

Annual Report 2013



The Competition Authority
An tÚdarás Iomaíochta

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A MESSAGE FROM THE CHAIRPERSON

Imagine a world without open markets and competition policy. As a nation, we would be immeasurably poorer, because import tariffs and quotas in other countries would be used to block our exports and increase the price of imported inputs that our economy needs. In particular, the agricultural sector would have no outlet other than the very small local market. We would be unable to attract Foreign Direct Investment, which also depends on the ability to export, so there would be no high-tech industry, no pharmaceutical industry, no aircraft leasing. In the absence of an effective competition policy, both public and private monopolies would exploit their captive consumers, secure in the absence of any threat to their profits from imports. Consumers would not just pay more – they would suffer from a lack of choice and innovation, since monopolists would not bother to create new products if they didn't have to. The lot of ordinary consumers would be pretty dismal. And this, pretty much, is how it was in Ireland until the 1960s, when Seán Lemass and TK Whittaker revolutionised Irish economic policy by ending protectionism and introducing competition.

Competition drives growth and innovation. At home, it ensures that firms, particularly in the non-traded sector, keep their costs down and their quality up because of the threat that a rival will come and take their business. Consumers benefit, but so do businesses and the economy generally, because competition encourages innovation and new businesses and this results in more money being spent on new and innovative products. Abroad, open markets and competition policy underpin the whole idea of the European Union – the “common market” - ensuring that other countries do not use protectionist policies to prevent us from exporting goods and services where our natural resources, level of education or hard work and inventiveness give us a competitive advantage.

It sounds like competition policy is good for everybody. Why, then, does it encounter such resistance? Why have legislative reforms – including those agreed with the Troika – taken so long? (See *opinion piece on p. 7*). Why do prices remain stubbornly high in essential areas such as health insurance and medicines?

At least part of the answer is that restrictions on competition create both winners and losers. The losers are generally individual consumers, and the amounts of money concerned - while important to those consumers and collectively large - are individually small. The winners are the monopolists and the sheltered sectors, who make large profits and who have developed their lobbying skills and influence over many years. They dominate the public debate, frequently using vulnerable consumer groups – the elderly, children or those on low incomes – as “human shields” by falsely claiming that those groups will lose, not win, from competition.

Some of the Competition Authority's policy recommendations were not implemented in the boom years, perhaps because incomes and profits were rising steeply, with consumers and businesses becoming relatively insensitive to costs. Equally, in the downturn, there was strong resistance from vested interests to greater competition, using the argument that profits had declined and that their businesses were suffering. We have advocated for competition to the benefit of consumers in good times and in bad, and we will continue to do so. We have maintained our emphasis on enforcement, both criminal and civil, which has been greatly boosted by our ability to recruit some staff this year, bringing numbers back up to 2004/2005 levels.

We process mergers efficiently and effectively. We place great importance on our statutory function of providing advice to Government departments and public bodies on the role of competition in improving public services, and increasingly try to get involved at the earliest possible stage of policy development. We also continue to implement best practice in corporate governance and to continually improve our practices and procedures.

Looking forward to 2014, we will continue to prepare for our forthcoming amalgamation with the National Consumer Agency. While setting up the new agency will undoubtedly take time and resources, we are confident that the new, combined agency will deliver substantial results for consumers and the economy in the long run. We will seek to ensure that Ireland's newly-regained competitiveness is not eroded by anti-competitive practices or regulations, so that input costs to business are kept as low as possible. We will continue to focus on awareness of competition issues among the business community so as to promote compliance.

Finally, I would like to thank all the staff of the Authority for their dedication, openness and positivity in implementing our strategy. These are not easy times for the public service, and economic recovery has demanded sacrifices from everybody. Our staff have met the challenges with intelligence, hard work and good humour, and I am proud to be associated with them.



Isolde Goggin

Chairperson, The Competition Authority

Staying the course: why sticking to the Troika's tough prescription is worth it

In November 2010 the Irish Government agreed to a programme of financial support with the EU, the ECB and the IMF – “the Troika”. The Memorandum of Understanding (MoU) set out the economic policy measures that had to be implemented if the programme of financial support was to continue. The MoU comprised reforms under three main headings; fiscal consolidation, financial sector reform, and broader structural reforms – including measures to encourage competition in sheltered sectors of the economy.

Ireland exited the bailout in December 2013 and while considerable progress has been made in restructuring the public finances and the financial sector, some of the key competition measures (such as reform of the legal profession) have yet to be implemented. This is a concern to the Competition Authority. Delays in making long overdue reforms are costing consumers and weakening the prospects of a robust recovery.

As Government policy focus shifts from crisis management to job creation and growth, greater priority must be given to promoting more competition in sectors that affect business input costs such as professional services, energy, transport and utilities. Rivalry between firms not only benefits consumers but also drives innovation and supports growth throughout the economy over the longer term.

Many of the reforms contained in the MoU mirrored recommendations in Competition Authority studies on the professions and our various submissions and reports recommending the removal of restrictive practices in sheltered sectors of the economy. For example, a series of studies into the professions identified a range of restrictive practices designed to protect the interests of those already within the profession rather than the needs of consumers. The ultimate result of those practices was longer queues in waiting rooms and higher prices.

Under the bailout programme, the Irish Government committed to removing restrictions to competition in certain sheltered sectors. These sectors include:

- Legal Profession – Establishing an independent regulator for the legal profession and implementing the recommendations of the Legal Costs Working Group and outstanding Competition Authority recommendations to reduce legal costs.
- Medical Services – Eliminating restrictions on the number of GPs qualifying and removing restrictions on GPs wishing to treat public patients as well as restrictions on advertising.
- Pharmacy Profession - Ensuring that the elimination of the 50% mark-up paid for medicines under the State's Drugs Payments Scheme (DPS) is enforced.

What progress has been made?

Progress on the implementation of the various competition proposals has been slower than expected but change is underway. For example, the Legal Services Regulation Bill was first published in October 2011 but has been the subject of a number of amendments that have slowed its passage through the Oireachtas. The Bill is now at Committee stage and should finally pass in to law this year. This legislation will establish a system of independent regulation of the legal profession for the first time. This in turn will provide a better environment for reform of outdated practices that inhibit modernisation of the legal services market.

The Health (Provision of General Practitioner Services) Act 2012 introduced greater competition in the provision of medical services provided by GPs treating public patients who are eligible for the General Medical Services scheme (GMS). GPs are now able to establish their own practices and obtain a GMS contract without the need to buy in to an existing practice or wait for a GMS contract in a particular area to be relinquished.

The Government has also eliminated the 50% mark-up guaranteed to pharmacies under the DPS and introduced legislation to encourage the sale of generic drugs where they are suitable substitutes for more expensive branded products.

These changes in how legal and medical services are provided will in time deliver better value for money and more choice by giving consumers more rights to choose the lawyer or doctor who best meets their needs. This will spur service providers into providing better services in more innovative ways.

What's next?

While the Troika has provided the stimulus for change, there are still many sectors of the Irish economy in need of reform. A focus for us will be on sectors that affect prices to consumers by pushing up business costs.

The Irish retail banking market is now dominated by the two pillar banks. All evidence suggests that such a highly concentrated banking market is detrimental to consumers and to the long term growth of the economy. In an uncompetitive market consumers are faced with higher fees, low deposit interest rates and poor service. SMEs complain that the banks are unwilling to lend to them as banks focus on debt recovery instead of new business. Measures to encourage entry by well capitalised overseas institutions should be considered.

Competition in the retail electricity and gas markets has led to wider choice for consumers, but prices remain high by international standards. Ireland will remain a price-taker on international fuel markets. Therefore, the key challenge for Irish policymakers is to keep a tight rein on those costs that are within our control, for example by using competitive tendering for the construction and maintenance of energy networks.

The transfer of responsibility for the management of State assets to New Era provides an ideal opportunity for the introduction of more competition in such sectors as energy, forestry, broadband and public infrastructure. Similarly, the opening of Public Service Obligation bus routes to competitive tendering for the first time, however limited, will provide opportunities for private operators to offer services which were once the preserve of the monopoly operators.

Many of the policy prescriptions involved in the Troika bailout have certainly involved a painful adjustment for the Irish people. But as we begin the process of recovery the positive aspects of the Troika's role in kick-starting much needed reform of sheltered sectors of the economy should not be overlooked. And as doctors always advise, the course of medicine should be completed to ensure a full recovery and avoid a relapse.

1. ABOUT THE COMPETITION AUTHORITY

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.

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, so does the economy as a whole. 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 benefited from 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 tablets, and services such as the huge variety of online services that are now available.

Our Functions

Preventing Anti-competitive Behaviour

The 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*
- *Abuse of Dominance*
- *Other Anti-competitive Agreements - where the object or effect of the behaviour is less egregious than a hardcore cartel.*

Private Enforcement of Competition Law

The Authority cannot get money back 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.

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 little or no impact on consumers at all. The majority do not pose a problem and are cleared.

- 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.
- But mergers and acquisitions that lessen competition can 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 as a consequence.

The Authority has to be notified of mergers and acquisitions involving companies with turnover above 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.

Promoting Competition

The 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.

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 that we employ best practice within our agency. It is also to fulfil our role as part of the EU competition enforcement network.

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

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

Strategy & Business Planning

Strategy Statement

The Authority is obliged to produce a Strategy Statement every three years and our Strategy Statement 2012-2014 reached its halfway mark during 2013. A midterm review of the Strategy Statement was piloted by the Strategy Division to establish how the Authority was doing in achieving its high level goals and following its strategy.

Business Plan

In December 2013 the Authority submitted a Business Plan for 2014 to the Minister for Jobs, Enterprise & Innovation. Producing an annual Business Plan before the end of each year is a requirement under section 33 of the 2002 Act. The Business Plan provides a structured basis for developing and planning implementation of the objectives that flow from the high level goals of the Strategy Statement.

As part of the management of the current Business Plan, the Strategy Division oversees quarterly reporting to the Authority. Quarterly reports measure implementation of the planned steps and activities set out in the Business Plan and report on the progress made.

Management & Reporting

Service Level Agreement

The Authority signed a Service Level Agreement with the Department of Jobs, Enterprise & Innovation in May 2013. The Service Level Agreement is a requirement following a Government decision on 15 November 2011 and under the Public Service Reform Programme published on 17 November 2011.

Quarterly reports are prepared and presented to the Department, outlining how the Authority has fulfilled its commitments under the Service Level Agreement.

Effective Project Delivery

The Authority has in place an Effective Project Delivery framework. The principal aim of framework is to ensure a standard and accountable management process to enable the Authority to deliver its work consistently and successfully. Each division provides monthly reports to the Management group and the Authority on effective project delivery.

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). It has 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 Broadcasting Authority of Ireland
- the Commission for Aviation Regulation
- the Commission for Communications Regulation
- the Commission for Energy Regulation
- the Commission for Taxi Regulation
- the Health Insurance Authority
- 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 p.14. It is designed to encourage participants to report cartels in which they are, or have been, involved. 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 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. We strongly encourage anyone with information about suspected anti-competitive behaviour to contact us. Information from the public is often the first step in launching an investigation into people or organisations 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 the Authority by email, telephone, via our website 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 the Authority. 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 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.

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

Web complaint form: www.tca.ie/complaints.aspx
Email: 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 2013.

Total Complaints Received by the Authority in 2013	
Total received	195
Ongoing	46
Added to existing cases/investigations	5

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

- 34 new complaints of alleged criminal cartel behaviour. Of these, 26 were examined and closed in 2013, and 8 are still under assessment.
- 92 new complaints of anti-competitive agreements and abuses of dominance, 65 of which were examined and closed during the year.

The Authority also completed the review of a number of complaints that were carried over from previous years. These included 14 complaints of alleged criminal cartel behaviour and 24 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 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 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 Authority's **cartel immunity hotline number** which 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 our website www.tca.ie.

There are protections in the Act for "whistle-blowers", people who report suspected breaches to us. For example, under the Competition Act 2002 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 Act to us.

