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### *Bill Prasifka*

In 2007 the Competition Authority amassed a solid record of achievement and continued to make progress towards its ultimate goal of establishing a more vibrant competition culture in Ireland.

The year saw the first criminal conviction under the Competition Act, 2002 in the Central Criminal Court. The defendant, Denis Manning, was convicted of aiding and abetting a cartel relating to the distribution of Ford motor vehicles. That conviction was particularly significant as it sent a strong signal to the wider community that the courts viewed competition offences as serious crimes against the public and that offenders should expect severe sanctions.

Also during the year, two additional convictions were secured for cartel offences. These convictions were in the heating oil case in the West of Ireland, a cartel in which 15 criminal convictions had been secured in 2006. 2007 also saw the initiation of criminal proceedings of a new cartel involving the distribution of Citroen motor vehicles. A Book of Evidence was served on one defendant and summonses were issued against 13 other defendants who will appear in court in 2008.

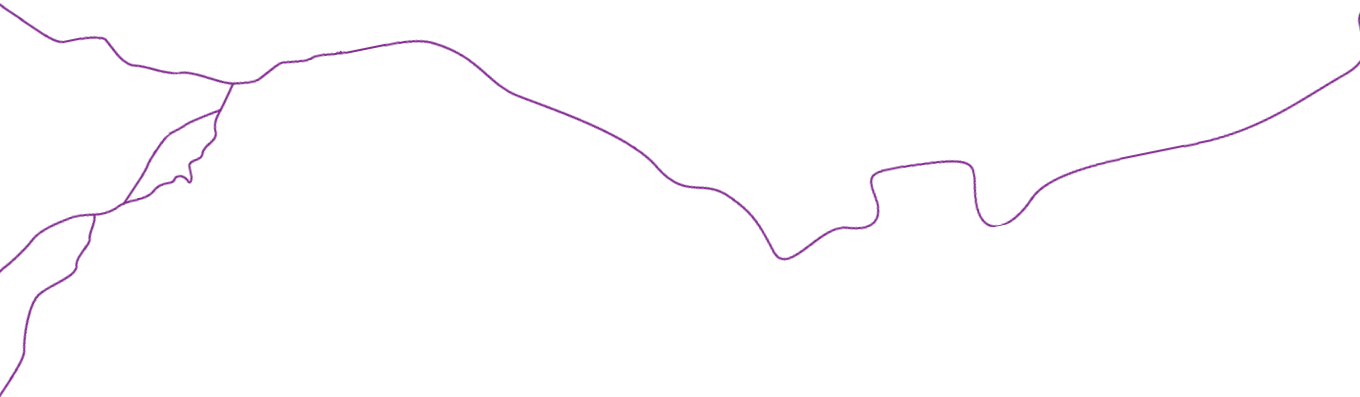
International experience has suggested that non-monetary sanctions against individuals can be the most effective deterrent of anti-competitive conduct. I believe this will hold true in Ireland. Convictions in Ireland to date have been accompanied not only by fines but in two cases by custodial sentences, albeit suspended, and in other cases, by disqualification from holding directorships. For the Competition Authority, these non-monetary sanctions are an important step towards establishing an enforcement regime that will effectively deter anti-competitive behaviour.

Civil enforcement remains one of our priorities and the Competition Authority recorded a number of successes, most notably in the healthcare area. Effective competition benefits consumers in all areas of the economy and healthcare is no exception. It is particularly important that our services markets operate efficiently and the Competition Authority will continue to intervene vigorously in areas where it sees producer interests operating to the detriment of consumers.

Of course, I would be remiss if I did not mention the significant setback incurred by the Competition Authority as a result of the Supreme Court's overturning of the High Court decision in our action against the Irish League of Credit Unions. We have carefully studied that decision, committed ourselves to heeding the important lessons learned therein and recalibrated our civil enforcement strategies to ensure that future cases are received more favourably by the courts.

In merger enforcement the Competition Authority achieved a particularly good record in 2007 issuing reasoned determinations in 70 cases. This is a decrease in the number of determinations from last year, partly reflecting the success of the Competition Authority in having a number of changes implemented to reduce the scope of mergers which must be notified to us under the Act. This is to be welcomed, as a more streamlined approach allows the Competition Authority to devote more resources to mergers that raise difficult issues of law, fact or economic analysis. This is reflected in our final work product with a number of decisions demonstrating a growing sophistication in both analysis and remedy, all completed within tight deadlines. Our merger enforcement regime compares well when set against best international practice.

In the important area of competition advocacy, 2007 saw major advances in our long-standing advocacy of greater competition in the area of professional services. We published a study on the provision of Dental Services which pointed out several areas where there is an urgent need for improvement. Perhaps even more significantly, in 2007 we saw the acceptance at the highest levels of government



of the need to end the anachronistic practice of self-regulation that has been the bugbear of the Irish professions, and particularly the legal professions. However, notwithstanding acceptance of the principle, the implementation of significant reform of the legal professions awaits and we expect to continue to push for reform of the legal professions in the year ahead.

The year ended with the Competition Authority making a substantial contribution to the consultation being led by the Department of Enterprise, Trade and Employment on the review of the Competition Acts. The decisions of the Department at the time of the last review which resulted in the Competition Act, 2002 are in no small part responsible for the successes I am able to report here. Similar foresight on the part of the Department in the upcoming review will also yield dividends in the years to come.

Our achievements, however, are only possible with external support. The Department of Enterprise, Trade and Employment has also been a stalwart advocate for competition throughout the year. Our successes in criminal enforcement would not have been possible without the expertise, commitment and resourcefulness of the Director of Public Prosecutions and the Office of the Chief Prosecution Solicitor. We are grateful for their continued support.

Finally, I must pay tribute to the staff of the Competition Authority. Their intelligence, dedication and diverse multi-cultural backgrounds come together to make a dynamic workplace and it is my continued pleasure to be associated with them..



## Enforcing Competition Law

Competition law is designed, primarily, to protect and benefit consumers who expect to purchase goods and services at a competitive price. Greater competition provides good value for consumers, stimulates business and enhances the economy as a whole. Anti-competitive behaviour results in consumers paying higher prices without any extra benefits and undermines the competitiveness of the Irish economy.

A particularly bad disservice to consumers comes from cartels: price-fixing, bid rigging and allocation of markets by competitors which deprive consumers of the benefits of vigorous competition on price, service and innovation. There are no pro-competitive benefits to consumers from cartels, which invariably are designed to result in hidden costs and higher prices to the benefit of competitors and to the detriment of competition and consumers.

Criminal enforcement of competition law began in 2006 with 15 convictions of individuals and companies in relation to the heating oil cartel. This included the first conviction in Ireland and Europe before a jury. A decision by the Department of Enterprise, Trade and Employment to increase the penalties for breaches of competition law has since helped to enhance the enforcement powers of the Authority and in particular new proceedings initiated in 2007 are directly related to those increased resources.

The Competition Act, 2002 increased the penalties for infringements and placed them within the jurisdiction of the Central Criminal Court. In February 2007, the first criminal conviction and sentence was imposed by the Central Criminal Court under the Competition Act, 2002. More proceedings will be brought by the Director of Public Prosecutions in 2008 on foot of investigations by the Competition Authority.

Anti-competitive cartel conspiracies are nothing more than theft by people looking to make extra profits at the expense of consumers. As noted by Mr. Justice McKechnie in the Central Criminal Court during sentencing in a cartel case involving the motor retail trade<sup>1</sup>:

<sup>1</sup> DPP v Denis Manning, Central Criminal Court, unreported judgement, 9th February 2007

*'This type of crime is a crime against a consumer and is not simply against one or more individuals. To that extent it is different from other types of crimes; and while society has an interest in preventing, detecting, and prosecuting all crimes, those which involve a breach of the Competition Act are particularly pernicious. In effect every individual who wished to purchase for cash, a vehicle from these dealers over the period which I've mentioned were liable to be defrauded, and many surely were, by the scheme and by the practices which unashamedly this cartel operated. These activities, in my view, have done a shocking disservice to the public at large.'*

### 1.1 Criminal Cases Taken by the Director of Public Prosecutions

#### Heating Oil Cartel

The Director of Public Prosecutions v Michael Flanagan trading as Flanagan Oil, Con Muldoon, Muldoon Oil Limited, James Kearney, Cloonan Oil Limited, Ruby Oil (Roscommon) Limited, Kevin Hester, Sean Hester, All Star Oil Limited, Alan Kearney, Mor Oil Limited, Pat Hegarty, Sweeney Oil Limited, Gort Oil, Declan Geraghty, Matt Geraghty Oil Limited, Michael McMahon, Fenmac Oil & Transport Limited, Tom Connolly, Eugene Dalton Snr, Corrib Oil Company Limited, Kevin Cunniffe, Hi-Way Oil (Galway) Limited, JP Lambe.

In 2007, the prosecution of various members of the heating oil cartel continued. On 23rd January 2007, in Dublin Circuit Criminal Court, Corrib Oil Company Limited and its director, Eugene Dalton Snr, were convicted and sentenced. Corrib Oil Company Limited was fined €15,000 and Eugene Dalton was fined €10,000. Eugene Dalton was disqualified automatically for a period of five years from holding a directorship of any company in Ireland under Section 160 of the Companies Act, 1990. A *nolle prosequi* was entered by the DPP against another director of Corrib Oil Company Limited, Thomas Connolly. On 9th May, a *nolle prosequi* was entered by the DPP against Sweeney Oil Limited leaving Pat Hegarty as the last remaining defendant in the heating oil prosecution. A date in 2008 will be set for his trial. These convictions bring to 17 the total number convicted in the heating oil case.

**TABLE 1.1 OUTCOME OF OUTSTANDING PROCEEDINGS IN THE HEATING OIL CASE AS OF DEC. 31st 2007**

Defendant	Result
Corrib Oil	Convicted on 23rd January 2007 and fined €15,000
Tom Connolly	<i>Nolle prosequi</i> , 23rd January 2007
Eugene Dalton Snr	Convicted on 23rd January 2007 and fined €10,000
Sweeney Rabbitte Oil	<i>Nolle prosequi</i> , 9th May 2007
Pat Hegarty	Awaiting trial

#### Irish Ford Dealers Association

The Director of Public Prosecutions V Denis Manning

In April 2006, the Director of Public Prosecutions initiated proceedings against Denis Manning in Cork District Court. Mr. Denis Manning was summoned to court to answer two charges alleging that he aided and abetted the Irish Ford Dealers Association and its members in the implementation of agreements to fix the selling prices of Ford motor vehicles within the State between May 2001 and June 2003. The first of the two charges related to an alleged offence under the Competition Act, 1991 as amended and the second of the two charges related to an alleged offence under the 2002 Act.

On 21st June 2006, Mr. Manning was returned for trial from Cork District Court to the Central Criminal Court on both charges. He made his first appearance before the Central Criminal Court sitting in Dublin before Mr. Justice Paul Carney on the 26th June 2006. The case was adjourned to the 24th July 2006 when Mr. Justice Carney set the case against Mr. Manning down for trial on the 30th January 2007 in the Central Criminal Court to sit specially in Cork. A designated competition judge in the Central Criminal Court, Mr. Justice Liam McKechnie, was assigned to try the case.

