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Annual Report 2009



The Competition Authority
 An tÚdarás Iomaíochta

Table of Contents

Foreword	1
1. About The Competition Authority	3
<i>The Benefits of Competition</i>	3
<i>The Competition Authority's Structure and Functions</i>	5
<i>Working with other State Agencies</i>	8
<i>Identifying Anti-competitive Behaviour</i>	9
2. Enforcing Competition Law	11
<i>Criminal Cases taken by the DPP on foot of Competition Authority Investigations</i>	12
<i>Criminal Cases Awaiting Trial</i>	19
<i>Civil Actions Brought by the Competition Authority</i>	20
<i>Closed Civil Investigations</i>	23
<i>Guidance on the Application of Competition Law</i>	25
<i>Use of Enforcement Powers</i>	28
<i>Private Actions under Section 14 of the Competition Act 2002</i>	29
3. Evaluation of Mergers and Acquisitions	31
<i>Stakeholder Survey</i>	31
<i>Merger Notifications during 2009</i>	33
<i>Credit Institutions Financial Support Act 2008</i>	36
<i>Appeal to the Supreme Court on Kerry Foods Decision</i>	36
4. Promoting Competition in Ireland	39
<i>Identifying Public Restrictions on Competition</i>	39
<i>Advice on Proposed Legislation, Regulation and Competition Issues</i>	42
<i>Analysing how Competition Works in Particular Sectors</i>	43
<i>Raising Awareness of Competition</i>	45
<i>Previous Recommendations of the Competition Authority</i>	47
5. International Work	51
<i>European Commission</i>	51
<i>European Competition Network</i>	51
<i>Organisation for Economic Co-operation and Development</i>	52
<i>International Competition Network</i>	52
<i>European Competition Authorities</i>	53
6. Corporate Services	55
<i>Finance</i>	55
<i>Freedom of Information</i>	55
<i>Human Resources</i>	55
<i>Customer Service</i>	55
A. Competition Authority Structure	57
B. Mergers Notified to the Competition Authority in 2009	59
C. Statistics on Mergers Evaluated 2007-2009	61
D. Speeches and Presentations	63
E. Media Interviews	67

FOREWORD

2009 proved to be a very challenging year for the Competition Authority. As a result of budget cuts, an embargo on recruitment and implementation of various government incentive schemes to reduce numbers in the public service, the Competition Authority sustained real reductions in its budget and staff numbers; 18% and 17% respectively. Early in the year, we took decisive action to reorganise our activities, which included the abolition of one Division and the restructuring of reporting lines, to cope with the reduced resources available. However, the work of the Competition Authority continued and this is due entirely to the expertise and dedication of the staff here.

The enforcement record of the Competition Authority continued apace in 2009. Ten additional criminal convictions were secured in relation to prosecutions of cartel activity relating to the Citroën Dealers Association. To date, 33 criminal convictions have been secured in total, the level of fines has increased and one defendant in 2009 was sentenced to 28 days in prison for failure to pay a fine. All but forgotten is the debate that dominated the competition community in Ireland a short time ago: "*Will there ever be a criminal conviction in Ireland for a competition offence?*" That question has been answered conclusively. Now we must continue to build on this record and make further strides towards achieving an effective enforcement regime that deters criminal conduct.

Other enforcement activity reinforced a longstanding message of the Competition Authority – that competition enforcement and competition policy is even more important in difficult economic times. At the end of 2008, the two trade associations representing publicans in Ireland, the LVA and VFI announced a "price freeze" on behalf of their members. The fact that such a "price freeze" was taking place in a deflationary economic environment was well noted by consumers. The Competition Authority took decisive action in 2009 to have the coordinated action in relation to prices struck down by the court. It is not in the public interest for trade associations to coordinate the prices of their members and the Competition Authority will always act against such anti-competitive activity. The action sent a strong and well-needed message to trade associations throughout the State.

Also in 2009, the State was successful in implementing cost-saving measures in the pharmacy sector; this outcome was certainly facilitated by the use of competition law made credible by a strong Competition Authority. Some pharmacists sought to put pressure on the State to back down on the cost-saving measures by withdrawing their services. Due to the Competition Authority's previous activity in this sector, pharmacists knew that they had an individual right to deal or not to deal with the State, but that a collective boycott across all pharmacies was prohibited by competition law. A collective withdrawal of services by every pharmacy in the State would have been a much bigger problem for the HSE to cope with than the individual withdrawal of a third of all pharmacies, which is what actually occurred.

Our enforcement successes are due in no small measure to our independence from Government. This independence is no accident. It goes to the core of our statutory remit and governance structure – currently four independent Members chosen by a public appointments process on the basis of proven expertise.

Any report of the year must include our setback in the High Court in relation to the Kerry/Breeo merger. The High Court quashed our decision to block the merger. The matter lies before the Supreme Court on appeal.

We began 2009 with a renewed commitment to advocacy in light of the crying need for the same due in large part to our national economic crisis. Accordingly, we invested more in advocacy and took our message to the public in ways different than before. We published booklets providing general guidance to consumers, businesses and public authorities. We organised a "Bid-rigging Road Show" bringing the competition message on this important area to a variety of venues. We published Guidance Notices and Enforcement Decision Note – providing guidance on areas as diverse as pay-TV exclusivity, collective action in the pharmacy sector and trade associations.

In addition, 2009 saw the publication of the first two parts of our report on competition in the General Medical Practitioner profession. As a demonstration of our ability to engage stakeholders as part of the advocacy process, this Report was able to record that the Authority had already secured the agreement of the Medical Council and the Irish College of General Practitioners to the Report's two central recommendations by the time of publication – a tribute to the advocacy powers of our advocacy division.

Ultimately, our success is due to the staff of the Competition Authority. They have shown the ability to get the job done notwithstanding the difficult environment in which they operate. It is to them that I must pay tribute.

A handwritten signature in black ink, appearing to read "William Prasifka". The signature is fluid and cursive, with a large, stylized initial "W".

William Prasifka

Chairperson

1. ABOUT THE COMPETITION AUTHORITY

The Benefits of Competition

Competition law is designed, primarily, to protect and benefit consumers, including business consumers. The Competition Authority's Mission Statement is ***"to ensure that competition works well for consumers and the Irish economy"***.

Where there is a lack of competition, for example if there is cartel or a monopoly in operation, businesses do not compete for customers. In such cases, the consumer suffers as a result of higher prices, less choice and lower quality. Prices can always be kept lower with competition than they would be in the absence of competition.

Competition benefits everyone; consumers, businesses and the economy as a whole. It keeps prices and costs down, it improves choice and quality for all; it fosters innovation in the form of new products and services and it supports economic growth.

These benefits arise because competition encourages businesses to compete for customers. When consumers benefit from competition, then the economy does too. For example, when electricity costs fall due to greater competition, the cost of doing business falls. This makes Irish businesses more competitive at home and internationally; which, in turn, supports long-term economic growth.

The next page provides a short summary of a paper titled *"Competition in Good Times and Bad"* which highlights that competition is vital in difficult times. Declan Purcell, Member of the Competition Authority and Director of the Advocacy Division, presented this paper at the DEW Kenmare Conference on 18th October 2009. The full paper is available from the Competition Authority's website (www.tca.ie).

Competition in Good Times and Bad Times

The Irish economy is in the midst of a serious economic recession. This means that there are many hard choices that policy makers will have to contend with. However, in many sectors of the economy, by allowing competition to thrive, the Government can exact huge benefits to the consumer and the State.

Competitive markets have, time after time, been shown to be the best way of ensuring that the range and quantity of goods and services we want and need are produced at the lowest possible cost to society.

The McKinsey Institute has carried out many country level studies on productivity and concludes that:

"Increasing productivity is by far the most important ingredient in economic development. It solves almost all other economic problems. From the vast amount of economic experience in countries all over the world for the past 50 years, we have learned without doubt that the most important condition necessary for rapid productivity growth is fair and intense competition in all the sectors of an economy."

It is in times of economic crisis that competition policy becomes very important. The evidence from the US Great Depression of the 1930s and Japan's more recent deep recession during the 1990s is that well-intentioned protectionist policies actually prolonged those recessions.

Ireland has lost its competitive edge over recent years. Between January 2000 and September 2008, we saw a 32% loss in Ireland's international price competitiveness. Increasing competition in the non-traded sectors of the economy would reduce costs for businesses and consumers. This will be of huge benefit in increasing growth and employment.

In this context, the proposal to grant exemptions from competition law to certain professions would be counter-productive. The exemptions proposed are for self-employed voice-over actors in broadcasting, session musicians and freelance journalists. Although it may be argued that the economic impact of the higher prices that will result from exemptions in these markets is negligible, it will certainly raise costs in those industries.

It also sets a precedent that others will pursue. Alongside these groups it is also proposed that the representative body for general medical practitioners, the Irish Medical Organisation, would be exempted from competition law. If granted an exemption from competition law in this way, the IMO could be legally entitled to use anti-competitive means when engaging with the State on fees for the treatment of medical card holders, the administration of vaccines and other services to the public.

There are also serious dangers to the wider goal of economic competitiveness and dangers to consumers by granting exemptions from the Competition Act 2002 in that the economy will not be as responsive as it needs to be to ensure that economic recovery comes sooner rather than later.

Ensuring that all facets of the economy are as competitive as possible is imperative if Ireland is to embark on a path of sustainable growth. Applying the full rigours of competition law to all sectors is essential in doing this.

The Competition Authority's Structure and Functions

The Competition Authority is an independent statutory body that enforces Irish and European competition law and advises Government Ministers and public authorities generally as set out in the Competition Act 2002. The Competition Authority consists of a Chairperson and not less than two or not more than four whole-time Members chosen by a public appointments process. As of the end of 2009, the board consisted of a Chairperson and three Members.

The Competition Authority strives to make sure that competition works for the benefit of all consumers, including business, who buy products and services in Ireland. This is achieved through promoting competition in all sectors of the economy by tackling anti-competitive practices and by increasing awareness of such practices. Specifically:

- Where there is evidence of businesses engaging in anti-competitive practices, the Competition Authority can investigate and bring proceedings in court;
- The Competition Authority can also block mergers that would otherwise substantially lessen competition;
- The Competition Authority identifies restrictions on competition that originate in State laws, regulations or administrative practices and advises the Government and its Ministers about the implications for competition of proposed legislation or regulations;
- The Competition Authority has a duty to inform public authorities and the general public about competition issues and provides general guidance on compliance with competition law.

There is also an important international aspect to the work of the Competition Authority. This role stems primarily from its role, alongside the European Commission and national competition authorities in other Member States, in enforcing European competition law. As part of this role the Competition Authority is a member of the European Competition Network to facilitate co-operation in the consistent application of Community competition rules. The Competition Authority is also Ireland's representative at the Competition Committee meetings of the Organisation for Economic Co-operation and Development. The Competition Authority also participates in the International Competition Network and the ECA ("European Competition Authorities") as a means of promoting best practice within the agency and to maintain knowledge of competition issues that are universal.

The co-ordination of the Competition Authority's international responsibilities lay with the Policy Division. In 2009 due to reduced staff numbers and a moratorium on recruitment, the functions of the Policy Division were dispersed between the other five divisions. In addition to housing the international function, the Policy Division provided analytical support to other divisions (especially the Mergers Division during peak times), developed information and training structures, and developed policy and strategy for the Competition Authority.

The work of the Competition Authority is organised into five divisions, elaborated on below.¹

¹ *Appendix A presents the Members and the staff of the Competition Authority by division.*

The Cartels Division

The Cartels Division, along with the Monopolies Division, is responsible for investigating alleged breaches of competition law. The focus of the Cartels Division is on the investigation and prosecution of “hard-core” cartels.

"There is no standard definition or even description of a cartel. Some are informal and undocumented; others are formal and documented. Most have policy structures and provide sanctions in case of breach. All are secretive in intent and purpose and thrive on concealment. Cartels involve a group of competitors who for self gain agree to restrict their individual business freedom and follow a common course of conduct on the market. They can be used for all forms of anti-competitive behaviour but are particularly attracted to price fixing, restricting output/limiting production, bid-rigging and market allocation. These are "hard-core" infringements of competition law, and rightly so have been repeatedly described, as involving odious practices."²

A cartel is a type of anti-competitive behaviour that is by its nature harmful to consumers. A cartel is an illegal agreement between two or more competitors not to compete with each other. Cartels typically involve a secret conspiracy among many businesses. Their aim is to make more profit at the expense of their customers. They cause consumers to pay more for goods and services and are a crime against the consumer. There are different types of cartels:

- **Price fixing:** Competitors illegally agree the price for, or discounts on, goods or services.
- **Market sharing:** Competitors illegally agree on which locations each of them can or cannot operate in, or customers to whom they can or cannot sell. They also divide locations and/or consumers up among competitors.
- **Limiting production:** Competitors illegally agree to control the amount of goods or services provided in order to ensure prices remain high.
- **Bid-rigging/collusive tendering:** Collusive tendering involves competitors illegally agreeing on who will win a tender. Bid-rigging or collusive tendering may take the form of any or all of the specifically prohibited activities, by fixing prices, sharing markets or limiting access to goods or services.

These types of agreements are in breach of section 4 of the Competition Act 2002, and Article 101 of the Treaty on Functioning of the European Union (“TFEU”), formerly Article 81 of the EU Treaty (“TEC”). Those businesses and individuals found guilty of hard-core cartel offences face a number of penalties including fines and jail sentences.

Cartels are criminal conspiracies that are usually very complex and uncovering them requires specialised investigative skills. Staff who investigate cartels include former members of An Garda Síochána, the Revenue Commissioners and other law enforcement agencies that investigate complex white-collar crimes, along with individuals with experience in competition law enforcement from other jurisdictions around the world. In addition, one member of the Garda Bureau of Fraud Investigation (GBFI) is currently seconded to work full-time with the Cartels Division and is designated as an authorised officer of the Competition Authority.

² Judgment of Mr. Justice McKechnie, *Director of Public Prosecutions v Patrick Duffy and Duffy Motors (Newbridge) Limited*, 23 March 2009, at para. 22.

Where sufficient evidence of a cartel is obtained, the Competition Authority will submit a file to the Director of Public Prosecutions ("DPP") with a recommendation that the parties involved be prosecuted on indictment. Competition offences committed from 1st July 2002, are prosecuted on indictment in the Central Criminal Court. In those circumstances, where the Competition Authority does not believe that the allegations warrant prosecution on indictment, the Competition Authority may itself bring a summary prosecution in the District Court.

The Monopolies Division

The Monopolies Division is also responsible for investigating agreements under section 4 of the Competition Act 2002 and Article 101 TFEU (ex Article 81 TEC). Agreements that are not considered hard-core cartels may breach competition law where they have anti-competitive effects. For example, agreements between manufacturers and distributors of their products, or between distributors and retailers, can sometimes be found to be anti-competitive.

The Monopolies Division also investigates allegations that undertakings have abused a dominant position in a sector of the economy. Abusing a dominant position is illegal under section 5 of the Competition Act 2002 and Article 102 TFEU (ex Article 82 TEC). Holding a dominant position does not of itself break the law. Exploiting a dominant position to stifle competition is, however, anti-competitive. Attempting to eliminate your competitors or prevent new competitors emerging, by abusing your dominant position, can be a breach of competition law.

Where the Competition Authority forms the view that there has been a breach of the Competition Act 2002, it can initiate legal proceedings in order to compel the parties to cease the illegal activity. Such proceedings are generally civil (through the High Court), although criminal proceedings may be appropriate depending on the circumstances of each case. In such circumstances, a file would be prepared for the DPP, unless the case was one more appropriately prosecuted by the Competition Authority itself in the District Court. To fulfil its investigative role, the Monopolies Division comprises a multi-disciplinary team of economists and lawyers.

It is often the case that the Competition Authority may reach settlement in a case involving an alleged breach of either section 4 and/or 5 of the Competition Act 2002 without recourse to the courts where the offending parties recognise and remedy their anti-competitive behaviour. This settlement might occur after proceedings have been threatened, or sooner during an investigation when the undertakings concerned realise and acknowledge that their behaviour is in breach of competition law.