Amalgamation with the National Consumer Agency

In 2008, the Government announced that the Authority was to be amalgamated with the National Consumer Agency as part of a rationalisation of State agencies. Work on legislation to give effect to this decision was added to a review of the Competition Act which was already taking place. Plans for the legislation were later further expanded with the addition of new provisions for dealing with mergers in the media sector and a statutory code of conduct for the grocery sector.

2013 saw close co-operation continue between the two organisations, together with the Department of Jobs, Enterprise & Innovation, in relation to preparation for the amalgamation.

With the publication of the legislation expected in early 2014, 2014 is the year when the vast majority of the work will be required for

- developing a corporate plan,
- moving two organisations from two buildings into one new building and onto one IT platform,
- drafting agreed policies and procedures, and
- creating a new identity, brand and website.

Towards the end of 2013, the Authority and National Consumer Agency therefore increased the level of resources devoted to managing the amalgamation process throughout 2014.

2. ENFORCING COMPETITION LAW

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 and so need to be proven beyond reasonable doubt. Where we have enough evidence of a criminal cartel, 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.

Current Cases

The Competition Authority v Irish Medical Organisation

On 2 July 2013, the Minister for Health announced that he had decided to reduce the fees payable by the Health Service Executive to General Practitioners (GPs) for providing services to eligible patients under the General Medical Scheme (GMS). He proposed to do this by means of regulations made under the Financial Emergency Measures in the Public Interest (FEMPI) Act 2009. On 10 July 2013, the GP Committee of the Irish Medical Organisation (IMO) issued a press release condemning the proposed reduction in fees and stating that it had been decided that GPs would withdraw from the provision of certain services, including

- participation by GPs in Primary Care Teams,
- participation by GPs in Community Intervention Teams,
- participation by GPs in Clinical Care Programmes (Chronic Disease), and
- any other services not specified in the GMS contract (i.e., the contract which governs the provision of services by GPs under the GMS).

In the Authority's opinion, GPs are undertakings within the meaning of the Competition Act 2002 and the IMO's action therefore constituted a decision by an association of undertakings which would limit collectively the range and quality of services provided by GPs to GMS patients. As such, it was a decision which had the object and/or effect of preventing, restricting or distorting competition in the State and which might also affect trade between EU Member States.

On 11 July 2013, the Authority wrote to the IMO stating its view that the decision of its GP Committee constituted collective action by GPs and was in breach of competition law, specifically section 4 of the Act and Article 101 TFEU. It called on the IMO to rescind its decision immediately and to publish its agreement to do so on its website.

Following the IMO's failure to comply with the Authority's request, the Authority instituted proceedings in the High Court on 16 July 2013 seeking certain orders against the IMO, including an interlocutory injunction requiring the IMO to rescind the decision of its GP Committee to withdraw from providing certain services to GMS patients.

On 23 July 2013, the IMO gave voluntary undertakings to the High Court whereby it agreed, pending the final determination of the case, to suspend the decision of its GP Committee to withdraw services; to remove the press release of 10 July 2013 from its website and to inform its members of the giving of the undertakings. Pleadings have since been exchanged between the Authority and

the IMO and it is expected that the case will be heard during the first half of 2014.

Other Ongoing Investigations

Given that some of our investigations involve potentially serious infringements of competition law and the possibility that some may result in criminal trials at a future date, it is inappropriate for us to comment publicly on such investigations. However, we acknowledge that some of the cases under investigation in 2013 were reported in the media. They concern allegations of anti-competitive activities in the commercial flooring, cement and milk sectors. No further details can be provided as these investigations are ongoing.

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 involved allegations of bid-rigging and it remains under consideration by the DPP.

Completed Investigations

In 2013, the Authority concluded a number of cases, some of which are summarised below.

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 resale price maintenance (RPM) by various means in recent years. RPM is the practice where distributors or suppliers dictate the price at which goods or services must be sold by retailers. It is anti-competitive because it results in consumers paying more than they might otherwise have if retailers were free to set their own prices.

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, which FitFlop models they could discount, and what level of discount they could offer.
- **Implementing a passive sales ban with respect to the FitFlop brand of footwear:** 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. ('Passive sales' are sales to customers who approach the retailer without being specifically targeted, e.g., via the retailer's website.)

This conduct meant that consumers who wished 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 under which 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. This means that the commitments given by BBS are now an Order of the High Court. This also 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.

The Authority subsequently issued an Enforcement Decision setting out in detail the issues which arose in the FitFlop case, which was published on the Authority's website in April 2013¹.

Fees at Rosslare Europort

On 20 April 2012, the Authority received a complaint from a ferry operator regarding the fees charged by Irish Rail to ferry operators at Rosslare Europort. The complainant alleged that Irish Rail charged fees in a discriminatory manner, with the fees charged to it being higher than those charged to its competitor for the same services. According to the complainant, this alleged discrimination placed it at a competitive disadvantage vis-à-vis its competitor.

During the assessment of this complaint, the Authority gathered a substantial amount of information from Irish Rail and other sources. The information obtained by the Authority showed that Irish Rail may hold a dominant position in the market for the provision of port services at Rosslare to operators providing ferry services on the relevant route. However, the analysis of the data obtained did not show a substantial difference in the rates applied by Irish Rail to ferry operators providing ferry services on the relevant route, including those charges levied on the complainant. This meant that the Authority did not find any evidence that Irish Rail had engaged in discriminatory behaviour which might have amounted to the abuse of a dominant position in breach of section 5 of the Act.

Bulk LPG

In October 2013, the Authority closed a long-running investigation into supply arrangements in the bulk LPG sector. The Authority has previously assessed, on a number of occasions, exclusive purchasing agreements between bulk LPG suppliers and commercial users.

In 2005, and again in 2010, the Authority publicly consulted on whether to issue a Declaration² in respect of Bulk LPG. Following receipt of submissions, and detailed analysis, the Authority decided in October 2013 not to issue a separate Declaration in respect of bulk LPG. Accordingly, bulk LPG agreements are subject to the Authority's 2010 Verticals Declaration and, more broadly, to the Act.

The Authority closed its investigation on a number of grounds:

¹ This is available at <http://www.tca.ie/EN/Enforcing-Competition-Law/Notices-Declarations-and-Guidance-Notes/Enforcement-Decisions/Decisions/E1301--Resale-price-maintenance-of-FitFlops-branded-footwear.aspx?page=1&year=0>

² The Act permits the Authority to declare in writing that a specified category of agreements, decisions or concerted practices complies with certain conditions, set out in section 4(5) of the Act. The effect of such a Declaration is that agreements within the category in question are not prohibited by section 4 of the Act.

Insufficient evidence of consumer harm

There is insufficient evidence of consumer harm to justify the further expenditure of resources. Bulk LPG accounts for less than 1.5% of annual energy consumption in the State, and this figure has been shrinking for a number of years. Accordingly, the resources to be expended were not considered justified, due to the small (and shrinking) size of the relevant market.

Small number of complaints & possible remedies are unsatisfactory

The number of complaints received by the Authority has been small and has declined in recent years. In addition, the Authority believes that the remedies at its disposal are unlikely to be effective tools for addressing any competition problems which may exist in the market. The majority of complaints have been received from domestic, rather than commercial/industrial customers. Domestic consumers are not undertakings and agreements between them and suppliers of bulk LPG are therefore not subject to Irish or European competition law. Very few complaints were received from commercial/industrial customers (who, in contrast to domestic consumers, are undertakings and whose agreements with suppliers would be subject to competition law). However, the Authority's assessment of these cases was that the supply agreements did not restrict competition and did not, therefore, warrant enforcement action by the Authority. The Authority also concluded that the adoption of a Declaration in respect of the type of supply agreements used in the sector was unlikely to resolve any of the issues raised in the complaints it had received.

Difficulty of securing an abuse of dominance ruling

The Authority also considered the possibility that suppliers had abused a dominant position on the market. Given the current structure of this market, it seems likely that the Authority would have to prove that the two principal suppliers enjoy a position of joint dominance in the relevant market. The Authority decided that in light of the small number of complaints received and based on its review of the market, launching complex, lengthy and expensive court proceedings arguing that abuse of dominance had occurred was not warranted.

However, it is important to add that this decision applies only in the context of current circumstances in the bulk LPG market. The Authority remains at liberty to investigate any competition issues that may arise in this market in future, or to issue a Declaration in respect of bulk LPG should the circumstances warrant such action.

Dairy Sector

The Authority has assessed a number of complaints related to the supply of milk by farmers to dairy co-ops over the past year. The context of these complaints is the pending abolition of milk quotas in 2015 and the corresponding expected increase of 50% in raw milk production nationally by 2020. In response to this increase, co-ops are taking steps to (a) safeguard their milk supplies and (b) invest in additional milk processing infrastructure to accommodate the increased volumes of milk which, under standard co-op membership agreements, they are obliged to buy, subject to certain conditions.

Since 1984, the milk quota regime, together with the Society Rules of co-ops, has governed supply arrangements between farmers and co-ops. In preparation for the abolition of quotas in 2015, a number of co-ops are introducing milk supply agreements. These will result in farmers contracting with co-ops to supply their milk to that co-op for a number of years, typically on an exclusive basis.

In certain circumstances, exclusive supply agreements (which, by their nature, involve some restriction of competition) can create efficiencies which benefit

consumers. In recognition of this, such agreements may qualify for exemption from the general prohibitions of restrictive agreements provided for in EU and Irish competition law. This has been recognised by the adoption of general exemptions under both EU and Irish law that permit exclusivity agreements of up to five years' duration where certain conditions are met. These include, for example, a condition that the market shares of the supplier in the market in which it sells, and of the buyer in the market in which it purchases, must not exceed 30%, as well as conditions providing that the agreements must not contain certain other restrictive clauses (such as resale price maintenance or a ban on passive sales). Exclusive agreements in excess of five years or which do not comply with the other conditions for general exemption will fall to be assessed on a case-by-case basis.

In the Irish liquid milk market, there are a number of reasons why exclusive supply agreements may be justifiable on efficiency grounds, including security of supply and, in some cases, the funding of additional processing infrastructure. However, funding and supply mechanisms must not be used as tools to tie farmers to particular co-ops for unreasonably long periods of time. If this were to occur, new entrants would be unable to enter the milk processing market, as they would be unable to source supplies of milk. Moreover, farmers located in the catchment areas of multiple co-ops would be unable to switch co-ops to take advantage of better supply terms, including more attractive pricing. Accordingly, excessively long supply contracts may act as barriers to both entry and switching. For this reason, the Authority reviews such agreements carefully to ensure that any exclusive supply arrangements are justifiable on efficiency grounds and contain only restrictions that are indispensable to the achievement of those efficiencies.

The Authority also closed an investigation into the National Dairy Council's "Farmed in the Republic of Ireland" campaign. The Authority found that the NDC campaign promoted the point of origin of liquid milk products and that this, in itself, did not amount to a breach of competition law. However, the Authority cautions that great care must be taken in the use of NDC Mark campaign, to ensure the campaign does not become a vehicle for potentially anti-competitive activity.

Other Investigations

Two investigations concerning alleged hardcore breaches of section 4 of the Act were concluded in 2013. 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.

Other Enforcement Matters

NAMA

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.

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 any complaints made against NAMA 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. Having reviewed NAMA's use of its powers in 2012, the Authority concluded that no distortion of competition resulted.

General Competition Issues

School Uniforms

Periodically the Authority receives a large volume of complaints in relation to a particular sector or issue. In response, the Authority may publish general relevant advice on the "What's the story?" section of its website. One such example in 2013 was the issue of school uniform prices. Each year, approaching the start of the school year, the Authority receives complaints from parents relating to school uniforms. The most common complaint is about schools granting exclusivity for supplying uniforms to one retailer, therefore depriving parents of a choice of uniform supplier.

