Competition Act, 2002

Decision of the Competition Authority
No. E/04/002

Agreements between Irish Actors' Equity SIPTU and the Institute of Advertising Practitioners in Ireland concerning the terms and conditions under which advertising agencies will hire actors.

31 August 2004
(Case COM/14/03)

SUMMARY

In March 2003 the Competition Authority ("Authority") initiated its own investigation into possible price fixing among self-employed actors and advertising agencies. An agreement between Irish Actors' Equity SIPTU ("Equity") on behalf of the actors, and the Institute of Advertising Practitioners in Ireland ("Institute"), on behalf of advertising agencies, entitled "2002 Agreement on Minimum Fees Effective from 1 October 2002" ("Agreement"), provided both specific fees for services rendered and various other terms and conditions.

Following the Authority's investigation, Equity and the Institute ("the Parties" collectively) have undertaken not to enter into or implement any agreement that directly or indirectly fixes the fees that the Institute or its members pay self-employed actors in return for services rendered.

1. THE ISSUES

The Complaint

1.1 The Authority initiated its own investigation of possible price fixing in the provision of actors' services in Irish commercial advertising in March 2003. The investigation revealed that prior to 1st October 2002 the Parties had agreed to the terms and conditions governing the hiring of actors in the creation of commercial advertising. These terms were memorialised in the Agreement.

1.2 The terms of the Agreement are set forth in full as Appendix A to this Decision Note. The Agreement, for example, sets fees for doing "radio voiceovers,"[1] providing in part:

RADIO VOICEOVERS	
Usage Fees—Year 1	Euro
RTE/2 FM	140.00
Lyric FM	51.00
Today FM	51.00
FM 104	37.00
Star 106	37.00
Lite FM	37.00
96 FM	37.00
RTE Cork	22.00
Locals	22.00

The Agreement further provides specific terms and conditions under which actors will provide services. For example, "[p]ayment shall become due on or before 30 days from the end of the month of recording/filming."[2]

1.3 Although it is not clear when the Parties first entered into similar agreements, a course of dealings had existed for at least 15 years. As the conduct in question took place both before and after 1 July 2002, issues arise under both the

[1] In an advertising context, a "voice over" is the recording of vocal announcements over a bed of music in commercials.

[2] Agreement paragraph 8.

Competition Act, 2002 and the prior legislation. Given that an Acknowledgement & Undertakings were proffered by the Parties and accepted by the Authority and that a principal purpose of this Decision is to provide guidance prospectively, the issues are analysed under the Competition Act, 2002.

1.4 As part of its investigation, the Authority interviewed agents for actors, production agencies, advertising agencies and others within the industry. In addition, the Authority met with representatives of Equity and the Institute on several occasions.

1.5 Following the Authority's investigation, the Parties signed Undertakings in which they agreed not to fix fees and to comply with the Competition Act, 2002.[3] The full text of the Undertakings is set forth as Appendix B to this Decision Note.

The Parties

1.6 Equity is registered as a trade union with the Registry of Friendly Societies and is affiliated with the Irish Congress of Trade Unions. It has approximately 1635 members. Membership is open to anyone exercising professional skills full-time in the provision of entertainment that, in Equity's judgement, can demonstrate a required proof of professional experience.

1.7 The Institute was founded in 1964 when it replaced the Irish Association of Advertising Agencies as the trade association representing the interests of Irish advertising agencies. The Institute has approximately 44 agency members and represents about 95% of advertising agency expenditure in the country. A non-profit making company, the Institute has a secretariat of seven and is governed by a board of 12 directors.

[3] The Undertakings do acknowledge the right of Equity to represent *employed* actors in collective bargaining with employers.

