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## ***A MESSAGE FROM THE CHAIRPERSON***

2012 continued to prove challenging for Ireland. Our focus remains firmly on how competition can help to rebuild the Irish economy. Increased competition in the local economy will help improve our competitiveness at a domestic and an international level.

Ireland's changed economic circumstances have led to long-overdue changes in sheltered sectors of the economy, such as the legal and medical professions, based on Authority recommendations.

An increase in staff numbers for the Competition Authority has been sanctioned as a result of Troika requirements, despite a general moratorium on recruitment in the public sector. The Authority has been operating at significantly reduced numbers since the moratorium was put in place in 2009, and we are delighted that we will be able to boost our enforcement activities once the new staff are in place in 2013.

In July 2012 the Competition (Amendment) Act 2012 came into force. This is intended to strengthen the enforcement of competition law and help battle white-collar crime in Ireland. It increases penalties for conviction for competition offences, provides for defendants to pay the cost of Authority investigations and makes it easier for injured parties to take follow-on actions. These changes are a strong signal of how seriously the Government views competition offences. New provisions in this Act also allow the Authority to apply to the High Court to have commitments it has secured following an investigation made an order of the Court. We used this new legislation for the first time in December 2012 when we applied to have commitments given by Brazil Body Sportswear, the distributors of FitFlops in Ireland, made an order of the Court.

2012 saw stability return to the Authority following a period of uncertainty. A two-year spell of temporary leadership changed at the end of 2011 with my own appointment as Chairperson and the appointment of three long-term Members. We are confident this new stability will help to reassure staff and other stakeholders that the agency is entering a period of renewed focus.

In 2008 the Government announced the amalgamation of the Authority with the National Consumer Agency as part of a rationalisation of State agencies. The legislation to enact the amalgamation is expected to be published in 2013. In the meantime, we have been working away behind the scenes with our colleagues in the NCA on amalgamating the two organisations.

Other highlights in 2012 included the final prosecution in the long-running heating oil cartel case. The conviction of Pat Hegarty by a jury in Galway Circuit Court in May brought to 18 the total number of convictions in the case. Earlier in the year the Authority published an enforcement decision relating to the successful outcome of an investigation involving RTÉ. TV3 had complained that the way RTÉ sold advertising was anti-competitive. RTÉ agreed to change their 'share deal' system and signed undertakings to that effect.

In October, the Authority intervened to protect consumers by taking action to prevent the acquisition of Argosy by Eason. They are the only two Irish-based new book

wholesalers. This was the first time the Authority took action in relation to an acquisition that was not notifiable under the mergers provision of the Competition Act.

Work on a new market study into competition in ports began following a request from the Minister for Jobs, Enterprise and Innovation. 2012 also saw us significantly step up our outreach activities, especially among the business community. We hope to continue to build on this in 2013.

Finally, I would like to pay tribute to the staff of the Authority for their continued dedication and hard work throughout the year. They have faced head on all challenges that have come their way, including stepping up to the plate and showing flexibility when resources needed to be reallocated in the organisation during exceptionally busy periods. At a time when public services come in for some criticism, they have much to be proud of.

A handwritten signature in black ink, appearing to read 'Isolde Goggin', with a stylized flourish at the end.

**Isolde Goggin**

**Chairperson, Competition Authority**

# 1. ABOUT THE COMPETITION AUTHORITY

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The Competition Authority is the national agency responsible for enforcing Irish and European competition law. Our responsibilities are to investigate suspected breaches of competition law and take enforcement action where appropriate, to make decisions on whether certain mergers and acquisitions will have a negative effect on competition and to promote competition generally in the economy.

Competition law in Ireland is governed mainly by the Competition Act 2002 (the Act), as amended, and by Articles 101 and 102 of the Treaty on the Functioning of the European Union (TFEU). Unlike most European countries, where competition agencies can themselves decide on breaches of the law and impose penalties such as fines, in Ireland that responsibility lies with the Courts. We investigate suspected breaches of competition law and either take legal proceedings ourselves in Court, or, for serious criminal breaches, send a file to the Director of Public Prosecutions (DPP), who decides whether to take a criminal prosecution on indictment.

In July 2012 the Competition (Amendment) Act 2012 came into force. This piece of legislation increases penalties for competition offences and strengthens the enforcement of competition law in Ireland.

## Benefits of Competition

Healthy competition between businesses has many benefits.

- It gives consumers more choice.
- It ensures consumers get value for money.
- It encourages businesses to innovate by creating new and better products and services.
- It drives competitiveness and economic growth.

Consumers benefit when they have a choice of providers competing for their business by offering better prices and higher quality goods and services. Businesses are consumers too and when consumers benefit from competition, the economy does as well. For example, when input costs, such as waste, electricity or legal services, fall because of greater competition, the overall cost of doing business also falls. This makes Irish businesses more competitive, which supports long-term economic growth.

When there is a lack of competition, for example when there is a cartel, businesses do not compete for customers. In these cases, the consumer suffers because there are higher prices, less choice or lower quality. In the long term, businesses which do not face competition become slack and inefficient, resulting in a loss of innovation and competitiveness for the country as a whole.

Ireland has seen the benefits competition can bring. We know from experience that consumers get more choice, better prices, improved service and more new goods and services when the airline, telecommunications and taxi industries were opened up to competition.

## Competition Supports Economic Growth

In a small open economy like Ireland, the key driver of economic growth is international competitiveness: this is the ability of Irish-based companies to export. By exporting goods and services, businesses in Ireland create wealth and employment.

Competition supports international competitiveness in two ways. The first and most visible effect is by keeping domestic prices down and by providing a greater choice and quality of goods and services. This means that Irish-based companies can produce cheaper, better products that can be more easily exported.

Competition also promotes better productivity as firms strive to improve processes, reduce costs and produce products better suited to changing consumer needs.

Firms also become more productive through innovation. Firms innovate when they develop new and better products or provide services in new ways. Competition is the catalyst that drives innovation and creativity and has brought us exciting new products, like smartphones and generic medicines, and services such as Google and Netflix.

## Our Functions

### Preventing Anti-competitive Behaviour

The Competition Authority has a particular role in preventing anti-competitive behaviour. We are responsible for enforcing sections 4 and 5 of the Competition Act 2002 and Articles 101 and 102 TFEU. The Act gives us the power to investigate breaches of competition law, following a complaint or on our own initiative. It also gives us specific powers of investigation. These include the power to enter and search premises and homes with a search warrant issued by the District Court, the power to seize documents and records, the power to summon witnesses and to require information from third parties.

In Ireland, only a court can decide that competition law has been broken and impose penalties. The Authority does not make those decisions and cannot issue fines or other penalties for anti-competitive behaviour. Prosecutions are usually taken by the DPP following an investigation carried out by us, although we can bring summary prosecutions in the District Court in our own right.

In other cases, where we think competition law has been broken, we will bring a civil case before the courts. Sometimes cases are closed following a settlement with the parties, which involves them agreeing to change their behaviour.

Anti-competitive behaviour can take different forms.

#### *Cartels*

A cartel is an illegal agreement between two or more competitors not to compete with each other. Their aim is to make more profit at the expense of their customers. It means that consumers pay more for goods and services.

During one of the trials in the Citroën dealers cartel case, the following evidence was given from minutes of a meeting of the Citroën Dealers Association:

*“The President appealed to all Dealers to work together in a spirit of communication and co-operation and trust and **to make profit for themselves and not for the customer.**”*

Cartels are illegal throughout the European Union and are recognised throughout the world as the most serious breach of competition law. In Ireland, cartels are hardcore breaches of competition law. Any business or person who is found guilty of a hardcore cartel offence can face serious penalties, including fines and prison sentences.

Detecting, investigating and successfully prosecuting cartels is notoriously difficult and complex. In Ireland, unlike most EU countries, hardcore cartel offences are criminally prosecuted and the burden of proof in court is to a criminal standard. That means the offence must be proved to a judge or jury beyond a reasonable doubt (as opposed to on the balance of probabilities).

#### *Other Anti-competitive Agreements*

Other forms of anti-competitive agreements, where the purpose or effect of the behaviour is less obvious, are sometimes referred to as non-hardcore agreements.



These can be between:

- Competitors – agreements which may have an anti-competitive effect but do not relate to price-fixing, market-sharing, limiting production or bid-rigging. These agreements may involve, for example, sharing commercially sensitive information, certain types of joint venture and restrictions imposed by professional bodies or trade associations on their members.
- Non-competitors – agreements between firms that are not competitors, for example, agreements between firms in a distribution chain, such as manufacturers and distributors. Such agreements may be anti-competitive if they unnecessarily restrict a company's behaviour, for example, dictating the price at which a retailer must sell or the customers to whom they may sell.

The Authority's objective is to get the parties involved in these forms of anti-competitive agreements to agree to stop the problematic behaviour. If necessary, we can go to the High Court to seek orders requiring them to do so.

### *Abuse of Dominance*

Businesses that hold a powerful position in relation to their competitors and their customers are not allowed to behave in ways that are anti-competitive. Holding a dominant position is not illegal. However, if a business tries to eliminate its competitors or to stop new competitors emerging by abusing its dominant position, this is a breach of competition law.

Conduct that may be considered abuse by a firm in a dominant position includes:

- Predatory pricing – selling a product or service at a very low price, intending to drive competitors out of the market, or intending to create barriers to entry for potential new competitors.
- Exclusive dealing – where a retailer or wholesaler is obliged to buy most or all of a product or service from a single dominant supplier.
- Tying – making the sale of one good conditional on the purchase of a different good from the dominant supplier.
- Refusal to supply – refusing to supply products or services to another company as a means to eliminate competition.

As is the case with non-hardcore anti-competitive agreements, in abuse of dominance cases we will generally try to get the firm involved to agree to stop its anti-competitive behaviour. If we cannot get them to comply voluntarily, we can take the firm to Court.

### **Private Enforcement of Competition Law**

The Competition Authority cannot get back money for victims of cartels or other anti-competitive behaviour. Anyone harmed by anti-competitive behaviour can bring a private civil action in court under Irish law seeking redress, including damages. The new Competition (Amendment) Act 2012 makes this easier (see p.23).

### **Reviewing Mergers and Acquisitions**

Mergers between companies take place when they combine their business activities to create a larger company. An acquisition is where one company buys all or part of another company. Some mergers or takeovers may be good for consumers, some may be bad for consumers and some may have no real impact on consumers at all.

- Good mergers and acquisitions lead to a more efficient business that passes on some cost savings to consumers. They can also increase the level of competition in a market.

- Bad mergers and acquisitions lead to a situation where one or more businesses have the power to raise their prices, reduce output, or reduce quality to consumers. They can substantially lessen competition and consumers suffer.

The Competition Authority has to be notified of mergers and acquisitions involving companies with turnover over a certain threshold. We then have the power, after assessing the transaction, to clear a merger or acquisition if it raises no competition concerns, or block it if we find that it will substantially lessen competition and harm consumers. We can also clear a merger or acquisition subject to conditions, where we are satisfied that the conditions we impose will address any competition concerns.

Merger review can involve two phases. Phase 1 is a one month period (unless extended by a request for additional information and/or the submission of proposals to address competition concerns) in which an initial assessment of the transaction is carried out. Around 97% of all mergers are cleared in phase 1. If a merger is more complex, or more time is needed to assess it fully, the merger may go to phase 2. This is an in-depth assessment of the transaction that lasts for an extended period. Following a phase 2 assessment the deal may be cleared, cleared with conditions or blocked. In all cases, the Authority publishes a reasoned determination explaining its decision.

Media mergers are treated slightly differently. All media merger notifications must, in addition to being examined by the Authority, be sent to the Minister for Jobs, Enterprise and Innovation. If we decide to clear a media merger, on the basis that it raises no competition concerns, we must inform the Minister. The Minister can then decide to block the merger on non-competition grounds, such as diversity and plurality of media ownership.

Different rules also apply to mergers involving credit institutions in Ireland under the Credit Institutions (Financial Support) Act 2008 (CIFS Act). A CIFS merger is created when the Minister for Finance certifies in writing to the parties to the merger, the Competition Authority and the Governor of the Central Bank that the merger falls within the remit of the CIFS Act. Once a merger has been certified it must be notified to the Minister for Finance rather than the Authority. While we may have a role, on request by the Minister for Finance, to review and provide assistance in respect of a CIFS merger, we have no jurisdiction to reach a decision on such mergers. In addition, section 54 of the Credit Institutions (Stabilisation) Act 2010 provides that Parts 2 and 3 of the Competition Act 2002 and section 7 of the CIFS Act will not apply to certain actions by the Minister or by appointed "special managers" in relation to relevant financial institutions.

### **Promoting Competition**

The Competition Authority has a function under the Act to promote competition in the economy by

- studying areas of the economy to examine how competition is working,
- identifying laws, regulations or administrative practices that have a negative impact on competition,
- advising the Government, its Ministers and agencies about how legislation or regulations may affect competition,
- promoting compliance among businesses, and
- informing the public about competition cases and raising awareness of the benefits of competition.

Competition can be restricted by laws, regulations or administrative practices, which deny consumers the full benefits of competition.

If the Authority finds that the State, its agents, or a private representative body is restricting competition unnecessarily, we make recommendations for reform. Examples of such restrictions on competition include:

- An industry or profession setting too many entry requirements, for example requiring people to obtain qualifications that are not necessary to do the job.
- An industry or sector having a long-term legal right to a monopoly in producing a good or service. For example, until relatively recently the Government gave the ESB exclusive licence to provide electricity to domestic customers.
- A ban on advertising prices.

## **International Work**

There is an important international aspect to our work. The purpose of engaging at an international level with our competition colleagues in other countries and organisations is to contribute to the development of best practice internationally and to ensure we employ best practice within our agency. It is also to fulfil our role as a law enforcement agency within the EU.

Since 2003, we, together with the Irish courts, have been responsible for enforcing European competition law in Ireland<sup>1</sup>. This obligation comes from Council Regulation (EC) No.1 of 2003 and our membership of the EU generally. Competition law enforcement is one of the few economic policy areas where the EU has delegated powers and responsibilities to Member States. The European Commission monitors enforcement by individual Member States and seeks to ensure that there is a co-ordinated approach to competition by national competition authorities. They do this through the European Competition Network (ECN). The competition authorities of every EU Member State, including Ireland, are required to actively participate in the ECN to work with the Commission to agree common competition policy approaches and consult on enforcement activities throughout the EU. We also participate in EU merger policy development and case review when required, and are members of the EU Merger Working Group

The Authority is also Ireland's representative at the Competition Committee meetings of the Organisation for Economic Co-operation and Development (OECD) and we are active members of the International Competition Network (ICN). These organisations try to ensure a cohesive approach to competition law and policy internationally. This improves their effectiveness at a domestic level and reduces business regulatory costs at a global level.