While the Authority itself has not conducted a detailed investigation, the Authority's counterpart in the UK, the Office of Fair Trading (OFT), considered this issue in some detail and has developed a series of recommendations. Given the need for schools to give careful consideration to cost concerns of parents when deciding on school uniform policy, the Authority has made similar recommendations to those of the OFT, in particular:

- Where possible, schools should allow a number of different retailers to supply parents with the school uniform. The Authority believes that the best outcome for parents is likely to be when uniforms are available from multiple retailers. This would encourage retailers to compete and allow parents to make their own decisions on the basis of convenience, quality and price. It is reasonable to assume that the price of uniforms will generally be lower if it is supplied through a number of retailers who compete with each other.
- If a school chooses to establish an exclusive supply arrangement with a retailer, the Authority would recommend that
 - the retailer is chosen by means of a competitive tender rather than on the basis of established or historic relationships,
 - the selection criteria cover, among other things, quality, price, level of service, etc. This enables competition to occur at the tendering stage and enables schools to agree the exclusive arrangement with the retailer or retailers who offer the best mix of quality, price and other selection criteria, and
 - the arrangement is reviewed on a regular basis and is not awarded for an excessively long period.

The Authority is aware that school uniform policy is a matter that is generally decided at individual school level. The policy should therefore be settled following discussion within the school community (as was recommended by the Department of Education in 2008). The Authority encourages parents to be proactive in relation to this issue so that their school's policy is designed to ensure that uniforms are reasonably priced and are of good quality. They should use their influence with school principals and boards to that end. If they have concerns regarding the operation of a school's policy, they should raise those concerns, either individually or through a parents' committee, with the school principal and/or board of management.

Cartel Immunity Programme Review

During 2013 the Authority continued with its review of the Cartel Immunity Programme to ensure that it reflects best international practice, including the updated ECN Model Leniency Programme, and to ensure that it achieves its objectives in light of experience in operating the Programme. The Authority will work with the DPP with a view to adopting the revised programme during the course of 2014.

Use of Enforcement Powers

Under the Act, the Authority has extensive powers for use in its enforcement work. These powers enable it to obtain information where it is unlikely to be produced voluntarily, or where it has already been refused. During 2013, the Authority conducted seven searches at premises of different undertakings allegedly involved in anti-competitive activity. The search operations were conducted nationally and involved over half of the staff of the Authority. The Authority was assisted on site by members of An Garda Síochána. Substantial volumes of hard copy documents and forensic data were seized during the searches.

Table 1: Use of Enforcement Powers in 2013

Enforcement Power	2013
Search Warrants	7
Summonses	11

Table 2: Investigation & Enforcement Powers of the Competition Authority

Investigation & Enforcement Powers Description	
Types of investigations carried out	<ul style="list-style-type: none"> • Criminal investigations • Civil investigations • Assessment of mergers • Formal studies
Power of entry and search	Authorised officers 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	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

	<p>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>
<p>Power to seek disqualification of a director</p>	<p>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</p>

3. EVALUATION OF MERGERS AND ACQUISITIONS

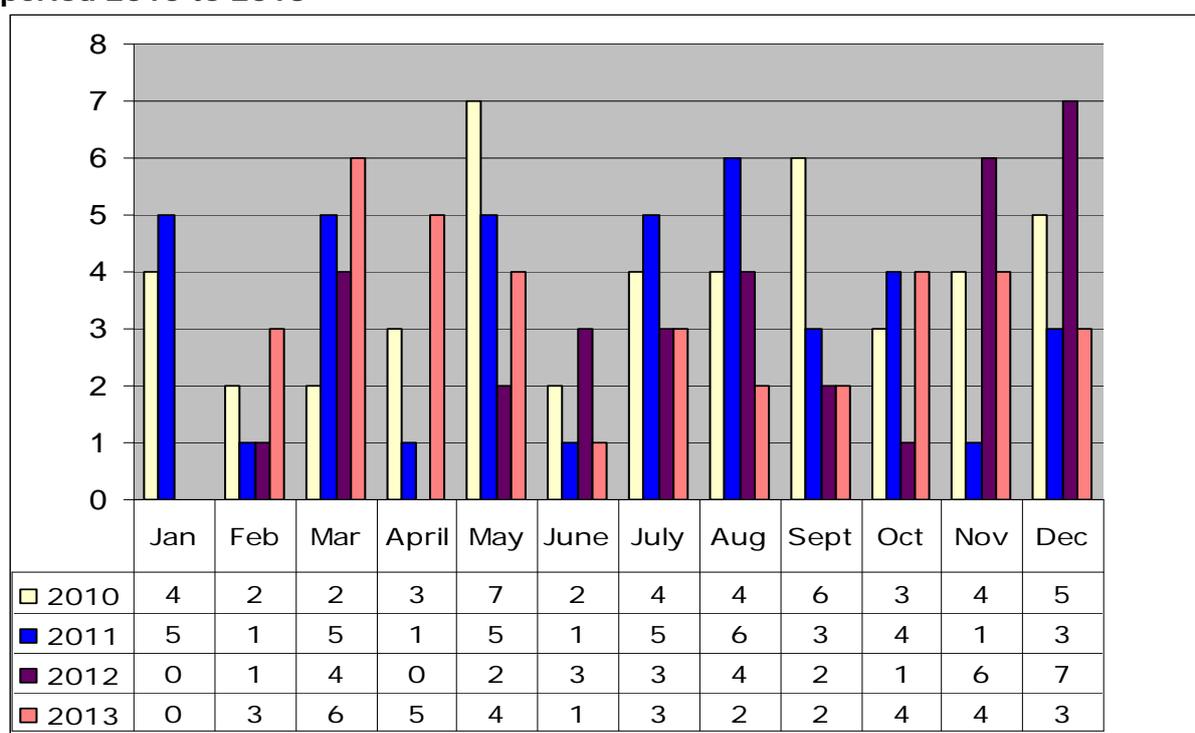
In 2013, the Authority made 39 merger determinations of which 6 were carried over from 2012. There was an increase in the number of mergers and acquisitions notified to us in 2013 (37) compared to 2012 (33). The number of media mergers notified also increased in 2013 (5) compared to 2012 (3).

The Credit Institutions (Financial Support) Act 2008 (CIFS Act) provides that some proposed mergers involving credit institutions³ must be notified to the Minister for Finance instead of to the Competition Authority. During 2013 no such mergers were notified. 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.

The Authority continues to strive to improve the effectiveness and efficiency of the merger review regime of Ireland and provide guidance to practitioners, Government Departments and industry. As part of this endeavour, the Authority consulted on and published revised Guidelines for Merger Analysis in 2013.

Merger Notifications during 2013

Figure 1: Monthly comparisons of merger notifications received for the period 2010 to 2013



Appendix B contains a full list of mergers notified to the Authority in 2013. 37 mergers were notified to the Authority in 2013. The following points about 2013 are highlighted:

- 2013 saw a slight increase in notifications to the Authority on the previous year.

³ 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.

- Almost a third of the mergers notified to the Authority in 2013 involved private equity firms purchasing businesses.
- In 2013, the Authority finalised its examination of six transactions which were notified in 2012 and whose deadlines extended into 2013. Two of these cases involved a full phase 2 investigation, while one involved an extended phase 1 investigation. All of those cases were cleared by the Authority without conditions.
- 10 Requirements for Further Information were issued in the examination of five mergers. Two of the five mergers involving Requirements for Further Information progressed to a phase 2 investigation.
- 33 of the 37 merger notifications received during 2013 were cleared in 2013 during the initial (phase 1) investigation, usually within one calendar month.
- Four merger notifications were carried forward into 2014.

Appendix C provides more detailed statistics on mergers examined between 2010 and 2013.

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 2013, two phase 2 investigations were initiated. Both phase 2 investigations involved notifications originally received in December 2012, namely:

M/12/027 – Uniphar / CMR

This transaction was notified by the parties on 12 December 2012. The Authority cleared the transaction on 30 April 2013. Uniphar and CMR are full-line wholesalers of pharmaceutical, healthcare, and veterinary products to pharmacies, hospitals and veterinary surgeons in the State. Both parties are active in the market for the full-line wholesale supply of pharmacy-only, human pharmaceutical drugs in the State. During its investigation, the Authority examined the competitive impact of the proposed transaction in this market.

At the conclusion of the preliminary (phase 1) investigation on 13 March 2013, the Authority announced that it was unable to conclude that the acquisition would not substantially lessen competition in markets for goods or services in the State. The Authority therefore proceeded to a full (phase 2) investigation.

Following an intensive full investigation, which included ongoing contacts with the parties, a survey of pharmacies carried out by Ipsos MRBI on behalf of the Authority, obtaining the views of competitors and suppliers of the parties, obtaining the views of industry representative bodies, the Department of Health and the Health Service Executive, and econometric analysis of pricing data, the Authority formed the view that the transaction will not substantially lessen competition in markets for goods or services in the State. In particular, the Authority concluded that the proposed transaction would not make it sufficiently more likely that Uniphar and United Drug would engage in tacit co-ordinated behaviour as to substantially lessen competition.

M/12/031 – Top Snacks / KP Snacks

On 18 December 2012 the Authority was notified of a proposed transaction whereby Intersnack International BV, through its subsidiary Top Snacks Limited, would acquire certain assets, comprising the business known as KP Snacks, from United Biscuits (UK) Limited.

Intersnack BV is part of the Intersnack Group, a major European manufacturer of branded and non-branded crisps and snack products. Intersnack BV's UK-based subsidiary Top Snacks has a controlling interest in Irish-based Largo Foods. Largo Foods brands include Tayto, King, Hunky Dorys, Perri and Sam Spudz.

KP Snacks, the target business in the merger, is a UK-based manufacturer and supplier of crisps and snacks. KP Snacks brands sold in Ireland include KP Nuts, Hula Hoops, McCoy's, Meanies, Rancheros and Skips.

As part of its analysis, the Authority examined the closeness of competition between the various crisp and snack products and the extent to which the acquisition of KP Snacks by Top Snacks might harm consumers within the State.

On 22 April 2013 following an intensive full investigation, which included ongoing contacts with the parties, obtaining the views of both competitors and customers of the parties, a survey of consumers and econometric analysis, the Authority formed the view that the transaction would not substantially lessen competition in markets for goods or services in the State.

Extended Phase 1 Merger Investigations - Requirements for Further Information

The Authority can issue a Requirement for Further Information (RFI) to any one or more of the parties to a merger in order to obtain information which will assist it 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 2013, 10 formal RFIs were issued in five merger cases.⁴ None of these cases were carried over to 2014. Three of these cases were cleared in phase 1 following an extended investigation lasting, on average, two to three months. Two of these involved subsequent phase 2 investigations, both of which were ultimately cleared and are discussed above. Of the extended phase 1 investigations the following case is of interest.

M/12/030 – C&C / Gleeson

On 18 December 2012 the Authority was notified of a proposed acquisition by C&C Group plc, through its wholly owned subsidiary C&C (Holdings) Limited, of the entire issued share capital of M&J Gleeson (Investments) Limited. On 16

⁴ Namely: Notifications M/12/027 - Uniphar / CMR, M/12/030 - C&C / Gleeson, M/12/031 - Top Snacks / KP Snacks, M/13/001 - BlackRock / CS ETF Business, and M/13/003 - BT / ESPN Global. See: <http://www.tca.ie/EN/Mergers--Acquisitions/Merger-Notifications.aspx> for more details. Two RFIs were issued in each of notifications listed above.

January 2013 the Authority issued an RFI to each of the parties, both of whom duly complied on 29 January 2013.

C&C is involved globally in the manufacture, marketing and supply of branded long alcoholic drinks (LADs), specifically cider and beer products, to wholesalers and retailers in both the on-trade and off-trade sectors. C&C manufactures, markets and supplies cider in the State under the Bulmers brand and internationally under several brands including the Magners brand. C&C also manufactures various Tennent's beer brands and acts as the exclusive supplier for a range of AB InBev's products.

