



February 2012



The Competition Authority
An tÚdarás Iomláochta

Annual Report 2011

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A MESSAGE FROM THE CHAIRPERSON

2011 was yet another challenging year for Ireland. As we endeavour to rebuild our economy, greater attention is being paid to the role that competition, and competition policy, can play in restoring our competitiveness, boosting exports and reviving economic growth. Lack of competition can affect the ability of our businesses to survive and grow, through increased input costs such as telecommunications, waste, energy and professional services. It can also create barriers to entry which prevent businesses from branching out into new areas.

In difficult times such as these, there is a greater need for pro-competitive reforms, and 2011 saw considerable movement in areas such as the legal and medical professions. On the other hand, there can be increased temptation for firms or sectors to seek legislative or regulatory protection against competition. While this may be a natural reaction to financial difficulties, it is likely to raise input costs, decrease productivity, and hamper recovery in the long term.

2011 was also a year of turmoil for the Competition Authority. There was considerable turnover among the Members caused by the expiry of the contracts of three Members (two temporary and one long-term), the retirement of the Chairperson, Declan Purcell, the appointment of Authority staff as temporary Members and the recruitment of new Members and Chairperson through open competition. In this context I would like to thank all the staff, who showed considerable dedication and professionalism in getting on with the job and keeping the organisation functioning throughout this period. I would particularly like to thank Noreen Mackey, David McFadden and Ciaran Quigley, the Authority staff who acted as temporary Members in addition to their day jobs, and provided leadership at a time of great turmoil. In October 2011 I took up the position of Chairperson, and was followed in December by new Members Stephen Calkins and Gerald FitzGerald¹. I have great confidence that we now have, not only the expertise and enthusiasm, but also the stability, in place to allow us to deal with the challenges ahead.

Those challenges will not diminish in 2012. Like all parts of the public service, the Authority has suffered cutbacks in its staff and resources. This means we have to plan the use of our resources more carefully, and prioritise ruthlessly. We are also working hard together with the National Consumer Agency to make sure that our planned amalgamation is a success. We are confident that we can create an agency which is highly effective, authoritative and relevant to the lives of ordinary consumers.



Isolde Goggin

Chairperson, Competition Authority

¹ Patrick Kenny joined the Authority as Member in January 2012.

1. ABOUT THE COMPETITION AUTHORITY

The Competition Authority is responsible for enforcing Irish and European competition law in Ireland and promoting competition in the economy. We have the power to investigate if there is evidence that businesses are involved in anti-competitive practices, such as price-fixing, or that businesses are abusing a dominant position. We can also block mergers between businesses that would substantially reduce competition and harm consumers.

Consumers are at the core of what we do. We are striving to make sure that competition works for the benefit of all consumers who buy products and services in Ireland. This includes businesses, the State and its agents, as well as individuals. Competition is very important to help Ireland's economic recovery.

Competition keeps prices down and improves the choices consumers have and the quality of goods and services they buy. This process makes Irish business more competitive, both at local and international level and supports economic growth, something which has never been more important.

The Authority also has a very broad role to promote competition in the economy. We do this by calling for reform when Irish laws, regulations or actions by State bodies restrict competition. We advise the Government and its agents on how proposed legislation or regulations could affect competition. We also promote competition by telling public authorities and the public about what we do and how competition can benefit all citizens.

Our investigations have resulted in businesses and individuals being successfully prosecuted for running illegal cartels. Other enforcement activities have helped change the behaviour of individual firms and put a stop to potentially harmful conduct. We have also studied various areas of the economy and make recommendations to improve competition.

Benefits of Competition

Healthy competition between businesses has many benefits.

- It gives the consumer more choice.
- It makes sure consumers get value for money.
- It encourages businesses to create new and better products and services.
- It supports economic growth.

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

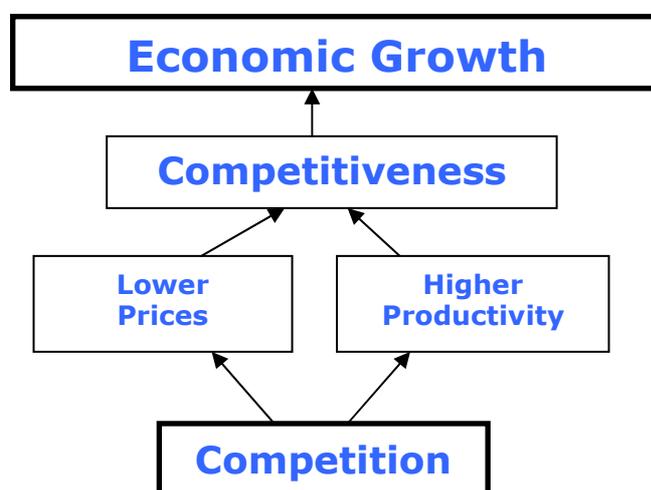
When there is a lack of competition, for example when there is a cartel, businesses do not compete for customers. In these cases, the consumer generally suffers because there are higher prices, less choice or lower quality.

Ireland has seen the benefits competition can bring. We know from experience that consumers got more choice, better prices, improved service and more new goods and services when the airline industry, intercity buses, telecommunications sector and the energy sector were opened up to competition.

Competition Supports Economic Growth

In a small open economy like Ireland, the key driver of economic growth is international competitiveness: this is the ability of Irish-based companies to export. By exporting goods and services, businesses in Ireland create wealth and employment, and help – by paying taxes – to fund public services such as health and social welfare.

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



Competition also drives productivity growth as firms strive to improve processes, reduce costs and produce products better suited to changing consumer needs. Productivity is a measure of the level of value a business gets from its inputs. To increase productivity, that is, to get more output from a given level of inputs, a business must become more efficient. It must also innovate and develop new and highly sought after products that consumers want.

Where competition is strong, productivity is strong. If companies operating in competitive markets do not improve their productivity performance they will lose customers. Indeed, Ireland's most productive sectors are those that trade internationally in competitive markets. For example, productivity levels in the innovative chemical, pharmaceutical and electronics sectors are high and above average compared to sheltered, domestically trading sectors such as legal services, retail and distribution where competition is usually weaker.

Productivity will increasingly determine Ireland's competitiveness and, with it, our long term economic growth. Even in a high cost economy like Ireland, companies with high levels of productivity can continue to cut costs and/or innovate to produce cheaper, better products that are easier to sell abroad. Productivity is therefore an essential factor in maintaining and building

employment and will be a key determinant of Ireland's future economic performance and living standards.

Our Functions

Preventing Anti-competitive Behaviour

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

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

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

Anti-competitive behaviour can take different forms.

Cartels

A cartel is an illegal agreement between two or more competitors not to compete with each other. It is a type of anti-competitive behaviour that is always harmful to consumers. Their aim is to make more profit at the expense of their customers. It means that consumers pay more for goods and services. Cartels are a crime against consumers.

Cartel agreements are sometimes referred to as hardcore anti-competitive agreements because of the unequivocal nature of the harm that they cause to consumers. Cartels are the most serious form of anti-competitive behaviour. So stopping cartels is the Authority's top enforcement priority.

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

Investigating cartels is difficult and complex. This is partly because cartels usually involve a secret conspiracy among many separate businesses and people. It is also because in Ireland, unlike most EU countries, hardcore cartel offences are criminally prosecuted and the burden of proof in court is to a criminal standard. That means the offence must be proved to a judge or jury beyond a reasonable doubt (as opposed to the balance of probabilities).

There are different types of cartels.

- Price-fixing cartels agree on the price to be charged for goods or services.
- Market-sharing cartels agree on which locations or group of customers they each sell to, which leads to higher prices.
- Production limiting cartels control the amount of goods or services they produce to make sure prices stay high.
- Bid-rigging or collusive tendering cartels agree how they will each tender or bid for a contract for business. They fix the outcome so that each member of the cartel gets a turn winning business. The result is that the business or public agency pays more for the goods or service.

When we have gathered enough evidence of criminal cartel agreements, we refer a file to the DPP for prosecution on indictment.

Non-hardcore Anti-competitive Agreements

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

Non-hardcore agreements may be between:

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

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

Abuse of Dominance

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

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

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

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

Private Enforcement of Competition Law

The Competition Authority cannot get back money for victims of cartels or other anti-competitive behaviour. Anyone harmed by anti-competitive behaviour can, however, bring a private civil action in court under Irish law.

Reviewing Mergers and Acquisitions

Mergers between companies take place when they combine their business activities to create a larger company. An acquisition is where one company buys all or part of another company. They can be good or bad for consumers.

- Good mergers and acquisitions lead to a more efficient business that passes on some cost savings to consumers. They can also increase the level of competition in a market.
- Bad mergers and acquisitions lead to a situation where one or more businesses have the power to raise their prices, reduce output, or reduce quality to consumers. They substantially reduce competition and consumers suffer.

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

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

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

Different rules also apply to mergers involving credit institutions in Ireland (CIFS mergers) under the Credit Institutions (Financial Support) Act 2008 (CIFS Act). A CIFS merger is created when the Minister for Finance certifies in writing to the parties to the merger, the Competition Authority and the Governor of the Central Bank that the merger falls within the remit of the CIFS Act. Once a merger has been certified it must be notified to the Minister for Finance rather than the Authority. While we may have a role, on request by the Minister for Finance, to review and provide assistance in respect of a CIFS merger, we have no jurisdiction to reach a decision on such mergers.

Promoting Competition

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

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

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

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

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

International Work

There is an important international aspect to our work. The purpose of engaging at an international level with our competition colleagues in other countries and organisations is to contribute to the development of best

practice internationally and to ensure we employ best practice within our agency, as well as to fulfil our role as a law enforcement agency within the EU.

Since 2003, we, together with the Irish courts, have been responsible for enforcing European competition law in Ireland². This obligation comes from Council Regulation (EC) No.1 of 2003 and our membership of the EU generally. Competition law enforcement is one of the few economic policy areas where the EU has delegated powers and responsibilities to Member States. The European Commission monitors enforcement by individual Member States and seeks to ensure that there is a co-ordinated approach to competition by national competition authorities. They do this through the European Competition Network (ECN). The competition authorities of every EU Member State, including Ireland, are required to actively participate in the ECN: to work with the Commission to agree common competition policy approaches and consult on enforcement activities throughout the EU. We also participate in EU merger policy development and case review when required, and are members of the EU Merger Working Group, of which we were also vice-chair up until December 2011.

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

Internal Support Services

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

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

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

Working with Other State Agencies

Enforcement of the Competition Act is primarily the responsibility of the Competition Authority. However, it is sometimes appropriate for us to liaise with other regulatory and law enforcement agencies to resolve matters. We sometimes examine certain sectors of the economy where an independent regulator already exists, for example, communications, aviation and energy.

² The Commission for Communications Regulation also has a role in enforcing competition law in Ireland in relation to the electronic communications sector.

To help co-operation, avoid duplication and ensure consistency, we have co-operation agreements with several regulators and agencies.

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

We have co-operation agreements with

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

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

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

We also operate a *Cartel Immunity Programme* jointly with the DPP. The Programme is described further on page 16. It is designed to encourage participants to report cartels they are, or have been, involved in. Cartel participants can apply for full immunity from prosecution in exchange for full co-operation with the Authority in the investigation of a case, and with the DPP in any eventual prosecution.

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

Identifying Anti-competitive Behaviour

Businesses and consumers are often best placed to know if anti-competitive behaviour is taking place. If you are aware of, or suspect, anti-competitive behaviour we strongly encourage you to bring the information to us. Information from the public is often the first step in launching an investigation into people or businesses involved in cartels or who are abusing a dominant

position. We are very interested in any information or evidence which suggests that price-fixing, bid-rigging, market-sharing or any other anti-competitive behaviour is taking place.

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

Making Complaints to the Competition Authority

Public complaints about anti-competitive behaviour are an important source of information for us. Individual consumers who suspect and report anti-competitive activity can help us greatly. Evidence of cartels and price-fixing from complaints we have received has given us valuable information and has resulted in successful investigations and prosecutions.

Complaints come to us from many sources, including members of the public, individual businesses, trade organisations and public representatives, as well as Government Departments and agencies. If you have information about anti-competitive activity we strongly encourage you to get in touch with us.

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

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

Complaints Handling Process

We have a Complaint Handling Process which assesses every complaint we receive. The Complaint Handling Process focuses resources on the most concrete cases, while ensuring that we can deal quickly but fairly with complaints which have little or no supporting evidence.