## **Internal Support Services**

There are two divisions within the Competition Authority that support the work of the organisation. The Corporate Services Division provides administrative support to the organisation and the Strategy Division works on projects of a strategic nature and houses the communications function.

The Corporate Services Division is responsible for corporate governance, financial management, IT, accounting, human resource management and legal support services. It ensures we comply with our various statutory and regulatory requirements under the Government's Code of Practice for Governance of State Bodies.

The Strategy Division is responsible for developing strategies and policies for the organisation. These relate to activities that affect the organisation at a multi-divisional level. It includes the development of policy, practice and procedures to enhance our international work, case prioritisation, effective project delivery etc. The Strategy Division co-ordinates the preparation of the Authority's annual business plan and three

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<sup>1</sup> The Commission for Communications Regulation also has a role in enforcing competition law in Ireland in relation to the electronic communications sector.

year Strategy Statements. It is also responsible for the development and management of the Authority's communications strategy.

### **Working with Other State Agencies**

Enforcement of the Competition Act is primarily the responsibility of the Competition Authority. However, it is sometimes appropriate for us to liaise with other regulatory and law enforcement agencies to resolve matters. We sometimes examine certain sectors of the economy where an independent regulator already exists, for example, communications, aviation and energy. To help co-operation, avoid duplication and ensure consistency, we have co-operation agreements with several regulators and agencies.

This is particularly the case with the Commission for Communications Regulation (ComReg). They have the power to enforce competition law jointly with the Competition Authority in relation to electronic communications services, networks or associated facilities. The Authority and ComReg operate a co-operation agreement to work together on competition issues.

We have co-operation agreements with

- the Commission for Taxi Regulation
- the Broadcasting Authority of Ireland
- the Commission for Energy Regulation
- the Commission for Aviation Regulation
- the Health Insurance Authority
- the Commission for Communications Regulation
- the National Consumer Agency
- the National Transport Authority

We also work closely with a number of other law enforcement agencies in the State to enforce competition law.

**The Director of Public Prosecutions:** When we have completed a criminal investigation we may refer a file to the DPP with a recommendation for prosecution on indictment. If the DPP decides to bring a prosecution, the Chief Prosecution Solicitor (CPS) takes charge of proceedings on behalf of the DPP and prepares a Book of Evidence to be served on the accused. We assist the DPP and the CPS as required during the prosecution of the case.

We also operate a *Cartel Immunity Programme* jointly with the DPP. The Programme is described further on page 15. It is designed to encourage participants to report cartels they are, or have been, involved in. Cartel participants can apply for full immunity from prosecution in exchange for full co-operation with the Authority in the investigation of a case, and with the DPP in any eventual prosecution.

**An Garda Síochána:** We regularly liaise with senior management of the Garda Bureau of Fraud Investigation (GBFI). A Detective Sergeant from GBFI is seconded to work in the Cartels Division as an authorised officer of the Competition Authority. An Garda Síochána also provides help to the Authority at other times, such as during searches.

## Making Complaints to the Competition Authority

Businesses and consumers are often best placed to know if anti-competitive behaviour is taking place. If you are aware of, or suspect, anti-competitive behaviour we strongly encourage you to bring the information to us. Information from the public is often the first step in launching an investigation into people or businesses involved in anti-competitive behaviour. We are very interested in any information or evidence which suggests that price-fixing, bid-rigging, market-sharing or any other anti-competitive behaviour is taking place.

If you suspect anti-competitive behaviour, you can report it to us by email, telephone or in writing. We put all complaints through a screening process to make sure they are properly assessed. If the information we receive suggests that the matter is not a breach of competition law, the file is usually closed.

Allegations that are accompanied by evidence are of great use to us. When it comes to cartels, we have to prove allegations to a criminal standard, that is, *beyond a reasonable doubt*. Therefore, complaints backed with evidence are more likely to result in a successful investigation. If the information we receive with a complaint is enough to give us reasonable grounds to suspect a breach of the Competition Act, we may launch a formal investigation.

If a complaint relates to an issue with existing laws, regulations, or administrative practices by a Government Department or agency, which impose unnecessary restrictions on competition, we will highlight the issue and try to advocate for change both publicly and with the Government Department or body concerned.

### Complaint Handling Process

We have a Complaint Handling Process which ensures that we assess every complaint we receive. The Complaint Handling Process helps ensure that resources are concentrated on cases involving serious infringements of competition law, while allowing us to deal quickly but fairly with complaints that either have little or no supporting evidence, or do not involve a breach of competition law.

The Complaint Handling Process has three steps:

- screening
- assessment
- investigation

As a first step, we will check that the complaint involves an alleged breach of competition law. Complaints are then passed to the relevant division for further assessment, where appropriate. In some cases, a complaint can result in an investigation which can have a number of possible outcomes, including

- sending a file to the DPP with a recommendation that criminal charges be brought,
- taking legal proceedings in the High Court in order to stop anti-competitive behaviour,
- negotiating out-of-court settlements with companies and organisations who agree not to engage in anti-competitive behaviour and, in some cases, to change their behaviour putting a stop to any competitive harm, or
- making recommendations to Government concerning changes in anti-competitive regulations.

### Resolving complaints without legal action

The vast majority of complaints made to us either do not involve a breach of competition law, or are resolved at an early stage without the need for legal action.

Following assessment, 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,
- the complaint concerns similar prices but there is no evidence or suggestion of an agreement between competitors,
- the complaint is closed due to prioritisation principles, or
- the parties under investigation give undertakings to remedy the anti-competitive concerns.

### **How to contact the Competition Authority with a complaint about a suspected breach of the law:**

Web complaint form: [www.tca.ie/complaints.aspx](http://www.tca.ie/complaints.aspx)  
Email: [complaints@tca.ie](mailto:complaints@tca.ie)  
Phone: LoCall: 1890 220 224 (intl.: +353-1-8045400)  
Fax: +353-1-8045401  
Other: The Competition Authority, Parnell House, 14 Parnell Square, Dublin 1

### **Complaints received by the Authority**

The following is a breakdown of the number of complaints received by the Authority in 2012 and what stage they reached.

<b>Total Complaints Received by the Authority in 2012</b>	
<b>Total received</b>	<b>233</b>
<b>Resolved at screening</b>	<b>136</b>
<b>Assessment Stage</b>	<b>97</b>
- ongoing	23
- resolved	73
- added to existing cases/investigations	1

Of those complaints that were dealt with by the enforcement divisions of the Authority, these included:

- 13 new complaints of alleged criminal cartel behaviour, one of which has led to a detailed investigation being launched. Of the others, 11 were examined and closed in 2012, and one is still being assessed.
- 127 new complaints of anti-competitive agreements and abuses of dominance, 107 of which were examined and closed during the year.

We also completed the review of a number of complaints that were carried over from previous years. These included 15 complaints of alleged criminal cartel behaviour and 33 complaints of anti-competitive agreements and abuses of dominance.

While the Authority receives hundreds of complaints, only a small proportion of them raise concerns significant enough to warrant a full investigation. Full investigations of alleged competition infringements usually require the allocation of significant resources. To ensure that the Authority's limited resources are efficiently used to bring anti-competitive practices to an end, the Authority selects cases for full investigation by reference to clearly defined prioritisation criteria. These criteria cover issues such as the significance of the alleged infringement (and, in particular, its likely effect on consumers); the economic significance and strategic importance of the market involved; the likely impact of enforcement action by the Authority; and the risk, resources and cost implications for the Authority of taking enforcement action.

## The Cartel Immunity Programme

The potential penalties for individuals and companies who commit hardcore cartel offences under the Competition Act include substantial fines and prison terms. Individuals and companies involved in such activity may consider applying for immunity from prosecution under the *Cartel Immunity Programme*, which we operate jointly with the DPP. Being the first individual or company to report cartel activity, to co-operate fully and give complete and full information to the Authority and the DPP, can offer benefits. It could result in companies or individuals avoiding criminal prosecution, getting immunity from jail terms and avoiding substantial fines and additional penalties such as being barred from serving as a director of a company for five years.

Companies who take full responsibility for the illegal acts of their officers, directors and employees and agree to co-operate with the Authority may qualify for immunity under the Programme. Immunity can be granted to the company and its past and present employees.

Even if a company does not come forward and take responsibility for its illegal actions, individual employees, officers and directors can still qualify for immunity under the *Cartel Immunity Programme* and potentially avoid fines and prison terms.

Immunity applications should be made to the Competition Authority's Immunity Officer. **The cartel immunity hotline number is 087 7631378.** The *Cartel Immunity Programme* has a marker system, which holds the position of possible immunity for the first individual or company to apply, and allows other members of the same cartel to 'line up' should the first to apply not qualify for immunity. Further information on the Programme can be found on the Competition Authority website [www.tca.ie](http://www.tca.ie).

There are protections in the Act for "whistle-blowers", people who report suspected breaches to us. For example, if you think that a company has breached the Act, you will not be liable for damages if you report it to us and it turns out that the offence did not take place, provided that you acted reasonably and in good faith. This protection also covers employees. It means that an employer cannot punish an employee who reports, in good faith, a suspected breach of the Competition Act to us.

## Prioritising Our Work

As part of our ongoing commitment to use our resources effectively and to try to provide the Irish taxpayer with the best possible value for money, we prioritised all of our discretionary work, such as investigations, during the year in line with the Project Selection and Prioritisation Principles booklet which we published last year. The market study that was started this year, looking at competition in the ports sector, was also chosen on the basis of the published principles.

In March, the Authority also adopted an Effective Project Delivery (EPD) Framework, which puts in place a standard and accountable project management process to enable the Authority to deliver its work on projects consistently and successfully.

The EPD Framework aims to achieve:

- Proper implementation of the Authority's Project Selection and Prioritisation Principles
- More effective allocation of resources
- More consistency and greater transparency of work within the Authority
- Timely results and quality decisions/output
- Improved knowledge management

The EPD Framework applies to all major or substantial projects, such as an enforcement investigation, market study, consultation, research paper, guidance note and any major event that involves a substantial investment of resources and is time critical.

## **Amalgamation with the National Consumer Agency**

In 2008, the Government announced that the Competition Authority and the National Consumer Agency were to be amalgamated as part of a rationalisation of State agencies. Work on the new legislation was added to a review of the Competition Act which was already taking place. This has since been further added to with additional elements such as new legislation regarding media mergers and an enabling provision in respect of a statutory code of conduct for the grocery sector. This has had the result of delaying the publication of the new legislation which will enable the amalgamation of the two agencies into one new body.

2012 saw a lot of work take place in the background in relation to the amalgamation. A structured project plan was put in place involving a Steering Group, Decision Makers, Project Group and eight individual Working Groups, to start the process of merging the two organisations. The project structure was put in place to ensure the amalgamation is carried out in a controlled and organised way, with as little disruption to the day-to-day work of both organisations as possible, which must continue throughout the process.



## 2. ENFORCING COMPETITION LAW

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A principal goal of competition law is to protect and benefit consumers, so they can purchase goods and services at a competitive price. Competition ensures value for consumers, stimulates business and enhances the economy as a whole. Anti-competitive behaviour by businesses results in consumers paying higher prices without any extra benefits and makes the Irish economy less competitive.

One of our core functions is to enforce competition law and to take legal action when we believe the law has been broken. Our enforcement work can be divided into two categories:

- The first relates to hardcore cartels. These are treated as criminal breaches of competition law. As cartels are a criminal breach of the Act, they need to be proven beyond a reasonable doubt. Where we have enough evidence of a criminal cartel agreement, we refer a file on that case to the DPP for prosecution on indictment.
- The second relates to abuse of dominance and anti-competitive agreements which do not amount to a cartel, for example vertical agreements. These are treated as civil breaches of competition law.

In 2012 the Authority reached successful conclusions in a number of cases.

### Heating Oil Case

#### DPP v Pat Hegarty

As reported in previous annual reports, the defendant in this case challenged the legality of the proceedings against him on the grounds that no proceedings were issued against the company he was employed by and that consequently his company was never convicted of the alleged competition law offence. This issue was resolved on 28 July 2011 when the Supreme Court ruled that Mr Hegarty could be tried even in circumstances where the company he was employed by had not been prosecuted.

In May 2012, a jury in Galway Circuit Court found Mr Hegarty guilty of price-fixing.

During the sentencing hearing, Judge Raymond Groarke said of the offence that price-fixing:

*"...has to be viewed as a very serious matter. There are many victims as a direct or indirect result of the criminal conduct of which Mr Hegarty has been convicted. ...and the motivation for this crime was one of greed."*

Drawing on the points made previously in the Citroën car dealers case by Mr Justice McKechnie, Judge Groarke stated that:

*"...Mr Justice McKechnie made an observation that it is but a short time before people who engaged in conduct such as this will end up in prison, and in my view this is a matter which undoubtedly warrants the imposition of a term of imprisonment and I see no reason why I would not impose a two-year term of imprisonment upon Mr Hegarty. That is the maximum provided by the statute."*

In deciding to suspend the two year jail sentence, due to a number of particularities of this case, Judge Groarke concluded by sending this clear message to cartelists:

*"Let it be a warning, however, to others that that day described by Mr Justice McKechnie is fast approaching."*

A fine of €30,000 was also imposed on Mr Hegarty. Judge Groarke stated:

*"I'm also of the view that a penalty of a financial nature - as I've said, the motivation for the commission of this crime was clearly greed - and a financial penalty must be imposed in order to teach those who are motivated by greed to commit crime that there can be a serious and painful penalty for them as and when the crime is to be punished."*

This case represented the last prosecution in the heating oil case that has resulted in fines totalling €86,000 being imposed on ten companies, fines of €64,000 being imposed on eight individuals and suspended prison sentences for two individuals; one for six months and the other for two years. These prosecutions were brought under the 1991 Act as amended by the 1996 Act. This meant they were prosecuted in the Circuit Court. The maximum penalties were two years imprisonment on indictment and/or a €3.8 million fine. The heating oil case also yielded the first ever jury conviction for a price-fixing cartel in Ireland and Europe.