Gleeson is involved in the wholesale distribution of beverage products (both alcoholic and non-alcoholic), such as LADs, wine, spirits, soft drinks and water. Gleeson manufactures several non-alcoholic products including mineral waters (Tipperary and Crystal Springs brands), soft drinks (Finches, Country Springs, Score and Cadet) and freeze pops (Magic Stick). Gleeson is not engaged in the brewing or manufacturing of alcoholic drinks but acts as the exclusive agent in the State for the supply of some products including soft drinks, beers and wine.

During the investigation, which included ongoing contacts with the parties and obtaining the views of both suppliers and competitors, the Authority focused on vertical issues such as input foreclosure and customer foreclosure along with other potential competition issues. The Authority sought the views of a number of third parties, comprising competitors, customers and suppliers of both C&C and Gleesons. In particular, the Authority sought the views of third parties involved in the distribution of cider and beer.

The Authority concluded that the proposed transaction would not substantially lessen competition in any market for goods or services in the State. The Authority cleared the transaction on 27 February 2013.

Mergers Involving Media Businesses

The Act 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. Of the five media mergers notified to the Authority in 2013, four were cleared following a phase 1 investigation during the year. Table 3 provides a summary of these four media mergers. No direction was made by the Minister for Jobs, Enterprise & Innovation during 2013, under section 23(2) of the Act, to the Authority to carry out a full investigation under section 22 of the Act.

Table 3: Notified Media Mergers in 2013

Notification	Economic Sector	Date of Notification	Status
M/13/003 - BT / ESPN Global	Broadcasting	27/02/2013	Cleared (phase 1)
M/13/005 - BSkyB / Be Un Limited	UK residential fixed broadband and telephony	04/03/2013	Cleared (phase 1)
M/13/006 - Clare FM / Terence and Gay Mangan / Tipp FM	Radio advertising in County Tipperary and County Clare	14/03/2013	Cleared (phase 1)
M/13/029 - Fox / Setanta Africa	Broadcasting	07/10/2013	Cleared (phase 1)

The fifth media merger notified in 2013 - M/13/033 – Sappho / TCH – was carried forward into 2014 as the parties submitted proposals to the Authority which extended the phase 1 deadline to 45 days into January 2014.

Review of Non-notifiable Mergers

Although the main role of the Mergers Division is to perform the statutory task of reviewing proposed mergers that are notified to the Authority it also investigates non-notified mergers that risk breaching sections 4 and/or 5 of the Act. The Mergers Division undertakes this task in co-operation with other divisions of the Authority.

Corrib Oil / Sutttons Oil

Corrib Oil Limited and Sutttons Oil Limited are both heating oil suppliers based in the west of Ireland. The Authority became aware in early September 2013 that Bord na Móna had reached an agreement to sell its oil distribution business, namely Sutttons Oil, to Corrib Oil. The Authority received a complaint from a member of the public in relation to this proposed merger. It centred on the fact that Corrib Oil has a previous conviction under the Competition Act 1991 (as amended) for price-fixing.⁵

Under the circumstances, and given the characteristics of the industry, the Authority decided to investigate the likely competitive impact of the proposed transaction. The investigation included requests for information from the parties, and obtaining the views of a large number of third parties, including competitors and customers of both parties.

Following its investigation, the Authority informed the parties that, based on the information available to it, it did not intend to challenge or object to the completion of the proposed acquisition. The Authority also informed the parties, however, that since this acquisition was not notified to it under section 18 of the Act, it retains and reserves the right to consider any competition issues under the Act at some future date should the need arise.

Kerry / Breeo Case

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

On 7 April 2009, the Authority appealed the High Court decision to the Supreme Court. The appeal was in accordance with section 24(9) of the Act, which specifies that an appeal to the Supreme Court may only be made on a question of law.

In 2010, the Authority 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 submitted documentation to the Courts in early 2013 and has liaised with the Supreme Courts Office and the legal advisors to Rye Investments Limited (Kerry Group) in an effort to fix a date for the hearing of the appeal. It is now anticipated that the hearing of the case will take place during the second or third law term of 2014.

Merger Guidelines

The Authority concluded its review of its current merger guidelines, *Notice in respect of Guidelines for Merger Analysis, Decision No. N/02/04*, published in December 2002. The Authority issued revised draft merger guidelines for consultation on 13 September 2013 requesting submissions by 26 October. Ten submissions were received.⁶ "*Guidelines for Merger Analysis - Notice N/13/001*"

⁵ For information on this case see: <http://www.tca.ie/EN/Enforcing-Competition-Law/Criminal-Court-Cases/Home-Heating-Oil.aspx>

⁶ These are available to view at <http://www.tca.ie/EN/Mergers--Acquisitions/Legislation--Guidance/Guidance-on-Mergers/Merger-Analysis.aspx>

was published on 20 December 2013. These Guidelines replace the Authority's previous 2002 Guidelines. They reflect the Authority's experience in reviewing mergers since it was given this power by the 2002 Act and also take account of international developments in merger review over the last decade or so. They include detailed explanations of the Authority's approach to merger review and provide guidance on the issues that are central to the Authority's review of mergers and acquisitions.

4. PROMOTING COMPETITION IN IRELAND

The 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 respond to public consultations. We promote the idea of a competition culture to the wider community through publishing guidelines, organising and participating in conferences and seminars and interacting with business organisations.

Action Plan for Jobs – Irish Ports Sector Market Study

As an island, Ireland is heavily dependent on its ports. Exports have been Ireland's only net contributor to economic growth in recent years. So ensuring that competition is working as well as it can, and increasing Ireland's ability to trade internationally, are vital. In that context, the Action Plan for Jobs 2013 required the Authority to publish a report on competition in the Irish ports sector.

We published our comprehensive study in November 2013, which made six recommendations aimed at improving competition in the sector.

Recommendation 1 - Leasing and licensing of Dublin Lo-Lo terminals: The Authority recommended that the way that leasing and licensing of Dublin Lo-Lo terminals is managed should be changed to substantially reduce the duration of the leases (sometimes over 100 years) and to change the way in which licences are automatically renewed. The Authority also recommended that performance measures should be incorporated into any future terminal leases or licences.

Recommendation 2 - Stevedore licensing: The Authority recommended that:

- At least two new general stevedore licences should be issued in Dublin Port.
- General stevedore licences should be granted to applicants on a fair, reasonable and non-discriminatory basis, or through a tendering process.
- General stevedore licences should not be automatically renewable.
- Ports should not require applicants to demonstrate that they will attract new business to the port as a condition for granting new licences.
- Self handling licences should be granted by Dublin Port Company on a fair, reasonable and non-discriminatory basis.
- Where stevedore services are provided exclusively by the port directly, this should be clearly justified by the port authorities in question.

Recommendation 3 - Port closure and amalgamation: The Authority did not recommend any specific port closures or amalgamations. Rather, we recommended that the policy focus should be on preserving competition and ensuring larger ports are operating efficiently and competing with one another. While port closures may result in lower administrative costs, they are unlikely to enhance competition among ports. The report recommended that the Department of Transport, Tourism and Sport should be required to seek the views of the Competition Authority on any proposed port mergers, or alternatively, that ports with turnovers below the existing merger thresholds should be designated by the Minister for Jobs, Enterprise & Innovation as a class of merger that must be notified to the Authority regardless of whether it meets the merger thresholds.

Recommendation 4 - Management models: The Authority recommended that the Department of Transport, Tourism and Sport should ensure that effective competition within ports is a key objective for port authorities.

Recommendation 5 - Investment in port-related road and rail infrastructure: The Authority concluded in its report that it is unlikely that future Government investment in port-related road and rail infrastructure could be justified purely on the grounds of improving competition between ports, and therefore any decision to invest in infrastructure in this context should be carefully considered.

Recommendation 6- Data collection and performance measures: Data collection and port performance measures are vital in order to analyse the level of competition within the sector and to guide future policy-making. However, the Authority's study highlighted a lack of both. The Authority recommended that the Department of Transport, Tourism and Sport prioritise the development of performance measures and data collection for the main ports.

Commenting on the report, Minister for Jobs, Enterprise & Innovation, Richard Bruton TD, said, *"A strong export performance will be crucial to the recovery in the economy and jobs market we are working so hard to achieve. That is why providing better supports and a better environment for exporters is at the centre of our Action Plan for Jobs. As part of this drive, I asked the Competition Authority to carry out a study on how competition in our ports sector can be improved, in order to make it easier and cheaper for our exporters to do business. The report produced today is an excellent piece of work, and Government will study its recommendations in detail and take appropriate action. This will ensure that we continue to improve the environment for exporters and support the growth in jobs and the economy we need"*.

Welcoming publication of the report and signalling his commitment to exploring its recommendations, Minister for Transport, Tourism and Sport, Leo Varadkar TD, said, *"My Department will now consider these recommendations in detail and within six months will reply to the Competition Authority with a 'reasoned response' stating in each case whether we accept or reject the individual recommendations and explaining why."*

Advice on Proposed Legislation, Regulations and Competition Issues

Public restrictions on competition – for example, unnecessary limits on the number of firms allowed to provide a service, or overly restrictive rules on how they can operate - 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 businesses.

Consumers and businesses have fewer options in dealing with public versus private restrictions, which makes identifying and commenting on them all the more important. Therefore, we promote competition by making submissions⁷ and providing advice, to Government Departments, public authorities and other State bodies on the implications for competition of both proposed and existing laws, regulations and policies.

⁷ Copies of our submission are available on our website at <http://www.tca.ie/EN/Promoting-Competitio/Submissions.aspx>

Submissions

Registration of Architects

In May 2013, the Authority made a submission to the *Independent Review of the Arrangements for Registration of Architects* established by the Department of the Environment, Community and Local Government. The submission noted that a properly regulated registration system for architects can provide important protections to consumers, by providing some indication of the competence, qualifications and experience of service providers. We raised a number of concerns however about aspects of the current registration system. Among the issues raised were questions regarding the registration of practically-trained architects, concerns about the recognition of Irish architects in Europe and concerns about the lack of part-time or modular courses in architecture.

Mr Garrett Fennell, of GFC Consulting, who was appointed by the Minister to carry out the Independent Review, published his report in September. He made a number of recommendations for reforming the system for registering architects, which we welcome. Implementation of the proposed reforms will provide those applying for registration with greater clarity, transparency and certainty on the registration process; will enhance the actual and perceived independence of the regulatory functions of the Royal Institute of Architects in Ireland (RIAI); and will give greater protection and assurances to the consumers of architectural services.

Government Statement on Economic Regulation

The Authority made a submission to the Draft Consultation on the Government Statement on Economic Regulation. The Authority raised concerns regarding powers given to regulators in Ireland compared with other jurisdictions, particularly other EU Member States. In the Authority's view, the relative weakness of Irish regulators' enforcement powers with regard to the imposition of fines and other sanctions means that structural reform in regulated sectors in Ireland will likely lag behind that experienced in other EU Member States.

Economic regulation is a policy response to a market failure. In some cases, the need for regulation could be lessened by restructuring previously State-owned monopolies in advance so that only those areas that cannot support competition are left subject to regulation. Failure to do this will make regulation more complex and, as a result, more costly. Consumer welfare will also be reduced relative to its potential.

Reforming the Dental Profession

The Authority made a submission to the Department of Health's public consultation on new legislation to replace the Dentists Act 1985. The public consultation put forward a number of legislative proposals which will implement most of the outstanding recommendations in the Authority's 2007 report on competition in the dental profession (Dentists Report 2007) and yield benefits to consumers.

The Authority welcomed the proposal to amend the composition of the Dental Council to provide that the majority of Council members are not dentists.

The Authority agreed with the proposal to introduce regulations to allow the public to directly access some classes of auxiliary dental professionals so as to improve consumers' access to quality dental services, and lead to improved oral healthcare in Ireland and encourage competition in dental services, in terms of price and quality.

The Authority also endorsed the proposal to remove the prohibition on the incorporation of dental practices as this will offer benefits to dentists by giving

them more flexibility to choose between establishing their own practice and working on a full or part-time basis as an employee.

