

Coimisiún um Iomaíocht agus Cosaint Tomhaltóirí Competition and Consumer Protection Commission

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Competition and Consumer Protection Act 2014









Competition and Consumer Protection Commission

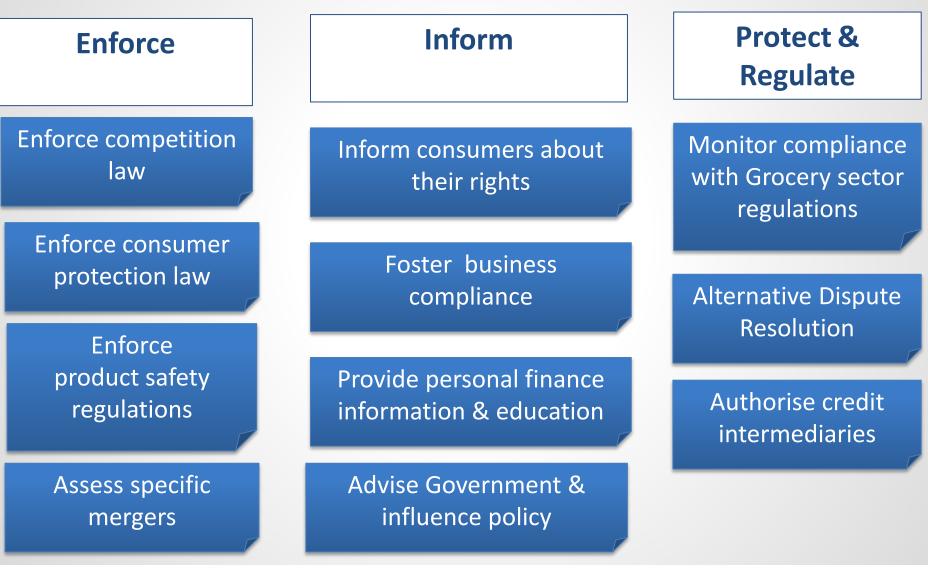




- Corporate Services



An Economy Wide Remit to..





Cartel Enforcement in Ireland

- First criminal cartel convictions in Europe
- First cartel conviction on indictment by a jury in Europe
- 2017 first conviction in Ireland for bid-rigging offences
- Nine custodial sentences totalling 84 months in prison all suspended
- Fines totalling €600,000
- Bid rigging particularly in public procurement is a major organisational priority



Level of sentencing

- Flooring cartel case (CCC)
 - Fines: €7,500 and €10,000
 - 3-month suspended sentence
- Car clocking case (DC)
 - Fine: €3,000 + compensation order
 - 6-months' imprisonment



Features of white-collar cases

- Length of trials (86 days/127 days in Anglo cases)
- Small number of cases and convictions

• Relatively low level of sentencing

• Subject matter



Difficulties in investigating non-cartel agreements and abuse

- Evidential standard for economic/regulatory behaviour
- Obtaining reliable witness evidence
- No civil penalties declarations/injunctions/undertakings
- Favouring of producer over consumer interests
- Is there sufficient deterrent effect?



A best-in-class competition law regime?

- Civil burden of proof (balance of probabilities)
- Fines imposed by civil courts or administrative bodies
- Effective leniency programme
- Retain criminal sanctions for most egregious behaviour
- UK regime a good example



Other regimes in Ireland

- ComReg: may apply to High Court to impose a "financial penalty"
- BAI: "financial sanction" broadcaster can choose to pay or go to High Court
- CBI: "monetary penalty" with appeal to IFSAT and thence to High Court
- DPC: General Scheme of Data Protection Bill transposing GDPR – "administrative fine" with appeal to High Court or Circuit Court



ECN+

- Empowering national competition authorities to be more effective enforcers
- Review of operation of Regulation 1/2003
- NCAs need means and instruments as well as powers



ECN+: Areas for Action

- Ensure that all NCAs:
 - Have effective enforcement toolbox
 - Can impose effective fines
 - Have effective leniency programmes
 - Have adequate resources and are sufficiently independent



Effective enforcement toolbox

- Core minimum effective powers to investigate and take decisions
- Tools backed up by effective sanctions for noncompliance
- Key procedural safeguards in place



Ability to impose deterrent fines

- Remove obstacles which prevent authorities from imposing deterrent and proportionate fines:
 - For criminal systems ensure additional alternative route
 - Ensure fines are calculated on basis of common parameters
- Ensure companies cannot escape payment through:
 - Corporate restructuring, or
 - Because they have no legal presence in territory of authority imposing fine



Leniency

- Ensure that companies benefit from leniency in the same way across the EU by translating core principles of ECN Model Leniency Programme into law
- Grant leniency and settlement material the same level of protection as before the Commission
- Protect employees and directors of immunity applicants from individual sanctions if they co-operate



Independence and resources

- Not all NCAs have safeguards in place to ensure functional independence
- Several NCAs do not have sufficient budget/staff to effectively enforce EU antitrust rules, e.g. cannot carry out simultaneous inspections



<u>CCPC submission - Law Reform</u> <u>Commission</u>

- Criminal system unsuited to detection and deterrence of non-cartel behaviour
- Ireland out of line with EU colleagues
- CCPC favours administrative regime
- Can comply with requirements of Irish constitutional law



Conclusions

- Crucial time in history of State
- Need strong competition law regime to withstand external shocks e.g. Brexit
- Stronger regime would lead to
 - More enforcement
 - More appeals
 - Possibility of settlements
 - Improved consumer welfare





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Thank you!