## **RPM Cases**

Resale Price Maintenance (RPM) is when a manufacturer, distributor or wholesaler supplies a retailer with goods and dictates the price at which the retailer must sell the goods. RPM may take many forms. Examples include instructions to sell at a fixed price, instructions not to sell below a minimum specified price, and maximum permitted discounts. The effect of RPM is to deprive retailers of their freedom to price goods as they wish. RPM harms consumers by preventing retailers from competing with each other on price. It may also facilitate collusion amongst retailers and manufacturers.

Minimum RPM is presumed to be anti-competitive under European and Irish competition law unless it can be objectively justified. While a firm that has engaged in RPM may plead an efficiency defence, no such defence has ever been successfully pleaded in Ireland or at EU level.

The Authority regularly receives complaints alleging RPM. During 2012 the Authority successfully pursued two RPM cases. The first case concerns FitFlop branded footwear and the second relates to Shellac nail polish.

## **FitFlop Branded Footwear**

The FitFlop brand of footwear, which claims to tone leg muscles, is distributed in Ireland by Double Bay Enterprises, trading as Brazil Body Sportswear (BBS). In September 2011, the Authority received a complaint that BBS had engaged in RPM by various means in recent years.

Following an investigation, the Authority formed the view that BBS had infringed section 4 of the Act in the following ways.

- *Engaging in RPM.* BBS had, in the Authority's opinion, sought to require certain retailers to price at a minimum level, and had also sought to direct retailers as to when they could discount FitFlops, what FitFlop models they could discount, and how much of a discount they could offer.
- *Implementing a Passive Sales Ban with respect to the FitFlop brand of footwear.*<sup>2</sup> BBS had, in the Authority's view, sought to prevent passive sales by requiring retailers (i) not to make sales of the products through mail order, the internet or other electronic media without prior written consent of BBS; and (ii) only to resell the products to third parties within their allocated territories.

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<sup>2</sup> Passive sales typically occur when a customer from outside the retailer's territory approaches the retailer seeking to make a purchase, despite the fact that the retailer made no effort to specifically target the customer in question. Internet sales are generally considered to be passive sales. Active sales, on the other hand, occur when a retailer actively targets a consumer group, for instance through advertising in local or specialist media. While bans on active sales may sometimes be permitted, passive sales bans generally infringe Irish and EU competition law by preventing consumers from benefiting from proactively searching for better quality, prices or services from retailers.

This conduct meant that consumers who were willing to purchase FitFlop products were unable to shop around for better value.

The Authority gave BBS the opportunity to cease engaging in RPM and the passive sales ban as outlined above. In November 2012, BBS and the Authority entered into an agreement. BBS undertook to refrain from engaging in these practices and to inform its retailers accordingly. In return, the Authority agreed not to bring proceedings against BBS.

On 18 December 2012, the High Court granted the Authority an Order under section 14B of the Competition Act 2002 (as inserted by the Competition (Amendment) Act 2012), in relation to this Agreement.<sup>3</sup> This means that commitments given by BBS to cease the practices complained of are now an Order of the High Court. This means that if BBS were to breach the undertakings, it would be in contempt of Court. Section 14B also provides that an Order made under the section does not come into effect until the expiry of a 45 day period following the making of the Order. This is to allow third parties who may be affected to apply to the Court to have the Order varied or annulled. No such application was made in this case and the Order therefore came into effect on 2 February 2013.

### **Shellac Nail Polish**

In May 2012, the Authority received a complaint in respect of the CND Shellac Salon Certification Program launched by Creative Academy. According to this Program, Shellac-certified beauty salons had to charge a minimum retail price for a Shellac nail service.

The Authority advised Creative Academy that this requirement amounted to RPM in breach of section 4 of the Act. In October 2012, Creative Academy agreed to amend the CND Shellac Salon Certification Program to provide that (i) the recommended retail price for a Shellac nail service is a recommended price only; and (ii) all salons are free to decide their own price per service.

### **RTÉ**

In October 2011, following an investigation in respect of the 'share deal' scheme operated by Raidió Teilifís Éireann (RTÉ) in the market for television advertising airtime in the State, the Authority entered into an agreement and undertakings with RTÉ. As reported in the Authority's annual report for 2011, RTÉ undertook to start implementing a new trading scheme from 1 July 2012 which would not include incentives related to the share of an advertiser's budget which was allocated to advertising through RTÉ.

In 2012, following the receipt of detailed information from RTÉ, the Authority assessed whether RTÉ's new scheme is compatible with the agreement and undertakings. Under the new scheme, the discount granted to individual advertisers no longer depends on the share of budget committed to RTÉ. Consequently, the new scheme, in the Authority's view, complies with the agreement.

The Authority also examined whether the implementation of the new scheme amounted to an abuse of dominance under section 5 of the Act and Article 102 TFEU to ascertain whether it might have loyalty-inducing effects which would foreclose competitors from significant parts of the market. The Authority is of the view that, at present, there is no evidence to suggest that RTÉ's new trading scheme has such loyalty-inducing effects. However, this view is without prejudice to any action that the Authority may take in respect of RTÉ's new trading scheme if evidence of such loyalty-inducing effects comes to light in the future.

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<sup>3</sup> A Section 14B Order is one of the new powers given to the Authority following the commencement of the Competition (Amendment) Act 2012. See p.23 for a summary of the provisions of the 2012 Act.

## Show Jumping Ireland

The Authority received a number of complaints alleging that Article 299N (the Rule) of the Rulebook of Show Jumping Ireland (SJI) was anti-competitive. The Rule prevented members of SJI from competing at unaffiliated show jumping events with a prize fund in excess of €50/£50. Members of SJI were penalised if they breached the Rule.

Following an investigation which commenced in 2011, the Authority formed the opinion that the Rule amounted to a decision of an association of undertakings which was likely to restrict (i) the participation of SJI members at unaffiliated show jumping events; and (ii) the organisation of such unaffiliated events in Ireland. The Authority considered the Rule to be disproportionate in relation to SJI's stated justification and took the view that the Rule was likely to infringe section 4 of the Act and Article 101 TFEU.

SJI co-operated with the Authority's investigation and, on 9 February 2012, agreed to amend Article 299N of its Rulebook to address the competition concerns. The amended Rule means that members of SJI may now participate in unaffiliated events with a prize fund greater than €50/£50 without being penalised so long as the unaffiliated event concerned (i) has signed up to Health and Safety Standards specified by SJI; and (ii) has adequate insurance. (Members of SJI were always free, and remain free, to participate in unaffiliated events with a prize fund of €50/£50 or less without penalty.)

SJI has published the amendment of the Rule on its website ([www.sji.ie](http://www.sji.ie)) and in its March 2012 Showjumping Bulletin.

## Eason/Argosy

The Authority decided to take proceedings under at least section 4 of the Act in relation to Eason and Son Limited's proposed acquisition of Argosy Libraries Limited after the parties informed the Authority of an agreement signed by them in August 2012. Although this was not a notifiable merger under the Act, the Authority had competition concerns given that they are the only two Irish-based wholesalers of new books in Ireland. Following the decision by the Authority to initiate proceedings with a view to prohibiting the proposed merger, the parties agreed on 1 October 2012 not to proceed with the transaction. Further information on this can be found in the Mergers chapter on p.30-31.

## Preferred Repairer Arrangements in the Insurance Sector

In December 2012, the Authority published a Guidance Note on Preferred Repairer Arrangements in the Insurance Sector. The Guidance Note focuses on the motor and home insurance markets.<sup>4</sup>

Preferred repairer arrangements involve insurance companies entering into agreements with service providers to repair, restore or replace a car or building when an insurance claim is made. For example, if a policyholder needs to have a cracked windscreen repaired, their insurance company may have an arrangement in place with a particular company to which the policyholder is directed to have it repaired under their policy.

In recent years, the Authority has received a number of complaints (mainly from repairers) about preferred repairer arrangements in the insurance market. There are advantages and disadvantages to preferred repairer arrangements.

Some policyholders may feel that such arrangements put them at a disadvantage since they usually involve incentives to use a preferred repairer rather than a repairer of their own choice. In addition, repairers who are not on a panel of preferred repairers for an insurance company may feel at a disadvantage because their exclusion from the panel causes them to lose out on insurance-related business.

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<sup>4</sup> The Guidance Note is available at: <http://www.tca.ie/EN/Promoting-Competition/Guidance-Notes.aspx>

However, preferred repairer arrangements also help insurance companies to control the cost of claims by using competition between repairers to their advantage. These arrangements can yield benefits for all users of insurance.

- *From an insurer's perspective:* They allow insurance companies to get a good price from the repairer and to reduce administration costs.
- *From a policyholder's perspective:* They offer peace of mind and clarity regarding the cost of repairs. They can also save the consumer the time and hassle of searching for various quotes for repair. In addition, if the repairer is chosen by the insurance company, the policyholder has the protection of the Central Bank's Consumer Protection Code 2012 in relation to the quality of the work done.
- *From a preferred repairer's perspective:* Being part of such an arrangement may guarantee a steady stream of business.

Having looked at the type of preferred repairer arrangements that are currently in place in the insurance market in Ireland, the Authority is of the view that these arrangements generally result in efficiencies which benefit consumers and that the essential terms of such arrangements therefore do not infringe Irish or EU competition law. It is important to remember in this context that the purpose of competition law and policy is to protect competition, not individual firms.

Having assessed these arrangements from a competition perspective, the Authority decided to publish a Guidance Note setting out our views. The Guidance Note aims to assist policyholders, insurers and those who provide, or wish to provide, repair services that are indemnified by insurance policies in understanding the Authority's views regarding these arrangements.

## Other Investigations

Two investigations concerning alleged hardcore breaches of section 4 of the Act were concluded in 2012. These investigations concerned allegations of criminal behaviour, but there was insufficient evidence to warrant the Authority referring a file to the DPP. In the interests of natural justice and to protect the rights of those companies and individuals investigated, the Authority will not provide any further detail on these investigations.

## Waste Complaints

During 2012, the Authority received a large volume of complaints in relation to the provision of domestic waste collection services. Among the complaints received, a large number related to the sale of Dublin City Council's (DCC) waste collection service to Greyhound Recycling & Recovery Ltd (Greyhound).

The short notice given to DCC customers informing them of the sale of DCC's business, in conjunction with the absence of alternative suppliers available to many households immediately after the sale, meant that DCC customers were left with little choice but to purchase a service from Greyhound.

In its assessment of these complaints, the Authority obtained information from all local authorities in County Dublin and from household waste collection businesses in the Dublin area.

The Authority found no evidence of anti-competitive agreements or concerted practices (such as market-sharing or customer allocation) that might have breached section 4 of the Act. Furthermore, no evidence of an abuse of a dominant position in the market for waste collection in the Dublin area was identified. (Holding a dominant position on a market is not itself unlawful; only an abuse of a dominant position is problematic under competition law.) While the immediate lack of choice available to many DCC customers

in this case understandably caused dissatisfaction for consumers, it did not in itself involve a breach of competition law.

Included in the Authority's assessment was the change in Greyhound's payment terms from a quarterly fee to an upfront annual charge. While an upfront annual fee discourages households from switching service providers during the relevant year, it is unlikely to infringe competition law. An annual fee, in effect, equates to a year-long contract and contracts of such a short duration are not generally considered harmful to competition.

In broader terms, as noted on p.38, the Authority continues to liaise with, and advise, the Department of the Environment, Community and Local Government on how best to ensure that waste markets work well for the benefit of consumers.

The National Consumer Agency has also carried out work in the area of household waste collection and identified a number of issues which are affecting consumers at present in the household waste collection sector. It has secured commitments from a number of household waste collection companies that they will amend certain terms in their standard consumer contracts, which the NCA regard as unfair to consumers<sup>5</sup>.

## **NAMA**

Over the last three years, the Authority has received a number of complaints alleging that the National Asset Management Agency (NAMA) abused its dominant position in breach of section 5 of the Act.

While NAMA's activities with respect to the acquisition of bank assets are exempt from the Competition Act 2002, its post-acquisition conduct falls within the remit of the Act. In light of this, the Authority, based on the complaints received, carefully assessed NAMA's conduct in a number of sectors. In the hotel and golf course sectors, it was alleged that NAMA-supported hotels and golf courses were engaged in predatory pricing to the detriment of solvent hotels and golf courses. In the residential property sector, it was alleged that NAMA's Deferred Payment Scheme was anti-competitive as it gave properties involved in the scheme an unfair advantage over competing properties.

During the assessment of these complaints, the Authority requested relevant information from NAMA. The Authority also met NAMA on a number of occasions. Based on the information gathered from NAMA and from other sources, it appears unlikely that NAMA is dominant in any of the above sectors, despite its status as a State agency and a large financial institution. If dominance is not established, then an abuse of dominance in breach of section 5 of the Act cannot be found. Even if NAMA were considered dominant on the relevant markets, the evidence reviewed by the Authority did not support the view that NAMA's conduct was abusive. On this basis, the Authority decided not to take further action on foot of these complaints.

The Authority is aware of the importance of NAMA in the Irish economy and the impact it may have through its various activities. The position taken by the Authority in relation to complaints to date is without prejudice to any action it may take in the future if evidence of anti-competitive behaviour comes to light.

Because of NAMA's potentially significant effects on competition, it is required to report on an annual basis to the European Commission and the Competition Authority on the use of its post-acquisition powers. The purpose of this is to allow the Commission and the Authority to take any action they consider adequate if they deem that NAMA's use of its powers has resulted in a distortion of competition.

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<sup>5</sup> <http://www.nca.ie/nca/waste-collection-services>

## DPP File

We reported in our annual report for 2010 that one cartel investigation was completed during that year with a file sent to the DPP recommending prosecution on indictment. This case remains under consideration by the DPP.

## Cartel Immunity Programme Review

In 2010, we carried out a review of the *Cartel Immunity Programme* to ensure that it continues to reflect best international practice. This included the publication of a consultation paper with proposed revisions to the Programme.

During 2012 work continued on revising the programme in light of both the experience that the Authority has gained from operating the programme and recent developments in the ECN Model Leniency Programme. The review is ongoing and we expect to publish the revised programme in 2013.

## Competition (Amendment) Act 2012

On 3 July 2012, the Competition (Amendment) Act 2012 came into force. The 2012 Act is intended to strengthen the enforcement of competition law and help combat white-collar crime in Ireland, ultimately helping to reduce costs across the economy and create jobs. The main provisions of the 2012 Act include:

- An increase from five to 10 years of the maximum prison sentence for conviction of an offence relating to anti-competitive agreements, decisions and concerted practices.
- Increases in fines that can be imposed for competition offences from €4 million to €5 million.
- A person convicted of competition offences may have to pay the costs of investigation and court proceedings for the first time.
- The courts can now disqualify a person from being a director of a company in summary criminal and civil proceedings.
- A person convicted of certain competition offences will not be eligible for probation.
- Undertakings given to the Authority can be made an Order of Court. Such an order is known as a section 14B Order. As already noted above, in 2012, the Authority used this new power for the first time.<sup>6</sup>
- It will be easier for private individuals affected by anti-competitive practices to prove an action for damages against a cartelist, once public enforcement proceedings have successfully been taken.