Because many of the matters dealt with by the Monopolies Division raise complex legal and economic issues, a substantial portion of the Division's resources are devoted to developing guidance to businesses about how they may best comply with competition law. Such guidance is provided either through the publication of Decision Notes or Guidance Notes which are developed in the context of market-specific investigations; these are provided for guidance only and are not legally binding. The Competition Authority can also issue declarations that broad categories of agreements, if they comply with certain conditions, are not prohibited by section 4 of the Competition Act 2002.

The Mergers Division

Mergers over a certain financial threshold must be notified to the Competition Authority. The main role of the Mergers Division is to perform the statutory task of reviewing, analysing and preparing the reasoned determinations of the Competition Authority on notified mergers and acquisitions within the specified time period. The Competition Authority then has the power to block a merger where it finds that it will lead to a substantial lessening of competition.

The Mergers Division also investigates mergers below the notification thresholds, under sections 4 and 5 of the Competition Act 2002.

The Advocacy Division

The Competition Authority has a statutory duty to promote competition in the economy. This is carried out mainly through the Advocacy Division, though all Divisions endeavour to promote awareness of the role of competition and competition law in the Irish economy. The Advocacy Division's core functions are to raise awareness of the role of competition and its benefits, and to advise public policy makers. Specifically, the Division:

- Gives advice to Government Departments, public authorities and other stakeholders on the implications for competition of other policies and policy proposals;
- Analyses areas of the economy where competition may be absent, limited or restricted; and
- Identifies workable solutions to increase competition (where it is identified as absent, limited or restricted) and follows up on their implementation.

Where the Competition Authority finds that competition is being unnecessarily restricted by the State, it makes recommendations for reform. Examples of such restrictions on competition include: excessive requirements to enter an industry or profession, a long-term legal right to a monopoly, a ban on advertising of prices.

The Advocacy Division also coordinates all interactions with the media.

The Corporate Services Division

The Corporate Services Division performs the central administrative and support functions for the Competition Authority. This includes corporate governance, business planning, financial management, human resource management and development, information technology and legal support services.

Working with other State Agencies

While public enforcement of the Competition Act 2002 rests primarily with the Competition Authority, in some circumstances it is appropriate for the Competition Authority to liaise with relevant regulatory agencies to resolve matters. The Competition Authority is often 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. In order to facilitate co-operation, avoid duplication and ensure consistency the Competition Authority has cooperation agreements with relevant regulators and agencies.

This is particularly the case in regard to the **Commission for Communications Regulation** ("ComReg"), which since 2007 has itself power to enforce competition law jointly with the Competition Authority in relation to electronic communications services, electronic communications networks or associated facilities. The Competition Authority and ComReg operate a cooperation agreement which facilitates the exercise of the two authorities concurrent competition powers.³

On 23rd December 2009, following a Ministerial Order, the Competition Authority entered a cooperation agreement with the **Commission for Taxi Regulation**. The Competition Authority also has co-operation agreements with the Broadcasting Authority of Ireland, the Commission for Energy Regulation, the Commission for Aviation Regulation, the Health Insurance Authority, the Commission for Communications Regulation and the National Consumer Agency.

The Competition Authority also works closely with a number of other law enforcement agencies in the State to promote compliance with competition law. For example:

- The Director of Public Prosecutions: When the Competition Authority has completed a criminal investigation, a file may be forwarded to the 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 takes charge of proceedings on behalf of the DPP and prepares a Book of Evidence to be served on the accused. The Competition Authority also operates a *Cartel Immunity Programme* jointly with the DPP.
- An Garda Síochána: The Cartels Division regularly liaises with senior management of the Garda Bureau of Fraud Investigation. Since March 2002, Detective Sergeants from GBFI have been seconded to work in the Cartels Division as authorised officers of the Competition Authority. An Garda Síochána continue to provide invaluable assistance to the Competition Authority at crucial times, such as the execution of search warrants.

Identifying Anti-competitive Behaviour

The only way the Competition Authority can stop anti-competitive conduct is to be aware that it is taking place. Both business and consumers are often best placed to identify anti-competitive practices. If you are aware of or suspect such behaviour the Competition Authority strongly encourages you to bring that information to its attention. Information from the public may be the first step in launching an investigation into the activities of undertakings involved in a cartel or an abuse of dominance. The Competition Authority is very interested in any information or evidence which suggests the presence of price fixing, bid-rigging, market-sharing or other anti-competitive conduct.

Suspected anti-competitive conduct may be reported to the Competition Authority via email, telephone or written correspondence. All complaints of alleged anti-competitive conduct are put through a screening system to ensure they are appropriately assessed and considered. If the information suggests that there has not been a breach of competition law, then the file on the matter is closed. The box below provides information on why some complaints are resolved without legal action.

³ Section 47G of the Competition Act 2002, as inserted by section 31 of the Communications Regulation (Amendment) Act 2007, requires the Authority and ComReg to enter into a cooperation agreement

For further information on how to report anti-competitive conduct (i.e. “make a complaint”) visit the Competition Authority’s website at www.tca.ie

Table 1: Complaints Screening Process

	2009	2008	2007	2006	2005	2004
Total Received	318	386	397	419	413	293
Resolved at Preliminary Screening	155	177	211	247	328	212
Detailed Evaluation	137	135	88	72	61	25
-Ongoing	61	47	30	31	27	-
-Resolved	75	88	58	41	34	25
Added to Current Investigations/work	24	71	94	23	19	42
Full Investigations	2	3	4	5	6	14

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 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 its local market; or,
- 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. This detailed evaluation may involve background research, taking formal statements from complainants and 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; or
- The complaint involves issues and facts similar to those previously examined and resolved by the Competition Authority.

2. ENFORCING COMPETITION LAW

The Competition Authority has a particular role in preventing anti-competitive behaviour. Anti-competitive behaviour deprives consumers of the benefits of competition, reduces the choice consumers have, causes consumers to pay more, deprives them of new products and services and undermines economic growth.

Sections 4 and 5 of the Competition Act 2002 prohibit anti-competitive behaviour. An infringement of section 4 or 5 is a criminal offence. However, in respect of any infringement of these sections, the Competition Authority has the right either to seek a criminal prosecution or to pursue the matter in the civil courts or both.

In Ireland, cartels are hard-core breaches of competition law. Any businesses and individuals who are found guilty of hard-core cartel offences can face a number of penalties, including fines and prison sentences. 2009 proved to be an extremely busy and active one for cartel enforcement in Ireland. Since 2000 a total of 33 convictions have been secured for offences under the Competition Act.⁴ Ten of these convictions were secured in 2009 by the Director of Public Prosecutions ("DPP") in relation to the Competition Authority's investigation into price fixing of Citroën vehicles by members of the Citroën Dealers Association. Sanctions were imposed on four undertakings and five individuals who pleaded guilty to fixing prices on Citroën cars and one individual who pleaded guilty to aiding and abetting the commission of an offence of price fixing. Suspended custodial sentences were imposed by the Courts ranging from six to nine months, in addition to fines ranging from €2,000 to €80,000. In one instance, that of Mr. James Burse, failure to pay the fine imposed on him resulted in him being sentenced to 28 days in prison.

Civil enforcement of competition law was also active in 2009. An action brought by the Competition Authority in the High Court found the Vintners' Federation of Ireland ("VFI") and the Licensed Vintners Association ("LVA") to be in contempt of court because of a recommendation to their members in December 2008 regarding prices. The recommendation regarding prices to be charged by publicans breached previous undertakings given to the High Court arising from cases previously taken by the Competition Authority against the VFI and LVA. In another ongoing civil matter, that of the Competition Authority and the Beef Industry Development Society ("BIDS"), significant progress was made. The Irish Supreme Court, following a 2008 judgment by the European Court of Justice, held that the BIDS agreement has as its object the restriction of competition. The Supreme Court remitted the case to the High Court to decide whether the conditions of Article 101(3) TFEU are satisfied and therefore whether the agreement can be implemented.

In addition to active investigation and enforcement of competition law, the Competition Authority published three Guidance Notices and one Decision Note in 2009. The Notices are not legally binding and are intended only to provide practical guidance for compliance with the Act. The Guidance Notices relate to pay-TV exclusivity in apartment developments, the community pharmacy sector and trade associations. The Decision Note relates to pay-TV exclusivity in apartment developments.

⁴ This total includes one conviction in connection with price fixing of petrol; 17 in connection with fixing the price of home heating oil; and 15 in connection with fixing the price of motor vehicles, one involving the Irish Ford Dealers Association and 14 involving the Citroën Dealers Association.

Criminal Cases taken by the DPP on foot of Competition Authority Investigations

Citroën Dealers Association Cartel

In 2007 the DPP preferred charges against six Citroën dealerships and seven individual officers and directors of those undertakings, alleging that they agreed to fix prices and to implement those agreed prices on the sales of Citroën cars, contrary variously to section 4 of both the Competition Act 2002 and section 4 (1) of the Competition Act 1991 and sections 2 and 3(4)(a) of the Competition (Amendment) Act 1996. The DPP also preferred charges against the Secretary of the Citroën Dealers Association alleging that he had aided and abetted the alleged price fixing agreements by dealers.

In 2008 two individuals and two companies pleaded guilty to the price fixing charges and were convicted and sentenced in the Circuit Criminal Court. In 2009 five individuals and four undertakings pleaded guilty to the price fixing charges and were convicted and sentenced in the Dublin Circuit Criminal Court and Central Criminal Court. The Secretary of the Citroën Dealers Association pleaded guilty to the offence of aiding and abetting the commission of the offence of price fixing and was convicted and sentenced in the Central Criminal Court.

These convictions bring to an end the DPP's prosecutions in connection with the Competition Authority's investigation of the Citroën Dealers Association. In total 14 convictions, comprising eight individuals and six undertakings, were secured by the DPP in relation to this investigation. A summary of these cases is set out in Table 2 and the individual convictions from 2009 are described below.

At the sentencing of an individual and company in the Central Criminal Court, Mr. Justice McKechnie described the Citroën Dealers Association cartel:

"It appears that in March 1995 an association known as the Citroen Dealers Association ("the C.D.A.") was established. . . It held its first meeting in April 1995 and operated at least until February 2004. This association, whose members consisted of the authorised dealers for Citroen motor vehicles in this State, appointed officials such as a Secretary, Treasurer and President, and kept detailed minutes of its activities. . . From the outset it set in place a comprehensive scheme which had the following as its objects:- (i) The setting of minimum discounts from the retail dealers recommended price list for new Citroen motor vehicles; (ii) The setting of delivery charges in respect of such vehicles; (iii) The setting of accessory prices; (iv) The setting of prices for metallic paint; (v) The setting of prices for trade-ins and for used stock; and (vi) The setting of export prices and parts. . . At meetings of the Association, of which about 48 were minuted, prices were agreed in respect of each of these items and then recorded. Thereafter a new revised price list would be printed and distributed by the Secretary to each member of the association. In addition, the Secretary produced a pocket card for internal use by individual dealers showing what price should be asked for. This became known as the "card price". The routine was followed on every occasion upon which there was a price change. . . To underpin adherence to the objectives of the scheme, the association employed two independent companies to police its members so as to ensure compliance. These monitors carried out so called "mystery shopping surveys", during which, disguised as genuine members of the public, they attended at a dealer's premises and obtained a quote or price for any one or more of the products above mentioned. A report would then be submitted to

the Secretary. Fines, which were specified for any breach, were originally set at £500 and later increased to £1,000 (€1,270).⁵

DPP –v- Patrick Duffy and Duffy Motors (Newbridge) Limited

On 26th January 2009 before Mr. Justice Carney in the Central Criminal Court, Duffy Motors (Newbridge) Limited and Mr. Patrick Duffy, in his capacity as a Director of Duffy Motors (Newbridge) Limited, pleaded guilty to one count each of entering into an agreement and one count each of implementing an agreement which had as its object the prevention, restriction or distortion of competition in the motor vehicle trade in Leinster by directly or indirectly fixing the selling price of Citroën vehicles, in contravention of the Competition Act 1991 (as amended 1996). On 23rd March 2009 both defendants were sentenced by Mr. Justice McKechnie in the Central Criminal Court. Duffy Motors (Newbridge) Limited was fined €50,000, €20,000 for entering into an illegal agreement and €30,000 for implementing the agreement under the Competition Act 1991 (as amended 1996). Mr. Patrick Duffy was sentenced by the Court to pay a fine of €20,000 and to serve a term of six months in prison for entering into an illegal agreement and to pay a fine of €30,000 and serve a term of nine months in prison for implementing the illegal agreement. The prison terms, which were to run concurrently, were suspended by the Court for a period of five years.

DPP –v- James Bursey and Bursey Peppard Limited

On 9th March 2009 before Mr. Justice Carney in the Central Criminal Court, Bursey Peppard Limited and Mr. James Bursey, in his capacity as a Director of Bursey Peppard Limited, pleaded guilty to one count each of entering into an agreement and one count each of implementing an agreement which had as its object the prevention, restriction or distortion of competition in the motor vehicle trade in Leinster, by directly or indirectly fixing the selling price of Citroën vehicles in contravention of the Competition Act 1991 (as amended, 1996). On 3rd April 2009 Mr. Bursey and Bursey Peppard Limited were sentenced by Mr. Justice McKechnie in the Central Criminal Court. Bursey Peppard Limited was fined a total of €80,000, €30,000 for entering into an illegal agreement and €50,000 for implementing an illegal agreement under the Competition Act. Mr. James Bursey was sentenced by the Court to a fine of €30,000 and a term of imprisonment of six months for entering into an illegal agreement, and to a fine of €50,000 and a prison term of nine months for implementing an illegal agreement contrary to the Competition Act 1991 (as amended 1996). The prison terms, which were to run concurrently, were suspended by the Court for a period of five years.

On 30th November 2009 Mr. Justice McKechnie heard evidence that Mr. Bursey had failed to pay the imposed fines and as a consequence of his failure to pay the fines sentenced Mr. Bursey to 28 days imprisonment.

DPP –v- Finglas Motors (M50) Limited and Mr. Bernard Byrne

On 26th January 2009 before Judge Delahunty in the Dublin Circuit Criminal Court, Finglas Motors (M50) Limited and Mr. Bernard Byrne, in his capacity as Director, both pleaded guilty to one count each of entering into an agreement which had as its object the prevention, restriction or distortion of competition in the motor vehicle trade in Leinster by directly or indirectly fixing the selling price of Citroën vehicles, in contravention of the Competition Act 1991 (as amended, 1996). On 17th June 2009 both defendants were sentenced by Judge Nolan in the Dublin Circuit Criminal Court. Finglas Motors (M50) Limited

⁵ *Judgment of Mr. Justice McKechnie, Director of Public Prosecutions v Patrick Duffy and Duffy Motors (Newbridge) Limited, 23 March 2009, at paragraphs 6 to 9.*

was fined €35,000. Mr. Bernard Byrne was fined €2,000 and sentenced to nine months imprisonment, suspended for one year.

DPP –v- Gowan Motors (Parkgate) Limited, Michael Patrick Gibbs and Brian Smyth

On 24th November 2008 before Judge Delahunt in the Dublin Circuit Criminal Court, Gowan Motors (Parkgate) Limited and Mr. Michael Patrick Gibbs and Mr. Brian Smyth in their capacity as Directors, pleaded guilty to one count each of entering into an agreement which had as its object the prevention, restriction or distortion of competition in the motor vehicle trade in Leinster by directly or indirectly fixing the selling price of Citroën vehicles, in contravention of the Competition Act 1991 (as amended, 1996). On 22nd June 2009 the defendants were sentenced by Judge Delahunt in the Dublin Circuit Criminal Court. The Court imposed a fine of €30,000 on Gowan Motors (Parkgate) Limited. Mr. Michael Patrick Gibbs was fined €30,000 and sentenced to six months imprisonment, suspended for three years. Mr. Brian Smyth was fined €30,000 and sentenced to six months imprisonment, suspended for three years.

As a consequence of their conviction under the Competition Act 1991, and pursuant to section 160(1) of the Companies Act 1990, Mr. Patrick Duffy, Mr. James Burse, Mr. Bernard Byrne, Mr. Michael Patrick Gibbs and Mr. Brian Smyth are disqualified, for a period of five years from the date of their conviction, from appointment as or acting as an auditor, director or other officer of any company. Mr. Justice McKechnie has noted: "*this is a mandatory consequence of the conviction whether by plea or verdict*".⁶ (See Box on "Statements By The Court At Sentencing Hearings", on page 17).