The submission supports the proposal to give power to the Dental Council to make rules – within reasonable and limited circumstances - regarding advertising. Informative advertising of the services provided by healthcare professionals helps consumers make better choices and leads to lower prices.

Producer Responsibility Initiative

Producer responsibility initiatives (PRIs) have their origins in the "producer pays principle". PRIs create a duty for the producers of waste to treat or have the waste they produce treated in accordance with EU requirements. They try to ensure that producers involved in a particular waste stream pay the full costs of waste management services provided including collection, treatment and disposal. The waste streams covered by PRIs in Ireland include packaging, waste electrical and electronic equipment, end of life vehicles, batteries, farm plastics and tyres.

The Authority made a submission to the Department of Environment, Community and Local Government's public consultation on the Report on Corporate Governance in the Producer Responsibility Initiative sector in Ireland.

The Authority welcomed generally the proposals outlined in the consultation document, which sets out a clear, standardised, consistent and accountable relationship between the Department of Environment, Community and Local Government and compliance schemes. However, to facilitate effective competition among compliance schemes, we made the following recommendations:

- There should be limited restrictions on waste producers' ability to switch between compliance schemes where possible, and on the ability to switch to self-compliance.
- PRIs should limit the opportunities for waste producers and compliance schemes to share commercially sensitive information.
- Regulatory functions – e.g., ensuring Ireland achieves its recycling targets, enforcing contingency plans in case of failing schemes, and carrying out educational and promotional activities for encouraging "reduce, reuse and recycle" – should rest with an existing State agency or Government Department to avoid potential conflicts of interest.

Proposals to directly award Public Bus Services Contracts to Dublin Bus and Bus Éireann in 2014

The Authority made two separate submissions to the National Transport Authority (NTA) regarding its public consultation on Directly Awarding Public Bus Services Contracts to Dublin Bus and Bus Éireann in 2014. The NTA proposed directly awarding new contracts for the operation of all services covered by the current public contracts to Dublin Bus and Bus Éireann on 1 December for five years.

The Authority queried the grounds for the NTA's decision to directly award contracts to Dublin Bus and Bus Éireann in 2014. The Authority felt that it was not clear from the consultation documents that continued adequacy of public bus passenger services could "only be guaranteed" by another direct award contract to Dublin Bus and Bus Éireann - the relevant legal test⁸ to be applied.

⁸ Section 52(6)(c)(ii) of the Dublin Transport Authority Act 2008

Although the NTA also proposes to open up part of the services covered by the current public contracts held by Dublin Bus and Bus Éireann to competitive tendering in 2016, at least 90% and 93% respectively will still be covered by the directly awarded contracts until 2019. Moreover, there is no indication whether the market is to be opened further after 2019, which could affect investment decisions by new entrants.

The Authority urged the NTA to reconsider its proposals and to facilitate the introduction of effective competition in the bus services sector as early as possible.

A list of formal submissions made by the Authority in 2013 is available at **Appendix D**.

Advice to Government Departments and Agencies

Medium Term Economic Strategy

The Authority provided input to the development of the Government's Medium Term Economic Strategy (MTES). It outlined the current state of play in key sectors to identify any competition-related issues which might need to be addressed by the MTES. 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 is the catalyst that drives innovation and creativity and has brought us exciting new products and services. While there has been some progress made in introducing competition in previously sheltered sectors, there are still a number of sectors where opportunities exist for further reform. These include: banking, energy, professions, transport, groceries/retail sector and utilities.

It is important that competition principles form the bedrock of the MTES and that no exemptions from competition law are granted. The Irish economy can no longer afford the cost of sheltering certain sectors from competition, the cost of which is paid for by consumers and businesses in the form of higher prices by the economy in the form of lost jobs and by the State and taxpayers in public services.

Banking

The Authority and the NCA made a joint submission to the Department of Finance's review of the regulation of bank fees. Bank fees in Ireland are currently regulated under section 149 of the Consumer Credit Act 1995, as amended.

Given the current conditions in the banking sector and in the absence of convincing evidence to the contrary, the two agencies concluded that removing section 149 at this time would eliminate important consumer protections. In normal competitive conditions price regulation is less effective than competition as a means of protecting the consumer interest. In a competitive banking market there would be no need for regulation of bank fees. However, competition in the Irish banking market is so weak at present that any removal of price regulation of incumbent banks is likely to lead to higher prices to the detriment of consumers.

The Irish banking landscape is dominated by the two pillar banks who command significant market share in the main retail market segments. As part of the conditions under which the Irish banks received State Aid, Ireland made various 'sectoral commitments' to the European Commission in order to promote competition in the Irish banking sector. Among these commitments, section 1.1 (b) of the approved State Aid for Bank of Ireland states; "Legislation will be

enacted that will provide that section 149 of the Consumer Credit Act 1995 regarding price regulation and fees will not be applied to new entrants in their first three years of commencing business in Ireland⁹.

This three-year exemption from section 149 has been given effect in the Central Bank (Supervision and Enforcement) Act 2013. Given that this exemption was only enacted in July 2013 and other sectoral commitments have also only been recently introduced to encourage competition and consumer protection, the two agencies pointed out that it will take some time for the effect of these initiatives to be realised.

The restoration of competition by encouraging new entry is a more progressive and effective way of safeguarding consumers' interests than easing the constraints on incumbents' profitability. As a wide range of commitments have been implemented to improve the competitive landscape in banking, including amending section 149, its removal at this point in time, and in the current state of the market, is likely to harm consumers.

Waste Sector

The Authority has consistently advocated for effective competition in the household waste collection market. The Waste Management Policy Statement 2012 asked the Authority to

- maintain an ongoing oversight of household waste collection markets, and
- produce a report in 2016 as part of a mid-term review of the implementation of the new waste management policy.

To help the Authority and/or the Minister decide whether a report on competition in the waste sector is appropriate in 2016, we will need access to data that allows us to examine how competition is working. We therefore engaged with the Department of Environment, Community and Local Government in 2013 to explore the availability of the relevant data regarding the waste collection market. We will continue to work with the Department and other relevant agencies such as the EPA in 2014 to ensure that there is a good data resource available.

The Department of Environment, Community and Local Government published two public consultations in the area of producers' responsibility initiatives for Tyres and Waste Tyres and End Life Vehicles in 2013. Although the Authority did not make formal submissions to those consultations, we engaged with the Department of Environment, Community and Local Government to welcome most of the proposals that will tighten up the current regulatory regimes for these waste streams. However, we expressed some concerns about removing the self-compliance option for tyres and waste tyres and cautioned that any decision to use end consumers as a source of funding for producers' responsibilities for End of Life Vehicles should be carefully considered.

Water

Irish Water was established in 2013. The Authority recognises that the role of competition in the provision of transport of water and collection of waste water is generally limited. However, the Authority has continually advocated that the government should avoid putting in place anything which could prevent the emergence of competition in the future. It is equally important not to create a state-owned monopoly water company with expectations that such a model may continue indefinitely. To signal and prepare for that eventuality at the outset, the regime should establish the possibility of "yardstick" competition, where the

⁹ European Commission State Aid decision SA 33443 (2011/N) - Second restructuring of Bank of Ireland

performance of comparable units can be examined so that best practice can be established and efficiency rewarded.

Taxis

The Authority has a representative on the Taxi Advisory Council to provide ongoing guidance and advice on any issues that may arise that could have a negative impact on competition. We participated in three meetings of the Taxi Advisory Council in 2013.

Advice on Proposed Legislation, Regulation and Competition

Government legislation and regulations can have competition implications. The Authority is asked from time to time to provide observations for different Government Departments' Memoranda for Government which is at the very latest stage of a proposed legislation. In 2013, the Authority provided observations on 21 Memoranda for Government. Sometimes, the Authority has the opportunity to engage with the relevant Government Department at an earlier stage of newly proposed legislation or regulations. In 2013, the Authority engaged with relevant bodies including the Departments of Finance; Public Expenditure and Reform; Communications, Energy and Natural Resources; Justice; and Environment, Community and Local Government. Specific topics included:

Grocery Code of Practice

The Authority appeared before the Joint Oireachtas Committee on Agriculture on 16 July 2013 to discuss the policy proposals in the grocery sector, which recommend implementing a statutory Code of Practice for Grocery Goods Undertakings.

The Authority cautioned that the potential for administration of the Code to impose costs on consumers should be carefully considered in designing it. Overly prescriptive Codes of Practice are not always fit for purpose and may not solve the problems for which they were intended. In addition, Codes of Practice can impose significant compliance costs on small and large businesses alike, which are likely to be passed on to consumers. Furthermore, the effective enforcement of such a code depends on access to credible evidence, and on the willingness of witnesses to go on the record.

Legal Services Regulation Bill

The Authority welcomed the publication of the Legal Services Regulation Bill which will substantially reform the legal profession and will stimulate competition between legal practitioners, if it is enacted in its current form. The Bill, as it stood at 31 December 2013, builds on recommendations the Authority made in its legal profession report of 2006 and on other recommendations made by the Legal Costs Working Group.

The most important innovation of the Bill and the key recommendation of our report is the introduction of an independent regulator for the legal profession – 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 welcomes the proposed introduction of an independent regulator as this should bring more transparency to the regulatory process and should substantially reform the legal profession to the benefit of consumers and the economy as a whole.

There are a number of other measures provided for within the Bill that will help modernise the legal services sector and benefit consumers of legal professional services.

- Consumers will have the right of direct access to barristers for legal advice. This means that clients will be in a position to avoid the cost of retaining solicitors in appropriate circumstances.
- Barristers will be permitted to operate in partnerships and not be confined to operating as sole traders. Allowing barristers to form partnerships would allow them to benefit from the economies and efficiencies derived from shared costs, shared work, shared risk and shared professional reputation. Clients would benefit from a choice of service delivery that suits their needs and face less risk of being left without a barrister at short notice due to scheduling issues.
- Qualified barristers employed by firms will be allowed to represent their employers in court, thereby eliminating a restriction which leads to an unnecessary replication of work and raises costs for many firms.

The Bill requires the new authority to examine issues relating to the establishment of multi-disciplinary practices (MDPs) with a view to permitting them. Having examined the issues in some detail in our 2006 Report, the Authority acknowledged that there are regulatory hurdles to overcome in establishing MDPs in Ireland, however these hurdles are not insurmountable and the potential consumer benefits are such that this issue should be explored further.

Government Commitment on Authority Recommendations

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.

Government has committed 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.

Following the publication of the ports sector market study, the Authority made six recommendations to the Department of Transport, Tourism and Sport and relevant port companies. The Department of Transport, Tourism and Sport has committed to responding to those recommendations within six months. We will work with the Department and relevant port companies in 2014 to ensure that the potential benefits of those recommendations can be realised.

Other Areas of Advice

In addition to the major areas of work outlined above, we engaged with Government Departments and public bodies in 2013 on a range of other policy issues. These are summarised in Table 4 below.

Table 4: Advice Provided to Government Departments and Public Bodies in 2013

Department/Pubic Body	Topic
EPA	Minimum price for inspection
Department of Finance	OECD questionnaire on professions
	Regulatory reform of legal services
Department of Communications, Energy and Natural Resources	REMIT Directive
	Better Energy Financing Project
	Merger procedures
Department of Environment, Community and Local Government	Building Control Regulation
	Independent Review of Architects Registration
RIAI	Code of Conduct
Kerry County Council	Electricity prices in Ireland
Radiographers Registration Board	Code of Conduct and Ethics
Department of Health	Government health care reform programme
Forfás	Consumer Price Differentials Study
NCC and Forfás	Action Plan for Jobs
CORU	Framework Code of Conduct and Ethics
Private Security Authority	Licensing regime
New Era	Merger procedures

Raising Awareness

One of our key objectives is to raise awareness and understanding of the benefits of competition, competition law and of the Authority's role and activities among

- consumers and the public generally,
- businesses, and
- policy-makers.