2. ASSESSMENT

Introduction

2.1 Section 4 of the Act applies when undertakings are engaged in arrangements, which have as their object or effect the prevention, restriction or distortion of competition in trade in any goods or services in the State. Section 4(1) reads as follows:

> Subject to the provisions of this section, all agreements between undertakings, decisions by associations of undertakings and concerted practices which have as their object or effect the prevention, restriction or distortion of competition in trade in any goods or services in the State are prohibited and void, including in particular, without prejudice to the generality of this subsection, those which (a) directly or indirectly fix purchase or selling prices or any other trading conditions….

2.2 Section 3(1) of the Act defines an "undertaking" as "a person being an individual, a body corporate or an unincorporated body of persons engaged for gain in the production, supply or distribution of goods or the provision of a service."

2.3 To establish a breach of Section 4(1) of Act, the Authority must demonstrate that:

- there is an agreement, decision or concerted practice,
- the parties to that agreement, decision or concerted practice are undertakings, and,
- the object or effect of the agreement, decision or concerted practices is to prevent, restrict or distort competition.

Section 4(1) of the Act is based on Article 81(1) of the Treaty establishing the European Community, which is commonly referred to as the "Treaty of Rome" (the "Treaty"). In applying Section 4(1) the Authority looks to its interpretation by Irish

courts, and also the interpretation of Article 81(1) of the Treaty by the European Commission ("EC") and the Community courts.

Agreements, Decisions and Concerted Practices

2.4 The legislation does not define the terms "agreements", "decisions" and "concerted practices". Reference must be made to the interpretation of these terms by the Courts.[4] Agreements include legally binding agreements as well as informal ones, and they may be written or not. The latter would include, for example, so-called "gentlemen's agreements".

2.5 Although the existence of an agreement may present issues in other cases, it does not here. The Parties did not dispute the existence of an agreement. Indeed, and as noted above, the document memorialising the Parties' understanding itself is entitled "2002 Agreement." An agreement entered into by a trade association can be construed to be an agreement on the part of its members.[5]

2.6 More importantly, the decision by the Parties to make *and then implement* the agreement with reference to their members certainly constitutes a "decision" as that term is used in the Act.[6] The Parties did not contest this point. Accordingly, further attention to these issues is unwarranted.

Object or Effect of Preventing, Restricting or Distorting Competition

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[4] For further discussion see generally Richard Whish, 2003, *Competition Law*, Fifth Edition, London, Butterworths. pp. 91-106. Professor Whish summarises the case law observing: "A broad interpretation has been given to each of the terms 'agreement,' 'decision,' and 'concerted practice.'" (P. 91).

[5] *See* Whish, 2003, supra note 4, at 93 *citing* Cases 209/78 etc. *Heintz Van Landewyck v. Commission* [1980] ECR 3125, [1981] 3 CMLR 134.

[6] Vincent Power, 2001,*Competition Law & Practice*, London, Butterworths § 15.27 (2001) (citations omitted).

> A recommendation made by an association is a decision of an association of undertakings for present purposes. Even a non-binding recommendation can constitute a decision for these purposes…. If a trade association recommends to its members to engage in anti-competitive behaviour then not only will the members be liable…but the trade association itself will be liable.

See also Whish, 2003, supra note 4, at 97-98.

2.7 The Act generally forbids all agreements that have as their object or effect preventing, restricting or distorting competition and then specifically proscribes "agreements…which directly or indirectly fix purchase or selling prices or any other trading conditions…." Section 4(1), Competition Act, 2002.

2.8 During the early course of the investigation, Equity maintained that the contract fees were only "suggested fees" and that the actors and agencies were free to negotiate other terms. As evidence of the "suggested" nature of the terms, Equity cited the first paragraph of the "General Notes of Guidance," which provides: "Any artiste asked to provide services at rates lower than in this agreement should first consult the Secretary of Irish Actors Equity Group."[7] While one can argue that this paragraph is evidence of the "suggested" nature of the fees, one may also conclude that the required notice to Equity's secretary may serve to deter deviation from the terms of the Agreement. *More importantly, the Authority's investigation revealed that the fees set forth in the Agreement were those used by the parties and did, in fact, reflect the agreed terms.*[8] Indeed, the Institute's representatives acknowledged that it had reached an agreement with Equity with reference to the prices that would

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[7] Agreement paragraph 1.