On Tuesday 30th January 2007, Mr. Manning pleaded guilty before the Central Criminal Court, sitting in Cork, to one count of violating the Competition Act, 2002. That charge read:

*That you Denis Manning did between the 1st day of July 2002 and the 30th day of June 2003, both dates inclusive, within the State, did aid and abet the Irish Ford Dealers Association and its members, all undertakings within the meaning of Section 3 of the Competition Act, 2002, to commit an offence, namely implementing an agreement which had as its object the prevention, restriction or distortion of competition in the trade of motor vehicles in the State by directly or indirectly fixing the selling price of motor vehicles. Contrary to Section 4(1) and 6 of the Competition Act, 2002 and contrary to Section 7(1) of the Criminal Law Act, 1997.*

Mr. Justice McKechnie delivered judgement in the case on the 9th February 2007 imposing a 12 month custodial sentence, suspended for five years, together with a fine in the amount of €30,000. Mr. Justice McKechnie stated that the crime perpetrated by Mr. Manning was particularly pernicious as it was against consumers in general and not just one or two individuals. The activities which had been accredited to the Irish Ford Dealers Association had, in the view of the Judge, *'done a shocking disservice to the public at large'*. He continued by commenting on why the Court should consider the imposition of a custodial sentence in such cases. He stated at page 83:

*'In my view there are good reasons as to why court should consider the imposition of custodial sentences in such cases.*

*Firstly, such a sentence can operate as an effective deterrent in particular where if fines were to have the same effect they would have to be pitched at an impossibly high figure.*

*Secondly, fines on companies may not always guarantee an adequate incentive for individuals within those firms to act responsibly. This particular point may not, in some circumstances, have the same force where individuals are concerned.*

*Thirdly, a knowledge within undertakings that courts will regularly make use of a custodial sentence may act as an incentive to people to offer greater co-operation in cartel investigations against, and quite frequently against their employers.*

*Fourthly, prison, in particular for those with unblemished pasts, for those who are respected within the community, and for those who are unlikely to re-offend can be a very powerful deterrent and finally, the imposition of a sentence for the type or category of persons above described can carry a uniquely strong moral message. Accordingly they are, in my view, some very powerful reason to custodise an individual who has been found guilty under the 2002 Act. In this context I would like to state clearly and categorically that I see no room for a lengthy lead in period before jailing convicted persons becomes commonplace under this legislation.'*

#### **Citroen Dealers Association**

**The Director of Public Prosecutions V John McGlynn**

The Director of Public Prosecutions instituted proceedings against Mr. John McGlynn alleging that he breached Section 7(1) of the Criminal Law Act, 1997 by aiding and abetting the members of the Citroen Dealers Association to commit an offence, namely the entering into an agreement, which had as its object the prevention, restriction or distortion of competition in the trade of motor vehicles in the State by directly or indirectly fixing the selling price of motor vehicles. Such an offence is contrary to Section 4(1) and 6 of the Competition Act, 2002. Mr. John McGlynn faces six charges spanning the time period from 1st July 1998 to 25th November 2003 during which time such activity was a criminal offence contrary to the Competition Act, 1991 as amended and the Competition Act, 2002.

Judge Brian Sheridan sent Mr. John McGlynn forward for trial to the Central Criminal Court on 5th June 2007. The trial has been listed for hearing before Mr. Justice McKechnie for the 3rd March 2008.

#### **Other Proceedings Instituted by the Director of Public Prosecutions**

In 2007, proceedings were initiated against a number of other members of the Citroen Dealers Association by the Director of Public Prosecutions. The charges proffered against the various Citroen dealerships within the State, and individual officers and

directors of those undertakings, allege that they agreed and fixed prices on the sales of Citroen cars in breach of Sections 4 and 6 of the Competition Act. Those dealers and directors are listed below.

**TABLE 1.2**

Defendant	Date of First Appearance in District Court
Mr John McGlynn	Trial to begin on 3rd March 2008
Burse Peppard Limited	7th January 2008
Mr James Bursey	9th January 2008
Patrick Duffy Motors (Newbridge) Limited	9th January 2008
Mr Patrick Duffy	9th January 2008
Ravenslodge Trading Limited	18th January 2008
Mr Jack Doran	18th January 2008
Finglas Motors M50 Limited	4th February 2008
Gowan Motors (Parkgate) Limited	4th February 2008
Mr Michael Patrick Gibbs	4th February 2008
Mr Bryan Smyth	4th February 2008
James Durrigan & Sons Limited	11th February 2008
Mr James Durrigan	11th February 2008
Mr Bernard Byrne	14th February 2008

### 1.2 Use of Enforcement Powers

Under Sections 31 and 45 of the Competition Act, 2002, the Competition Authority may issue a summons and/or apply for search warrants in order to assist its investigations of breaches of the Act. During 2007, the Competition Authority was granted 10 search warrants in relation to ongoing investigations into anti-competitive behaviour. These search warrants were executed by Authorised Officers of the Authority. Assistance was provided by the Garda Bureau of Fraud Investigation and local members of An Garda Síochána around the country.

In addition, the Competition Authority issued 18 witness summonses during the year. The Competition Authority can issue summonses to compel witnesses to give evidence under oath and produce documents as requested. Failure to comply with these summonses is an offence under the Competition Act, 2002.

**TABLE 1.3**

Use of Enforcement Power	2007	2006	2005	2004	2003	2002	2001
Search Warrants	10	9	42	24	21	18	2
Summonses	18	38	46	58	69	56	11

### 1.3 Guidance on the Application of Competition Law

#### Guidance in Respect of Collective Negotiations Relating to the Setting of Medical Fees

In January 2007, the Competition Authority published a Guidance Note in respect of collective negotiations relating to the setting of medical fees.

In 2005, the Competition Authority concluded an investigation into the way in which fees for consultants' services are negotiated between consultants and private health insurers which, in the Authority's view, breached Section 4(1)(a) of the Competition Act, 2002. The Authority issued a letter of initiation outlining its view to the Irish Hospital Consultants Association and a settlement was subsequently reached between the Authority and the Irish Hospital Consultants Association on 27th September 2005.

The Competition Authority published a Consultation Document in January 2006 to determine the scope of guidance that could be provided in respect of collective negotiations relating to the setting of medical fees. The aim of the Consultation Document was to get a better understanding of the way in which fees for consultants' services are negotiated between consultants and private health insurers.

As a consequence of the consultation process, the Competition Authority decided to publish a Guidance Note under Section 30(1)(d) of the Competition Act, 2002. The objective of the Competition Authority guidance is to ensure that consultants (and other health professionals in a similar position) are aware of the prohibitions contained in the Competition Act, 2002 as they apply to them and to assist them in complying with the Act.

#### 1.4 Civil Cases Taken by the Competition Authority

Under Section 14 of the Competition Act, 2002, any aggrieved person has the right of action to seek relief if they are harmed by an anti-competitive agreement or an abuse of a dominant position. This right applies equally to the Competition Authority and anyone else that would be deemed to be an aggrieved party. Actions under Section 14 are civil cases and are decided by the court on the balance of probabilities. An aggrieved party can apply for relief by way of injunction or declaration. The court may award damages, including exemplary damages. Section 14 also allows the court to discontinue or adjust a dominant position (which may include the sale of assets).

#### The Competition Authority V Irish League of Credit Unions

In May 2007, the Supreme Court overturned an earlier High Court judgement that the Irish League of Credit Unions (ILCU) had abused its dominant position by 'tying' the provision of a Savings Protection Scheme (SPS) to the purchase of its credit union representation services.

The case was the first time that the Supreme Court has been called upon to adjudicate on a substantive issue in Irish competition law. The Court affirmed the importance of promoting consumer welfare as the 'entire aim and object of competition law'. It continued, 'Competitive markets must serve the consumer. That is their sole purpose.'

TABLE 1.4 INVESTIGATION & ENFORCEMENT POWERS OF THE COMPETITION AUTHORITY

Investigation & Enforcement Powers	Description
Types of Investigations carried out	<ul style="list-style-type: none"> <li>• Criminal investigations</li> <li>• Civil investigations</li> <li>• Assessment of Mergers</li> <li>• Formal Studies</li> </ul>
Power of Entry and Search	Authorised officers of the Competition Authority can enter or search any premises or dwelling with a warrant issued by the District Court
Power to Seize Documents and Records by Warrant	Authorised Officers of the Competition Authority can seize documents/records on foot of a warrant issued by the District Court
Power to Summon Witnesses and to Require the Production of Records and Information	<p>The Competition Authority can summon a witness to attend before it to be examined under oath and can require production of records and information from that witness</p> <p>Witnesses have the same immunities and privileges as a witness before the High Court</p> <p>Non-compliance is a criminal offence</p>
Power to require information from third parties	The Competition Authority can obtain information from third parties, including professional advisors and financial institutions
Methods of Concluding Investigations	<ul style="list-style-type: none"> <li>• <b>Criminal prosecution (on indictment)</b> – Brought by the DPP in Central Criminal Court (or the Circuit Criminal Court under the 1991 Act) following an investigation by the Competition Authority</li> <li>• <b>Criminal prosecution (summary)</b> – Brought in the District Court by the Competition Authority</li> <li>• <b>Civil Action</b> - Brought in the High Court by the Competition Authority in order to halt suspected anti-competitive behaviour</li> <li>• <b>Settlement without court action</b> – Where the parties involved recognise and remedy potential breaches of competition law</li> </ul>
Maximum Level of Fines & Penalties	<ul style="list-style-type: none"> <li>• <b>Criminal (on indictment in the Central Criminal Court)</b> €4 million or 10% of turnover, whichever is the greater, and/or up to five years in prison</li> <li>• <b>Criminal (summary in the District Court)</b> €3,000 and/or up to six months in prison</li> <li>• <b>Civil Action (by the Competition Authority)</b> Injunctive and declaratory relief in lieu of fines</li> <li>• <b>Civil Action (by injured parties)</b> Damages at the discretion of the Court</li> </ul>

The Supreme Court held that no unlawful *'tying'* had occurred as the SPS did not constitute a distinct product from *'the bundle of services that ILCU has provided to its own members'*. The Authority's case fell on the narrow issue of whether or not the SPS was a separate product. However, the Court took the view that if this hurdle had been overcome then the ILCU would probably have been dominant in SPS and that as a result *'it is probably inescapable that it is engaged in abusive tying activity.'*

Further, while the Supreme Court was not ultimately required to decide on whether the credit union representation services provided by ILCU consisted of a distinct market, it considered the existence of such a market *'troubling'* because of the implication that *'every association of business undertakings should be held, for the purposes of competition law, automatically to be engaged in a business consisting of the provision of services for reward'*. The Court also took the view that *'no evidence was presented of the existence of any market consisting of sellers and buyers of representation services.'*

#### **The Competition Authority V Beef Industry Development Society**

In June 2003, the Competition Authority initiated High Court proceedings against the Beef Industry Development Society (BIDS). These legal proceedings challenged a proposed rationalisation of the beef processing industry – led by a group of beef processors – which the Competition Authority believed constituted a breach of Section 4 of the Competition Act, 2002. In July 2006, the High Court refused the relief sought by the Competition Authority and an appeal was filed with the Supreme Court.

In March 2007, the Supreme Court decided to lodge a request to the European Court of Justice (ECJ) for a preliminary ruling under Article 234 of the Treaty in relation to the appeal filed by the Competition Authority against the 2006 High Court judgement.

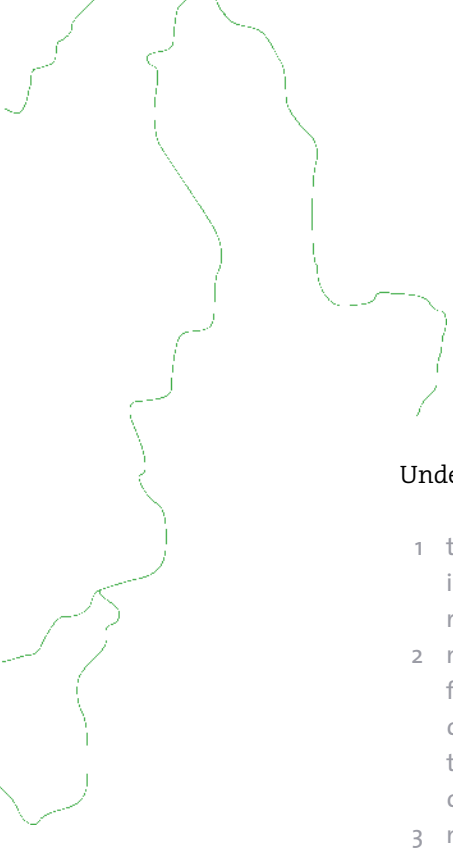
The Supreme Court asked the ECJ to clarify whether or not the agreement among beef processors to reduce capacity was *'to be regarded as having as its object, as distinct from effect, the prevention, restriction or distortion of competition within the common market and therefore, incompatible with Article 81(1) of the Treaty establishing the European Community?'* The ECJ's interpretation of Article 81(1) of the Treaty will enable the Supreme Court to deliver judgement on this matter.

#### **The Competition Authority V Irish Medical Organisation**

On 25th May 2007, the Competition Authority agreed settlement terms with the Irish Medical Organisation (IMO) in relation to legal proceedings initiated in the High Court by the Competition Authority. The IMO is the national representative body for general medical practitioners (GPs) and non-consultant hospital doctors, in addition to 800 consultant members. In February 2005, the Competition Authority began an investigation into allegations of price-fixing by the IMO in relation to the provision of Private Medical Attendant Reports (PMARs) to life assurance companies. It was further alleged that the IMO threatened to withdraw these services if the life assurance companies did not pay a proposed increase in fees.