The Complaint Handling Process has three steps:

- screening
- assessment
- investigation

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

- sending a file to the DPP with a recommendation that criminal charges be brought,
- taking legal proceedings in the High Court in order to stop anti-competitive

- behaviour,
- negotiating out-of-court settlements with companies and organisations who agree not to engage in anti-competitive behaviour and, in some cases, to change their behaviour putting a stop to any competitive harm, or
- making recommendations to Government concerning changes in anti-competitive regulations.

Resolving complaints without legal action

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

Following assessment, many complaints are resolved because

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

The Cartel Immunity Programme

The potential penalties for individuals and companies who commit hardcore cartel offences under the Competition Act include substantial fines and prison terms. Individuals and companies involved in such activity may consider applying for immunity from prosecution under the *Cartel Immunity Programme*, which we operate jointly with the DPP. Being the first individual or company to report cartel activity, to co-operate fully and give complete and full information to the Authority and the DPP, can offer benefits. It could result in companies or individuals avoiding criminal prosecution, getting immunity from jail terms and avoiding substantial fines and additional penalties such as being barred from serving as an officer or director of a company under Section 160 of the Companies Act 1990.

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

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

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

There are protections in the Act for "whistle-blowers", people who report suspected breaches to us. For example, if you think that a company has breached the Act, you will not be liable for damages if you report it to us and

it turns out that the offence did not take place, provided that you acted reasonably and in good faith. This protection also covers employees. It means that an employer cannot punish an employee who reports, in good faith, a suspected breach of the Competition Act to us.

Total Complaints Received by the Authority in 2011	
Total received	212
Resolved at screening	99
Assessed	113
- ongoing	43
- resolved	70
<p>How to contact the Competition Authority with a complaint about a suspected breach of the law:</p> <p>Web complaint form: www.tca.ie/complaints.html Email: complaints@tca.ie Phone: LoCall: 1890 220 224 (intl.:+353-1-8045400) Fax: +353-1-8045401 Other: The Competition Authority, Parnell House, 14 Parnell Square, Dublin 1</p>	

Prioritising Our Work

In 2011 we published Project Selection and Prioritisation Principles. The aim of the principles is to help decide how discretionary work - which includes complaints - is prioritised, according to five main principles. Discretionary work means work that we have the power to carry out, but are not obliged to carry out, under the Act. The principles are

- significance of the issue or effect of the conduct in question
- impact of the Competition Authority's action
- wider economic significance of the market involved
- strategic significance and
- risks, resources and costs.

The principles are also applied when we decide on which cases or investigations should be pursued and in which areas of the economy we will carry out market studies.

2. ENFORCING COMPETITION LAW

The principal goal of competition law is to protect and benefit consumers, so they can purchase goods and services at a competitive price. Greater competition ensures good value for consumers; it 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 makes the Irish economy less competitive.

One of our core functions is to enforce competition law and to take legal action when we believe the law has been broken.

In some cases where we are of the opinion there has been a breach of competition law, we will bring a civil case before the Courts. Other cases are closed following a settlement in which the offending parties recognise and remedy their anti-competitive behaviour. However, the majority of cases are closed following an internal finding that they do not involve a breach of the Act.

Where we have gathered sufficient evidence of criminal cartel agreements, we refer a file on that case to the DPP for prosecution on indictment.

At the end of 2010 six investigations of alleged hardcore criminal breaches of section 4 were ongoing. In 2011 three of these cases were closed. In two of these cases there was insufficient evidence to warrant recommending a prosecution to the DPP. In the third case (see below under Irish Rail) the case was closed following a court case in which the defendants were acquitted on all charges.

We reported in 2010 that one case was completed with a file sent to the DPP recommending prosecution on indictment. This case remains under consideration by the DPP.

Four new investigations of alleged hardcore criminal breaches of section 4 were opened in 2011 bringing the number of active investigations at the end of 2011 to seven. Four of these seven cases were initiated following applications for immunity under the *Cartel Immunity Programme*.

At the beginning of 2011 there were four active civil investigations ongoing and two investigations which had been suspended because private actions were taken by the parties involved. Three of the four active civil investigations and one of the suspended civil investigations were closed during 2011. In addition, two new civil investigations were opened during 2011 so that, as of year end 2011, three active civil investigations were ongoing.

Given that some of our investigations involve potentially serious infringements of competition law and the possibility that some may result in criminal trials at a future date, it is inappropriate for us to comment publicly on investigations. However, we acknowledge that two of the cases under investigation in 2011 have been reported in the media. These concern allegations of anti-competitive activities

- in the liquid milk market and
- in the concrete and cement industries.

No further details can be provided as the investigations are ongoing.

Many cases that do not involve hardcore criminal breaches of section 4 of the Act, such as vertical agreements or concerted practices that reduce competition are also investigated by the Competition Authority. The Authority may take these cases in the Civil Courts. Alternatively, we may seek a commitment from a firm that we believe may be in breach of the Act. Some examples of this are described below in the section outlining our success in changing the behaviour of trade associations.

In relation to section 5 and the behaviour of dominant firms, the Authority secured commitments from two firms operating in different sectors of the economy. Marine Transport Services gave commitments to ensure effective competition between shipping agents in Cork harbour. In the media sector, RTÉ gave commitments to amend the way they sell advertising to address concerns we had over its effect on television broadcasting. This change should enhance the ability of RTÉ's competitors to compete with the State-owned company.

After the settlement of the BIDS case, the Competition Authority published a guidance note on how competition law applies to agreements to reduce capacity in an industry. (See below for a summary of the BIDS case).

In 2011, we received

- 33 new complaints of alleged criminal cartel behaviour, one of which has led to a detailed investigation being launched. Of the others, 21 were closed in 2011, and 11 are still being evaluated.
- 106 new complaints of anti-competitive agreements and abuses of dominance, 92 of which were closed during the year.

Cases before the Courts

Beef Industry Development Society

Competition Authority –v- Beef Industry Development Society

In January 2011, the Authority reached a settlement in its long-running proceedings against Beef Industry Development Society Limited (the BIDS case). This settlement was reached at a time when the BIDS case had been referred back to the High Court by the Supreme Court after the European Court of Justice had decided that an agreement between competitors to reduce capacity in the Irish beef processing industry was prohibited by Article 101(1) TFEU (see previous annual reports for a summary of the BIDS case).

On 16 June 2011, the Authority published a Guidance Notice on agreements to reduce capacity (N/11/001). The Notice gives information on the decisions of the various courts involved in the BIDS case and in that way provides guidance on the application of Irish and European competition law to businesses considering entering into agreements or any form of co-ordination to reduce capacity in specific industries in Ireland. In particular, the Guidance Notice

- (i) sets out the legal and historical context relevant to agreements aimed at reducing capacity in specific industries,
- (ii) describes the main features of the BIDS agreement and summarises the conclusions of the courts involved in the proceedings,

- (iii) explains the effect of the BIDS case in respect of the application of section 4(1) of the Act and Article 101(1) TFEU to agreements to reduce capacity in specific industries, and
- (iv) outlines the Authority's views on the application of section 4(5) and/or Article 101(3) to anti-competitive agreements.

The purpose of the Guidance Notice is to help firms carry out an informed assessment of their agreements and practices from the point of view of competition law. Guidance Notices published by the Authority are not intended as legal advice. Firms must assess the legality of their actions in order to make an informed decision on whether to go ahead with an agreement or practice and in what form.

The Guidance Notice is available on our website at www.tca.ie.

Irish Rail

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

On 14 October 2008, the Competition Authority commenced summary proceedings in Athenry District Court against John Joe McNicholas trading as John Joe McNicholas Plant Hire, Oliver Dixon, and Oliver Dixon (Hedgecutting & Plant Hire) Limited in connection with alleged price-fixing on a tender for vegetation clearance services by Iarnród Eireann/Irish Rail.

This case was heard before Mr Justice Cooke in the Central Criminal Court between 19 May and 27 May 2011. Mr Justice Cooke sent the case to the jury for deliberation on 27 May 2011. Later that day all defendants were acquitted on all counts.

The defendants subsequently made an application for costs. On 20 December 2011 Mr Justice Cooke awarded the defendants 50% of the costs incurred finding that

"While, in the judgment of the Court, these charges were properly laid and the prosecution justifiably brought and fairly conducted, the Court considers that the imbalance between the length of time taken (for which the defendants are not in any way accountable) together with the formality, stress and expense of a jury trial in the Central Criminal Court on the one hand and the essential character of the events out of which the charges arose on the other, justifies the exercise of the Court's discretion towards a partial acceptance of the defendants' application.

"Having regard to these factors, the Court considers that it would be a just and proportionate exercise of its discretion under the rule to award the defendants John Joe McNicholas trading as John Joe McNicholas Plant Hire and Oliver Dixon (Hedge Cutting and Plant Hire) Limited 50% of the costs incurred."³

³ Judgment of Mr Justice Cooke in DPP -v- John Joe McNicholas trading as John Joe McNicholas Plant Hire, Oliver Dixon and Oliver Dixon (Hedgecutting & Plant Hire) Limited on 20 December 2011 at paragraphs 36 and 37.

Heating Oil Case

DPP -v- Pat Hegarty

As reported in previous annual reports Mr Hegarty in the case challenged the legality of the proceedings against him based on the fact that no proceedings were issued against the company he was employed by and that his company was never convicted of the alleged competition law offence. Consequently he argued that he could not be convicted of an alleged cartel offence unless his employer (which is alleged to have been part of the cartel) is first convicted of the offence. The Circuit Court referred this to the Supreme Court for adjudication asking:

*"Where an individual is prosecuted pursuant to s. 3(4)(a) of the Competition Act 1996 [sic]:
(a) whether an adjudication as to whether the relevant undertaking has committed an offence can be undertaken when no prosecution has been initiated against the undertaking, and
(b) whether it is necessary that the undertaking be convicted of the offence before the individual can be convicted."*

On 28 July 2011 Mr Justice William M McKechnie of the Supreme Court gave his judgment:

*"...I would answer the questions posed in the case stated as follows:-
1) Question A: Yes;
2) Question B: No."⁴*

Put simply this means that the Supreme Court ruled that Mr Hegarty can be tried even in circumstances where the company he was employed by has not been prosecuted, let alone convicted of a criminal offence under the Act.

Closed Investigations

Three investigations concerning alleged hardcore breaches of section 4 of the Act were concluded in 2011. These investigations concerned allegations of criminal behaviour but the Authority concluded that there was not enough evidence to warrant referring a file to the DPP.

The following is a selection of some of the Authority's enforcement activity and includes examples of one investigation into alleged cartel activity in the retail petrol sector, and two cases investigating non-hardcore activity. It should be noted, the latter were not criminal investigations. A description of hardcore and non-hardcore activity, as viewed by the Competition Authority, can be found on pages 10 and 11.

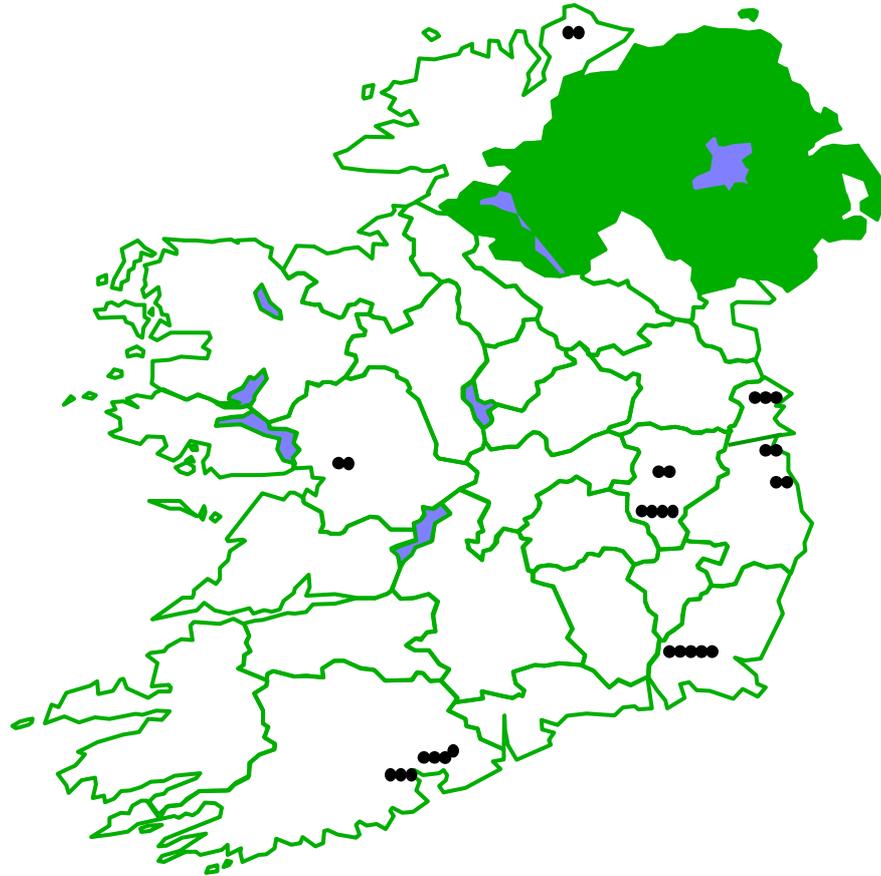
Retail Petrol/Diesel Prices

Throughout 2010 and 2011 the Authority received a number of independent complaints from different parts of the country alleging cartel behaviour in relation to the retail prices of petrol and diesel between local petrol stations (see Figure 1).⁵

⁴ Judgment of Mr Justice William M McKechnie of the Supreme Court, in *DPP -v- Pat Hegarty* dated 28 July 2011.