The way we communicate to each group may differ, but the core message remains the same. Our objective is to explain our role and functions and to help people understand why competition is good for everyone. Where there is healthy competition purchasers of goods and services - whether individuals or businesses - benefit from

- lower prices for goods and services,
- having more choice and better quality goods and services, and

- more innovation.

When purchasers of goods and services benefit from competition, so does the economy as a whole. The cost of doing business comes down, which helps Irish businesses to be more competitive at home and abroad, which in turn supports economic growth and ultimately helps job creation.

Education and Outreach

2013 saw further work on our education and outreach programme to the business community. We have further strengthened our interactions with a number of business associations. The aim of engaging with the business community is to raise awareness of competition law and policy and to encourage compliance.

We also published a new information booklet called '[Complying with Competition Law: A guide for Businesses and Trade Associations](#)' which is aimed at helping businesses and trade associations stay on the right side of competition law. It also provides useful information on setting up a compliance programme. The booklet was produced following feedback from a number of business organisations. We distributed these and other information booklets at events throughout the country during 2013. A digital copy of the booklet is also available on our website (or by clicking on the link above).

2013 European Competition and Consumer Day

As part of Ireland's Presidency of the Council of the European Union 2013, the Authority and the NCA hosted the 2013 European Competition and Consumer Day in Dublin Castle. The conference was attended by more than 200 delegates; representatives of competition and consumer agencies, officials from Government Departments, representatives of consumer organisations and legal practitioners, from Ireland and abroad.

The conference was opened by Mr Richard Bruton TD, Minister for Jobs, Enterprise & Innovation. The keynote speakers, Dr Tonio Borg, EU Commissioner for Health and Consumer Policy, and Dr Alexander Italianer, Director General, Competition Policy (European Commission), provided an update on recent developments in European consumer and competition policy.

The rest of the conference focused on the challenges and choices faced by consumer and competition organisations. The heads of the OFT (UK), the Authority for Consumers and Markets (Netherlands), the Competition and Consumer Authority (Denmark) and the Federal Trade Commission (USA) held thought-provoking discussions on the synergies between consumer protection and competition policy. They agreed that most of the benefits are in the areas of enforcement capability and advocacy. During the session on collective redress, Mr Eddy De Smijter, the Head of the Private Enforcement Unit of DG Competition, outlined the European Commission's views on Collective Redress which are now published in the *Commission Recommendation on common principles for injunctive and compensatory collective redress mechanisms*¹⁰. The final session on behavioural economics highlighted ways to develop a better and more coherent understanding of products, consumers and markets.

Presentations are available on the Authority's website¹¹.

¹⁰ The document is available at http://ec.europa.eu/justice/civil/files/c_2013_3539_en.pdf

¹¹ <http://www.tca.ie/EN/News--Publications/Events/European-Competition-and-Consumer-Day-2012/Presentations.aspx>



Pictured at the conference are (L-R) Karen O'Leary, Chief Executive, NCA, Tonio Borg, EU Commissioner for Health & Policy, Richard Bruton TD, Minister for Jobs, Enterprise and Innovation, Alexander Italianer, Director General, EU Competition Policy, and Patrick Kenny, Acting Chairperson and Member of the Competition Authority

Taking Care of Business – One-Stop-Shop

A number of agencies under the Department of Jobs, Enterprise & Innovation together worked on a new initiative aimed at helping small and medium sized businesses. It involved the regulatory agencies within the Department coming together to host a joint event for the business community with the objective of making it easier to start up and do business in Ireland. The idea was that the event would offer a one-stop-shop for start ups and SMEs where they can come to a single, free event and meet all of the State agencies who can help them in terms of funding and support when setting up a business.

The first event took place in October 2013 in Dublin Castle and was a great success. 19 agencies participated with information stands and short presentations on the day. The event was opened by Mr John Perry TD, Minister of State with responsibility for Small Business. Over 800 people registered for the event. Based on the feedback forms, the event was very well received. The success of the pilot event led to a decision to continue with further events which will take place across the country in 2014.

ISME Roadshow

In 2013, the Authority partnered with ISME for their Briefing Sessions roadshow. Designed to give small and medium businesses a competitive edge, the sessions examined the operating environment for SMEs. Each session focused on practical and relevant information. This set of sessions looked at three topics:

- Are you ready for SEPA?
- Dealing with the banks
- Protect your business from anti-competitive practices

The Authority's presentations focused on what small and medium businesses need to know about competition law and how to protect themselves from anti-competitive behaviour by others. It also covered what businesses can do if they suspect others of anti-competitive behaviour, and also how they can make sure

their business stays on the right side of the law. There were 10 events nationwide during the month of June. Table 5 lists the IMSE roadshow events.

Table 5: ISME Roadshow events

Date	Location	Venue
11 June	Gorey	Amber Springs Hotel
12 June	Dublin	Stillorgan Park Hotel
18 June	Waterford	Granville Hotel
18 June	Cork	Silver Springs
19 June	Tralee	Manor West
19 June	Limerick	Castletroy Hotel
25 June	Sligo	Clarion Hotel
25 June	Galway	The Connacht Hotel
27 June	Dundalk	Fairways Hotel
27 June	Dublin	Red Cow Hotel

Irish Franchising & Start Ups Expo

In 2013, the Sunday Business Post combined the Start Ups Summit, which the Authority sponsored in 2012, with the Franchise Association annual showcase to create the Irish Franchising & Start Ups Expo. The event took place in the RDS in October. It was aimed at anyone interested in setting up a business or becoming a franchisee. The Authority co-sponsored the event with Ulster Bank and attended on the day with an exhibition stand and a presentation by Patrick Kenny.



Pictured at the launch of the event are Orna Stokes, Ulster Bank, Tom Shanahan, Executive Director, Irish Franchise Association and Clodagh Coffey, Communications Manager, The Competition Authority

Other Outreach Events

In total, the Authority participated in 21 events during 2013, aimed at raising awareness among the business community and consumers about competition law, the role of the Authority and how they can protect themselves against anti-competitive behaviour. These included attendance at the National Ploughing Championships, the Irish Tatler Women's Business Academy and the National Business Expo. These events were in addition to over 40 speeches, presentations and papers delivered during the year to a number of different audiences including academics and the public sector as well as businesses.

An example of the type of event we attended during the year was MeetWest which took place in Mayo in November. It was a joint enterprise by the County Councils and Enterprise Boards from Mayo, Galway and Roscommon and the Western Development Commission. It was a two-day event encompassing a conference on day one, and a networking dinner that night with guests of honour An Taoiseach, Enda Kenny TD, and Minister of State for Small Business, John Perry TD. Day two was a full day of one-to-one networking meetings between businesses where the Authority had the opportunity to meet with many businesses from the locality and beyond. We also had a stand at the event. There were over 440 delegates present.



Pictured at MeetWest are David McFadden, Competition Authority, Enda Kenny, Taoiseach, and Clodagh Coffey, Competition Authority

This is an important part of the Authority's work. We will continue to build on this outreach in 2014 with activities aimed at consumers, in addition to businesses and policy-makers. A list of speeches, presentations and papers given in 2013 is available at **Appendix E**.

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 combat fraud, waste and corruption and to save money, especially in the public sector. Over the past number of years we have met with a number of Government Departments and public bodies about public procurement and the Competition Act. In 2013, the Authority delivered five bid-rigging presentations to public bodies. During the course of 2013 the Authority started the process of working with the Office of Government Procurement to ensure that systems are put in place to detect and deter bid-rigging in public procurement and to ensure that the procurement process is as competitive as possible to ensure value for money for taxpayers and citizens.

Education Outreach

The Authority also takes the opportunity to inform trainee lawyers, law students and academics and judges on competition law issues. In particular, the Authority has given lectures on the enforcement of competition law in the following:

- Law Society Professional Practice course (for trainee solicitors)
- Kings Inns Diploma in White Collar Crime
- Trinity College Extra-Mural Course in White Collar Crime
- LL.M. Business Law class in University College Cork
- LL.M. class in University of Limerick
- LL.M. class in University College Dublin
- EU Commission/UCD training course for EU national judges and competition enforcers

The Authority has also participated in other third level courses giving lectures on the role of economics in competition policy to the MA in Economics class in UCD.

5. INTERNATIONAL WORK

We continued to fulfil our EU obligations and participated in international organisations in 2013. 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.

Enforcement staff represented the Authority in participating at four oral hearings.

In 2013, the Mergers Division followed the progress of and participated in the Advisory Committee hearings of two EU Merger Review cases:

- *Aegean / Olympic II – Case No. COMP/M.6796*
- *Ryanair / Aer Lingus – Case No. COMP/M.6663*

In 2013, the Mergers Division also followed the progress of and provided its views to the European Commission, where appropriate, in several other cases.

In addition, on 20 September 2013 the Authority made a submission to the European Commission in response to its public consultation on possible improvements to EU merger control in two areas: minority shareholdings and the transfer of cases between the Commission and national competition authorities. The Authority focused its submission on the issue of non-controlling minority shareholdings.

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. Staff represented the Authority in participating at the following ECN meetings:

ECN Verticals Working Group

The ECN Verticals Working Group discusses the application of competition law in general, and the EU Verticals Block Exemption Regulation (BER) and Guidelines in particular, to vertical agreements concluded by firms in the EU. The Working Group also has a central role in discussing revisions to the BER and Guidelines.

During 2013 the Working Group turned its attention to the specific issue of competition in the online travel agency market, and organised two workshops on this topic, one in April in London, and one in Brussels in September. The Authority attended both workshops, and gave a presentation at the Brussels workshop, at which it set out its experience of market analysis in this sector.

ECN Group on Fines

Authority staff attended several meetings of the ECN Group on Fines, which meets to discuss various issues which are encountered by Member States when imposing fines on undertakings for breaches of competition law. Examples of issues discussed include: the legal basis for imposing fines; determining value of sales when calculating fines; applying fines to ensure sufficient deterrence; aggravating/mitigating circumstances; inability to pay; maximum levels of fines; leniency; symbolic fines; parental liability (of firms for their subsidiaries); and proposals for co-operation within the ECN in related cases.

In 2013 the Group produced a report on fines. As part of this report Authority staff provided detailed responses to a series of questions in relation to the fines regime in Ireland. The regime in Ireland differs from most Member States, in that the Irish Competition Authority does not have the power to impose fines as this power is reserved for the courts.

ECN Food Subgroup

The ECN Food Subgroup provides national competition authorities and the Commission with an informal platform for the exchange of experiences and good practices in the food sector. In 2013, the main focus of the Food Subgroup was the outcome of the Common Agricultural Policy (CAP) reform and the issue of unfair trading practices (UTPs) in the grocery retail sector.

In the context of the CAP reform, the Food Subgroup has been assisting the Commission in drafting guidelines on the implementation of the new competition rules concerning joint sales by farmers in the sectors of olive oil, beef and veal and arable crops. To facilitate the preparation of these guidelines each national competition authority has completed two questionnaires in conjunction with their respective Departments of Agriculture.

ECN Working Group on Competition Issues and Due Process

The ECN Working Group on Competition Issues and Due Process (WGCIDP) examines the state of convergence of enforcement procedures in the various Member States. It also focuses on the practical aspects of co-operation between the members of the Network.

In 2013, the Group drafted Recommendations on Powers to Investigate, Enforcement Measures and Sanctions, Commitment Procedures, Structural Remedies and Forensic IT procedures. Work also began on the Interviews Project, the Privilege against Self Incrimination Project and Substantive Standard for carrying out Inspections Project. These projects included the completion of questionnaires by each national competition authority. An ECN Modus Operandi manual was also produced by the Working Group.

ECN Technology Transfer Block Exemption Regulation Working Group

Authority staff also attended the ECN Advisory Committee meeting on the revision to the Technology Transfer Block Exemption Regulation (TTBER). A technology transfer agreement is a licensing agreement where one party (the licensor) authorises another party or parties, the licensee(s), to use its technology (patent, know-how, software) for the production of goods and services.