[8] Even in the absence of this finding, the conduct would still be objectionable.

> A recommendation made by an association has been held to amount to a decision, and it has been clearly established that the fact the recommendation is not binding upon its members does not prevent the application of Article 81(1). In such cases it is necessary to consider whether members in the past have tended to comply with recommendations that have been made, and whether compliance with the recommendation would have a significant influence on competition within the relevant market. In *NVIAZ International Belgium NV v. Commission* [Case 96/82 [1983] ECR 3369, [1984] 3 CMLR 276] an association of water-supply undertakings recommended its members not to connect dishwashing machines to the mains systems, which did not have a conformity label supplied by the Belgian association of producers of such equipment. The ECJ confirmed the Commission's view that this recommendation, although not binding, could restrict competition…."

Whish, 2003, supra note 4, at 97-98 [citations omitted]. The evidence is unequivocal that, even if the price terms were recommendations, the vast majority of market participants adhered to those terms and that it had the requisite effect on the market.

The Commission has addressed this issue recently. In considering whether a fee "guideline" promulgated by the Belgian Architects' Association was contrary to Article 81, the Commission observed:

> According to case law of the Court, an act described as a recommendation may be contrary to Article 81, whatever its legal status, if it constitutes the faithful reflection of a resolve on the part of an association of undertakings to coordinate the conduct of its members' [*sic*] on the market in accordance with the terms of the recommendation."

Comp/38.549 – PO / Barême d'honoraires de l'Ordre des Architectes belges (Belgian Architects' Association) Commission Decision of 24 June 2004, *quoting* Case 45/85 *Verband der Sachversicherer e.V.v. Commission* [1987] ECR 405.

be charged and paid. Accordingly, the Authority concluded that a case was stated under Section 4(1) of the Act.

2.9 Section 4(5) of the Act provides a defence where the parties can establish that their conduct is efficiency enhancing.[9] As the Parties are best placed to produce evidence of countervailing efficiencies, the onus of proof is on them to show that the arrangement can avail of Section 4(5). Neither Equity nor the Institute argued that there were countervailing efficiencies.[10]

Undertakings as the Term is used in the Act

Generally

2.10 The Institute does not contest that it is an association of undertakings and its constituent members are undertakings in their own right. The only real issue posed by this matter is whether the actors are "undertakings" and Equity "an association of undertakings" for the purposes of the Act. Put in layperson's terms, are the actors in question self-employed independent contractors (who are subject to the Act) or are they employees (who are not generally subject to the Act)?[11] The Authority has concluded that self-employed actors are undertakings[12] and that Equity is an association of undertakings when it acts on behalf of self-employed actors.

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[9] To qualify the agreement, decision or concerted practice must be one that "contributes to improving the production or distribution of goods or provision of services or to promoting technical or economic progress, while allowing consumers a fair share of the resulting benefit and does not (a) impose on the undertakings concerned terms which are not indispensable to the attainment of those objectives, (b) afford undertakings the possibility of eliminating competition in respect of a substantial part of the products or services in question." For a discussion of the application of this section, see Address of John Fingleton, "Balancing Economic Pros and Cons in Applying Article 81(3)," Irish Centre for European Law, Dublin, May 8, 2004.

[10] Indeed, they would be hard-pressed to do so. In construing the analogous provisions of the Treaty, the Court of First Instance has held that there are no agreements which, as a matter of law, could not satisfy the Article 81(3) defence. *Matra Hachette SA v. Commission*, Case T-17/93, [1994] ECR II-595, para. 85. Nonetheless, it is exceedingly difficult for a defendant to do so in a price fixing case. As Professor Whish observes: "it is highly unlikely that hard-core restrictions such as price-fixing and market-sharing agreements would be found to satisfy Article 83(3)…." Whish. 2003, supra note 4, at 150. Importantly the Commission has observed that price fixing falls into "the category of manifest infringement under Article 81(1) which it is almost always impossible to exempt under Article 81(3) because of the total lack of benefit to consumers." *See generally* Whish, 2003, supra note 4, at 476.