The Minister also signed an order to commence section 10 of the Competition Act 2002 which provides measures to assist juries in considering complex financial and economic evidence during trials for breaches of competition law.<sup>7</sup>

## Use of Enforcement Powers

Under the Act, we have extensive powers for use in our enforcement work. These powers enable us to obtain information where it is unlikely to be produced voluntarily, or where it has already been refused. During 2012, the Authority conducted ten searches at premises of different undertakings allegedly involved in anti-competitive activity. The search operations were conducted nationally and involved almost all of the staff of the

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<sup>6</sup> See p.18-19 above

<sup>7</sup> S.I. No. 491/2011 — Competition Act 2002 (Section 10) (Commencement) Order 2011.

Authority. We were also assisted on site by members of An Garda Síochána. In addition, the Authority's forensic team was assisted by several members of the Computer Crimes Investigation Unit of the Garda Bureau of Fraud Investigation. Substantial volumes of hard copy documents and forensic data were seized during the searches.

**Table 1: Use of Enforcement Powers in 2012**

Enforcement Power	2012
Search Warrants	10
Summonses	1

**Table 2: Investigation & Enforcement Powers of the Competition Authority**

Investigation & Enforcement Powers	Description
Types of investigations carried out	<ul style="list-style-type: none"> <li>• Criminal investigations</li> <li>• Civil investigations</li> <li>• Assessment of mergers</li> <li>• Formal studies</li> </ul>
Power of entry and search	Authorised officers can enter or search any premises or dwelling with a warrant issued by the District Court
Power to seize documents and records by warrant	Authorised officers can seize documents/records with a warrant issued by the District Court
Power to summon witnesses and to require the production of records and information	<p>The Competition Authority can summon a witness to be examined under oath and/or can require production of documents from a 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>
Power to seek to have certain agreements made an Order of Court	<p>The Competition Authority can enter into an agreement with an undertaking under investigation for an alleged breach of the Competition Act 2002, whereby that undertaking agrees to do or not do certain things in return for the Authority agreeing not to bring proceedings against it</p> <p>The High Court, on the application of the Authority, can make the agreement an Order of the Court</p> <p>Any breach of that order by that undertaking will amount to a contempt of court and can be punished as such</p>



Power to seek disqualification of a director	The Competition Authority can apply to Court in civil and summary criminal cases to have a director disqualified if that person has been found to have contravened section 4 or 5 the Competition Act 2002
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**Table 3: Penalties and Remedies**

**Criminal (on indictment in the Central Criminal Court)** – Up to €5 million or 10% of turnover, whichever is the greater, and/or up to ten years in prison

**Criminal (summary in the District Court)** – Up to €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)** – Damages at the discretion of the Court, injunctive and declaratory relief



### 3. EVALUATION OF MERGERS AND ACQUISITIONS

Mergers and acquisitions (mergers) are generally 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, some mergers substantially lessen competition with the effect that consumers, including businesses, suffer.

Mergers of companies whose turnover is above a certain financial threshold must be notified to the Competition Authority. Certain mergers involving media businesses must be notified to the Authority regardless of their turnover. We aim at all times to review mergers in a timely manner so that good mergers are not held up. At the same time, we actively protect the interests of consumers and have the power to block mergers where we find that they will lead to a substantial lessening of competition.

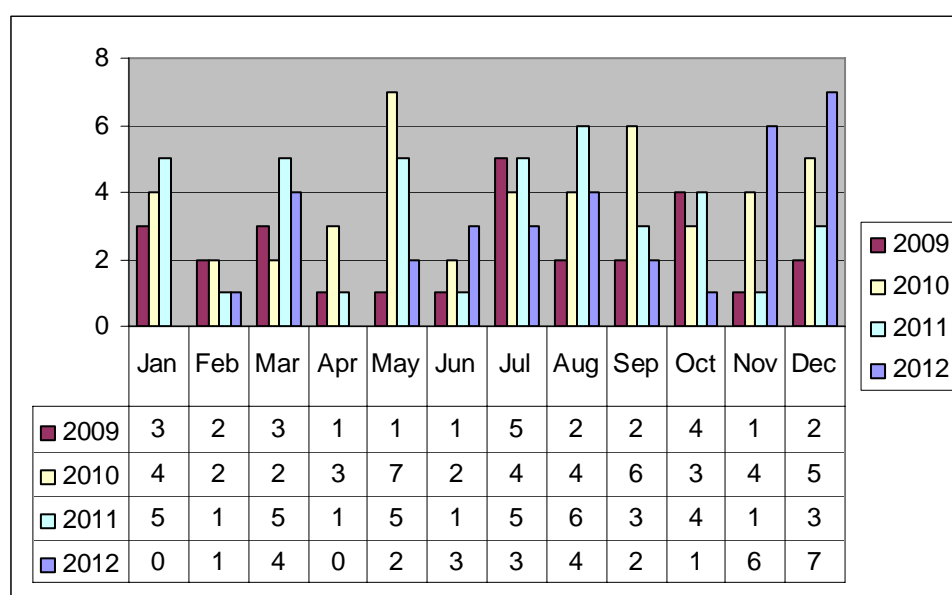
In 2012, the Authority made 30 merger determinations, of which four were carried over from 2011. There was a decrease in the number of mergers notified to us in 2012 (33) compared to 2011 (40). However, the number of notifications for 2012 was greater than for 2009 (27), the lowest annual figure to date since the Authority became fully responsible for merger review in 2003. The number of media mergers notified to us also decreased in 2012 (3) compared to 2011 (5).

The Credit Institutions (Financial Support) Act 2008 (CIFS Act) provides that some proposed mergers involving credit institutions must be notified to the Minister for Finance instead of the Competition Authority<sup>8</sup>. During 2012, no such mergers were notified. In addition, section 54 of the Credit Institutions (Stabilisation) Act 2012 provides that Parts 2 and 3 of the Competition Act 2002 and section 7 of the CIFS Act will not apply to certain actions by the Minister or by appointed “special managers” in relation to relevant financial institutions.

#### Merger Notifications during 2012

Figure 1 below provides a comparison of the number of merger notifications received by the Authority in each of the years 2009, 2010, 2011 and 2012.

**Figure 1: Monthly comparisons of merger notifications received for the period 2009 to 2012**



<sup>8</sup> This requirement applies to credit institutions meeting the criteria set out in section 7(1) of the CIFS Act. The CIFS Act does not, therefore, remove the Competition Authority's jurisdiction for credit institution mergers altogether.

**Appendix B** contains a full list of mergers notified to the Authority in 2012. The following points about 2012 are highlighted:

- A large number of mergers notified to the Authority involved private equity firms purchasing businesses.
- The year had a final quarter surge, with 14 proposed transactions notified to the Authority. This represented 42% of the total number of notifications in 2012.
- The Authority finalised its examination of four transactions which were notified in 2011 and whose deadlines extended into 2012. All of those cases were cleared during the initial (phase 1) investigation.
- All transactions were analysed within the statutory time period.
- Seven Requirements for Further Information were issued in the examination of three mergers.
- 26 of the 33 merger notifications received during 2012 were cleared during the initial (phase 1) investigation, usually within one calendar month.
- One notification submitted in 2012 was withdrawn by the parties.
- Six merger notifications were carried forward into 2013.

**Appendix C** provides more detailed statistics on mergers examined between 2009 and 2012.

### **Mergers Requiring a Full (Phase 2) Investigation**

The Authority must carry out a detailed (phase 2) investigation of a transaction if after a preliminary (phase 1) investigation it has been unable to conclude that the transaction would not “substantially lessen competition”. In 2012, no phase 2 investigations were initiated.

### **Extended Phase 1 Merger Investigations - Requirements for Further Information**

The Authority can issue a Requirement for Further Information (RFI) to any of the parties to a merger to obtain information to assist us with the examination of a merger. An RFI may be used to get, for example, more detailed information about the business activities of the parties, the parties’ decisions regarding the transaction, the transaction process, empirical information concerning market shares, or data such as prices. The precise nature of any particular RFI depends on the type and extent of the information required by the Authority.

An RFI requires parties to respond within a specified timeframe. During the phase 1 period, an RFI has the effect of changing the appropriate date and consequently the phase 1 deadline. (The “appropriate date” is the start date of the timeframe for phase 1 and phase 2 decisions). The RFI stops the clock and the clock restarts only after we have received the requested information. In contrast, the phase 2 deadline remains unchanged by the issuing of an RFI.

In 2012, seven formal RFIs were issued in three merger cases.<sup>9</sup> None of these cases were carried over to 2013 and all of these cases were cleared in phase 1 following an extended investigation lasting, on average, between two to three months. These three cases are discussed below.

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<sup>9</sup> Namely: Notifications M/12/002, M/12/010 and M/12/017. See: <http://www.tca.ie/EN/Mergers--Acquisitions/Merger-Notifications.aspx> for more details. Three RFIs were issued in M/12/002 and two RFIs were issued in each of M/12/010 and M/12/017.

### ***M/12/002 – Millington/Siteserv***

This transaction was notified by the parties on 16 March 2012. This transaction was a media merger within the meaning of section 23(1) of the Act. The Authority cleared the transaction on 21 May 2012 following an intensive investigation which included desk research, ongoing contacts with the parties, and obtaining the views of both suppliers and competitors.

Millington Limited was incorporated in the Isle of Man in December 2011 as an acquisition vehicle, owned and controlled by Denis O'Brien, to facilitate the proposed transaction. Mr O'Brien has controlling interests in a wide range of companies in the mobile telecom, IT disaster recovery, radio and digital media, websites and software for recruits and job seekers, and other sectors. Siteserv plc is involved in Ireland and the UK in infrastructure and utilities support services in a broad range of sectors including energy, satellite and telecommunications, education, healthcare, events services, civil engineering and construction.<sup>10</sup>

During the investigation, which focused on vertical and potential competition issues, the Authority sought the views of a number of third parties, including competitors, customers and suppliers of Siteserv and/or companies controlled by Mr O'Brien. In particular, the Authority sought the views of third parties involved in the electronic communications and media infrastructure sectors. None of these third parties raised concerns specifically about the proposed transaction. The Authority also consulted with ComReg, which did not raise any concerns about the proposed transaction.

The Authority concluded that the proposed transaction would not give rise to competition concerns in any market for goods or services in the State.

### ***M/12/010 - Pallas/Crossgar***

This transaction was notified by the parties on 22 June 2012. The Authority cleared the transaction on 23 August 2012 following an intensive investigation which included desk research, obtaining extensive information from the parties, carrying out market enquiries and obtaining the views of both suppliers and competitors. In addition the Authority also consulted with An Bord Bia – the Irish Food Board - and engaged on an ongoing basis with the parties.

Both Pallas Foods Ltd, a wholly owned subsidiary of Sysco Corporation, and Crossgar Foodservice Ltd are involved in the food service sector in Ireland. The food service sector is wide ranging and includes various product categories including beverages, canned and dried foods, meat, poultry, paper and disposables. Food service operators are active in a wide variety of "away from home" dining situations ranging from fast-food outlets, full service restaurants and staff canteens to hospitals and prisons.

As a result of its investigation, the Authority concluded that the proposed transaction would not give rise to competition concerns in the food service sector as a whole or in any food service product category or food service operator category.<sup>11</sup>

### ***M/12/017 – United Care/Pharmexx***

This transaction was notified by the parties on 22 August 2012. The Authority cleared the transaction on 9 November 2012 following an intensive investigation which included desk research, obtaining the views of customers and competitors, and issuing formal RFIs to the parties and ongoing contacts with the parties.

Both parties are active in the market for the provision of outsourced sales representatives to pharmaceutical companies in the State. During the investigation, we examined the competitive impact of the proposed transaction in this market. The

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<sup>10</sup> See <http://www.tca.ie/EN/Mergers--Acquisitions/Merger-Notifications/M12002--MillingtonSiteserv.aspx?page=3&completed=True&year=0>

<sup>11</sup> See <http://www.tca.ie/EN/Mergers--Acquisitions/Merger-Notifications/Pallas--Crossgar.aspx?page=2&completed=True&year=0>

Authority formed the view that the proposed transaction will not result in increased prices for the provision of outsourced sales representatives to pharmaceutical companies or other harm to competition.

## Mergers Involving Media Businesses

The Competition Act 2002 allows for the possibility that a media merger cleared by the Authority on competition grounds after a full investigation may still be blocked by the Minister for Jobs, Enterprise and Innovation on public interest grounds. Table 4 below provides a summary of the three notified media mergers in 2012.

**Table 4: Notified Media Mergers in 2012**

Notification	Economic Sector	Date of Notification	Status
<a href="#">M/12/014 - Manwin / RK Netmedia</a>	Adult Entertainment	07/08/2012	Cleared (phase 1)
<a href="#">M/12/004 - Southbank Media / Travel Channel</a>	Television Broadcasting	22/03/2012	Cleared (phase 1)
<a href="#">M12/002 - Millington / Siteserv</a>	Infrastructure and utility support services	16/03/2012	Cleared (phase 1)

None of the mergers that were cleared in 2012 appeared likely to lessen competition. No order was made by the Minister for Jobs, Enterprise and Innovation during 2012 to carry out a full investigation under section 22 of the Act or to prohibit a media merger from being put into effect.

## Review of Non-notifiable Mergers

The main role of the Mergers Division is to perform the statutory task of reviewing proposed mergers notified to the Authority and determining whether they will or will not lead to a substantial lessening of competition. However, the Authority also investigates non-notified mergers, for example ones that are below the statutory threshold for notification and have not been voluntarily notified, that risk breaching sections 4 and/or 5 the Act. The Mergers Division undertakes this task in co-operation with other divisions of the Authority.

### *Eason/Argosy*

Eason and Son Limited and Argosy Libraries Limited are the only two Irish-based wholesalers of new books in Ireland. Eason is also the leading retailer of new books within Ireland. Although this was not a notifiable merger under the Act, Eason and Argosy informed the Authority of an agreement signed on 27 August 2012, whereby Eason would acquire certain assets of Argosy.