DPP –v- John McGlynn

On 6th July 2009 before Mr. Justice Carney in the Central Criminal Court, Mr. John McGlynn pleaded guilty to three counts of aiding and abetting the Citroën Dealers Association to commit offences of entering into an agreement which had as its object the prevention, restriction or distortion of competition in the motor vehicle trade in Leinster by directly or indirectly fixing the selling price of Citroën vehicles. Mr. McGlynn pleaded guilty to two counts of aiding and abetting the Citroën Dealers Association in entering into an illegal agreement in violation of the Competition Act 1991 (as amended, 1996); and to one count of aiding and abetting the Citroën Dealers Association in entering into an illegal agreement in violation of the Competition Act, 2002. On 27th November 2009, Mr. John McGlynn was convicted and sentenced by Mr. Justice McKechnie in the Central Criminal Court. The Court imposed a fine of €30,000 on Mr. McGlynn and imposed three custodial sentences, two prison terms of six months each for aiding and abetting the entering into of an illegal agreement under the Competition Act 1991, and a prison term of nine months for aiding and abetting the Citroën Dealers Association in entering into an illegal agreement under the Competition Act 2002. The sentences, which were to run concurrently, were suspended by the Court for a period of 5 years, with the custodial sentences to be imposed for non-payment of the fine.

⁶ *Judgment of Mr. Justice McKechnie, Director of Public Prosecutions v Patrick Duffy and Duffy Motors (Newbridge) Limited, 23 March 2009, at paragraph 60.*

Table 2: Convictions in the Citroën Dealers Association Cartel

Defendant	Sentencing Date	Result
James Durrigan & Sons Limited	8 th May 2008	€12,000 fine
James Durrigan	8 th May 2008	3 months sentence – suspended for 2 years.
Ravenslodge Trading Limited T/A Jack Doran Motors	28 th October 2008	€20,000 fine
Jack Doran	28 th October 2008	3 months prison sentence – suspended for 5 years.
Duffy Motors (Newbridge) Limited	23 rd March 2009	€50,000 fine.
Patrick Duffy	23 rd March 2009	6 months and 9 months sentences – suspended for 5 years Total of €50,000 fines.
Bursey Peppard Limited	3 rd April 2009	€80,000 fine.
James Bursey	3 rd April 2009	6 months and 9 months sentences – suspended for 5 years; Total of €80,000 fines. Prison term of 28 days imposed for non-payment of the fine.
Finglas Motors (M50) Limited	17 th June 2009	€35,000 fine.
Bernard Byrne	17 th June 2009	9 months sentence – suspended for 1 year €2,000 fine.
Gowan Motors (Parkgate) Limited	22 nd June 2009	€30,000 fine.
Michael Patrick Gibbs	22 nd June 2009	6 months sentence – suspended for 3 years €30,000 fine.
Brian Smyth	22 nd June 2009	6 months sentence – suspended for 3 years €30,000 fine.
John McGlynn	27 th November 2009	6 months and 9 months sentences – suspended for 5 years €30,000 fine.

Mayo Waste Disposal Case

DPP -v- Stanley Bourke, Bourke Waste Removal Limited, Patrick McGrath, Declan McGrath, McGrath Industrial Waste Limited, Paul Gleeson, Wheeley Environmental Refuse Services Limited, and Pdraig Hughes

The first four individuals, in their capacity as Directors, and the three undertakings were each charged with entering into an agreement which had as its object the prevention, restriction or distortion of competition in the provision of domestic waste collection services in County Mayo. Mr. Hughes was charged with aiding, abetting or procuring others to enter into an agreement which had as its object the prevention, restriction or distortion of competition in the provision of domestic waste collection services in County Mayo.

The eight defendants were tried before a jury at the Central Criminal Court sitting in Galway between 23rd June 2009 and 2nd July 2009. The trial judge, Mr. Justice McKechnie, sent the case to the jury for deliberation. All defendants were unanimously acquitted on all counts.

Statements by the Court at Sentencing Hearings

The judgments of Mr. Justice McKechnie have provided guidance on the Court's view of cartel offences and the appropriate sentences for cartelists.

On The Nature of Cartels

*"They, of course, stifle competition, they damage economic and commercial liberty and, in fact, if they were to continue unabated, they could seriously impact upon the economic and commercial welfare of, not only customers and consumers, but of an entire nation."*⁷

On Mixed Sentences Appropriate in Cartel Cases

"Normally a sentencing court might first consider whether a fine would fit the crime and the convicted, and if so, subject to funds being available, would not go on to consider deprivation of liberty. If the imposition of a fine however was of doubtful effect then of course a gaol term would be considered. In a case like the present, this two step approach may not be the most appropriate. Rather, a court might feel that a more general overview involving the imposition of a mixed type of sentence is to be preferred.

*Fines evidently play a significant role in criminal law. In competition cases the way in which the maximum amount is structured clearly indicates a strong relationship between the undertaking's business and the crime."*⁸

On Custodial Sentences Being Critical

"Notwithstanding this level of fine however, the availability of a custodial sentence is critical.

*... I see no room for any lengthy lead in period before use is commonly made of this supporting form of sanction ... Every purchaser of goods or services now has a strong and definite appreciation of what competition can do for him or her. Therefore it must be realised that serious breaches of the code have to attract serious punishment."*⁹

On Mitigating Circumstances for Sentencing:

Continuous and Conscious Nature of Cartels

*"Although it may be true that the offence is unlikely to be repeated; as stated above, the on-going and continuous nature of the cartel crimes would tend to suggest that the acts complained of were not, in fact, out of character. Operating a cartel is not a once off criminal act. It is not done on the spur of the moment. It is continuous and requires high levels of planning and organisation."*¹⁰

⁷ Unreported Judgment of Mr. Justice McKechnie, *Director of Public Prosecutions v James Bursley and Bursley Peppard Limited*, 3rd April 2009, at page 3.

⁸ Judgment of Mr. Justice McKechnie, *Director of Public Prosecutions v Patrick Duffy and Duffy Motors (Newbridge) Limited*, 23 March 2009, at paragraphs 40 and 41.

⁹ *Ibid* at paragraph 43.

¹⁰ *Ibid* at paragraph 47.

Character of the Defendant

*"A person seeking to successfully implement a price fixing agreement decides every day to go into work and therein to commit and conceal a criminal conspiracy. That person, typically will be well educated, businessly astute, either owns the business or has risen to senior management, and almost certainly will have done a value benefit/detection appraisal. He then proceeds, indefinite as to duration, ceasing only when confronted. For that person whose persona is representative of carteliars, it is very difficult to say that such behaviour is out of character."*¹¹

Distress and Coercion

*"It has also been said that the offences at issue were committed against the backdrop of a struggle for survival, rather than in the greedy pursuit of excess profit. That may, or may not, be true, but even if so it is still not a factor which the Court should consider a mitigating one. If credit was available for economic distress it would be the antithesis of competition."*¹²

Likelihood of Re-offending

*"Factors such as that the conduct concerned was a first offence and that the offender is unlikely to re-offend are, in my view, of limited application in cartel cases. ... as commented upon in the European Guidelines, whilst recidivism would be a substantial aggravating factor, its likely absence is not necessarily a weighty mitigating factor."*¹³

Other Lawful Aims of the Citroën Dealers Association

*"... no cognisance can be had of the fact that the C.D.A. may have started as a representative association with some legitimate purpose. ... Legal activities do not shroud or insulate illegal ones with any form of justification or mitigation."*¹⁴

The "Object" and "Effect" of the Offences

*"I would suggest that whether or not the enterprise is successful, or beneficial or profitable, or otherwise, cannot have any relevance to the issue of guilt. If the end result could decriminalise the conduct then this type of offence would lack utility and be redundant."*¹⁵

¹¹ *Ibid* at paragraph 47.

¹² *Ibid* at paragraph 49.

¹³ *Ibid* at paragraph 48.

¹⁴ *Ibid* at paragraph 50.

¹⁵ *Ibid* at paragraph 51.

Criminal Cases Awaiting Trial

Irish Rail Cases

DPP -v- John Joe McNicholas trading as John Joe McNicholas Plant Hire, Oliver Dixon and Oliver Dixon (Hedgecutting & Plant Hire) Limited

On 14th October 2008, summary proceedings were commenced by the Competition Authority in Athenry District Court against John Joe McNicholas trading as John Joe McNicholas Plant Hire, Oliver Dixon, and Oliver Dixon (Hedgecutting & Plant Hire) Limited in connection with alleged price fixing on a tender for vegetation clearance services by Iarnród Eireann/Irish Rail. Jurisdiction was refused by the District Court on the basis of the Judge's view that the case was non minor and therefore not appropriate to be tried in the District Court. The DPP consented that this case be returned for trial to the Central Criminal Court, as provided by section 11 of the Competition Act, 2002. The defendants first appeared before the Central Criminal Court on 15th December 2008. On 26th January 2009, Mr. Justice Carney fixed a trial date for the 2nd November 2009.

The case was adjourned on 2nd November 2009 due to an earlier ruling by the Supreme Court in the judicial review of an unrelated case, *Reade -v- Judge Reilly & the Director of Public Prosecutions*, which affected the jurisdiction of the Central Criminal Court to hear these cases because of the manner in which the charges had been sent forward for trial by the District Court. On 25th January 2010 the DPP entered a *nolle prosequi* on all three indictments in light of the Supreme Court's jurisdictional ruling. The cases affected by the *Reade* decision are with the DPP for determination on whether to reinstitute proceedings in 2010.

Heating Oil Investigation

Following a Competition Authority investigation, the DPP in April, May and June of 2004 preferred charges against 24 defendants. The charges related to allegations of fixing the price of gas oil and kerosene across the west of Ireland. To date, there have been seventeen convictions involving ten undertakings and seven individuals. A *nolle prosequi* was entered in six cases. A case remains outstanding in relation to one defendant.

DPP -v- Pat Hegarty

Pat Hegarty is the last remaining defendant in the heating oil investigation. The status of the case remains the same; a date is still awaited for hearing this case before the Supreme Court.

Cartel Immunity Programme

The potential penalties for individuals and companies who commit hard-core offences under the Competition Act 2002 include substantial fines and prison terms. Individuals and companies who face liability for such behaviour may consider availing themselves of the opportunity to obtain immunity from prosecution under the *Cartel Immunity Programme*, which is operated jointly by the Competition Authority and the Director of Public Prosecutions ("DPP"). Being the first individual or company to report cartel activity, to co-operate fully and provide complete and full information to the Competition Authority and the DPP, may offer substantial benefits. These may include avoidance of criminal prosecution, immunity from jail terms and substantial fines, and avoidance of ancillary penalties such as being barred from serving as an officer or director of a company under section 160 of the Companies Act 1990.

Companies which, by a corporate resolution, take full responsibility for the illegal acts of their officers, directors and employees and agree to co-operate with the Competition Authority may qualify for immunity both for the company and for its present and past officers, directors and employees under the Programme. Even if a company does not come forward and take responsibility for its illegal actions, individual employees, officers and directors can still qualify for individual immunity under the *Cartel Immunity Programme* and avoid the possibility of fines and prison terms.

Immunity applications should first be made to the Competition Authority's Immunity Officer, who is an individual unaffiliated with the Cartels Division. The Cartel Immunity Programme hotline number is:

087 7631378

The *Cartel Immunity Programme* includes a marker system, which preserves the possibility of immunity for the first individual or company to apply, and allows others to reserve the possibility of immunity should the first to apply not qualify for immunity. Further information on the Programme can be found on the Competition Authority's website www.tca.ie.

Civil Actions Brought by the Competition Authority

The Competition Authority –v- The Licensed Vintners Association and others

On 24th July 2009, the Licensed Vintners Association ("LVA") and the Vintners' Federation of Ireland ("VFI"), the principal trade associations representing publicans in Ireland, were found to be in contempt of court for implementing a one-year price freeze among their members. The proceedings had been initiated by the Competition Authority in the High Court, on foot of undertakings given previously to the High Court by the LVA and VFI.

The undertakings stemmed from cases taken against the LVA and VFI in 1998, in which it was claimed that certain activities of the LVA and VFI breached Irish competition law prohibiting anti-competitive coordination. Under settlement terms reached between the Competition Authority and the LVA and VFI which were lodged in the High Court, in 2003 and 2005 respectively, each representative association undertook (1) not to recommend to members "*the prices, margins, increases in prices and increases in margins earned on the sale to the public of alcoholic beverages*", and (2) not to

"breach section 4 of the Competition Act 2002" in relation to the price at which alcohol was sold to the public for consumption on licensed premises.

On 1st December 2008, the associations issued a joint press release, announcing "a one year price freeze in drinks prices in pubs with immediate effect"; this committed members to not exceeding the existing price levels that they applied to drinks products over the following twelve months. The announcement took place at a time when general price deflation was expected throughout the economy. The Competition Authority's view was that a freeze in prices, when prices are expected to fall, is as harmful to consumers as an agreement to raise prices in a normal inflationary environment. Moreover, the Competition Authority's resolve to take action with respect to the publicans' associations actions was not driven only by concerns arising solely in the drinks industry. If the price freeze policy adopted by the publicans were to be replicated in other sectors of the economy, consumers and businesses alike would suffer.

The Competition Authority was of the opinion that the coordinated pricing policy breached Irish and EC competition law, and moreover, that it violated the undertakings previously given by the LVA and the VFI. In order to get the case to court as expeditiously as possible, and thus secure cessation of the price freeze prior to the expiry of the one year period, the Competition Authority brought an action for contempt of court, based on breach of the undertakings. Following a hearing on 14th July 2009, Mr. Justice McKechnie in the High Court on 24th July 2009 held that the announcement did indeed breach the first undertaking, namely, not to recommend prices to its members. It was not necessary for the Court to rule on whether there had been a breach of the Competition Act 2002 in the circumstances.

In order to purge their contempt, the LVA and VFI apologised to the High Court; they also undertook to cease the price freeze with immediate effect, to notify each of their members in writing that the policy had been discontinued and to publish a press release in three Sunday newspapers explaining that the policy had come to an end. The Competition Authority was awarded its full costs in the matter.

The box below (page 22) is an article on the LVA and VFI price freeze. It was written by the Chairperson of the Competition Authority, William Prasifka, and was published in the *Irish Examiner*.

The Competition Authority -v- Beef Industry Development Society (BIDS) and others

On the 3rd November 2009, following the ECJ judgment of 20th November 2008, the Irish Supreme Court gave its judgment by which it held that the Beef Industry Development Society ("BIDS") agreement had infringed Article 101(1) TFEU (ex Article 81(1) TEC). The Supreme Court remitted the case to the High Court to decide whether the conditions of Article 101(3) TFEU (ex Article 81(3) TEC) are satisfied.

The case *Competition Authority -v- Beef Industry Development Society & Another* (2006) IEHC 294 was a civil action brought by the Competition Authority alleging that BIDS had infringed Article 101 TFEU by the plans it adopted for the rationalisation of the Irish beef industry. These plans involved the major players in the industry agreeing to pay those players ("the goers") who would voluntarily leave the industry. In return for that payment, the goers would agree to decommission their plants, refrain from using the associated lands for processing for a period of five years and sign a two-year non-compete clause with regard to processing anywhere in Ireland. The High

Court held that the agreement had neither the object nor the effect of preventing, restricting or distorting competition.

This judgment was appealed to the Supreme Court by the Competition Authority. The appeal hearing began on 7th March 2007 and was suspended on 8th March 2007 after the Supreme Court made a reference to the European Court of Justice ("ECJ") pursuant to Article 234 EC, asking whether an agreement in the form of the BIDS scheme had the object, as distinct from the effect, of preventing, restricting or distorting competition contrary to Article 101(1) TFEU.

On 20th November 2008, the ECJ found that the BIDS agreement has as its object the restriction of competition and thus is incompatible with Article 101(1) TFEU. The judgment states that "*An agreement with features such as those of the standard form of contract concluded between the 10 principal beef and veal processors in Ireland, who are members of Beef Industry Development Society Ltd, and requiring among other things, a reduction of the order of 25% in processing capacity has as its object the prevention, restriction or distortion of competition within the meaning of Article 81(1) EC*".

On the 3rd November 2009, the Irish Supreme Court held that the BIDS agreement had infringed Article 101(1) TFEU.

