



## 2005 Annual Report

competition  
consumers  
innovation

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## Foreword *Declan Purcell, Paul Gorecki, Stanley Wong\*, Members of the Competition Authority*

Reporting on the work of the Competition Authority in 2005 is the perfect opportunity to review what has been achieved in Irish competition law in recent years. 2005 marks the end of John Fingleton's five year tenure as Chair of the Competition Authority and also brings to a conclusion the relevant period of the Authority's current Strategy Statement.

Over the last five years the Competition Authority has undergone a period of profound change. New legislation, the Competition Act 2002, was enacted by the Oireachtas and has given the Competition Authority new powers as well as increasing the penalties for anti-competitive behaviour. Staff numbers at the Competition Authority have significantly increased in line with a larger budget. In terms of output and impact the Competition Authority has had its most successful period in its history. Since 2003 the Competition Authority has established a successful merger control regime as well as having increased activity and new achievements in the enforcement of competition law. The Competition Authority's advocacy work continues to shed light on a wide range of areas where competition is absent, limited or restricted. How to ensure that the interests of consumers come first has been the driving motivation behind the work of the Competition Authority in the last five years.

However these changes at the Competition Authority have taken place alongside a long legacy of an anti-competitive and anti-consumer culture. Public policies to drive competition such as law enforcement, merger review and regulatory reform have historically been weak in Ireland. Not surprisingly, in the absence of effective competition law, many markets in Ireland became highly concentrated via mergers and other practices in the private sector. In addition the State has in the past created many monopolies and protected many sectors of the economy from competition.

The Government's recent allocation of extra resources for the investigation of criminal cartels will ensure that the Competition Authority's contribution to addressing these issues will continue to grow. Ireland is one of only three countries in Europe which makes involvement in a price-fixing, market-sharing or bid-rigging cartel a criminal offence. While this indicates how seriously these types of offences are taken it also means that cartel investigations are complex, time consuming and absorb a lot of resources. As a result there are likely to be only a small number of such cases brought before the Irish courts over the next few years. Despite the small number, Ireland is an international leader in this area. The first jury trial in Europe concerning criminal competition law involves allegations of a cartel in home heating oil in the west of Ireland. A series of separate trials relating to these allegations are due to be heard in 2006.

The Competition Authority continues to be very active in the area of civil litigation in the High Court. Between November 2005 and January 2006 the Competition Authority's case against the **Beef Industry Development Society** was heard over twelve days. The Competition Authority is challenging a proposed rationalisation of the beef processing industry led by a group of beef processors. In April 2005, the **Irish Dental Association** agreed settlement terms with the Competition Authority in advance of a full hearing in the High Court. Legal proceedings were initiated by the Competition Authority against the Irish Dental Association following allegations of a collective boycott of a private dental insurance scheme being introduced in Ireland by Vhi DeCare.

The **Irish Hospital Consultants Association** (IHCA) agreed settlement terms with the Competition Authority in relation to the collective negotiation of consultants' fees from private medical insurance providers. The Competition Authority decided to

\* Stanley Wong took up his position as a Member of the Competition Authority in February 2006

initiate legal action in May 2005 having formed the view that the object and/or effect of the IHCA's collective negotiations on behalf of its members was to directly, or indirectly, fix the fees paid to consultants by health insurers. However, this action was settled following negotiations with the IHCA and before proceedings were lodged in the High Court.

The Competition Authority also agreed settlement terms in its High Court actions against the **Vintners Federation of Ireland, Connacht Mineral Water Company Limited, Deasy & Company Limited, United Beverages Limited, C&C (Wholesale) Limited and M&J Gleeson & Company**. The Competition Authority is continuing to pursue High Court proceedings against **Superquinn and Nash Beverages Limited**.

There is now a steady stream of criminal and civil competition cases coming before the Irish courts. However the long-term effectiveness of the Competition Authority's criminal and civil enforcement work will depend on a number of factors outside its control. These factors include timely hearings for criminal cases and financial penalties which would act as effective deterrents in civil court cases. During 2005 a criminal competition case was delayed by 12 months due to the lack of a court room for the trial. Another indicator of how difficult it will be to discourage anti-competitive behaviour is that there are no financial penalties for civil breaches of competition law in Ireland. Civil fines are seen as an essential tool of competition enforcement in most EU countries and in countries such as Australia and the U.S.

Another vital part of making sure that competition works for the benefit of consumers is the effective and timely evaluation of mergers and acquisitions. Most mergers are likely to be beneficial to consumers, by promoting efficiency and reducing

unnecessary costs. However, some mergers could lead to a substantial lessening of competition to the detriment of consumers. The role of the Competition Authority in this area is to allow beneficial mergers to proceed in order to promote an efficient and dynamic economy, while prohibiting ones that substantially lessen competition.

The Competition Authority took over the function of evaluating mergers and acquisitions on 1st January 2003 and has established an international reputation for the high quality of its merger analysis. Over the last three years the Competition Authority was notified of 212 mergers and acquisitions (47 in 2003, 81 in 2004, and 84 in 2005). The Competition Authority's evaluation of 206 of these notifications was completed following a preliminary investigation (Phase 1). 199 of these transactions were cleared, six transactions were cleared with a total of 18 specific measures designed to address competition concerns and one notification was withdrawn. The Competition Authority initiated a full investigation (Phase 2) in six transactions, of which one was prohibited, one was withdrawn, three were cleared with a total of 25 conditions attached and one was cleared without conditions.

There are many areas of the Irish economy where competition is absent, limited or restricted. A legacy of anti-consumer policy and culture has contributed enormously to this situation. The public reaction to the television series 'Rip-Off Republic' demonstrated the growing realisation that the interests of consumers are significantly under-represented in Irish society. The establishment of the National Consumer Agency in 2005 was welcomed by the Competition Authority as an important milestone in creating a pro-consumer culture in Ireland.

As part of its contribution to the creation of a pro-consumer culture the Competition Authority

continued in 2005 to raise awareness about, and call for the removal of, anti-competitive, anti-consumer laws and regulations. Issues highlighted by the Competition Authority included the restrictions on competition between pharmacies, the impact of the Groceries Order on price competition in supermarkets and convenience shops, as well as the current public licensing regulations. The Competition Authority also published five major reports on competition in banking, insurance and four professions (solicitors, barristers, dentists and optometrists).

In December 2005 the Competition Authority submitted a new Strategy Statement to the Minister for Enterprise, Trade & Employment. The new Strategy Statement covers the period 2006 to 2008 and outlines the next stage in the development of the Competition Authority. As a maturing agency the Competition Authority is moving away from building up its capacity to concentrating on improving the quantity and quality of its 'outputs' and their delivery. However the Competition Authority's Mission Statement and High Level Goals are substantively unchanged. The focus of the Competition Authority will continue to be **"to ensure that competition works for the benefit of consumers throughout the Irish economy."**

Over the last five years the Competition Authority has built a solid foundation for the enforcement of competition law in Ireland and the promotion of the interest of consumers in public policy. The Competition Authority would particularly like to thank John Fingleton, Terry Calvani and Ted Henneberry, all of whom announced their departure as Members of the Authority in 2005, for their enormous contribution to building the organisation.

# competition

consumers innovation

vigorous  
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## Section 1: **Enforcing Competition Law**

# 1. Enforcing Competition Law

The ability of the Competition Authority to uncover illegal anti-competitive behaviour received a boost in November 2005 when the Government announced extra resources for the investigation of criminal cartels. Over the last number of years the Competition Authority has increased its activity and achievements in the enforcement of competition law. Ireland is the first country in Europe to have a jury trial for a criminal competition offence and the Competition Authority continues to bring a significant number of civil cases before the High Court.

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

## 1.1 Use of Enforcement Powers

During 2005 the Competition Authority applied to the District Courts and was granted 42 search warrants in relation to on-going investigations into anti-competitive behaviour.

These search warrants were executed by authorised officers of the Competition Authority. On a number of occasions assistance was provided by the Garda Bureau of Fraud Investigation and local members of An Garda Síochána around the country.

In addition, the Competition Authority issued 46 witness summonses during the year. The Competition Authority is entitled to issue summonses to compel witnesses to give evidence under oath and produce documents requested. Failure to comply with these summonses is an offence under the Competition Act, 2002.

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

## 1.2 Criminal Cases taken by the Director of Public Prosecutions

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

In April, May and June of 2004 the Director of Public Prosecutions (DPP) initiated proceedings against 24 defendants in eleven District Courts across the west of Ireland. The charges relate to allegations of fixing the price of gasoil and kerosene and follow an investigation by the Competition Authority who referred a file on the matter to the DPP in 2003. Books of evidence were served on the defendants and all were returned to Galway Circuit Court for trial on indictment.

In October 2004, the DPP indicated that he wished to proceed with an initial group of four defendants. In December 2004 counsel for three of the defendants (**Corrib Oil Company Limited, Eugene Dalton Snr & Tom Connolly**) made an application to Galway Circuit Court to move the trial to the Dublin Circuit Criminal Court on the grounds that they were unlikely to get a fair trial in Galway as potential jurors were likely to have been customers of one or more of the defendants and/or witnesses for the prosecution. The application was granted and the trial of the fourth defendant (**JP Lambe**) was also moved to Dublin Circuit Criminal Court. A trial date for all four defendants was set for 14th November 2005.

**J.P. Lambe** pleaded guilty in Dublin Circuit Criminal Court on the 27th October 2005 to both counts of aiding and abetting Corrib Oil Company Limited in

price-fixing. He is due to be sentenced on 6th March 2006. Specifically he was charged as follows:

*Statement of Offence:* Entering into an agreement which had as its object the prevention, restriction or distortion of competition contrary to Section 2 (2) and Section 3 (4) (a) of the Competition (Amendment) Act, 1996, and contrary to section 7(1) of the Criminal Law Act, 1997.

*Particulars of Offence:* J.P. Lambe, between the 1st day of January 2001 and the 11th day of February 2002, both dates inclusive, in the County of Galway, did aid and abet Corrib Oil Company Limited, an undertaking within the meaning of Section 3 of the Competition Act, 1991, to commit an offence, namely, the entering into an agreement which had as its object the prevention, restriction or distortion of competition in the trade of gasoil in Galway City and County by directly or indirectly fixing the selling price of gasoil.

The second count was in identical terms except that the product was kerosene instead of gasoil.

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

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

### The Director of Public Prosecutions v Pat Morgan

During 2004, the Competition Authority made a complaint to An Garda Síochána in relation to the failure by Pat Morgan, managing director of Tru Gas Limited, to appear before the Competition Authority. The witness summons was issued under Section 31 of the Competition Act, 2002. The Competition Authority was seeking information during a consultation process leading up to making a Declaration in relation to exclusive purchasing agreements in the cylinder LPG market under Section 4(5) of the Competition Act, 2002.

The prosecution was brought by the Director of Public Prosecutions and the case was heard in the Dublin Metropolitan District Court on 22nd December 2005. The District Court Judge found that the facts were proven against Mr. Morgan. At the suggestion of the Competition Authority sentencing was put back to 6th February 2006 to allow Mr. Morgan time to comply with the Authority's witness summons and provide the information sought.

### 1.3 Civil cases taken by the Competition Authority

#### The Competition Authority v Irish League of Credit Unions

In October 2004, the High Court found in favour of the Competition Authority in proceedings against the Irish League of Credit Unions (ILCU). This was the first ever court decision in an abuse of dominance case brought by the Competition Authority. The High Court's decision is now being appealed to the Supreme Court by the ILCU.

In July 2003, the Competition Authority sought an injunction to prevent the Irish League of Credit Unions (ILCU) from disaffiliating twelve credit unions. On disaffiliation these credit unions would lose access to the ILCU's Savings Protection Scheme (SPS). The Competition Authority viewed this loss of

access to the SPS as constituting a breach of the law as it would prevent these credit unions from having access to an important facility for protecting individual members' savings. In the opinion of the Competition Authority this action restricted competition in the market for credit union representation.

Following a full hearing on the issues the High Court ordered that the ILCU grant access to its Savings Protection Scheme to any credit union, satisfying certain entry criteria, that agree to abide by the rules of participation. (High Court Record 2003 No. 868oP). The full text of this judgment is available on the Competition Authority's website [www.tca.ie](http://www.tca.ie)

#### The Competition Authority v Beef Industry Development Society

The Competition Authority initiated High Court proceedings against the Beef Industry Development Society (BIDS) in June 2003. These legal proceedings challenge a proposed rationalisation of the beef processing industry – led by a group of beef processors – which the Competition Authority believes will result in anti-competitive effects including increased beef prices to consumers.

It is the Competition Authority's contention that some of BIDS activities constitute a breach of Section 4 of the Competition Act and Article 81 of the Treaty establishing the European Union. An injunction was not sought in this case because the parties gave undertakings to the Competition Authority to withhold implementation of the proposed scheme pending the case being heard.

The hearing of this case began on the 8th November 2005. It was before the High Court for a total of five days in November 2005, and was concluded with a further seven days before the High Court in January 2006. It is expected that the High Court will deliver its judgment sometime in the spring of 2006. (High Court Record 2003 No. 7764P).



treatment of patients covered by private health insurance. As a result of this investigation, it is the Competition Authority's view that a breach of the Competition Act had occurred. In the opinion of the Competition Authority the object and/or effect of the IHCA's collective negotiations on behalf of its members is to directly, or indirectly, fix the fees paid to consultants by health insurers. The IHCA deny that it is in breach of the Competition Act and has entered the settlement agreement with the Competition Authority without admission of liability.

The text of the undertakings made by the IHCA is reproduced in **Appendix I** of this Report.

Following the conclusion of its investigation the Competition Authority decided to carry out a consultation process with a view to providing further guidance in respect of collective negotiations relating to the setting of medical fees. The aim of this consultation process is to produce guidance that will facilitate compliance with the Competition Act by doctors – consultants and general medical practitioners – in private practice. The Competition Authority believes that increased compliance with the Competition Act promotes competition for the benefit of consumers. A further aim of the process is to determine the extent to which there are economic efficiencies associated with collective negotiations between doctors and payors, and to identify mechanisms consistent with the Competition Act that will achieve these efficiencies. This will be ultimately to the benefit of consumers. This consultation process was launched on 27th January 2006 and the consultation document is accessible at [www.tca.ie](http://www.tca.ie)

### Galileo Ireland

The Competition Authority received a complaint from a travel technology developer, in March 2003, alleging that Timas Ireland, trading as Galileo Ireland, had unjustifiably refused access to its computerised reservation system. Galileo Ireland operates the computerised reservation system used by most travel agents in Ireland. It was alleged that the refusal to allow the complainant access to Galileo Ireland's computerised reservation system was preventing the development of new technology for the travel industry that would enable travel agents to search more effectively and efficiently for information, such as airfares, on behalf of their customers.

The Competition Authority investigated this complaint primarily as a possible abuse of a dominant position, in breach of Section 5 of the Competition Act, 2002, and Article 82 of the Treaty establishing the European Union. The Competition Authority agreed to conclude its investigation without recourse to legal proceedings having received legally binding commitments from Galileo Ireland to deal with future requests for access to its computerised reservation system in an open, transparent, proportionate and non-discriminatory manner. Galileo Ireland asserted that its behaviour was not in breach of the Competition Act and denied that the facts alleged in the complaint were true. Nevertheless, in the interest of resolving the investigation, Galileo Ireland offered to give undertakings to the Competition Authority. The text of the undertakings made by Galileo Ireland is reproduced in **Appendix J** of this Report.