⁵ The National Consumer Agency carried out an investigation into diesel and petrol prices in 2008 and concluded that "At a national level, the retail market shows strong evidence of competition between players. Evidence of this is the low level of profits made by oil companies, the number of

Figure 1: Location of complaints alleging cartel behaviour between petrol retailers



Source: the Competition Authority

The Authority carried out a detailed assessment of these complaints which included

- conducting price surveys
- monitoring prices
- meeting employees of the petrol stations concerned and
- meeting senior management in three of the main wholesale oil companies, which together account for approximately 40% of filling stations operating within the State.⁶

The price surveys and follow-up discussions with complainants revealed that while prices may follow each other for a period of time, this pattern does not always continue over the longer term. Before opening a criminal investigation we need sufficient evidence to suspect that filling stations or other companies further down the supply chain have entered into pricing agreements or that more informal concerted practices exist.

stations that have closed in recent years and the increased emphasis on making profit through retail outlets attached to service stations."

⁶ Own-branded filling stations account for approximately 25% and nine other brands account for the remaining 35%.

The interviews with wholesalers confirm that company-owned filling stations closely monitor their competitors' prices. However each of the companies demonstrated an acute awareness of competition law and while instructing their employees to monitor local prices they expressly forbid their employees to talk about retail prices with their competitors. Retail prices of petrol at these company-owned petrol stations are set by head office while the prices charged at dealer owned stations are set independently of the wholesale supplier.

Throughout the course of this review no complainant provided any evidence that either formal or informal anti-competitive agreements or concerted practices took place between individual filling stations. Most complainants state that motor fuel prices are identical in a number of locations throughout the State. Parallel pricing is not a breach of the Competition Act and it is not unique to the motor fuel market. The Authority addressed the issue of parallel pricing when it appeared before an Oireachtas Joint Committee meeting on 8 October 2008

"Sometimes the line between normal competitive behaviour and price-fixing or concerted practices is difficult to define. For example, there is nothing wrong with parties deciding unilaterally to charge similar prices. This type of parallel pricing can be found in many areas, especially those which share characteristics such as transparent pricing, undifferentiated products and stability of demand, and where the sellers' costs and business structures are the same. As the retail motor fuel sector has many of these features, it is not surprising to find parallel behaviour there."

Bill Prasifka, Chairperson, Competition Authority

The review of the complaints made to the Authority in relation to petrol prices failed to provide any evidence of unlawful price co-ordination.

RTÉ

On 7 October 2011, the Competition Authority entered into an Agreement and Undertakings with Raidió Teilifís Éireann (RTÉ) following an investigation in respect of the 'share deal' scheme operated by RTÉ in the market for television advertising airtime in the State. Under this scheme, discounts granted to individual advertisers depended, among other factors, on the percentage (or share) of each advertiser's total television advertising budget committed to RTÉ.

According to established case law, target rebates with loyalty-inducing effects offered by a dominant firm may amount to an abuse of a dominant position in breach of section 5 of the Competition Act and/or Article 102 TFEU. The Competition Authority started an investigation with the aim of reaching a view on the following issues: (i) the relevant market, (ii) whether RTÉ held a dominant position in the relevant market, and (iii) whether the share deal amounted to an abuse of such a dominant position.

Based on the information gathered during our investigation, our preliminary view was that RTÉ was likely to be dominant in the market for television advertising in Ireland. It was also our view that the share deal scheme was likely to be a target rebate with loyalty-inducing effects and therefore capable of foreclosing RTÉ's competitors. We communicated our concerns to RTÉ and, in response, RTÉ offered undertakings that were satisfactory to us. In particular, RTÉ undertook to start the process of implementing a new trading

scheme, one which would not include incentives related to the share of an advertiser's budget which was allocated to advertising through RTÉ. RTÉ also undertook to implement the new scheme by no later than 1 July 2012. As these undertakings addressed the Authority's concerns, we did not need to continue the investigation and therefore did not reach a final view on the application of section 5 and/or Article 102 to the share deal scheme.

The full Enforcement Decision is available on our website at www.tca.ie.

Marine Transport Services

In December 2011, the Competition Authority entered into an Agreement and Undertakings with Marine Transport Services (MTS) following an investigation into their pricing practices for the sale of sea-side mooring services in Cork Harbour.

All ships that call to any port need to acquire services at that port. To employ these services the ship owner or charterer appoints a ship agent. The agent's role is to contract third parties to provide services for the ship such as mooring services, towage etc.

All ships require mooring services, ie, assistance to tie the vessel to the shore. In all cases ships need the assistance of linesmen from the shore (shore-side mooring). In some instances, ships need the assistance of boats to pass the rope to the linesmen on the shore (sea-side mooring).

MTS is the only provider of sea-side mooring services in Cork Harbour. The Authority's investigation concerned the manner in which MTS priced its sea-side mooring services. MTS charged a higher price for sea-side mooring services to ship owners that used independent ship agents than it did when ship owners used its sister company, James Scott, as ship agent. Due to the possible exclusionary effect this practice may have had on the market for ship agency services in Cork Harbour, we were concerned that MTS's pricing practice for sea-side mooring services could be in breach of section 5 of the Competition Act.

We communicated our concerns to MTS and they offered undertakings to address our concerns. The Agreement and Undertakings received from MTS mean that ship owners or charterers availing of sea-side mooring services from MTS within the Port of Cork will be treated the same by MTS, whether they use James Scott or any competitor of James Scott as ship agent, except in circumstances which objectively justify otherwise. In other words, the Agreement and Undertakings provide that any terms offered by MTS will be independent of the ship agent chosen.

RPM Cases

During 2011, the Competition Authority received commitments from a number of companies in relation to allegations of Resale Price Maintenance (RPM) cases.

RPM refers to agreements or concerted practices that dictate the price at which goods or services should be sold by the retailer. Such agreements are presumed anti-competitive under European and Irish competition law unless they can be objectively justified (which is only possible in very exceptional circumstances).

The products involved in these cases include power tools, cooking oil, and cosmetic and beauty products. After an initial assessment, the Authority wrote to the companies involved in each case to outline its concerns. These companies subsequently offered commitments to address our concerns.

Trade Associations and Competition Law

During 2011, the Competition Authority intervened on a number of occasions where trade associations and professional representative bodies appeared to be co-ordinating the commercial conduct of their members.

At the beginning of December, the Authority wrote to the Criminal Law Practitioners Organisation in relation to alleged threatened strike action by its members. The Criminal Law Practitioners Organisation represents barristers and solicitors who practice criminal law. Self-employed solicitors, solicitor partnerships and barristers are subject to competition law. The alleged threatened strike action, in response to changes in the Criminal Legal Aid Scheme, could be considered a decision or concerted practice by an association of undertakings and as such, could have amounted to an infringement of competition law. We received a response indicating that the threatened strike action did not relate to fees; however we continue to monitor the situation in conjunction with the Department of Justice.

Later in December 2011 the Authority contacted the Irish Property Owners Association (IPOA) concerning its recommendation to its members that they should pass on the Household and Non Principal Private Residence (NPPR) Charges to tenants. The Competition Authority informed the IPOA that this type of concerted action by their members in relation to pricing may be in breach of competition law. In response, the IPOA issued a clarification stating that pricing is a matter for individual landlords and their tenants and withdrew their earlier recommendation to their members. Tenants must be allowed to negotiate their arrangements with landlords individually without interference from a landlords' trade association.

Also, in December 2011, the Authority contacted the Restaurant Association of Ireland (RAI) concerning their apparent recommendation that all restaurants charge a €10 deposit per head for bookings to reduce the number and impact of 'no-shows'. Although the Competition Authority understands that no-shows can have a detrimental impact on restaurants, the stipulation of a particular fee for a deposit raised concerns. Competing businesses should not co-ordinate on any aspect of pricing, either directly or through a trade association. However, in response to our concerns the RAI clarified with its members that it was up to all restaurants to make all commercial decisions independently.

Submission on White Collar Crime

In early 2011, the Competition Authority made a substantial submission to the Department of Justice and Law Reform's White Paper on Crime, Discussion Document No. 3 'Organised and White Collar Crime'. Our work in this area together with our experience and success in combating white collar crime fed into the Criminal Justice Act 2011. Under section 3(2) of that Act, the Minister for Justice may specify by Order, that arrestable competition offences can be deemed as relevant offences for the purposes of that Act.

Submission on Collective Redress

In April 2011, the Competition Authority made a substantial submission to the European Commission's Public Consultation: 'Towards a Coherent European Approach to Collective Redress.' Our Submission on Collective Redress dealt with the issue of consumer harm where individual consumers suffer small losses due to anti-competitive activity but have no means of obtaining compensation. (Taken as a group, they are sometimes referred to as "a class".) The submission represents an example of synergies between the Authority and the NCA as the NCA made a similar submission on the same consultation process.

In the submission, the Authority made a number of recommendations including that

- the Commission propose minimum standards of collective redress in competition and consumer cases (by way of Directive),
- it be made possible for actions for collective redress in cases involving harm to consumers to be taken by a named individual on behalf of the class or by a nominated representative body,
- actions for collective redress in cases involving harm to SMEs should be taken by a named SME on behalf of the class and not by the trade association (or representative body),
- collective redress be by way of 'opt-out' action, an easier process,
- actions for collective redress be taken before the courts in the Member States, instead of NCAs or other public authorities,
- courts be given the discretion to create a trust or fund through which damages can be distributed, and
- issues relating to the funding of litigation be examined.

Competition (Amendment) Bill 2012

During 2011, the Authority assisted the Department of Jobs, Enterprise and Innovation in the drafting of the Competition (Amendment) Bill 2012. The Amendment Bill was drafted for the purpose of addressing certain issues that had arisen on the enforcement of competition law, both public enforcement by the Authority, and private enforcement by injured parties such as consumers. The Bill

- no longer allows the application of the Probation of Offenders Act,
- increases sanctions in criminal cases, in particular the imprisonment sanction which is to be raised from a maximum of five years to ten years for an individual convicted on indictment,
- allows the court to order a convicted person to pay the costs of investigating the crime,
- splits the public and private parts of the civil enforcement of the Act,
- means undertakings given to the Competition Authority can be made an Order of Court,

- introduces *Res Judicata* to help follow-on actions by private litigators, and
- amends the Companies Act to allow the Competition Authority to apply to Court in civil proceedings to have a director disqualified.

Review of the Cartel Immunity Programme

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

In light of the submissions we received, we have proposed revisions to the Programme and given it to the DPP for consideration. It is expected that the revised programme will be published in early 2012.

Use of Enforcement Powers

Under the Competition Act, we have extensive powers for use in our enforcement work. These powers enable us to obtain information where it is unlikely to be produced voluntarily, or where it has already been refused.

One search warrant was executed in 2011. The search was conducted on 13 May 2011 at the Irish Farmers Association headquarters as part of an ongoing investigation by the Authority into possible price-fixing in the liquid milk market and following incidents involving the disruption by groups of farmers of normal business at a number of retail outlets.

