

Joint Committee on Enterprise, Trade & Employment Competition and Consumer Protection Commission (CCPC) Opening Statement by Isolde Goggin

I am Isolde Goggin, Chairperson of the Competition and Consumer Protection Commission. I am joined by Brian McHugh, Member of the Commission, who has responsibility for our Competition Enforcement and Mergers functions.

I would like to thank the Committee for the opportunity to speak to you today, and to provide our views on the Competition (Amendment) Bill 2021.

As the primary enforcement body for competition law, both the CCPC and our predecessor, the Competition Authority, have used all of our powers and resources to investigate suspected anti-competitive practices, and bring those damaging practices to an end. In doing so we have built up a strong track record of enforcement.

However, developments in enforcement mechanisms have left Ireland out of step with the rest of Europe. Our ability to act is grounded in our statutory powers and therefore, it is essential that those laws provide the CCPC with the right enforcement tools to effectively deter, detect and address white collar crime relating to competition law.

This Bill provides a significant opportunity for major change and will enable the CCPC to be more effective for the benefit of consumers, businesses and the economy as a whole. However, the devil is in the detail and the specifics of how this European legislation is transposed will determine how effective it is.

CCPC's enforcement powers

Competition law investigations are built on physical and digital evidence and require in-depth economic and legal analysis. We have consistently used our current powers to challenge anti-competitive practices in a wide variety of sectors. We secured Ireland's first conviction for bid-rigging, and recently we referred a file to the DPP into potential bid-rigging in the procurement of publicly-funded transport services. Last year, we issued preliminary findings against a number of businesses in the motor insurance sector and most recently we secured a High Court order in respect of a commitment agreement with Ticketmaster (*further details are provided below*).

We have a substantial enforcement track record, but there are areas where we could have done more if we had the same powers as other competition agencies in the EU. For example, at present, the most the CCPC can achieve in a significant amount of competition cases is to seek commitments that the business will cease the practice or behaviour and not do it again. If we cannot obtain

commitments ourselves, we can apply to the Courts for a declaration that the behaviour is unlawful and an injunction. In our view, this is not an effective deterrent to practices that harm competition and, ultimately, consumers.

Unlike other competition agencies, the CCPC cannot impose financial sanctions for breaches of competition law. We also cannot operate a leniency programme, which allows for the reduction in fines when a business provides evidence that it has participated in a breach of competition law. Leniency programmes encourage companies to come forward with evidence and result in much more effective and efficient investigations and enforcement.

Investigative powers

Secret cartels are extremely damaging and therefore are considered a serious breach of competition law. This type of activity has a very harmful effect on consumers and the wider economy as any or all of the following can happen as a result of businesses coming together to agree prices or to share out a market between them: prices go up while efficiency, innovation and the options available to consumers go down. They are also the most challenging breaches to detect and investigate as, by their nature, they involve a secret conspiracy. The parties often make considerable efforts to hide their involvement from their customers and indeed from the CCPC.

International experience has shown that cartelists have become more sophisticated in using electronic communications technology and social media apps to co-ordinate their behaviour. Indeed, many cartelists work diligently to avoid leaving a paper trail and only communicate verbally on their mobile phones.

For this reason, the CCPC is seeking investigative and surveillance powers which are appropriate to detect white-collar crime. We are very aware that the powers we seek must be balanced with safeguards for the rights of the individual. Currently, for the CCPC to search a premises we must present sufficient evidence to a judge in order to obtain a warrant and we anticipate this level of judicial oversight will be maintained in our new powers.

Implementation

This Bill will, for the first time in Ireland, allow the use of important enforcement tools commonly used across the EU. The CCPC believes that giving us these tools will fill a significant gap in the existing competition law enforcement regime in Ireland.

The detail of how the regime works is crucial in ensuring that the legislation is effective. From our experience, we know that for there to be a meaningful deterrent, the threat of enforcement must be real - and go beyond reputational damage. The CCPC is of the view that we require the power to adopt infringement decisions, grant immunity from or reductions in fines, make orders, grant remedies and, subject to the appropriate judicial oversight, impose fines in respect of breaches of competition law.

Conclusion

As the Chair of the CCPC, and previously the Chair of the Competition Authority over a number of years, I can confidently say that we have spent many years enforcing the law to the best of our ability. I can assure the Committee that the views put before you today come from much consideration over this time.

I firmly believe that the Competition (Amendment) Bill 2021, is a once in a generation opportunity to reform Irish competition law and align our enforcement regime with the rest of the EU, something that is long overdue. These are major changes and the detail of the Bill will be very important if we are to realise the full potential of these reforms and enable the CCPC to be more efficient, effective and impactful when tackling white collar crime in Ireland.

We recognise the CCPC must play its part in this, and in this regard we have been working closely with our parent Department, the Department of Enterprise, Trade and Employment. Both in terms of working through the detail of the legislation and considering the impact such powers will have on our organisation, particularly in ensuring there are sufficient resources, expertise and oversight. Our mission is to make markets work better and we are committed to playing our part in ensuring that this legislation benefits consumers, businesses and ultimately the economy.

We are happy to take any questions and explain further our views in more detail.