[11] Although application of the Act is limited to "undertakings," persons, including non-undertakings, who aid and abet a violation of the statute, may be guilty of an offence under Irish law.

[12] Some actors may not be undertakings; actors may be employees. This Decision Note and the underlying undertakings made by the Parties do not apply to them.

2.11 Section 3(1) of the Act defines an "undertaking" as "a person being an individual, a body corporate or an unincorporated body of persons engaged for gain in the production, supply or distribution of goods or the provision of a service." Obviously, actors are persons engaged for gain in the production of a service. Unfortunately, construction of this language is not so simple, and much ink has been spilled attempting to distinguish "undertakings" from employees who are not "undertakings" and therefore not subject to the Act.[13] We now address those issues. To do so, we turn to the Irish case law and to that of the Community courts.[14]

2.12 This issue is particularly important where the trade union has both employed persons and self-employed independent contractors as members. While perfectly legal for it to represent employees in collective bargaining with their employers, its trade union mantle cannot exempt its conduct when it acts as a trade association for self-employed independent contractors. If one were to take a wooden approach and find that all trade union members were exempt from the Act, the protections afforded Irish consumers by the Oireachtas in enacting the Competition Act, 2002 could easily be rendered illusory. Associations of independent pharmacists, publicans, and barristers—to name only a few—would shortly obtain safe haven for their members by adding "union" to their name and obtaining a negotiation license.[15]

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[13] Some jurisdictions have avoided these issues. For example, the United States Sherman Act states: "Every person who shall make any contract or engage in any combination or conspiracy hereby declared to be illegal shall be guilty of a felony…." 15 U.S.C. § 1. The law has been construed to apply to both natural persons and legal entities. While the issue of what constitutes an "undertaking" is an issue in many European cases, the definition of what constitutes a "person" for purposed of the Sherman Act is seldom litigated.

[14] It is noteworthy that while the term "undertaking" is defined by the Act, the term is not defined within the Treaty.

[15] The decision of the European Court of Justice in *Jean Claude Becu*, *Annie Verweire, Smeg NV and Adia Interim,* Case C-22/98 [1999] ECR-I-5665, [2001] 4 CMLR 968, is not to the contrary. There the Court held that workers, incorporated into the undertakings that employ them during the course of their employment relationship, are not themselves undertakings. But that begs the question of whether the individuals are employees or independent contractors, which is the issue we confront here. Similarly the decision in *Greally v. Minister for Education*, [1995] 3 IR 481 is inapposite. There the High Court considered the question of whether a trade union representing secondary teachers was an undertaking and concluded that it was not. Here the issue is whether the actors are themselves undertakings and Equity an association of undertakings. Commenting on *Greally* one writer observes: "an association representing self-employed persons (such as veterinary surgeons, publicans or travel agents) would be an association of undertakings (or at least, an undertaking) and subject to the Competition Acts." Power, 2001, supra note 6, at § 9.111. Likewise the fact that the Authority itself has taken the view that employees are not undertakings for purposes of the Act begs the question of whether actors in the instant case are employees or independent contractors.

RAI UNITEL, O.J. [1978] L.157/39, [1978] 3 CMLR 306 is even more instructive. There the Commission found that opera singers to be undertakings. There the Commission observed: "The Commission takes the view…that artistes are undertakings within the meaning of Article 85(1) when they exploit commercially their artistic performance." The Agreement here uses the very term "artiste" and clearly involves the commercial exploitation of their artistic performance.