Table 1: Investigation & Enforcement Powers of the Competition Authority

Investigation & Enforcement Powers	Description
Types of investigations carried out	<ul style="list-style-type: none"> • Criminal investigations • Civil investigations • Assessment of mergers • Formal studies
Power of entry and search	Authorised officers can enter or search any premises or dwelling with a warrant issued by the District Court
Power to seize documents and records by warrant	Authorised Officers can seize documents/records with a warrant issued by the District Court
Power to summon witnesses and to require the production of records and information	<p>The Competition Authority can summon a witness to be examined under oath and can require production of records and information from that witness</p> <p>Witnesses have the same immunities and privileges as a witness before the High Court</p> <p>Non-compliance is a criminal offence</p>

Table 2: Use of Enforcement Powers in 2011

Enforcement Power	2011
Search Warrants	1
Summonses	4

Table 3: Penalties and Remedies

Maximum level of fines & penalties	<p>Criminal (on indictment in the Central Criminal Court) - €4 million or 10% of turnover, whichever is the greater, and/or up to five years in prison</p> <p>Criminal (summary in the District Court) - €3,000 and/or up to six months in prison</p> <p>Civil Action (by the Competition Authority) - Injunctive and declaratory relief in lieu of fines</p> <p>Civil Action (by injured parties) - Damages at the discretion of the Court Injunctive and declaratory relief</p>
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3. EVALUATION OF MERGERS AND ACQUISITIONS

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

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

In 2011, the Authority made 42 merger determinations of which 6 were carried over from 2010. There was a decrease in the number of mergers and acquisitions notified to us in 2011 (40) compared to 2010 (46). The number of media mergers notified to us also decreased in 2011 (5) compared to 2010 (8).

The Credit Institutions (Financial Support) Act 2008 (CIFS Act) provides that some proposed mergers involving credit institutions⁷ must be notified to the Minister for Finance instead of to the Competition Authority. For the first time, on 8 June 2011, a merger was notified under this statute to the Minister for Finance⁸ - Allied Irish Banks plc's acquisition of sole control of EBS Building Society. Subsequently, on 9 June 2011 the Minister for Finance requested the views of the Authority on the proposed transaction. The Authority presented its views on this transaction to the Minister for Finance on 17 June 2011 following consultations with the notifying parties, the Department of Finance and the National Treasury Management Agency. These views are described further below.

The Mergers Division examines mergers notified to the Authority with assistance from other divisions. An increase in the number of mergers notified in 2012 would increase its dependence on other divisions for assistance. This can create difficulties for other divisions of the Authority as they strive to carry out their own core functions. As a result of resource constraints within the Mergers Division, the Authority may find it difficult to prioritise a scheduled review of its external and internal merger procedures.

The Authority will continue, however, to strive to improve the efficiency and effectiveness of the merger review regime of Ireland and provide guidance to practitioners, Government Departments and industry.

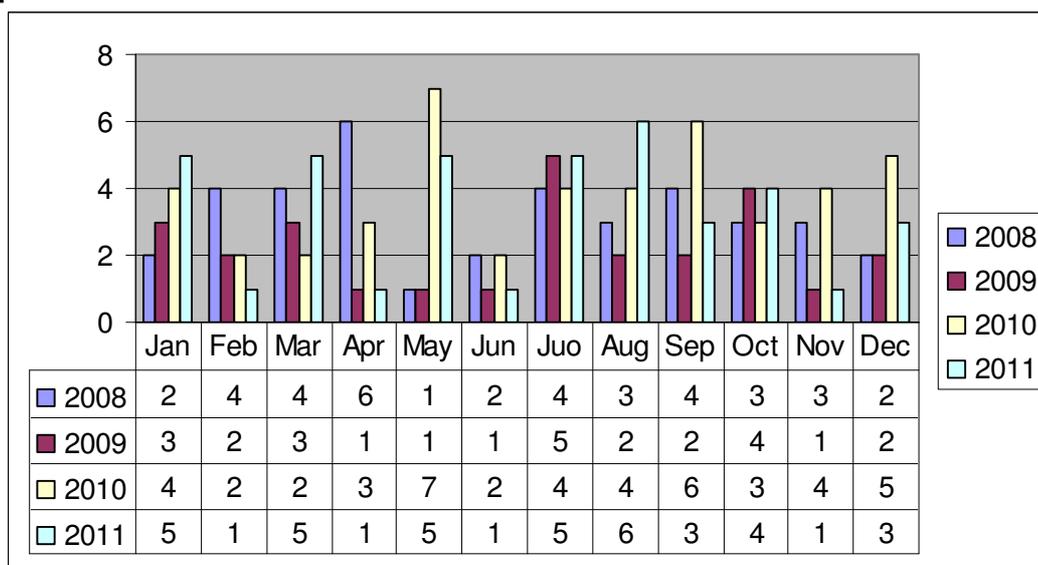
Merger Notifications during 2011

Figure 2 below provides a comparison of the number of merger notifications received by the Authority in each of the years 2008, 2009, 2010 and 2011.

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

⁸ See <<http://www.finance.gov.ie/viewdoc.asp?DocID=6883>>

Figure 2: Monthly comparisons of merger notifications received for the period 2008 to 2011



Appendix B contains a full list of mergers notified to the Authority in 2011. 40 mergers were notified to the Authority in 2011 compared to 46 in 2010. The following points about 2011 are highlighted:

- A significant number of the mergers examined took place in the foods and groceries sectors followed by the financial services sector, information technology and media.
- The Authority finalised its examination of six transactions which were notified in 2010 and whose deadlines extended into 2011. In one of those cases, the Authority decided, in January 2011, to carry out a full (phase 2) investigation.
- All transactions were analysed within the statutory time period.
- 10 Requirements for Further Information were issued in the examination of 5 mergers.
- 36 of the 40 merger notifications received during 2011 were cleared during the initial (Phase 1) investigation, usually within one calendar month.
- Four merger notifications were carried forward into 2012.

Appendix C provides more detailed statistics on mergers examined between 2009 and 2011.

Mergers Requiring a Full (Phase 2) Investigation

The Authority must carry out a detailed (phase 2) investigation of a transaction if after a preliminary (phase 1) investigation it has been unable to conclude that the transaction would not “substantially lessen competition”. In 2011, we initiated one phase 2 investigation described below concerning a merger received in 2010.

M/10/043 - Stena/DFDS

On 17 December 2010, the Competition Authority was notified of the acquisition by Stena AB (Stena), through its subsidiary Stena Line (UK) Limited, of sole control of vessels, related assets, inventory, employees and contracts relating to passenger and freight ferry services operated by DFDS A/S (DFDS) between Belfast and Heysham and between Belfast and Liverpool. The examination of this case was carried over into 2011 and on 14 January 2011 the Authority made a decision to move to a phase 2 investigation.⁹

On 21 December 2010 the Authority advised the parties in writing that (i) implementing the acquisition before receiving Competition Authority clearance infringed section 19(1) of the Competition Act 2002 and (ii) the acquisition was void, under section 19(2) of the Act. The Authority also issued a press release on the same day stating that there had been a breach of Section 19 of the Act and that the acquisition was void. The Authority subsequently assessed the notified transaction as a proposed transaction in accordance with the Act.

Subsequent to the notification, on 24 December 2010 Stena ended its ferry services between Larne and Fleetwood. Also subsequent to the notification, on 13 January 2011 DFDS ended its ferry services between Dublin and Liverpool.

On 14 January 2011 the Authority made a decision to move to a more intensive phase 2 investigation which included considering whether the above decisions by Stena and DFDS were integral parts of a larger transaction (ie, encompassing more than the transaction as notified). The investigation included ongoing contacts with the parties and also obtaining the views of third parties, in particular competitors and customers of Stena and/or DFDS.

On 7 April 2011, the Authority formed the view that the result of the transaction would not be to substantially lessen competition in any market for goods or services in the State and could be put into effect. In particular, the Authority concluded that:

- The acquisition by Stena of DFDS's routes between Belfast and Heysham and between Belfast and Liverpool would not substantially lessen competition in any market for goods or services in the State.
- The above conclusion holds irrespective of Stena's decision to end its ferry services between Larne and Fleetwood and irrespective of whether the decision to end ferry services between Larne and Fleetwood is an integral part of a larger transaction (including the notified transaction).¹⁰
- DFDS's decision to end its ferry services between Dublin and Liverpool was a separate decision, ie, not an integral part of a larger transaction (including the notified transaction).

⁹ The merger was also reviewed by the UK Office of Fair Trading and subsequently referred to the UK Competition Commission which on 29 July 2011 announced it had cleared the merger. See <http://www.competition-commission.org.uk/press_rel/2011/june/pdf/34-11_CC_clears_ferry_acquisition.pdf>.

¹⁰ In this regard the UK Office of Fair Trading in paragraph 156 of its Decision of 8 February 2011 commented as follows "Based on the evidence available to it, the OFT was not persuaded, to the relevant standard, that the potential acquisition of the target routes did not influence Stena's decision to decide to close the Fleetwood-Larne route" See paragraph 165 of <http://www.offt.gov.uk/shared_offt/mergers_ea02/2011/Stena.pdf>.

- DFDS would most likely have exited from its routes between Dublin and Liverpool, irrespective of Stena requiring DFDS routes between Belfast and Heysham and between Belfast and Liverpool. Therefore any impact on competition on routes between Dublin and Liverpool would not be a result of the acquisition by Stena of DFDS routes between Belfast and Heysham and between Belfast and Liverpool.
- The Authority did not find evidence to support a theory of harm of co-ordinated behaviour by the parties, or by the parties and third parties, for the ending of DFDS ferry services on its routes between Dublin and Liverpool.
- The Authority did not find evidence to support a theory of harm of co-ordinated behaviour by the parties, or by the parties and third parties, for any actual or expected price rises for freight services.

Extended Phase 1 Merger Investigations - Requirements for Information

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

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

In 2011, 10 formal RFIs were issued in 5 merger cases.¹¹ One case was carried over to 2012 and the remaining four cases were cleared in phase 1 following an extended investigation lasting, on average, between two to three months. Two of these cases are discussed below.

M/11/005 – JD Sports/Champion Sports

This transaction was notified by the parties on 25 January 2011. The Authority cleared the transaction on 30 March 2011 following an intensive investigation, which included obtaining the views of third parties and further information from the parties.

The Authority examined the likely competitive impact of the transaction in two product markets:

- Retail sale of branded sports clothing
- Retail sale of branded sports footwear

The Authority examined the likely competitive impact of the transaction in the two geographic areas:

¹¹ M/11/001 – Greencore/Northern Foods; M/11/004 – Glanbia/Dawn Dairies and Golden Vale Dairies; M/11/005 – JD Sports/Champion Sports; M/11/022 – Musgrave/Superquinn; and, M/11/037 – Connacht Gold/Donegal Creameries. See <http://www.tca.ie/EN/Mergers--Acquisitions/Merger-Notifications.aspx> for more details.

- Greater Dublin Area consisting of Dublin City Centre, Liffey Valley Shopping Centre, and Blanchardstown Centre
- Newbridge Area consisting of White Water Centre and shopping outlets within a radius of approximately a 20 minute drive-time from it

The Authority concluded that the transaction on its own did not raise competition concerns in any of the markets listed above.

M/11/022 – Musgrave/Superquinn

This transaction was notified by the parties on 21 July 2011. The Authority cleared the transaction on 28 September 2011 following an intensive investigation which included desk research, ongoing contacts with the parties, obtaining the views of both suppliers and competitors, and on-site inspections of affected local markets.

During our investigation we looked at four possible problems that might arise as a result of the transaction:

- Would the new entity be able to raise prices regardless of the reaction of its competitors and customers?
- Would consumers face higher prices and/or reduced output because of the actions of the new entity and its competitors?
- Could the deal be a strategy for Musgrave to discourage a new competitor from entering the market?
- Could the deal mean that the merged entity could force better terms from suppliers, causing them in turn to price discriminate against smaller retailers, harming consumers in the long term?

The Authority concluded that the transaction would not result in the problems identified.

Credit Institutions (Financial Support) Act 2008 - Advice provided to Minister for Finance under section 7

CIFS Act/11/001 – AIB/EBS

Under section 7(7) of the CIFS Act, the Minister for Finance may request that the Authority provide any advice, information and assistance that the Minister reasonably requires for the purposes of making a decision on a notification under the CIFS Act.

On 9 June 2011, the Minister for Finance requested the views of the Authority by 15 June 2011 on the proposed transaction whereby Allied Irish Banks plc would acquire sole control of EBS Building Society. This deadline was subsequently extended by two days until 17 June 2011.