Additional Information – Investigations

Bid-rigging Conviction

The CCPC secured Ireland's first conviction for a bid-rigging cartel offence in May 2017 when Mr. Brendan Smith and Aston Carpets and Flooring pleaded guilty to implementing and taking part in an anti-competitive bid-rigging agreement in the procurement of flooring contracts for the offices hosting major international companies between 2012 and 2013. This followed an investigation by the CCPC and subsequent prosecution by the Director of Public Prosecutions (DPP). Mr. Smith was convicted of impeding a criminal prosecution and given a three-month suspended sentence. Mr. Smith was also fined €7,500 and disqualified from acting as a company director for a period of five years. Aston Carpets and Flooring was also fined €10,000. The original sentences imposed by the Central Criminal Court in 2017 were appealed by the DPP on the basis that they were unduly lenient. In June 2018, the Court of Criminal Appeal increased the fine handed down to Mr. Smith to €45,000

Transport Investigation

In 2016, following a complaint, the CCPC opened an investigation into potential bid-rigging in the procurement of publicly-funded transport services in certain parts of Munster and Leinster. As part of this investigation, the CCPC applied to the relevant local District Courts for search warrants to gather evidence relating to the investigation at identified locations. In executing these warrants, the CCPC undertook 22 searches in Tipperary, Waterford, Limerick and Kilkenny. Authorised officers from the CCPC and several members of An Garda Síochána, including a Detective Sergeant from the Garda National Economic Crime Bureau, carried out the searches. In 2019, the culmination of an in-depth investigation, involving a wide number of parties and multiple lines of enquiry, resulted in a file being referred to the DPP.

Motor Insurance Investigation

In September 2020, the CCPC issued preliminary findings to five insurers, an insurance industry trade association and an insurance broker:

- AIG Europe S.A.
- Allianz PLC
- AXA Insurance DAC
- Aviva Insurance Limited
- FBD Insurance PLC
- Brokers Ireland, formerly the Irish Brokers Association
- AA Ireland Limited

In 2016, the CCPC commenced an investigation into suspected anti-competitive practices in the provision of private motor insurance in the State, contrary to section 4(1) of the Competition Act 2002, as amended (the "2002 Act") and Article 101(1) of the Treaty on the Functioning of the European Union.

The anti-competitive cooperation activities under investigation include a practice which is commonly referred to as 'price-signalling'. Price signalling occurs when businesses make their competitors aware that they intend to increase prices, in turn causing further price increases across the sector. Price signalling can happen in public, through announcements or comments on prices, or in private through direct contacts between companies. If a business knows that their competitor is increasing prices then they may be encouraged to also increase prices, since their customers are less likely to move to their competitor.

The preliminary findings alleged that these organisations engaged in anti-competitive cooperation over a 21-month period during 2015 and 2016. The alleged anti-competitive cooperation consisted of public announcements of future private motor insurance premium rises as well as other contacts between competitors, all of which reduced levels of competition between the parties. The CCPC's findings are provisional.

The relevant parties now have the opportunity to consider and respond to the preliminary findings. It is open to them, under section 14B of the 2002 Act, to engage with the CCPC to offer commitments regarding their future behaviour to address the CCPC's competition concerns. The CCPC will carefully consider any responses before deciding if it will bring civil court proceedings pursuant to section 14A(1) of the 2002 Act or to take some other course of action. The investigation is ongoing.

Ticketing Investigation

In January 2017, the CCPC commenced an investigation into suspected anti-competitive practices in relation to the provision of tickets and the operation of ticketing services for live events. The CCPC opened this investigation because of concerns that activities by operators in the market for the supply of outsourced ticketing services to live events may be in breach of competition law and causing consumer harm. Ticketmaster Ireland holds a very significant share of this market in the island of Ireland. The CCPC had concerns that Ticketmaster Ireland may have abused a dominant position in the market by entering into long term exclusive contracts with contractual partners and that these contracts may have restricted competition in the market. Abuse of a dominant position and entering into anti-competitive agreements are prohibited by competition law.

The CCPC conducted an extensive investigation which involved engaging with industry parties. Ticketmaster Ireland denies breaching competition law but has nonetheless entered into an agreement with the CCPC in which Ticketmaster Ireland has given certain commitments. In summary, Ticketmaster's agreement has committed Ticketmaster to remove exclusivity clauses with respect to venues in relation to the supply of outsourced primary ticketing services, and limit the time period of exclusivity clauses to 3 years in contracts with live event organisers. The overall contract duration will be capped at 5 years, and there will be no automatic contract renewals.

On 15 December 2020 the CCPC made an application to the High Court for an order pursuant to section 14B(2) of the Competition Act 2002, as amended, in the terms of an agreement dated 20 November 2020 between the CCPC and Ticketline Unlimited Company trading as Ticketmaster Ireland.

Having granted the CCPC's application, the High Court made an order in the terms of the CCPC's agreement with Ticketmaster on 15 December 2020, subject to the expiry of a standstill period of 45 days. Following the conclusion of this standstill period, the order came into effect on 29 January 2021. As a result, the terms of the agreement came into effect as of 29 January 2021 and are now binding on Ticketmaster.

CCPC's Remit

- The CCPC enforces Irish and European competition law. We conduct investigations and can take civil or criminal enforcement action if we find evidence of breaches of competition law.
- The CCPC enforces a wide range of consumer protection legislation. The laws cover transactions between businesses and consumers across all sectors of the economy.
- The CCPC must be notified about proposed mergers, acquisitions and takeovers which reach a certain financial threshold, and all media mergers. We assess whether they are likely to result in a substantial lessening of competition.
- The CCPC enforces product safety regulations – we work to ensure that product safety standards are being complied with through the General Product Safety Directive and other relevant regulations. We share information about dangerous goods and enforcement measures across the EU through the RAPEX system.
- We have a role in promoting competition and enhancing consumer welfare by influencing public debate and policy development. We highlight to Government and other policymakers the possible impact of proposed legislation or regulations on competition and/or consumer welfare. We also study markets and recommend ways in which competition or the experience of consumers can be improved.
- We inform and educate consumers through our helpline and website about their rights and help them resolve issues when they buy products or services. And we have a specific role in financial education and providing information about financial products. Each year we help 40,000+ consumers through our helpline and 1.7 million consumers visit our website. We also run public awareness campaigns.