The Authority began an investigation into the proposed transaction. The investigation included desk research, requests for information from the parties, ongoing contacts with the parties, and obtaining the views of large numbers of third parties, including publishers, UK wholesalers and retail customers.

The investigation identified several competition concerns that might arise from the transaction. The transaction would have reduced the number of new book wholesalers based in the State from two to one.

Given the absence of credible actual and potential competitors and the wide gap between Eason and the only significant alternative suppliers in the State (that is, UK wholesalers and publishers), the Authority was concerned that the proposed transaction would result in increased prices and a reduction in the range of new books to consumers.

In view of these competition concerns, the Authority decided to initiate proceedings against Eason and Argosy for infringement of at least section 4 of the Act (which prohibits agreements that restrict competition). However, when Eason and Argosy were informed of this, they abandoned the proposed merger and also committed, for a period of one year, to give the Authority 30 days advance notice of any similar arrangement. This allowed the Authority to close the investigation.

This was the first case in which the Authority decided to initiate proceedings in relation to a non-notifiable merger.

### **Kerry/Breeo Case**

In 2008 the Competition Authority blocked the purchase of Breeo by Kerry Group, a decision which Kerry successfully appealed to the High Court. The High Court annulled the Authority's decision to block the transaction. In 2009 the Authority appealed the High Court decision to the Supreme Court.

In 2010, we made an application for a priority hearing of the Supreme Court appeal in the Kerry/Breeo case. This application was not granted. Work on the case however continued and the Authority attended four case management hearings before Judge Clarke during 2012. In addition, the case involved a hearing on a motion to adduce new evidence lodged by Rye Investments Limited in September 2012. It is now anticipated that the hearing of the case will take place during the second law term of 2013.

### **Merger Guidelines**

The Competition Authority is undertaking a review of its current merger guidelines, *Notice in respect of Guidelines for Merger Analysis, Decision No. N/02/05*, published in December 2002. As reported last year this review is taking longer than originally anticipated due to a number of factors. We currently intend to publish draft revised merger guidelines for public consultation in the first half of 2013.

## **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 based on the turnover of the undertakings involved. At least two of the undertakings involved must have annual financial turnover of at least €40 million worldwide. At least two 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 harm consumers. The Competition Act allows for these mergers to be notified voluntarily to the 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 Authority has conducted investigations of non-notified transactions. See, for example, the Eason/Argosy case on p.30/31.

### **Pre-notification (optional)**

Parties to a transaction may contact the 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, among other things, the business activities of the notifying parties, their customers, their competitors, the manner in which prices are negotiated, the route to market and other relevant matters.

### **Preliminary investigation (phase 1)**

Phase 1 is a one month initial examination, subsequent to the “appropriate date” (which is usually the day of the notification of the merger) although as already explained, it can be lengthened by the issuing of an RFI. At the end of the phase 1 period, the Authority will either clear the merger or proceed to a full (phase 2) investigation.

### **Full investigation (phase 2)**

The 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 period where a detailed examination of the transaction and the market(s) in which the parties operate is conducted. At the end of the phase 2 period, the Authority will either clear the merger, clear it with conditions or prohibit it.

### **Requirement for Further Information**

In addition to information provided in the notification documents, we may issue an RFI to any of the parties to a merger to obtain information that will assist us with our examination of the merger. If issued within one month of the date of receipt of the notification, an RFI has the effect of changing the appropriate date and consequently the phase 1 deadline. The RFI stops the clock and the clock restarts either after we have received the requested information or the deadline for responding to the RFI has expired – whichever is earliest. In contrast, the phase 2 deadline remains unchanged by the issuing of an RFI.



**Witness Summons**

The Authority may issue a witness summons to any one of the merging parties or third parties such as customers and competitors. A witness summons may be used to obtain, for example, more detailed information about the business activities of the parties, the parties' decisions regarding the transaction, the transaction process, empirical information concerning market shares, or data such as prices.

**Remedies**

Remedies are measures which can be implemented by the parties to mitigate competition concerns arising from a merger. Remedies form part of the Authority's determination. Remedies can be considered at either phase 1 or phase 2 of the merger review process. The merging parties can propose remedies at either phase 1 or 2. The Authority can accept or reject proposals at phase 1 or phase 2. Only at phase 2 can we impose conditions on the merging parties.

**Assessment**

During a phase 2 investigation, if we have serious competition concerns, we may issue a paper setting out these concerns. This is known as an Assessment. The parties will be invited to respond to these concerns.

**Appeal to the Courts**

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



## 4. PROMOTING COMPETITION IN IRELAND

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Job creation has become the primary focus of Government policy as the Irish economy shows signs of a tentative recovery. Competition policy plays a key role in improving the competitiveness of all areas of the Irish economy, which translates into jobs and higher living standards.

Competitiveness is about more than lowering costs: it also relates to a country's ability to foster innovation and thereby achieve sustainable job opportunities for all its citizens. A more competitive domestic economy is much more effective in spurring efficiency and innovation than various forms of one-off grants and special incentives which often lead to waste and red tape.

Competition policy is particularly important in hard times, when there may be a natural tendency towards protectionism. Sheltered sectors can use the high protection they enjoy to make inefficiency profitable at the expense of consumers. Given the strong evidence linking competition to productivity growth, it is important to ensure that our recent competitiveness gains are sustained over the long term.

While exports are naturally an important part of the competitiveness picture, all sectors of the economy impact competitiveness. High prices in the non-traded sectors such as professional services and many public services raise the cost of living and doing business for all of us.

Open and competitive markets are critical to Ireland's long term economic success. The benefits of competition can be seen in areas such as telecoms and airlines where previous monopolies now have to compete with new entrants for customers.

The Competition Authority promotes competition in many different ways. We highlight areas of the economy where competition is restricted, we publish reports on how competition may be improved in certain sectors, we advise Government Departments and other State agencies on competition issues relevant to their work, including procurement and tendering for public contracts, and in particular, we comment on proposed legislation and we make responses to public consultations. We promote the idea of a competition culture to the wider community through the publication of guidelines, the organisation and participation in conferences and seminars and interaction with business organisations. We advise Government Departments and public authorities on competition issues such as procurement and tendering for public contracts.

### Action Plan for Jobs

The *Action Plan for Jobs 2012* states that the Department of Jobs, Enterprise and Innovation (DJEI) and the Competition Authority shall "*Identify any sheltered areas of the economy where competition is restricted and commission studies on such areas where appropriate*".

The steps associated with this are given as:

Steps Necessary for Delivery	Timeline	Responsible body
Identify sheltered areas of the economy where competition is restricted	Q1 2012	DJEI / Competition Authority
Consider whether studies of such areas are important and identify which studies are of importance	Q2 2012	Government
Commence market study of top priority area	Q2 2012	Competition Authority

Prepare public consultation on the issues	Q4 2012	Competition Authority
Publish market study	2013	Competition Authority

## Identifying Sheltered Areas

The Competition Authority operates an ongoing market monitoring process to identify practices or sectors where competition issues arise which are not clearly a breach of the law. In these areas, enforcement of competition law is either not possible or not an appropriate tool but a market study may yield useful results.

Information is gathered through interactions with businesses, consumers and Government Departments and agencies, with whom we constantly seek to develop good working relationships. In 2012, we also studied the National Competitiveness Council's Competitiveness Scorecard, and identified areas where competition could play a role, such as non-traded services and network infrastructure as input costs to business. An initial total of 26 topics were identified in this way.

We then applied the Competition Authority's Project Selection and Prioritisation Principles to filter the 26 nominated topics to the most appropriate sectors for scoping.

## Scoping

This process yielded the top three topics short-listed as suitable for "scoping" in 2012 as: port services, retail pricing of prescription medicines to private patients, and competitive tendering for the provision of subsidised public bus services. All three topics scoped in 2012 have been the subject of numerous complaints to the Competition Authority.

Following discussions with DJEI, in June 2012, the Minister for Jobs, Enterprise and Innovation, Richard Bruton, TD, directed the Authority to carry out a study of the ports sector in Ireland.

## Market Study 2013 – Ports

The Competition Authority estimates that in 2011 sea-borne freight accounted for 84% of Ireland's trade in volume and 62% in value terms. Many of Ireland's major exporting sectors - for example, pharmaceuticals, chemicals and food - are heavily reliant on sea transport. Due to this reliance it is important to ensure that competition in the Irish ports sector is working well as it drives efficiency and service quality, both of which are key factors in national competitiveness.

Following an initial period of research and stakeholder engagement we published a ports consultation document in Q4 2012, the objective of which is to verify our analysis and identify areas for exploration. Some of our initial findings in the sector are as follows:

- The level of inter-port competition appears limited.
- At an inter-port level there is a high level of product specialisation among major Irish ports which could limit competition between ports.
- There is some inter-port competition for niche products, and in some instances for other cargos, however most ports seem to operate as natural monopolies.
- With regard to competition within the ports themselves, that due to long-term lease agreements for terminals in Dublin the threat of new entry could be restricted.
- There appears to be restrictions in a number of ports with regard to market access for stevedoring services.

The findings from the consultation will be used to shape the direction of the full market study, due for publication in 2013. The study will outline how competition in the ports sector works and identify what actions, if any, should be taken by the Government to ensure and improve competition in the ports sector.

## **Advice on Proposed Legislation, Regulations and Competition Issues**

Public restrictions on competition often force consumers to pay more for services. These public restrictions on competition increase business input costs, making businesses less competitive. They allow sheltered sectors of the economy to free-ride on competitive sectors, and reduce productivity and growth in the economy as a whole. 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.

Consumers and businesses have fewer options in dealing with public versus private restrictions, which makes identifying and commenting on them all the more important.

## **Submissions**

### **Competitive Tendering for the Provision of Subsidised Public Bus Services**

An efficient public transport network in the capital city is an important part of a country's infrastructure. It contributes to the cost of living and costs for tourists. It can indirectly contribute to the cost of doing business in the capital. At a time when there are constraints on the public purse, the potential for competitive tendering of public bus services to reduce the substantial subsidy paid to Coras Iompair Éireann - without a corresponding increase in bus fares - deserves attention.

The Authority made a submission to the National Transport Authority's (NTA) public consultation on "2014 Public Bus Service Contracts". We argued that a monopoly bus service provider is less likely to use routes that best suit the needs of their customers and more likely to be inefficient. Competitive tendering of bus services generally leads to a better network, better service, and competitive prices. Any lack of performance can be punished through the contract with the NTA.

The submission outlined the many benefits associated with introducing competitive tendering for subsidised public bus services, provided that the system of competitive tendering is well designed. These benefits include the NTA's three main objectives of (i) improved service quality, (ii) a more integrated transport system, and (iii) greater value for taxpayers' money. The Authority will continue to advocate for the introduction of effective competitive tendering of subsidised bus services, rather than the monopoly held by Bus Éireann and Dublin Bus.

### **Draft Building Control (Amendment) Regulation 2012**

The Competition Authority made a submission on the Draft Building Control (Amendment) Regulation 2012 to the Department of the Environment, Community and Local Government. The proposed regulation specifies that only Registered Architects, Registered Building Surveyors and chartered Engineers may inspect and certify works. Our submission explained, from general competition principles, how new legislation should not impose any unnecessary restrictions on the pool of people eligible to offer a service and suggested that other groups who can demonstrate the necessary levels of professional competence should also warrant consideration.

A full list of submissions made during the year can be found in **Appendix D**.

## Advice to Government Department and Agencies

### Waste Sector

Appropriately regulated competition in the waste sector is essential in helping Ireland achieve environmental goals at a competitive cost. The household waste collection market has changed significantly with the exit of most local authorities from the market by 2012. Following the Competition Authority's submissions to the Department of the Environment, Community and Local Government (DECLG) in the area of household waste collection in 2011, the Authority has been actively engaged with the DECLG in 2012 in communicating our views on how to introduce effective competition in the household waste collection market into the National Waste Policy.

The Government's Waste Management policy, published in July 2012, requests the Competition Authority to maintain an ongoing oversight of household waste collection markets.

### Legal Services

In 2012 we continued to look for opportunities to discuss and debate the Legal Services Regulation Bill, to ensure that the final version represents a good outcome for consumers.

Published in October 2011, the Bill builds on recommendations we made in our Solicitors and Barristers Report<sup>12</sup> and on other recommendations made by the Legal Costs Working Group.<sup>13</sup> Our most important recommendation was the introduction of an independent regulator - instead of the present system of self-regulation by the Bar Council and the Law Society. This would be in line with Better Regulation principles and mirror reform in other sectors and in the legal profession in other countries. The Bill provides for the establishment of a new regulator of both branches of the legal profession to protect and promote the interests of consumers.

The Authority appeared before the Joint Oireachtas Committee on Justice, Defence and Equality on 21 March 2012 to discuss our views on the Legal Services Regulation Bill. Chairperson Isolde Goggin voiced the Authority's general support for the Bill and the positive impact we believe it will have on consumers. In particular Isolde commended the fact that the Bill offers a lot to consumers in the form of greater competition, greater transparency and greater protection. Isolde also addressed a few areas of the Bill which we believe required further consideration and debate by the Committee, including concerns that proposals relating to the adjudication of costs could provide a menu of reasons for justifying increases in fees and could cement rather than reform existing legal costs practices.

Following the Committee Stage debates, amendments to the Bill are expected to be published in early 2013.

### General Medical Practitioners

The Health (Provision of General Practitioner Services) Act, which came into force in March 2012, gave effect to many of the key recommendations in our 2010 Report.<sup>14</sup> The Act opened up access to State (GMS) contracts for all fully-qualified GPs. By the end of September 2012, 78 GPs had been awarded a new GMS contract and more than 40 applications were being processed. The new contracts have been spread throughout the country.

The Irish College of General Practitioners (ICGP) has developed an alternative route to specialist GP registration for doctors who have experience in general practice but who are not eligible for inclusion on the specialist register of the Medical Council. Such doctors are precluded from holding a GMS contract. The application process for the

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<sup>12</sup> Competition in Professional Services: Solicitors and Barristers, December 2006.

<sup>13</sup> Report of the Legal Costs Working Group, November 2005.

<sup>14</sup> Competition in Professional Services: General Medical Practitioners, Competition Authority, 2010.

Alternative Route to Membership of the ICGP is due to open in early 2013. About 250 doctors are believed to be eligible to participate in this new programme.

## **Retail Planning**

In May 2012, the Minister for the Environment, Community and Local Government, Phil Hogan, TD, published new Retail Planning Guidelines which have fully implemented the majority of Authority's recommendations made in the Grocery Monitor Report 3<sup>15</sup>. More generally, the language and provisions throughout the Guidelines better reflect the benefits of competition and the interests of consumers in retail development.