The Competition Authority carried out an investigation into whether or not the IMO had acted in breach of Section 4 of the Competition Act, 2002. Arising from that investigation, the Competition Authority initiated proceedings in the High Court against the IMO claiming that the IMO's conduct had as its object the prevention, restriction or distortion of competition in the market for medical information provided to life insurance companies and/or had as its effect the prevention, restriction or distortion of competition in the market for medical information provided to life insurance companies and the downstream market for life insurance.





Under the settlement terms the IMO agreed:

- 1 to refrain from recommending or expressing an opinion on fees to be provided to life insurance companies by GPs or otherwise facilitating co-ordinated behaviour with regard to fees for these services.
- 2 not to directly or indirectly instruct or recommend to GPs to withhold services from life insurance companies in breach of competition law, or otherwise facilitate co-ordinated behaviour in breach of competition law regarding the response of GPs to particular proposals on fees to be charged for services provided to life insurance companies by GPs.
- 3 not to issue any communications to its members that directly or indirectly instruct or recommend to GPs to withhold services from life insurance companies in breach of competition law, or otherwise facilitate co-ordinated behaviour in breach of competition law regarding the response of GPs to particular proposals on fees to be charged for services provided to life insurance companies by GPs, including but not limited to PMARs and medical examinations.
- 4 not to directly or indirectly discourage its members from individually negotiating with life insurance companies.
- 5 not to indicate to life insurance companies that its members will refuse to supply services to the life insurance companies if they do not accede to the fee levels and/or increases sought by the IMO.
- 6 not to encourage, suggest, advise or otherwise induce or attempt to induce any third party to engage in any action that would be prohibited if carried out by the IMO by the terms of this agreement.

As part of the settlement terms, the IMO agreed to payment of the Competition Authority's costs in the proceedings. The Settlement Agreement is in full and final settlement of all claims arising out of the alleged facts and matters pleaded in these proceedings, but does not constitute any admission of a breach of Section 4 of the Competition Act, 2002 or of any of the alleged facts.

#### Other Ongoing Civil Proceedings

Proceedings were still in place in both *The Competition Authority v Superquinn* (High Court Record 1999 No. 6916P) and *The Competition Authority v Nash Beverages Limited* (High Court Record 1998 No. 12162P). Further information on these cases can be found in previous Annual Reports.

#### Working with other State agencies

During 2007, the Competition Authority worked very closely with a number of other law enforcement agencies in the State to promote compliance with competition law.

#### The Director of Public Prosecutions

When the Competition Authority has completed a criminal investigation a file may be forwarded to the Director of Public Prosecutions (DPP) with a recommendation for trial on indictment.

When the DPP feels there is a justifiable case, his Office takes over full responsibility for any further enforcement action. In such cases the Chief Prosecution Solicitor's Office takes charge of proceedings on behalf of the DPP and prepares a Book of Evidence to be served on the accused.

## ENFORCEMENT DIVISIONS IN THE COMPETITION AUTHORITY

The Cartels and Monopolies Divisions have primary responsibility within the Competition Authority for enforcing competition law, specifically Sections 4 to 6, inclusive, of the Competition Act, 2002 and Articles 81 and 82 of the EU Treaty. In addition, the Mergers Division has an enforcement role which is outlined in the next section.

### The role of the Cartels Division

The focus of the Cartels Division is on the investigation and criminal prosecution of 'hard-core' cartels that involve price-fixing, bid rigging and market allocation among competitors. Cartels are conspiracies that are complex crimes and uncovering them requires specialised investigative skills. The Division's Authorised Officers who investigate cartels include ex-members of An Garda Síochána, the Criminal Assets Bureau, the Revenue Commissioners and other law enforcement agencies that investigate complex white-collar crimes, along with individuals with experience in competition law enforcement from other jurisdictions around the world. In addition, two members of the Garda Bureau of Fraud Investigation (GBFI) are seconded to work full-time with the staff of the Competition Authority and are designated Authorised Officers of the Authority.

Where evidence of a cartel is obtained, the Competition Authority will submit a file to the Director of Public Prosecutions (DPP) with a recommendation that the parties involved be prosecuted on indictment. Since 2002, competition prosecutions on indictment are tried in the Central Criminal Court. In rare circumstances where the Competition Authority does not believe that the allegations warrant the filing of a case on indictment, the Authority may itself bring a summary prosecution in the District Court.

### The role of the Monopolies Division

The Monopolies Division mainly investigates allegations that individuals or companies have abused a dominant position in various sectors of the economy. Abusing a dominant position is illegal under Section 5 of the Competition Act, 2002. However, holding a dominant position does not of itself break the law. For an offence to occur, an individual or company must abuse that position. The Monopolies Division is also responsible for investigating non-cartel agreements that may be anti-competitive. These may be between sellers in the same market (horizontal agreements) or between firms at different stages in the manufacturing, distribution, or retail chain (vertical agreements).

Where the Competition Authority forms the view that there has been a breach of the Competition Act, it can initiate legal proceedings in order to compel the parties to stop what is considered to be illegal activity. Such proceedings are generally civil (through the High Court), although criminal proceedings may be appropriate depending on the circumstances of each case. To fulfil its investigative role, the Monopolies Division comprises a multi-disciplinary team of three economists and three lawyers, as of 31st December 2007.

Frequently a solution acceptable to the Competition Authority is reached after extensive negotiations with the parties. In addition, the Competition Authority may also settle cases without recourse to the courts where the offending parties recognise and remedy their anti-competitive behaviour.

### An Garda Síochána

Two Detective Sergeants from the Garda Bureau of Fraud Investigation (GBFI) have been seconded to work in the Cartels Division as Authorised Officers of the Competition Authority since March 2002. These and other members of An Garda Síochána continue to provide invaluable assistance to the Competition Authority at crucial times, such as the execution of search warrants.

### Regulators

The Competition Authority will often be asked to examine situations in sectors of the economy for which an independent regulator has been appointed by the Government, e.g., communications, energy and aviation. While public enforcement of the Competition Act rests primarily with the Competition Authority, in some circumstances it is appropriate for the Authority to liaise with the relevant regulatory agency to resolve such matters.

By exercising its regulatory powers a regulator may be able to achieve a satisfactory outcome more quickly than the Competition Authority could in legal proceedings. In this way the Competition Authority can ensure that consumers are guaranteed a timely and effective result. The Competition Authority has entered into co-operation agreements with the Broadcasting Commission of Ireland, the Commission for Energy Regulation, the Commission for Aviation Regulation, the Health Insurance Authority, the Commission for Communications Regulation and the Office of the Director of Consumer Affairs.

**Self-Reporting Infringements of the Competition Act**

The potential penalties for individuals and companies who commit hard-core offences under the Competition Act include substantial fines and prison terms. Individuals and companies who face liability for such behaviour may consider availing themselves of the opportunity to obtain immunity from prosecution under the *Cartel Immunity Programme*, which is operated jointly by the Competition Authority and the Director of Public Prosecutions. Being the first individual or company to report cartel activity, to co-operate fully and provide complete and full information to the Competition Authority and the DPP, may offer substantial benefits. These may include avoidance of criminal prosecution, immunity from jail terms and substantial fines, and avoidance of ancillary penalties such as being barred from serving as an officer or director of a company under Section 160 of the Companies Act.

Companies which, by a corporate resolution, take full responsibility for the illegal acts of their officers, directors and employees and agree to co-operate with the Competition Authority may qualify for immunity both for the company and for its present and past officers, directors and employees under the Programme. Even if a company does not come forward and take responsibility for its illegal actions, individual employees, officers and directors can still qualify for individual immunity under the *Cartel Immunity Programme* and avoid the possibility of fines and prison terms.

Immunity applications should first be made to the Competition Authority's Immunity Officer, who is an individual unassociated with the Cartels Division. The Cartel Immunity hotline number is **087 7631378**. The *Cartel Immunity Programme* includes a marker system, which preserves the possibility of immunity for the first individual or company to apply, and allows others to reserve the possibility of immunity should the first to apply not qualify for immunity. Further information on the Programme can be found on the Competition Authority website [www.tca.ie](http://www.tca.ie).

**Making a Complaint about Anti-Competitive Behaviour**

Public complaints about anti-competitive behaviour are an important source of information for the Competition Authority. Individual consumers who suspect and report anti-competitive activity can assist the Competition Authority greatly, in order to ensure that consumers benefit from competition and fair dealing. Allegations of cartels and price-fixing have provided valuable information to the Authority and have resulted in successful investigations and prosecutions.

Complaints come to the attention of the Competition Authority from numerous sources including members of the public, individual businesses, trade organisations and public representatives, as well as Government Departments and agencies. Individuals with information about anti-competitive activity are encouraged to contact the Competition Authority.

Allegations that are accompanied by evidence which may be verified and used to pursue an investigation are of great benefit to the Competition Authority. Because the Authority is required to prove allegations to a legal standard, complaints coupled with solid evidence are mostly likely to result in an Authority investigation.

When the information provided through a complaint is sufficient to give the Competition Authority reasonable grounds to suspect an offence under the Competition Act, 2002, a formal investigation may be launched.

Where the details of a complaint indicate the existence of laws or regulations, or administrative practices by a Government Department or agency, which impose unnecessary restrictions on competition, the issue is brought to the attention of the Advocacy Division.

As a first step, the Competition Authority will check that the complaint can be dealt with under competition law. The Competition Authority has a Complaints Screening System where a team of staff members meets weekly to assess every complaint and request for information. The Competition Authority's Complaint Screening System focuses resources on the most substantive cases, while ensuring that complaints which have little or no supporting evidence are dealt with expeditiously but fairly.

The Competition Authority's Complaint Screening System is made up of three steps:

- Preliminary Screening;
- Detailed Evaluation; and
- Investigation.

In the most serious cases a complaint can result in a full investigation leading to a number of possible actions by the Competition Authority, including:

- Sending a file to the DPP with a recommendation that criminal charges be brought;
- Taking legal proceedings in the High Court in order to stop anti-competitive behaviour;
- Negotiating out-of-court settlements with companies and organisations who agree not to engage in anti-competitive behaviour and, in some instances, to change their behaviour so as to cure any competitive harm; and
- Making recommendations to Government concerning changes in anti-competitive regulations.

**Resolving complaints without legal action**

The vast majority of complaints made to the Competition Authority do not reveal a breach of competition law or are resolved at an early stage without the need for legal action.

## REPORTING INFRINGEMENTS AND MAKING COMPLAINTS TO THE COMPETITION AUTHORITY

Following a preliminary screening many complaints are resolved because:

- The complaint is really a request for information;
- The complaint does not involve a competition law matter;
- The complaint arises from a business facing legitimate competition in its local market; or
- The complaint concerns similar prices with no evidence or suggestion of an agreement between companies.

Some complaints receive a more detailed evaluation in order to assess their significance and determine whether a full investigation should be opened. This detailed evaluation may involve background research, taking formal statements from complainants and third parties and an examination of the legal parameters of the case. The main reasons complaints are resolved following such an evaluation include:

- The complaint cannot be substantiated;
- The complaint concerns a private or contractual dispute without any competition significance;
- Another regulatory agency also has jurisdiction and can remedy the situation in a more timely manner through the exercise of its functions; or
- The complaint involves issues and facts similar to those previously examined and resolved by the Competition Authority.

### COMPLAINTS SCREENING PROCESS

	2007	2006	2005	2004
Total Received	397	419	413	293
Resolved at Preliminary Screening	211	247	328	212
Detailed Evaluation	88	72	61	25
Ongoing	30	31	27	-
Resolved	58	41	34	25
Added to current investigations/work	94	23	19	42
Full Investigations	4	5	6	14

How to contact the Competition Authority with a complaint about a suspected breach of the law:

Web complaints form: [www.tca.ie/complaints.html](http://www.tca.ie/complaints.html)  
 Email: [complaints@tca.ie](mailto:complaints@tca.ie)  
 Phone: LoCall: 1890 220 224 (intl.: +353-1-8045400)  
 Fax: +353-1-8045401  
 Written Complaints: The Competition Authority, Parnell House, 14 Parnell Square, Dublin 1.

## Evaluation of Mergers and Acquisitions

Most mergers can be beneficial to consumers, when they lead to greater efficiency and a reduction in unnecessary costs. However, some mergers can lead to a substantial lessening of competition to the detriment of consumers. It is therefore vital that an effective and timely merger enforcement procedure permits beneficial mergers, while prohibiting ones that substantially lessen competition.