The Supreme Court has remitted the case to the High Court to decide on whether the conditions of Article 101(3) TFEU are satisfied. An agreement which infringes Article 101(1) TFEU, such as the BIDS agreement, may be allowed under Article 101(3) if four cumulative conditions are satisfied and if the benefits outweigh the negative effects of the agreement. The onus of proof is on the party relying on the defence in Article 81(3). The case is now pending.

Thanks but no thanks: publicans' price freeze is anti-consumer

William Prasifka, Chairperson, the Competition Authority
Published in the *Irish Examiner*, 6th March 2009

On 1 December 2008 the Licensed Vintners Association ("LVA") and the Vintners' Federation of Ireland ("VFI"), the two main trade associations representing publicans in Ireland, issued a joint press release, announcing "*a one year freeze in drinks prices in pubs with immediate effect*." A headline in one of the national newspapers the following day simply read "Cheers". Well thanks but no thanks.

The publicans' associations have tried to portray the coordinated price freeze being adopted by their members as pro-consumer. In their joint press release the publicans claim that the commitment was being made in "*light of the deteriorating economic situation and growing pressure on consumer spending*", and out of a desire by publicans to do their bit. It all sounds quite plausible, doesn't it? To see how consumers are being harmed by this measure, we need to step back for a moment and consider precisely what the deteriorating economic situation implies.

It's simple. Prices are falling. According to the Central Statistics Office prices as measured by the consumer price index fell by approximately 1% between December and January. In this context, any claims that a price freeze will benefit consumers ring hollow. In reality, publicans are likely to be encouraged to resist deflationary pressures in the economy, rather than to reduce prices as competing businesses would normally do. In this way, consumers are denied price reductions which would reasonably be expected in

the current and likely continuing economic circumstances.

The central point about falling prices hardly needs to be laboured but is illuminating nonetheless. Earlier this week the Government announced that energy prices were to be reduced by 10%. The weakening property market means rental values are falling. On top of this, the labour market has softened and wage rates are coming down. All of these are costs for publicans. Falling costs coupled with a price freeze means just one thing – growing margins for publicans.

The Competition Authority's resolve to take action with respect to the publicans' associations announced price freeze is not driven only by concerns arising solely in the drinks industry. If the price freeze policy adopted by the publicans were to be replicated in other sectors of the economy, consumers and businesses alike would suffer. Consumers and businesses should fully expect to benefit from falling prices.

One final point is worth making. The publicans' associations have asserted that the price freeze is not mandatory, and that publicans remain free to set drinks prices in their premises. Nonetheless, their press release described the price freeze as being *"very much member driven"*, was adopted after *"widespread consultation"* and that they are *"committing [their] members to not exceeding the current price levels which they apply to drink products over the next twelve months."* According to the publicans' associations themselves therefore, widespread compliance with the price freeze is expected. The fact that the price freeze has been announced publicly and is claimed to be non-mandatory is therefore largely irrelevant. The effect of it is to limit one of the most important aspects of competition – price and therefore value for consumers.

Given the publicity that this issue has generated and the fact that there has been substantial public comment on it, not least by the LVA and VFI, the Competition Authority yesterday confirmed publicly that it had written to the two trade associations asking that they "cease and desist" their implementation of the coordinated price freeze, or face court action by the Competition Authority. The Competition Authority has called on the LVA and VFI to state in writing whether they intend to comply with the Competition Authority's "cease and desist" requirements by 20th March 2009.

The Competition Authority is taking these steps to safe guard consumers and to help them reap the full benefits of competition. The current economic climate has adversely affected all citizens – is it too much to ask that consumers get a fair share of what is one of the few upsides to our current economic circumstances – price reductions?

Closed Civil Investigations

During 2009 the Competition Authority concluded a number of investigations. The following is a representative sample of complaints alleging anti-competitive behaviour and the action that was subsequently taken by the Competition Authority.

Motor Insurance

The Competition Authority closed a number of investigations during 2009 concerning certain agreements made between motor insurance companies ("insurers") and "approved" motor repairers. The agreements facilitate the repair of insured vehicles by motor repairers who have been approved by

insurance companies. The Competition Authority has concluded that these agreements are not in breach of the Competition Act 2002.

This conclusion was reached on the basis that there is no general obligation under competition law on the insurers to deal with or to approve all repairers in the motor repair market; the insured claimants can still go to motor repairers of their own choosing; and the approved repairer system is intended to benefit the insurer, the approved repairers and the consumers who insure their vehicle. Benefits are thought to accrue in four main ways:

- The insurer selects approved repairers on the basis that the repairers meet various qualitative standards, such as location, reasonableness of costs, competency and consistency of repairs, and quality of customer service and facilities;
- Both the approved repairer and the insurer benefit from reduced administrative overheads through more efficient arrangements for dealing with each other, including preparation and assessment, repair quotes and making and receiving payments;
- The insurer guarantees a minimum flow of work to the approved repairers. Through greater and more stable volumes of work, approved repairers can benefit from lower repair costs due to economies of scale. In return, the insurer obtains a discount on the labour rates it would normally expect to pay a repairer for the repair of the insured claim; and,
- The agreements between insurer and approved repairers ultimately are beneficial for the insured consumers. The main benefit that accrues to consumers is the lower insurance premiums that insurers can charge due to the passing on of cost savings that result from these agreements.

Building Management Systems

During 2009 the Competition Authority closed an investigation relating to the repair and maintenance of building management systems after certain commitments were made to resolve the related complaint. Building management systems are software systems that allow for the central control of heating, ventilation and air conditioning systems in commercial and industrial buildings. Repair of building management systems requires access to controlling software. The alleged infringement related to the conditions of access to this controlling software.

Building management systems products are installed in end users' buildings by "systems integrators". Systems integrators are approved by the building management systems software owner and placed on a panel from which construction contractors can choose. Repairers of building management systems must subcontract systems integrators from the approved panel in order to gain access to the systems. It was alleged that these arrangements restricted control over the quality of the repair and maintenance services for which repairers are accountable and, moreover, the users of the buildings had to incur duplicated costs due to the obligation to subcontract approved systems integrators.

To address this issue, the building management systems software company had proposed to set up an approved repair and maintenance panel for its installed products. The panel members would be known as "maintenance houses". These maintenance houses would be trained to access the building management systems software and avoid the need to subcontract approved systems integrators. This would allow for greater control of repair and

maintenance services and avoid the unnecessary duplication of costs for end users.

The proposal to establish maintenance houses was abandoned and the issue was raised with the Competition Authority by an aggrieved repairer. Following the Competition Authority's investigation of the issue, the building management systems software company gave a commitment to the Competition Authority to reactivate the maintenance house arrangement. This effectively resolved the matter.

Air Travel

In 2009 it was alleged, by a rival airline, that Ryanair was engaging in predatory pricing on flights on the Dublin-Cork route. Predatory pricing occurs when a dominant firm deliberately sells its products or services at a loss in the short term, in order to eliminate its competition and be in a position to charge higher prices in the long term to the detriment of consumers. Predatory pricing is an abuse of dominance and a breach of section 5 of the Competition Act 2002.

As a first step it was necessary to assess whether Ryanair holds a dominant position in the relevant market. Upon an in-depth investigation of all the transport options available on the Dublin-Cork route (including road, rail and bus transport options as well as air transport) the Competition Authority concluded that Ryanair did not have a dominant position during the time period in question. Having adopted this view, Ryanair's conduct could not be considered to be predatory. The Competition Authority accordingly concluded its investigation without any further action.

Guidance on the Application of Competition Law

The Competition Authority published three Guidance Notices ("Notice") and one Enforcement Decision Note ("Decision Note") in 2009, pursuant to section 30(1)(d) of the Competition Act 2002.

The Competition Authority publishes Notices to provide practical guidance for compliance with the Competition Act 2002. The Notices are provided for guidance only. They are not legally binding.

The Competition Authority publishes Decision Notes only on selected investigations that:

- Create a precedent;
- Are of public interest (e.g. the investigation is in the public domain, the issue has been subject to considerable debate and discussion); and
- Raise issues of interest or complexity.

Like Notices, Decision Notes are provided for guidance only and are not legally binding.

Guidance Notice and Enforcement Decision Note on Pay-TV Exclusivity in Apartment Developments

On 14th August 2009 the Competition Authority published a Notice and a Decision Note regarding alleged anti-competitive practices in the provision of pay-TV to apartment developments. The Competition Authority's Decision Note sets out in detail the legal and economic bases for its findings, while the Competition Authority's Guidance Notice is intended to give consumers a

synopsis of the findings in plain English, and to make consumers aware of their rights.

Over the past decade, apartment dwelling has become much more common in Ireland, particularly in Dublin and surrounding counties. In recent years, the Competition Authority has received approximately 200 complaints from residents of apartment developments who have been unable to switch pay-TV provider. Most of these complaints concerned the fact that apartment residents were unable to switch to another pay-TV provider because of exclusivity arrangements, agreed during the building construction phase, between the original pay-TV service provider and the developer.

The Competition Authority conducted an in-depth investigation of this sector and sourced information from a large number of pay-TV providers, construction firms, solicitor firms, other EU Member State competition authorities, local authorities and a number of relevant State agencies in Ireland (including the National Consumer Agency, ComReg, the Law Reform Commission, the Building Regulations Advisory Body and the Property Services Regulatory Authority). Due to the high volume of complaints and the significant amount of data generated by the Competition Authority's investigations, the Competition Authority devoted considerable time and resources to this investigation.

Having gathered and collated all relevant information, the Competition Authority found that exclusivity agreements are unlikely to breach the Competition Act 2002 where they are of no longer than two years' duration. This is because pay-TV service providers incur high sunk costs in installing dedicated infrastructure to apartment developments. In the absence of a limited period of exclusivity, no service provider may wish to take the risk of installing infrastructure without a guaranteed revenue stream. The Competition Authority indicated that, where agreements are of longer than two years' duration, they will be assessed on a case-by-case basis. Furthermore, the Competition Authority indicated in its Guidance Notice that it will continue to advocate in favour of legislative and regulatory steps which can be taken to facilitate competition in the provision of pay-TV to apartment developments.

Following the publication of its Guidance Notice and Decision Note, the Competition Authority has continued to examine instances where pay-TV exclusivity at certain apartment developments may be anti-competitive.

Guidance Notice in respect of Collective Action in the Community Pharmacy Sector

On 23rd September 2009 the Competition Authority published a "*Notice in respect of Collective Action in the Community Pharmacy Sector*". The Notice provides guidance on the application of Irish and European competition law to collective action by community pharmacy contractors, and other healthcare professionals, when engaging with the Health Service Executive ("the HSE"). In particular, the Notice clarifies the limits competition law places on co-ordinated action by self-employed health professionals in relation to key competitive factors such as fees.

The Notice was published in the context of a public consultation launched by the Competition Authority, in October 2008, into collective action in the healthcare sector. The Competition Authority issued the Guidance Notice on the basis of information received from the consultation. The notice restates the Competition Authority's recommendation of the adoption of the "messenger model" for the setting of contractual terms and conditions.

The Notice also takes into account the Hickey Judgment¹⁶ and the *Financial Emergency Measures in the Public Interest Act 2009* ("the 2009 Act"). The Hickey case occurred when a number of pharmacy contractors commenced court actions against the HSE, alleging breach of their agreement with it. The Court found that the HSE was in breach of contract because the Minister for Health and Children was obliged to consult (not negotiate) with the Irish Pharmacy Union, in advance of unilaterally setting the rates of payment. The Court further found that this obligation to consult was not contrary to section 4(1) of the Competition Act 2002 on the basis that there was no obligation to negotiate.

Pursuant to the 2009 Act, the Minister for Health and Children may, with the consent of the Minister for Finance, unilaterally reduce the fees paid to health professionals in respect of services provided. The Minister for Health and Children may choose to consult with representatives of health professionals or others prior to reducing the payment rate, however, it is expressly stated that nothing in the Competition Act shall prevent participation in such consultations.

Guidance Notice on Activities of Trade Associations and Compliance with Competition Law

The Notice on Trade Associations, published on 9th November 2009, informs the business community and trade associations about the limits that competition law places on joint or coordinated action by competitors.

The Competition Authority has investigated cases where trade associations have been used to restrict competition, either by coordinating such activity or by providing competitors with the opportunity to meet and form anti-competitive agreements. Indeed, in relation to the Competition Authority's investigation and subsequent prosecution of certain cartel cases by the DPP, it transpired that trade association meetings provided a convenient forum for illegal price fixing agreements amongst its members. Criminal convictions have been secured relating to price fixing activities by the Connaught Oil Promotion Federation, Irish Ford Dealers Association and the Citroën Dealers Association. In all three cartels, trade association meetings were used as the venue for price fixing agreements between competitors. As already mentioned, the Competition Authority also brought contempt of court proceedings against the two publican trade associations, the Vintners' Federation of Ireland and the Licensed Vintners Association.

Due to the concerns of the Competition Authority in this regard, the Notice addresses the application of competition law to a range of activities of trade associations and its members. The types of activities featured in the notice include:

- Coordination on pricing;
- Coordination on market allocation;
- Collective boycotts and collective negotiations;
- Participation in anti-competitive meetings; and,
- Information exchange.

The Notice identifies those forms of coordinated horizontal conduct which are absolutely prohibited by competition law, as well as forms of conduct which

¹⁶ *Hickey and others v HSE [2007] 180 COM judgment of 11th September 2008*

the Competition Authority considers to be of considerable concern. Within the category of coordinated activities, it is firmly established that there are certain practices which are absolutely prohibited – such as price fixing – as well as many practices which may have an anti-competitive effect, and are thus prohibited. The Notice is intended to provide some insight into the enforcement priorities of the Competition Authority in this area, and to place interested parties on notice of when the Competition Authority may be expected to take enforcement action.

During 2010 the Competition Authority will raise awareness among trade associations of the competition compliance risks raised by their activities through a series of presentations based on this Notice.

Use of Enforcement Powers

In order to assist its investigations of alleged breaches of the Competition Act 2002, the Competition Authority may under section 31 issue a summons and/or under section 45 apply to the District Court for search warrants. During 2009 the Competition Authority obtained and executed three search warrants in relation to ongoing investigations into allegations of anti-competitive behaviour (see Table 3). These search warrants were executed by authorised officers of the Competition Authority. Assistance was provided by the Garda Bureau of Fraud Investigation and local members of An Garda Síochána.

In addition, the Competition Authority issued 24 witness summonses during the year. The Competition Authority can issue summonses to compel witnesses to attend before it, give evidence under oath and/or produce documents. Failure to comply with a summons is an offence under section 31 of the Competition Act 2002.

Table 3: Use of Enforcement Powers

Enforcement Power	2009	2008	2007	2006	2005	2004	2003	2002
Search Warrants	3	7	10	9	42	24	21	18
Summonses	24	40	18	38	46	58	69	56

Table 4: Investigation & Enforcement Powers of the Competition Authority

Investigation & Enforcement Powers	Description
Types of Investigations	<ul style="list-style-type: none"> ▪ Criminal investigations ▪ Civil investigations ▪ Assessment of Mergers
Entry and Search	<p>Authorised officers of the Competition Authority can enter and search any premises or dwelling with a warrant issued by the District Court.</p>
Seize Evidence	<p>Authorised officers of the Competition Authority can seize documents/records on foot of a warrant issued by the District Court.</p>
Summon Witnesses	<p>The Competition Authority can summon a witness to attend before it to be examined under oath and can require production of records and information from that witness.</p> <p>Witnesses have the same immunities and privileges as a witness before the High Court.</p> <p>Non-compliance is a criminal offence.</p>
Concluding Investigations	<ul style="list-style-type: none"> ▪ Criminal prosecution (on indictment) – Brought by the DPP in Central Criminal Court 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 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) – Injunctive and declaratory relief. ▪ Civil Action (by injured parties) – Injunction, declaratory relief and damages.

Private Actions under Section 14 of the Competition Act 2002

There has recently been some private actions alleging breaches of either section 4 and/or 5 of the Competition Act 2002 or of Articles 101 and/or 102 TFEU (ex Article 81 and 82 TEC), taken in the Irish courts. The Competition Authority welcomes this development.

Although not strictly speaking part of the Competition Authority’s work, an important aspect of competition law is the ability given to private plaintiffs by

section 14 of the Competition Act 2002 to bring a civil action alleging a breach of section 4 or 5 of the Act.