2.13 It is similarly important that the legal status of the entity not be determinative. Whish, 2003, supra note 4, at 82. Although Equity is a trade union and doubtless can represent *bona fide* employees in true collective bargaining contexts, self-employed persons cannot don the mantle of union membership to evade the provisions of the law. *Cf.* C. Bellamy & G. Child, 2001, *European Law of Competition* § 2-006 (5th ed., Roth, ed.).[16]

Actors as undertakings

2.14 We begin by noting Justice Keane's admonition in *Henry Denny & Sons (Ireland) Ltd. v. The Minister for Social Welfare*[17] that each case must be decided on its facts.[18]

2.15 As a starting point, we consider whether the Revenue Commissioners treat actors as employees subject to PAYE[19] or as independent contractors. The Authority's investigation revealed that the vast majority of actors in the State are not treated as PAYE employees. While this one factor is not outcome determinative,[20] it is a useful starting place.

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[16] *See also French Inland Waterway Charter Traffic: EATE Levy,* OJ 1985 L219/35, [1988] 4 CMLR 698, on appeal Case 272/85 *ANTIB v. Commission* [1987] ECR 2201, [1988] 4 CMLR 677.

Authorised trade unions, which are holders of a negotiation license under the Trade Union Act, 1941, are entitled to the immunities conferred by Section 11-13 of the Industrial Relations Act, 1990. Those immunities apply to actions taken against authorised trade unions in respect of acts done by those unions "in contemplation or furtherance of a trade dispute." While a breach of the Competition Act, 2002 might be characterised as a "tortious act" under Section 13 of the Industrial Relations Act, 1990, it would not be "in contemplation or furtherance of a trade dispute." Therefore, the immunity provisions of the Industrial Relations Act, 1990 have no application or relevance to the instant case.

[17] [1998] 1 IR 34. In construing the statutory language, the Supreme Court stated: "The words 'for gain' connote merely an activity carried on or a service supplied, as it is in this case, which is done in return for a charge or payment…."

[18] *See McAuliffe v. Minister for Social* Welfare, [1995] 2 IL 238, where the Court stated:

> Having regard to the wide range of particular circumstances from case to case, it is not possible to devise any hard and fast rule as to what constitutes a servant and what constitutes an independent contractor. Each case must be considered on its own special facts in the light of the broad guidelines which case law provides.

See also Graham *v Minister for Industry and Commerce* [1933] IR 156 (Kennedy, C.J. dissenting), and Forde, *Employment Law* (2nd ed, 2001) at page 23.

[19] PAYE is "pay as you earn," which is a tax typically paid by employees.

[20] *Cf. In re Sunday Tribune Ltd* [1984] IR 505.

2.16 Other factors lend weight to the Authority's determination that most of the actors in question are independent contractors.

- Actors providing advertising services generally are not obliged to work for a single advertising agency. They may work for several at the same time.
- Such actors generally do not receive the benefits one usually associates with a contract for labour. For example, they generally do not receive holiday pay, health insurance, maternity leave and the like.
- Such actors generally do not have employment security.
- Such actors are free to accept or decline a specific piece of work as they see fit.
- Actors generally are not thought of as employees of a particular agency.

In light of these factors, the Authority considers most actors to be independent contractors and therefore undertakings subject to the Act. Actors, like many musicians, may accept an engagement, and decline another at will. They may be at this venue on one date and at another the next. Of course, there may be actors who have genuine contracts *of* service and who, like some musicians, are employees. The Authority's investigation of this matter revealed, however, that the vast majority of actors providing advertising services under this Agreement are independent contractors.

2.17 Having found the actors to be undertakings, it is clear that Equity—which entered into the Agreement on their behalf—is an association of undertakings.[21]

3. ENFORCEMENT ACTION

3.1 The Authority may enforce the Act by either seeking an appropriate civil remedy in the High Court or recommending the prosecution of a criminal action by the Director of Public Prosecution.[22] Generally the Authority pursues a criminal

[21] The fact that not every member of Equity may have been an undertaking does not alter this conclusion. Power, 2001, supra note 6, at §15.24 *citing* Dec No 16 *Association of Optometrists* 29 April 1993 and Notif CA/9/92 E (para. 70).