### USIT Canadian (Non-Student) Working Holiday Visa Programme

The Competition Authority has received commitments from USIT to revise the terms and conditions of its Working Holiday Visa Programme. The Competition Authority's investigation followed a number of complaints concerning the insurance requirements specified in the terms and conditions of USIT's Working Holiday Visa Programme and USIT's procedures for dealing with customer queries.

The complaints received by the Competition Authority alleged that USIT required visa applicants to pay for its travel insurance product, even where cheaper alternative insurance was available. It was also alleged that visa applicants had been required to pay for USIT insurance, even where they had purchased this cheaper insurance and submitted the details so that USIT could confirm the terms and conditions adequately cover appropriate risks.

Following discussions with the Competition Authority, USIT offered to revise its terms and conditions to clarify the insurance requirements (whereby alternative insurance meeting particular criteria could be substituted by visa applicants) and submitted procedures for staff to follow, in informing visa applicants about the insurance requirements of the programme. On the basis of these undertakings, offered by USIT, the Competition Authority decided to discontinue its investigation.

#### 1.5 Cases taken against the Competition Authority

##### The Law Society of Ireland v The Competition Authority

The Competition Authority has found that multiple representation of suspects and witnesses by the same solicitor has created serious difficulties in the

conduct of its investigations. Multiple representation has occurred where the same solicitor has appeared before the Competition Authority representing both suspects and witnesses in the same investigation. In an attempt to remedy this a Notice in respect of legal representation for persons attending before the Competition Authority was issued in 2004 which purported to set out a policy as follows:

In general the Competition Authority takes the view that the integrity of its processes is, or is likely to be, compromised by the fact that the same lawyer represents more than one person in any particular matter, be it two parties to an investigation or a party to an investigation and a witness relevant to that investigation. In general, therefore, the Competition Authority will not permit the same lawyer to represent both persons.

The Law Society sought judicial review of the Competition Authority's decision to refuse representation as enshrined in the Notice. The ensuing case (*The Law Society v The Competition Authority* 2004 963JR) was heard in the High Court in February 2005. In its judgment issued on 21st December 2005, the High Court quashed the Competition Authority's Notice on the grounds, (inter alia) that it infringed the constitutional right of persons appearing before the Competition Authority to be represented by a lawyer of their choice. Costs were awarded to the Law Society.

#### 1.6 Guidance on the application of Competition Law

##### Competition Law Enforcement Decision Series

The Competition Authority published details of two investigations in 2005 as part of its Enforcement Decision Series. The Competition Authority publishes information on selected investigations, in order to inform the public about competition issues and

increase transparency in the enforcement of the Competition Act, 2002. Other aims of the Series are to provide greater legal certainty and a reduction in compliance costs for business.

The Enforcement Decision Series focuses on investigations that have been resolved, either because no breach of competition law has been found or, because the anti-competitive behaviour has been rectified.

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

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

During 2005, the Competition Authority published two Enforcement Decisions which are available to download from the Authority's website [www.tca.ie](http://www.tca.ie)

These non-infringement decision notes highlight the economic effects-based approach employed by the Competition Authority in analysing alleged breaches of competition law particularly with regard to:

- The definition of dominance; and,
- The analysis of certain abuses - predatory pricing (newspapers); excessive pricing (Greenstar).

**Table 1.2: Enforcement Decision Services**

Decision Number:	Decision Description:
E/05/001	The alleged predation by Drogheda Independent Company Limited in the market for advertising in local newspapers in the greater Drogheda area
E/05/002	Alleged excessive pricing by Greenstar Recycling Holdings Limited in the provision of household waste collection services in northeast Wicklow.

#### Drogheda Independent Company Limited

The Competition Authority published details of its investigation into alleged predatory conduct by the Drogheda Independent Company Limited (Drogheda Independent) on 15th February 2005.

The Competition Authority's investigation was prompted by complaints from the publisher of the Drogheda Leader alleging that the Drogheda Independent was abusing a dominant position by:

- Launching the Drogheda Independent Weekend Extra in 1997;
- Selling advertising below cost since 1997; and,
- Selectively discounting the price of advertising in the Extra during January and February 2003.

The Competition Authority rejected the first two of these allegations for a number of reasons including that the Drogheda Independent's actions could not plausibly be considered as predatory. The Competition Authority has outlined in detail its



analysis of the allegation of below cost selling of advertising space in the Drogheda Independent Weekend Extra during early 2003 in the decision note. The note describes the structured "rule of reason" approach followed by the Competition Authority in assessing allegations of predatory pricing. This methodology comprises four key elements that are required to establish a breach of the Competition Act:

1. The plausibility of the alleged behaviour being an abuse of dominant position in a particular market;
2. Lack of any business justification;
3. The ability to recover any short term losses; and,
4. Pricing below cost.

The Competition Authority has taken the view that alleged predatory conduct by the Drogheda Independent Company Limited does not breach the Competition Act. This view was taken on the basis that the Drogheda Independent is not dominant nor could its alleged conduct constitute an abuse. The alleged conduct is arguably pro-consumer and more indicative of intense competition in the market than predatory conduct by a dominant undertaking.

The Competition Authority published details of the investigation in this case, to provide guidance on its approach to examining allegations of predatory conduct to interested economic and legal practitioners as well as the general public. Details of this investigation were published as part of the Competition Authority's Enforcement Decision Series and can be downloaded from the Authority's website [www.tca.ie](http://www.tca.ie).

### Household waste collection services in northeast Wicklow

The Competition Authority published, on 11th October 2005, the results of its investigation into allegations of breaches of competition law in household waste collection services. While the investigation did not find any breach of competition law, the Competition Authority does believe that the market for household waste collection is not working well for consumers.

In its report the Competition Authority recommended that the Department for the Environment, Heritage and Local Government consider reform of the household waste collection sector. Based on observations from international experience the Competition Authority suggested that competitive tendering (competition for the market) would be the best method of ensuring that household waste collection providers deliver good service at competitive prices.

From 2001 the Competition Authority received a significant number of complaints alleging:

- A lack of competition/choice in household waste collection services in northeast Wicklow; and,
- Excessive pricing by Greenstar Recycling Holdings Limited (Greenstar) in household waste collection services in northeast Wicklow.

The Competition Authority's main findings from its investigation, into allegations that Greenstar abused its dominant position by charging 'high' or 'excessive' prices for household waste collection, may be summarised as follows:

- Greenstar possesses a dominant position in the market for household waste collection services in northeast Wicklow. This finding is based on the fact that Greenstar is the only operator active in the market concerned, there has been no new entry since 2000 and there is a lack of competition from firms operating in adjacent areas. A combination of economies of scale and density, as well as regulatory delays in establishing waste sorting/recycling facilities, constitute significant barriers to new entry and expansion by operators in this market.
- The evidence does not substantiate the allegation that Greenstar's prices are unrelated to the social value of the service provided or to the cost involved in providing the service in question. Nor is it the case that Greenstar's prices are significantly higher than the prices charged by other private operators; they are in some cases, cheaper than those charged by other private operators in the State.

Details of this investigation were published as part of the Competition Authority's Enforcement Decision Series and can be downloaded from the Authority's website [www.tca.ie](http://www.tca.ie).

#### Guidelines on "Refusal to Supply" complaints

The Competition Authority receives a large volume of refusal to supply complaints. In some instances the complainant has had their supply of goods or services cut off; in other instances the attempt to start supply has been unsuccessful. Only a small proportion of these complaints raise concerns about anti-competitive behaviour. In December 2005 the Competition Authority published a guidance note relating to such refusal to supply complaints.

This information booklet gives guidance to Irish consumers and businesses so that they may better understand and evaluate when a refusal to supply is likely to raise concerns under the Competition Act. It is also intended to assist firms, who may experience difficulties in obtaining supplies of products or services, to decide whether or not they may have legitimate grounds to make a complaint to the Competition Authority and to provide the relevant information that the Competition Authority requires in order to assess such a complaint. It is also designed to give firms guidance on their obligations under the Competition Act.

#### Declaration on the Cylinder LPG market

On 21st March 2005, the Competition Authority published a Declaration concerning exclusive purchasing agreements for cylinder liquified petroleum gas (LPG). Under the Competition Act, complying fully with the terms of the Declaration will give suppliers of cylinder LPG a safe harbour from prosecution under competition law. The Competition Authority's Declaration limits exclusive agreements in the cylinder LPG market to two years.

The Competition Authority has issued this Declaration following a review of how this market has worked over a ten-year period between 1994 and 2004. This review has highlighted a contrast between positive competition developments between 1994 & 1999 and an apparent decline in competition between 1999 and 2004.

The Declaration for the cylinder LPG market entered into force on 1st April 2005 and expires on 31st March 2015 (with a review after 5 years). Existing agreements entered into prior to 1st April 2005 were allowed a six-month period of transition until 30th

September 2005. A copy of the Declaration is available from the Competition Authority's website [www.tca.ie](http://www.tca.ie).

Under Section 4(3) of the Competition Act, 2002, the Competition Authority may declare in writing that in its opinion, a specified category of agreements, decisions or concerted practices complies with the following conditions as laid out in Section 4(5):

That the agreement, decision or concerted practice or category of agreement, decision or concerted practice, having regard to all relevant market conditions, contributes to improving the production or distribution of goods or provision of services or to promoting technical or economic progress, while allowing consumers a fair share of the resulting benefit and does not –

- Impose on the undertakings concerned, terms which are not indispensable to the attainment of those objectives; and,
- Afford undertakings the possibility of eliminating competition in respect of a substantial part of the products or services in question.

### Consultation on the Bulk LPG market

In May 2005 the Competition Authority initiated a public consultation in relation to liquefied petroleum gas (LPG) to determine whether to issue a Declaration in the bulk LPG market. The purpose of this consultation was to set out a number of issues relevant to the Competition Authority's investigation of the bulk LPG market and invite comments on those issues from interested parties.

This consultation process concluded in September 2005, and the Competition Authority received a total of four formal submissions. No decisions have yet been taken on any issue set out in this paper. The Competition Authority is undertaking further research into how competition works in this market and it is envisaged that a decision will be taken in 2006 on whether or not a Declaration will be made.



Table 1.3: Investigation &amp; Enforcement Powers of the Competition Authority

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



### 1.7 Working with other State agencies

During 2005, the Competition Authority worked very closely with a number of other law enforcement agencies in the State to promote compliance with competition law.

#### The Director of Public Prosecutions

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

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

#### An Garda Síochána

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

During 2005 staff of the Competition Authority made a number of presentations to An Garda Síochána at In-Service training courses on the relevance and scope of the Competition Act, 2002, and its impact on criminal investigations.

#### Other Law Enforcement Agencies

In order to carry out its investigative functions, the Competition Authority works in co-operation with law enforcement agencies, such as, the Office of the Director of Corporate Enforcement, the Criminal Assets Bureau and the Revenue Commissioners. During 2005, the common issues discussed with these agencies included computer forensics, the consequences of the judgement of the Supreme Court in the matter of CAB vs. Dylan Creaven as well as arrest, detention and prosecution procedures.

#### Regulators

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

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

### 1.8 Enforcement Obligations under EU Competition Law

Since 1st May 2004, the Competition Authority has responsibility for investigating breaches of EU competition law relevant to Ireland. These new procedures, under EU Regulation 01/2003, are designed to modernise and decentralise EU competition law enforcement and bring considerable additional work to the Competition Authority.

Since 2002 the Competition Authority has participated in the development and implementation of a European Competition Network (ECN). The ECN is used to keep member states informed of activities that may involve the application of EU law and to administer the huge flow of information and contacts between member states.

From 1st May 2004 the Competition Authority has examined all complaints under domestic and EU competition law. 22 of the 413 queries received from complainants in 2005 were deemed to have a cross-border element. Five of these were progressed to further evaluation by the Competition Authority. Four investigations have commenced under Section 30(1)(b) of the Competition Act, 2002.

In June 2005 Authorised Officers of the Competition Authority assisted staff of EU Commission DG Competition in an inspection of the Dublin offices of Fyffes plc. The inspection was in relation to a suspected infringement of Article 81 of the EC Treaties which prohibit agreement that prevent, restrict or distort competition between member states of the EU.

In December 2005 the European Commission initiated a public consultation inviting comments on its draft discussion paper on the application of

Article 82 of the Treaty to exclusionary abuses. During 2005 the Competition Authority advocated the adoption of an effects-based consumer harm approach to the application of Article 82 at an EU level. The Commission's discussion paper reflects the views put forward by the Competition Authority and indicates a movement (in the application of Article 82) toward a more economic effects-based approach.



## Making a complaint to The Competition Authority

### Complaints about anti-competitive behaviour

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

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

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

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

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

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

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

### Resolving complaints without legal action

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

Following a preliminary screening many complaints are resolved because:

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







## Section 2: Evaluation of Mergers and Acquisitions

## 2. Evaluation of Mergers and Acquisitions

Mergers and acquisitions in the Irish economy remained at a consistently high level during 2005. As a consequence, the number of mergers notified to the Competition Authority continues to grow. The 84 mergers received in 2005 more than matched the 81 submitted in 2004. The 2004 figure was in turn more than a 70% increase on those notified in 2003.

Most mergers can be beneficial to consumers when they lead to greater efficiency and a reduction of unnecessary costs. However, some mergers could lead to a substantial lessening of competition to the detriment of consumers. It is therefore vital that effective, timely merger enforcement allows beneficial mergers, which in turn promote an efficient, dynamic economy, while prohibiting ones that substantially lessen competition.

### 2.1 Merger Notifications during 2005

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

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

The mergers notified to the Competition Authority in 2005 demonstrate the important areas of the Irish economy which are affected, sectors such as retail, construction, telecommunications, financial services, media and IT. Inefficiency or high prices resulting from a lack of competition in such sectors could negatively affect all Irish consumers.

See **Appendix C** for a full list of mergers notified to the Competition Authority in 2005.

Some of the highlights of the Competition Authority's evaluation of mergers and acquisitions in 2005 include:

- The number of mergers notified to the Competition Authority increased to 84 in 2005 in comparison to 81 notifications in 2004 and 47 notifications in 2003;
- During the year the Competition Authority also finalised its work on 11 transactions which were notified in 2004 and whose deadlines extended into 2005;
- All transactions were analysed within the statutory time period;
- 93 of the 95 transactions assessed during 2005 were cleared during the initial (Phase 1) investigation;
- In 2005 the Competition Authority initiated one full investigation (Phase 2 investigation);
- The Competition Authority also concluded one Phase 2 investigation that had been notified in 2004;
- During the year, five transactions were cleared with specific measures designed to address concerns raised by the Competition Authority during a preliminary investigation (Phase 1); and,
- 2005 saw heightened activity in media mergers and acquisitions in Ireland with 23 media mergers notified to the Competition Authority compared to the 14 notified in 2004.

2005 marked the third year since the Competition Authority took over the review of mergers and acquisitions in Ireland from the Department of Enterprise, Trade and Employment.

- Over the last three years the Competition Authority was notified of 212 mergers and acquisitions (47 in 2003, 81 in 2004, and 84 in 2005).
- The Competition Authority has made determinations in respect of 209 of these notifications, 2 were withdrawn and the one remaining notification is still being reviewed.
- Figure 1 below, shows the monthly comparisons of the notifications received by the Competition Authority for the period 2003 to 2005. June 2005 was the month with the highest number of notifications received by the Competition Authority. December remains the busiest month with an average of 10 notifications over the last three years.

