006	Completed
M/06/096 - IBM/Vallent	Information Technology	22 December 2006	Completed
M/06/097 - Sagard/ Aliplast	Soft-alloy extruded aluminium products	22 December 2006	Completed
M/06/098 - Premier Foods/ RHM	Food	28 December 2006	Active

Appendix C: Formal Submissions made by the Competition Authority in 2006

Submission Number:	Submission to:	Topic:	Summary of Recommendations:
S/o6/001	European Commission	Green Paper on Damages Actions for Breach of EC Antitrust Rules	The Green Paper asks whether there should be special rules on disclosure of documentary evidence, and, if so, what form it should take. The Competition Authority believes to harmonise procedural requirements across the EU in one field of law alone seems to have great potential for confusion. With that important caveat in mind, the Competition Authority considered the options as to the form the rules (if any) on disclosure should take.
S/o6/002	The Irish Auditing and Accounting Supervisory Authority	Legal protection of the term "Accountant"	The Competition Authority is strongly of the view that there is no public interest case requiring legal protection of the term "Accountant" at this time. The current system provides for statutory protection for a key element of the work done by accountants in public practice but allows freedom in relation to other services they provide. The introduction of a system of legal protection of the term "Accountant" would impose a cost on accountants which would lead to an increase in costs for consumers.
S/o6/003	Department of Health and Children	Legislation to establish the Health Information and Quality Authority	The Competition Authority supports the establishment of the HIQA and the important role it will play in the provision of information to consumers of healthcare services. Improving the accessibility of information will empower consumers and enable them to make better informed decisions regarding their health and the services and treatments they choose to consume.

Submission Number:	Submission to:	Topic:	Summary of Recommendations:
S/o6/004	Business Regulation Forum	Reducing the burden of regulation on business	The Competition Authority identifies a number of sectors of the economy where competition problems are contributing significantly to business costs and can be remedied by regulatory reform. Better regulation of the banking, insurance, waste and electricity sectors will lead to more competition and will reduce business costs, allowing businesses to become more competitive, both in Ireland and abroad. The submission details recommendations made by the Competition Authority to better regulate each of these sectors to promote competition, following detailed critical analysis of the sector.
S/o6/005	Department of Health and Children	Draft Medical Practitioners Bill 2006	Changes to the composition of the Medical Council are welcomed, as are the more streamlined registration process for medical practitioners from overseas, the improved fitness to practice regulations and the new role of the Health Service Executive in manpower planning for medical practitioners. A number of concerns still remain and these should be addressed to ensure that the new regulations work in the best interests of consumers of medical services.
S/o6/006	Joint Oireachtas Committee on Communications, Marine and Natural Resources	Draft Broadcasting Bill 2006	The Competition Authority welcomes the thrust of the proposals in the Bill as an important step in ensuring that the public service remit is clearly defined and policed and that public service broadcasters are properly funded in a manner that minimises distortions on competition. The Authority identifies a number of concerns with the proposals and makes recommendations intended to address these concerns.
S/o6/007	Department of the Environment, Heritage and Local Government	Consultation Paper on Regulation of the Waste Management Sector	The Competition Authority sees no clear need for a waste regulator and pointed out that international evidence showed that competitive tendering is the best way to achieve lower per unit operating costs for the service provider and lower prices for consumers. If a waste regulator is appointed, the Competition Authority strongly recommends that the regulator should not have responsibility for price setting, either on a national or a regional basis.
S/o6/008	Department of the Taoiseach	Consultation Paper on Regulatory Appeals	In order to provide the essential elements of a good regulatory appeals body i.e. expertise, efficiency and finality, the Competition Authority suggests that consideration be given to the establishment of a specialist court presided over by the High Court judge which would have available to it experts in the relevant areas of regulation who would attend, with the presiding judge, the entirety of the appeal.
S/o6/009	Department of Communications, Marine and Natural Resources	Energy Green Paper	The Competition Authority recommends that a comprehensive programme of structural reforms takes place in the Irish electricity market to promote competition in generation and supply, provide the conditions for lower prices to end users, reduce barriers to entry, end ESB dominance, ensure security of supply and promote sustainability.