The new Retail Planning Guidelines serve to:

- Reduce barriers to entry into the retail market
- Widen the choice of retail outlets for consumers
- Ensure an adequate provision of space for retail development
- Ensure that consumer attitudes and preferences receive more attention in retail planning policies
- Make the planning process faster and less burdensome for new retailers
- Ensure that the planning system no longer unduly favours existing retailers in an area over new retailers but instead looks at the impact of the new retailer on the vitality of the town centre or district centres as a whole

Combined, these changes will enhance competition in the retail sector.

One recommendation of the *Grocery Retail Planning Report* – to remove blanket caps on the size of retail stores was not implemented in the new Guidelines. Instead, they propose to apply a different set of caps to the existing caps. Therefore, Ireland is unlikely to see the kind of large scale discount retailers that exist in other countries and the lower prices that go with them.

Overall, we believe that the newly published Guidelines strike a better balance between their various objectives and will support the vitality, viability and competitiveness of city and town centres.

## **Advice on Proposed Legislation, Regulation and Competition**

### **Water**

Planning for major reform of water services provision in Ireland continued in 2012. The Programme for Government commits to the creation of Irish Water, a State company that will take over the water investment and maintenance programmes of the 34 county and city councils. Within this context, the Department of the Environment, Community and Local Government in January 2012 sought views in relation to the development of an implementation strategy for the public water utility and the proposed approach in relation to the future funding of water services. We made a submission to the DECLG public consultation on the reform of the water sector.

Following an independent assessment of the market by PricewaterhouseCoopers (PWC) the Government decided to establish a public water utility monopoly, Irish Water. PWC recommended that the introduction of competition should not be regarded as a priority at this time, but that once Irish Water is well established as a self-funding utility, international experience of the role of competition in water and sewerage services should

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<sup>15</sup> <http://www.tca.ie/EN/Promoting-Competitio/Market-Studies/Grocery-Monitor-Project.aspx>

be examined to see whether Ireland could benefit from competitive markets at a later date.

From a competition perspective, this is not an ideal outcome. However, given the particular characteristics of the water supply chain and the challenges facing the water sector in Ireland, in our submission we agreed with PWC's analysis that this is the most feasible model in the short term. A public utility is likely to be the best way to put in place all that is required so that a functioning water market exists (i.e. installing water meters, transfer of staff from local authorities, investment in water infrastructure etc).

Once this new structure is in place, we believe the introduction of competition where possible could further improve the delivery and efficiency of our water services. Our submission highlighted that it is important that the new monopoly water company is not created with expectations that such a model would continue indefinitely.

Setting out medium and long-term goals involving increased competition would help to manage any such expectations. Such a roadmap would also reassure households and businesses that when they are charged the full cost of water services - as they must be under EU Directives - the price charged will be competitive.

## **Agriculture**

Maintaining effective competition in the markets for agricultural products in Europe has witnessed a number of challenges in recent years. In its report of 15 July 2010, the High Level Group on Milk (HLG) recommended that the European Commission consider a legislative proposal to allow producers' organisations of dairy farms negotiate contract terms, including price, jointly for some or all of its members' production with a dairy, subject to a quantitative limit expressed as a percentage of EU milk production. This recommendation did not reflect the unanimous opinion expressed by the competition authorities of the Member States within the HLG, which strongly warned against any legislative proposal that would enable dairy farms to jointly fix milk prices without appropriate limits.

The ongoing reform of the Common Agricultural Policy (CAP) has also raised a number of issues for the effective application of competition rules. A number of proposals, particularly by members of the European Parliament, call for the large-scale exclusion of the application of competition rules in the sector. DG Competition, supported by the national competition authorities, has been vocal in warning against any such exemptions. In a joint resolution issued on 19 December 2012, the heads of the European competition authorities stated that such exclusion would slow down the much-desired adaptation of the sector which is facing significant competition from producers outside Europe. The resolution also highlighted that such exemptions could jeopardise several CAP objectives by hindering gains in productivity, increasing the instability of markets and raising prices for consumers, a particularly sensitive issue at a time when disposable incomes are being squeezed across the EU. Such an approach may also put in danger the sustainability of the whole sector in the long run.

The Authority had a number of meetings with representatives from the Department of Agriculture to discuss these developments and in particular what they could mean for the Irish agricultural sector. We also held meetings with other national competition authorities on this issue under the auspices of the European Competition Network.

## **Banking**

Since the onset of the financial crisis in 2008, competition has taken second place to the need for financial stability. The Competition Authority has, however, been involved in efforts to promote the longer term benefits that a competitive, well-regulated banking sector can bring to the wider economy.

As part of the programme agreed between the Troika and the Irish authorities, Ireland committed to undertake a number of measures to restore competition and improve consumer protection in the financial services sector.



The Authority participates in a steering group, alongside senior representatives of the Department of Finance, the Central Bank of Ireland and the National Consumer Agency, which will review and report on an annual basis on progress in implementing measures to improve competition among banks.

Among the measures to improve competition was the revised Consumer Protection Code which came into effect in 2012. This sets out the principles and rules that financial services firms must follow when they provide financial products and services to the public.

In 2012 the Authority also made a submission to the Central Bank's consultation on the operation of the consumer switching code. Competition works best when consumers actively search for better offers and make informed choices to secure value for money. A credible threat that enough consumers are able to switch should incentivise banks to offer consumers the desired level of service at a reasonable cost. We said that the Central Bank should further examine why so few consumers switch banks. We referred to a number of studies which point to the role of public policy in discouraging activities that raise switching costs such as breakage fees and so-called "loyalty schemes". Public policy should instead encourage activities that reduce switching costs such as cost comparison tools and clearer information on transaction fees.

Another important step towards a more competitive banking landscape will be the establishment of a comprehensive, reliable Central Credit Register (CCR) registry of credit information. This should support the twin policy objectives of securing the financial stability of the financial system as a whole while also encouraging competition between credit institutions.

The ability of the regulatory authorities to more closely monitor the volume and quality of lending being undertaken in the economy should serve as a useful tool for protecting financial stability. System-wide monitoring is essential for the Central Bank to quantify total borrower exposures.

## **Energy**

The number of companies active in the energy sector fell in 2012 as a number of mergers and acquisitions paved the way towards greater concentration. While our Mergers Division assessed a number of acquisitions our Advocacy Division participated in a number of public consultations on the future of Irish energy policy.

Most notably, 2012 also saw the publication of the International Energy Agency's (IEA) review of Irish energy policy. The IEA said Ireland would need to develop a range of large infrastructure projects in order to meet ambitious renewable targets and improve our level of energy security.

Ireland is highly dependent on imported fuels for its energy needs and this situation is unlikely to change in the near future. As a small open economy with few developed indigenous natural resources, Ireland is a price taker with no control over the price of internationally traded oil and gas.

Ireland's electricity prices remain high by international standards. The cost of our electricity and gas networks will become an increasingly large element of consumers' energy bills in the coming years as the cost of connecting and transporting electricity from wind farms in remote areas of the west of the country to the demand centres in the east will become apparent. The development of renewable energy sources will carry a considerable price tag which will ultimately be paid for by consumers.

It is therefore of the utmost importance to Ireland's overall competitiveness that we develop and maintain a cost effective energy infrastructure. Competition between infrastructure providers will play a key role in ensuring that capital projects are delivered on time and on budget.

We also made a submission to the Commission for Energy Regulation's (CER) consultation on monitoring the retail electricity market. Although retail electricity prices have been fully deregulated, market monitoring is an essential feature of all electricity regulation regimes given the susceptibility of electricity markets to abuses of market power.

In a deregulated market environment, market monitoring should focus on consumer satisfaction in terms of value and choice rather than solely static measures of concentration as a means of assessing how competition is working for consumers.

## Recommendations from Previous Reports

The Authority continually advocates for the implementation of recommendations we have previously made in market study reports. We do this by creating public awareness and engaging in public debate. We advise decision makers of the benefits that our recommendations will bring to consumers and businesses.

By March 2012, the Government had made decisions on 173 recommendations made between 2002 and 2010.

The Government classified these recommendations as follows:

- 97 "implemented" (56%)
- 35 "overtaken by events or other policies" (20%)
- 9 "having been rejected" (5.5%)
- 25 "accepted but have yet to be implemented" (15%)
- 7 "under consideration" (3.5%)

What remains in the "accepted but have yet to be implemented" category is mainly in the Legal Services Bill and in the "under consideration" category is our dentists recommendations.

## Government Commitment

The Government has announced that, in respect of recommendations made by the Competition Authority in future market studies, the Minister with relevant policy responsibility for those recommendations will, within nine months of the publication of the report, bring a report to Government giving their position on implementation of the recommendations.

Furthermore, it was decided that where any outstanding recommendations or future recommendations made by the Authority are of relevance to the recently launched *Action Plan for Jobs*, their implementation should be monitored in that context.

## Other Areas of Advice

In addition to the major areas of work outlined above, we engaged with Government Departments and public bodies in 2012 on a range of other policy issues. These are summarised in Table 5 below.

**Table 5: Advice Provided to Government Departments and Public Bodies in 2012**

Department/Pubic Body	Topic
Central Bank	Consumer protection
	Consumer switching

CER	Monitoring the retail electricity market
Forfás	Forfás study on economic regulators
NAMA	Deferred payment mortgages
NTA	Bus contracts
	Vehicle standards
Department of Agriculture	EU agriculture policy
	CAP reform
Department of Communications, Energy and Natural Resources	Merger procedures in the sale of State assets
Department of the Environment	Water policy
	Bin collection charges
	Waste policy
	Buiding control regulations
Department of Finance	Role and work of the Competition Authority
Department of Health	Competition law and policy
	Health (Pricing and Supply of Medical Goods) Bill 2012
Department of Jobs, Enterprise and Innovation	Licensing of gambling and lotteries
	Retail code of practice
Department of Public Expenditure and Reform	Public procurement
	Role and work of the Competition Authority
Department of Transport	Ports study
	Regulation of vehicle clamping
<b>Working Groups / Committees</b>	Business Regulation Public Procurement Subgroup.
	Taxi Review Group
	Banking Sectoral Commitments

## Raising Awareness

One of our key objectives, set out in the Competition Act and identified in our current Strategy Statement, is to raise awareness of the benefits of competition, competition law and policy issues and the role and work of the Competition Authority. Our main target audiences for these messages are:

- consumers and the public generally
- businesses

- policy-makers

By communicating with these groups we hope to help people understand

- why competitive markets are good for the economy,
- how competition can help Ireland's economic recovery,
- how competition law can help businesses,
- how they can make sure they comply with competition laws, and
- that competition benefits everyone.

We also raise awareness through other means, by engaging with other bodies, educational institutions and the media, in order to try and raise the profile of the Authority. We regularly give interviews, write articles and make speeches and presentations to a wide range of audiences. Examples of this can be found in **Appendices E and F**.

## Education and Outreach

In 2012 the Authority embarked on a number of initiatives aimed at communicating specifically with the business community and the public sector.

### SMEs

During the year we produced a new business booklet aimed at the Small and Medium Enterprise sector called "Your Business and Competition Law – How it helps you and what you need to know". The booklet contains useful information to help businesses recognise anti-competitive behaviour, make sure they do not become a victim and keep their business on the right side of the law. We recognise that new start ups and small and medium businesses are extremely busy and have to know about a lot of different regulations and laws such as company law, employment law, health and safety law, as well as competition law. Armed with our new booklet for SME's, the Authority engaged with the business community and attended and presented at a number of events in the second half of the year to try and bring this information to businesses and hopefully make starting up a business or carrying on business in Ireland that little bit easier.

Table 6 contains a list of events the Authority attended in 2012 targeting the business community. Building on this momentum, this activity will continue in 2013.

**Table 6: Business events attended by the Authority in 2012**

Event	Date
Small Firms Association Annual Conference, Berkeley Court	20 June
Women in Business Seminar, Girls Day Out Exhibition, RDS	24 August
Ready Steady Go Enterprise Exhibition, RDS	3 October
Sunday Business Post Start Ups Summit, RDS	3 October
ISME Business Briefing Session, Red Cow Hotel	16 October

National Women's Enterprise Day, Portlaoise	17 & 18 October
Taking Care of Business, Maldron Hotel, Tallaght	23 October
ISME Annual Conference, RDS	9 November
North Dublin Enterprise Expo, Regency Hotel	15 November

### **Joint Initiatives with Other Regulatory Bodies**

A number of agencies under the Department of Jobs, Enterprise and Innovation came together in 2012 on a new initiative aimed at helping small and medium sized businesses. It involves the regulatory agencies within the Department working together to host joint events and communications to the business community with the objective of making it easier to start up and do business in Ireland.

The first event, Taking Care of Business, was held in October and was hosted by the Health and Safety Authority. Several agencies, including ourselves, took exhibition stands at the event. In 2013 we plan to do more events together, including a significant exhibition and conference, jointly hosted by all of the agencies together.

### **Public Sector**

In Q4 of 2012, the Authority contacted over 130 Government Departments and public sector bodies, introducing our information booklets and offering to meet with relevant staff or make a presentation generally about who we are, what we do and some more specific messages around public procurement and watching out for bid-rigging, where appropriate. We had a very good response to this outreach activity and held a number of meetings towards the end of the year and into 2013. Again, we hope to build on this work in 2013 and continue to meet with our colleagues in the public sector to help raise awareness of the benefits of competition.

### **15th Annual Irish European Law Forum**

The Irish and European Law Forum is an annual one-day conference run by the UCD School of Law. In 2012 the conference was held in association with the Competition Authority on the theme of competition law enforcement. The conference explored the question of enforcement in the competition sphere looking at the toolkit of enforcement mechanisms that are available across the twin axes of private and public enforcement, and civil and criminal actions. The discussion was framed by consideration of the complementary concerns of deterrence and compliance.

Speakers included Isolde Goggin, Chairperson of the Authority; Morten Hviid, Director, Centre for Competition Policy, University of East Anglia; Frédéric Jenny, Chairman, OECD Competition Law and Policy Committee; Cathal Guimard, Commissioner for Aviation Regulation; Judge Aindreas Ó Caoimh, European Court of Justice; Ewoud Sakkers, Head of Unit of the ECN, Policy and Strategy Directorate, European Commission; Sebastian Peyer, Centre for Competition Policy, University of East Anglia; Niamh Hyland, BL; Gerald FitzGerald, Member of the Authority; André Andeweg, Head of Unit Agriculture, Industry and Construction Industry, Netherlands Competition Authority; Don Baker, Baker and Miller PLLC; Professor Colin Scott, UCD Dean of Law and Professor of EU Regulation and Governance; Michael Collins, SC, Adjunct Professor of Law, UCD; and Imelda Maher MRIA, Sutherland Professor of European Law, UCD School of Law.