Section 14 states that "*any person who is aggrieved in consequence of any agreement, decision, concerted practice or abuse which is prohibited under section 4 or 5 shall have a right of action.*" That right of action allows an injured party to recover damages as well as to seek declaratory and/or injunctive relief in the courts.

Private actions help to bring clarity to the law and can compensate persons who have suffered loss or damage through the anti-competitive activity of undertakings. They support the public enforcement of competition law by providing an additional deterrent to anticompetitive behaviour.

3. EVALUATION OF MERGERS AND ACQUISITIONS

Mergers are a mechanism used by businesses to restructure in order to compete and prosper. However, some mergers can have a negative effect on consumer welfare by, for example, leading to an increase in price or a reduction in output. That is, they substantially lessen competition and consumers (including businesses) suffer.

Mergers over a certain financial threshold must be notified to the Competition Authority. The Competition Authority aims at all times to make sure that we review mergers in a timely manner so that good mergers are not held up. At the same time, the Competition Authority actively protects the interests of consumers and has the power to block mergers where it finds that it will lead to a "substantial lessening of competition".

In 2009 the Competition Authority reviewed 27 mergers and acquisitions notified to it and completed reviews of two transactions carried forward from 2008. The decline in the number of transactions notified to the Competition Authority – compared with 38 in 2008, down from 72 in 2007 – is not surprising given the economic downturn within Ireland and globally, and the much tighter credit conditions pertaining since September 2008.¹⁷

The Competition Authority's 2008 determination, in *M/08/009 Kerry/Breeo*, to block the proposed acquisition of Breeo Foods Limited and Breeo Brands Limited by Kerry Group plc. was overturned on appeal to the High Court in 2009. This was the first ever appeal to the High Court on a merger determination of the Competition Authority, and it raised some interesting points of law. The Competition Authority then appealed the decision of the High Court to the Supreme Court, where the matter has not yet been heard.

In 2009 the Competition Authority also made a number of improvements to its notification procedures, processes and interactions with stakeholders following a stakeholder survey commissioned by the Authority in 2008.

Stakeholder Survey

In 2008 the Competition Authority commissioned Drury Research to undertake a survey of stakeholders in order to obtain feedback on the Competition Authority's: (i) merger procedures; (ii) investigation process; (iii) published determinations; and (iv) guidance and advice on merger provisions and procedures. Drury Research delivered its report to the Competition Authority in the first quarter of 2009.

The survey highlighted various positive features of the Mergers Division's processes and people, such as:

- Professional and responsive staff;
- Approachable and helpful staff;
- Efficiently-run division; and

¹⁷ As reported last year, the decrease relative to 2007 and previously can also be partly attributed to (i) the Competition Authority's reinterpretation of the "carries on business" notification threshold to mean for undertakings without a physical presence on the island, sales must be at least €2 million into the island in the most recent financial year, Decision No. N/02/003 *Notice in respect of certain terms used in Part 3 of the Competition Act 2002 (As amended, 12 December 2006)*, available on the Competition Authority's website, www.tca.ie; and (ii) the amendment by Ministerial Order S.I. 122 of 2007 of the compulsory notification criteria for mergers involving media businesses.

- Procedures in line with international best practice.

Also highlighted by the survey were specific areas for possible improvement in performance, including:

- Greater use of pre-notification procedures and more open and meaningful dialogue to better enable merging parties (and also third parties) to provide necessary information;
- Earlier engagement with parties once a notification has been received;
- An increase in Mergers Division Case Officers' knowledge of markets and sectors to enable a more practical business approach to reviewing notified transactions;
- An updated and simplified Mergers section of the Competition Authority website; and
- A more concise and updated merger notification form.

Survey respondents also expressed concern about the low number of staff in the Mergers Division, and its implications for the performance of the Mergers Division particularly, for example, in the event of a number of simultaneous notifications.

The Competition Authority has always endeavoured to maintain high levels of performance in merger review, and where possible to improve performance while at the same time preserving the integrity of the Authority's merger review function. The Competition Authority's Strategy Statement 2009-2011 highlights the Authority's commitment to implementing desirable changes identified by such surveys.

In 2009 the Competition Authority:

- Increasingly used pre-notification processes as a means to identify early those issues for which particular or additional information may be required;
- Introduced mechanisms to ensure that notifications are analysed upon receipt without any undue delay and processed expeditiously thereafter. The time period for Phase 1 determinations has reduced in 2009 to 22 days on average compared to an average time of 27 days for the preceding five year period;
- Increased contact with parties during the merger review process, in particular, through greater use of site visits;
- Provided training for Competition Authority staff to better understand the merger process from the perspective of merging parties; and
- Improved the "Mergers & Acquisitions" section of the Competition Authority website by:
 - Distinguishing between statutory documents and Competition Authority documents;
 - Including website links to relevant legislation and guidance documents; and

- Distinguishing between those notifications currently under review and those already decided.

The Competition Authority will continue to seek to maintain and improve performance in relation to the above issues in 2010 and into the future.

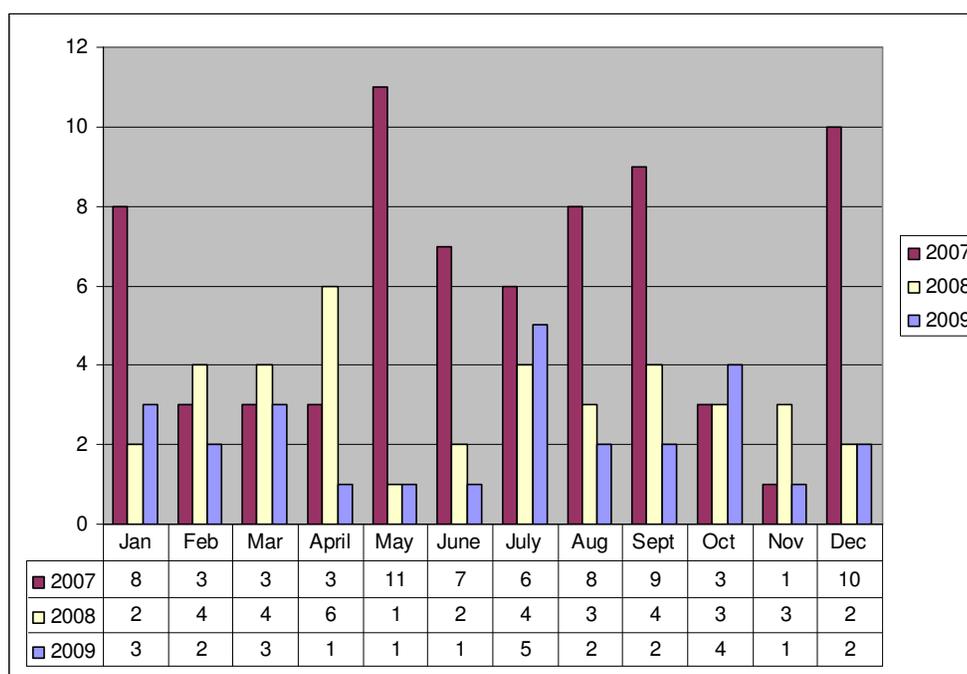
The Competition Authority did not address the question of revising notification forms or merger review guidelines in 2009. It does not propose to conduct a review of notification forms and merger review guidelines until the legislation on the amalgamation of the Competition Authority and the National Consumer Agency has been published.

Merger Notifications during 2009

Mergers involving parties that meet the monetary thresholds specified in the Competition Act 2002 must be notified to the Competition Authority for evaluation. However, certain mergers involving media businesses must be notified regardless of their turnover.

The number of mergers and acquisitions notified to the Competition Authority decreased slightly in 2009 relative to previous years. It is possible that merger activity may increase in the event of global and/or domestic economic recovery, and also given greater certainty arising from the establishment of the National Assets Management Agency (NAMA).

Figure 1: Monthly comparisons of the notifications received by the Competition Authority for the period 2007 to 2009



Appendix B contains a full list of mergers notified to the Competition Authority in 2009. The following are various statistics regarding the Competition Authority's evaluation of mergers and acquisitions in 2009:

- 27 mergers were notified to the Competition Authority;
- The Competition Authority also finalised its work on two transactions which were notified in 2008 and whose deadlines extended into 2009;

- All transactions were analysed within the statutory time period;
- 23 of the 27 merger notifications received during 2009 were cleared during the initial (Phase 1) investigation, usually within one calendar month;
- Three merger notifications were carried forward into 2010;
- The Competition Authority initiated one full (Phase 2) investigation in 2009, following which the merger was approved subject to conditions; and
- 2009 saw a decrease in the notification of mergers involving media businesses. There were two such mergers notified to the Competition Authority in 2009, compared with five notified in 2008.

Appendix C provides more detailed statistics on mergers evaluated between 2007 and 2009.

Mergers Requiring a Full (Phase 2) Investigation

The Competition Authority must carry out a detailed examination (Phase 2 investigation) of a transaction, if after a preliminary investigation (Phase 1) it has been unable to conclude that the transaction would not "substantially lessen competition". In 2009, the Competition Authority initiated one Phase 2 investigation described below.

Metro/Herald

On 17th July 2009 the Competition Authority received a notification of a proposed transaction - *M/09/013 Metro/Herald AM* - whereby Irish Times Limited ("ITL"), DMG Ireland Holdings Limited ("DMG") and Independent Newspapers (Ireland) Limited ("Independent"), the publisher of *Herald AM*, would acquire joint control of Fortunegreen Limited ("Fortunegreen"), the publisher of *Metro*. At the time of the notification, Fortunegreen was controlled by ITL and DMG, each with a 45% shareholding, and by Metro International which held a 10% shareholding.

The relevant market affected by the proposed transaction was the market for display advertising in daily paid-for and free newspapers in the Greater Dublin Area ("GDA"). In this market, *Metro* and *Herald AM* were each other's closest competitor, but both also faced competition from paid-for newspapers in the GDA particularly *Evening Herald* and *The Independent*.

The Competition Authority concluded that three competition concerns would likely result from the proposed transaction, these were:

- The ability of Fortunegreen to compete effectively in the market for display newspaper advertising in the GDA may be diminished;
- A forum would be created that could enhance the potential for coordination between the shareholders of Fortunegreen; and
- A forum would be created that could enhance the potential for coordination between Fortunegreen and its shareholders.

On 2nd November 2009, ITL, DMG, Independent and Fortunegreen submitted proposals, in accordance with section 20(3) of the Competition Act 2002, to address the competition concerns arising from the proposed transaction. The parties have undertaken that the shareholders will direct Fortunegreen to

operate the New Free Newspaper as an independent competitor of the shareholders' other newspapers; in particular the parties undertake that:

- The management of Fortunegreen will make decisions in respect of certain competitive parameters without requiring the approval of the shareholders or their representatives on the Board;
- The parties undertake that the directors nominated to the Board of Fortunegreen will not have day-to-day responsibility for the advertising function of any daily newspaper sold in the GDA; and
- Certain information in respect of their own business activities will not be exchanged between the shareholders or between the shareholders and Fortunegreen.

The Competition Authority determined that the proposals, summarised above, would be appropriate and effective to address its concerns.

Mergers involving media businesses

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 blocked by the Minister for Enterprise, Trade and Employment on public interest grounds.

Since 21st March 2007, when S.I. No. 122 of 2007 came into effect and narrowed the scope of the media mergers to be notified:¹⁸

- There has been a reduction in the number of mergers involving media businesses notified to the Competition Authority - from 22 in 2006, 17 in 2007, five in 2008 to two in 2009; and,
- All mergers involving media businesses notified since 21st March 2007 have had a material link to the State.

Two media mergers were notified in 2009:

- *M/09/013* - *Metro/Herald AM* involved the acquisition of print publications; and,
- *M/09/003* - *Communicorp/Boxer Sweden* involved digital terrestrial television and radio.

Both were cleared by the Competition Authority by the end of the year. No order was made by the Minister for Enterprise, Trade and Employment during 2009 either to carry out a full investigation under section 22 of the Competition Act 2002 or to prohibit a media merger from being put into effect.

¹⁸ As reported last year, Statutory Instrument (S.I.) No. 622 of 2002, under section 18(5) of the Competition Act 2002, specified all media mergers as being a compulsorily notifiable "class" of merger, even if the financial thresholds for mandatory notification set out in section 18(1)(a) of the Competition Act 2002 were not met. The class of merger specified in S.I. No. 622 of 2002 had the effect of causing many mergers to be notified that had little or no material link to the State, and in some cases, no practical link with media businesses at all. On 21st March 2007, S.I. No. 622 of 2002 was revoked by S.I. No. 122 of 2007. This Order requires the notification of: (i) all mergers or acquisitions in which two or more of the undertakings involved carry on a "media business" in the State; and (ii) all mergers or acquisitions in which one or more of the undertakings involved carries on a "media business" in the State and one or more of the undertakings involved carries on a "media business" elsewhere.

Credit Institutions Financial Support Act 2008

The *Credit Institutions (Financial Support) Act 2008* provides that some proposed mergers and acquisitions involving credit institutions¹⁹ must be notified to the Minister for Finance instead of to the Competition Authority. The Mergers Division has worked closely with the Department of Finance during 2009 to ensure that the Competition Authority is able to discharge its functions under the *Credit Institutions (Financial Support) Act 2008* in an effective manner, if so requested by the Minister for Finance. However, no such request for advice was received by the Competition Authority in 2009. In addition, with respect to competition matters arising in the Irish banking sector which fall within the jurisdiction of the European Commission, the Competition Authority has and will continue to provide assistance to the European Commission's work.

Appeal to the Supreme Court on Kerry Foods Decision

On 28th August 2008 the Competition Authority made a decision to block the acquisition of Breeo Foods Limited and Breeo Brands Limited (Breeo) by Kerry Group plc (Kerry) - *M/08/009 Kerry/Breeo*. Kerry successfully appealed to the High Court which, on 19th March 2009, annulled the Competition Authority's decision to block the acquisition.

On 7th April 2009 the Competition Authority appealed the High Court decision to the Supreme Court. The appeal was in accordance with section 24(9) of the Competition Act 2002, which specifies that an appeal to the Supreme Court may only be made on a question of law. The matter has not yet been heard by the Supreme Court.

¹⁹ This requirement applies to credit institutions meeting the criteria set out in section 7(1) of the *Credit Institutions (Financial Support) Act 2008*. The 2008 Act does not therefore remove the Competition Authority's jurisdiction.

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 is used 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 turnover of the undertakings involved. Each of the undertakings involved must have annual financial turnover of at least €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.

Pre-notification (optional)

Parties to a transaction may contact the Competition Authority in advance of formally notifying a merger. Pre-notification discussions can assist parties in preparing a Notification Form, and offer parties the opportunity to provide an introductory explanation about the nature of competition in the relevant industries or sectors concerned.

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.

Full investigation (Phase 2)

The Competition Authority may carry out a full (Phase 2) investigation where it is unable to determine after a preliminary examination that a merger will not lead to a "substantial 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 is conducted.

Assessment

During a Phase 2 investigation, if 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 concerns and allows the parties to respond to them.

Appeal to the Courts

If a merger is prohibited, the parties have one month to decide if they wish to appeal to the High Court. The Court may annul the Competition Authority's determination, confirm it, or confirm it subject to modifications.

4. PROMOTING COMPETITION IN IRELAND

The Competition Authority also has a duty to promote competition in the economy. Competition can be restricted by State laws, regulations or administrative practice. This means that consumers do not get the benefits of competition. If the Competition Authority finds that the State is restricting competition unnecessarily it makes recommendations for reform.

To fulfil its function of promoting competition, the Competition Authority also raises awareness of the role of competition and its benefits, and advises public policy makers on the implications for competition of existing and proposed legislation, regulations and other relevant decisions.

In 2009, the Competition Authority published two reports on competition. The reports examined the import and distribution of products for retail sale, and the general medical practitioner profession. The report on General Medical Practitioners is part of a series of major studies on competition in eight professions. The Competition Authority has made numerous recommendations to improve competition in these sectors and, in 2009, continued to successfully advocate for implementation of these recommendations.

In 2009, the Competition Authority also fulfilled its role of promoting competition by:

- Making submissions to Government Departments and other bodies, often by way of responses to public consultation processes;
- Speaking on radio and TV about competition issues;
- Publishing a series of booklets offering guidance on competition law and policy; and
- Designing a "Bid-rigging Road Show" which raised awareness among public procurers of the harm caused by bid-rigging and the role of the Competition Authority in investigating suspected bid-rigging.