The rules on how to assess technology transfer agreements are set out in two instruments, the TTBER and accompanying Guidelines. The TTBER exempts certain categories of licensing agreements concluded between companies that have limited market power and that respect certain conditions set out in the TTBER. Such agreements are deemed to have no anti-competitive effects or, if they do, the positive effects outweigh the negative ones. The Guidelines provide guidance on the application of the TTBER as well as on the application of EU competition law to technology transfer agreements that fall outside the safe harbour of the TTBER. The current TTBER expires on 30 April 2014. The revised TTBER will come into force on 1 May 2014 and will remain in place until 30 April 2026.

ECN Cartels Working Group

The ECN Cartels Working Group meets usually twice a year to discuss issues of mutual concern in the enforcement of competition law as regards cartels across all Member States. Members share information and experiences from cases with a view to developing best practice in the detection and prosecution of cartel offences across Europe. This group has been centrally involved in the development of the ECN Model Leniency Programme.

The Authority has been an active participant in the Cartels Working Group since its establishment. The Working Group had two meetings in 2013, one in Brussels and one in Rome, both of which the Authority attended. In 2013 it completed the final stage of its review of the ECN Model Leniency Programme Convergence Project and discussed a number of ongoing cartel cases in various Member States, changes in national leniency programmes and new competition laws.

EU Merger Working Group

During 2013, the Authority attended and actively participated in three merger group meetings, which included work on the EU merger simplification project and minority shareholdings. The Authority also responded to a number of information requests from other national competition authorities.

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* in 2013.

The ECN *Brief* gives information to the public on the activities of ECN members five times a year. To view past editions of the ECN *Brief* visit <http://ec.europa.eu/competition/ecn/brief/index.html>.

The Authority submitted five articles to the *Newsletter* and *Brief* in 2013.

International Competition Network

The Authority is an active member of the International Competition Network (ICN), and 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.

The ICN promotes the adoption of superior standards and procedures in competition policy around the world, formulates proposals for procedural and substantive convergence, and seeks to facilitate effective international co-operation to the benefit of member agencies, consumers and economies worldwide.

Two members of staff represented the Authority at the 10th Annual ICN Cartel Workshop in Cape Town, South Africa, where they acted as moderators in break-out sessions on "Building political support for cartel enforcement" and "Building blocks for effective cartel enforcement teams". The Workshop was hosted by the Competition Commission of South Africa. The theme of this year's Workshop was "Tackling Roadblocks to Effective Cartel Enforcement". Approximately 185 people attended the conference, representing national competition agencies, the OECD, the UN, public prosecutors and a small number of non-Governmental agencies.

A member of the Authority's staff joined approximately 80 people from competition authorities and consultancies from around the world at an ICN workshop in Stockholm, Sweden. The purpose of the workshop was to promote best practice relating to legal enforcement of unilateral conduct exclusive dealing cases.

An Authority staff member gave a presentation at the ICN Advocacy Workshop, where the topics of "Competition in Recessionary Times" and "Creating Competition Culture" were explored. There was widespread agreement internationally that national competition authorities should be more persuasive in their advocacy efforts and should make greater effort to explain how competition policy can help governments achieve wider socio-economic objectives.

An Authority Member participated as a speaker on a panel on Public Interest Objectives in Merger Review: How to Reconcile Them with Competition Policy, at the ICN annual meeting in Warsaw in April 2013.

Organisation for Economic Co-operation and Development

The Authority attends meetings of the Competition Committee of the Organisation for Economic Co-operation and Development (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 2013, the Authority submitted written contributions to six OECD roundtables. These are listed in Table 6.

Table 6: OECD Submissions

Topic	Date
Competition in Television and Broadcasting	February 2013
Competition in Local and Regional Transportation Services	February 2013
Competition in Waste Management	October 2013
Remedies in Cross-border Merger Cases	October 2013
Competition in the Food Chain	October 2013
Defining Confidential Information	October 2013

We also issued an annual report to the OECD in 2013.

6. CORPORATE SERVICES

Finance

The Authority's financial accounts are subject to audit by the Comptroller & Auditor General (C&AG). As the audit of our 2013 accounts is unlikely to be completed until June at the earliest, 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. In fact, the C&AG's audit of our annual accounts for 2012 was not completed until December of 2013 due to pressure of other work in his office and the accounts were immediately posted on our website. We will again publish our accounts on our website as soon as the audit is completed during 2014.

The Authority's grant from the Department of Jobs, Enterprise & Innovation in 2013 was €5,127,000, an increase of €473,000 from the 2012 budget allocation. The provisional, unaudited estimate of expenditure in 2013 is an outturn of €4,463,000. The increase in expenditure related mainly to pay costs arising from the recruitment of additional staff in 2013.

Income from merger notifications was up on 2012. 37 merger notifications were made to the Authority in 2013 realising income of €296,000 as against €256,000 in 2012. Each merger notified to the Authority under the Act must be accompanied by a fee of €8,000. The income received from merger notifications is paid over to the Exchequer through the Department of Jobs, Enterprise & 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, it considers that the Chairperson of the Authority, Isolde Goggin, fulfils that role. The Chairperson's annual salary 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 received a salary of €170,345 in 2013 and 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 performance bonuses 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. Mr Bardon retired from his position on the Audit Committee on the completion of his term of appointment in December 2013. The Authority greatly appreciates the work and commitment of Mr Bardon during his time on the Committee. He has been replaced by Mr Brian Whitney.

The Authority's Audit Committee met on four occasions during 2013. In 2013 the Committee directed that a number of audits be conducted on its behalf by Capita Consulting, the Authority's internal auditors. These audits included Merger Notifications, Internal Financial Controls, Strategic Business Planning and Corporate Governance & Risk Management. In addition to reviewing the reports on these audits, the Committee also reviewed progress on implementation of any outstanding audit recommendations from previous audit reports.

Freedom of Information

The Authority received three requests under the Freedom of Information Acts in 2013 – a similar figure to the previous two years. Of the three requests dealt with in 2013, two were part-granted and one was dealt with outside the Freedom of Information process and withdrawn. All three requests were business related. The Authority received one request for an internal review of the decision made in one case not to release a particular record. The internal review upheld the original decision not to release the record in question as the record was deemed to be legal advice and therefore covered by legal professional privilege. The prescribed fees totalling €105 were paid over by the Authority to the Department of Jobs, Enterprise & Innovation.

Human Resources

As reported in last year's annual report, 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. Arising from that review the Minister for Jobs, Enterprise & Innovation approved an additional 10 posts for the enforcement function of the Authority, bringing the Authority's staff complement up to 49 posts.

Of the 10 posts, three were filled in 2012, one on the basis of a secondment from the Department of Jobs, Enterprise & 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. Seven new appointments arising from that competition were made in the first half of 2013.

At the end of 2013 the Authority had three vacancies in its staff complement of 49. One of those vacancies arose from the retirement of Ms Noreen Mackey, one of its two legal advisers, earlier in the year. The Public Appointments Service commenced a competition to fill this post late in 2013 and an appointment is expected to be made early in 2014.

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 15 days. From our records it would appear that 97% of incoming correspondence was acknowledged within the three day target and 79% 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 about our customer service 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.

Energy Consumption

The Authority has one office which is located in Parnell House, a building shared with the Companies Registration Office (CRO). Based on the percentage occupancy of the building the energy consumption costs are divided, with the Authority paying for one third.

In 2013, the Authority consumed 376.85Wh of energy, consisting of:

- 144.24MWh of electricity and
- 232.61MWh of fossil fuels, with natural gas being the only fossil fuel used.

Actions Taken in 2013

In 2013, the Authority undertook a range of initiatives in conjunction with the CRO to improve our energy performance including:

- Energy-saving related emails were sent to staff reminding everyone to turn off PC monitors, printers, etc. each evening.
- Monthly 'No-Lift Days' were held.
- Out of hours energy audits were conducted.
- Air Handling Unit operating hours were monitored continuously.
- Heating timers were regularly programmed in line with current weather conditions.

It is not possible to give specific figures of energy saving for all of the above actions or indeed to break it down by organisation however

- the building had a decrease of 2.6% in electricity usage in 2013 compared to 2012,
- fossil fuel (gas) usage in the building rose by a total of 15.1% compared to 2012.
- overall energy usage increased by 7.6% and CO₂ emissions increased by 7.6% compared to 2012.

Actions Planned for 2014

Infrastructural energy-saving initiatives were implemented in 2010 and resulted in an initial reduction of energy costs. The energy infrastructure of the building is quite old and not as energy-efficient as more modern systems. It was decided not to invest in further infrastructural energy-saving initiatives in the building due to the short lifetime remaining on the current lease. Therefore, the Authority focus for 2014 will be on staff awareness and enhancement of initiatives already implemented such as:

- Displaying new energy awareness posters around the building.
- Presentations to staff.
- Conducting out of hours energy audits.
- Monthly 'No-Lift Days'.

A. COMPETITION AUTHORITY MEMBERS

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 2013

Notification	Economic Sector	Date of Notification	Status
M/13/037 - Permira / Atrium	Development, manufacturing, and commercialisation of dietary supplements endorsed by health professionals	20/12/2013	Preliminary investigation (phase 1)
M/13/036 - Glanbia / Wexford Creamery	Procurement of raw milk and the processing and supply of liquid milk, cream and cheese	12/12/2013	Further information requested (phase 1)
M/13/035 - Toshiba / OCZ	Computer hardware	10/12/2013	Preliminary investigation (phase 1)
M/13/034 - Adams / First Milk	Supply of cheese to retail and foodservice customers in the UK	29/11/2013	Cleared (phase 1)
M/13/033 - Sappho / TCH	Media, in particular radio broadcasting	27/11/2013	Preliminary investigation (phase 1)
M/13/032 - Tennants / Dynea	Chemicals industry (primarily the manufacture of resins)	18/11/2013	Cleared (phase 1)
M/13/031 - Permira / R Griggs	Design, development, procurement, marketing, selling and distribution of footwear, clothing and accessories	06/11/2013	Cleared (phase 1)
M/13/030 - McKesson / Celesio	Retail pharmacy and technology solutions in healthcare	24/10/2013	Cleared (phase 1)
M/13/029 - Fox / Setanta Africa	Broadcasting	07/10/2013	Cleared (phase 1)
M/13/027 - Carlyle / Beats	Global alternative asset management and consumer audio electronics	01/10/2013	Cleared (phase 1)
M/13/028 - PGI / Fiberweb	Global alternative asset management and production of nonwoven material	01/10/2013	Cleared (phase 1)
M/13/026 - Kepak / McCarren	Pork processing	26/09/2013	Cleared (phase 1)
M/13/025 - Bridgepoint / AHT Group	Commercial refrigeration equipment	16/09/2013	Cleared (phase 1)
M/13/024 - KCI / Systagenix	Wound care	23/08/2013	Cleared (phase 1)
M/13/023 - RBSPTL / UTA / PHOENIX	Natural gas distribution	06/08/2013	Cleared (phase 1)
M/13/022 - Berkshire/Hartford	Insurance and reinsurance sectors	25/07/2013	Cleared (phase 1)
M/13/021 - Aspen / MSD NL 8 B.V.	Pharmaceutical	18/07/2013	Cleared (phase 1)
M/13/020 - MUTB / FGL Lux	Hedge fund and family fund administration.	08/07/2013	Cleared (phase 1)