## 2.2 Mergers which required a Full Investigation (Phase 2)

The Competition Authority may carry out a detailed examination (Phase 2 investigation) of a transaction if after a preliminary investigation (Phase 1), the Authority has been unable to conclude that the

transaction would not "substantially lessen competition". In 2005 the Competition Authority initiated one Phase 2 investigation;

- The proposed acquisition of MS Irish Cable Holdings B.V. (trading as NTL Ireland) by UPC Ireland B.V. was cleared in November 2005 subject to 19 conditions (M/05/024 NTL/UPC).

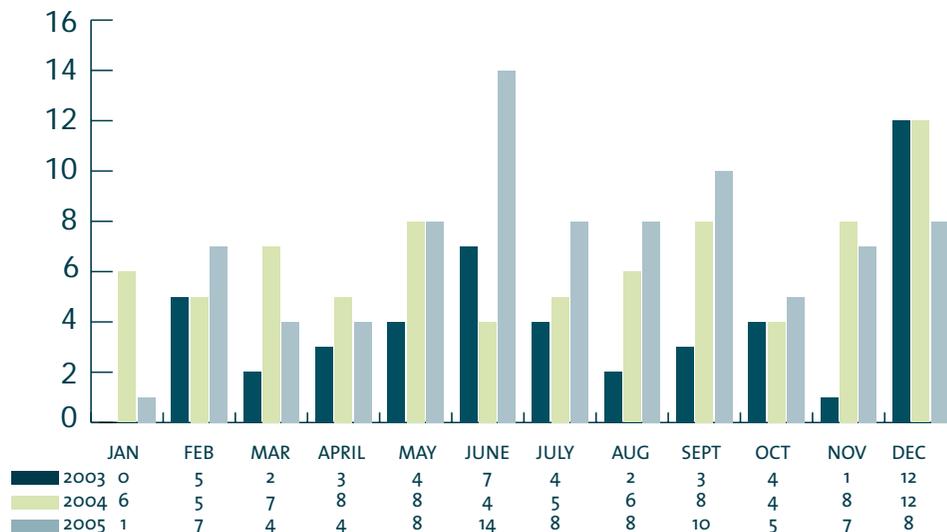
The Competition Authority also concluded one Phase 2 investigation that had been opened in 2004;

- The proposed acquisition of Heiton Group plc by Grafton Group plc was cleared in January 2005 subject to two conditions (M/04/051 Grafton/Heiton).

### Acquisition of NTL by UPC Ireland

The Competition Authority announced on 4th November 2005 its determination that the proposed acquisition of MS Irish Cable Holdings B.V. (trading as NTL Ireland) by UPC Ireland B.V. could be put into effect subject to a series of conditions. UPC Ireland is ultimately owned by Liberty Global Inc. which also owns the Irish cable provider Chorus (Merger Notification M/05/024).

Figure 2.1: Mergers Notified to the Competition Authority in 2003-2005



Following a full (Phase 2) investigation the Competition Authority had significant concerns about the cross ownership interests held by a number of directors of Liberty Global including John Malone, the leading shareholder in Liberty Global. The Competition Authority was specifically concerned about cross ownership interests linked to NewsCorporation and BSkyB. In order to address these concerns the Competition Authority imposed 19 conditions that were attached to the transaction. The Competition Authority determined that the transaction could be put into effect subject to these 19 conditions. (For a full list of the conditions see the Competition Authority's website [www.tca.ie](http://www.tca.ie))

As this was a media merger under the Competition Act, 2002, the matter was referred to the Minister for Enterprise, Trade & Employment for independent review. While the Competition Authority must make its determination based on competition issues the Minister may make independent findings based on separate, non-competition criteria within 30 days (Phase 2 merger). In this case the Minister did not make any order prohibiting the merger from being put into effect.

#### Acquisition of Heiton by Grafton

The Competition Authority announced on 6th January 2005 that it had approved the proposed acquisition by Grafton Group plc of Heiton Group plc with two conditions (Merger Notification M/04/051).

During a full (Phase 2) investigation the Competition Authority examined the effect on competition in the provision of retail DIY and builders merchanting services. Following this investigation the Competition Authority determined that the result of the proposed transaction would not be to "substantially lessen competition" and accordingly

the proposed transaction could be put into effect subject to the following conditions:

- For three years from the date on which the acquisition is put into effect, the Grafton Group and its successors will inform the Competition Authority in advance of all proposed mergers or acquisitions in the builders' merchants sector in the State, in which it is involved, and will notify such proposed transactions in accordance with Section 18(3) of the Competition Act, 2002, when requested to do so by the Competition Authority.
- Pursuant to Section 22(6) of the Competition Act, 2002, the acquisition must be put into effect within 12 months after the making of the determination.

#### 2.3 Mergers cleared with specific measures designed to address competition concerns

As part of the Competition Authority's preliminary investigation (Phase 1) the parties involved in a transaction may submit proposals to address any competition concerns. These proposals become legally binding on the parties if the Competition Authority takes them into account and incorporates them as the basis or part of the basis of its determination.

During 2005 the Competition Authority cleared five Phase 1 transactions with specific measures designed to address concerns raised by the Authority;

- The proposed acquisition of Century Homes by Kingspan Group Limited was cleared in April 2005 subject to one specific measure designed to address competition concerns (M/05/009 – Kingspan/Century Homes);

- The proposed acquisition of Donegal Highland Radio Limited (trading as Highland Radio) by Scottish Radio Holdings plc. was cleared in August 2005 subject to three specific measures designed to address competition concerns (M/05/025 Highland Radio/Scottish Radio Holdings);
- The proposed acquisition of certain assets of United Beverages Sales Limited by M&J Gleeson and Co. was cleared in August 2005 subject to two specific measures designed to address competition concerns (M/05/027 – M&J Gleeson/United Beverages);
- The proposed acquisition of Eason Electronic Limited by Alphyra Ireland Limited was cleared in July 2005 subject to two specific measures designed to address competition concerns (M/05/028 – Alphyra/Eason Electronic); and,
- The proposed acquisition of Meteor Mobile Communications by eircom Group plc was cleared in November 2005 subject to eight specific measures designed to address competition concerns (M/05/050- eircom/Meteor).

#### Acquisition of Century Homes by Kingspan

The Competition Authority announced, on 13th April 2005, its determination that the proposed acquisition of Woodroe Limited, (trading as Century Homes) by Kingspan Group Limited could be put into effect subject to a specific measure designed to address competition concerns.

After a preliminary investigation (Phase 1) the Competition Authority determined that the proposed transaction could be put into effect subject to the revision of the definitions of certain terms used in

the agreement to acquire. These terms related to a non-compete clause directly related to the implementation of the merger.

The parties made a proposal that the original definition of the terms "Restricted Business Area" and "Restricted Period" be revised. The Competition Authority accepted the parties' proposal to revise the definitions but did not publish the revised definitions due to confidentiality requirements.

#### Acquisition of Highland Radio by Scottish Radio Holdings

The Competition Authority announced on 26th August 2005 its determination that the proposed acquisition of Donegal Highland Radio Limited (trading as Highland Radio) by Scottish Radio Holdings plc. could be put into effect subject to a number of specific measures designed to address competition concerns (Merger Notification M/05/025).

After an extended Phase 1 investigation the Competition Authority determined that the proposed transaction could be put into effect subject to the following proposals:

- Scottish Radio Holdings plc and Donegal Highland Radio Limited (trading as Highland Radio) shall cease any and all forms of participation in the advertising sales of Independent Radio Sales Limited (IRS) on or before six months after the date of completion of the proposed acquisition;
- The parties commit to relinquish any shareholding in IRS, to cease any involvement in the management of IRS and to remove themselves from the board of IRS within the same timeframe; and,

- For the avoidance of doubt, this commitment shall not have the effect of preventing IRS from purchasing airtime from Highland Radio for resale to advertisers on an arm's length basis subject to Highland Radio not participating in any way in the profits accruing to IRS or in the resale of this airtime by IRS.

As this was a media merger under the Competition Act, 2002, the matter was referred to the Minister for Enterprise, Trade & Employment for independent review. Within 10 days the Minister may ask the Competition Authority to carry out a full investigation (Phase 2) of the transaction. In this case the Minister did not make any order asking the Competition Authority to carry out a Phase 2 investigation.

#### Acquisition of United Beverages assets by M&J Gleeson Ltd

The Competition Authority announced on 23rd August 2005 its determination that the proposed acquisition of certain assets of United Beverages Sales Ltd. by M&J Gleeson and Co. could be put into effect subject to specific measures designed to address competition concerns (Merger Notification M/05/027).

M&J Gleeson is active in the manufacture, wholesale, and distribution of soft drinks, mineral water and alcoholic beverages. United Beverages Sales Ltd. which is also active in the wholesale, and distribution of soft drinks, mineral water and alcoholic beverages, is a wholly owned subsidiary of Diageo Ireland and is part of Diageo plc.

After an extended Phase 1 investigation the Competition Authority determined that the result of

the proposed transaction would not be to "substantially lessen competition" and accordingly the proposed transaction could be put into effect subject to the following proposal:

- For five years from the date on which its proposed acquisition of certain assets of United Beverage Sales Limited is put into effect, M&J Gleeson and its affiliated companies will inform the Competition Authority in writing, in advance of all proposed mergers or acquisitions, of any wholesale distributor of alcoholic or non-alcoholic beverages based in one or more of the following regions, Cork City and County; Dublin City and County; and counties Kildare, Louth, Monaghan, Meath and Wicklow; in which it is the proposed acquirer and will notify such transactions to the Competition Authority under Section 18 (3) of the Competition Act, if and when requested to do so by the Competition Authority.

#### Acquisition of Eason Electronic Limited by Alphyra Ireland Limited

On 14th July 2005, the Competition Authority determined that the proposed acquisition of Eason Electronic Limited by Alphyra Ireland Limited (Merger Notification M/05/028) could be put into effect subject to a number of specific measures designed to address competition concerns.

Alphyra is active in the provision of a nationwide electronic payment network that allows retailers to process electronic payments. Additionally, Alphyra provides a number of value added services, including distributing terminals to retailers to sell prepaid mobile phone "top-ups" and international calling cards, utility bill payments, and electronic lottery services, across its network. Eason Electronic Limited

was also engaged in the provision of terminals and related software allowing retailers to sell top-ups for mobile phones and international calling cards, debit and credit card transactions.

The Competition Authority was concerned about the possible effect of the proposed transaction on end-consumers who rely on a cash-based method of top-up of mobile phones and in particular on:

- Customers who do not have an account with one of the mobile phone companies;
- Customers who do not have credit or debit cards; and,
- Customers who do not have a bank account with banks offering ATM top-ups.

In order to address the Competition Authority's concerns, Alphyra made the following proposal, on which the Authority determined that the transaction could proceed:

- For five years from the date on which the acquisition is put into effect, Alphyra Holdings Limited, its subsidiaries and affiliated companies (to the extent controlled by Alphyra Holdings Limited, as that term is used in Section 16(2) of the Competition Act, 2002) and its successors ("Alphyra") will inform the Competition Authority in writing in advance of all proposed mergers or acquisitions in the mobile phone top-up sector on the island of Ireland, in which it is the proposed acquirer, and will notify such proposed transactions in accordance with Section 18(3) of the Competition Act, 2002 if and when requested to do so by the Authority. In addition, Alphyra will inform the Competition Authority in writing in advance of the sale of its mobile phone top-up

business to a third party, although no obligation will be imposed on Alphyra to notify such sale to the Competition Authority; and,

- The foregoing obligations will also apply, on a several basis and for the same period of five years, to Benchmark Management UK L.L.P ("Benchmark") for so long as Benchmark retains control, as that term is used in Section 16(2) of the Competition Act, 2002, of Alphyra during that five year period.

#### Acquisition of Meteor by eircom

The Competition Authority announced on 18th November 2005 its determination that the proposed acquisition of Meteor Mobile Communications Limited (trading as Meteor) by eircom Group plc could be put into effect subject to eight specific measures designed to address competition concerns (Merger Notification M/05/050).

The eight specific measures attached to this transaction were designed to address concerns about the transparency of cost allocation and internal transfers within eircom. Specifically these measures will allow the Commission for Communications Regulation (ComReg) to monitor on the Competition Authority's behalf:

- Specific accountancy statements for Meteor;
- Specific accountancy statements for any future mobile phone entity established within eircom;
- Details on the allocation of costs and internal transfers between eircom's fixed-line business and Meteor;

- Details on the allocation of costs and internal transfers between eircom's fixed-line business and any future mobile phone entity established within eircom; and,
- Details on the allocation of costs and internal transfers between Meteor and future mobile phone entity established within eircom.

After an extended Phase 1 investigation the Competition Authority determined that the result of the proposed transaction would not be to "substantially lessen competition" and accordingly the proposed transaction could be put into effect subject to the proposals outlined above (for full details of the proposals see the Competition Authority's website [www.tca.ie](http://www.tca.ie)).

#### 2.4 Media Mergers

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

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

2005 saw heightened activity in media mergers and acquisitions in Ireland with 23 media mergers notified to the Competition Authority compared to the 14 notified in 2004. Of the 23 media mergers notified in 2005:

- Five involved the acquisition of radio stations;
- Eight involved the acquisition of print publications;
- Seven involved the acquisition of broadcasting platforms and/or broadcasting content;
- The remaining three involved the acquisition of non-media targets (these are covered by the Competition Act when one or more of the notifying parties is involved in media business);
- 20 were cleared by the Competition Authority by the end of the year;
- A further two were cleared in January 2006 and the Competition Authority will make a determination on the remaining media merger during 2006; and,
- No order was made by the Minister for Enterprise, Trade and Employment during 2005 prohibiting a media merger from being put into effect.

