

Empowering national competition authorities to be more effective enforcers of EU competition rules

Background

Isolde Goggin, Chairperson spoke at a European Commission Public Hearing on 19 April 2016 on the topic of *"Leniency and Sanctions in the Member States when enforcing EU competition rules"*. During her speech, Ms Goggin explained why it was vitally important that competition authorities should have access to the full range of sanctions, both criminal and civil to enforce competition law.

Isolde Goggin remarks

Open competition is crucial to the European project in many ways. When effectively enforced, it keeps access to markets open so that new companies are not stifled at birth, and established companies continue to develop and innovate. It protects both companies and consumers from anti-competitive behaviour, either by a single dominant company or by a group of companies illegally colluding.

Because competition law spans the entire economy and covers all companies, large and small, I believe that it needs an appropriate range of sanctions tailored to the type of behaviour. Because hard-core cartels are considered the most serious form of anti-competitive conduct, constituting deliberate behaviour aimed at damaging consumer welfare, criminal sanctions are entirely appropriate. These can range from imprisonment, through fines on individuals and companies, to the disqualification of convicted individuals from acting as company directors. Ireland has a strong track record in successfully prosecuting cartels, including the first jury conviction for price-fixing in Europe: to date, 17 individuals and 16 companies* have been convicted of price fixing and fined (although jail sentences have been imposed, these have always been suspended).

These penalties, however, can only be imposed after a criminal prosecution. Less serious offences are prosecuted summarily, before a judge of the District Court, while more serious offences are prosecuted on indictment in the Central Criminal Court, i.e. before a jury. In both cases, the offence must be proved to the criminal standard – "beyond reasonable doubt". This system is not appropriate to the detection and deterrence of other types of behaviour, such as abuse of dominance or anti-competitive vertical agreements, where the "balance of probabilities" standard used by civil courts is more appropriate. Unlike in most other European jurisdictions, however, civil courts in Ireland cannot impose fines on individuals or undertakings. The most the CCPC can achieve, therefore, by taking cases

through the civil courts is a declaration that the conduct is illegal, and an injunction to prevent the undertaking(s) from continuing it. The CCPC itself does not have the power to adopt prohibition decisions or make orders, grant remedies or impose penalties – those matters are reserved to the courts.

While we have been vigorous in using the powers, we have – for instance, taking court proceedings against trade associations for fixing prices, or by seeking injunctions to prevent collective boycotts – there are undoubtedly cases where we would have sought fines if that option had been available. The lack of any kind of financial penalty in civil court actions means that there is little deterrent effect in such cases: industry knows that it may as well try to engage in such conduct, because even if we intervene to stop it, they are not at a loss. In addition, there is no learning across the wider economy: the publicity attached to sanctions means that other firms take compliance more seriously and the level of competition improves across the whole economy. We regard it as crucial that we, and other competition authorities, should have access to the full range of sanctions, both criminal and civil. In particular, in the Irish context, we believe that it is vital that civil fines should be one of the sanctions available to enforce competition law.

Otherwise, enforcement is unduly biased towards some types of conduct, competition develops unevenly across different sectors and markets, and the welfare of consumers, not just in Ireland but in Europe as a whole, suffers.

**In addition, there is a case currently before the courts due to be heard in April 2017. This follows a CCPC investigation into allegations of anti-competitive activity in the industrial flooring sector which resulted in the Director of Public Prosecutions (DPP) charging an individual and an undertaking with entering into a bid rigging agreement.*