The Competition Authority took over the function of evaluating mergers and acquisitions on 1st January 2003, when Part 3 of the Competition Act, 2002 came into force. Previously, mergers had primarily been the responsibility of the Department of Enterprise, Trade and Employment. Since 1st January 2003, the Competition Authority has had the opportunity to assess the effectiveness of the provisions of the Competition Act, 2002 relating to mergers and acquisitions.

In 2006, this experience led to the amendment of the Authority's interpretation of the 'carries on business' notification requirement, the publication of new guidelines on access to the file in merger cases and the publication of revised and updated *merger review guidelines*.

This work continued in 2007, in particular by:

- The amendment by Ministerial Order of the compulsory notification criteria for mergers involving media businesses;
- The organisation of a mergers conference in order to outline and discuss with practitioners recent and future proposed amendments to the mergers regime;
- The identification of possible amendments to the Competition Act, 2002 in order to improve the working of the mergers regime; and
- The coming into effect of the European Commission's Consolidated Jurisdictional Notice and the amendment of the Competition Authority's website in order to reflect the impact of the Notice on Authority guidance.

The number of mergers and acquisitions, including media mergers, has decreased significantly since 2006. This is likely to be a result of the change in the Authority's understanding of the 'carries on business' requirement and to the compulsory notification criteria for mergers involving media businesses. This reduction means that the Authority is in a better position to focus resources on more complex mergers. These include, for example, the four Phase 2 investigations concluded in 2007 and certain Phase 1 determinations requiring proposals and/or sophisticated econometrics analysis<sup>2</sup>.

All the above developments are discussed in further detail in the text that follows.

### 2.1 Merger notifications during 2007

Only mergers in which the undertakings involved meet the monetary thresholds specified in the Competition Act, 2002 must be notified for evaluation by the Competition Authority. However, no notification thresholds apply to certain mergers involving media businesses, which must be notified regardless of turnover<sup>3</sup>.

The mergers notified to the Competition Authority in 2007 demonstrate the important sectors of the Irish economy affected, such as financial services, retail, construction and related services, electronic communications, food and drink, healthcare and media. Inefficiency or high prices resulting from a lack of competition in such sectors could negatively affect all Irish consumers.

The number of mergers and acquisitions notified to the Competition Authority decreased significantly in 2007. 72 notifications were received in 2007, compared with 98 in 2006 and 84 in 2005. Appendix A contains statistics on mergers evaluated between 2005 and 2007.

<sup>2</sup> Recent examples of such Phase 1 determinations include M/06/098, Premier Foods/RHM; M/07/022, Thomas Crosbie Holdings/South East Broadcasting; and M/07/027, Britvic/C&C

<sup>3</sup> See section 2.3 for further details.

This decrease, at least in part, can be attributed to:

- the Authority's re-interpretation of the 'carries on business' notification threshold requirement. Since 2003, the Authority had understood the expression to include an undertaking making sales into the island of Ireland, even if it did not have a physical presence on the island. This led to mergers with an insufficient nexus to the State being notified. On 12th December 2006, the Authority published its revised understanding of the term<sup>4</sup>. It now interprets the term as meaning that when an undertaking does not have a physical presence on the island, it must make sales of at least €2 million into the island in the most recent financial year to be considered to 'carry on business' on the island; and
- the amendment by Ministerial Order of the compulsory notification criteria for mergers involving media businesses (discussed further at 2.3 below)<sup>5</sup>.

Appendix B contains a full list of mergers notified to the Competition Authority in 2007. The following are various statistics regarding the Competition Authority's evaluation of mergers and acquisitions in 2007:

- The number of mergers notified to the Competition Authority decreased to 72 in 2007, from 98 notifications in 2006 and 84 notifications in 2005;
- During the year the Competition Authority also finalised its work on nine transactions which were notified in 2006 and whose deadlines extended into 2007 (one of which involved the divestiture of a business conducted under an entire brand by the acquirer);
- All transactions were analysed within the statutory time period;
- 58 of the 72 merger notifications received by the Authority during 2007 were cleared during the initial (Phase 1) investigation. Two further notifications were withdrawn<sup>6</sup> and nine were still under investigation at the end of the year;
- There were two transactions cleared at Phase 1 which required specific measures to address concerns raised by the Competition Authority during the preliminary investigation;

<sup>4</sup> See Decision No. N/02/003 Notice in respect of certain terms used in Part 3 of the Competition Act, 2002 (as amended, 12th December 2006), available on the Competition Authority website [www.tca.ie](http://www.tca.ie).

<sup>5</sup> There may be external factors which have caused the decline in the number of merger notifications. For example, in the second half of 2007 the tightening in global capital markets as a result of difficulties in the market for sub-prime lending, increasing interest rates and expectations of a downturn in global economic activity may also have contributed to the reduction in the number of notifications. In order to test whether external factors were responsible the record of the European Commission was considered, which has a similar notification system to Ireland but with a somewhat different competition test. Comparing the number of mergers notified to the Commission in 2007 with 2006, sees an increase of at least 10%, suggesting that the decline in the number of mergers notified in the State may not be due to external factors. For details of Commission notifications see <http://ec.europa.eu/comm/competition/mergers/statistics.pdf>

<sup>6</sup> One was withdrawn as a result of the publication of the Authority's revised understanding of the 'carries on business' requirement; the other was withdrawn because the merger did not proceed.

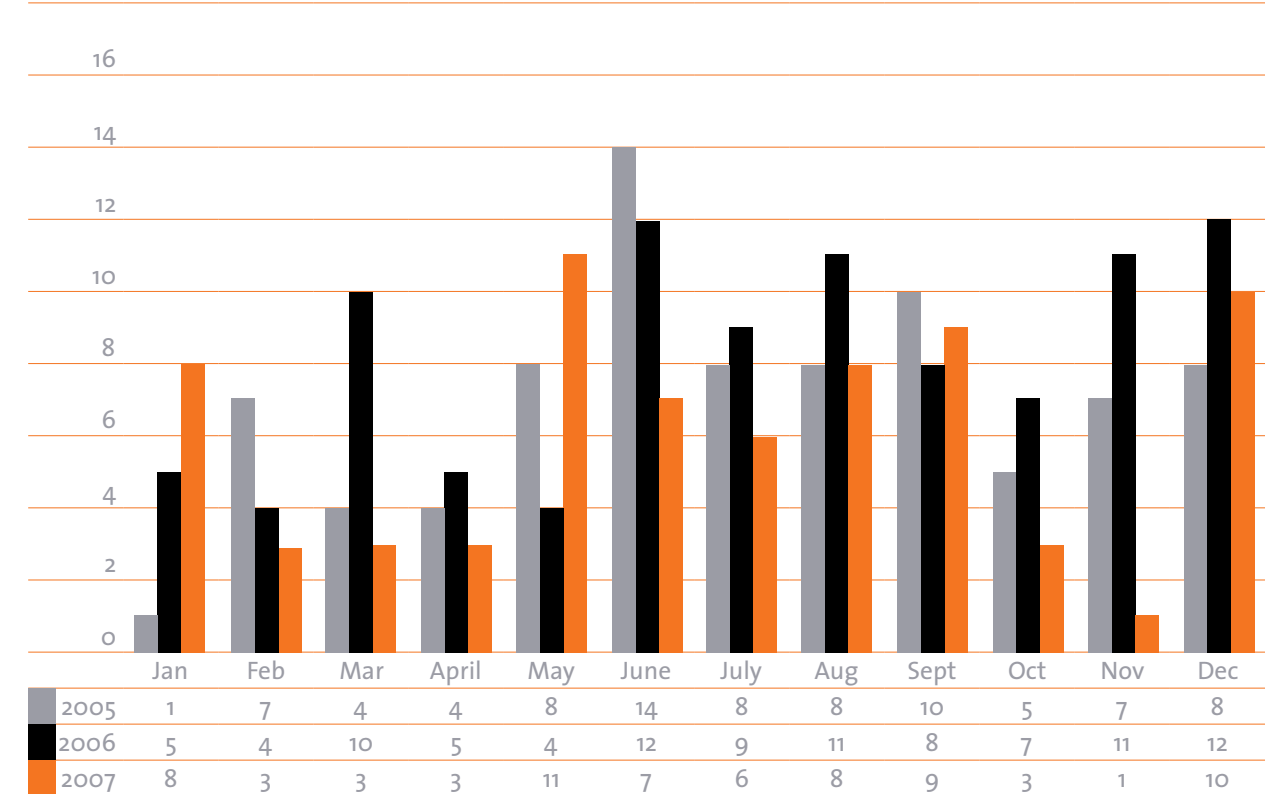
- The Competition Authority initiated three full (Phase 2) investigations, all of which were cleared (one involving the divestiture of a business and assets which were to be acquired as part of the notified transaction); and
- 2007 saw a decrease in the number of mergers involving media businesses notified to the Authority for the period 2005 to 2007. 17 such mergers were notified, compared with 22 notified in 2006.

Over the period 2003 to end 2007 the Competition Authority:

- was notified of 382 mergers and acquisitions (47 in 2003, 81 in 2004, 84 in 2005, 98 in 2006 and 72 in 2007).
- had made determinations in respect of 367 of these notifications, six were withdrawn and nine were still under investigation.

Figure 2.1 shows the monthly comparisons of the notifications received by the Competition Authority for the period 2005 to 2007. The highest number of notifications were received in May (11) and December (10). In the three previous years, June was the busiest month, with an average of 11 notifications in each year.

FIGURE 2.1 MERGERS NOTIFIED TO THE AUTHORITY 2005–2007 BY MONTH



## 2.2 Mergers requiring a full investigation (Phase 2)

The Competition Authority must carry out a detailed (Phase 2) investigation of a transaction if, after a preliminary (Phase 1) investigation, it has been unable to conclude that the transaction would not '*substantially lessen competition*'. In 2007, the Competition Authority initiated three Phase 2 investigations. In addition, one Phase 2 investigation was carried over from 2006. These Phase 2 investigations were:

- **M/06/087** - the proposed acquisition by Applied Materials Inc. of the assets comprising the software business of Brooks Automation Inc., cleared on 6th February 2007. This case was carried over from 2006.
- **M/07/030** – the proposed acquisition by Glen Electric Limited, a wholly-owned subsidiary of the Glen Dimplex Group, of Applied Energy Holdings Limited, cleared on 25th September 2007.
- **M/07/031** – the proposed acquisition by Galco Steel Limited of Sperrin Galvanisers (Irl) Limited and Sperrin Galvanisers Limited, cleared on 2nd October 2007.
- **M/07/040** – the proposed acquisition by Communicorp Group Limited of certain assets and businesses of Scottish Radio Holdings, cleared on 7th December 2007, taking into account proposals made by the parties.

A more detailed account of each Phase 2 investigation follows below.

### Acquisition by Applied Materials Inc. of the assets comprising the software business of Brooks Automation Inc. (M/06/087)

The Competition Authority announced on 6th February 2007 that it had unconditionally approved the proposed acquisition by Applied Materials Inc. of the assets comprising the software business of Brooks Automation Inc. The Competition Authority received notification of the proposed acquisition on 1st December 2006. On 21st December 2006, the Competition Authority announced its decision to carry out a full (Phase 2) investigation in relation to the proposed acquisition. This decision came after a preliminary investigation (Phase 1), where the Competition Authority had been

unable to conclude without further investigation that the transaction would not substantially lessen competition.

The Competition Authority's investigation of the proposed acquisition examined the effect on competition in the supply of specific software applications, in particular MES software, in the State. MES software is deployed in an assortment of complex manufacturing environments such as semiconductor fabrication plants ('fabs'), flatpanel display plants, automotive plants and life sciences manufacturing plants. The greatest worldwide overlap of the activities of the undertakings involved, and the only overlap in the State, occurred in the supply of MES to the semiconductor industry.

Having established that the extent of the concentration arising from the merger might lead to competition concerns, the Authority then considered the issue of whether or not the merger would result in a substantial lessening of competition. Three alternative theories of harm were analysed: increased prices to buyers of MES software; refusal to supply maintenance service to users of 'out of the box' MES software; and increased prices for maintenance services for MES.

The Competition Authority concluded that there was limited overlap of the MES activities of the undertakings involved in the State and that it was unlikely that there would be any contestable opportunities in the State over the next 2-3 years. While the merged entity would have an incentive to harm competition, it would not have the ability to behave in a manner consistent with any of the theories of harm considered. The global nature of the product meant that the decision to use a particular MES supplier was taken outside the State and on a worldwide basis and therefore only affected the State insofar as there happened to be manufacturing plants in the State. Furthermore, given that these plants existed on the whole for the purpose of exporting, and also given the global nature of the downstream markets, it was difficult to demonstrate harm to consumers in the State.