Table 2.1: Media Mergers Notified to the Competition Authority in 2005

Notification	Industry	Date Notified	Status
M/05/005 - Radio Two Thousand / Maypril	Radio Broadcasting	09/02/2005	Cleared 9th March, 2005
M/05/020 - UTV / Wireless	Radio Broadcasting	13/05/2005	Cleared 1st June, 2005
M/05/024 - UGC (Chorus) / NTL	Electronic communications and broadcasting	24/05/2005	Cleared with conditions 4th November, 2005
M/05/025 - SRH / Highland Radio	Radio Broadcasting	01/06/2005	Cleared 25th August, 2005
M/05/026 - Radio Kerry / Midland Radio	Radio Broadcasting	02/06/2005	Cleared 1st July, 2005
M/05/029 - Setanta / NASN	Media	09/06/2005	Cleared 8th July, 2005
M/05/030 - Benchmark Europe / Setanta	Media	09/06/2005	Cleared 8th July, 2005
M/05/036 - Emap / SRH	Media	28/06/2005	Cleared 28th July, 2005
M/05/037 - Johnston Press / Score Press	Media	29/06/2005	Cleared 28th July, 2005
M/05/038 - Leinster Leader / Tallaght Publishing	Newspaper	29/06/2005	Cleared 22nd July, 2005
M/05/051 - Trinity Mirror / Smart Media	Media	17/08/2005	Cleared 15th September, 2005
M/05/052 - Trinity Mirror / Financial Jobs Online	Media	17/08/2005	Cleared 16th September, 2005
M/05/053 - General Electric (NCB) / Business News (CNBC)	Media / TV	19/08/2005	Cleared 19th September, 2005
M/05/058 - Trinity Mirror / Hotgroup	Online recruiting	12/09/2005	Cleared 6th October, 2005
M/05/061 - Trader Publishing / Webzone	Publishing	19/09/2005	Cleared 3rd November, 2005
M/05/062 - Johnston Press / Local Press	Newspaper	21/09/2005	Cleared 21st October, 2005
M/05/065 - Johnston Press / The Leinster Leader	Newspaper	30/09/2005	Cleared 2nd December, 2005
M/05/069 - Sky Broadband / Easynet	Broadcasting / Broadband	28/10/2005	Cleared 24th November, 2005
M/05/070 - NTL UK / Telewest	Media	02/11/2005	Cleared 2nd December, 2005
M/05/071 - Associated Newspapers & Irish Times & Metro / Fortunegreen	Newspapers	04/11/2005	Cleared 1st December, 2005
M/05/072 - Benchmark Europe II / Setanta Sport	TV Broadcasting	18/11/2005	Cleared 12th December, 2005
M/05/079 - Radio County Sound / Dooley and Feeney	Media	07/12/2005	Active
M/05/083 - Trinity Mirror Digital / Paldonsay	Media - Newspaper Publishing and Electronic and online media	23/12/2005	Cleared 11th January, 2006

## 2.5 Mergers below notification thresholds

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

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

In essence if, after a preliminary examination, the Competition Authority considers the transaction may raise competition concerns, it will contact the parties to determine whether they wish to notify voluntarily. If the transaction has not yet been put into effect, the parties have an opportunity to make a voluntary notification. Where the parties fail to make a voluntary notification, the Competition Authority may issue legal proceedings seeking an injunction to restrain the implementation of the merger. If the transaction has already been put into effect, the Competition Authority will conduct an investigation as to whether or not there has been a breach of Sections 4 and/or 5 of the Competition Act, 2002. During 2005, the Competition Authority carried out 2 preliminary assessments of below-notification-threshold-mergers. These were closed as there was insufficient evidence to initiate formal investigations.

## 2.6 Merger Procedures

In 2005, the Competition Authority published two consultation documents seeking comments from interested parties on specific aspects of its merger procedures. These documents were:

- **Draft Procedures for Access to the File in Merger Cases:** to give guidance to businesses and their advisors on the processes and types of documents to which access will be granted following the issue of an Assessment in a merger review; and,
- **Draft Revised Procedures for the Review of Mergers and Acquisitions:** to update the existing procedures in light of the Competition Authority's experience of reviewing mergers and acquisitions over the last three years.

The Competition Authority received two submissions relating to these consultation documents. After finalising its review of the submissions and other policy considerations, the Competition Authority will publish the new Notices in early 2006.

## 2.7 International Mergers and Merger Policy

In December 2005, the Competition Authority entered into discussion with the European Commission in connection with the possible referral of the proposed acquisition of **Ark Life Assurance Company Limited by Aviva plc** (Comp/M.4047). Although the focus of competition in this transaction occurs almost entirely in Ireland after considering the details of the case and market factors the Competition Authority decided not to pursue a request for referral.

# competition consumers in the economy

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In relation to international merger policy, the Competition Authority co-chaired two studies undertaken by the International Competition Network (ICN). These were the Global Practice

Study on Merger Remedies and the ICN Report on Merger Guidelines. The Competition Authority also contributed to the OECD round table symposium in the area of cross border remedies in merger reviews.

## The role of the Mergers Division in the Competition Authority

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

The Mergers Division comprises a Director, a Divisional Manager and three Case Officers.





## Section 3: Promoting Competition in Ireland

## 3. Promoting Competition in Ireland

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

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

### 3.1 Identifying public restrictions on competition

The Competition Authority continued in 2005 to raise awareness and call for the removal of anti-competitive laws and regulations. Issues highlighted by the Competition Authority included the restrictions on competition between pharmacies, the impact of the Groceries Order on price competition in supermarkets and convenience shops, as well as the current pub licensing regulations.

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

however, less value for money and less choice for consumers.

**Appendix D** contains a full list of formal submissions made by the Competition Authority in 2005. These include a number of submissions made to Government Departments and State bodies in response to public consultation processes. Summaries of two of these submissions, on the Groceries Order and the draft Liquor Licensing Bill, are outlined below:

#### **The Groceries Order: Submission to the Department of Enterprise, Trade & Employment**

On 8th November 2005, the Competition Authority welcomed the announcement by Minister Micheál Martin TD, that the Government intended to remove the Groceries Order. In its submission to the Minister for Enterprise, Trade & Employment in July 2005, the Competition Authority pointed out that Ireland has become one of the most expensive countries in the Eurozone for food shopping.

#### **Summary of the Competition Authority's submission on the Groceries Order (July 2005)**

- a) The Groceries Order is a relic from an era of protectionism, weak economic performance and national insecurity, when protection from competition was clung to like a safety blanket. This anti-competitive restriction is very costly for consumers and the Irish economy.
- b) The successful prosecution of two supermarkets in January 2004 for providing discounts on baby food is a perfect example of why the Groceries Order needs to be abolished.

- c) As demonstrated by the Consumer Strategy Group, the Groceries Order makes it illegal for retailers to pass on substantial discounts to their customers. The Groceries Order also gives legitimacy to practices that would otherwise be illegal under competition law.
- d) This anti-consumer regulation adds to the problem of high food prices in Ireland. Removing it may save Irish consumers up to €577 million a year or €481 for the average household (based on estimate for the period June 2004 to June 2005).
- e) This protectionism also undermines the competitiveness of the Irish food industry and hinders employment. Providing a vibrant and competitive marketplace at home is the best way to ensure that Irish companies are in a position to compete internationally.
- f) The 1987 Groceries Order is no longer necessary to protect consumers from anti-competitive behaviour. Consumers are adequately protected from predatory pricing and other anti-competitive behaviour by the Competition Act, 2002.
- g) Consumers are also protected by a substantial body of legislation governing misleading or false advertising and transparency of prices.
- h) The Groceries Order has clearly failed to protect small independent retailers. Convenience stores which are linked to symbol groups such as Spar, Centra and Mace have largely replaced the traditional small corner shops. These convenience stores are able to benefit from the collective purchasing power of these symbol groups.

#### Draft Liquor Licensing Bill (2005): Submission to the Department of Justice, Equality & Law Reform

The Competition Authority published its submission on the draft Liquor Licensing Bill (2005) on 13th June 2005. In its submission to the Department of Justice, Equality & Law Reform, the Competition Authority repeated its welcome for the proposed reforms outlined in the draft Bill, and especially the proposal for a new form of licence for café bars.

However the Competition Authority stated its belief that the proposed reforms will have, at best, a modest effect in terms of stimulating competition in a sector where publicans, brewers, distillers and soft-drinks distributors have been protected from competition for decades. The Competition Authority made a number of suggestions for further reform, which it believes will benefit consumers, the hospitality industry and the economy.

According to the Competition Authority's submission the current licensing regime imposes avoidable costs in excess of €1 billion on the economy, leads to higher drink prices, reduces publicans incentives to innovate, deprives the exchequer of revenue, and has, if anything, aggravated inappropriate consumption of alcohol. By restricting entry and stifling competition, the current licensing system enables publicans to raise the prices of both alcoholic and non-alcoholic drinks. For example between 1993-2003, the bar price of a pint of stout increased by 51.2%. Over the same period, the Consumer Price Index (all items) increased by just 34.6%.

A copy of the submission can be downloaded from the Competition Authority's website [www.tca.ie](http://www.tca.ie)

### 3.2 Advice on proposed legislation and regulation

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

and pre-empt any negative consequences for consumers that newly framed policies might (inadvertently or otherwise) bring.

In 2004, the Competition Authority responded on 47 occasions to requests for advice from Government Departments and other public sector bodies. This advice was given in a variety of formats including meetings, written comments or a combination of both. Many different economic sectors were involved, see Table 3.1:

Table 3.1: Advice on proposed legislation and regulation

Comments to:	Advice/ Recommendation	Result
Dept of Health & Children (Jan 05)	Health and Social Care Professions registration bodies should have a majority who are not of the profession being regulated should have to publish (draft) bye-laws, and their codes of conduct should be "competition-proofed" by the Competition Authority.	All of these proposals appear in the final wording of the Health and Social Care Professionals Act 2005.
An Bord Bia (Jan-Feb 05)	A phrase in the Bord's Guide to Farmer's Markets could be interpreted as promoting price-fixing and should be amended or removed.	Bord Bia altered the guide on their website in February 2005.
Dept of Environment, Heritage & Local Government. (Feb-May 05)	Proposed regulations to implement WEEE directive should make clear that cooperative schemes cannot be used as a safe harbour for cartels.	Specific wording inserted into (July/August) regulations to this effect.
Dept of Agriculture & Food (May 05)	Proposed Animal Remedies Regulations raise competition concerns. Greater consideration should be given to UK model and to providing more safeguards against increasing vets' market power.	Minister has delayed implementation of regulations to see how the EU processes work.



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

- Better Regulation Group (Department of the Taoiseach);
- Better Regulation Sub-Group - Appeals & Penalties (Department of the Taoiseach);
- Auctioneering and Estate Agency Review Group (Department of Justice, Equality and Law Reform); and,
- Consumer Strategy Implementation Group (Department of Enterprise Trade and Employment).

### 3.3 Studying how competition operates in particular sectors

During 2005, the Competition Authority published five reports on competition in particular sectors of the economy. For the last number of years the Competition Authority has been conducting three major studies in the areas of Banking, Insurance and Professional Services.

The Competition Authority is using these Studies to examine regulations and practices that potentially restrict competition, and seeks to have anti-competitive restrictions abolished or replaced. The Competition Authority is also seeking to study how competition works in the sector concerned, and to identify behaviour which, although not necessarily breaching competition law, nevertheless inhibits competition. The five reports published in 2005 were;

1. Final Report on "Competition Issues in the non-life Insurance Market";
2. Final Report on "Competition in the (non-investment) banking sector in Ireland";

3. Preliminary Report on competition issues in the legal profession (covering solicitors & barristers);
4. Preliminary Report on competition issues associated with the dental profession; and,
5. Preliminary Report on competition issues associated with the optometry profession.

#### MOTOR, EMPLOYER'S AND PUBLIC LIABILITY INSURANCE: FINAL REPORT

The Competition Authority published its final report on "Competition Issues in the non-life Insurance Market" on 8th March, 2005. The Competition Authority's Report examined competition in motor, employer's liability and public liability insurance. This Study was co-funded by the Department of Enterprise, Trade and Employment.

The Competition Authority made 47 recommendations designed to make the insurance market in Ireland more open, transparent and competitive. According to the report, specific categories of motorists, businesses, and voluntary groups are "locked in" to their current insurance supplier. In addition new and existing insurance companies are "locked out" of many important and profitable segments of the insurance market.

Speaking at the launch of the Report John Fingleton, then Chair of the Competition Authority said: "Profit levels for insurance companies in Ireland are at historically high levels but unlike a competitive market, new or existing companies are not responding quickly to the profitable opportunities. Many motorists, businesses and voluntary groups do not have enough information to help them search for better insurance quotes and when they do search they find limited choice."

The focus of the Competition Authority's recommendations is to provide the necessary information to open up the Irish insurance sector. Providing this essential information will:

- Enable new & existing insurance companies to get into or expand in the profitable Irish insurance market; and,
- Empower motorists, businesses & voluntary groups to shop around for a better insurance deal.

The Competition Authority's recommendations can be summarised under the following headings:

#### **Recommendations to open the insurance market for new & existing insurance companies**

- Centralised gathering & publication of industry statistics;
- Insurance Statistical Review available by June each year;
- Transparency of claims through the legal system;
- Transparency in system for non-insured drivers - Motor Insurance Bureau of Ireland;
- Transparency in the Declined Cases Agreement; and,
- Insurance Compensation Fund to cover all Irish mass risk.

#### **Recommendations to open the insurance market for motorists**

- Certified claims history;
- Breakdown of premium charges;
- Renewal notices direct to customer;
- Disclosure of all commissions and compensation paid to intermediaries / brokers;
- Clarity on types of intermediaries / brokers; and,
- Procedures for companies to self-insure.

#### **Recommendations to open the insurance market for business & voluntary groups**

- Renewal notices 8 weeks in advance;
- Breakdown of premium charges;
- Certified claims history;
- Cost surveys of liability insurance;
- Disclosure of all commissions and compensation paid to intermediaries / brokers;
- Clarity on types of intermediaries / brokers; and,
- Renewal notices direct to customer.

A copy of the report "*Competition Issues in the Non-Life Insurance Market*" is available from the Competition Authority's website [www.tca.ie](http://www.tca.ie)

#### **NON-INVESTMENT BANKING SERVICES: FINAL REPORT**

The Competition Authority published its report "Competition in the (non-investment) banking sector in Ireland" on 22nd September 2005. The report points out that banks in Ireland do not compete aggressively for customers.

The Competition Authority's report identified anti-competitive problems in the three sectors examined, which were:

- **Personal current accounts;**
- **Lending to small businesses; and,**
- **The crucial role of the payments clearing system.**

The Competition Authority made 25 recommendations intended to mitigate these problems and make the banking industry more competitive. The Competition Authority recommended that regulation of bank charges should not be removed until competition improves.

Since the commencement of the Competition Authority's Study, numerous changes have taken place within the Irish banking sector. Some of these changes anticipated the Competition Authority's recommendations. During 2004, the Irish Bankers' Federation (IBF), the Irish Payments Services Organisation (IPSO) and the Department of Finance all announced their intentions to remove some of the more troublesome restrictions on competition in banking.

- The Minister for Finance has endorsed the removal of the double-taxation stamp duties on customers who switch banks.
- Entry barriers to the Payments Clearing System that inhibit new banks getting into the Irish banking market have been substantially reduced by the clearing organisations.
- The Irish Bankers' Federation has also introduced a switching code that will facilitate bank rivalry and make switching banks easier for Irish consumers.

The Competition Authority's report outlines what remains to be done in the Irish banking sector. "*Competition in the (non-investment) banking sector in Ireland*" delivers a total of 25 recommendations, addressed to the Government, the Financial Regulator, the clearing companies, and the banks under the following headings:

#### **Personal Current Accounts**

Customers with personal current accounts are effectively locked in to their existing service providers because it is so difficult to change banks. This problem arises from structural arrangements within the banking sector, the behaviour of the banks themselves, and unintended consequences of

Government regulation. The result is that banks don't compete for existing account holders but fight aggressively for customers who are opening accounts for the first time (for example college students).

#### *Recommendations on Personal Current Accounts:*

- 1) Improve the switching code for personal current accounts;
- 2) Develop a transferable direct debit;
- 3) End double taxation of plastic cards;
- 4) Assess the distortionary costs of the current level of stamp duty;
- 5) Standardise acceptable forms of identification;
- 6) Remove price regulation once competition improves;
- 7) Provide free 12-month account history;
- 8) Provide personal current account interest rate information; and,
- 9) Promote personal current account interest rate awareness.

#### **Loans to small businesses**

Small businesses are not benefiting from competition particularly in the vital area of working capital lending. Banks are not fully passing on interest rate decreases to their Small and Medium Enterprises (SMEs) lending customers. This problem is costing small businesses an estimated €85 million a year.

