



Coimisiún um
Iomaíocht agus
Cosaint Tomhaltóirí

Competition and
Consumer Protection
Commission

ISEL Regulatory Event

26th September 2017

Isolde Goggin

**Chairperson, Competition and Consumer Protection
Commission**

Competition and Consumer Protection Act 2014

The Competition Authority



National Consumer Agency



Competition and Consumer Protection Commission





Chairperson: Isolde Goggin

Organisation
Development
Unit



**Patrick
Kenny**

- Criminal Enforcement
- Legal Services
- Business Regulation



**Fergal
O'Leary**

- Consumer Enforcement
- Advocacy
- Communications & Market Insights
- International & Policy Development



**Brian
McHugh**

- Competition Enforcement & Mergers
- Corporate Services

An Economy Wide Remit to..

Enforce

Enforce competition law

Enforce consumer protection law

Enforce product safety regulations

Assess specific mergers

Inform

Inform consumers about their rights

Foster business compliance

Provide personal finance information & education

Advise Government & influence policy

Protect & Regulate

Monitor compliance with Grocery sector regulations

Alternative Dispute Resolution

Authorise credit intermediaries

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 non-compliance
- 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

CCPC submission - Law Reform Commission

- 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!