**Acquisition by Glen Electric Limited, a wholly-owned subsidiary of the Glen Dimplex Group, of Applied Energy Holdings Limited (M/07/030)**

The Competition Authority announced on 25th September 2007 that it had decided to clear without conditions the proposed acquisition by Glen Electric Limited, a wholly-owned subsidiary of the Glen Dimplex Group, of Applied Energy Holdings Limited. The Competition Authority received notice of the proposed acquisition on 6th June 2007. On 15th August 2007, the Competition Authority announced its decision to carry out a full (Phase 2) investigation in relation to the proposed acquisition. This decision came after a preliminary investigation (Phase 1), where the Competition Authority had been unable to conclude without further investigation that the transaction would not substantially lessen competition.

The Authority concluded that the product dimension of the relevant market was at least the market for the provision of electric, gas-fired and oil-fired primary space heating products in the State. It might include, because of supply side considerations, secondary space heating. It might also include primary space heating systems fired by renewable energy sources. In addition, the geographic market might be wider than the State. However, the Authority did not need to come to a view on these issues as the transaction did not raise competition concerns.

The Authority concluded that the transaction would not lead to a major increase in concentration in the relevant market. In addition, given the large number of competitors active in the provision of primary space heating products in the State, the negligible increase in market concentration post-acquisition, and the ability of builders' merchants and wholesalers to source primary space heating products from abroad quickly and without incurring significant transport costs, the Authority formed the view that the merged entity would not have the power to unilaterally exercise market power. Any attempt by the merged entity to increase the price of its electric primary space heating products post-acquisition would lead property developers to switch in the first instance to either imports of electric primary space heating products or other providers of electric space heating products, or following

that, to providers of gas-fired and oil-fired primary space heating products.

The Authority's analysis also indicated that the proposed acquisition would not change the prevailing market conditions that served to make it difficult for competitors to be able to reach a common understanding to lessen competition, or to detect and punish any breach. This was because:

- The relevant market would continue to be served by a large number of competitors, that were quite varied in size pre- and post- merger;
- The relevant market would continue to be characterised by low barriers to entry and strong potential competition;
- Price discounting would remain a strong feature of the competitive process;
- Cost structures greatly differed between competitors;
- Low price transparency (due to pervasive price discounting) would continue to be an important aspect of the competitive process, thereby making it difficult for rivals to detect any deviations from a common understanding to lessen competition; and
- The combination of a large number of firms and strong potential competition meant that it was unlikely that firms would be able to institute any credible punishment mechanism that they might use to maintain a common understanding to lessen competition.

**Acquisition of Sperrin Galvanisers (Irl) Limited and Sperrin Galvanisers Limited by Galco Steel Limited (M/07/031)**

The Competition Authority announced on 2nd October 2007 that it had unconditionally approved the proposed acquisition by Galco Steel Limited of Sperrin Galvanisers (Irl) Limited and Sperrin Galvanisers Limited. The Authority received notification of the proposed acquisition on 12th June 2007. On 15th August 2007, the Authority announced its decision to carry out a full (Phase 2) investigation in relation to the proposed acquisition. This decision came after a preliminary (Phase 1) investigation, where the Authority had been unable to conclude without further investigation that the transaction would not substantially lessen competition.



The Authority concluded that the relevant product market was that of hot dip galvanising. The Authority did not have to decide whether the geographic market was the island of Ireland or regional in nature, as, even on the basis of an analysis of narrower regional segments, the Authority's conclusion on the proposed acquisition was not affected.

The investigation conducted by the Authority showed that the merger fell within 'Zone C' of its *Merger Guidelines*, in other words, one likely to occur in a highly concentrated market and more likely to raise competition concerns. The Authority therefore analysed the following market characteristics, in order to assess the likely effects of the merger on competition:

- Closeness of competition;
- Possibility of entry;
- Expansion and capacity;
- Imports; and
- Buyer power and switching costs.

The Authority found that the parties competed only in the Ulster and Connacht regions, where there were several other credible competitors present. In addition, there were significant levels of spare industry capacity, which for the most part was in the hands of competitors. Its utilisation (and expansion) was likely to be timely, likely and sufficient. Furthermore, the threat or occurrence of new entry would also be timely, likely and sufficient. In addition, there were no switching costs for buyers, who frequently played one galvaniser off another to obtain lower pricing. The Authority therefore considered that the above factors were likely to constrain the merged entity from raising prices post-merger.

The Authority also concluded that many of the conditions needed for firms to tacitly collude were not present either pre- or post- merger:

- The steel items to be hot dip galvanised were varied in size, type and quantity and not homogenous;
- Costs were variable, depending on factors such as the size and frequency of loads and the type of steel products being galvanised. Customers often obtained discounts from galvanisers;
- The merger would increase the inequality in the size of hot dip galvanisers, thus decreasing the probability of co-ordinated behaviour;
- There were no structural links between the galvanising firms;
- The market was growing and had experienced new entry in recent years; and
- Several competitive constraints existed, including the likelihood of entry, greater utilisation of existing capacity and/or building new capacity.

#### **Acquisition by Communicorp Group Limited of certain assets and businesses of Scottish Radio Holdings (M/07/040)**

On 7th December 2007 the Competition Authority announced that it had approved the proposed acquisition by Communicorp Group Ltd of certain assets and businesses of Emap plc<sup>7</sup>.

The approval by the Authority was given following the submission of a number of proposals which were taken into account by the Authority when making its determination and which became binding on the parties. These proposals were submitted to address a number of competition concerns raised by the transaction. The Competition Authority originally received notification of the proposed acquisition on 30th July 2007. On 9th November 2007, the Competition Authority announced its decision to carry out a full (Phase 2) investigation in relation to the proposed acquisition. This decision came after an extended preliminary (Phase 1) investigation, where the Competition Authority had been unable to conclude without further investigation that the transaction would not substantially lessen competition.

<sup>7</sup> These assets consisted of all of Emap's radio interests in the State (i.e. FM104, Today FM and Donegal Highland Radio) and maybefriends.com internet dating agency.

The Authority concluded that the relevant product market was the market for radio advertising and that the relevant geographic markets related directly to the coverage areas of the radio stations involved. Consequently the Authority found that there were three relevant product and geographic markets:

- 1 The market for radio advertising in County Donegal;
- 2 The market for radio advertising nationally; and
- 3 The market for radio advertising in Dublin City and County.

#### The market for radio advertising in County Donegal

The Authority's investigation found that Highland Radio was the only local radio station operating in that region and thus post-transaction there would be no change in market structure in the radio advertising market in County Donegal, as there was no overlap between the parties activities prior to the transaction. The Authority therefore considered that the proposed transaction did not raise any competition concerns in this market.

#### The market for radio advertising nationally

The Authority's investigation found that market share measured by listenership, advertising revenue and advertising minutes, all indicated that the proposed acquisition would lead to a 'Zone C' merger in the national radio advertising market. Post-merger, two entities would control all the radio stations in the national market: RTE (Radio 1, 2FM and Lyric FM) and Communicorp (Newstalk and Today FM). Communicorp would own the only two commercial national radio stations in the State. In effect, the proposed acquisition would result in a three to two merger in the national market for radio advertising. Nevertheless, for the reasons set out below, the Authority considered that competition in the national market would not be affected adversely by this new ownership structure and that, in some respects, the merger might be considered pro-competitive:

- The programming format of Today FM and Newstalk were different. Today FM provides a 'broad contemporary music format with strong current affairs, sport and comedy sequences', while Newstalk provides solely talk-based programming, with news, sport and traffic reports every 20 minutes;
- Evidence from a variety of sources<sup>8</sup> demonstrated that Today FM's closest competitor was 2FM, while Newstalk's closest competitor was RTE Radio 1;
- The overwhelming majority of advertising agencies expressed no concerns about the merger at the national level; and
- By bundling the advertising of Today FM and Newstalk the merged entity might be in a better position to compete with the offerings of RTE across its three radio stations.

#### The market for radio advertising in Dublin City and County

The Authority's investigation found that market share measured by listenership, advertising revenue and advertising minutes all indicated that the proposed acquisition would lead to a 'Zone C' merger in the radio advertising market for Dublin City and County. Pre-merger, Communicorp owned two of the six commercial radio stations active in the market for radio advertising in Dublin City and County, namely 98FM and Spin 103.8. Post-acquisition, with the addition of FM104, it would own three of the six Dublin commercial radio stations.

To examine the competitive effects of the proposed transaction on the market for radio advertising in Dublin City and County, the Authority used a number of different types of evidence and sources to determine which combination or pair of radio stations in Dublin City and County advertisers, advertising agencies and listeners considered to be close substitutes<sup>9</sup>. The results of the Authority's analysis indicated that 98FM and FM104 were each other's closest competitors in Dublin City and County; consequently the Authority was concerned that the proposed merger of 98FM and FM104 would give rise to unilateral effects (i.e. a situation where the merged entity had the ability post-acquisition to unilaterally exercise market power by, for example, raising prices or reducing output) and thus harm competition.

<sup>8</sup> These included data from the Joint National Listenership Research (JNLR); Adscan data which monitors the radio advertising activities of advertisers in a particular week; the Authority's survey of direct and indirect advertisers; internal documentation supplied by and the survey undertaken by the parties; and the views and submissions of third parties.

<sup>9</sup> These sources of evidence included those outlined in the previous footnote and also an analysis of the Cost Per Thousand (CPT) which is a measure of media efficiency based on the cost of reaching a thousand people and is a comparative tool used by advertisers and radio stations to assess the value for money of placing an advertisement with a particular radio station.

Under the Competition Act, 2002, parties to a proposed transaction can make proposals to the Authority to address the competition concerns identified. Where these proposals are accepted by the Authority and taken into account when the Authority makes its determination, they become binding commitments on the parties. In the instant case, proposals were made by Communicorp and Emap to meet the competition concerns expressed by the Authority in the Dublin City and County radio advertising market.

The proposals offered and accepted can be summarised as consisting of the following four elements:

**From Communicorp:**

- 1 Subject to the Authority's approval and before the closing of the entire transaction, as notified to the Authority, the divestiture of Capital Radio Productions Limited, t/a FM104.

This was designed to address the competition issues identified by the Authority in relation to the market for radio advertising in Dublin City and County by providing for an upfront buyer<sup>10</sup> of FM104, thus preventing a situation where the assets of FM104 could be significantly degraded. For example, among the most important and valuable assets of a radio station are contracts with the individual presenter personalities. The upfront buyer solution provides *'increased incentives for the parties to close the divestiture in order to be able to complete their own'*<sup>11</sup> merger and thus helps to preserve the key assets and the operational integrity of FM104 as a viable business.

- 2 A commitment not to obtain or exercise a controlling interest in or any substantial interest in or over the affairs of Independent Radio Sales (IRS)<sup>12</sup> and to continue to offer airtime to IRS on usual commercial terms.

This commitment was offered, given the Authority's concerns, raised in previous mergers, about the continued viability of IRS and in order to deal, upfront, with any potential concerns raised by third parties in relation to the continued viability of IRS.

**From Emap:**

- 3 A commitment to take all reasonable steps to facilitate compliance by Communicorp with its obligations to effect the divestiture of FM104.

This ensured that the current owners of FM104 did not hinder the compliance of Communicorp with the proposals it offered.

- 4 A commitment to continue to operate FM104 as a going concern as carried on prior to the instant transaction.

This ensured that in the interim period, before FM104 transferred to Communicorp, that its commercial operation was preserved by Emap.

In the case of the proposed divestiture of FM104, the Authority market tested the proposals offered, in order to establish whether the divestiture was considered appropriate, proportionate and effective in addressing the competition concerns raised by the proposed transaction. The Authority distributed: (a) a non-confidential detailed version of Element 1; and (b) a short questionnaire, to six prospective purchasers of the business to be divested, and tested the divestiture proposal for competition, purchaser and asset risks<sup>13</sup>. The market testing is described in more detail in section 2.5.

The Authority concluded that the divestiture of FM104 represented an effective divestiture solution. The proposed divestment of FM104 removed the overlap created by the proposed transaction in this market and would have the effect of maintaining the merged entity's share of the market for radio advertising in Dublin City and County at the level that prevailed pre-merger. This removed the competition concerns raised by the proposed transaction in the market for radio advertising in Dublin City and County.

