The Competition Authority
An tÚdarás Iomaíochta

NEWS RELEASE

28 MAY 2014

Competition Authority secures High Court undertakings from the Irish Medical Organisation

The Irish Medical Organisation (IMO) has today provided undertakings to the High Court (i) not to organise or recommend the collective withdrawal of services or boycotts by its members and (ii) to advise its members that they should decide individually and not collectively whether to participate in publicly funded GP health services on such terms as are offered by the Minister. These undertakings resolve concerns held by the Competition Authority since it began High Court proceedings against the IMO in July 2013. They form part of a settlement agreement reached today between the Authority and the IMO. The agreement also contains a number of other provisions which confirm the Authority's position – from the point of view of competition law enforcement - regarding the role of the IMO in any process of engagement with the Minister and/or the HSE, and the limitations to that role.

Isolde Goggin, Chairperson of the Authority, said "*This is a good outcome for both patients and the State. It allows the process of reform of the health sector to move ahead while ensuring costs are not increased through anti-competitive behaviour. We are happy that the settlement terms represent a positive outcome for all those who avail of publicly funded GP health services and those who ultimately pay for those services – taxpayers.*"

The Authority initiated proceedings against the IMO in July 2013 and following the IMO's refusal to rescind a decision of its GP Committee to withdraw certain patient services in protest at proposed Government cuts to fees paid to GPs under the General Medical Services (GMS) contract. Competition law protects consumers by making it illegal for private undertakings to get together to agree the price they charge for their goods or services. Under competition law, self-employed individuals cannot act collectively with the aim of affecting fees paid to them.

The settlement agreement reiterates and clarifies key aspects of the Authority's position regarding the relationship between the IMO and the Department of Health/HSE relating to discussions on publicly funded GP health contracts. The terms of the settlement set out, from a competition law perspective, the nature of the IMO's role in such a process and the safeguards which are necessary to ensure that competition law is not breached and patients and taxpayers are protected. In particular, it emphasises that the Minister/State must make the final decision on contract terms and conditions, including fees.

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NOTES TO EDITOR

On 11 July 2013 the Competition Authority confirmed that it had issued a warning to the IMO. This warning related to a reported decision of the IMO of 10 July 2013 threatening collective action, including the possible withdrawal of certain services by its members. An IMO press release issued on 10 July 2013 stated that at a meeting of its GP committee on 8 July 2013, it passed a motion that unanimously condemned the reduction in GP fees which the Government proposed to introduce under the Financial Emergency Measures in the Public Interest Act 2009. In particular, the GP Committee decided at that meeting to immediately withdraw from:

- Primary Care Teams;
- Community Intervention Teams, and
- Clinical Care Programmes (Chronic Disease).

The Competition Authority wrote to the IMO setting out its objection to this alleged breach of competition law in this instance. The Authority advised that it intended to take all necessary enforcement action if the IMO failed to rescind its decision concerning the withdrawal of services. The Authority requested that the IMO immediately remove the press release and publish on its website an open undertaking to reverse this decision.

On 16 July 2013 the Competition Authority confirmed it had commenced legal proceedings against the IMO following their refusal to rescind the decision of the GP Committee. Those proceedings were brought under section 4 of the Competition Act 2002 and Article 101 of the Treaty on the Functioning of the European Union. The Authority filed papers in the High Court seeking (i) a declaration that the IMO's decision to withdraw the services concerned with a view to preventing the Minister for Health and Children from reducing fees payable under the GMS contract is prohibited under both Irish and EU competition law and is therefore void and (ii) an interlocutory injunction requiring the IMO to retract and rescind its decision of 8 July and not to issue any further decision to the same or similar effect and (iii) to remove from the IMO's website its press release of 10 July relating to this matter and to publish on its website an open undertaking to reverse its decision of 8 July.

On 23 July 2013 in the High Court, the IMO agreed to suspend the decision of its GP Committee to withdraw from certain services to patients, pending the outcome of the proceedings in the Court.

Section 4 of the Competition Act and Article 101 of the Treaty on the Functioning of the European Union prohibit agreements among undertakings that have the object or effect of restricting or distorting competition. The Authority considers that these competition law prohibitions apply to self-employed GPs. The Authority further considers that an agreement to take collective action or any subsequent collective action on foot of such agreement breaches Section 4 and/or Article 101 of the Treaty. This is consistent with the view that the

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Authority has taken in previous cases involving trade associations representing pharmacists, hauliers, travel agents and veterinary surgeons.

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