Identifying Public Restrictions on Competition

Public restrictions on competition often force consumers to pay more for services. They increase business input costs, making business less competitive. They allow sheltered sectors of the economy to free-ride on exposed sectors, and reduce productivity and growth in the economy as a whole. Therefore, identifying and removing public restrictions on competition is of utmost importance. The end result of public restrictions is the same as with private ones - less value for money, less choice for consumers and higher costs to both consumers and business.

Submissions

In 2009, the Competition Authority continued to raise awareness and call for the removal, amendment or avoidance of anti-competitive laws and regulations through submissions to Government Departments and State bodies in response to public consultation processes.

For example, the Competition Authority made a submission in response to a call for submissions by the Tánaiste and Minister for Enterprise, Trade and Employment on her intention to introduce a *Code of Practice for Grocery Goods Undertakings*. The Competition Authority questioned the rationale for

introducing the proposed Code of Practice and suggested an alternative approach that might be more effective than a Code of Practice.

Much of the conduct at issue in the proposed Code of Practice is already prohibited by legislation. The Competition (Amendment) Act 2006 was enacted to prevent the following practices in the grocery trade:

- Attempts to impose resale price maintenance;
- Discrimination by dissimilar conditions equivalent transactions in the sector;
- Compelling or coercing payment or allowances for advertising or display of goods; and,
- "Hello money" to new extended retail outlets or outlets under new ownership.

The Competition Authority pointed out that such conduct is only prohibited where it has as its "*object or effect the prevention, distortion of competition*". The Authority's submission suggested some novel remedies to assist and incentivise plaintiffs to bring such private actions. These included removing a fault requirement in a follow-on action by a private plaintiff, limiting the exposure to costs of a plaintiff if the plaintiff loses the private action, and allowing for the possibility of double damages to plaintiffs. Double damages would act as a deterrent to would-be offenders whilst also encouraging plaintiffs to take otherwise expensive actions in court.

The Competition Authority also made a submission to the Department of Health and Children regarding resource allocation in the health sector. The Competition Authority identified a number of issues relating to the efficient allocation of resources in three health care professions, namely: optometry, dentistry and pharmacy. It drew specific attention to a number of recommendations it had previously made in its reports on the dental and optometry professions which would bring efficiencies but have not yet been implemented.

The Competition Authority also made a submission to the Commission for Taxi Regulation following the publication by the Commission of the *Economic Review of the Small Public Service Vehicle Industry*. The Competition Authority highlighted the need for the Commission to make potential entrants to the market more aware of general market conditions e.g. average hours worked and potential earnings.

Copies of these submissions are available from the Competition Authority's website (www.tca.ie).

Complaints

The Competition Authority receives a large number of complaints from businesses and members of the public about perceived public restrictions on competition. In many cases, it turns out on inquiry that a public body is, in fact, imposing a *proportionate* restriction on a market or indeed a pro-competitive solution to further another public policy goal. A public body's actions nevertheless still have the potential to negatively affect competition, and the Competition Authority can be in a position to suggest appropriate solutions. The box below gives some illustrative examples of complaints of this type received by the Competition Authority in recent years and the action taken.

Sample Complaints

Tour Buses

A tour bus company complained that it was being disadvantaged by a Local Authority's allocation of bus bays for day tour operators.

All potential customer footfall for the tour operators came from the same direction. As a result, the first parking space "Bus Bay 1" was the most advantageous in terms of footfall, and the remaining three bays increasingly disadvantageous. There was a rota system in place whereby three bus operators rotated Bays 1, 2 and 3, on a weekly basis – so that the three operators could each have a turn in Bay 1. However, when a new tour bus company came into existence, it was not party to the arrangement and had to use Bay 4 every week. The new company complained to the Competition Authority that it was being disadvantaged by the existing rota arrangement.

The Local Authority originally proposed the rota system as a pro-competitive solution, given the difficult relationships between the operators and the Local Authority and between the operators themselves. The Competition Authority pointed out to the Local Authority that there was no objective justification for maintaining the existing 3-operator rota agreement and that it was having an anti-competitive effect on the new operator. The Competition Authority recommended that the local authority introduce a four-operator rota with identical terms and conditions for each of the operators. The local authority subsequently advised all operators that the rota arrangements would be changed to include all four bus operators.

The Early Childhood Care and Education Scheme

The Competition Authority received a number of complaints from private pre-schools in 2009 in relation to the proposed *Early Childhood Care and Education Scheme* ("ECCE"). The aim of the ECCE is to offer parents a free pre-school year for their children.

Private pre-school owners were unhappy because the Government can set the price that they get for providing the ECCE scheme. They were of the view that the actions of the State had the effect of restricting competition.

The Competition Authority found that it was unlikely that the ECCE scheme breached competition law. However, as part of its advocacy function, the Competition Authority met with officials from the Office of the Minister for Children and Youth Affairs ("OMCYA") to discuss the details of the scheme and issues raised by the complainants.

Having spoken to the OMCYA, the Competition Authority concluded that the scheme as currently constituted did not give rise to any serious competition concerns. There is no obligation on private providers to participate in the scheme, and the decision on whether or not to opt-in will be based on a commercial assessment by each individual provider. Furthermore, it is possible for providers to charge additional fees for children covered by the scheme, where additional services/hours are provided to those children above those specified by the scheme.

The ECCE scheme appears to be a proportionate response to what is generally acknowledged to be an important and worthwhile social policy objective, namely the provision of free pre-school education. Indeed, the feedback received by the OMCYA to date suggests that the vast majority of pre-school providers are happy with the ECCE scheme.

Public Procurement

The Competition Authority often receives complaints from businesses which feel that public bodies are limiting competition by setting overly-restrictive pre-qualification criteria for public sector contracts. For example, it has been argued that turnover thresholds, or the level of insurance cover required by public bodies, have been set too high, with the result that smaller bidders are being excluded.

The Competition Authority contacted a number of Government Departments, local authorities and private consultants to get a better understanding of how pre-qualification criteria are determined. The feedback received showed that there is no formal methodology or guidelines available; rather it is deemed preferable that pre-qualification criteria are determined on a project-by-project basis by procurement experts who are closely involved with the project. The National Public Procurement Policy Unit (NPPPU), whose main role is to disseminate advice and best practice experience on procurement to the Irish public sector, is of the same view. The NPPPU asked the Competition Authority to direct any complaints regarding pre-qualification criteria to the procurement section of the relevant Government Department.

The topic of overly restrictive pre-qualification criteria is very much a two-sided argument. On the one hand, the Competition Authority understands the frustration of, for example, a building contractor being excluded from a public body tendering process because its turnover-threshold rate is slightly lower than the specified rate. On the other, the Competition Authority also understands the position of the public body which, acting in the public interest, wishes to be absolutely sure that all prospective candidates would, if successful, be capable of completing the project. Clearly, pre-qualification criteria should be proportionate to cater for both sides of the argument; however, given the specific nature of each case, it is extremely difficult for the Competition Authority (and beyond our remit), or indeed for Government Departments, to decide what is proportionate and what is not in every individual case. The Competition Authority will continue to monitor this important area in 2010.

Advice on Proposed Legislation, Regulation and Competition Issues

The Competition Act 2002 gives the Competition Authority the specific function of advising the Government, Ministers and Ministers of State about the implications for competition of proposed legislation. In carrying out this function, the Competition Authority regularly highlights competition concerns and seeks to pre-empt any negative consequences for consumers and the economy in general.

In addition to commenting on specific draft legislation and making formal public submissions, the Competition Authority also gives advice to Government Departments and public agencies in other ways and in various formats such as meetings, written communications or combinations of both. In 2009 the Competition Authority advised Government Departments and public bodies on many issues covering a wide range of economic sectors including public transport, energy and waste collection. Competition Authority staff members were also invited to attend consultative group meetings organised by the Department of the Environment, Heritage and Local Government and the Dublin Transportation Office (now the National Transport Authority).

Analysing how Competition Works in Particular Sectors

In 2009 the Competition Authority published two reports that looked at how competition is working in specific sectors of the economy. The reports examined:

- The import and distribution of products for retail sale; and
- The general medical practitioner profession.

Retail-related Import and Distribution Study

The price differential between the Republic of Ireland and Northern Ireland has grown in recent years. A survey conducted by the National Consumer Agency (NCA) in 2008 found that supermarket prices (excluding VAT) in the Republic were on average 21% higher than those in Northern Ireland.

Many retailers in the Republic of Ireland attributed the price differential to higher business costs south of the border, while others cited costs associated with the importation and distribution of goods. For example, some retailers claimed that a substantial portion of the price differential could be explained by suppliers in sterling zones not passing on exchange rate benefits from the fall in the value of sterling.

In response, the Tánaiste and Minister for Enterprise, Trade and Employment asked the Competition Authority to examine how retail goods are imported and distributed. The Competition Authority's Report, published in June 2009, described the supply chain, specifically the distribution of imported goods, and how competition works in the retail grocery, clothing and pharmaceutical sectors.

The Competition Authority found that suppliers frequently charge retailers in the Republic of Ireland more than their Northern Ireland counterparts. However, the Report showed that increasingly cost-conscious consumers are forcing retailers and suppliers to lower their prices. Retailers are pressurising suppliers for better deals and finding alternatives, with food and clothing prices falling as a result (see Figure 2).

The extent and nature of a retailers reaction to changing consumer behaviour depends significantly on the flexibility of the supply chain as well as the level of competition. For example, some resellers of branded clothing are having difficulty renegotiating prices with suppliers, while relatively weak competition at the wholesale and retail level of the Irish grocery supply chain might also be limiting price reductions to consumers.

Apart from import and distribution costs, the Report identified a number of other factors that contribute to the price differential between the Republic of Ireland and Northern Ireland. These include the high cost of doing business, differences in planning conditions, higher disposable incomes and incomplete exchange rate pass-through. Northern Ireland, as part of the UK, also benefits more from economies of scale and centralised distribution systems.

To reduce the price differential, the Report recommended that the Government should tackle factors that raise the cost of doing business in Ireland. Labour, energy and other utility costs, as well as costs associated with professional and other services, contribute to a higher cost of doing business in Ireland. The Competition Authority also recommended the reform of the *Retail Planning Guidelines* to better facilitate new competition to existing retailers in towns in Ireland. It also recommended that the mark-up

paid to pharmacies for medicines under the State's Drugs Payment Scheme should be reduced.

Figure 2: Food and Clothing Prices in Ireland, July 08 – Sept 09



Source: Eurostat HICP Data

General Medical Practitioners

The Competition Authority has, in recent years, carried out a series of major studies on competition in eight professions, to examine how competition works in the professions concerned, and to identify behaviour which, although not necessarily breaching competition law, nevertheless inhibits competition.

Parts I and II of the Competition Authority's report on *General Medical Practitioners* were published in December 2009. The Report identified solutions to improve the supply of GPs in Ireland and to facilitate advertising by GPs.

Ireland is facing a shortage of supply of GP services. The Competition Authority has identified a bottleneck in GP training that is contributing to this problem. The Report found that GP training programmes do not recognise previous hospital training and experience and some GP trainees have to repeat certain training they have already completed.

The Competition Authority proposed that an alternative intensive course could be introduced as a fast-track option for doctors who have already completed relevant hospital-based training. This will result in more GPs being trained as quickly and as cheaply as possible and help alleviate predicted shortages in the supply of GP services. This proposal has been positively received and deemed to be workable by the Irish College of General Practitioners ("ICGP", the training body for GPs in Ireland); however, the issue of funding such a course is a matter currently under discussion by the HSE and the ICGP.

The Report also noted that the Competition Authority had secured the removal of previous restrictions on advertising by GPs that discouraged price competition. GPs have traditionally not been allowed to advertise. For example, a new GP practice could not distribute leaflets advertising their services or prices. In 2008, the Competition Authority advocated that unnecessary restrictions on truthful and informative advertising by GPs should be removed. Subsequently, the Medical Council removed restrictions on advertising in its November 2009 revision of the *Guide to Professional*

Conduct and Ethics for doctors. GPs are now free to advertise their services and prices. If GPs respond to this development, patients should start to see more information about the services available to them and how much they can expect to pay.

The issue of the impact of the GMS system (for GPs treating public patients) will be dealt with in Part III of the Report, to be published in 2010.

Raising Awareness of Competition

One of the Competition Authority's main goals is to foster a culture of competition in Ireland by raising awareness and understanding of the benefits of competition and the Authority's role among policy makers, businesses and consumers. The Competition Authority achieves this goal mainly through speaking opportunities, and media briefings. In 2009, the Competition Authority also produced a series of booklets offering guidance on competition law and policy.

Outreach and Training - Bid Rigging Road Show

The Competition Authority placed a high priority in 2009 on raising awareness of the harm caused by anti-competitive conduct and in particular bid-rigging/collusive tendering cartels. A "Bid Rigging Road Show" was designed by the Cartels Division to create awareness among public procurers of the harm caused by bid-rigging and the role of the Competition Authority in investigating suspected bid-rigging. The Competition Authority gave presentations to individuals involved in public procurement in a number of Government Departments and State Agencies. Procurers were informed of the pitfalls to avoid in tender design and what to look out for in submitted tenders. The attendees included representatives from County Councils, Government Departments, State Agencies, Semi-State Bodies, Universities and other public bodies.

The presentations were well received by attendees and it is planned to expand the Road Show further in 2010.

In addition, the Authority published a booklet in December 2009 entitled "*The Detection and Prevention of Collusive Tendering.*" Details of information booklets published in 2009 are elaborated below.

Speeches and presentations

Members and staff gave speeches and presentations on competition matters to a wide range of audiences throughout 2009. In addition to the Bid Rigging Road Show, speeches and presentations focused on three main areas:

- **The importance of competition in difficult economic times:** Recessions can have a negative affect on competition; businesses are tempted to form cartels and often plead with governments to introduce special measures to protect them from the effects of slower economic growth. However, effective competition is an ally to policymakers in restoring an economy. The Competition Authority spoke about this issue at a number of fora including the Dublin Economic Workshop in Kenmare.
- **Competition Authority output:** The Competition Authority made a number of presentations during 2009 on the findings of the *Retail-related Import and Distribution Study* and earlier studies on the grocery sector that were published in 2008.

- **Competition Policy and the role and functions of the Competition Authority:** Competition Authority staff gave a number of lectures and presentations on competition policy and the role and functions of the Competition Authority to educational institutions including Carlow Institute of Technology, University of Limerick, University College Cork and the Institute of Public Administration.

Appendix D contains a list of speeches and presentations given including those presented on the Bid Rigging Road Show.

Media

Media interviews also raise awareness of competition policy matters and the work of the Competition Authority; indeed they are generally an efficient means of informing the public about competition issues. Competition Authority Members and staff gave a large number of radio and TV interviews in 2009 (see Appendix E). There was particularly strong media interest following the publication of the *Retail-related Import and Distribution Study*; the *General Medical Practitioners* report and the Competition Authority's decision to initiate proceedings against the Vintners Federation of Ireland (VFI) and the Licensed Vintners Association (LVA) following their "price freeze" announcement in December 2008. The Competition Authority also informs the media and public of its activities through press releases.

Information Booklets

As part of its outreach and awareness-raising activities, the Competition Authority published four information booklets in 2009. They provide general information on the role that competition policy and law play in the economy and what to do if you suspect that competition law is being breached:

- ***Competition Benefits Everyone*** shows the benefits that increasing competition brings to consumers, businesses and society in general. The booklet outlines how competition promotes higher productivity and economic growth. Specifically aimed at those involved in public policy, it details how an awareness of competition issues is beneficial when formulating policy. It gives examples of where increased competition has led to better choice for consumers and lower prices, such as in aviation and telecommunications. It also gives examples of areas of the economy where competition is not yet sufficient, along with recommendations on how to promote competition in these areas.
- The ***Guide to Competition Law and Policy for Consumers*** gives information on how competition benefits consumers and how cartels, anti-competitive mergers and abuses of a dominant position harm consumers and the economy as a whole. The booklet gives details of what to do if you suspect the existence of a cartel or other forms of anti-competitive behaviour.
- The ***Guide to Competition Law and Policy for Businesses*** outlines why competition is good for businesses – small, medium and large. As consumers of goods and services, businesses benefit greatly from competitive markets. However, businesses also have obligations under competition law. This booklet gives details of behaviour that is prohibited under Irish and European competition law. It describes some of the warning signs which may indicate that a breach of competition law is occurring and what to do if a business suspects this. It also includes information on the Cartel Immunity Programme.

