

“Shaping Contemporary Competition policy”

W@Competition Conference Enforcers' Roundtable

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Isolde Goggin, Chairperson, Competition and Consumer Protection Commission

Ireland’s markets and our work are about to change significantly as Britain prepares to exit the European Union. As an organisation, we need to be ready to anticipate and react to the changing circumstances.

While working towards our long term mission, “to make markets work better for consumers and businesses”, each year we revisit our priorities to make sure our actions work towards our mission.

In 2017, we continue to prioritise cartel detection, particularly bid rigging in procurement. We have a case due before the courts in April, involving the commercial flooring sector. Recently, we also confirmed an ongoing investigation into procurement for publicly funded transport services. We work hard to publicise successful cases in this area as they act as an important deterrent to would-be offenders.

In 2017, with the Office of Government Procurement, the State’s leading procurement body, we will be exploring systematic screening tools for procurement processes. This will assist in the detection and deterrence of bid rigging on public tenders.

Another key priority for 2017 is to take enforcement action against firms engaging in information sharing and anti-competitive agreements. Last year we were active in investigating breaches relating to information sharing and price signalling; we opened an investigation, which is ongoing, into price signalling within the motor insurance market. We also concluded two investigations with undertakings and commitments– one which related to information sharing between private motor insurers via a software product provided by software company, Relay, and the second related to the production of minimum pricing guides by a trade association. In January 2017, we also concluded an investigation, with an agreement and undertakings, from the Irish Property Owners Association. This related to whether the association had attempted to co-ordinate the business conduct of its members.

The CCPC also has an ongoing investigation into potential anti-competitive practices in the supply of bagged cement in Ireland. A search conducted at the premises of Irish Cement (a subsidiary of CRH) in May 2015 was subject to High Court action to prevent the CCPC from examining certain emails seized as it was argued that they were unrelated to the business of Irish Cement and were therefore not entitled to be seized. The High Court ruled against the CCPC, following which we successfully applied to the Supreme Court, this was heard on the 25 and 26 January and we are awaiting their judgement.

How authorities are adjusting to the ever more digital world

The CCPC typically receives over 40,000 contacts per year. Interestingly when we break down the trends in these contacts, issues within traditional markets (vehicles, telecoms, waste) dominate and so our focus is primarily concentrated there.

However, the case for regularly reviewing our consumer protection priorities is strong; our consumer laws are broad, new problems emerge and old practices can re-surface. And it is important that we keep abreast of how new markets are working and affecting consumers. As a relatively small agency, we have limited resources, which means that co-operation with other agencies is very important to us – it allows us to maximise our effect and learn from others. Collaborating with the European Commission and other National Competition Agencies has worked well for us - in 2015, we secured commitments from online travel agent platform, Booking.com. Although it was a cross Europe project, the CCPC secured commitments relating to price parity agreements specifically for accommodation providers in Ireland.

Our dual mandate in both competition and consumer protection also allows us to look at issues from all angles and employ a wider toolbox in assessing and tackling consumer harm.

The European Commission's consultation on NCA powers and toolkits

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.

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. Hard-core cartels are considered the most serious form of anti-competitive conduct, constituting deliberate behaviour aimed at damaging consumer welfare, and therefore 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. Although Ireland has a strong track record in successfully prosecuting cartels, including the first jury conviction for price-fixing in Europe, serious offences, such as cartels included the case due to be heard in April, are prosecuted on indictment in the Central Criminal Court. That is, before a jury. The offence must be proven to the criminal standard – “beyond reasonable doubt”. Unlike in most other European jurisdictions, Irish civil courts, where decisions are taken by judges based on the “balance of probability”, 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.

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. However, there are undoubtedly cases where we would have sought fines if that option were

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.

I believe 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. Any opportunity to broaden our enforcement tools is a very positive one.

How will Britain leaving the EU impact on your work for years to come

Given Ireland's history and geographic location, Brexit obviously raises serious issues regarding the free movement of people, the possible reinstatement of a hard border and the circumstances of the large number of citizens of one country living in the other. From an economic point of view, most of the focus in Ireland to date has been on exports – understandably so, given that Ireland is a small open economy with a very high level of international trade.

However, I believe that the effects on consumers and competition in domestic markets have not yet got the attention they deserve. Many UK firms are active in the Irish market, and while Ireland is ranked seventh for UK exports, with 5.5% of all trade in goods, the UK is ranked first in Irish imports, with 25.7% of all trade in goods. At this stage it is impossible to say how Brexit will affect this: the nature of the customs agreement with the rest of the EU, whether or not imports from continental Europe which physically pass through the UK are subject to tariffs, and currency fluctuations, will all play a part. It's not difficult, though, to envisage a situation where imports from the UK drop off and are not replaced by imports from other countries.

At present the UK is either in first or second place as a source of imports of food, clothing, electrical and electronic equipment and vehicles – all of them important consumer purchases. If this happens, markets will become less competitive and prices will rise. A move towards economic nationalism and protectionism is also possible. The CCPC will have to be a strong advocate on behalf of consumers, as well as a respected enforcer against abuses.

2017 is set to be a challenging year but irrespective of what challenges lie ahead we will continue to work hard to ensure that markets in Ireland are open and competitive and that consumers are protected and able to assert their rights when they need to.