Recommendations on Loans to Small Businesses:

- 10) Implement an effective switching code for small businesses;
- 11) Make it easy to compare current accounts;
- 12) Provide free 3-year account history;
- 13) Develop standard mortgage document; and,
- 14) Facilitate easier transfer of mortgages.

**Payments Clearing System**

The Competition Authority is concerned that the structure of the payment clearing system has inhibited new banks from offering services in Ireland. The payments clearing system performs a crucial role in the Irish banking system. Financial institutions who want to offer a broad range of banking services need access to the payment clearing system to process transactions their customers conduct with customers of other banks.

*Recommendations on the Payments Clearing System:*

- 15) Create a single Board of Directors for the Payments System;
- 16) Expand the membership of IPSO;
- 17) Publicise decisions and actions of the payments industry;
- 18) Clarify status of An Post and credit unions in the payments industry;
- 19) Make key non-confidential IPSO documents available;

- 20) Analyse new technology for clearing electronic copies of cheques;
- 21) Implement legislation to recognise electronic copies of cheques;
- 22) Implement legislation to re-assign ownership of cheques;
- 23) Update clearing rules to facilitate electronic copies of cheques;
- 24) Investigate the establishment of an Automated Clearing House; and,
- 25) Devise an action plan for implementing an Automated Clearing House.

A copy of the report "Competition in the (non-investment) banking sector in Ireland" is available from the Competition Authority's website: [www.tca.ie](http://www.tca.ie)

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## THE LEGAL PROFESSION (SOLICITORS & BARRISTERS): PRELIMINARY REPORT

The Competition Authority published its preliminary report on competition issues associated with legal services in Ireland on 24th February 2005. The Competition Authority's report found that the legal profession is permeated with unjustified and disproportionate restrictions on competition. These restrictions emanate primarily from the regulatory rules and practices of the Law Society, the Bar Council and King's Inns but also from relevant legislation.

The Competition Authority's report analyses each of these restrictions and examines whether they are necessary, consistent and proportionate with the public interest objectives claimed. The transparency and accountability of the regulatory system that applies to the legal profession was also examined.

The Competition Authority has proposed the creation of an independent, transparent and accountable Legal Services Commission to remedy the conflict of interest faced by the representative bodies of the legal profession. The Law Society and the Bar Council represent their members, while at the same time they are responsible for the rules and practices which are expected to protect the public interest.

The Competition Authority also made over 40 proposals to remove or amend unjustified anti-competitive restrictions in the legal profession. The most significant of these proposals include:

- Abolition of the educational monopolies enjoyed by Kings Inns and the Law Society in respect of professional legal education;
- Removal or amendment of the rule requiring barristers to be sole traders;
- Either the broadening of the Bar Council's Direct Professional Access Scheme, or the abolition of the prohibition on direct access by the public to barristers' services;
- Amendment of the restriction on the provision of conveyancing services by persons other than solicitors firms and practicing solicitors;
- Removal of the restriction on partnerships between barristers and solicitors;
- Removal of the restriction on lawyers holding the titles of barrister and solicitor simultaneously;
- Abolition of the rule which prevents barristers engaging in occupations inconsistent with full-time practice at the Bar;
- Abolition of the rule which confines membership of the Law Library to full-time practicing barristers;
- Removal of all restrictions on barrister and solicitor advertising, or of all except specified minimum restrictions;
- New criteria for allowing entry of lawyers qualified outside the EU;
- The establishment of a transparent scheme for the awarding of the title of Senior Counsel, together with the opening up of the title to solicitors; and,
- The provision by barristers of fee information to clients in advance.

### THE DENTAL PROFESSION: PRELIMINARY REPORT

The Competition Authority published its preliminary report on competition issues associated with the dental profession on 15th December 2005. The Report makes 13 recommendations designed to remedy problems identified in the dental profession by the Competition Authority.

The Competition Authority's report was critical of the layers of unnecessary laws and regulations under which the dental profession must operate in Ireland. The Competition Authority's report goes on to highlight that:

*Competition is not working well for consumers of dental services, i.e. individual patients and the State. The prices of dental services in Ireland have been consistently rising beyond the general rate of health inflation. Some consumers have even opted to travel to other countries for certain dental services. This is not surprising when competition is actively discouraged. For example, the Dental Council bans dentists from offering discounts to consumers and it is illegal for suitably qualified professionals to offer basic dental services directly to consumers.*

#### Issues in the Dental Profession

The Competition Authority believes that the rules governing the dental profession in Ireland urgently need to be modernised. The report highlights that competition in dental services has been seriously restricted by unnecessary laws and regulations that do not apply to dentists in most other countries. In particular, the Dentists Act, 1985, and the rules imposed by the Dental Council, prevent consumers from benefiting from active competition in the following ways:

- Healthcare professionals, such as dental hygienists and clinical dental technicians, are prevented from offering basic dental services directly to consumers;
- Dentists are discouraged from attracting customers through normal methods of competition including price discounting and advertising;
- Restrictions on informative advertising prevent consumers from getting access to basic information which would help them to make more informed decisions about their health;
- Consumers are unnecessarily limited in their choice of provider of dental services; and,
- There are unnecessary obstacles put in the way of dentists trying to offer new services to consumers, or to deliver their services in new ways.

The preliminary report on the dental profession is available from the Competition Authority's website [www.tca.ie](http://www.tca.ie)

### THE OPTOMETRY PROFESSION: PRELIMINARY REPORT

The Competition Authority published its preliminary report on competition issues associated with the optometry profession (commonly known as opticians) on 15th December 2005.

In contrast to its report on the dental profession the Competition Authority finds that the optometry profession is one where competition appears to be working well. The Report makes five recommendations designed to remedy problems identified in the optometry profession by the

Competition Authority. The Competition Authority's report goes on to say that:

*Many of the unnecessary restrictions the Competition Authority has found in other professions are not present in the optometry profession. Irish consumers benefit from having a choice in how to avail of quality optometry services. Consumers also benefit from freely available information about the range, location and price of those services. The Competition Authority has found no evidence that restrictions on competition have contributed to increasing prices for optical examinations, spectacles and contact lenses.*

#### **Issues in the Optometry Profession**

The Competition Authority has a number of minor concerns relating to rules and practices in the optometry profession which may inhibit competition. Accordingly, the Competition Authority's preliminary report makes 5 recommendations designed to enhance and protect competition in optometry services. Implementation of these recommendations will:

- Reduce waiting lists for school children who require eye tests;
- Make it easier for consumers to compare the price and range of optometry services on offer;
- Bring the composition of the Opticians Board into line with other regulators of health professions and the principles of better regulation; and,
- Ensure a sufficient supply of optometrists to meet long-term demand for optometry services.

The preliminary report on the optometry profession is available from the Competition Authority's website [www.tca.ie](http://www.tca.ie)

#### **3.4 Raising awareness of competition**

The Competition Authority continues to raise awareness of the positive role of competition. Through a wide range of methods, Members and staff of the Competition Authority promote awareness of the role of competition in Ireland's economy and continue to draw attention to identified specific problems. Channels used to raise awareness include public speaking opportunities, hosting seminars, giving presentations at conferences and through the media.

On almost 50 occasions in 2005, Members and staff of the Competition Authority gave speeches or presentations to a wide range of audiences. The competition issues discussed were as diverse as waste management, professional services and agricultural markets. **Appendix E** contains the full list of speeches and presentations made by Members and staff of the Competition Authority.

The Competition Authority's Seminar Series was launched in 2005 to promote a better understanding of current issues in competition law and economics. These are public seminars hosted by the Competition Authority with a distinguished list of Irish and international guest speakers.

#### **3.5 Appearance before Oireachtas Committees**

The Chairperson of the Competition Authority appeared before the Joint Oireachtas Committee on Enterprise & Small Business in September 2005. The Oireachtas Committee invited the Chairperson of the Competition Authority to discuss the retail groceries sector in Ireland and the Authority's submission on reforming the Groceries Order.

Table 3.2: The Competition Authority Seminar Series 2005

Date	Speaker	Title
6th May, 2005	Don Baker, Baker and Miller (Washington)	Private Antitrust litigation in the US and EU
25th May, 2005	Ilene Gotts, Wachtell Lipton Rosen and Katz (Washington)	Recent Developments in US Merger Control
17th June, 2005	Joseph McLaughlin, Heller Ehrman LLP (New York)	Civil Antitrust Litigation in the United States: Implications for Ireland and the European Community
22nd June, 2005	Damian Collins, McCann FitzGerald (Brussels & Dublin)	Identifying the Implications of the Commission's State Aid Reform for Ireland's Enterprise Policy
9th November, 2005	Dermot Cahill, Solicitor, Senior Lecturer - UCD School of Law (Dublin)	Public Sector Competition
23rd November, 2005	Shaun Hargreaves Heap, University of East Anglia (Norwich)	Media mergers and the problem of diversity

### The role of the Advocacy Division in the Competition Authority

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

Public restrictions on competition may arise from laws, regulations or administrative practice. The Competition Authority seeks reform where the restriction is not justified by another policy aim which benefits consumers, such as environmental concerns, or it restricts competition far in excess of the level necessary to achieve the pro-consumer aim. The Advocacy Division regularly advises Government Departments and public agencies on the effects on competition of legislation being proposed or under review (see Appendix D), and makes recommendations to Government, its Departments and agencies, on anti-competitive restrictions identified in the course of a Study or a complaint received by the Competition Authority.

The Competition Authority also promotes the case for competition generally, through speeches, presentations and representation (see Appendix E).

# Pharmacy sector reforms should be investigated now

## Pharmacy sector reforms should be instigated now

*The Tánaiste has a lot of unfinished business in liberalising the pharmacy market, and some key moves could be made immediately, writes Declan Purcell*

The Minister for Health & Children, Mary Harney T.D., has announced details of a number of welcome reforms in the Irish pharmacy market. Predictably, the main pharmacy lobby group - the Irish Pharmaceutical Union - has reacted negatively.

It should come as no surprise that the Government should want to substantially reform this sector of the economy. Consumers in Ireland with no medical card pay a huge mark-up on prescription drugs (50 per cent); Irish pharmacists enjoy the highest margins in the EU (33 per cent); wholesale drug prices are pegged to expensive northern European countries; and Irish students who train abroad as pharmacists cannot open a new chemist shop in Ireland (the notorious regulation known as the "three-year rule").

Under the announced proposals the "three-year rule" is to be scrapped, and rightly so. But this won't happen for at least a year, until a bill that hasn't been drafted yet is enacted, and changes to regulations will only come after that.

The "three-year rule" has been law since 1987, and applies in the same way to Irish students who get their pharmacy degrees abroad. So if you are an Irish person who gets a pharmacy degree in another EU country, you cannot come back to Ireland and set up your own chemist shop. Simple as that.

Not just for some short period, mind - you may never open your own pharmacy business. You may work in a new shop as a pharmacist - you just can't manage it or own it.

How many Irish students have found themselves in this unfair predicament? Probably upwards of 2,000, given the numbers who have gone mainly to the UK for their pharmacy degree over the years because they couldn't qualify in Ireland. How many of these would actually want to open their own shop is irrelevant. Many of them will, however, feel aggrieved at having to wait a lot longer to achieve the same economic freedom as their luckier Irish educated counterparts.

This is one of the most blatantly discriminatory and protectionist laws on our statute book, and independent observers have argued for many years that it should be done away with.

It could - and should - be scrapped overnight, rather than waiting for perhaps another year.

Pharmacy lobbyists argue that Ireland shouldn't act alone, and that the rule shouldn't be abolished until the other EU countries that have a similar rule abolish theirs.

The fear, apparently, is of a one-way flood of pharmacists from Newry, Naples or Norfolk. In the unlikely event of that happening, it's hard to see how it would harm consumers, since it would mean more pharmacies in Ireland.

The Tánaiste's second area of reform is to introduce "fitness to practice" rules for pharmacists, which is very sensible and way overdue.

She also proposes, in the short term, to reform the statutory overview body in this area - the Pharmaceutical Society of Ireland - by, among other things, requiring a number of non-pharmacists to sit on its governing council. Again, very sensible. It is simply bizarre that a statutory regulatory body in this day and age should be governed exclusively by representatives of the profession it is supposed to be regulating.

Perhaps most welcome of all is the Government's rejection of a proposal to limit the number of chemist shops that can be owned by one entity. In doing this, the Government has rightly rejected the notion that new anti-consumer restrictions should be brought in simply to protect existing pharmacies from competition.

So is that it, then? Is there no more to be done to bring this market up to date, and on the same footing as other retail businesses?

Not by a long way. There's a lot of other unfinished pharmacy business which the Tánaiste must also grapple with sooner or later, and it is a pity the opportunity wasn't taken in the recent Government decision. These include:

- Abolishing the automatic and unique 50 per cent mark-up on the cost of (non-medical card) prescription medicines which pharmacists enjoy and the State endorses;
- Renegotiating the agreement between the Government and the pharmaceutical industry on the wholesale price of medicines, so that both consumers and the taxpayer get a better deal; and,
- Making sure that consumers can become more price-aware at the point of sale when they are buying medicines.

But for now, half a loaf is better than no bread.

*Declan Purcell is a member of the Competition Authority and is its Director of Advocacy.*

*This article first appeared in the Irish Times on 1st August, 2005.*





## Section 4: Policy & Corporate Services

## 4. Policy & Corporate Services

In order to maximise the impact of the Competition Authority's work it is important that the organisation as a whole operates smoothly and efficiently. What are sometimes considered invisible support services are in fact vital to the enforcement, mergers and advocacy work of the Competition Authority.

These support services are focussed on facilitating the core functions of the Competition Authority as well as assisting the Authority's direct customers including complainants, firms and individuals under investigation, parties involved in mergers, elected representatives, lawyers, civil servants and journalists.

### 4.1 Finance

The Competition Authority is funded by way of annual grant from the Department of Enterprise, Trade and Employment. In 2005 the Competition Authority's grant was €5.07m. The Competition Authority's accounts are subject to audit by the Comptroller & Auditor General and the audit of the 2005 accounts is unlikely to be completed until the second quarter of 2006. However, at the time of writing, the provisional unaudited expenditure for 2005 was €4.621m. A summary sheet of the Competition Authority's audited accounts for 2004 are published at **Appendix A** of this report.

In 2005 the Competition Authority received €672,000 in respect of merger notification fees. However this is not income to the Competition Authority as it is regarded by the Department of Enterprise, Trade and Employment as Appropriations in Aid and is passed by the Competition Authority to the Department.

### 4.2 Freedom of Information

The Competition Authority received three requests under the Freedom of Information Acts in 2005, one less than the total number of requests in 2004. All three requests were of a non-personal nature. Two of those requests were granted in full and one was refused.

### 4.3 Recruitment

The Competition Authority carries out direct recruitment for its own staff. During 2005 the Competition Authority conducted three public recruitment campaigns from which it made nine appointments. Some of these appointments arose from the Government's decision in December 2004 to increase the resources of the Competition Authority with six new posts. The other appointments resulted from vacancies that arose during the year.

During 2005 three Members of the Competition Authority resigned. The recruitment to fill the posts vacated by Mr. Terry Calvani in June 2005, Dr. John Fingleton in October 2005 and Mr. Edward Henneberry in January 2006, is a matter for the Civil Service Commissioners pursuant to Section 35(3) of the Competition Act, 2002. Appointments by the Minister for Enterprise, Trade and Employment in respect of at least two of those posts will be taken up within the first quarter of 2006.