[22] The Authority may itself commence summary proceedings in the district courts.

prosecution only when there is clear evidence that parties are in breach of the "hard-core" provisions of Section 4(1) of the Act.

3.2 Although this case involves price fixing, the Authority elected in this instance to pursue civil relief. This decision is the product of the individual facts of this case and ought not be regarded as a statement of prosecutorial policy.

3.3 Prior to the commencement of legal proceedings, the Parties expressed their willingness to address the Authority's competition concerns.[23] The Authority and the Parties signed undertakings in June and August of this year.

4. DECISION

4.1 On the basis of the facts and for the reasons set out above, the Authority has decided that for so long as the Parties are in compliance with the terms of the Acknowledgement & Undertakings made by them to the Authority, the Authority shall close its investigation as it relates to the Parties and will refrain from commencing enforcement action against them.

4.2 This Decision of the Authority does not affect the rights of private parties to take action under the Act.

For the Competition Authority

Terry Calvani
Member and Director of the Cartel Division

[23] The Parties were helpful and cooperative throughout the Authority's investigation.

Appendix A

Institute of Advertising Practitioners in Ireland &
Irish Actors' Equity SIPTU

2002 Agreement on Minimum Fees
Effective from 1st October 2002

General Notes of Guidance in addition to those terms given in this document

1. Any artiste asked to provide services at rates lower than in this agreement should first consult the Secretary of Irish Actors Equity Group.
2. Producers should discuss clearly the exact terms of usage intended, when available, for any production with the artiste in advance. Artistes should ensure that this takes place before agreeing to any contract.
3. The airdate for a commercial shall be that stated on the contract. If the airdate is not given or agreed upon, it shall be deemed to be 2 months after the date of recording.
4. The contract should state clearly whether a usage fee shall be paid in part or in full, if the artiste's performance is cut from the finished commercial or the commercial is never transmitted.
5. Fees may be negotiated at time of contract for two years or the full three year life of the commercial.
6. Following the expiration of a one year or two year contract, additional use within the three year life of the commercial shall be subject to a negotiated fee which shall not be more per annum than the agreed sum for the first year's usage at current market rates. Such additional use within the life of the commercial requires the completion of a new contract.
7. The agreement provides that the life of TV, cinema and radio commercials is three years. Additional life must be negotiated for any further use. Unauthorised use out side of the contract shall incur an automatic penalty of not less than 150% of the original usage fee.
8. 'The Form of Engagement for Performers in Advertising' (copies available from Equity and IAPI) constitutes a formal contract to be completed in triplicate by the performer or his/her agent and two copies delivered to the advertising agency. Payment shall become due on or before 30 days from the end of the month of recording/filming.
9. Irish Actors Equity Group agrees that its members shall not negotiate any terms or conditions with non members of the Institute of Advertising Practitioners in Ireland which are more favourable than those contained in this agreement.
10. Cancellation Fee. In the event of a cancellation within 24 hours of the appointment it shall not exceed the studio fee. Cancellations made earlier are negotiable.

VOICEOVERS

Studio/Demo Fee applying to radio, TV and cinema.	Euro
Payable in year 1 only, in addition to usage fee	118.00
Narrative non-broadcast	162.00

*Tags: A Tag is a change of information relating only to time/place within the same station area and/or date/dealer at the beginning, middle or end of the script, performed by the same artiste, and which appear as a once-only reference. The fee is payable per changed item and is in addition to any studio/usage fees already paid for the commercial. If the tag includes a station or stations not covered in the original usage fee, then the usage fee for the additional station(s) must be paid. Other voice-overs for audio-visual productions and internet shall be subject to negotiations.