<sup>13</sup> See Competition Commission, Application of divestiture remedies in merger inquiries: Competition Commission Guidelines, December 2004: 'to be effective, a divestiture should involve the sale of an appropriate divestiture package to a suitable purchaser through an effective divestiture process.' (para.2.2) This may be accessed at [http://www.competition-commission.org.uk/rep\\_pub/rules\\_and\\_guide/pdf/divestiture\\_remedies\\_guidance.pdf](http://www.competition-commission.org.uk/rep_pub/rules_and_guide/pdf/divestiture_remedies_guidance.pdf)

<sup>10</sup> Upfront buyer refers to a situation (according to the European Commission Draft Notice on Remedies Acceptable under Council Regulation (EEC) No 139/2004 and under Commission Regulation (EC) No 802/2004 ('the Draft Notice')) whereby 'the parties may not complete the notified operation before having entered into a binding agreement with a purchaser for the business, approved by the Authority (paragraph 50).  
<sup>11</sup> Commission, Draft Notice, para. 55  
<sup>12</sup> IRS is a central sales and marketing office for 16 local commercial radio stations located across the State, including Highland Radio. The Authority considered that this proposal would preserve the independence and viability of IRS as an alternative to the merged entity in the market for national radio advertising slots.

### 2.3 Mergers involving media businesses

#### New Statutory Instrument

On 1st January 2003, the Minister for Enterprise, Trade and Employment made an Order under section 18(5) of the Competition Act, 2002. This Order, Statutory Instrument (S.I.) No. 622 of 2002, specified all media mergers as being a 'class' of merger that was compulsorily notifiable, even if any such media merger did not meet the financial thresholds for mandatory notification set out in section 18(1)(a) of the Competition Act, 2002.

The Act allows for the possibility that a media merger cleared by the Competition Authority on competition grounds after a full investigation may still be prevented from being put into effect by the Minister for Enterprise, Trade and Employment on public interest grounds.

However, the class of merger specified in S.I. No. 622 of 2002 had the effect of causing many mergers to be notified that had no nexus with the State, and in some cases, no practical link with media businesses at all, as:

- '*media merger*' is defined in the Act as a merger in which one or more of the undertakings involved carries on a 'media business' in the State. S.I. No. 622 of 2002 provided that all mergers falling within this definition were compulsorily notifiable; and
- in identifying the '*undertakings involved*' the Competition Authority followed the European Commission's practice of considering the undertakings involved to be the whole group, rather than just the individual company that is the purchaser or target.

On 21st March 2007, S.I. No. 622 of 2002 was revoked by S.I. No. 122 of 2007.

The new Order now requires the notification of:

- all mergers or acquisitions in which two or more of the undertakings involved carry on a '*media business*' in the State; and
- all mergers or acquisitions in which one or more of the undertakings involved carries on a '*media business*' in the State and one or more of the undertakings involved carries on a '*media business*' elsewhere.

Since 21st March 2007 when the new Order came into effect:

- there has been a reduction in the number of mergers involving media businesses notified to the Competition Authority, from 23 in 2005 and 22 in 2006 to 17 in 2007;
- unlike in previous years, no non-media related mergers have been notified under section 18(1)(b) of the Competition Act, 2002; and
- all mergers involving media businesses notified since 21st March 2007 have had a nexus with the State.

#### Media mergers of note in 2007

There were two media mergers notified in 2007 that resulted in proposals by the undertakings involved. One of these was the acquisition by Communicorp Group Limited of certain assets and businesses of Scottish Radio Holdings. It was cleared in Phase 2 with proposals from the parties that became binding commitments. For further discussion of this case, see section 2.2. The other media merger involved the acquisition of WLR FM by Thomas Crosbie Holdings Limited.

**Acquisition by Thomas Crosbie Holdings Limited of 75% of the issued shares of South East Broadcasting Company Limited trading as WLR FM**

The acquisition of control of South East Broadcasting Company Limited (trading as WLR FM), by Thomas Crosbie Holdings (TCH) was cleared at Phase 1 with proposals from the parties that became binding commitments<sup>14</sup>. This acquisition was notified to the Authority at the same time as the acquisition by TCH of control of WKW FM Limited (trading as Beat FM), which was cleared in Phase 1 without proposals.

TCH, the acquirer, is a holding company whose subsidiaries publish various newspapers, including The Irish Examiner and The Waterford News and Star. TCH also owns minority interests in County Mayo Radio Limited, NWR FM Limited and Red FM.

WLR FM provides a local radio service aimed at 25-55 year olds in Waterford City and County. Beat FM is a regional radio station which provides sound broadcasting services targeting audiences in the 15-34 age group in Wexford, Waterford, Kilkenny, Carlow and South Tipperary.

The Authority received three submissions from third parties. Three concerns were expressed regarding:

- the creation of a local radio duopoly for advertisers;
- the possibility of refusal to sell radio advertising slots to one newspaper post-acquisition; and
- the view that post-acquisition, TCH would offer some type of bundled advertising package to advertisers of both Waterford News and Star and the two radio stations.

<sup>14</sup> Case M/07/022.

The Authority undertook an extensive Phase 1 investigation and was able to allay the concerns in relation to the second and third issues highlighted by the third parties. It found (1) refusal to sell advertising slots post-acquisition would raise concerns under Section 5 of the Competition Act, 2002 and could be investigated by the Competition Authority; and (2) that bundling had not been observed in practice and could possibly be considered pro-competitive.

The Authority also considered in detail the concerns in relation to the possible creation of a duopoly for advertisers in the Waterford area and concluded that radio advertising was in a separate market to print advertising. Since radio advertising competed in a different market to press advertising, there was no competitive overlap between the TCH titles and WLR FM in the sale of advertising in Waterford City and County. The Authority therefore considered that the combination of the TCH titles and WLR FM on its own would not raise any competition concerns.

The Authority found, however, that there was a direct overlap in the coverage areas of Beat FM and WLR FM in Waterford City and County. The coverage area of Beat FM represented a population of approximately 460,000, of which 107,000 (i.e., 23%) lived in WLR FM's coverage area, i.e., Waterford City and County.

In order to establish whether WLR FM and Beat FM were each other's closest competitor, the Authority used JNLR data to establish:

- The profile and level of overlap in the listenership of each station in their core target audiences in Waterford County and City. The Authority found that there was an overlap both in terms of listenership and minutes listened to between Beat FM and WLR FM. However, Today FM appeared to be Beat FM's main competitor in the latter's target audience (15-34 year olds) while RTE Radio 1 was WLR FM's main competitor in the 35+ year olds.

- The level of overlap in advertising revenue in their core target audiences. The Authority's investigation revealed that WLR FM and Beat FM, combined, accounted for less than 4% of the national radio advertising market. Thus the Authority concluded that given the level of overlap and the competition that would remain in the market post-acquisition, the proposed transaction did not raise competition concerns in the market for national radio advertising.
- Concerning local radio advertising, a concern arose from the fact that, post-acquisition, the only two radio stations that target local advertising in Waterford City and County would come under common control. However the investigation undertaken by the Authority revealed that pre-merger, the limited competition existing between Beat FM and WLR FM was preserved by ensuring that each station was operated and managed separately, with many third parties highlighting the importance of the existence of a separation between the sales teams of the two stations. The Authority therefore concluded that the preservation of this level of competition pre-merger would require that the management of the two radio stations should be kept separate and there should be a limit to the exchange of certain information.

TCH made proposals to the Authority of the kind referred to in sections 20(3) and (4) of the Competition Act, 2002 with a view to them becoming binding on it if the Authority took them into account in making its determination. These included the maintenance of separate sales advertising teams for both stations, other managerial and functional separation between the stations and limitation on information exchanged between employees of both stations and the appointment of an independent observer to oversee compliance with the proposals. The Authority therefore cleared the acquisition in Phase 1, taking TCH's proposals into account<sup>15</sup>.

<sup>15</sup> Such proposals would have been inappropriate in the Communicorp/SRH merger in view of the different circumstances in each case. In general, structural remedies are preferred to behavioural remedies

### Statistics

There were 17 media merger notifications to the Authority in 2007, compared with 22 such notifications in 2006 and 23 in 2005. Of the media mergers notified in 2007:

- Five involved the acquisition of radio stations. One of these mergers related to the operation of regional radio stations in the UK;
- Five involved the acquisition of print or online publications;
- Five involved the acquisition of broadcasting platforms and/or broadcasting content;
- Two involved the acquisition of non-media targets (both of these mergers were notified before the coming into effect of S.I. No. 122 of 2007);
- 15 were cleared by the Competition Authority by the end of the year and two were carried over into 2008; and
- No order was made by the Minister for Enterprise, Trade and Employment during 2007 either to carry out a full investigation under Section 22 of the Competition Act, 2002 or to prohibit a media merger from being put into effect.

**TABLE 2.3 MEDIA MERGERS NOTIFIED TO THE COMPETITION AUTHORITY IN 2007**

Notification	Date Of Notification	Economic Sector	Date Of Decision / Status
M/07/003 – General Electric Company / Vetco International Limited	8 January 2007	Supply of systems, products and services for onshore and offshore oil and gas production	25 January 2007
M/07/005 River Newspapers (NI) Limited / Olok Limited	12 January 2007	Media sector, in particular regional newspapers	9 February 2007
M/07/006 GMG Radio Holdings Limited / Saga Radio Limited, Saga Radio (North East) Limited, Saga Radio (Scotland) Limited, Saga Regional Digital Radio Limited	17 January 2007	Radio broadcasting in the United Kingdom	14 February 2007
M/07/008 CBS Outdoor Limited / Haveco Limited	31 January 2007	Marketing and media solutions	13 February 2007
M/07/010 Irish Times / Gazette Group	27 February 2007	The newspaper publishing and advertising sector	22 March 2007
M/07/019 Agricultural Trust / Irish Catholic	09 May 2007	Specialist weekly periodicals	23 May 2007
M/07/021 Thomas Crosbie Holdings / WKW FM	11 May 2007	Radio broadcasting	17 August 2007
M/07/022 Thomas Crosbie Holdings / South East Broadcasting	11 May 2007	Radio broadcasting	5 September 2007
M/07/029 ntl Communications (Ireland) Limited / Clane Cable Systems	1 June 2007	Retail pay-TV	27 June 2007
M/07/040 Communicorp / SRH	30 July 2007	Radio broadcasting	7 December 2007
M/07/046 Smart Telecom / E-nvi	20 August 2007	Provision of multi-channel TV, telephony and broadband services	17 September 2007

**TABLE 2.3 MEDIA MERGERS NOTIFIED TO THE COMPETITION AUTHORITY IN 2007**

M/07/047 LGI Ventures BV / City Channel Limited	22 August 2007	Production of television programmes and television broadcasting	12 September 2007
M/07/048 News Corporation / Dow Jones	27 August 2007	Newspaper publishing	13 October 2007
M/07/050 Universal Pictures / Sparrowhawk	4 September 2007	Media	28 September 2007
M/07/061 News Corporation / NGT/NGC – UK	26 October 2007	The production and supply of television channels	22 November 2007
M/07/064 Johnston Press / Clonnad	12 December 2007	Regional newspapers and local free-sheet/community newsletters	Active as at 31 December 2007
M/07/069 UTV / FM104	21 December 2007	Radio	Active as at 31 December 2007

#### 2.4 Mergers below the notification thresholds

Mergers below the notification turnover thresholds may also have the potential to limit competition. In particular, they may breach sections 4 and/or 5 of the Competition Act, 2002.

After investigating a number of such mergers, the Competition Authority issued a Notice (N/03/001) on 30th September 2003, stating its policy with regard to such transactions. This Notice gives parties clarity about how the Competition Authority will treat non-notifiable mergers and states the Authority's policy of ensuring that such deals do not harm competition and consumers.

In essence, if, after a preliminary examination, the Competition Authority considers that the transaction may raise competition concerns, it will contact the parties to determine whether they wish to notify voluntarily. If the transaction has not yet been put into effect, the parties have an opportunity to make a voluntary notification. Where the parties fail to make a voluntary notification, the Authority may issue legal proceedings seeking an injunction to restrain the implementation of the merger. If the transaction has already been put into effect, the Authority will conduct an investigation as to whether or not there has been a breach of sections 4 and/or 5 of the Competition Act, 2002.

During 2007, the Competition Authority carried out one assessment of a merger below the notification threshold. This merger was the acquisition of Sperrin Galvanisers (Irl) Limited and Sperrin Galvanisers Limited by Galco Steel Limited, a Phase 2 investigation discussed in section 2.2.