### 4.4 New Policy Division established

The Competition Authority established a new Policy Division during 2005. The principal purpose of the division is to provide assistance to the Mergers

Division at times of peak activity. Due to the unpredictable nature of merger notifications the Mergers Division has in the past had to draw on the resources of the other divisions of the Competition Authority, thereby drawing resources away from important enforcement and advocacy work.

The four core functions of the Policy Divisions are:

- Analytical Support;
- International Activities;
- Information and Training; and,
- Policy & Strategy.

#### **4.5 Information Technology**

During 2005 the Competition Authority was in a position to provide its own stand-alone Information Technology (IT) service for the first time. This was possible following the establishment of an IT unit within the Competition Authority.

Prior to the enactment of the Competition Act, 2002, IT services were provided by the Department of Enterprise, Trade and Employment to the Competition Authority as an office of that Department. With the establishment of the Competition Authority as an independent statutory agency in the Competition Act, the onus on the Department to provide those services was removed. However, the Department continued to provide IT services until such time as the Competition Authority was in a position to take on this responsibility.

The Competition Authority's IT Unit also provides support to the Enforcement Divisions in terms of document & computer forensics.

#### **4.6 External Communications**

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

The media plays a vital role in communicating the activities of the Competition Authority to the general public. In 2005 the Competition Authority issued 27 news releases and held two formal media briefings. In addition Members and staff of the Competition Authority contributed to numerous debates in the print and broadcast media on a variety of competition-related issues.

#### **4.7 Strategy Statement**

On 22nd December 2005 the Competition Authority submitted a new Strategy Statement to the Minister for Enterprise, Trade & Employment. This Strategy Statement covers the period 1st January 2006 to 31st December 2008.

The production of this Strategy Statement is a requirement under Section 33 of the Competition Act, 2002. The new Strategy Statement replaces the Competition Authority's Strategy Statement 2003 – 2005 published in February 2003. The Competition Authority's Mission Statement and High Level Goals are substantively unchanged since the last Strategy Statement. The new Strategy Statement also outlines specific strategies and performance indicators for the Competition Authority.

An explanatory note on the Competition Authority's Strategy Statement 2006-2008 is outlined in this Report (page 56). A full copy of the Strategy Statement is available from the Competition Authority's website [www.tca.ie](http://www.tca.ie)

#### **4.8 Code of Practice for the Governance of State Bodies**

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

To assist in its compliance with the Code the Competition Authority during 2005 adopted a "*Code of Practice for the Governance of the Competition Authority*". This code sets out in written form the

agreed standards of principle and practice which inform the conduct and governance of the Competition Authority. The Code was drafted to conform to the principles of good corporate governance, comply with relevant enactments of the Oireachtas and meet the statutory functions conferred upon the Competition Authority in its enabling legislation – the Competition Act, 2002. The Code of Governance is published on the Competition Authority's website [www.tca.ie](http://www.tca.ie).

Also during 2005 the Competition Authority adopted a "*Customer Charter*" as an expression of its commitment to ensuring that its customers, continue to receive the highest level of service possible. The Customer Charter sets out the standards any member of the public should expect from the Competition Authority, explains how information can be obtained from the Authority and outlines procedures for expressing any concerns. The Competition Authority's Customer Charter is published on its website [www.tca.ie](http://www.tca.ie).

### **The role of the Corporate Services Division in the Competition Authority**

The Corporate Services Division provides internal support for the enforcement, mergers, advocacy and policy work of the Competition Authority as a whole. This support includes legal services, administration & Information Technology services, finance, human resources, and general resource management. In addition, the Corporate Services Division manages the internal and external communications of the Competition Authority.

### **The role of the Policy Division in the Competition Authority**

The Policy Division of the Competition Authority was set up during the summer of 2005. The principal purpose of the Policy Division is to provide assistance to the Mergers Division at times of peak activity. The Policy Division also provides analytical support to the other divisions of the Competition Authority as required.

The Policy Division also coordinates the Competition Authority's International Activities and acts as the first point of contact for all international affairs. The Policy Division organises the Competition Authority Public Seminar Series as well as internal seminars for staff development and training purposes.

The Policy Division is responsible for the development of Competition Authority Policy and Strategy. The principal activities under this role are providing support to the Chairperson, developing appropriate guidance for business and consumers, drafting the Competition Authority's Strategy Statements and ensuring that the Competition Authority's Business Plan is consistent with overall strategy.

The Policy Division has the Chairperson as its Director. It also has a Divisional Manager and four case officers.

# competition

consumers and value for all consumers in the economy

innovation  
 productivity  
 competition  
 in the economy

competition

productivity

## 4.9 Membership of the Competition Authority

The Members of the Competition Authority in 2005 were:

John Fingleton	Chairperson
Declan Purcell	Director of Advocacy Division
Paul Gorecki	Director of Monopolies Division
Terry Calvani	Director of Cartels Division
Edward Henneberry	Director of Mergers Division
Noreen Mackey	Part-time Member

**John Fingleton** was appointed Chairperson of the Competition Authority in May 2000. John also held positions as a member of the National Competitiveness Council, the National Consumer Agency and Chair of the International Association of Competition Economists. He previously taught at Trinity College Dublin from 1991 until April 2000.

John Fingleton's resignation as Chairperson of the Competition Authority took effect on 5th October 2005. John announced his intention to resign in July 2005 to take up a new role as Chief Executive of the UK Office of Fair Trading (OFT). His replacement as Chairperson of the Competition Authority is William Prasifka who takes up his duties in March 2006.

**Declan Purcell** was first appointed to the Competition Authority in April 1998 and was reappointed for a further five year term in 2001. Declan previously worked in the Department of Enterprise, Trade and Employment and in its predecessor, the Department of Industry and Commerce, for over twenty years.

**Paul Gorecki** took up his appointment as a Member of the Competition Authority in June 2000. He worked for the Canadian competition authorities for several years before joining the Economic Council of Canada in 1978. In 1992 he moved to Northern Ireland as Director of the Northern Ireland Economic Council.

**Terry Calvani** became a Member of the Competition Authority in May 2002. Previously he was a partner in the antitrust practice group of Pillsbury Winthrop LLP, resident in both its San Francisco and Washington, D.C. offices. Terry was Commissioner of

the US Federal Trade Commission (1983-1990) and was acting Chairman of the Commission during 1985 and 1986.

Terry Calvani's resignation as a member of the Competition Authority took effect on 31st May 2005. His replacement as a Member of the Competition Authority is Dr Stanley Wong who took up his duties in February 2006.

**Edward Henneberry** took up his appointment as a Member of the Competition Authority in September 2003 and became Director of the Authority's Mergers Division. Prior to his appointment to the Authority he was a partner in Howrey Simon Arnold & White's Antitrust Practice Group in Washington, DC. Edward previously worked for five years as a trial attorney with the Antitrust Division of the US Department of Justice.

Edward Henneberry's resignation as a Member of the Competition Authority took effect on 31st January 2006. His replacement as a Member of the Competition Authority is yet to be announced.

**Noreen Mackey** was appointed a part-time Member of the Competition Authority in October 2005 in accordance with Section 35(1)(c) of the Competition Act, 2002. The part-time appointment was made on the condition she acts as a Member only when required and where the Competition Authority would otherwise be inquorate. The appointment will terminate on the date Dr Stanley Wong takes up office in February 2006.



#### 4.10 Organisational Structure of the Competition Authority (reflects staff positions on 31st December, 2005)

Division	Advocacy	Mergers	Corporate Services	Cartels	Monopolies	Policy
<b>Members</b>	Declan Purcell	Edward Henneberry <sup>1</sup>	John Fingleton <sup>2</sup> Chairperson	Terry Calvani <sup>3</sup>	Paul Gorecki	John Fingleton, Chairperson
<b>Functions</b>	Study, analysis and advocacy of competition in markets where the State restricts competition and liberalising markets	Merger notifications and enforcement	Coordination, administrative services, public relations and external/international representation	Investigation and prosecution of and enforcement against hard-core cartels under Section 4	Investigations and enforcement in abuse of dominance cases and for non-cartel (horizontal and vertical) agreements under Sections 4 and 5	Analytical support for other divisions, principally for the Mergers Division. management and coordination of international work. Development of information and training structures. Development and implementation of policies and strategy.
<b>Divisional Managers</b>	Carol Boate	Cormac Keating <sup>4</sup> Dermot Nolan <sup>5</sup>	Ciarán Quigley	Ray Leonard	Vivienne Ryan	John Evans
<b>Legal Advisors</b>			Noreen Mackey David McFadden			
<b>Communications Manager</b>			Mark Garrett			
<b>Case Officers</b>	Brian Devine Jacinta McDonnell Dave O'Connell Maureen O'Sullivan <sup>6</sup> Andrew Rae Anne Ribault O'Reilly	Ibrahim Bah Linda Ni Chualladh Rosemary O'Loughlin		Derek Charles <sup>7</sup> Patrick D'Arcy Michael Downey Colette Hegarty <sup>8</sup> Catherine Kilcullen Eksteen Maritz Tony Mulligan <sup>9</sup> Patrick Neill Michael Prendergast <sup>10</sup>	Victoria Balaguer Vanessa Fenton Reuben Irvine <sup>11</sup> Paku Khan <sup>12</sup> Han Nie Barry O'Donnell Emily O'Reilly Kate Renda	David Boyle Janet McCoy Brendan O'Connor Michele Pacillo
<b>Higher Executive Officers</b>			Olive O'Malley (Finance Officer) James Plunkett (IT Manager)			
<b>Executive Officers</b>			Sandra Rafferty Stephen Lalor			
<b>Clerical Officers</b>			Elizabeth Heffernan Laraine Cooper	Catherine Cuthbert	Pat Downey	

1. Edward Henneberry's resignation as a Member of the Competition Authority took effect on 31st January, 2006. His replacement as a Member of the Competition Authority is yet to be announced.
2. John Fingleton's resignation as Chairperson of the Competition Authority took effect on 5th October, 2005. His replacement as Chairperson of the Competition Authority is William Prasifka who takes up his duties in March, 2006.
3. Terry Calvani's resignation as a Member of the Competition Authority took effect on 31st May, 2005. His replacement as a Member of the Competition Authority is Stanley Wong who takes up his duties in February, 2006.
4. Cormac Keating joined the Competition Authority as Manager of the Mergers Division in August, 2005
5. Dermot Nolan's resignation from the Competition Authority took effect in July, 2005.
6. Maureen O'Sullivan is on secondment to the Competition Authority from the Department of Enterprise, Trade and Employment.
7. Patrick D'Arcy's resignation from the Competition Authority took effect in March, 2005.
8. Colette Hegarty is currently on a career break.
9. Detective Sergeant Tony Mulligan is on secondment to the Competition Authority from the Garda Bureau of Fraud Investigation.
10. Detective Sergeant Michael Prendergast is on secondment to the Competition Authority from the Garda Bureau of Fraud Investigation.
11. Reuben Irvine is currently on a career break.
12. Arshad (Paku) Khan's resignation from the Competition Authority took effect in September, 2005.





## Appendices

## Appendix A: Income and Expenditure Account (2004)

for the Period 1 January to 31 December 2004

	Year ended 31.12.04	Year ended 31.12.03
	€ (000)'s	€ (000)'s
<b>Income</b>		
Grant	4,112	3,282
Transfer (to)/from Capital account	21	-9
	4,091	3,291
<b>Expenditure</b>		
Staff Costs	2,783	2,385
Consultancy	228	257
Enforcement	717	180
Administration	466	404
Depreciation	75	65
	4,269	3,291
Surplus\ (Deficit) of Income over Expenditure	-178	0
Accumulated Surplus at 31 December 2004	-178	0

## Appendix B: Statistics on Mergers Evaluated 2003-2005

	2005	2004	2003
<b>NOTIFIED MERGERS</b>	<b>84</b>	<b>81</b>	<b>47</b>
required notifications (Section 18(1))	84	81	46
voluntary notifications (Section 18(3))	0	0	1
<b>CARRIED FROM PREVIOUS YEAR</b>	<b>11</b>	<b>13</b>	<b>0</b>
carried as Phase 1	10	11	0
carried as Phase 2	1	2	0
<b>REFERRED FROM THE EU COMMISSION (ECMR Art 9)</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>TOTAL CASES</b>	<b>95</b>	<b>94</b>	<b>47</b>
of which media mergers	23	14	11
of which entered Phase 2 in year of notification	1	3	3
of which entered Phase 2 in year previous to notification	1	2	0
<b>CASES WITHDRAWN</b>	<b>1</b>	<b>1</b>	<b>0</b>
withdrawn at phase 1	1	0	0
withdrawn at phase 2	0	1	0
<b>DETERMINATIONS DELIVERED</b>	<b>87</b>	<b>82</b>	<b>33</b>
phase 1 determination without proposals	80	78	32
phase 1 determination with proposals	5	1	0
phase 2 determination without conditions	0	1	1
phase 2 determination with conditions	2	1	0
phase 2 prohibition	0	1	0
<b>REFERRAL TO EU COMMISSION (ECMR Art 22)</b>	<b>0</b>	<b>0</b>	<b>1</b>
<b>CARRIED TO NEXT YEAR</b>	<b>7</b>	<b>11</b>	<b>13</b>
carried as Phase 1	7	10	11
carried as Phase 2	0	1	2

Note: Some of the figures from 2003 & 2004 have been adjusted to account for the removal of non-notified mergers from this table.