- ***The Detection and Prevention of Collusive Tendering*** gives information to public procurers on the tell-tale signs of collusive tendering or bid-rigging and how to report it. Bid-rigging is a hard-core cartel offence and is seen throughout the world as one of the most serious breaches of competition law. It carries the strongest penalties, including prison sentences. This booklet gives guidance on some common types of collusive tendering and how to spot them. Just as importantly, it details steps that can be taken during the tender process to help prevent collusive tendering occurring. Although aimed at procurement officials working in the public sector the booklet is of interest to all businesses. Anyone involved in either putting projects out to tender, or in bidding for them, will find this booklet useful.

Copies of all these booklets are available electronically from the Competition Authority's website www.tca.ie or by phoning either 01 8045400 or Lo-Call 1890 220 224.

Meetings with Oireachtas Committees

The Chairperson of the Competition Authority met the Joint Oireachtas Committee on Enterprise, Trade and Employment on 1st July 2009 to discuss the performance of the Competition Authority and the manner in which it carries out its functions. The main discussion at the meeting related to the Competition Authority's *Retail-related Import and Distribution Study*, differences in prices between Northern Ireland and the Republic of Ireland, alleged unfair practices in the grocery trade and the planning system. The Chairperson stressed to the Committee the necessity of a reduction in the cost of doing business. In addition, the Chairperson advocated that any person with evidence of unfair practices should contact and inform the Competition Authority. In relation to planning laws, the Chairperson stated that, in line with a previous Competition Authority recommendation, planning laws should be amended so that competition factors are also taken into account.

Previous Recommendations of the Competition Authority

The Competition Authority has published comprehensive reports on twelve sectors of the economy since the year 2000. Those reports made 163 recommendations to Government Departments, public agencies and private sector organisations.

Every year, the Competition Authority continues to advocate for the implementation of these recommendations. At the end of 2009, over 40% of recommendations made since 2000 had been implemented, with a further 30% being progressed or not requiring any action at this time. This is an improvement on 2008; it mainly reflects a number of recommendations that were being progressed in 2008 becoming fully implemented in 2009. The remaining 30% have not yet been implemented. Below is a brief summary of the status of the recommendations in each report.

Of course, the implementation of recommendations does not imply that any sector has achieved a "clean bill of health" from a competition perspective. Markets change over time; recommendations are there to encourage and facilitate competition but do not guarantee it. The Competition Authority will pursue any evidence of cartels, abuses of dominance, and other illegal activities in any sector of the economy, whether it has been subjected to a market study or not.

General Medical Practitioners (2009)

At the time of publication, the Medical Council and Irish College of General Practitioners, respectively, had already agreed to the two recommendations made in the Competition Authority's report.

Retail-related Import and Distribution (2009)

The Competition Authority's report urged the Government to bring down the costs of doing business in Ireland and to reduce the mark-up paid to pharmacies. The latter has been done and the former is a long-term challenge.

Groceries (2008)

The Department of the Environment, Heritage and Local Government is currently reviewing the *Retail Planning Guidelines* and the Competition Authority's seven recommendations were aimed at adjusting these Guidelines to better promote competition.

Veterinary Practitioners (2008)

The Veterinary Council published a new Code of Professional Conduct in November 2009 and in doing so it amended its rules on advertising and touting for business by veterinary practitioners. The Competition Authority will be meeting the Council soon to discuss the new Code in the context of the Authority's two recommendations to the Council to remove all unnecessary restrictions on advertising and touting for business from the Code. The Department of Agriculture has not yet implemented any of the other three recommendations in the Competition Authority's report.

Dentists (2007)

The Dental Council has implemented two significant recommendations in the Competition Authority's report - creating a new profession of clinical dental technician and allowing dentists the freedom to advertise their prices and services. The Department of Health and Children stated in 2007 that it would address the remaining recommendations in the context of a new National Oral Health Policy. This policy has been put on hold by the Department.

Private Health Insurance (2007)

Almost all of the recommendations in the Competition Authority's report have either been fully implemented or proposed in draft legislation by the Minister for Health and Children, or implemented by the Health Insurance Authority.

Solicitors & Barristers (2006)

The Law Society has either implemented or progressed all of the recommendations addressed to it. While the Bar Council has implemented many of the recommendations made to it, the Competition Authority's recommendations to allow direct access to barristers for legal advice and allow barristers to operate in groups have not yet been implemented.

The Minister for Justice, Equality and Law Reform implemented one of the twelve recommendations addressed to him, which was to replace the basic Irish competency requirement with a voluntary system of high level Irish language training. Among the recommendations not yet implemented by the Minister is arguably the most important one in the Competition Authority's

report, i.e. that the legal profession be subject to independent regulatory oversight instead of the current system of (largely) self-regulation.

Optometrists (2006)

The HSE now allows optometrists to provide State-funded eye examinations to children identified at national school exit screening in certain areas of the country; however, this Competition Authority recommendation has not yet been implemented country-wide. The Opticians Board has not yet removed the restrictions on advertising identified in the Competition Authority's report. The Minister for Health and Children has progressed the three recommendations addressed to her by making plans to legislate for the Opticians Board to move into the regulatory framework of the new Health and Social Care Professionals Council.

Banking (2005)

The Financial Regulator, the Irish Banking Federation, the Irish Payments Services Organisation and the Minister for Finance have addressed almost every recommendation in the Competition Authority's report. The remaining recommendations depend on other crucial decisions about the banking sector in Ireland and also the extent of the promotion of electronic methods of payments over paper methods.

Architects (2005)

Most of the thirteen recommendations in the Competition Authority's report have been implemented or are on their way to being implemented, now that there is a new statutory Register of Architects. In 2005, the Minister for the Environment, Heritage and Local Government decided against creating an independent regulator for architects but to instead appoint the largest professional representative body, the RIAI, as the new regulator. However, the Minister did implement other safeguards recommended by the Competition Authority to reduce the likelihood of conflicts of interests, or the perception of conflicts of interests. The RIAI removed restrictions on advertising and the inclusion of actual percentages for fees in draft contracts before the Competition Authority's final report was published.

Non-life Insurance (2005)

The Financial Regulator has addressed all of the recommendations in the Competition Authority's report that it had the power to address. Some recommendations were not implemented by the Regulator as they were overtaken by other events which rendered them unnecessary. In some cases, a recommendation of mandatory information provision to consumers carried a risk of consumer information overload and the Regulator instead made it mandatory for insurance companies and intermediaries to provide this information if requested by the consumer.

Engineers (2003)

There were only two recommendations in this report and neither require any action at this time.

5. INTERNATIONAL WORK

The Competition Authority has fulfilled its EU obligations and maintained an active level of participation in international organisations. The Competition Authority's international role stems primarily from its role, alongside the European Commission and national competition authorities in other Member States, in enforcing European competition law (i.e. the competition provisions of the Treaty on the Functioning of the European Union). The Competition Authority is also Ireland's representative at the Competition Committee meetings of the Organisation for Economic Co-operation and Development and participates in other international fora as a means of promoting best practice within the agency and to maintain knowledge of competition issues that are universal.

European Commission

The Competition Authority is the representative of Ireland for consultations by the European Commission relating to competition enforcement cases and initiatives in competition law and policy. Before adopting a decision relating to an abuse of dominance or a proposed merger, for example, the Commission is required to ask each Member State for its opinion through "Advisory Committees". In addition, the Commission consults with Member States on proposed enforcement practices, guidance, policies and legislation relating to Community competition law and policy. The Competition Authority fulfils this role through attendance at decision-making and other meetings as well as making written and oral contributions to policy and case analyses. The Competition Authority does not attend all meetings but focuses its resources on those cases that impact on Irish consumers and also on the high level meetings that encourage the consistent and efficient application of European law.

In 2009 the Competition Authority attended three advisory committees and acted as rapporteur for one of them.

European Competition Network

Membership of the European Competition Network ("ECN") is compulsory for national competition authorities of Member States. It was established in 2004 to facilitate co-operation in the consistent application of Community competition rules through arrangements for information sharing, assistance and consultation. The objective of the ECN is to build an effective legal framework to challenge companies that are engaged in cross-border practices which restrict competition and are detrimental to consumer welfare.

In 2009 the Competition Authority attended the two types of high level general meetings; the meeting of Directors' General and ECN Plenary meetings. The Competition Authority was also active in four of the five ECN Working Groups and five of the eleven Sectoral Sub-groups.

With regard to Working Groups, the Competition Authority attended meetings of Groups dealing with: Co-operation between Competition Authorities, Exemptions to Vertical Restraints, Leniency and Chief Economists. The Sectoral Sub-groups included: Banking, Health Insurance, Energy, Food, Consumer Issues and Abuse of Dominance.

Organisation for Economic Co-operation and Development

Ireland is a member of the Organisation of Economic Co-operation and Development ("OECD"). The OECD provides a setting for its 30 member governments to discuss economic, social and governance policy issues and experiences. The OECD also acts as an independent source for policy research and analysis. The OECD consists essentially of Committees whose work focuses on a wide range of policy issues. The Competition Committee is responsible for competition policy.

The main objective of the Competition Committee is to protect and promote competition as an organising principle of modern economies, based on the knowledge that vigorous market competition boosts growth and employment and makes economies more flexible and innovative. The Committee also promotes reform by actively encouraging and assisting decision-makers in Government to tackle anti-competitive practices and regulations.

Three times a year the Competition Authority attends 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 Co-operation and Enforcement. Meetings regularly feature "roundtable" discussions on substantive policy issues and member countries are invited to make submissions in advance of the roundtables. In 2009 the Competition Authority made four submissions on:

- i. Competition and Financial Markets;
- ii. Standard for Merger Review;
- iii. Failing Firm Defence; and,
- iv. Generic Pharmaceuticals.

These submissions are all published by the OECD at a later stage, together with a background report by the OECD Secretariat and a synthesis of the discussion.

International Competition Network

The Competition Authority is a member of the International Competition Network ("ICN"). The ICN seeks to provide competition authorities with a specialised yet informal venue for supporting the development of best practice in competition law and policy and addressing practical competition concerns. The Irish Competition Authority is active in four of the ICN's working groups: the Mergers Working Group, the Advocacy Working Group, the Unilateral Conduct Working Group and the Cartels Working Group.

The Competition Authority co-chairs the Mergers Working Group with the Antitrust Division of the United States Department of Justice (US DOJ) and is chair of the ICN Subgroup on Merger Investigation and Analysis. Building on the success of the *ICN Merger Guidelines Workbook*, the Mergers Working Group is currently exploring substantive areas in which to promote recommended practices for merger analysis. During 2009 the Working Group completed final draft recommended practices on competitive effects in mergers analysis, in particular unilateral effects and coordinated effects.

The Competition Authority participated in the ICN's Advocacy Working Group in 2009 and contributed to the drafting of an ICN Market Studies Handbook. This Handbook aims to provide international best practice guidance for conducting market studies and will be completed in 2010.

In the Unilateral Conduct Working Group the Competition Authority made submissions on the refusal to supply questionnaire as well as being active in all other areas of the Working Group.

The Competition Authority is a very active member of the ICN Cartels Working Group. The Cartels Division contributed to the Enforcement Techniques Sub-group as a member of the drafting teams for two Chapters of the Cartels Enforcement Manual; including Chapter 6 on Interviewing Techniques, which was published in 2009, and Chapter 4 on Case Initiation (Revisions), which will be published in 2010. In addition, the Division has provided speakers for discussion panels at the Annual ICN Cartels Workshop and the international criminal conference call series, sponsored by the Sub-group on General Legal Framework.

European Competition Authorities

The Competition Authority is a member of the European Competition Authorities ("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 ("EFTA") 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. The Competition Authority participated in the annual meeting of the ECA in 2009.

6. CORPORATE SERVICES

Finance

The Competition Authority is funded by way of annual grant from the Department of Enterprise, Trade and Employment. In 2009 the Competition Authority's grant was €5.57m following the supplementary budget of April 2009. The Competition Authority's accounts are subject to audit by the Comptroller & Auditor General and the audit of the 2009 accounts is unlikely to be completed until the second quarter of 2010. However, at the time of writing, the provisional, unaudited outturn for 2009 was expenditure of €5.38m. The underspend arose mainly from the existence of a number of vacancies in the second half of the year. The savings identified by the Competition Authority were surrendered to the Department of Enterprise, Trade and Employment.

The Code of Practice for the Governance of State Bodies published in July 2009 provides that State bodies should publish, with their annual reports, their audited annual accounts. Section 42 of the Competition Act 2002 requires the Competition Authority to publish its annual report by the end of February each year, while section 41 of the Act requires it to submit its annual financial accounts to the Comptroller & Auditor General for audit by the end of March each year. It is therefore not possible for the Competition Authority to publish its audited accounts with its annual report.

The Code of Practice also states that in the interests of transparency and good governance, State bodies should publish in their reports details of the salary of the Chief Executive Officer. For the purposes of meeting this requirement the Competition Authority considers its Chairperson to be its Chief Executive Officer. The Chairperson's salary in 2009 was in compliance with Government pay policy and was equivalent to the remuneration of a Deputy Secretary as set out in Appendix 2A of Department of Finance Circular E107/22/06 i.e. €186,891.

Freedom of Information

The Competition Authority received four requests under the Freedom of Information Acts in 2009. All four requests were of a non-personal nature. Of the four requests dealt with: two were granted in full; one was part-granted with access to some documents being refused; and the other was transferred to the Department of Enterprise, Trade & Employment.

Human Resources

2009 saw the introduction by Government of a number of measures to reduce public service staffing levels, including placing a moratorium on recruitment and the introduction of incentivised career break and early retirement schemes. This resulted in the staffing level of the Competition Authority being reduced by nine people in 2009. As a consequence, at the end of 2009 there were 46 people working in the Competition Authority from a sanctioned staff complement of 59.

Customer Service

In 2005 the Competition Authority adopted a Customer Charter as an expression of its commitment to ensuring that its customers continue to receive the highest level of service possible. In 2009, approximately 35% of correspondence requiring action, received by post and electronically, was audited to monitor performance under the Customer Charter. While most

correspondence was responded to in accordance with the charter, regrettably 3% of correspondence received was not acknowledged in accordance with our customer service commitments and 1% of the correspondence received an interim/full response outside the deadline. In light of these results, the Competition Authority will increase the level of correspondence audited in 2010 and welcomes feedback from the public on how we can improve our customer service.

A. COMPETITION AUTHORITY STRUCTURE

Competition Authority Members

William Prasifka

Chairperson

Director of Corporate Services and Monopolies Divisions



Declan Purcell

Director of Advocacy Division



Stanley Wong

Director of Mergers Division



Carolyn Galbreath

Director of Cartels Division



Organisational Structure of the Competition Authority²⁰

	Division				
	Advocacy	Mergers	Corporate Services	Cartels	Monopolies
Members	Declan Purcell	Stanley Wong	William Prasifka	Carolyn Galbreath	William Prasifka
Functions	Study, analysis and advocacy of competition in markets where the State restricts competition and liberalising markets, and public relations	Merger notifications, review and enforcement	Human resource management, finance, legal services, administrative support, ICT	Investigation and prosecution of and enforcement against hard-core cartels under section 4	Investigation and enforcement in abuse of dominance cases and non-cartel (horizontal and vertical) agreements under sections 4 and 5
Divisional Managers	Carol Boate	Ibrahim Bah	Ciarán Quigley	Cormac Keating	John Evans
Legal Advisors			Noreen Mackey David McFadden		
Press Officer	Janet McCoy				
Case Officers	Ciarán Aylward Cathal Hanley Deirdre McHugh Kathryn MacGuill Malachy Fox	Victoria Balaguer Barry O'Donnell Andrew Rae Elisa Ryan		John Burke Thomas Fitzpatrick Catherine Kilcullen Eksteen Maritz Daniel Kenna Joe McLoughlin ²¹ Joseph Walser John Gasaway	Aoife Brennan Anne Ribault O'Reilly John McNally David O'Connell Haiyan Wang
Higher Executive Officers			James Plunkett Sandra Rafferty		
Executive Officers	Pat Downey		Stephen Lalor Elizabeth Heffernan		
Clerical Officers			Laraine Cooper Mark Wilkinson	Stephen Tighe	Sandra Brennan

²⁰ Reflects staff actually working in the Authority on 31st December 2009. There are nine other positions that are temporarily vacant due to career breaks and maternity leave.