The views expressed by the Authority were based primarily on the information provided by the parties, AIB and EBS, in the joint notification they submitted to the Minister for Finance on 8 June 2011. The Authority also relied on information provided to it by the Department of Finance on 23 May 2011, particularly in relation to the relevant counterfactual (ie, what would have happened in the absence of the proposed acquisition of EBS Building Society by Allied Irish Banks plc.). Where applicable, we also drew from our previous experience in reviewing mergers involving the financial services sector. Due

to the urgency attached to the provision of these views, we were not in a position to conduct our own market enquiries into the proposed transaction.

On the basis of the information provided by the Department of Finance and, in the absence of information to the contrary, we concluded the following:

- In the State, there is unlikely to be any competition concerns as a result of the proposed transaction in relation to the insurance distribution, distribution of mutual funds, payment cards and savings accounts market segments.
- The Authority is not in a position to conclude whether there would be, or would not be, competition concerns as a result of the proposed transaction in relation to the residential mortgages market segment.
- The Authority considered whether the failing firm argument is applicable to EBS for the purposes of reviewing proposed acquisition of EBS Building Society by Allied Irish Banks plc and concluded that there is strong evidence in support of EBS being a failing firm.

The Minister for Finance approved the transaction on 27 June 2011 on the basis that the acquisition would not substantially lessen competition in the Irish banking market. According to the Minister, the rationale for this opinion was "there is no realistic alternative which would ensure that competition from EBS would be preserved".¹²

Mergers involving media businesses

The Competition Act 2002 allows for the possibility that a media merger cleared by the Competition Authority on competition grounds after a full investigation may still be blocked by the Minister for Jobs, Enterprise and Innovation on public interest grounds. Table 1 below provides a summary of the 5 notified media mergers in 2011.

Table 4: Notified Media Mergers in 2011

Notification	Economic Sector	Date of Notification	Status	Acquired
M/11/024 – Acromas/Allied Healthcare	Home Health Care	04/08/2011	Cleared (Phase 1)	Allied Healthcare International
M/11/027 – Scripps/UKTV	Television broadcasting	19/08/2011	Cleared (Phase 1)	50% in each of UK Channel Management Limited, UK Gold Holdings Limited and UKTV New Ventures Limited
M/11/036 – Independent/GrabOne	The digital media sector and newspaper publishing	26/10/2011	Cleared (Phase 1)	GrabOne Investments Limited
M/11/039 – RTÉ/TG4	Television broadcasting	07/12/2011	Further Information	Teilifís na Gaeilge

¹² See <<http://www.finance.gov.ie/viewdoc.asp?DocID=6907&CatID>>.

			requested (Phase 1)	
M/11/039 – TDL Media/DCPL/Setanta	Television broadcasting	12/12/2011	Cleared (Phase 1)	Setanta Sports Broadcasting Limited

None of the mergers that were cleared in 2011 appeared likely to lessen competition. No order was made by the Minister for Jobs, Enterprise and Innovation during 2011 to carry out a full investigation under section 22 of the Competition Act 2002 or to prohibit a media merger from being put into effect.

Kerry Breeo Case

In 2010, we made an application for a priority hearing of the Supreme Court appeal in the Kerry/Breeo case. This application was not granted and the case is still awaiting a hearing date.

Merger Guidelines

The Competition Authority is undertaking a review of its current merger guidelines, *Notice in respect of Guidelines for Merger Analysis, Decision No. N/02/05*, published in December 2002. This review is taking longer than originally anticipated due to a number of factors, most notably the turnover of staff at Member level over the past year and other work requirements. On 3 December 2010, the Authority published a public consultation document on guidelines for merger analysis which invited submissions by 31 January 2011. Seven submissions in total were received by the Authority in response to its consultation document. We intend to publish draft revised merger guidelines for public consultation in 2012.

Merger Procedures in Ireland (Competition Act 2002)

Merger Test: Substantial lessening of competition

The test used to decide whether a merger should be allowed or not is whether it will “substantially lessen competition” in the markets for goods or services in the State. This is the test used in the UK, and a similar version is used by the European Commission. It allows for a focus purely on how competition and consumers are affected by the transaction.

Notification thresholds

The thresholds for notification are based on the turnover of the undertakings involved. At least two of the undertakings involved must have annual financial turnover of at least €40 million worldwide. At least two of them must also carry on business in the island of Ireland, and at least one of them must generate €40 million turnover within the State. If these thresholds are triggered, then a notification must be made.

Mergers below threshold

Mergers that are below these thresholds may still give rise to anti-competitive effects which hurt consumers. The Competition Act allows for these mergers to be notified voluntarily to the Authority, so as to gain legal certainty. This is partly because below-threshold mergers are still subject to enforcement action under sections 4 and 5 of the Act, and the Authority has conducted investigations of such transactions.

Pre-notification (optional)

Parties to a transaction may contact the Authority in advance of formally notifying a merger. Pre-notification discussions can assist parties in preparing a notification form, and offer parties the opportunity to provide an introductory explanation about, among other things: the business activities of the notifying parties, their customers, their competitors, the manner in which prices are negotiated, the route to market and other related relevant matters.

Preliminary investigation (phase 1)

Phase 1 is a one month initial examination, subsequent to the ‘appropriate date’ (which is usually the day of the notification of the merger). At the end of the phase 1 period, the Authority will either clear the merger or proceed to a full (phase 2) investigation.

Full investigation (phase 2)

The Authority may carry out a full (phase 2) investigation where it is unable to determine after a preliminary examination that a merger will not lead to a “substantial lessening of competition”. Phase 2 is an additional three month period where a detailed examination of the transaction and the market(s) in which the parties operate is conducted. At the end of a phase 2 period, the Authority will either clear the merger, clear it with conditions or prohibit it.

Requirement for Further Information

In addition to information provided in the notification documents, we may issue an RFI on any one or more of the parties to a merger in order to obtain information that will assist us with our examination of the merger. During the phase 1 period, an RFI has the effect of changing the appropriate date and consequently the phase 1 deadline. The RFI stops the clock and the clock restarts only after we have received the requested information. In contrast, the phase 2 deadline remains unchanged by the issuing of an RFI.

Witness Summons

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

Remedies

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

Assessment

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

Appeal to the Courts

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

4. PROMOTING COMPETITION IN IRELAND

2011 was a year when the Competition Authority focused resources on two aspects of promoting competition.

- Promoting the acceptance and implementation of recommendations we had made in previous years.
- Advising on areas of economic importance where future competition is going to be shaped by policy changes currently under consideration.

This focus was due to a convergence of opportunities for reform.

1. In 2010, the then Government introduced a process for reviewing the progress of Competition Authority recommendations. We worked throughout 2011 with the Department of Jobs, Enterprise and Innovation to support its role of co-ordinating the Government's review process.
2. The 2010 Memorandum of Understanding between Ireland and the EU/IMF set out commitments on structural reform which corresponded closely to, and gave added impetus to, some of our recommendations.
3. The continued imperative to regenerate and grow the economy has created renewed interest in the scope for competition to contribute positively to Ireland's economic recovery. The number of requests for advice from Government Departments - on how to make the best use of competition in various sectors - which had already grown significantly in 2010, increased again in 2011.

This focus proved worthwhile. Promoting competition to better achieve public policy goals and regain competitiveness was a notable feature of Ireland's legislative and policy-making agenda in 2011. Significant progress was made in implementing our past recommendations and public debate in many economically important sectors acknowledges the role competition must play.

Recommendations from Previous Reports

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

Over 50% of the Authority's 173 formal recommendations since the Competition Act 2002 have now been implemented. More will be put into effect in 2012 if legislation and regulations currently being debated in the Oireachtas and by the Government are passed into law.

The most important pro-competition policy developments in 2011 were in

- legal services,
- general medical practitioners,
- retail planning, and

- competition among TV providers in apartment blocks.

Legal Services

In October 2011, the Legal Services Regulation Bill was published as the Government's proposal to meet commitments made to the EU/IMF regarding the legal services sector. Overall, the proposed new regulatory set-up encompasses many of the features we would recognise in a competitive, transparent and accountable profession.

The Bill builds on recommendations in our *Solicitors and Barristers Report*¹³ and the Legal Costs Working Group.¹⁴ Our most important recommendation was the introduction of an independent regulator - instead of the present system of self-regulation by the Bar Council and the Law Society. This would be in line with better regulation principles and mirror reform in other sectors and in the legal profession in other countries.

The Bill provides for the establishment of a new regulator of both legal professions that will protect and promote the interests of consumers. At the time of writing, the Bill does not appear to provide for sufficient independence of the regulator from Government, though the Minister has stated he will address this. The Bill will also make it possible for the new regulator to implement other key outstanding recommendations from our report, such as

- greater transparency and protection for clients regarding fees and quality of service,
- allowing modern business structures and new professions to develop, and
- the end of the monopolisation of legal training.

The Competition Authority made constructive suggestions in 2011 for improvements to the Bill - to the Department of Justice and in a paper delivered at a UCD conference (available from our website) on our initial views of the Bill.

General Medical Practitioners

Government proposals in 2011 to meet commitments made to the EU/IMF and implement Competition Authority recommendations will bring a series of benefits to GPs and patients. It will be easier for doctors to qualify as GPs and to set up in business and compete with established GP practices. Patients will have a greater choice of GP practices. There will be more incentives for GPs to be innovative in the type of service they provide and to compete on price for private patients.

GPs who wish to set up in practice will in future find it much easier to do so thanks to proposed new legislation published in September 2011. The Health (Provision of General Practitioner Services) Bill gives effect to four of the recommendations in our 2010 report.¹⁵

¹³ *Competition in Professional Services: Solicitors and Barristers*, December 2006.

¹⁴ *Report of the Legal Costs Working Group*, November 2005.

¹⁵ *Competition in Professional Services: General Medical Practitioners*, 2010.

The Bill provides that

- access to State contracts will be open to all fully qualified and trained GPs,
- GPs will be free to establish a practice and treat public patients in the location of their choice,
- protecting the viability of existing GP practices in an area will no longer be a factor in awarding State contracts, and
- GPs who received a State contract under the 2009 interim entry provisions will be free to accept any patient who chooses to attend them, including existing medical card holders who wish to transfer from another practice.

Progress was also made in 2011 in addressing Ireland's shortage of qualified GPs. In our report, we expressed concern about the inflexibility of the four-year GP training programme - the sole route to qualification as a GP in Ireland (MICGP). We recommended a fast-track training programme be introduced for doctors who had already completed relevant hospital-based training. Under the terms of the EU/IMF programme, the Government committed to introducing a new route to the specialist qualification - 'MICGP-Alternative Route' - for doctors who are currently working as GPs in Ireland but who do not meet the standard requirements for registration set down by the Medical Council. This is a welcome development. It will regularise the position of up to 250 doctors who are already working as GPs in Ireland.

Retail Planning

2011 saw the publication of draft new Retail Planning Guidelines¹⁶ that took on board four of the recommendations made by the Competition Authority in our 2008 report on *The Retail Planning System as Applied to the Grocery Sector: 2001- 2007*. More generally, the language and provisions throughout the Draft Guidelines better reflect the benefits of competition and the interests of consumers in retail development.

The Draft Guidelines serve to enhance retail competition. They will

- make the planning process faster and less burdensome for new retailers,
- widen the choice of retail outlets for consumers,
- ensure that consumer attitudes and preferences receive more attention in retail planning policies,
- ensure that the planning system no longer unduly favours existing retailers in an area over new retailers but instead looks at the impact of the new retailer on the vitality of the town centre or district centres as a whole.

The Draft Guidelines do not implement one recommendation of our report - to remove blanket caps on the size of retail stores. Instead, they propose to apply a different set of caps to the existing caps. Therefore, Ireland is unlikely to see the kind of large scale discount retailers that exist in other countries and the lower prices that go with them.

¹⁶ The new draft Guidelines were drafted and published by the Department of Environment, Community and Local Government.

Overall, we believe that the newly published Draft Guidelines will strike a better balance in supporting the vitality, viability and competitiveness of city and town centres.

Competition among TV Providers in Apartment Blocks

New legislation introduced in 2011 will help to open up competition among TV providers in multi-unit developments, such as apartment blocks.

In 2009, we drew attention to the fact that many apartment residents were unable to choose their preferred TV provider.¹⁷ TV providers require the permission of the management company to enter onsite and install the necessary receiving infrastructure. This permission was often refused because developers had agreed exclusivity deals with providers for lengthy periods of time. In many instances, management companies remained vested in developers long after residents had moved in. They therefore tended to act in the interests of developers rather than residents.