## Appendix C: Mergers Notified to the Competition Authority in 2005

Notification	Industry	Date Notified	Status
M/05/001 - Select Retail Holdings / Tokad Company	Retail	21/01/2005	Cleared 9th February, 2005
M/05/002 - Aramark Ireland Holdings Limited / Campbell Catering Services	Catering	03/02/2005	Cleared 17th February, 2005
M/05/003 - JPMorgan Chase Bank / Vastera Inc.	Software / logistics	04/02/2005	Cleared 18th February, 2005
M/05/004 - IBM / Equitant	Order to cash outsourcing	04/02/2005	Cleared 28th February, 2005
M/05/005 - Radio Two Thousand / Maypril	Radio Broadcasting	09/02/2005	Cleared 9th March, 2005
M/05/006 - Glanbia / CMP	Food	09/02/2005	Cleared 9th March, 2005
M/05/007 - Wavin / Hepworth	Pipe systems	22/02/2005	Cleared 22nd March, 2005
M/05/008 - Microsoft / Sybari	IT software	25/02/2005	Cleared 24th March, 2005
M/05/009 - Kingspan / Century Homes	Construction	14/03/2005	Cleared 13th April, 2005
M/05/010 - Alphyra Holdings / Post TS UK / Post TS Spain	Electronic transaction services	16/03/2005	Cleared 6th April, 2005
M/05/011 - IBM / Ascential	Data Integration software	24/03/2005	Cleared 20th April, 2005
M/05/012 - Bridgepoint Capital Group / Tilney Holdings	Financial Services	29/03/2005	Cleared 25th April, 2005
M/05/013 - Aviva / Gresham Insurance / Barclays	Insurance	04/04/2005	Cleared 3rd May, 2005
M/05/014 - Apax / HIT Entertainment	Entertainment	05/04/2005	Cleared 25th April, 2005
M/05/015 - Tysan Investments / Balcuik	Commercial Property	08/04/2005	Withdrawn
M/05/016 - ABN AMRO / FlexLink	Industrial automation equipment	29/04/2005	Cleared 26th May, 2005
M/05/017 - Honeywell / Zellweger	Gas	03/05/2005	Cleared 26th May, 2005
M/05/018 - Tysan / Balcuik	Property	05/05/2005	Cleared 19th May, 2005
M/05/019 - Warburg Pincus / Caradon	Manufacture of commercial and domestic boilers	12/05/2005	Cleared 10th June, 2005
M/05/020 - UTV / Wireless	Radio Broadcasting	13/05/2005	Cleared 1st June, 2005
M/05/021 - William Hill / Stanley Racing	Gambling and betting activities	16/05/2005	Cleared 2nd June, 2005
M/05/022 - Alpha Publications / Midmedia	Publishing	17/05/2005	Cleared 30th May, 2005
M/05/023 - Madison Dearborn Partners / Sirona	Dental products	23/05/2005	Cleared 10th June, 2005
M/05/024 - UGC(Chorus) / NTL	Electronic communications and broadcasting	24/05/2005	Cleared with Conditions: 4th November, 2005
M/05/025 - SRH / Highland Radio	Radio Broadcasting	01/06/2005	Cleared 25th August, 2005
M/05/026 - Radio Kerry / Midland Radio	Radio Broadcasting	02/06/2005	Cleared 1st July, 2005
M/05/027 - M&J Gleeson / United Beverages	Alcoholic and non-alcoholic beverages	02/06/2005	Cleared 23rd August, 2005
M/05/028 - Alphyra / Eason Electronic	Electronic transaction services	03/06/2005	Cleared 14th July, 2005
M/05/029 - Setanta / NASN	Media	09/06/2005	Cleared 8th July, 2005
M/05/030 - Benchmark Europe / Setanta	Media	09/06/2005	Cleared 8th July, 2005
M/05/031 - Warburg Pincus (through WP Roaming) / Advent Midas	Telecommunications / IT solutions and services	20/06/2005	Cleared 8th July, 2005
M/05/032 - DCC plc / Pilton Company Ltd	Wholesale distribution of tapes, DVDs, computer games software	21/06/2005	Cleared 13th July, 2005
M/05/033 - H.J. Heinz Company / HP Foods Limited	Food	22/06/2005	Cleared 11th August, 2005
M/05/034 - Bridgepoint / Tunstall	Social alarms and communications/telecare	24/06/2005	Cleared 21st July, 2005
M/05/035 - PPM Capital / Jost-World	Commercial Vehicle Equipment	28/06/2005	Cleared 26th July, 2005
M/05/036 - Emap / SRH	Media	28/06/2005	Cleared 28th July, 2005
M/05/037 - Johnston Press / Score Press	Media	29/06/2005	Cleared 28th July, 2005
M/05/038 - Leinster Leader / Tallaght Publishing	Newspaper	29/06/2005	Cleared 22nd July, 2005
M/05/039 - Diageo plc / The "Old Bushmills" Distillery Company Limited	Alcoholic beverages	06/07/2005	Cleared 4th August, 2005
M/05/040 - Mountaintop / Loparex	Siliconised release liners	07/07/2005	Cleared 2nd August, 2005
M/05/041 - BASF / Orgamol	Pharmaceutical fine chemicals	08/07/2005	Cleared 5th August, 2005
M/05/042 - ABF Holdings / St. James's Street Properties / Littlewoods Stores	Retail	14/07/2005	Cleared 25th July, 2005
M/05/043 - General Electric/Everest VIT	Manufacture of visual inspection products for industrial equipment	15/07/2005	Cleared 12th August, 2005
M/05/044 - Bridgepoint / Auto-Sleepers	Motorhomes	21/07/2005	Cleared 15th August, 2005
M/05/045 - HTS International / National Linen	Commercial Laundry	22/07/2005	Cleared 11th August, 2005
M/05/046 - BUPA / IHI	International Health Insurance	29/07/2005	Cleared 24th August, 2005
M/05/047 - 3i / Oakhill / TeleCity	Data centre services	03/08/2005	Cleared 2nd September, 2005

Notification	Industry	Date Notified	Status
M/05/048 - Oracle Corporation / i-flex solutions Ltd.	Software / banking	05/08/2005	Cleared 2nd September, 2005
M/05/049 - Citigroup / Legg Mason	Brokerage	11/08/2005	Cleared 21st September, 2005
M/05/050 - eircom / Meteor	Mobile network services	12/08/2005	Cleared 18th November, 2005
M/05/051 - Trinity Mirror / Smart Media	Media	17/08/2005	Cleared 15th September, 2005
M/05/052 - Trinity Mirror / Financial Jobs Online	Media	17/08/2005	Cleared 16th September, 2005
M/05/053 - General Electric (NCB) / Business News (CNBC)	Media / TV	19/08/2005	Cleared 19th September, 2005
M/05/054 - Hewlett Packard / Scitex	Printing	25/08/2005	Cleared 23rd September, 2005
M/05/055 - KKR / GMAC Commercial	Finance-real estate	01/09/2005	Cleared 30th September, 2005
M/05/056 - Bridgepoint / Swiss Caps	Manufacture of pharmaceuticals and health and nutrition supplements	02/09/2005	Cleared 29th September, 2005
M/05/057 - Bank of America / MBNA	Financial services - Bank	09/09/2005	Cleared 7th October, 2005
M/05/058 - Trinity Mirror / Hotgroup	Online recruiting	12/09/2005	Cleared 6th October, 2005
M/05/059 - Norfolkline Shipping / Norse Merchant Group Ltd.	Ferries: Passenger and Freight	12/09/2005	Cleared 10th October, 2005
M/05/060 - KKR Group & Silver Lake (Argos) / Agilent Technologies	Semiconductor products	13/09/2005	Cleared 13th October, 2005
M/05/061 - Trader Publishing / Webzone	Publishing	19/09/2005	Cleared 3rd November, 2005
M/05/062 - Johnston Press / Local Press	Newspaper	21/09/2005	Cleared 21st October, 2005
M/05/063 - Rabobank / Achmea	Insurance	22/09/2005	Cleared 26th October, 2005
M/05/064 - Hewlett Packard / Peregrine Systems	Computer / IT Management Services	19/10/2005	Cleared 16th November, 2005
M/05/065 - Johnston Press / The Leinster Leader	Newspaper	30/09/2005	Cleared 2nd December, 2005
M/05/066 - KKR / Accelent	Medical Devices	21/10/2005	Cleared 14th November, 2005
M/05/067 - Swiss Re Ireland/Dortmund Re/ International Reinsurance Company Limited	Reinsurance	24/10/2005	Cleared 18th November, 2005
M/05/068 - United Technologies Corp / Keystone Ranger Holdings Inc	Helicopter Maintenance, Repair and Overhaul Services	28/10/2005	Cleared 24th November, 2005
M/05/069 - Sky Broadband / Easynet	Broadcasting / Broadband	28/10/2005	Cleared 24th November, 2005
M/05/070 - NTL UK / Telewest	Media	02/11/2005	Cleared 2nd December, 2005
M/05/071 - Associated Newspapers & Irish Times & Metro / Fortnuegreen	Newspapers	04/11/2005	Cleared 1st December, 2005
M/05/072 - Benchmark Europe II / Setanta Sport	TV Broadcasting	18/11/2005	Cleared 12th December, 2005
M/05/073 - Associated British Foods / HP Ethnic Foods	Food	21/11/2005	Cleared 21st December, 2005
M/05/074 - Stafford Holdings / Lifestyle Sports	Retail	23/11/2005	Cleared 15th December, 2005
M/05/075 - ORIX USA / HLHZ	Investment Banking	30/11/2005	Cleared 22nd December, 2005
M/05/076 - Sagard / Souriau	Connectors and Interconnect Solutions	30/11/2005	Cleared 22nd December, 2005
M/05/077 - Siemens / Electrium	Electrical Engineering and electronics components	02/12/2005	Cleared 21st December, 2005
M/05/078 - Nokia / Intellisync	Mobile network services	12/12/2005	Cleared 10th January, 2006
M/05/079 - Radio County Sound / Dooley and Feeney	Media	07/12/2005	Active
M/05/080 - East Surrey Holdings / Deutsche Bank	Water and other services	16/12/2005	Cleared 10th January, 2006
M/05/081 - Commerzbank / Eurohypo	Commercial real estate and public sector financing	16/12/2005	Cleared 12th January, 2006
M/05/082 - ABN AMRO / U-POL	Financial Services / Automotive refinish repair materials and related products	21/12/2005	Cleared 11th January, 2006
M/05/083 - Trinity Mirror Digital / Paldonsay	Media - Newspaper Publishing and Electronic and online media	23/12/2005	Cleared 11th January, 2006
M/05/084 - BIIP / Guggenheim Alternative Asset	Banking / Investment Services	23/12/2005	Cleared 23rd January, 2006

## Appendix D: Formal Submissions made by the Competition Authority in 2005

Submission Number:	Submission to:	Topic:	Summary of Recommendations:
S/05/001	National Qualifications Authority of Ireland (NQAI)	Draft Policies and Criteria for the Inclusion of Awards in the National Framework of Qualifications	The Competition Authority welcomes the NQAI's intention to extend the framework for the recognition of qualifications. The Competition Authority suggests identifying phases of implementation according to the sector or field of competence, as an alternative to the "statutory recognition" approach proposed by the NQAI.
S/05/002	Commission for Taxi Regulation	National Review of Taxi, Hackney and Limousine Services and Vehicles Standards	This submission provides general guidance to the Commission for Taxi Regulation on the types of issues it should consider when undertaking the first comprehensive review of taxi, hackney and limousine services in Ireland and regulatory reform of the sector. The importance of accounting for the costs and benefits of different regulatory options, according to the principles of better regulation, is highlighted.
S/05/003	Irish Financial Services Regulatory Authority	Consumer Protection Code	The Competition Authority broadly supports the direction of this code. Financial regulation to protect consumers should be conducted in a light-handed and proportionate manner. The Competition Authority also suggests that means of integrating its own Banking and Insurance studies recommendations into the code be explored.
S/05/004	Department of the Environment, Heritage and Local Government	Draft WEEE and RoHS Regulations	This submission identifies areas where the regulations may negatively impact on competition between providers of waste management services or between producers who have obligations under the Directive. The Competition Authority makes some suggestions to alleviate its concerns.
S/05/005	Department of Justice, Equality and Law Reform	General Scheme of the Intoxicating Liquor Bill, 2005	Unnecessary quantitative and qualitative restrictions on the issuing of liquor licences should be removed. In particular, the requirement that an existing licence must be extinguished before a new one may be issued should be abolished. The legislation should stipulate that any objection to the granting of a new licence be accompanied, where relevant, with a declaration of commercial interest (for example by an actual or potential competitor).
S/05/006	Minister for Enterprise, Trade and	The Groceries Order	The Groceries Order should be abolished. The effect of the Groceries Order is to restrict competition and increase prices. The Groceries Order does not meet, and is unnecessary to achieve, the claimed benefits.

Submission Number:	Employment Submission to:	Topic:	Summary of Recommendations:
S/05/007	Department of Agriculture and Food	Preliminary Draft of the Animal Remedies Regulations, 2005	The animal prescription medicine regime should be as liberal as possible, consistent with the need to ensure both public and animal health. Prescribing rights for certain categories of animal medicines should not be restricted to veterinarians, where other animal health professionals can demonstrate their ability to do so in accordance with health and safety standards.
S/05/008	Commission for Taxi Regulation	National Review and Roadmap	The Competition Authority welcomes many of the proposals contained in the National Review and Roadmap. However, a number of proposals have the potential to negatively impact on competition in the provision of taxi services. The Competition Authority recommends the use of Regulatory Impact Analysis by the Commission for Taxi Regulation when considering regulatory reform in this sector.
S/05/009	Department of Health and Children	Strategic Review of Disability Services	Unbundling the delivery of investment and on-going services as well as introducing competition among service providers should be envisaged as a mechanism to deliver better services, for better value, and promote choice, for the benefit of people with disabilities.
S/05/010	Commission for Taxi Regulation	Taximeter Areas and Taxi Fares	This submission builds on previous submissions to the Commission for Taxi Regulation. Gathering detailed information on local market conditions is necessary to inform decisions about the reform of taxi fare regulation and, ultimately, ensure value for money, encourage taxi use, provide incentives for supply to meet demand and encourage productivity and efficiency among taxi drivers.

## Appendix E: Speeches & Presentations 2005

Title	Forum	Date	Person
Competition Policy and Ireland's Economic Future	Chamber of Commerce, Waterford	13 January	John Fingleton
Criminal Sanctions & Civil Remedies in Antitrust	Kings College, London	21 January	Terry Calvani
Cartel Enforcement	ABA, Miami	24 January	Terry Calvani
The Return of the Celts: Spreading the Competition Message from Island to Island	Federation of Trade, Iceland	4 February	Ted Henneberry
Economics in EU Merger Review	ABA/NYC Bar, New York	10 February	John Fingleton
Recent Abuse of Dominance Cases in EU	NYC Law School, New York	14 February	John Fingleton
Cross-border remedies in merger cases	OECD, Paris	15 February	Ted Henneberry
Competition Penalties & Damages in a Cartel Context	Centre for Law & Economics, Amsterdam	17 February	Terry Calvani
Enforcement of Competition Law in Ireland	UCD, Dublin	25 February	Emily O'Reilly
The Competition Act 2002 and the work of the Cartel Division	Detective Training Course, Dublin	28 February	Derek Charles
Competition & Procurement Policy	Forum on Public Procurement, Dublin	3 March	Anne Ribault-O'Reilly
Legal Profession	UCC Law Society, Cork	3 March	John Fingleton
The Application of Economics in Court	IBA/European Commission Conference, Brussels	11 March	John Fingleton
International Enforcement of Vertical Issues	ALI-ABA, New Orleans	17 March	Terry Calvani
Dominance Under Article 82	Competition & Regulation Economics Group, Dublin	22 March	Emily O'Reilly
International Antitrust Convergence	American Bar Association, Washington	30 March	Terry Calvani
Competition Law in the Waste Sector in Ireland	Waste Sector Discussion Group, Dublin	4 April	Emily O'Reilly
The Political Economy of Competition Policy	UCD, Dublin	12 April	Declan Purcell
Is Dominance an Abuse?	'Competition Press' Conference, Dublin	14 April	Paul Gorecki
Use of Economic Tools in Merger Analysis	'Competition Press' Conference, Dublin	14 April	Ted Henneberry
Quantitative Analysis in Authority Merger Cases	'Competition Press' Conference, Dublin	14 April	Dermot Nolan