Appendix D: Speeches and Presentations by Competition Authority Members and Staff in 2006

Title	Forum	Date	Person
Is the overall approach of the Commission in its Article 82 Discussion Paper on tying /bundling the correct one?	Panel Discussion, American Chamber of Commerce to the EU, Workshop on the Review of Article 82 and Implications for Industry, Brussels	16 January	Paul Gorecki
Comment on Sean Lyons' paper - Testing which proposed regulations need 'Competition Proofing'	Seminar sponsored by the Statistical and Social Inquiry Society of Ireland, Dublin	26 January	Paul Gorecki
Regulation, Competition and Political Economy	Business Regulation Forum, Department of Enterprise, Trade and Employment	23 February	Declan Purcell
The Abolition of Groceries Order: Enforcement by the Competition Authority	Conference on the ending of the Groceries Order hosted by Competition Press, Dublin	1 March	Paul Gorecki
Competition Issues in the Agri-Food Sector	Trinity College Dublin, School of Economics	10 April	Declan Purcell
Comments on the Building Control Bill, 2005 and the Competition Authority's Report on Competition in the Architect's profession.	Joint Oireachtas Committee on the Environment and Local Government	26 April	Bill Prasifka
Removing the Protective Shackles	Senior Management Conference, Department of Enterprise, Trade and Employment	27 April	Declan Purcell
Enforcement in the Post Groceries Order Era	Annual Conference of Food and Drink Industry Ireland, Santry	27 April	Stanley Wong
Merger Remedies in Ireland	International Competition Network, Annual Conference, Cape Town, South Africa	5 May	Stanley Wong
Market Definition in Pharmaceutical Wholesale Mergers	European Competition Network	19 June	Brian Devine
Regulation and Competition	Incorporated Law Society	12 July	Noreen Mackey

Title	Forum	Date	Person
Form versus Effects-Based Approaches to the Abuse of a Dominant Position: the case of TicketMaster Ireland	Paper published in <i>Journal of Competition Law and Economics</i> , Vol.2, pp 533-548	September	Paul Gorecki
Ensuring Effective Competition in Waste Collection	Environment Ireland 2006 Conference, Dublin	4 September	Paul Gorecki
Competition Law and the Agri-Food Sector	ICOS UCC Dairy Director Development Programme, Dublin	6 September	Paul Gorecki
The Professions Studies	Better Regulation Group, Government Buildings	20 September	Declan Purcell
Presentation to the Business Leaders' Conference	Industry Leader's Conference 2006 Druid's Glen	8 September	Bill Prasifka
Competition Policy in Ireland	Competition Press, Annual Conference Dublin	28 September	Bill Prasifka
Expanding Civil Penalties Constitutionally	Competition Press Annual Conference Dublin	28 September	Noreen Mackey
The Political Economy of Competition	UCD, Postgraduate Economics Students	24 October	Declan Purcell
Criminal Cartels in Ireland: The Heating Oil Case	Paper published in <i>The European Competition Law Review</i> , Issue 11, pp 631-640	November	David McFadden and Paul Gorecki
Sanctions in Competition Cases in Ireland	Institute of European Affairs, Dublin	14 November	Bill Prasifka
Liberalisation of Pharma distribution, regulation and distribution - Ireland	European Competition Network, Dublin	17 November	Declan Purcell
Competition Policy- An Instrument to Fight Inflation	Anti-Inflation Working Group Government Buildings	29 November	Declan Purcell
How Directors can be Disqualified following Competition Cases	Paper published in <i>Competition Press</i> , Volume 14, Edition 8	December	David McFadden
Competition Law Enforcement in Ireland	Presentation to The Portuguese Competition Authority, Lisbon	1 December	Stanley Wong
Competition in Legal Services	Opening remarks at the launch of the <i>Final Report into Solicitors and Barristers</i>	11 December	Bill Prasifka
The Legal Profession: Competition and Liberalisation	Opening remarks to the Conference on the Economic Case for Professional Services Reform, Brussels	13 December	Declan Purcell

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The Competition Authority

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