The Multi-Unit Developments Act 2011 will make it easier for people living in apartments to choose between different providers of Pay-TV. The new Act requires management companies to be handed over to residents in a timely and orderly manner. Common areas in multi-unit developments must be transferred to the owners' management company within six months. Decisions involving the common areas - such as the decision to install a competing TV operator's infrastructure onsite - can be made by residents, rather than by the developer (through control of the management company).

Advice on Proposed Legislation, Regulation and Competition Issues

The Competition Act 2002 gives us the specific function of advising the Government and its Ministers about the implications of proposed legislation for competition as well as advising Government Department and other public agency officials about competition issues that arise in their work. This includes engaging in public consultation processes and making submissions on relevant competition issues, as well as providing competition experts to contribute to working groups and committees.

In carrying out this function, we aim to ensure that competition works well for consumers, for businesses and for the wider economy. We highlight any competition concerns and try to anticipate and pre-empt any negative consequences which might arise. State laws, regulations and administrative practices can, and often do, restrict competition. They can result in higher prices or poorer services for consumers and businesses.

No new formal market studies were initiated by the Competition Authority in 2011, in order to focus resources elsewhere. We nonetheless worked closely with policy-makers across a broad range of sectors to promote Ireland's competitiveness. We made 11 formal submissions to public consultation processes and these are detailed in **Appendix D**.

The key areas where we provided advice to Government in 2011 were banking, electricity, waste, and water. Our involvement in these areas is summarised below.

¹⁷ *Pay-TV Exclusivity in Apartment Developments: Guidance for Residents*, Guidance Note, August 2009. *Alleged Anti-Competitive Practices in the Provision of Pay-TV Infrastructure and Services to Apartment Developments*, Enforcement Decision (E/09/001), 14 August 2009.

Banking

The new Irish banking landscape began to take shape in 2011 with the decision to rebuild the Irish banking system on the 'two pillars' of Bank of Ireland and AIB. Of the four other Irish banks covered by the blanket guarantee of September 2008, two (Anglo Irish Bank and Irish Nationwide Building Society) will be wound down. Another, EBS Building Society was merged with AIB while the Government is still considering options regarding the future of Permanent TSB.

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

The EU/IMF programme provides an envelope of €35 billion to assist in the fundamental restructuring of the Irish banking system. As part of the programme agreed between the Troika and the Irish authorities, Ireland committed to undertake a number of measures to restore competition and improve consumer protection. The Competition Authority participates in a steering group, alongside senior representatives of the Department of Finance, the Central Bank of Ireland and the National Consumer Agency, which will review and report on an annual basis on progress in implementing measures to improve competition among banks.

Tighter regulation and competition enforcement will have to work side-by-side to reform the Irish banking sector and make it more stable and transparent in the future. Financial stability and competition are ultimately complementary rather than conflicting objectives, as outlined in a paper published by two staff members of the Authority in 2011.¹⁸

Electricity

Competition among electricity companies is now a reality in Ireland. In April 2011 the Commission for Energy Regulation (CER) took the decision to remove tariff regulation on Electric Ireland, (formerly ESB Customer Supply) following the successful entry of Bord Gáis and Airtricity into the retail electricity market. However, there is considerable scope for further market reforms before the full potential for competition in the electricity sector can be realised. The Competition Authority made two submissions to the CER in 2011 on how competition in electricity can be improved.

In our submission on *Market Power in Wholesale Electricity*, we reiterated our support for directly addressing the issue of market power through the sale of certain plants owned by the ESB. The purpose of any sale should not be to maximise revenue on the sale of State assets. Instead any asset sales should be aimed at increasing the competitive rivalry in electricity generation.

In our submission on *Price Discrimination and Consumer Protection*, we called on the CER to focus on removing the remaining barriers to switching and improve consumers' ability to make better informed decisions rather than setting social tariffs for vulnerable consumers. The CER should ensure that all consumers get clear information about when their electricity supply contracts are ending and what renewal options are open to them. Competition works

¹⁸ Hanley C. and Rae A. (2011), *Competition Policy and Financial Stability: Friends or Foes?*, Paper presented to Dublin Economics Workshop, Annual Conference, Kenmare. 14 October 2011.

best when well-informed consumers can choose suppliers and switch if they are not happy with the service they receive.

We also met with a number of stakeholders - including the Department of Communications, Energy and Natural Resources, the Sustainable Energy Authority of Ireland and the International Energy Agency - to promote the development of competition in the electricity sector.

Waste

We contributed to two Department of the Environment, Community and Local Government (DECLG) public consultations on its ideas for reforming Ireland's waste sector. *Altering the Structure of Household Waste Collection Market* proposed to introduce competitive tendering for local markets (instead of the current model where waste collection companies operate alongside one another); and *National Waste Policy* set out steps towards an agreed coherent, comprehensive, and consistent national waste policy.

In our submission on *Altering the Structure of Household Waste Collection Market*, we point out that, although in theory competitive tendering is superior to side-by-side competition, there are pitfalls associated with both models. In the real world, either model can result in a cartel or private local monopoly. Our submission provided specific advice on ways to avoid competitive tendering resulting in either a cartel or a series of entrenched monopolies.

We also pointed out that introducing competitive tendering for household waste collection will have a significant impact on the structure of all related waste markets, including treatment and disposal. Directing collected waste to particular treatment facilities could harm competition between treatment facilities at the same level of the Waste Management Hierarchy. The question facing the DECLG is which model of competition will facilitate the best environmental management of waste, in line with the Waste Management Hierarchy, while also minimising the cost of waste collection.

In our submission on *National Waste Policy*, we pointed out that to achieve effective competition among Producer Responsibility Schemes (PRS) – ie, packaging recycling, WEEE recycling, batteries recycling - the DECLG would be required to plan out a road map to effective competition among PRSs. The DECLG would have to play a bigger role in dealing with many of the social and environmental issues involved.

Water

A major reform of water services provision in Ireland began in 2011. PricewaterhouseCoopers (PWC) were appointed as consultants to undertake an independent assessment of the transfer of responsibility for water services provision from the local authorities to a water utility. In line with the Programme of Financial Support for Ireland agreed between the Government and the EU/IMF, PWC were asked to recommend the most effective assignment of functions and structural arrangements for delivering high quality competitively priced water services to customers.

Within this context, the Competition Authority advised PWC on various areas where competition could develop in the future, for example: competition for the market and the procurement of major works, as well as retail and wholesale competition. These views are reflected in PWC's final report.

Water services are normally considered natural monopolies - chiefly the transport of water to final customers and waste water collection. However, there is increasing recognition that competition in certain areas has the potential to contribute many benefits to the Irish water sector, including

- the efficient use of water,
- value for money,
- effective regulation,
- the avoidance of over-spending and inappropriate assets, and
- cost competitiveness for all businesses in Ireland.

Introducing competing water companies is not likely to be feasible or desirable in the short term. However, it should be considered in the medium to long term. In the meantime, it is important that the initial set up of Irish Water avoids putting in place anything that could prevent the introduction of competition in the future.

Other Areas of Advice

In addition to the major areas of work outlined above, we engaged with Government Departments and public bodies in 2011 on a range of other policy issues. These are summarised in Table 5 below.

Table 5: Advice Provided to Government Departments and Public Bodies in 2011

Department/Pubic Body	Topic
Central Bank	Variable rate mortgages
Department of Agriculture	Aquaculture - licensing of fish farming
	Beef 2020 Action Group & Food Harvest 2020
Department of Communications, Energy and Natural Resources	Energy-saving measures in the oil sector
	Single Energy Market
	Unbundling the electricity grid
	Oil emergency planning
Department of Finance	Section 149 of the Consumer Credit Act
	Variable rate mortgages
	Bank of Ireland state aid assessment
Department of Health	Pharmaceuticals: reference pricing and generics
	Health (Provision of GP Services) Bill 2011

	Private health insurance
	Relevance of competition law for discussions on the new GP contract
Department of Jobs, Enterprise and Innovation	23 Topics
Department of Public Expenditure and Reform	Household Benefits Scheme
Dept of Social Protection	Household Benefits scheme
Department of Transport	Airport competition
Forfás	Retail planning
Working Groups / Committees	Working Group on Credit Histories
	Business Regulation Public Procurement Subgroup.
	Taxi Review Group
	Banking Sectoral Commitments

Raising Awareness

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

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

The way we communicate to each group may differ, but the core message remains the same. Our objective is to explain our role and functions and to give clear details on the rationale and results of our activities. By doing this we hope to build a stronger culture of competition in Ireland by promoting compliance with competition law and deterring anti-competitive behaviour and policies. Properly functioning markets will contribute to improved competitiveness and our economic recovery generally.

Education and Outreach

2011 saw further work on the education and outreach programme to the business community. We engaged with a number of business associations to explore the possibility of establishing longer term relationships. The aim of engaging with the business community is to raise awareness of competition law and policy and to encourage compliance.

We also published two new information booklets. One is called '*Bringing A Private Action*' and gives guidance to individuals or businesses who may wish

to take a private action if they feel they have been harmed by a breach of competition law. The second is a guide to how the Authority prioritises its work, to help people understand why we pursue some cases and not others. All of our information booklets are available on our website.

Bid-rigging Roadshow

The Authority's Bid-rigging Roadshow continued in 2011 with a further eight presentations made during the year. The roadshow is aimed at procurement officials from public bodies and is designed to raise awareness of potential cartel activity between tenderers for public contracts. It also gives advice on what to do if officials suspect anti-competitive tendering.

As part of the programme we gave a number of presentations to Government Departments and centrally through the Civil Service Training and Development Centre. We also presented to Public Affairs Ireland. In addition, a representative from the Competition Authority sat on the Government Construction Contracts Committee in 2011, which is chaired by the Department of Finance.

Institute of International and European Affairs Seminar Series

In 2011 we co-hosted a series of seminars in conjunction with the Institute of International and European Affairs. The series was called '*The Competition Enforcers*' and involved a number of high profile people from the competition arena coming to Ireland to discuss competition enforcement.

<i>Speaker(s)</i>	<i>Title</i>	<i>Date</i>
Dr Alexander Italianer, DG Competition, European Commission	EU Priorities and Competition Enforcement	25 March 2011
Dr Frédéric Jenny, Cour de Cassation	The Globalisation of Competition Law	4 April 2011
Marcus Bezzi, Australian Competition and Consumer Commission, and Ana Maria Melo Netto, Brazilian Ministry of Justice	Global Co-operation in Competition Enforcement	23 May 2011
Scott Hammond, US Department of Justice	Criminal Anti-trust Enforcement in the US	10 October 2011

Civil Fines Seminar

On 11 April 2011, the Competition Authority hosted a seminar on the Authority's perspective on the civil fines condition in the EU/IMF Memorandum of Understanding. Gerald FitzGerald, Member and then Director of the Cartels and Mergers Divisions, outlined the Authority's position on how Ireland could

meet its commitment to “empower judges to impose fines and other sanctions in competition cases” given in the Programme of Financial Support for Ireland (1 December 2010). David McFadden, Legal Adviser to the Authority, addressed some of the apparent difficulties associated with the introduction of civil fines in Ireland. The session was opened to the floor for a questions and answers session. We followed up this seminar by publishing a paper, authored by Gerald FitzGerald and David McFadden, entitled “Filling a Gap in Irish Competition Law Enforcement: the Need for a Civil Fines Sanction” – it is available on our website.

Competition Conference

In 2011, the Competition Authority celebrated 20 years of competition law in Ireland. To mark the event, we hosted a one-day conference in Dublin Castle on 13 June. The topical and timely theme of the conference was “*The Role of Competition in Ireland’s Economic Recovery*”. The conference was opened by Lucinda Creighton, TD, Minister of State for European Affairs and featured a host of high profile speakers including Paul Gallagher, SC, Dr Vincent Power, Professor John FitzGerald, William Kovacic, Dr Don Thornhill, Anna Colucci, Colm McCarthy and Dr John Fingleton. The conference covered three areas:

- 20 years of competition policy in Ireland: where next?
- The link between competition and competitiveness
- Where competition and other policy objectives collide

The conference proved highly popular with over 150 registered attendees.



Lucinda Creighton gives her opening address

Strategy Statement

Every three years, the Competition Authority produces a Strategy Statement which sets out the strategic goals and objectives of the organisation for the following three years. In 2011 the Strategy Statement for 2009-2011 came to an end. In December 2011, we published a new Strategy Statement for the period 2012-2014.