RADIO VOICEOVERS

Usage Fees - Year 1

RTE/2 FM	140.00
Lyric FM	51.00
Today FM	51.00
FM 104	37.00
98 FM	37.00
Star 106	37.00
Lite FM	37.00
96 FM	37.00
RTE Cork	22.00
Locals	22.00
All Stations (ROI)	415.00
All Stations (ROI + NOI)	481.00
Northern Ireland (where NOI is the exclusive market)	140.00
Newstalk	37.00
Spin	37.00
Red	37.00
Tags*	22.00

TELEVISION VOICEOVERS

Usage Fees - Year 1

	Euro
RTE/Network 2	500.00
TV 3	125.00
TG 4	125.00
E4	79.00
Sky- Ireland (1 channel)	125.00
Sky- Ireland (2 channels)	162.00
Northern Ireland (where NOI is the exclusive market)	500.00
All stations (ROI)	735.00
All stations (ROI and NI)	959.00
Tags*	162.00

CINEMA

Usage Fees - Year 1

ROI	250.00
NI	125.00

Studio fees are payable per commercial and not per studio session.

VISUAL ARTISTES

	Euro
Studio Fee	334.00
Usage Fees - Year 1	
RTE/Net 2	1001.00
TV3	467.00
TG4	467.00
Sky IRL.	467.00
Northern Ireland	501.00
All stations (ROI)	2134.00
All stations (ROI and NI)	2333.00
Cinema (ROI/NI)	467.00
Extra artiste daily rate	
Overtime @ €13 p.h. after 9 hours	121.00
Semi Featured Artiste's	525.00

Notes on Visual Artistes

Artistes should take care to have a signed contract before commencing work.

Edits or cutdown versions of a commercial to be regarded as the same commercial except where there are significant changes.

Overtime: 20% of the Basic Studio Fee per hour after 9 hours (including a break of one hour or part thereof).

Wardrobe: For attendance on a day outside the engagement period for a half day (up to 4 hours) €47.

Casting: Each call back will be charged at €47 for up to a half day.

Institute of Advertising Practitioners (IAPI),
8 Upper Fitzwilliam Street,
Dublin 2.
(01) 676 5991

Irish Actors' Equity SIPTU,
Liberty Hall,
Dublin 1.
(01) 874 0081

Appendix B

THE COMPETITION AUTHORITY

-and-

INSTITUTE OF ADVERTISING PRACTICIONERS IN IRELAND

Acknowledgement and Undertakings

1. The Institute of Advertising Practitioners in Ireland (hereinafter referred to as IAPI) acknowledges that the Competition Authority has concerns that certain arrangements involving Irish Actors Equity SIPTU and IAPI in Ireland regarding the "2002 Agreement on Minimum Fees" breaches Section 4 of the Competition Act, 2002 ("the Act").

2. In light of Paragraph 1 above, and in order to address the concerns of the Competition Authority, IAPI undertakes that it will not in future aid and abet Irish Actors Equity SIPTU and its self employed actor undertaking members to enter into or implement any agreement that has the object or effect of preventing, restricting or distorting competition between self employed actor undertakings on the one hand and IAPI or its members on the other, in the market for self employed actors services in Ireland.

3. In light of Paragraph 1 above, and in order to further address the concerns of the Competition Authority, IAPI undertakes that it will not in future make a decision as an association of undertakings to directly or indirectly fix the fees that its members pay to self employed actor undertakings in return for the services of self employed actor undertakings.

4. In particular, IAPI undertakes as follows:

a. Not to publish and / or circulate any notices of minimum fees to be paid to self employed actor undertakings who are members of Irish Actors Equity SIPTU;

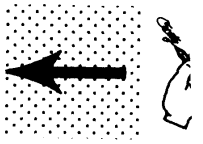
b. Not to provide or share with any advertising practitioner undertakings who are members of IAPI, information relating to minimum fees to be paid to self employed actor undertakings that are members of Irish Actors Equity SIPTU;

c. Not to co-ordinate with Irish Actors Equity SIPTU or its self employed actor undertakings members with respect to the fees to be paid to self employed actor undertakings by advertising practitioner undertakings who are members of IAPI;

5. The Competition Authority accepts that the undertakings set out in Paragraphs 2, 3 and 4 above resolve its concerns as identified in Paragraph 1 above. For so long as IAPI is in compliance with Paragraphs 2, 3 and 4 above, the Competition Authority shall refrain from instituting proceedings against IAPI, its directors and employees, with respect to the "2002 Agreement on Minimum Fees".