M/13/019 - Blackstone / ATC	Global alternative asset management and trust and corporate administration services	11/06/2013	Cleared (phase 1)
M13/018 - Ladbrokes / Chronicle Group	Betting and gaming	27/05/2013	Cleared (phase 1)
M/13/017 - Royalty Pharma / Elan	Pharmaceutical	15/05/2013	Cleared (phase 1)
M/13/016 - GE / Lufkin	Industrial automation	03/05/2013	Cleared (phase 1)
M/13/015 - Promontoria / Greenstar	Waste management	02/05/2013	Cleared (phase 1)
M/13/014 - Arvato / Gothia	Business process outsourcing	24/04/2013	Cleared (phase 1)
M/13/013 - Kepak / Silvercrest	Frozen burgers	23/04/2013	Cleared (phase 1)
M/13/011 - OIF / Mount Kellett / Ulster Bank / Jurys Inn	Hotel/hospitality	15/04/2013	Cleared (phase 1)
M/13/012 - R&R / Fredericks	Industrially-produced ice cream	15/04/2013	Cleared (phase 1)
M/13/010 - Aztec/Duke Street Oasis	Dental care	02/04/2013	Cleared (phase 1)
M/13/009 - European Refreshments / Fresh Trading	Non-alcoholic beverages (NAB)	19/03/2013	Cleared (phase 1)
M/13/008 - LDC (PIMCO) / NRS Healthcare	Disability and rehabilitation products and services	19/03/2013	Cleared (phase 1)
M/13/007 - DZ Bank / UMH / WGZ Bank	Business consultancy services to retail co-operative banks in Germany	14/03/2013	Cleared (phase 1)
M/13/006 - Clare FM / Terence and Gay Mangan / Tipp FM	Radio advertising in County Tipperary and County Clare	14/03/2013	Cleared (phase 1)
M/13/005 - BSkyB / Be Un Limited	UK residential fixed broadband and telephony	04/03/2013	Cleared (phase 1)
M/13/004 - Bertelsmann / BMG	Music rights management	01/03/2013	Cleared (phase 1)
M/13/003 - BT / ESPN Global	Broadcasting	27/02/2013	Cleared (phase 1)
M/13/002 - Capita IT / Northgate	Information technology	14/02/2013	Cleared (phase 1)
M/13/001 - BlackRock / CS ETF Business	Asset management	08/02/2013	Cleared (phase 1)

C. STATISTICS ON MERGERS EVALUATED 2010-2013

	2013	2012	2011	2010
Notified Mergers	37	33	40	46
required notifications [section 18(1)]	37	33	40	46
voluntary notifications [section 18(3)]	0	0	0	0
Carried from previous year	6	4	6	3
carried as phase 1	6	4	5	3
carried as phase 2	0	0	1	0
Referred from the EU Commission (ECMR Art 9)	0	0	0	0
TOTAL CASES	43	37	46	49
of which media mergers	5	3	5	8
of which entered phase 2 in year of determination	2	0	1	1
of which entered phase 2 in year previous to determination	0	0	1	1
Cases Withdrawn	0	1	0	0
withdrawn at phase 1	0	1	0	0
withdrawn at phase 2	0	0	0	0
Determinations Delivered	39	30	42	43
phase 1 determinations cleared without proposals	37	30	40	41
phase 1 determination with proposals	0	0	0	1
phase 2 positive determination without conditions or proposals	2	0	2	1
phase 2 determination with proposals	0	0	0	0
phase 2 determination with conditions	0	0	0	0
phase 2 prohibition	0	0	0	0
Referral to EU Commission (ECMR Art 22)	0	0	0	0
Carried to next year	4	6	4	6
carried as phase 1	4	6	4	5

D. FORMAL SUBMISSIONS BY THE COMPETITION AUTHORITY IN 2013

Submission Number	Submission to	Topic	Summary
S-13-001	Architects' Register Review	Registration of Architects	The submission raised questions regarding the registration of practically-trained architects, the recognition of Irish architects in Europe and the lack of part-time or modular courses in architecture.
S-13-002	Department of the Taoiseach	Government Statement on Economic Regulation	The Authority raised concerns regarding powers given to regulators in Ireland compared with other jurisdictions, particularly other EU Member States.
S-13-003	Department of Health and Children	Reforming the Dental Profession	The Authority welcomed a number of legislative proposals which will implement most of the outstanding recommendations in the Authority's 2007 report on competition in the dental profession.
S-13-004	Department of Environment, Community and Local Government	Producer Responsibility Initiative	This submission recommended making it easier for waste producers to switch between different compliance schemes and limiting the opportunities for competitors to share commercially sensitive information. It also suggested the separation of operational and regulatory functions to avoid potential conflict of interests.
S-13-005	National Transport Authority	Proposal to directly award a Public Bus Services Contract to Dublin Bus in 2014	The submission queried the grounds for the NTA's decision to directly award contracts to Dublin Bus in 2014 and urged the NTA to reconsider its proposals and facilitate the introduction of effective competition in the bus services sector as early as possible.
S-13-006	National Transport	Proposal to directly award a	The submission queried the grounds for the NTA's decision to directly award

	Authority	Public Bus Services Contract to Bus Éireann in 2014	contracts to Bus Éireann in 2014 and urged the NTA to reconsider its proposals and facilitate the introduction of effective competition in the bus services sector as early as possible.
S-13-007	European Commission	Towards more effective EU merger control	The submission addressed the issue of non-controlling minority shareholdings raised the by the European Commission in the consultation documentation.
18/01/2013	OECD Competition Committee Working Party 2 on Competition and Regulation	Allocating Contracts for the Provision of Local and Regional Transportation Services	The submission addressed the issue of allocating contracts for the provision of local and regional bus services in Ireland.
21/01/2013	OECD Directorate for Financial and Enterprise Affairs – Global Forum on Competition	Competition Issues in Television and Broadcasting – Contribution from Ireland	The submission summarised two cases where competition law was applied in the sector – one case involving TV advertising loyalty rebates and one involving State Aid to RTÉ and TG4.
26/09/2013	OECD Competition Committee Working Party 3 Roundtable	Remedies in Cross-border Merger Cases	The submission addressed the issues of cross-border remedies in merger cases.
26/09/2013	OECD Competition Committee Working Party 3 Discussion	Defining Confidential Information	This submission was made in response to an OECD questionnaire seeking details on approaches to the receipt and protection of confidential information in the course of investigations by competition authorities. The Authority's submission focussed principally on the receipt of confidential information in the context of merger notifications.
08/09/2013	OECD Competition Committee Working Party 2 on Competition and Regulation	Competition Issues in Waste Management	The submission provided detailed information to the OECD questionnaire regarding waste management in Ireland.

16/10/2013	OECD Directorate for Financial and Enterprise Affairs – Competition Committee	Competition Issues in the Food Chain Industry – Note by Ireland	The submission was made in response to an OECD questionnaire seeking information on competition along the length of the food supply chain, focusing in particular on buyer power at the retail level
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E. SEMINARS, SPEECHES, PRESENTATIONS & PAPERS

Title	Forum	Date	Person
Enforcement of competition law	PPC1 class, Law Society of Ireland	15 January	David McFadden
Competition law and the obligations of Trade Association executives	'How to run a Trade Association', IBEC, Dublin	18 January	David McFadden
Public procurement and the Competition Act	Public Affairs Ireland	22 January	Patrick Kenny
Some issues from prosecuting criminal cartels	Advanced Diploma in Corporate, White Collar and Regulator Crime, Honorable Society of King's Inns	23 January	David McFadden
Public procurement and the Competition Act	Laois County Council	25 January	Patrick Kenny
Competition in the Irish ports sector	Dublin Port Company	31 January	Ciarán Aylward, John Evans & Isolde Goggin
The role of economics in competition policy	MA in Economics class, UCD	8 February	Patrick Kenny
Some issues from prosecuting criminal cartels	Extra-mural course: White Collar Crime, Trinity College Dublin	12 February	David McFadden
Public procurement and the Competition Act	Department of Education & Skills, Tullamore	12 February	Dan Kenna & Joe McLoughlin
The role of the Competition Authority	Department of Communications, Energy Natural Resources	25 February	Patrick Kenny
Enforcing competition law	LL.M class, University of Limerick	4 March	David McFadden
Your business and competition law	National Business Expo	8 March	David McFadden
Money Skills for Life (NCA initiative)	IBM Ireland, Dublin	14 March	John Burke
Enforcement in Ireland	Presentation to investigators and prosecutors from the Ukraine, Harcourt Square	14 March	Joe McLoughlin
Regulating competition in professional services – a balancing act?	European Competition Journal, vol. 9, no. 1, 2013	April	Carol Boate & Kathryn MacGuill
Agency Effectiveness	Roundtable, Federal Trade Commission, Washington DC	9 April	Stephen Calkins
An American in Dublin	ABA Antitrust Law Spring meeting, Washington DC	10 April	Stephen Calkins
Public interest objectives in merger review: how to reconcile them with competition policy	ICN annual meeting, Warsaw	25 April	Stephen Calkins
Mechanisms of consistency and coherence in enforcing competition law in Europe: the role of NCAs	Training for National Judges and Competition Enforcers, UCD School of Law	3 May	Gerald FitzGerald
Ireland's Legal Services Regulation Bill	Tomorrow's Irish Lawyers, Quinn School of Business,	8 May	Gerald FitzGerald

	UCD		
Opening Address	European Competition & Consumer Day, Dublin Castle	24 May	Patrick Kenny
Your business and competition law	ISME Business Briefing, Wexford	11 June	Malachy Fox & David O'Connell
Your business and competition law	ISME Business Briefing, Dublin	12 June	Stephen Calkins & Eoghan ÓhArgáin
Enforcement of competition law in Ireland	School of Law, UCD	18 June	Dan Kenna & Victor Pigott
Your business and competition law	ISME Business Briefing, Waterford	18 June	Clodagh Coffey & Eksteen Maritz
Your business and competition law	ISME Business Briefing, Cork	18 June	Clodagh Coffey & Eksteen Maritz
Your business and competition law	ISME Business Briefing, Kerry	19 June	Eoghan ÓhArgáin & Catherine Kilcullen
Your business and competition law	ISME Business Briefing, Limerick	19 June	Eoghan ÓhArgáin & Catherine Kilcullen
Your business and competition law	ISME Business Briefing, Sligo	25 June	Malachy Fox & Joseph Walser
Your business and competition law	ISME Business Briefing, Galway	25 June	Malachy Fox & Joseph Walser
Your business and competition law	ISME Business Briefing, Louth	27 June	Pat Downey & Anne Ribault-O'Reilly
Your business and competition law	ISME Business Briefing, Dublin	27 June	Pat Downey & Anne Ribault-O'Reilly
Opening statement	Joint Oireachtas Committee on Agriculture, Food and the Marine, Leinster House	16 July	Isolde Goggin
The Antitrust Conversation	18th annual European University Institute EU Competition Law and Policy Workshop: Effective and Legitimate Enforcement of Competition Law, Italy	19 & 20 July	Stephen Calkins
Money Skills for Life	Central Bank, Dublin	10 September	Stephen Calkins
Improvements to EU Merger Regulation – making life easier for undertakings	Workshop on new challenges in merger control in Europe, Office of Competition & Consumer Protection, Warsaw	12 September	Stephen Calkins
Money Skills for Life	Central Statistics Office, Dublin	19 September	John Burke
Competition in the Irish ports sector	Irish Ports Association Conference, Dublin	27 September	Ciarán Aylward
Your business and competition law	Irish Franchising and Start Ups Expo, RDS	11 October	Patrick Kenny
Building political support for cartel enforcement in Ireland	ICN Cartel Workshop, South Africa	16 October	Patrick Kenny
Enforcing competition law	LL.M Business Law class, UCC	21 October	David McFadden
Top Tips for Business	Taking Care of Business,	22 October	Stephen Calkins

	Dublin Castle		
Enforcing competition law	LL.M class, UCD	1 November	Jennifer McSharry & Orla Reilly
Public procurement and the Competition Act	Certificate in Public Procurement, Public Affairs Ireland	5 November	Patrick Kenny
Legal Services Regulation Bill	Office of the Director of Corporate Enforcement	5 November	Eoghan ÓhArgáin
The role of economics in competition policy	MA in Economics class, UCD	8 November	Patrick Kenny
Public procurement and the Competition Act	High Level Group on Business Regulation, Department of Jobs, Enterprise and Innovation	27 November	Patrick Kenny
Competition policy and merger enforcement in Ireland	Galway Mayo Institute of Technology	29 November	Cormac Keating
Competition in the Irish ports sector	IEA Rail Freight Group	3 December	Ciarán Aylward