The Statement was drafted in the context of our impending amalgamation with the National Consumer Agency. We expect that the amalgamated body will be required to produce a new Strategy Statement within six months of its formation. While this would replace the current document, we have developed our strategic plan intending that the goals and strategies it sets out will remain relevant to the competition-related functions of the new organisation after amalgamation.

The goals and strategies within the Strategy Statement were developed on the basis of feedback from several sources. First, a consumer survey was carried out to gauge attitudes to competition and the Competition Authority. Second, an analysis of media coverage of the Authority's activities provided insight into perceptions of the organisation. Third, views of external stakeholders were gathered using a combination of face-to-face interviews and an online survey. We canvassed the views of external stakeholders from the following groups

- Government departments/agencies and regulators,
- business associations,
- consumer associations,
- economic and business commentators,
- the legal community, and
- international organisations.

We also consulted with staff on their views. Our goals for 2012-2014 represent a narrowing in focus to reflect the current economic environment in Ireland. They demonstrate our commitment to use our resources as effectively as possible. We have committed to doing this by allocating resources to fulfil our duties and obligations under law first, and then prioritising other activities, with a view to delivering best results for consumers and value for money for taxpayers.

Our four high level goals for 2012-2014 are:

1. Building a strong enforcement record
2. Raising awareness and understanding
3. Fulfilling our obligations
4. Managing the amalgamation process successfully

Further details are available in the Strategy Statement which can be accessed via our website.

Speeches, Presentations, Seminars and Articles

We also engage with other bodies, education institutes, the corporate sector and the media in our continuing efforts to engage with our stakeholders and raise awareness of our work and of the benefits of competition. Members of staff regularly give speeches, make presentations and write articles on different topics. A list of these can be found in **Appendix E**.

5. INTERNATIONAL WORK

We continued to fulfil our EU obligations and maintained participation in international organisations in 2011. Our international work stems primarily from our role, alongside the European Commission and national competition authorities in other Member States, in enforcing European competition law (ie, the competition provisions of the Treaty on the Functioning of the European Union).

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

European Commission

The Competition Authority is Ireland's representative for consultations by the European Commission relating to competition enforcement cases and initiatives in competition law and policy. Before adopting a decision relating to an abuse of dominance or a proposed merger, for example, the Commission must hold an Oral Hearing where defendants or merging parties can voice their opinion. This can lead to an Advisory Committee where each Member State can articulate their opinions. The Commission also consults with Member States on proposed enforcement practices, guidance, policies and legislation relating to Community competition law and policy. We fulfil this role through attendance at decision-making and other meetings, as well as making written and oral contributions to policy and case analyses. We do not attend all meetings but focus resources on cases and issues that have an (actual or potential) impact on Irish consumers and on the high level meetings that encourage the consistent and efficient application of European law.

We did not attend any Oral Hearings or Advisory Committees on restrictive practices and dominant positions in 2011.

EU Merger Review Cases

In 2011, the Mergers Division acted as rapporteur in the advisory committee hearing of one EU Merger Review case

- *Caterpillar/MWM – Case No. COMP/M.6106*

In 2011, the Mergers Division also followed the progress of and participated in the advisory committee hearings of two EU Merger Review cases

- *Seagate Technology/The HDD Business of Samsung – Case No. COMP/M.6214 and*
- *Deutsche Borse/NYSE Euronext – Case No. COMP/M.6166*

EU Ad Hoc Merger Working Group

In January 2010, the national competition authorities of the EU established a working group to exchange experience and foster more co-operation and convergence between agencies in the area of EU merger control. The Working Group is chaired by the European Commission, with two Vice Chairs chosen

from among the members. The Competition Authority and the German Bundeskartellamt were the first two Vice Chairs of the new working group.

In November 2011, European national competition authorities agreed a set of best practices prepared by the Working Group (*Best Practices On Co-operation between EU National Competition Authorities In Merger Review*). The Best Practices aim at fostering co-operation and the sharing of information between national competition authorities in the European Union, for mergers that do not qualify for review by the European Commission itself but require clearance in several Member States. The Competition Authority took the lead in drafting this document. It is available on our website.

European Competition Network

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

In 2011 we attended two types of high level general meetings; the meeting of Directors' General and ECN Plenary meetings. We were also active in the following Working Groups and Sectoral Sub-groups:

- Co-operation between Competition Authorities
- Forensic IT
- Cartels
- Chief Economists
- Banking
- Financial Services,
- Environment
- Food

We also contribute to ongoing projects which include the convergence of the Member States' leniency programmes and the relationship between criminal and administrative investigative procedures. The project to align leniency programmes throughout the EU is particularly relevant, given the revision of our own immunity programme. One outcome of the revision will be that our programme will be more aligned with the Commission's and other Member States' programmes. This, in turn, will help facilitate leniency applications on an EU-wide basis and further improve cartel detection and prosecution in Europe.

ECN Newsletter and ECN Brief

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

- The *ECN Newsletter* is an internal confidential document that details investigations, studies and other activities of interest to the Network.

It is issued four to five times each year. The Authority contributed articles to the Newsletter throughout the year. It was also the chief editor, along with Germany and Hungary, for the September issue.

- The *ECN Brief* gives information to the public on the activities of ECN members a few times a year. To view past editions of the ECN Brief and to sign up to receive new editions, go to <http://ec.europa.eu/competition/ecn/brief/index.html>. The Authority also contributes to the *ECN Brief* when noteworthy competition activity takes place in Ireland.

Organisation for Economic Co-operation and Development

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

One of these meetings, in June 2011, consisted of two roundtables, one on 'Impact Evaluation of Merger Decisions' and the other on 'Promoting Compliance with Competition Law'. Both roundtables involved country reports and a panel of experts on the topics. The latter roundtable complemented the Authority's work on an information booklet on compliance for businesses and trade associations.

International Competition Network

The Authority is a member of the International Competition Network (ICN). The ICN seeks to provide competition authorities with a specialised yet informal venue for supporting the development of best practice in competition law and policy and addressing practical competition concerns. The Irish Competition Authority is active in five of the ICN's working groups: Mergers, Advocacy, Unilateral Conduct, Agency Effectiveness and Cartels. We participate in many of these working groups via teleconferencing.

The Mergers Division of the Authority was a co-chair, with the Antitrust Division of the United States Department of Justice (US DOJ), of the Mergers Working Group until December 2011.

For 2010-2011, the Mergers Working Group was involved in conducting a comprehensive assessment of its existing work product and membership needs. The Mergers Division is actively involved in this process through the planning, drafting and analysis of working group member and NGA surveys.

6. CORPORATE SERVICES

Finance

The Competition Authority is funded by way of annual grant from the Department of Jobs, Enterprise and Innovation. In 2011 the Competition Authority's grant was €5.1m. The Authority's accounts are subject to audit by the Comptroller & Auditor General and the audit of the 2011 accounts is unlikely to be completed until the second quarter of 2012. As a consequence it is not possible for us to publish our audited accounts in our Annual Report. Our audited accounts are, however, published annually on our website on completion of the Comptroller & Auditor General's audit.

However the provisional, unaudited outturn for 2011 was expenditure of €3.6m. The reduction in the number of staff working in the Authority through the Government's moratorium on recruitment to the public service has naturally led to a reduction in expenditure. In addition, a number of contingent liabilities that had been factored into the €5.1m budget allocation did not materialise during the year thereby reducing expenditure further.

Mergers and acquisitions notified to the Authority under the Competition Act must be accompanied by a fee of €8,000. As reported elsewhere in this report, the Authority received 40 merger notifications in 2011 thereby bringing in €320,000 in merger fees. This money was paid over to the Department of Jobs, Enterprise and Innovation. We also paid €400,000 to the Department in legal costs that we recovered in January arising from our legal action against BIDS.

The Code of Practice for the Governance of State Bodies requires that in the interests of transparency and good governance, State bodies should publish in their reports details of the salary of the Chief Executive Officer. For the purposes of meeting this requirement the Competition Authority considers its Chairperson to be its Chief Executive Officer. As mentioned below, Isolde Goggin was appointed Chairperson in October 2011. The Chairperson's annual salary is set by the Department of Finance in compliance with Government pay policy and is equivalent to the remuneration of a Deputy Secretary as set out in Appendix 1A of Department of Finance Circular E107/22/06, ie, €176,800. The Chairperson of the Competition Authority does not receive any bonuses or additional remuneration.

Internal Audit

There are three members on the Authority's Audit Committee; two are external members and one is a representative from the Authority. One of the external members, Mr Jim Bardon, chairs the committee and Ms Noreen Fahy of the Institute of Public Administration is the second of the external members. Mr Gerald FitzGerald is the Authority's representative on the committee since 21 December 2011.

The Audit Committee is independent of the Authority in the performance of its duties is not subject to direction or control from any other party. It operates under a Charter which sets out its terms of reference.

The Audit Committee met on four occasions during 2011 and reviewed Internal Audit Reports on

- Complaints Handling

- Corporate Governance and Risk Management
- Internal Financial Controls and
- Merger Notification and Investigation.

The Committee also reviewed the Authority's Financial Statements and Accounts for 2009 and 2010 and met with a senior auditor from the Office of the Comptroller & Auditor General regarding the Authority's financial accounts. The Audit Committee concluded at the end of 2011 that it was satisfied that the Authority has robust systems of internal controls and risk management in place.

Freedom of Information

The Competition Authority received three requests under the Freedom of Information Acts in 2011. All three requests were of a non-personal nature. Of the three requests dealt with, two were part-granted with access to some documents being refused and the other request was withdrawn following consultation with the Authority.

Human Resources

In March 2009 the Government introduced a number of measures to reduce public service staffing levels, including placing a moratorium on recruitment and the introduction of incentivised career break and early retirement schemes. At the time of the introduction of the recruitment ban, the Competition Authority's sanctioned staff complement was 59. By the end of 2011 the number of people working in the Competition Authority had fallen to 39. This is the level at which the Authority's staffing has been capped under the Government's Employment Control Framework.

Departures from the Authority in 2011 arose from Declan Purcell's retirement in September having served as a Member of the Authority since 1998 and its Chairperson since April 2010. In February of 2011 Dr Stanley Wong left on the expiry of his five year term of office and, in May and July respectively, Isolde Goggin and Gerald FitzGerald left briefly on the expiry of their terms of office as temporary Members. Both were subsequently to return later in the year with Isolde's appointment as Chairperson and Gerald as a Member, following an open competition. They were joined on the Authority by Professor Stephen Calkins in December 2011 and Patrick Kenny in January 2012. Arising from the vacancies at Member level during 2011, the Minister for Jobs, Enterprise and Innovation appointed Ciarán Quigley, Noreen Mackey and David McFadden as temporary Members under the Competition (Amendment) Act 2010 pending the appointment of full-term Members under the 2002 Act.

The only other departures in 2011 were Elizabeth Heffernan, the Authority's Finance Officer, who retired in June, and Elisa Ryan, a Case Officer – Solicitor, who left in November.

As a result of the moratorium on recruitment and the cap on the number of staff permitted in the Authority under the Employment Control Framework, the number of people working in the Competition Authority in 2011 was at its lowest level since 2003.

Customer Service

The Competition Authority has in place a Customer Charter as an expression of its commitment to ensuring that its customers receive the highest level of service possible. In the main we met these commitments. 97% of the correspondence received was acknowledged within three days of receipt and 89% was either fully resolved or had been dealt with by way of an interim response.

A. COMPETITION AUTHORITY STRUCTURE

Competition Authority Members as at 31 December 2011

Isolde Goggin

Chairperson

Director of Advocacy Division and Strategy Division



Ciarán Quigley

Director of Cartels Division and Corporate Services Division



Gerald FitzGerald

Director of Monopolies Division



Stephen Calkins

Director of Mergers Division



Organisational Structure of the Competition Authority¹⁹

Divisions	Advocacy	Cartels	Corporate Services	Mergers	Monopolies	Strategy
Member	Isolde Goggin	Pat Kenny	Isolde Goggin	Stephen Calkin	Gerald FitzGerald	Isolde Goggin
Manager	Carol Boate	Cormac Keating	Ciarán Quigley	Ibrahim Bah	John Evans	Vivienne Ryan
Legal Advisers	Noreen Mackey David McFadden					
Communications Manager	Clodagh Coffey					
Case Officers	Ciarán Aylward Cathal Hanley Kathryn MacGuill Deirdre McHugh Han Nie	Aoife Brennan John Burke Dan Kenna Catherine Kilcullen Eksteen Maritz John McNally Joe McLoughlin ²⁰		Barry O'Donnell Andrew Rae	Victoria Balageur Malachy Fox Janet McCoy David O'Connell Anne Ribault O'Reilly Haiyan Wang	Joseph Walser
Higher Executive Officers	James Plunkett Sandra Rafferty					
Executive Officers	Rafal Saniternik Pat Downey					
Clerical Officers	Sandra Brennan Mark Wilkinson					

¹⁹ Reflects staff working in the Competition Authority on 31 December 2011.