#### 2.5 Merger remedies

In 2007, the Authority approved two mergers in which divestiture proposals were made by the parties to the transactions. These were the first instances in which structural divestitures were offered as proposals to address competition concerns identified by the Authority in merger notifications:

- **M/06/098 – Premier Foods/RHM:** During its preliminary (Phase 1) investigation, the Authority concluded that the proposed transaction would lead to competition concerns in the gravies market post-merger, with the merged entity having both the incentive and ability to raise prices unilaterally. Premier Foods offered, and the Authority accepted, the divestiture of the entirety of the business conducted by it under the Erin brand in the State. In this case the divesting business was already owned by Premier Foods. The Authority accepted a divestiture proposal where the parties were allowed to proceed with the implementation of the notified transactions on the basis that the divested business would be sold to a suitable purchaser within a fixed period of time.
- **M/07/040 – Communicorp/Emap:** As outlined above, the Authority concluded during its Phase 2 investigation that the proposed transaction would lead to competition concerns in the market for radio advertising in Dublin City and County. Communicorp offered, and the Authority accepted, divestiture of FM104. The divestiture proposal contained a further requirement for an 'upfront buyer'. In other words, the parties would not be allowed to complete the notified transaction before having entered into a binding agreement with a suitable purchaser for the divesting business.



Since it has not produced guidelines of its own in relation to remedies aimed at addressing identified competition concerns and in particular in relation to offers of structural divestiture, the Authority drew heavily on the 2007 European Commission *Draft Notice on Remedies Acceptable under Council Regulation (EEC) No. 139/2004 and under Commission Regulation (EC) No. 802/2004* and on the European Commission *Best Practice Guidelines for Divestiture Commitments* including the model texts for divestiture commitments and trustee mandates.

In both cases the Authority deemed it prudent to ‘market test’ the proposals on offer from the parties. This was undertaken in order to establish whether the proposals offered were appropriate, proportionate and effective in addressing the competition concerns raised by the proposed transaction. Following EU best practice the Authority distributed a summary/non-confidential version of the proposals offered and a short questionnaire to prospective purchasers of the business to be divested. The questionnaire asked respondents whether they would consider:

- purchasing the divesting business themselves;
- the divesting business to be a viable and competitive business that could be operated by a purchaser on a stand-alone basis;
- the divesting business to be able to compete effectively in the relevant market;
- the divesting business to be of interest for a company willing to enter into or expand in the relevant market;
- the proposals offered to be sufficient to eliminate any competition concerns;
- that they had any other concerns.

Following market testing, the Authority proceeded to evaluate the proposals in light of the concerns identified and the responses provided. Again, not having developed guidance of its own, the Authority consulted the guidance of the UK Competition Commission as set out in its Application of divestiture remedies in *merger inquiries*<sup>16</sup>. The Competition Commission notes that ‘*to be effective, a divestiture should involve the sale of an appropriate divestiture package to a suitable purchaser through an*

*effective divestiture process.*’ (para 2.2). Furthermore, following the practice suggested by the Competition Commission guidelines, the Authority tested the divestiture proposals for the following:

- Composition risks — these are risks that the scope of the divestiture package may be too constrained or not appropriately configured to attract a suitable purchaser or may not allow a purchaser to operate effectively and viably in the market;
- Purchaser risks — these are risks that a suitable purchaser is not available or that the merger parties will dispose to a weak or otherwise inappropriate purchaser; and
- Asset risks — these are risks that the competitive capability of a divestiture package will deteriorate prior to completion of divestiture, for example through loss of customers or key members of staff. (para 2.4).

Given the current timelines for merger review, particularly in Phase 1, the submission of proposals by parties, while extending the Phase 1 review period from one month to 45 days, means that there is relatively little time for the Authority to undertake its market testing and complete its evaluation of proposals offered by parties. This is particularly the case where proposals are offered at a relatively late stage in the Phase 1 process and/or where the initial set of proposals offered are not adequate to deal with the competition issues identified. Consequently the Authority will publish, in 2008, a guidance note for practitioners outlining:

- The nature and format of proposals to be submitted by parties;
- The methodology used by the Authority in testing and evaluating proposals submitted; and
- Issues with respect to the impact of the timing of the submission of proposals from parties.

This will no doubt draw heavily on the current guidance as set out in the various notices and guidelines referred to above. Furthermore, the Authority notice will only be published after a consultation process.

<sup>16</sup> Competition Commission, *Application of divestiture remedies in merger inquiries: Competition Commission Guidelines, December 2004.*

## 2.6 Conference: 'Merger Control in Ireland: Prospect and Retrospect'

On 11th April 2007, the Competition Authority held a public conference entitled '*Merger Control in Ireland: Prospect and Retrospect*'. The conference consisted of three sessions, in which papers were presented and discussed by lawyers and economists. Session one was entitled '*Review of Ireland's Merger Control: Four Years On*'. Two papers were presented, the first, '*How to Improve Merger Control in Ireland*', related to ways in which the current mergers regime under the Competition Act, 2002 could be improved. The second paper, prepared by two Case Officers in the Mergers Division, and entitled '*Pigs, Peru and Papers: Reforming Media Merger Control in Ireland*' examined the issues surrounding the mandatory notification of all '*media mergers*' and suggested ways in which the situation could be improved (for details of the changes subsequently implemented, see section 2.3).

In the second session, entitled '*The Use of Economic and Other Evidence in Merger Cases in Ireland*', another Case Officer in the Mergers Division presented a paper on the role of economic evidence in merger control in the State and on current and future practice. In session three, a representative of the European Commission presented a paper on the new consolidated jurisdictional notice<sup>17</sup>.

<sup>17</sup> These papers are available on the Authority's website [www.tca.ie](http://www.tca.ie). In addition, a revised version of one of the papers, 'The Role of Economic Evidence in Merger Control in Ireland: Current and Future Practice', appeared in the December 2007 issue of the European Competition Journal.

## 2.7 International Mergers and Merger Policy

### European Commission Advisory Committee on Concentrations

As part of its international obligations, the Competition Authority proactively participated on the Advisory Committee on Concentrations in respect of three proposed mergers at the European level:

- **Case No. Comp/M.3333 – Sony/BMG**

The Mergers Division represented the Authority on the Advisory Committee on Concentrations in this case. In 2004, the European Commission authorised the creation of the joint venture Sony BMG, combining the recorded music divisions of Sony Corporation and Bertelsmann AG (BMG). However, in 2006 the decision was annulled by the Court of First Instance, which considered that the Commission had made manifest errors of assessment and that the evidence relied on by the Commission had been insufficient to justify the clearance decision. Following this annulment, the case was re-notified to the Commission in January 2007 and the Commission started a new assessment of the transaction. In March 2007, the Commission opened an in-depth investigation. Finally, in October 2007, the European Commission confirmed clearance under EU merger control rules for the creation of Sony BMG, a joint venture combining the recorded music businesses of Sony and Bertelsmann, after concluding that the transaction would not create or strengthen a dominant or collectively dominant position in the relevant markets.

- **Case No. Comp/M.4403 – Thales/Finmeccanica/Alcatel Alenia Space and Telespazio**  
The Mergers Division of the Authority acted as rapporteur to the Advisory Committee on Concentrations for this case. The acquisition by Thales of France of Alcatel’s shareholdings in the space joint ventures Alcatel Alenia Space (AAS) of France and Telespazio of Italy, was originally notified to the European Commission in October 2006. In November 2006, the Commission opened an in-depth investigation to determine whether the new entity would be likely to restrict access to vital components for its downstream satellite and satellite subsystem rivals. The Commission’s investigation found that the new entity’s ability and incentive to do so would be very limited and significantly constrained by both competitors and customers. The Commission concluded that the concentration would not significantly impede effective competition and cleared the merger in April 2007.
- **Case No. Comp/M.4439 – Ryanair/Aer Lingus**  
The Mergers Division held several meetings with the parties in this case, met with the European Commission case team on several occasions and represented the Authority on the Advisory Committee on Concentrations. The proposed acquisition of Aer Lingus by Ryanair was notified to the European Commission on 30th October 2006<sup>18</sup>. On 20th December 2006, the Commission opened an in-depth investigation and subsequently prohibited the acquisition, which it asserted would have combined the two leading airlines operating from Ireland, which currently competed vigorously against each other and would have harmed consumers by removing this competition and creating a monopoly or a dominant position on 35 routes operated by both parties. The European Competition Commissioner Neelie Kroes stated that *‘Our decision to prohibit this merger was essential to safeguard Irish consumers, who depend heavily on air transport, and other EU consumers.’*

<sup>18</sup> The Authority decided not to request a referral of this merger back to Ireland under the ECFR. The reasons for its decision are set out in the 2006 Annual Report.

#### European Commission Reviews of Procedures and Notices

The Competition Authority participated in several European Commission mergers-related expert meetings, including those which examined the:

- Commission Consolidated Jurisdictional Notice (the Competition Authority’s website was amended to reflect the impact of these new guidelines); and
- Commission guidelines on the assessment of non-horizontal mergers under the Council Regulation on the control of concentrations between undertakings.

#### Organisation for Economic Co-operation and Development (OECD)

The Mergers Division prepared submissions to OECD Roundtables on dynamic efficiencies in merger analysis and on managing complex merger cases: how agencies can deal with complex data analysis, surveys and market studies, and obtain the necessary expertise for complex substantive issues.

### Merger Test: Substantial lessening of competition

The test used to decide whether a merger should be allowed or not is whether it will 'substantially lessen competition' in the markets for goods or services in the State. This is the test used in the UK, and a similar version is used by the European Commission. It allows for a focus purely on how competition and consumers are affected by the transaction.

### Notification thresholds

The thresholds for notification are derived from the turnover of the undertakings involved. Each of the undertakings involved must have annual financial turnover of at least €40 million worldwide. Both of them must also carry on business in the island of Ireland, and at least one of them must generate €40 million turnover within the State. If these thresholds are triggered, then a notification must be made.

### Mergers below threshold

Mergers that are below these thresholds may still give rise to anti-competitive effects which harm consumers. The Competition Act, 2002 allows for such mergers to be notified voluntarily to the Competition Authority, so as to gain legal certainty. This is partly because below-threshold mergers are still subject to enforcement action under sections 4 and 5 of the Act, and the Competition Authority has conducted investigations of such transactions.

### Mergers involving media businesses

Mergers where at least two of the undertakings involved carry on a media business in the State, or where at least one of the undertakings involved carries on a media business in the State and at least one carries on a media business elsewhere, must be notified to the Competition Authority, irrespective of the turnovers of the undertakings involved. The Competition Act defines a media business quite widely, including any business that has interests in, for example, newspapers, radio, television or broadcasting platforms. The Competition Act also specifies that a media merger that has been cleared by the Competition Authority can be prohibited by the Minister on public interest grounds.

### Preliminary investigation (Phase 1)

Phase 1 is a one month initial examination of the merger, which is generally sufficient for it to be cleared. The one month review period can be extended where the Competition Authority formally requests additional information from the parties or where the parties submit proposals with specific measures designed to address concerns raised by the Competition Authority. Approximately 95% of the mergers that were both notified and determined in 2007 were cleared in Phase 1.

### Full investigation (Phase 2)

The Competition Authority may carry out a full (Phase 2) investigation where it is unable to determine after a preliminary examination that a merger will not lead to a 'substantial lessening of competition'. Phase 2 is an additional three month period where a detailed examination of the transaction and the market(s) in which the parties operate is conducted.

### Assessment

During a Phase 2 investigation, if the Competition Authority has serious competition concerns, it may issue a written Assessment of the transaction to the parties during the period. This sets out the concerns, and allows the parties to respond to them.

### Clearance of media mergers by the Minister for Enterprise, Trade & Employment

If the Competition Authority clears a media merger at Phase 1, the Minister for Enterprise, Trade and Employment then has 10 days to decide if he wishes to request the Competition Authority to conduct a full investigation (Phase 2). Where the Competition Authority clears a media merger after a Phase 2 investigation, the Minister has 30 days within which he may decide, by order, to allow the merger, clear it with conditions or prohibit it.

The basis on which the Minister arrives at his decision relates not to competition criteria, but to one or more of the public interest grounds as set out in the Competition Act (known as 'relevant criteria'). The relevant criteria include such matters as: diversity of ownership, strength of indigenous media and cross-ownership of different forms of media.

### Appeal to the Courts

If a merger is prohibited, the parties have one month to decide if they wish to make a full appeal to the High Court. If the parties appeal, then the Court will decide on whether the determination of the Competition Authority is justified.