*L-R: Sebastian Peyer, Ewoud Sakkers, Imelda Maher, Frédéric Jenny, Isolde Goggin and Colin Scott*

More information on the speakers, along with the programme for the day, speeches and papers given and more photographs are available on our website (<http://www.tca.ie/EN/News--Publications/Conferences/14th-Annual-Irish-European-Law-Forum.aspx>)

### **Professor Richard Whish Seminar Series**

The Strategy Division organised two seminars by Professor Richard Whish in 2012. Richard is Professor of Law at King's College, London. Members of staff from the Authority, along with representatives from the Department of Jobs, Enterprise and Innovation, the Director of Public Prosecutions, the National Consumer Agency and ComReg attended the seminars. At the first seminar, Professor Whish presented an overview of recent developments in the area of cartel enforcement and at the second event, he gave an overview of developments in the areas of abuse of dominance and practice and procedures.

### **Competition and Consumer Day Conference 2013**

In the first half of 2013 Ireland will host the EU Presidency. One of the events that will take place as part of the Presidency is the Competition and Consumer Day conference. It is being jointly hosted by the Competition Authority and the National Consumer Agency and will take place on 24 May 2013 in Dublin Castle.

The conference will bring together national and international experts in the fields of consumer protection and competition policy to share their knowledge, experience and expertise on the challenges and choices which consumers, and those responsible for their welfare, face in modern marketplaces. We have been working on preparations for the conference in the latter half of 2012 along with our colleagues in the NCA, the Department of Jobs, Enterprise and Innovation, the Department of Foreign Affairs and the Office of Public Works.

## **Border Regional Authority**

The Authority made a presentation to the Border Regional Authority. The presentation outlined the Competition Authority's role and the work we have done in the area of price differences for goods and services across the border between the Republic of Ireland and Northern Ireland.

## **Healthcare Sector**

Competition can contribute to better outcomes in the healthcare sector, helping to deliver better access to high-quality patient care, driving innovation and enabling effective and efficient allocation of scarce resources. A number of presentations in 2012 focused on the role of competition in Ireland's changing healthcare system and outlined some of the prerequisites for effective competition:

*"Overview of Competition Policy in Ireland"*, A general overview of competition policy in Ireland was presented to students at the National College of Ireland in January 2012.

*"Intensification of competition in Primary Care under the EU/IMF Programme"*, Senior Management Forum on Competition in Health Care, Dublin, January 2012.

*"Ireland's Healthcare Reforms: Getting the Most from Competition"*, University College Cork, September 2012.

*"Universal Healthcare: Getting the Best from Competition"*, National Primary Care Conference, Cork, November 2012.

Copies of all the above presentations are available on our website at <http://www.tca.ie/EN/Promoting-Competitio/Speeches--Presentations.aspx>.

## **Public Procurement and Competition**

For the past number of years the Authority has been running a bid-rigging roadshow. This is aimed at raising awareness of the importance of competition in tendering, and avoiding bid-rigging as a way to avoid fraud, waste and corruption and to save money, especially in the public sector. This activity was expanded to include additional public sector outreach activity which we engaged in during the latter part of 2012. We spoke to a number of Government Departments and public bodies about public procurement and the Competition Act. These presentations included one to all of the procurement officers of all of the local governments at a meeting held in Local Government House in Dublin. This has since been followed up by a number of individual requests from local government to come and address their staff, reflecting an appreciation of the importance of the competitive process when it comes to tendering for public services.





## 5. INTERNATIONAL WORK

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We continued to fulfil our EU obligations and participated in international organisations in 2012. Our international work stems mainly from our role in enforcing European competition law, along with the European Commission and competition agencies in other Member States.

The Authority is also Ireland's representative at the Competition Committee meetings of the Organisation for Economic Co-operation and Development (OECD) and participates in other international fora as a means of promoting best practice within the Authority and to disseminate knowledge of competition issues. The Authority exchanges views on competition issues with other competition agencies.

### European Commission

The Authority attends Oral Hearings and Advisory Committee meetings of the European Commission on behalf of Ireland in relation to competition enforcement and initiatives on competition law and policy. Before adopting a decision finding an infringement, for example, or adopting a phase 2 decision in relation to a proposed merger, the Commission must hold an Oral Hearing. This is to give defendants, complainants and interested third parties, or merging parties an opportunity to voice their opinion. The Commission must then consult an Advisory Committee, to which each Member State belongs and in which they can articulate their opinions.

The Commission also consults with Member States on proposed enforcement practices, guidance, policies and legislation relating to Community competition law and policy. We fulfil this role by attending decision-making and other meetings such as Advisory Committees and Oral Hearings, as well as making written and oral contributions to policy and case analyses. Given constraints on resources we do not attend all meetings but focus resources on those cases that have an (actual or potential) impact on Irish consumers and on the high level meetings that encourage the consistent and efficient application of European law.

In 2012, we attended three Oral Hearings:

- Power Cables – *Case No. COMP 36910*
- TV and Computer Monitor Tubes – *Case No. COMP 39437*
- Medical Devices – *Case No. COMP M.6266*

In 2012, the Mergers Division followed the progress of and participated in the Advisory Committee hearings of four EU Merger Review cases:

- Deutsche Börse / NYSE Euronext – *Case No. COMP M.6166*
- Johnson & Johnson / Synthes – *Case No. COMP M.6266*
- Universal Music / EMI Group – *Case No. COMP M.6458*
- Hutchison 3G Austria / Orange Austria – *Case No. COMP M.6497*

In 2012, the Mergers Division also followed the progress of and provided its views to the Commission, where appropriate, in several other cases. The most notable of these was the review of the Ryanair / Aer Lingus notification (*Case No. COMP M.6663*) which was ongoing at the end of 2012.

### EU Merger Working Group

The EU Merger Working Group was established in 2010 and its purpose is to exchange experience and foster more co-operation and convergence between national competition agencies in the area of EU merger control.

In 2012, the Authority attended three EU Merger Working Group meetings. The Group exchanged experience regarding market definition, analytical and empirical filtering techniques and large-scale local mergers. It also identified and discussed a number of substantive and procedural aspects regarding pre- and post-notification referrals, with a particular focus on Article 22 EC Merger Regulation.

## European Competition Network

Membership of the European Competition Network (ECN) is compulsory for national competition authorities of Member States and for the Commission. 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 ECN's objective 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 2012, we attended two types of high level general meetings; the meeting of Directors General and ECN Plenary meetings. We were also active in the following Working Groups and Sectoral Sub-Groups:

- Co-operation between Competition Authorities
- Forensic IT
- Cartels
- Chief Economists
- Banking
- Financial Services
- Environment
- Food
- Pharma & Health Services
- Transport

## ECN Newsletter and ECN Brief

The ECN produces two documents concerning the activities of ECN members.

The ECN *Newsletter* is an internal confidential document that details investigations, studies and other activities of interest to the Network. There were five issues of the ECN *Newsletter*. The Authority submitted four articles to the *Newsletter* in 2012.

The ECN *Brief* gives information to the public on the activities of ECN members a few times a year. To view past editions of the ECN *Brief* go to <http://ec.europa.eu/competition/ecn/brief/index.html>. There were five issues of the ECN *Brief* in 2012. The Authority submitted three articles to the *Brief* in 2012.

## ICN

The Authority is an active member of the International Competition Network (ICN), where it has representatives participating in five working groups. They are Agency Effectiveness, Cartels, Mergers, Unilateral Conduct and Advocacy. Much of the work is carried out via conference calls and a number of webinars took place on specific subjects during the year.

As part of the Strategy Division's work on developing an Effective Project Delivery Framework for the Authority, the Division was closely involved in reviewing a new chapter of the ICN Agency Effectiveness Handbook on Effective Project Delivery and as part of that took part in 'road testing' the new chapter. Two members of staff represented the Authority at the 2012 ICN Annual Conference in Rio de Janeiro and acted as moderators in break-out sessions on Effective Project Delivery and Effective Knowledge Management.

Two members of the Cartels Division represented the Authority at the 9th Annual ICN Cartel Workshop in Panama City, where they acted as panellists in a mini plenary session on Investigative Strategies and a break-out session on Searches, Raids and Inspections. The Workshop was hosted by the Panamanian Competition Authority. The theme of this year's Workshop was "Enhancing Global Cartel Enforcement – Building on Solid Foundations". Approximately 130 people attended the conference, representing 40 national competition agencies, the OECD, the UN, public prosecutors and a small number of non-Governmental agencies. Other discussion topics included: drafting an effective leniency/immunity programme, digital evidence gathering, cartel case initiation, interviewing techniques and case resolution.

## OECD

The Authority attends meetings of the Competition Committee of the OECD, which is said to be the world's premier source of policy analysis and advice to governments on how best to harness market forces in the interests of greater global economic efficiency and prosperity. Bringing together the leaders of the world's major competition authorities, the Committee is the chief international forum on important competition policy issues.

In 2012, the Authority submitted a written contribution to the roundtables on "Competition in Health Services" and "Market Definition" held at the February and June meetings respectively. These contributions outline the experience of the Authority in these areas<sup>16</sup>.

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<sup>16</sup> The Authority's contributions to OECD roundtables can be accessed at: <http://www.tca.ie/EN/About-Us/International-Work/OECD.aspx>



## 6. CORPORATE SERVICES

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### Finance

The Authority's financial accounts are subject to audit by the Comptroller & Auditor General (C&AG). As the audit of our 2012 accounts is unlikely to be completed until June, and as there is a statutory deadline for publication of our annual report by the end of February each year, it is not possible for us to publish our annual audited accounts in our annual report. We will however publish our accounts on our website as soon as the audit is completed.

The Authority's grant from the Department of Jobs, Enterprise and Innovation in 2012 was €4,654,000, a reduction of €446,000 from the 2011 budget allocation. The provisional estimate of expenditure in 2012 is an outturn of €4,240,000, slightly higher than expenditure in 2011 – by €134,000. The increase in expenditure related mainly to pay costs and reflected the full year costs of the four Member positions being filled for the first time in a number of years.

Income from merger notifications was down on 2011. With only 33 mergers being notified to the Authority in 2012 (one of which was withdrawn), income was €256,000 as against €320,000 in the previous year. Each merger notified to the Authority under the Act must be accompanied by a fee of €8,000. The income we receive from merger notifications must be paid over to the Exchequer through the Department of Jobs, Enterprise and Innovation.

The Code of Practice for the Governance of State Bodies requires that in the interests of transparency and good governance, State bodies should publish in their reports details of the salary of their Chief Executive. While the Authority does not have a specific post of Chief Executive Officer, it considers that the Chairperson of the Authority, Isolde Goggin, fulfils that role. The Chairperson's annual salary of €176,800 is set by the Department of Public Expenditure and Reform in compliance with Government pay policy and is equivalent to the remuneration of a Deputy Secretary General in the Civil Service as set out in Appendix 1A of the Department of Finance Circular E107/22/06. The Chairperson does not receive any bonuses or additional remuneration. The salaries of all staff of the Authority are set by Government and no additional remuneration or special allowances are paid.

### Internal Audit

The Authority's Audit Committee is independent of the Authority in the performance of its functions and is not subject to direction or control from any other party. The Committee has three members, two of whom are external to the Authority. Mr Jim Bardon, one of the external members, chairs the committee, Ms Noreen Fahy from the Institute of Public Administration is the second of the external members and Mr Gerald FitzGerald, a Member of the Authority, is its third member.

The Authority's Audit Committee met on five occasions during 2012. During 2012 the Committee directed that a number of audits be conducted on its behalf by Capita Consulting, the Authority's internal auditors. These audits covered Human Resources, Cartel Investigations & Case Management, Internal Financial Controls, Cartel Complaint Handling and ICT & Hardcopy Information Security. In addition to reviewing the reports on these audits, the Committee also reviewed progress on implementation of any outstanding audit recommendations from 2011 audit reports.

The Audit Committee reviewed the Authority's Financial Statements and Accounts for 2011.

## Freedom of Information

The Competition Authority received three requests under the Freedom of Information Acts in 2012 – a similar figure to 2011. Of the three requests dealt with in 2012, two were granted in full and one was part granted. All three requests were business related. The prescribed fees totalling €45 were paid over by the Authority to the Department of Jobs, Enterprise and Innovation.

## Human Resources

In last year's annual report, the Authority reported that its staffing level had been capped at 39 posts under the Government's Employment Control Framework as compared with 59 posts at the time of the introduction of the moratorium on recruitment to the public service in March 2009. However, at the beginning of 2012, in the context of the EU/IMF Memorandum of Understanding, the Government committed to review the adequacy of resource levels in the Authority. On 25 April 2012, in the course of the Committee Stage Seanad debate on the Competition (Amendment) Bill 2012, Minister of State Fergus O'Dowd announced that following that review, the Minister for Jobs, Enterprise and Innovation had approved an additional ten posts for the enforcement function of the Competition Authority.

Of the ten posts, three have been filled, one on the basis of a secondment from the Department of Jobs, Enterprise and Innovation, one from the redeployment panel in the public service and one by an Authority employee returning from a career break. In September 2012 the Public Appointments Service launched a recruitment campaign to fill the seven remaining posts and interviews were conducted in November. While that recruitment process is continuing, no further appointments have yet been made.

In terms of staff movements in and out of the Authority, 2012 was perhaps the quietest ever. The public service recruitment ban has obvious implications on recruitment into the Authority and other public sector organisations. This, together with the current economic climate, has affected mobility generally within the public and private sectors. One member of staff, Mr Ibrahim Bah, left the Authority's employment at the end of 2012 to take up a position as head of the South African Competition Commission's Mergers and Acquisitions Division. Three other members of staff who had been on career breaks resigned their positions in 2012 to take up employment opportunities abroad.

The Authority participated in the Department of Social Protection's JobBridge programme during 2012 and engaged two people under the programme.

## Customer Service

The Authority has a Customer Charter which can be accessed on our website: <http://www.tca.ie/EN/Customer-Charter.aspx>. In our charter we commit to providing the highest level of service possible and we do this by setting out the standards of service that someone should expect from us. We also explain how to obtain information from us and how to provide us with feedback on the level of service provided.