²⁰ Detective Sergeant Joe McLoughlin is on secondment from the Garda Bureau of Fraud Investigation.

B. MERGERS NOTIFIED TO THE COMPETITION AUTHORITY IN 2011

Notification	Economic Sector	Date of Notification	Status
M/11/001 – Greencore/Northern Foods	Convenience food	07/01/2011	Cleared (phase 1)
M/11/002 – Igate/Patni Computer Systems	IT	14/01/2011	Cleared (phase 1)
M/11/003 – DSM/Martek	Manufacture and supply of poly-unsaturated fatty acids	17/01/2011	Cleared (phase 1)
M/11/004 – Glanbia/Dawn Dairies and Golden Vale Dairies	Liquid milk sector	19/01/2011	Cleared (phase 1)
M/11/005 – JD Sports/Champion Sports	Branded apparel and footwear	25/01/2011	Cleared (phase 1)
M/11/006 – Cargill/Nedalco	Production of alcohol	25/02/2011	Cleared (phase 1)
M/11/007 – Oaktree/Beluga	Financial services and the shipping industry	01/03/2011	Cleared (phase 1)
M/11/008 – Clondalkin Group/Catalent	Pharmaceutical, healthcare and IT	01/03/2011	Cleared (phase 1)
M/11/009 – BH Acquisitions/Northern Foods	Fish products and chicken products	07/03/2011	Cleared (phase 1)
M/11/010 – Northern Trust/BOI Securities Services	Custody and fund administration	08/03/2011	Cleared (phase 1)
M/11/011 – Duke Street/Hutton Collins/Lion/Katsu/JV	Restaurant	24/03/2011	Cleared (phase 1)
M/11/012 – Jabil/F-I Holding Company	Electronic manufacturing services	04/04/2011	Cleared (phase 1)
M/11/013 – DZ Bank/WGZ Bank/DZ Privatbank	Private banking services primarily in Germany	04/05/2011	Cleared (phase 1)
M/11/014 – Royal London/Royal Liver	Insurance	05/05/2011	Cleared (phase 1)

M/11/015 – AIBP/C&D Foods	Pet food	16/05/2011	Cleared (phase 1)
M/11/016 – Dell/CIT Group	Financial services	20/05/2011	Cleared (phase 1)
M/11/017 – Charterhouse/ERM Group	Environmental health and safety consulting	30/05/2011	Cleared (phase 1)
M/11/018 – Blackstone/Tangerine	Confectionary	03/06/2011	Cleared (phase 1)
M/11/019 – Amazon/Book Depository	Book retailing	04/07/2011	Cleared (phase 1)
M/11/020 – Ericsson/Telecordia	Telecommunications	12/07/2011	Cleared (phase 1)
M/11/021 – IHKG (NISF & Intersnack)/Largo Food	Savoury snack foods	15/07/2011	Cleared (phase 1)
M/11/022 – Musgrave/Superquinn	Grocery	22/07/2011	Cleared (phase 1)
M/11/023 – Greencore/Uniq	Convenience food	26/07/2011	Cleared (phase 1)
M/11/024 – Acromas/Allied Healthcare	Home health care	04/08/2011	Cleared (phase 1)
M/11/025 – LA Holding/Linpac Group	Transport packaging	09/08/2011	Cleared (phase 1)
M/11/026 – AIG/AeroTurbine	Commercial aviation	15/08/2011	Cleared (phase 1)
M/11/027 – Scripps/UKTV	Television broadcasting	19/08/2011	Cleared (phase 1)
M/11/028 – Valeo Foods/Jacob Fruitfield	Food	19/08/2011	Cleared (phase 1)
M/11/029 – HP/Autonomy	Infrastructure software	26/08/2011	Cleared (phase 1)
M/11/030 – IBM/Fitch Risk	IT	07/09/2011	Cleared (phase 1)
M/11/031 – Autobar/Provend	Vending machines	09/09/2011	Cleared (phase 1)
M/11/032 – Kerry/Cargill	Food ingredients	26/09/2011	Cleared (phase 1)
M/11/033 – Varde/SAV	Credit cards and credit insurance services	10/10/2011	Cleared (phase 1)

M/11/034 – Investec/Evolution	Financial services	14/10/2011	Cleared (phase 1)
M/11/035 – Graphite/Harbourmaster	Asset management	20/10/2011	Cleared (phase 1)
M/11/036 – Independent/GrabOne	Digital media and the printing and publishing of newspapers	26/10/2011	Cleared (phase 1)
M/11/037 – Connacht Gold/Donegal Creameries	Liquid milk Sector	01/11/2011	Cleared (phase 1)
M/11/038 - RTÉ/TG4	Television broadcasting	07/12/2011	Further information requested (Phase 1)
M/11/039 – TDL Media/DCPL/Setanta	Television broadcasting	12/12/2011	Cleared (phase 1)
M/11/040 – SAP/SuccessFactors	Software supporting business functions of companies	13/12/2011	Cleared (phase 1)

C. STATISTICS ON MERGERS EVALUATED 2009-2011

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

D. FORMAL SUBMISSIONS BY THE COMPETITION AUTHORITY IN 2011

Submission Number	Submission to	Topic	Summary
S-11-001	Central Bank	Consumer Protection Code	We welcomed the proposed changes to the Consumer Protection Code. They provide enhanced consumer protection without any loss of regulatory certainty.
S-11-002	Department of Justice and Law Reform	White Collar Crime	We put forward proposals to improve the investigation and prosecution of white collar crime. The introduction of a Perjury Act and a Whistleblowers' Act would help protect the integrity of investigations, whilst also giving some protection to witnesses who come forward to assist State agencies when enforcing white collar crime.
S-11-003	Commission for Energy Regulation	Wholesale Electricity	We reiterated our support for a structural (eg, splitting up the ESB's generation assets), rather than a regulatory, approach to addressing market power issues in wholesale electricity.
S-11-004	Commission for Energy Regulation	Price Discrimination and Consumer Protection	We opposed proposals to prohibit price discrimination by electricity suppliers in Ireland. Non-Discrimination Clauses are not necessary to protect consumers and may in fact lead to higher prices for <u>all</u> consumers - including those they are seeking to protect.
S-11-005	National Transport Authority	Transport Strategy 2011-2030	We expressed concern about the absence of any commitment to increased competition in public transport. All public bus transport services providers should have equal opportunity to compete to provide the subsidised services, when the current contracts with Dublin Bus and Bus Éireann expire. Any proposed new public bus transport services should be subject to open competition.
S-11-006	European Commission	Collective Redress	We set out our views on collective redress, as part of a Commission-led initiative to develop a coherent European-wide approach to the subject. Collective redress is an effective method of allowing claimants, such as consumers, with small dispersed claims, to receive compensation for the harm caused to them by the illegal conduct of undertakings.
S-11-007	National Transport Authority	Vehicle Standards	We set out our views on the proposed regulation of vehicles standards for taxis, hackneys and limousines, focussing on three areas: Vehicle Standards, Vehicle Branding and the overall effect of qualitative regulations.
S-11-008	Department of Jobs,	Groceries Code	We argued that the proposed Code of Conduct is not necessary and may prove counter-productive. It will increase business

	Enterprise and Innovation	of Practice	costs, reduce flexibility in the grocery supply chain and is unlikely to achieve its objective of increasing the bargaining power of small suppliers.
S-11-009	Department of Environment, Community and Local Government	Household Waste Collection	We examined the relative merits of competitive tendering versus side-by-side competition for household waste collection. We set out a range of steps which need to be taken if the potential benefits of competitive tendering are to be realised.
S-11-010	Department of Environment, Community and Local Government	National Waste Policy	We examined some of the competition issues arising in: Waste Management Planning; Compliance Schemes; Communicating Recycling Information; Green Public Procurement; and Levies.
S-11-011	Department of Environment, Community and Local Government	Retail Planning Guidelines	We welcomed the proposed new Retail Planning Guidelines. They will put into effect four of the recommendations made in our 2008 report and will bring benefits to both retailers and consumers. The Draft Guidelines do not implement one of our recommendations – to remove blanket caps on the size of retail stores. Ireland is unlikely, therefore, to see the kind of large scale discount retailers that exist in other countries and the lower prices that go with them.

E. SEMINARS, SPEECHES, PRESENTATIONS & PAPERS

Title	Forum	Date	Person
Competition law and the Agri-food Sector	UCC/ICOS Diploma in Corporate Direction (Food Business)	12 Jan	Aoife Brennan and Cathal Hanley
Bid-rigging Roadshow	Department of Jobs, Enterprise and Innovation	25 Jan	John Burke and Eksteen Maritz
The European Competition Network	National Economic and Social Council	26 Jan	Declan Purcell
Bid-rigging Roadshow	Public Affairs Ireland	2 Feb	Aoife Brennan and Catherine Kilcullen
Enforcing Competition Law	University of Limerick	1 Mar	David McFadden
Bid-rigging Roadshow	Lansdowne House	25 Mar	Aoife Brennan and Catherine Kilcullen
Reform of the Legal Profession Imminent	Article for Sunday Business Post	27 Mar	Declan Purcell
White Collar Crime	The Law Society	30 Mar	David McFadden
Civil Fines Condition in the EU/IMF MoU: The Competition Authority's Perspective	Competition Authority Civil Fines Seminar	11 Apr	Gerald FitzGerald and David McFadden
Bid-rigging Roadshow	UCD	19 Apr	Aoife Brennan and Dan Kenna
Bid-rigging Roadshow	Lansdowne House	27 May	Catherine Kilcullen and Eksteen Maritz
Some Thoughts on Criminalising Cartels	European Competition Day, Budapest	30 May	David McFadden
What We can Learn from Criminal Cartel Investigations	European Competition Day, Budapest	30 May	David McFadden
Filling a Gap in Irish Competition Law Enforcement: the Need for a Civil Fines Sanction	Paper following on from Civil Fines seminar held in April	9 Jun	Gerald FitzGerald and David McFadden
Bid-rigging Roadshow	Lansdowne House	17 Jun	Catherine Kilcullen and Eksteen Maritz
Exchange of Confidential Information and the Protection of Business Secrets	Seminar held by the Polish Office of Consumer and Competition Protection, Warsaw	5 Jul	Noreen Mackey
Enforcement v Advocacy – Lessons from the Downturn	Annual Heads of European Competition Authorities' Meeting, Warsaw	6 Jul	Declan Purcell
Competition and Privatisation	Eolas Economy Series: The Future of State Assets	28 Sep	Carol Boate
Practical Issues in Merger Review	Competition Press Conference	28 Sep	Ibrahim Bah
Effectiveness and Efficiency – Changes Sought by the Competition Authority	Competition Press Conference	28 Sep	Noreen Mackey

Detecting Anti-competitive Practices in Public Procurement	eProcurement Network, Lansdowne House	6 Oct	Dan Kenna and Catherine Kilcullen
What Happened to Competition Policy?	DEW Annual Conference, Kenmare	14 Oct	John Evans and David McFadden
Competition Policy & Financial Stability: Friends or Foes?	DEW Annual Conference, Kenmare	14 Oct	Cathal Hanley and Andrew Rae
Bid-rigging Roadshow	Public Affairs Ireland	26 Oct	Catherine Kilcullen and John McNally
Opening Energy and Utility Sectors to Competition	Conference on competition in energy and regulated markets	25 Nov	Isolde Goggin
Competition and the Structure of the Legal Profession	UCD conference on Regulating the Legal Profession, Newman House	25 Nov	Isolde Goggin
Making Competitive Tendering Work	National Waste Summit	29 Nov	Ciarán Aylward
Bid-rigging – Cartels in Public Procurement	St Martin Conference, Brno, Czech Republic	30 Nov	David McFadden
Bid-rigging Roadshow	Lansdowne House	16 Dec	Catherine Kilcullen and Joe McLoughlin