²¹ Detective Sergeant Joe McLoughlin is on secondment to the Competition Authority from the Garda Bureau of Fraud Investigation.

B. MERGERS NOTIFIED TO THE COMPETITION AUTHORITY IN 2009

Notification	Economic Sector	Date of Notification	Status
M/09/001 - SGVHT / Naspa	Financial services	13/01/2009	Completed 04/02/2009
M/09/002 - HMV / Zavvi	Operation of stores involved in the retail sale of entertainment products	15/01/2009	Completed 23/01/2009
M/09/003 - Communicorp / Boxer Sweden	Pay-TV and related services sector	16/01/2009	Completed 13/02/2009
M/09/004 - Unilever / TIGI Completed	Hair care products.	13/02/2009	Completed 11/03/2009
M/09/005 - MAHC / HSB	Insurance and Re-insurance sectors	16/02/2009	Completed 05/03/2009
M/09/006 - Mubadala/SR Technics	Aircraft maintenance, repair and overhaul services	11/03/2009	Completed 19/03/2009
M/09/007 - Max / IPC	Insurance and Reinsurance sectors	27/03/2009	Completed 16/04/2009
M/09/008 - Chevron / Texoil	Distribution of Petroleum Products	27/03/2009	Completed 23/04/2009
M/09/009 - Euro / Fresh	Non-alcoholic beverages	08/04/2009	Completed 07/05/2009
M/09/010 - LL / TPD / FIL & FreshMills / Drummonds	1. Agri-business. 2. Manufacture and wholesale supply of fertiliser.	21/05/2009	Completed 18/06/2009
M/09/011 - BFBP / CNCE	Retail Banking Sector	30/06/2009	Completed 23/07/2009
M/09/012 - SRF III / Touax Railcar leasing	Financial services sectors	08/07/2009	Completed 06/08/2009
M/09/013 - Metro / Herald AM	Newspaper publishing and advertising.	17/07/2009	Completed 06/11/2009
M/09/014 - Noonan Services / Federal Security Group	Security services in the UK and Ireland	17/07/2009	Completed 14/08/2009
M/09/015 - Vodafone Ireland / BT Ireland	Telecommunications sector in Ireland	22/07/2009	Completed 21/08/2009
M/09/016 - Tedcastles / Fate Park	Commercial oil distribution and retail oil in Ireland	27/07/2009	Completed 06/08/2009

M/09/017 - IBM Corporation / SPSS Inc.	Information Technology	10/08/2009	Completed 03/09/2009
M/09/018 - C&C Group / Tennent's Business	Production and distribution of beer and other beverages	27/08/2009	Completed 17/09/2009
M/09/019 - J.P. Morgan Ventures Energy Corporation / EcoSecurities	The sourcing, developing and trading of carbon credits.	24/09/2009	Completed 14/10/2009
M/09/020 - Dell / Perot Systems	Worldwide IT Services Sector	25/09/2009	Completed 20/10/2009
M/09/021 - ARAMARK / Veris	The provision of facility management (FM) and property management services in Ireland and the UK.	01/10/2009	Completed 27/10/ 2009
M/09/022 - GSO / ALcontrol Laboratory	Analysis in the environmental testing sector.	07/10/2009	Completed 22/10/2009
M/09/023 - Emerson Electric/Avocent	Information Technology	21/10/2009	Completed 12/11/2009
M/09/024 - Greenstar / Veolia (Ireland)	Waste Management in Ireland	22/10/2009	Active
M/09/025 - Singapore Technologies / Eircom	The electronic communications/telecom munications sector	11/11/2009	Completed 02/12/2009
M/09/026 - State Street Corporation / Mourant Limited	Provision of fund administration services and corporate administration services	14/12/2009	Active
M/09/027 - Apax / Iridium	Provision of logistic and support services to customers in the bio-pharmaceutical industry	17/12/2009	Active

C. STATISTICS ON MERGERS EVALUATED 2007-2009

	2009	2008	2007
Notified Mergers	27	37	72
required notifications [section 18(1)]	27	37	71
voluntary notifications [section 18(3)]	0	0	1
Carried from previous year	2	9	9
carried as Phase 1	2	9	8
carried as Phase 2	0	0	1
Referred from the EU Commission (ECMR Art 9)	0	1	0
TOTAL CASES	29	47	81
of which media mergers	2	5	20
of which entered Phase 2 in year of determination	1	2	3
of which entered Phase 2 in year previous to determination	0	0	1
Cases Withdrawn	0	0	2
Withdrawn at Phase 1	0	0	2
Withdrawn at Phase 2	0	0	0
Determinations Delivered	26	45	70
Phase 1 Determinations cleared without proposals	25	43	64
Phase 1 Determination with proposals	0	0	2
Phase 2 positive Determination without conditions or proposals	0	1	3
Phase 2 Determination with proposals	0	0	1
Phase 2 Determination with conditions	1	0	0
Phase 2 Prohibition	0	1	0
Referral to EU Commission (ECMR Art 22)	0	0	0
Carried to next year	3	2	9
Carried as Phase 1	3	2	9
Carried as Phase 2	0	0	0

D. SPEECHES AND PRESENTATIONS

Title	Forum	Date	Person
The Uniqueness of EC Competition Law and its Enforcement	University of International Business and Economics, Beijing	13 January	Stanley Wong
Abuse of Dominant Market Position	Invited on behalf of the European Commission: EU-China Workshop, EU-China Trade Project, Beijing	14-15 January	Stanley Wong
Merger Control Proceedings	Invited on behalf of the European Commission: EU-China Workshop, EU-China Trade Project, Beijing	16 January	Stanley Wong
Market Definition	Enterprise Ireland, Dublin	20 January	William Prasifka
Competition and Cartels in Public Procurement	Public Affairs Ireland Conference, Dublin	30 January	Carolyn Galbreath
Role & Functions of the Competition Authority	Masters Law Class, University of Limerick, Limerick	09 March	Declan Purcell
Competition in the Legal Profession	Law class, Carlow Institute of Technology, Carlow	12 March	Declan Purcell
Bidding for Public Contracts	Bidding for Public Contracts Seminar, A&L Goodbody, Dublin	25 March	Vivienne Ryan
Detecting Anti-Competitive Practices in Public Procurement	Government Contracts Committee (GCC), Dublin	8 April	Catherine Kilcullen & Eksteen Maritz
Criminalisation of Cartels	International Competition Law Forum, Warsaw	15 April	William Prasifka
Civil Fines Complement Criminal Enforcement	First Law Conference in Association with the Centre for Criminal Justice and Human Rights of UCC, Law Society, Dublin	25 April	David McFadden
Compliance and Risk Management	Lawyer Conference, Hilton Park Lane, London	28 April	David McFadden
Detecting Anti-Competitive Practices in Public Procurement	Eprocurement network, Dublin	14 May	Catherine Kilcullen & Eksteen Maritz
Antitrust in Challenging Times	Association of Corporate Counsel for Europe, Brussels	28 May	Carolyn Galbreath
Criminal Cartels in Ireland	OECD Regional Centre for Competition, Tirana	15-17 June	David McFadden
Vertical Restraints in	OECD Regional Centre for	15-17 June	David McFadden

Ireland	Competition, Tirana		
Merger Remedies: Lessons from Ireland and the EU	Remedies in Merger Control Conference, Turkish Competition Authority, Istanbul	17 June	Stanley Wong
Opening Statement of the Chairperson	Joint Oireachtas Committee on Enterprise, Trade and Employment, Dublin	01 July	William Prasifka
Competition and Cartels in Public Procurement	Public Affairs Ireland Conference, Dublin	09 July	Carolyn Galbreath
Detecting Anti-Competitive Practices in Public Procurement	HSE, Tullamore	10 July	Catherine Kilcullen & Eksteen Maritz
Introducing EU Competition Commissioner Neelie Kroes	Institute of International and European Affairs, Dublin	17 July	William Prasifka
Competition Law in Troubled Economic Times	Irish Centre for European Law: Competition Law Update: Competitive Solutions at a Time of Economic Crisis, Dublin	17 July	Stanley Wong
Role & Functions of the Competition Authority	Department of Enterprise, Trade & Employment, Dublin	19 August	Declan Purcell
Competition Policy in Good Times and Bad – the Role of Competition Advocacy	Annual Lecture - Jamaican Fair Trading Commission, Kingston	10 September	Declan Purcell
Can Competition Replace Regulation?	Public Affairs Ireland Conference: Regulating Ireland - reforming regulatory structures for a new economy, Dublin	18 September	William Prasifka
Concentration of Undertakings	Invited on behalf of the European Commission: EU-China Workshop, 2nd Anti-Monopoly Law Week, EU-China Trade Project, Guiyang	21-22 September	Stanley Wong
Competition Law and Policy in Troubled Economic Times: The European Experience	University of Beijing, Beijing	23 September	Stanley Wong
From Cooperation to Criminality	15th Irish Competition Law Autumn Update 2009, Dublin	01 October	William Prasifka
Jail is the way to go after DPP v Duffy	First Law Debate, Dublin	01 October	David McFadden

What the Competition Authority Expects for Trade Associations: A Cautionary Tale	IBEC Staff Compliance Briefing, Dublin	01 October	Carolyn Galbreath
Competition and Cartels in Public Procurement	Public Affairs Ireland Procurement Course, Dublin	15 October	Carolyn Galbreath
Competition Law and the Agri-food sector	UCC/ICOS Diploma in Corporate Direction (Food Business), Cork	15 October	David O'Connell & Thomas. Fitzpatrick
Competition Policy in Good Times and Bad	Irish Economic Association, DEW Kenmare Conference	18 October	Declan Purcell
Grocery Code of Practice	The Future of Retailing in Ireland, Dublin	22 October	William Prasifka
Detecting Anti-Competitive Practices in Public Procurement	HSE, Tullamore	29 October	Catherine Kilcullen & Eksteen Maritz
Failing Firm Defence - theoretical and practical problems	Office of Competition and Consumer Protection, Warsaw	29 October	Stanley Wong
Retail Chains – Abuse of Buyer Power, The Irish Experience	Office for the Protection of Competition, Brno	11 November	William Prasifka
Sectoral Regulators and Competition Authorities – can we be friends?	OECD/Treasury Workshop, Pretoria	18 November	Declan Purcell
Practice of Investigation and Enforcement in the European Union	Invited on behalf of the European Commission: 5th ASEAN Experts Group on Competition Capacity Building Workshop, Nha Trang	24-26 November	Stanley Wong
Competition Law Enforcement for All Seasons: The Good Times and The Bad Times	UCC Law Society, Cork	03 December	Stanley Wong
Detecting Anti-Competitive Practices in Public Procurement	Civil Service Training and Development Unit, Dublin	09 December	Catherine Kilcullen & Eksteen Maritz
Role and Work of the Competition Authority	Institute of Public Administration Certificate Course in Civil Service and State Agency Studies	10 December	Declan Purcell

E. MEDIA INTERVIEWS

Topic	Forum	Date	Person
Energy Prices	Morning Ireland, Radio 1	6 February	William Prasifka
Vintners price freeze	Breakfast, Newstalk	5 March	William Prasifka
Vintners price freeze	Morning Ireland, Radio 1	5 March	William Prasifka
Vintners price freeze	Red FM, Cork	5 March	William Prasifka
Vintners price freeze	The Last Word, Today FM	5 March	William Prasifka
Current Issues/Priorities	The Smart Money, RTE 2	18 April	William Prasifka
Tesco Price Reductions	Drivetime, WLR	6 May	William Prasifka
Taxis	Prime Time, RTE 1	26 May	Declan Purcell
Retail-related Import and Distribution Study	Morning Ireland, Radio 1	30 June	William Prasifka
Retail-related Import and Distribution Study	TV News, RTE 1	30 June	William Prasifka
Retail-related Import and Distribution Study	Ocean FM	30 June	William Prasifka
Retail-related Import and Distribution Study	Independent News and Media	30 June	Carol Boate
Retail-related Import and Distribution Study	Breakfast, Newstalk	30 June	William Prasifka
Retail-related Import and Distribution Study	LM FM	30 June	Carol Boate
Retail-related Import and Distribution Study	The Last Word, Today FM	30 June	William Prasifka
Retail-related Import and Distribution Study	WLR	30 June	Carol Boate
Retail-related Import and Distribution Study	Northern Sound	30 June	Carol Boate
Retail-related Import and Distribution Study	Drivetime, Radio 1	30 June	Carol Boate
Retail-related Import and Distribution Study	Inishowen Community Radio	1 July	Carol Boate
Retail-related Import and Distribution Study	4 FM	1 July	William Prasifka
Beamish & Crawford	Independent Documentary	7 July	William Prasifka
Taináiste announcement to follow-up on CA recommendations	Lunchtime, Newstalk	21 July	Declan Purcell

LVA/VFI	The Last Word, Today FM	29 July	William Prasifka
Pharmacy Dispute and Competition Law	Morning Ireland, Radio 1	5 August	Declan Purcell
Dentists	Breakfast, Newstalk	6 August	William Prasifka
Pharmacy Margins	Prime Time, RTE 1	6 August	Declan Purcell
Pharmacy Dispute and Competition Law	4 FM – Tom McGuirk	7 August	Declan Purcell
Pharmacy Dispute and Competition Law	The Last Word, Today FM	10 August	Declan Purcell
Pay-TV Decision Note	Down to Business, Newstalk	15 August	David O’Connell
Metro/Herald AM to Phase 2	Independent News and Media	27 August	William Prasifka
General Medical Practitioners Report	Breakfast, Newstalk	16 December	Carol Boate
General Medical Practitioners Report	C103 FM	16 December	Carol Boate
General Medical Practitioners Report	News at One, Radio One	16 December	Carol Boate
General Medical Practitioners Report	WLR FM	16 December	Declan Purcell
General Medical Practitioners Report	UTV Radio	16 December	Declan Purcell
General Medical Practitioners Report	The Last Word, Today FM	16 December	Declan Purcell
General Medical Practitioners Report	TV3	16 December	Carol Boate
General Medical Practitioners Report	TV News, RTE 1	16 December	Carol Boate
General Medical Practitioners Report	Clare FM	17 December	Carol Boate
General Medical Practitioners Report	Country Mix	17 December	Declan Purcell



Competition benefits everyone; businesses and the economy as a whole. It keeps prices and costs down; it improves choice and quality for all and supports economic growth. The Competition Authority is an independent statutory body responsible for enforcing Irish and European competition law. The mission statement of the Competition Authority is "To ensure that competition works well for consumers and the Irish economy".

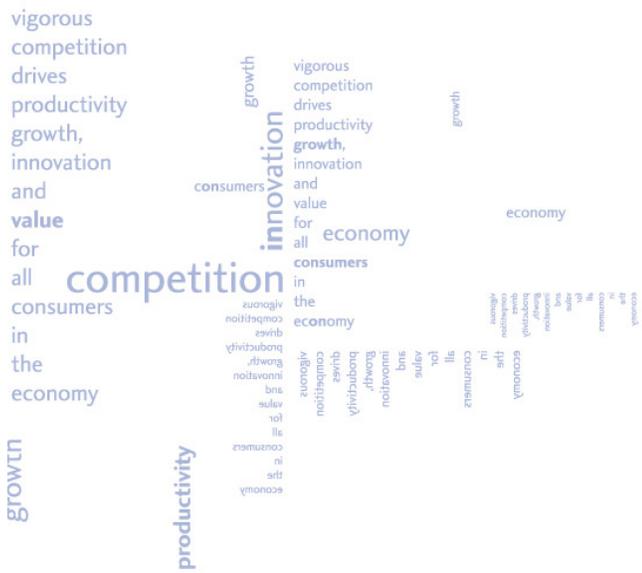
To report anti-competitive behaviour

Locall: 1890 220 224
 complaints@tca.ie
 www.tca.ie/complaints.aspx
 Cartel Immunity Programme hotline: 087 7631378

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