<b>Title</b>	<b>Forum</b>	<b>Date</b>	<b>Person</b>
Competition Law and Business Alliances: The Good, the Bad and the Ugly	The Institute of Chartered Accountants of Ireland, Galway	16 April	Ted Hennenberry
International Competition Compliance	Canadian Corp. Counsel Association, Toronto	18 April	Terry Calvani
The Role of Advocacy in the Irish Competition Authority	Institute of Public Administration, Dublin	19 April	Anne Ribault-O'Reilly
Supermarket Buyer Power and Sales Below Cost – the Irish Experience	TAIEX / Central European Competition Authorities Seminar, Budapest	21 April	Carol Boate
Are We Over-regulated?	IMI National Management Conference, Wicklow	21 April	John Fingleton
Competition Law and the Microsoft Case	UCD Smurfit Business School, Dublin	21 April	Paku Khan
Competition and a Competitive Economy	Newry Dundalk Cross Border Business Conference, Carlingford	4 May	John Fingleton
The Role of Economics in Merger Review	Kings College, London	20 May	John Fingleton
Competition and Standard setting in Irish Financial Services	National College of Ireland, Dublin	27 May	John Fingleton
Barriers to Entry	OECD, Paris	June	Ted Hennenberry
Designing Market Structures to Deliver Real Competition.	Energy Ireland Conference. Dublin	14 June	Dave O'Connell
EU Modernisation and Ireland	Presentation to American Bar Association Workshop	23 June	Linda Ni Chualladh
State Aid and Competitiveness – Where Now?	A New Competition Policy Agenda for the Twenty-First Century, London	1 July	John Fingleton
Regulation & Competition	Law Society of Ireland, Dublin	8 July	Noreen Mackey
Towards an Effects-Based Approach to Article 82	Regulatory Policy Institute, Oxford	12 July	John Fingleton
Competition in Retail Financial Services	UK Competition Day, London	15 September	John Fingleton
Competition Issues in the Agri-Food Industry	Agricultural Science Association Annual Congress, Carlow	23 September	Declan Purcell
The Competition Authority's Approach to Abuse of a Dominant Position	Joint Irish Society of European Law & Competition Authority Conference, Dublin	30 September	Paul Gorecki
Transatlantic Convergence: Judicial Treatment of Evidence in Merger Cases	Irish Centre for European Law, Dublin	October	Ted Hennenberry

<b>Title</b>	<b>Forum</b>	<b>Date</b>	<b>Person</b>
2000 – 2005: A Review of the Competition Policy in Ireland	Competition Press Conference, Dublin	4 October	John Fingleton
The Role of Information in Promoting Competitive Retail Banking Markets	Dublin Economic Workshop, Kenmare	16 October	Dave O’Connell
Ireland’s Approach to Dominance: Past, Present & Future.	Irish Centre for European Law Conference, Dublin	20 October	Paul Gorecki
Competition Issues in the Waste Sector	The Waste Summit, Dublin	24 October	Anne Ribault-O’Reilly
The Role of Information in Promoting Competitive Retail Banking Markets	Competition and Regulation Group, Dublin	6 November	Dave O’Connell
Competition Issues in the Agri-Food Industry	ICOS National Co-operative Conference, Dublin	14 November	Declan Purcell
Competition Policy in Ireland	Forfas, Dublin	17 November	Brendan O’Connor
Retail Pharmacy in Ireland	UK Presidency Conference, Brussels	21 November	Declan Purcell
Ireland in the Market Economy	Department of Economics, University of Limerick	29 November	Linda Ni Chualladh
The Political Economy of Competition Policy	UCD, Dublin	29 November	Declan Purcell
Article 82: Collective Dominance in Mobile Telecoms	Association of Competition Economics, 3rd Annual Conference, Copenhagen	1 December	Paul Gorecki

## Appendix F: The Competition Authority v the Vintners Federation of Ireland

### TERMS OF SETTLEMENT (The High Court 1998 No. 6658P)

Between

**The Competition Authority (Plaintiff)**

and

**The Vintners Federation of Ireland, Paul O’Grady, Patrick O’Brien, William Martin, Edward Carroll, James Tully, David Hickey and John Brennan (Defendants)**

The parties agree to settle these proceedings on the following terms:

On the undertakings to the Court referred to below, these proceedings shall be struck out as against the Defendants and each of them with no order as to costs.

The Defendants deny the allegations made in these proceedings. The settlement of these proceedings does not constitute an admission by the Defendants that they and each of them breached Section 4(1) of the Competition Act, 1991 as amended by the Competition (Amendment) Act 1996, in the matter alleged in these proceedings or at all, nor does it constitute an acknowledgement by the Defendants and each of them that the facts alleged in the proceedings are true.

This settlement is in full and final settlement of all claims arising out of the alleged facts and matters pleaded in these proceedings.

The following are the undertakings to be given to the Court:

- (1) The Vintners Federation of Ireland and its officers, servants or agents and each of them undertake to the Court not to recommend to the Federation’s members the prices, margins, increases in prices and increases in margins earned on the sale to the public of alcoholic beverages for consumption on licensed premises owned, managed or controlled by the Federation’s members.
- (2) The Federation and its officers, servants or agents and each of them undertake to the Court that they will not breach the provisions of Section 4 of the Competition Act, 2002 in relation to the sale of and the price at which alcoholic beverages are sold to the public for consumption on licensed premises owned, managed or controlled by the Federation’s members.
- (3) The Federation and its officers, servants or agents and each of them undertake to the Court to inform the Federation’s members of the settlement of these proceedings and the undertakings provided for herein and that the Federation may not recommend to its members the prices, margins, increases in prices and increases in margins earned on the sale to the public of alcoholic beverages for consumption on licensed premises owned, managed or controlled by the said members.

This settlement is to be received and filed in Court.

The parties agree that any public statement to be made by either of them or on their behalf concerning the settlement of these proceedings will be confined to what is specifically stated in these Terms of Settlement and in the Order of the Court reciting and receiving same.

## Appendix G: The Competition Authority v Soft Drinks Beer Bottlers Association

TERMS OF SETTLEMENT (The High Court 1999 No. 12162P)

Between

The Competition Authority (Plaintiff)

And

THE CONNAUGHT MINERAL WATER COMPANY LIMITED, DEASY & COMPANY LIMITED, C&C (WHOLESALE) LIMITED, M&J GLEESON AND COMPANY, NASH BEVERAGES LIMITED AND UNITED BEVERAGES SALES LIMITED (Defendants)

### AGREEMENT AND UNDERTAKING

**THIS AGREEMENT AND UNDERTAKING** is made between the Plaintiff, on the one part, and the First, Second and Sixth Defendants, on the other part.

#### WHEREAS:

- A. The Defendants are wholesalers of packaged beer and soft drinks in Ireland.
- B. During 1998 and 1999, the Plaintiff conducted an investigation into the packaged beer and soft drinks wholesale trade in Ireland.
- C. As a result of this investigation, the Plaintiff alleged that the Defendants had engaged in practices that contravened Section 4(1) of the Competition Act, 1991 (as amended). The Plaintiff's allegations related to agreements or concerted practices regarding the prices at which the Defendants sold packaged beer and soft drinks to licensed premises and off-licences and to the exchange of information regarding the Defendants' pricing and discounting policies.
- D. The First, Second and Sixth Defendants deny the Plaintiff's allegations and the settlement of these proceedings does not constitute an admission by the First, Second or Sixth Defendant that they or any of them breached Section 4(1) of the Competition Act, 1991, as amended by the Competition (Amendment) Act, 1996, in the matter alleged in these proceedings or at all.
- E. In these proceedings, the Plaintiff seeks, inter alia, declarations that the said agreements and/or concerted practices were prohibited and void by virtue of Section 4(1) of the Competition Act, 1991.

#### IT IS HEREBY AGREED AS FOLLOWS:

1. In consideration of the undertakings furnished by the First, Second and Sixth Defendants set out in this Agreement and Undertaking, the Plaintiff agrees that the within proceedings shall be struck out as against the First, Second and Sixth Defendants with no order as to costs.
2. In consideration of the Plaintiff agreeing to strike out these proceedings on the terms and subject to the conditions of this Agreement and Undertaking, each of the First, Second and Sixth Defendants hereby agrees and undertakes that:
  - 2.1. they, their employees, servants or agents will not in future enter into, adhere to, participate in, implement, enforce or otherwise facilitate any agreement or concerted practice:
    - (a) regarding the terms and conditions (including, price, discount and credit terms) on which they sell beer and soft drinks to retail outlets, including licensed premises and off-licences, within the State; or

- (b) for the exchange of information between the Defendants (or any of them) on pricing or discounting policies for the sale of packaged beer and soft drinks to retail outlets, including licensed premises and off-licences, within the State

Provided that neither:

- (i) the receipt by any of the First, Second or Sixth Defendants of wholesale price lists or terms and conditions of sale relating to such products as are supplied in the ordinary course of business to such Defendant by any third party for the wholesale distribution of such products by the such Defendant nor
  - (ii) the despatch by any of the First, Second or Sixth Defendants of wholesale price lists or terms and conditions of sale relating to such products as are supplied by such Defendant in the ordinary course of business to any third party for the wholesale distribution of such products by such third party shall constitute a breach of this Agreement and Undertaking.
- 2.2. they, their employees, servants or agents, shall not otherwise breach the provisions of Section 4 of the Competition Act, 2002 in relation to the sale of packaged beer and soft drinks to retail outlets, including lic ensed premises and off-licences, within the State.
- 2.3. they shall, within a period of 60 days from the date hereof, confirm to the Plaintiff in writing that a copy of this Agreement and Undertaking has been provided to each director and sales manager of the First, Second and Sixth Defendants.
3. Each of the First, Second and Sixth Defendants shall provide such information, from time to time, as may reasonably be required by the Plaintiff regarding compliance with the undertakings herein contained for a period of three years from the date of this agreement and undertaking.
4. This Agreement and Undertaking is in full and final settlement of all claims that the Plaintiff may have against the First, Second and Sixth Defendants (or any of them) arising out of the alleged facts and matters pleaded in these proceedings.
5. This Agreement and Undertaking shall be, and is intended by the parties to be, binding on the First, Second and Sixth Defendants, their successors and assigns and may be enforced by action in any court of competent jurisdiction in the State.
6. This Agreement and Undertaking is strictly without prejudice to the due exercise by the Authority of its functions, powers and duties under law and in particular, under the Competition Act, 2002.
7. This Agreement and Undertaking shall be received and filed in court.

## Appendix H: The Competition Authority v the Irish Dental Association

### TERMS OF SETTLEMENT

Between

The Competition Authority (Plaintiff)

and

The Irish Dental Association (Defendant)

*The Competition Authority has brought proceedings alleging a breach of Section 4(1) of the Act and Article 81(1) of the Treaty and without admission of liability on the part of the Irish Dental Association Limited ("the Irish Dental Association") the parties have agreed to the following:-*

- (i) The Irish Dental Association is happy to acknowledge and agrees to confirm to its members in writing within 28 days that it is for individual dentists to manage their own commercial affairs on an individual basis with regard to dealings with Vhi DeCare or similar dental insurance providers, and that this supersedes any previous communication by the Irish Dental Association on this issue.*
- (ii) The Irish Dental Association agrees that it will not issue any communications to its members which instructs individual dentists to adopt a policy of non-co-operation with Vhi DeCare or other private dental insurance providers in breach of competition law.*
- (iii) This will be made a rule of court with liberty to both parties to re-enter the present proceedings and/or to apply in respect of the aforesaid ruling.*
- (iv) Each party will bear its own costs in relation to these proceedings.*
- (v) For the avoidance of doubt, the term "Irish Dental Association" where used herein includes servants or agents (including sub-committees) of the Irish Dental Association.*

## Appendix I: Undertakings given by the Irish Hospital Consultants Association

### UNDERTAKINGS GIVEN BY THE IRISH HOSPITAL CONSULTANTS ASSOCIATION

"the [Irish Hospital Consultants Association] IHCA, together with its employees and agents (to include all speciality groups formed under the auspices of the IHCA), will immediately cease and desist from and will not in the future engage in any of the following:-

- Entering into, adhering to, participating in, maintaining, organising, implementing, enforcing or otherwise facilitating any agreement or concerted practice between consultants, or issuing any decision/recommendation to consultants, regarding the negotiation or agreement of the fee levels and increases sought from health insurers by particular specialities or consultants in general,
- Entering into, adhering to, participating in, maintaining, organising, implementing, enforcing or otherwise facilitating any agreement or concerted practice between consultants, or issuing any decision/recommendation to consultants, regarding the responses of particular specialities or consultants as a whole to particular proposals on fees from the health insurers,
- Expressing an opinion on contract terms directly or indirectly relating to specific fees offered for a particular procedure or general fee increases by health insurers to the members of the IHCA,
- Suggesting to health insurers that a particular fee increase is required to obtain full participation of its members,
- Directly or indirectly discouraging its members from individually negotiating with health insurers,
- Suggesting to health insurers that its members, or some or all members of a particular speciality, will refuse to supply consultant services to the health insurers if the insurer does not accede to the fee levels and/or increases sought by the IHCA.
- Encouraging, suggesting, advising or otherwise inducing or attempting to induce any third party from engaging in any action that would be prohibited if carried out by the IHCA by the terms of this undertaking.

The IHCA will provide information, from time to time, as may reasonably be required by the Competition Authority regarding compliance with its undertakings herein contained."

## Appendix J: Undertakings given by Galileo Ireland

### UNDERTAKINGS GIVEN BY GALILEO IRELAND

1. Galileo Ireland undertakes that:-
  - a) In the event that Galileo Ireland receives a request by a third-party to allow its application to operate in conjunction with the Galileo CRS, Galileo Ireland will provide on an open, transparent, proportionate and non-discriminatory basis to the third-party all such proprietary technical codes and/or other information as is reasonably necessary to allow for the operation by Galileo Subscribers of the third-party application in conjunction with the Galileo CRS, save where refusal to do so is objectively justified; and
  - b) It will permit Galileo Subscribers to use any combination of software, by whomsoever supplied, to access and make bookings through its CRS, save where refusal to do so is objectively justified.
2. In implementation of the obligations set out at Paragraph 1, but without prejudice to the generality of those obligations, Galileo Ireland undertakes within four months of the date hereof:
  - a) to offer such access to relevant documentation, test systems, identifiers (e.g., PCCs, Global Terminal Identifiers ("GTIDs"), and passwords) and other resources by third-parties as is reasonably necessary to allow third-party applications to operate in conjunction with the Galileo CRS;
  - b) to implement written testing procedures for third-party applications and the timely execution of those testing procedures so as not to unduly delay the development of such third-party applications;
  - c) to develop and implement dispute resolution procedures in the event of a dispute with third-parties; and
  - d) to publish on Galileo Ireland's website details of the procedures associated with the development of third-party applications relating to the Galileo CRS, and any updates thereon.
3. The circumstances in which refusal to comply with the obligations set out at Paragraph 1 is objectively justified are as follows:
  - a) a failure by a third-party to enter into a commercially reasonable confidentiality agreement with Galileo Ireland or a parent company;
  - b) where a third-party does not satisfy Galileo Ireland's reasonable credit or background check enquiries;
  - c) a failure by a third-party to provide Galileo Ireland with reasonably sufficient information, including but not limited to, architecture diagrams (including, where applicable, that relating to the intended recipient of such development work), to allow Galileo Ireland to assess whether its third-party application would adversely affect the use, integrity or operation of the Galileo CRS;
  - d) legal obligations pursuant to applicable law, including but not limited to, Article 9(6) of Council Regulation (EC) No. 2299/89 (as amended);
  - e) when the third-party application in question may adversely affect the use, integrity or operation of the Galileo CRS;
  - f) a failure by a third-party to enter into the applicable commercially reasonable application licence agreement with Galileo Ireland or a parent company;
  - g) a failure by a third-party to discharge the reasonable costs and expenses associated with allowing the third-party application in question to operate in conjunction with the Galileo CRS, including but not limited to, the provision of information and testing; and/or
  - h) such other objectively justified reasons as may be deemed appropriate by the Competition Authority (subject always in case of dispute to a final decision by the courts) in the applicable circumstances.