The charter also contains a commitment on our part to report annually how we have lived up to the standards that we have set. In terms of our written and electronic correspondence our commitment is to acknowledge receipt of all correspondence within three days and to issue a more substantive response within fifteen days. From our records it would appear that 90% of incoming correspondence was acknowledged within the three day target and 88% of correspondence received a more substantive response within the 15 day target. Our commitments in relation to service to telephone contacts and personal callers to our office are not as easily measured and so we rely on feedback from our customers. We did not receive any feedback or complaints and so while the lack of complaints is not a definitive indication of complete satisfaction, we can assume that we are generally meeting the commitments set out in our charter.

## A. COMPETITION AUTHORITY MEMBERS

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**Isolde Goggin**

**Chairperson**

**Director of Advocacy Division, Corporate Services Division and Strategy Division**



**Stephen Calkins**

**Director of Mergers Division**



**Gerald FitzGerald**

**Director of Monopolies Division**



**Patrick Kenny**

**Director of Cartels Division**







## B. MERGERS NOTIFIED TO THE COMPETITION AUTHORITY IN 2012

Notification	Economic Sector	Date of Notification	Status
M/12/033 – DCC / Kent	The manufacturing and supply of pharmaceuticals	27/12/2012	Preliminary Investigation (phase 1)
M/12/032 – Timac / Grassland Fertiliser	The wholesale supply of fertiliser	21/12/2012	Preliminary Investigation (phase 1)
M/12/031 – Top Snacks / KP Snacks	Savoury snacks	18/12/2012	Preliminary Investigation (phase 1)
M/12/030 – C&C / Gleeson	The wholesale distribution of beverage products	18/12/2012	Preliminary Investigation (phase 1)
M/12/029 – Endless / VION	The farming, slaughter, processing, production and sale of pork products	13/12/2012	Cleared (phase 1)
M/12/028 – Blackstone / Intertrust	Blackstone is a global alternative asset manager and provider of financial advisory services. Intertrust provides corporate administration services	13/12/2012	Preliminary Investigation (phase 1)
M/12/027 – Uniphar / CMR	The industry sectors involved are the distribution of human pharmaceutical products, veterinary pharmaceutical products, front-of-counter products and medical supplies	12/12/2012	Preliminary Investigation (phase 1)
M/12/026 – Onex / Summit / BBAM	The parties to the proposed transaction are engaged in private equity investment and commercial aircraft leasing, financing and management respectively	30/11/2012	Cleared (phase 1)
M/12/025 – AIB / Ark Life	Ark Life formerly operated in the design and underwriting of life insurance products (comprising protection, saving and investment products and pension products) sector. AIB operates in the commercial and personal banking sector	23/11/2012	Cleared (phase 1)
M/12/024 – Stobart / Aer Arann	Air transport	21/11/2012	Cleared (phase 1)
M/12/023 – DSM / Fortitech	Human nutrition	15/11/2012	Cleared (phase 1)
M/12/022 – Permira / Ancestry.com	The target is active in family history services and is an online family history resource	15/12/2012	Cleared (phase 1)
M/12/021 – Henry Schein / C&M Vetlink	Animal healthcare products	01/11/2012	Cleared (phase 1)
M/12/020 – EQT / Mitco / Zebra	The retail sale of a variety of goods to consumers across a number of products including food and non-food products	12/10/2012	Cleared (phase 1)
M/12/019 – IBM /	IT and recruiting and talent	20/09/2012	Cleared

Kenexa	management solutions		(phase 1)
M/12/018 – Julius Baer / The IWMB of Merrill Lynch & Co Inc	Wealth and investment management services	07/09/2012	Cleared (phase 1)
M/12/017 – United Care / Pharmexx	Sales representatives to pharmaceutical companies	22/08/2012	Cleared (phase 1)
M/12/016 – Cerberus / BancTec	IT/business support services industry	20/08/2012	Cleared (phase 1)
M/12/015 – State Street / Goldman Sachs	Financial services, particularly the provision of domestic and global securities services to institutional investors	15/08/2012	Cleared (phase 1)
M/12/014 – Manwin / RK Netmedia	Adult entertainment	07/08/2012	Cleared (phase 1)
M/12/013 – Dell / Quest	Enterprise systems management software	20/07/2012	Cleared (phase 1)
M/12/012 – FrieslandCampina / IDB Belgium	Dairy	06/07/2012	Cleared (phase 1)
M/12/011 – AXA PE / Arkadin	AXA PE is involved in managing and advising funds investing in private companies. Arkadin Group is a global collaboration services provider	02/07/2012	Cleared (phase 1)
M/12/010 – Pallas / Crossgar	Pallas and Crossgar are both involved in food service distribution	22/06/2012	Cleared (phase 1)
M/12/009 – DZ Bank / WGZ Bank	Private equity services primarily in Germany	21/06/2012	Cleared (phase 1)
M/12/008 – SSE / Endesa Ireland	The parties are engaged in the generation and wholesale electricity and in retail supply of electricity to end-consumers	18/06/2012	Cleared (phase 1)
M/12/007 – Nestlé / Pfizer	Paediatric nutrition, including everyday and speciality infant and toddler formulas, follow-on formulas, as well as maternal and adult nutrition products	18/05/2012	Cleared (phase 1)
M/12/006 – Airtricity / Pheonix	The supply of natural gas	16/05/2012	Cleared (phase 1)
M/12/005 – Apollo EPF / MBNA	Apollo is active in global alternative asset management and MBNA is a credit card business	27/03/2012	Cleared (phase 1)
M/12/004 – Southbank Media / Travel Channel	Television broadcasting	22/03/2012	Cleared (phase 1)
M/12/003 – SEP / ESB NM / Geothermal International	Heating and cooling systems and process and building controls	22/03/2012	Cleared (phase 1)
M/12/002 – Millington / Siteserv	Infrastructure and utility support services	16/03/2012	Cleared (phase 1)
M/12/001 – OEP / Sonneborn	The targets manufacture and market speciality hydrocarbons refined from base oils	28/02/2012	Cleared (phase 1)

## C. STATISTICS ON MERGERS EVALUATED 2009-2012

	2012	2011	2010	2009
<b>Notified Mergers</b>	<b>33</b>	<b>40</b>	<b>46</b>	<b>27</b>
required notifications [section 18(1)]	33	40	46	27
voluntary notifications [section 18(3)]	0	0	0	0
<b>Carried from previous year</b>	<b>4</b>	<b>6</b>	<b>3</b>	<b>2</b>
carried as phase 1	4	5	3	2
carried as phase 2	0	1	0	0
<b>Referred from the EU Commission (ECMR Art 9)</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>TOTAL CASES</b>	<b>37</b>	<b>46</b>	<b>49</b>	<b>29</b>
of which media mergers	3	5	8	2
of which entered phase 2 in year of determination	0	1	1	1
of which entered phase 2 in year previous to determination	0	1	1	0
<b>Cases Withdrawn</b>	<b>1</b>	<b>0</b>	<b>0</b>	<b>0</b>
Withdrawn at phase 1	1	0	0	0
Withdrawn at phase 2	0	0	0	0
<b>Determinations Delivered</b>	<b>30</b>	<b>42</b>	<b>43</b>	<b>26</b>
Phase 1 Determinations cleared without proposals	30	40	41	25
Phase 1 Determinations with proposals	0	0	1	0
Phase 2 positive Determinations without conditions or proposals	0	2	1	0
Phase 2 Determinations with proposals	0	0	0	0
Phase 2 Determinations with conditions	0	0	0	1
Phase 2 Prohibitions	0	0	0	0
<b>Referral to EU Commission (ECMR Art 22)</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>Carried to next year</b>	<b>6</b>	<b>4</b>	<b>6</b>	<b>3</b>
Carried as phase 1	6	4	5	3
Carried as phase 2	0	0	1	0



## D. FORMAL SUBMISSIONS BY THE COMPETITION AUTHORITY IN 2012

Submission Number	Submission to	Topic	Summary
S-12-001	Commission for Energy Regulation	Monitoring the Retail Electricity Market	In a deregulated market environment market monitoring should focus on consumer satisfaction in terms of value and choice as a means of assessing how competition is working for consumers.
S-12-002	Department of the Environment, Community and Local Government	Establishing a Public Water Utility	Given the particular characteristics of the water supply chain and the challenges facing the water sector in Ireland, a public water utility is the most feasible model in the short term.
S-12-003	Department of the Environment, Community and Local Government	Draft Building Control (Amendment) Regulations 2012	From a competition perspective the fact that the certification of building work is to be limited to three professions raises concerns.
S-12-004	National Transport Authority	Public Bus Contracts	This submission explained the benefits of competitive tendering and outlined some practical issues associated with implementing competitive tendering.
S-12-005	Central Bank of Ireland	Consumer Switching	Actions should be taken to ensure that bank staff are well trained in the switching process. Consumers need to be confident that bank staff are helpful and are aware of the steps involved in switching banks.



## E. SEMINARS, SPEECHES, PRESENTATIONS & PAPERS

Title	Forum	Date	Person
Intensification of competition in primary care under the EU-IMF Programme	Senior Management Forum on competition in healthcare	26 January	Carol Boate
A view from the Competition Authority – how they deal with regulation and enforcement	Law Society of Ireland Diploma in In-house Practice	13 March	Stephen Calkins
ECN Model Leniency Programme	The EU/China Trade Project	14 & 15 March	Ciarán Quigley
Opening statement to the Joint Committee on Justice, Defence and Equality	Joint Committee on Justice Defence and Equality	21 March	Isolde Goggin
In search of effectiveness: current trends and challenges in competition law enforcement	Keynote speech at the 6 <sup>th</sup> Annual Postgraduate Workshop, UCD School of Law	22 March	Stephen Calkins
Investigative powers of the Competition Authority	ISEL Competition Law Forum	28 March	Patrick Kenny
Competition law and cross-border pricing	Border Regional Authority Meeting	28 March	Han Nie and David O'Connell
Competition policy in Ireland	National College of Ireland	30 March	Carol Boate
Public procurement and the Competition Act	Public Affairs Ireland	18 April	Patrick Kenny
The real world of Irish competition law	Competition law class, UCD School of Law	19 April	Stephen Calkins
The economics of exclusive dealing	OECD Regional Competition Centre seminar	10 May	David O'Connell
Pay TV case	OECD Regional Competition Centre seminar	10 May	David O'Connell
The work of the Cartels Division	Quinn School of Business	14 June	Dan Kenna & Catherine Kilcullen
The Competition (Amendment) Act 2012	ISEL Competition Law Forum	4 July	Noreen Mackey
Opening statement to the Joint Committee on Jobs, Enterprise and Innovation	Joint Committee on Jobs, Enterprise and Innovation	24 July	Isolde Goggin
My role and the role of the Competition Authority	Women in Business seminar, Ultimate Girls' Day Out	24 August	Isolde Goggin
Lead respondent on Paul Gorecki's Economic Regulation and Economic Recovery	Second Economic Regulators' Network Workshop on Change Management	5 September	Stephen Calkins
Ireland's healthcare reforms – getting the most from competition	University College Cork	11 September	Deirdre McHugh
Making cartel crime not pay	Competition Press Annual Conference	27 September	Patrick Kenny

Penalising individuals and criminalisation	2 <sup>nd</sup> International Competition Law Forum	27 September	David McFadden
Business crime – settlement v leniency	International Bar Association Annual Conference	2 October	David McFadden
Where else would you rather be than right here, right now?	Keynote luncheon address at International Bar Association Antitrust Committee Annual Meeting	3 October	Stephen Calkins
Market definition and other analytical tools in merger review	International Bar Association Annual Conference	3 October	Ibrahim Bah
Your business and competition law	Sunday Business Post Start Ups Summit	3 October	David McFadden
Your business and competition law	ISME Business Briefing	16 October	Isolde Goggin
The global conversation about merger review and powerful buyers	3 <sup>rd</sup> Annual Baxter Lecture	23 October	Stephen Calkins
Thoughts on global merger review and powerful buyers	Remarks to the Australian Competition and Consumer Commission	24 October	Stephen Calkins
Merger review: a view from both sides	Gilbert & Tobin	24 October	Stephen Calkins
Universal healthcare: getting the best from competition	National Primary Care Conference	14 November	Isolde Goggin
Public procurement and the Competition Act	Meeting of Local Authorities	14 November	Patrick Kenny
One lawyer, many clients: legal representation of parties with conflicting interests	Paper published in International In-house Counsel Journal	Autumn edition	Noreen Mackey
Public procurement and the Competition Act	Railway Procurement Agency	30 November	Patrick Kenny
Public procurement and the Competition Act	Bord Gáis	18 December	Patrick Kenny and Dave O'Connell



# F. EXAMPLE OF MEDIA COVERAGE

These articles appeared in the Connacht Tribune in June following the conviction of Pat Hegarty, the last defendant in the heating oil cartel case. It sums up how the cartel operated, how consumers and businesses in the West were taken advantage of and detailed the investigation and the outcome.

## Oil scam cost homeowners millions

### Anonymous informant sparked probe that led to conviction of 18 oil distributors in Galway

#### Anonymous informant sparked probe that led to conviction of 18 oil distributors in Galway

BY MEDIA CORRESPONDENT

It took a month-long probe to bring the oil scam to light. The anonymous informant who provided the information to the Competition Authority was a former member of the cartel. The informant provided the information to the Competition Authority in a letter dated 15th March 2004. The informant provided the information to the Competition Authority in a letter dated 15th March 2004. The informant provided the information to the Competition Authority in a letter dated 15th March 2004.

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## Consumers ripped off as cartel of companies fixed the price they had to pay

BY MEDIA CORRESPONDENT

The Competition Authority found that the cartel was formed to fix the price of heating oil. The cartel members were aware of the fact that they were not only taking advantage of consumers but also of each other. The cartel members were aware of the fact that they were not only taking advantage of consumers but also of each other.

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### The convictions and sentences in heating oil price fixing court cases

Michael Sheehan, 54, pleaded guilty to conspiracy to fix the price of heating oil. He was sentenced to 12 months in prison. The Competition Authority found that the cartel was formed to fix the price of heating oil. The cartel members were aware of the fact that they were not only taking advantage of consumers but also of each other. The cartel members were aware of the fact that they were not only taking advantage of consumers but also of each other.

### Cartel member got immunity to squeal

...the fact that they were not only taking advantage of consumers but also of each other. The cartel members were aware of the fact that they were not only taking advantage of consumers but also of each other. The cartel members were aware of the fact that they were not only taking advantage of consumers but also of each other.

### 'Enforcer' made sure prices for customers stayed at high level

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