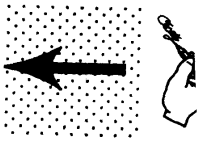
6. The acknowledgement and undertakings provided herein shall be binding on the successors and assigns of IAPI.

Dated this 24th day of August 2004, in Dublin Ireland



AGREED TO AND ACCEPTED BY:

Signed: _____ JOHN HORGAN



(Print Name)

Secretary for and on behalf of Institute of Advertising Practitioners in Ireland

Signed: _____

(Print Name)

Member for and on behalf of the Competition Authority

THE COMPETITION AUTHORITY

-and-

IRISH ACTORS EQUITY SIPTU

Acknowledgement and Undertakings

1. Irish Actors Equity SIPTU acknowledges that the Competition Authority has concerns that certain arrangements involving Irish Actors Equity SIPTU and the Institute of Advertising Practitioners in Ireland regarding the "2002 Agreement on Minimum Fees" breaches Section 4 of the Competition Act, 2002 ("the Act").

2. In light of Paragraph 1 above, and in order to address the concerns of the Competition Authority, Irish Actors Equity SIPTU undertakes that it will not in future aid and abet self employed actor undertakings to enter into or implement any agreement that has the object or effect of preventing, restricting or distorting competition between self employed actor undertakings on the one hand and the Institute of Advertising Practitioners in Ireland or its members on the other, in the market for self employed actors services in Ireland.

3. In light pf Paragraph 1 above, and in order to further address the concerns of the Competition Authority, Irish Actors Equity SIPTU undertakes that it will not in future make a decision as an association of undertakings to directly or indirectly fix the fees that its self employed actor undertaking members demand from the Institute of Advertising Practitioners in Ireland or its members in return for the services of self employed actor undertakings.

4. In particular, Irish Actors Equity SIPTU undertakes as follows:

   a. Not to publish and / or circulate any notices of minimum fees to be charged by self employed actor undertakings who are members of Irish Actors Equity SIPTU;

   b. Not to provide or share with any self employed actor undertakings information relating to minimum fees to be paid to self employed actor undertakings who are members of Irish Actors Equity SIPTU;

   c. Not to co-ordinate with the Institute of Advertising Practitioners in Ireland or its members with respect to the fees to be paid to self employed actor undertakings;

5. The Competition Authority acknowledges the right of Irish Actors Equity SIPTU to negotiate remuneration paid to actors in full time employment where for such employment the said actors are not self employed actor undertakings.

6. The Competition Authority accepts that the undertakings set out in Paragraphs 2, 3 and 4 above resolve its concerns as identified in Paragraph 1 above. For so long as Irish Actors Equity SIPTU is in compliance with Paragraphs 2, 3 and 4 above, the Competition Authority shall refrain from instituting proceedings against Irish Actors SIPTU, its directors and employees, with respect to the "2002 Agreement on Minimum Fees".

7. The acknowledgement and undertakings provided herein shall be binding on the successors and assigns of Irish Actors Equity SIPTU.

8. The acknowledgement and the undertakings provided herein shall remain binding so long as the activities described herein remain proscribed by the Competition Act. 2002.

Dated this 1st day of June 2004, in Dublin Ireland

AGREED TO AND ACCEPTED BY:

Signed: Jane Boushell

(Print Name) JANE BOUSHELL
Secretary for and on behalf of Irish Actors Equity SIPTU

Signed:

(Print Name) TERRY CALVANI
Member for and on behalf of the Competition Authority