### The role of the Mergers Division in the Competition Authority

The main role of the Mergers Division is to perform most of the Competition Authority's statutory functions regarding the review and determination of notified mergers in the State, within the specified time periods. The Mergers Division also investigates mergers below the notification thresholds under sections 4 and 5 of the Competition Act, 2002. Finally, it represents Ireland at European Commission and other international meetings on merger cases and merger policy.

The Mergers Division comprises a Director, a Division Manager and four Case Officers.

# Promoting Competition in Ireland

In addition to its law enforcement and merger regulation functions, the Competition Authority has a duty to promote competition in the economy in a number of ways:

- Identifying and commenting on the effects on competition of existing laws or administrative practices;
- Advising the Government and its Ministers about the implications for competition of proposed legislation or regulation;
- Studying and publicising how competition operates in the economy; and
- Advising and informing the general public, as well as public authorities, about competition issues.

## 3.1 Identifying Public Restrictions on Competition

In 2007, the Competition Authority continued to raise awareness and call for the removal of anti-competitive laws and regulations. Public restrictions on competition may manifest themselves in many different, and often very subtle, ways. Excessive restrictions on entry to a business or profession, legislation conferring monopoly rights on a particular firm, and prohibitions on advertising, are just some examples of public restrictions on commercial freedom to compete on level terms for the custom of consumers. They are distinguishable from private restrictions which are more relevant to the Competition Authority's enforcement and merger review functions. The end result is the same, however, less value for money and less choice for consumers.

Appendix C contains a full list of formal submissions made by the Competition Authority during 2007. These include a number of submissions made to Government Departments and State bodies in response to public consultation processes. For example, the Authority made submissions to the Medical Council on its *Review of Ethical Conduct and Behaviour*, and to the National Procurement Policy Unit on improving SME access to public procurement. Submissions are available from the Competition Authority's website [www.tca.ie](http://www.tca.ie). A summary of the Authority's submission to the Medical Council is outlined on p. 58.

NEWS RELEASE TUESDAY, 13 MARCH 2007

## Ending ESB's ownership of Ireland's electricity transmission system is essential to ensure competition

The Competition Authority welcomes the Government's proposals for reform of the electricity market outlined in the Government's Energy White Paper as the next logical step towards a truly competitive electricity market.

The proposal that the ownership of the electricity transmission system should be transferred from ESB to the independent state body Eirgrid is especially welcome.

The Chairperson of the Competition Authority, Mr Bill Prasifka, said *'removing the ownership of the electricity transmission system from the ESB is absolutely essential to bring about real competition in electricity generation in Ireland.'*

Competition in electricity generation has long been Government policy. The ESB has committed to this policy and as such has agreed to divest plants and reduce its market share in order to have competition in electricity generation. However, competition in electricity generation will only work if the electricity transmission network is separate from the ESB.

The ESB remains the dominant force in electricity generation and in electricity supply to households in Ireland. It is not realistic to expect competition in this market to emerge if the ESB remains the dominant firm and the owner of an essential facility such as the transmission grid.

*'It is vital that Ireland has real competition in electricity generation, not just the illusion of competition,'* Mr Prasifka concluded.

### Submission to the Medical Council: Review of *A Guide to Ethical Conduct and Behaviour (6th Edition)*

In October 2007, the Competition Authority made a submission to the Medical Council as part of its review of the current (6th) edition of *A Guide to Ethical Conduct and Behaviour* (the 'Guide').

The Guide is fundamentally a set of ethical principles which doctors must apply to clinical situations in which they work. In its submission, the Competition Authority expressed the view that ethical guidelines should not unduly restrict competition to the disadvantage of consumers and patients. Rather, ethical behaviour and competition can and should be entirely compatible and together they benefit consumers.

The Competition Authority recommended the reform of a number of existing guidelines which, in its view, go beyond ethical concerns to unnecessarily interfere with competition. The submission included specific recommendations in three main areas:

- **Advertising:** The revised Guide should liberalise the current guidelines restricting doctor advertising. The current Guide includes a strong presumption against advertising and against competition between doctors. For example, guideline 4.3 states that *'self-advertisement, or publicity to enhance or promote a professional reputation for the purpose of attracting patients, is unacceptable.'*
- **Prescribing:** The guidelines should more clearly support the prescribing of generic medicines, so long as a generic medicine meets required standards. The Authority also suggested that the Medical Council should consider amending its guidance on the financial interests of prescribing doctors in pharmaceutical companies.
- **Referrals:** The current presumption that a GP will be involved in all referrals to consultants is disproportionate and not necessarily in the best interests of patients.

### 3.2 Advice on Proposed Legislation and Regulation and Competition Issues

The Competition Authority regularly advises Government Departments and agencies on the effect on competition, if any, of new legislation or policy proposals under consideration. The Competition Act, 2002 gives the Competition Authority the specific function of advising the Government, Ministers and Ministers of State about implications for competition of proposed legislation. In carrying out this function, the Competition Authority seeks to highlight competition concerns and pre-empt any negative consequences for consumers.

In addition to making formal submissions and commenting on specific draft legislation, the Competition Authority also provides advice to Government Departments and public agencies in other ways and in various formats such as meetings, written communications or combinations of both. In 2007, the Competition Authority advised Government Departments and public bodies on 27 issues covering a wide range of economic sectors, including, for example:

- The Competition Authority advised the Property Services Regulatory Authority on its Code of Conduct for estate agents and auctioneers to ensure that it did not unintentionally include anti-competitive rules;
- The Competition Authority met with the Broadcasting Commission of Ireland to discuss potential models for Digital Terrestrial Television in Ireland;
- The Competition Authority engaged with the Pharmaceutical Society of Ireland's consultants, PWC, regarding the appropriate setting of registration fees for pharmacists under the Pharmacy Act, 2007.

Staff of the Competition Authority also participated in the work of the following external working groups:

- The Services Advisory Group (*Forfás*); and
- The National Oral Health Policy Consultative Panel (*Department of Health and Children*)

### 3.3 Studying How Competition Operates in Particular Sectors

#### Professions Studies

For the last number of years the Competition Authority has been engaged in a series of major studies on Competition in Professional Services, examining eight different professions. The Competition Authority is seeking to examine how competition works in the professions concerned, and to identify behaviour which, although not necessarily breaching competition law, nevertheless inhibits competition. The Competition Authority also examines regulations and practices that potentially restrict competition in these professions, and seeks to have anti-competitive restrictions abolished or replaced.

The Authority published its fifth report in this series in 2007, dealing with the dental profession. The report is available from the Competition Authority website [www.tca.ie](http://www.tca.ie). Work also commenced on the veterinary and medical professions reports, which will continue in 2008.

#### Dentists Report

The Competition Authority published its report on competition issues associated with the dental profession on 3rd October 2007. The Authority found that competition in dental services was restricted and discouraged by an outdated system of regulation. Among the report's key findings were:

- Dentists are not allowed to advertise their prices;
- Dentists are not allowed to offer discounts;
- Dentists are not allowed to canvass for each other's customers;
- Consumers in Ireland do not have the option of going directly to qualified dental hygienists and clinical dental technicians for dental hygiene services and dentures, respectively;
- The number of dentists and orthodontists being trained in Ireland has not kept pace with growing demand.

The Competition Authority made 12 recommendations to address the competition issues identified. Implementation of these recommendations will lead to a modern system of regulation where:

- Consumers are informed of the price of dental services;
- Consumers are aware of their entitlements and the availability of services in their area;
- Consumers have greater choice regarding dental service providers;
- There is a sufficient supply of dentists and orthodontists;
- The public interest is at the heart of statutory regulations.

The recommendations are designed to promote and enhance competition in dental services so that consumers get value for money while at the same time their health and safety is protected.

#### Study of the Private Health Insurance Market

In 2006, the Minister for Health and Children requested the Competition Authority and the Health Insurance Authority to report on *'further measures to encourage competition in the health insurance market and the strategy or strategies which might be adopted in order to create greater balance in the share of the market held by competing insurers'*.

The Competition Authority reported its findings to the Minister for Health and Children in January 2007 and published its report on 13th February 2007. In its report the Authority made 16 recommendations for promoting competition in the private health insurance market in Ireland, including the following:

- Vhi Healthcare's exemption from prudential regulation should be ended as soon as possible so that it becomes subject to the legal solvency requirements and corporate structure rules that apply to other health insurers in Ireland;
- A package of measures should be introduced to provide consumers with useful and timely information to enable them to consider alternative private health insurance products, and to promote consumer awareness of the ease of switching health insurer;
- Vhi Healthcare should discontinue its practice of cancelling its *MultiTrip Travel Insurance* when members switch health insurer;
- The *Minimum Benefit Regulations* should be modernised and the Health Insurance Authority should be allowed to approve limited cover plans, to allow more innovation in the market; and
- The Health Insurance Authority should be given wider powers to enforce the Health Insurance Acts and formally assigned the function of promoting the interests of consumers.

The Voluntary Health Insurance (Amendment) Bill, 2007 was, at the time of writing, before the Oireachtas, and is expected to become law during 2008. The purpose of this Bill is to alter the way in which Vhi Healthcare carries out both its core business of selling private health insurance, and any other ancillary activities in which it engages. Among other things, the Bill would require Vhi Healthcare to establish subsidiaries to carry out certain activities. It would also end Vhi Healthcare's obligation to notify the Minister for Health and Children of any proposed premium increases. In addition, the Bill would impose certain solvency requirements on Vhi Healthcare and oblige it to report its market share figures to the Competition Authority twice yearly. The Bill would implement, either in full or in part, three of the most important recommendations of the Competition Authority's Report.

### 3.4 Raising Awareness of Competition

The Competition Authority continues to raise awareness of the positive role of competition. Through a wide range of methods, Members and staff of the Competition Authority promote awareness of the role of competition in Ireland's economy and continue to draw attention to identified specific problems. Channels used to raise awareness include public speaking opportunities, hosting seminars, giving presentations at conferences and through the media, for example Members and staff of the Competition Authority gave a number of media interviews in conjunction with the publication of the reports published in 2007.

Members and staff also gave speeches or presentations on other matters to a wide range of audiences throughout 2007. Appendix D contains the full list of speeches and presentations made by Members and staff.

The Competition Authority's Seminar Series, which was launched in 2005 to promote a better understanding of current issues in competition law and economics, continued in 2007. The Competition Authority hosts public seminars with a distinguished list of Irish and international guest speakers. Details of the seminars hosted in 2007 are set out at table 3.1.



**TABLE 3.1**

**THE COMPETITION AUTHORITY SEMINAR SERIES 2007**

Date	Speakers	Title
21 February 2007	Herbert Ungerer and Jolanka Fisher	<i>Promoting Competition in Electricity Markets in Small Economies</i>
10 May 2007	Miguel de la Mano, Paul Gorecki and Gerald FitzGerald	<i>Assessing Non-horizontal Mergers</i>
27 September 2007	Ingrid Gubbay, David McFadden, Dermott Jewell and Rosaleen Byrne	<i>Consumer Actions for Damages for Anti-competitive Violations: UK experience and prospects in Ireland</i>
22 November 2007	William Prasifka, John Fingleton and Ann Fitzgerald	<i>Interface between Competition Policy and Consumer Policy: Issues in UK and Ireland</i>

**3.5 Appearance Before Oireachtas Committees**

The Chairperson of the Competition Authority met the Joint Oireachtas Committee on Communications, Marine and Natural Resources on 10th January 2007 to discuss the proposed Broadcasting Bill, 2007, specifically in relation to public broadcaster’s requirements as regards advertising and sponsorship.

The Chairperson also met the Joint Oireachtas Committee on Enterprise and Small Business on 21st February 2007 to outline measures to improve competition in the private health insurance market as outlined in the Competition Authority’s report on competition in that market.

As a separate matter, the Chairperson also met the same Committee on 21st February 2007 to comment on changes in grocery prices following the abolition of the Groceries Order. The Chairperson also outlined how the Authority had approved a grocery monitoring project that would describe in detail the structure of the retail and wholesale segments of the grocery sector, report on business practices in the sector and consider barriers to entry and expansion.

**3.6 Previous Reports and Recommendations of the Competition Authority**

As part of its advocacy function, the Competition Authority continually provides advice, advocates change and makes recommendations to Government Departments and agencies through participation in public consultation processes, in response to requests for advice, following the receipt of information from a concerned business or consumer or by means of formal market studies.

Since 1998, the Authority has carried out studies on a number of different sectors of the economy. The role of the Competition Authority is to study the market concerned and make recommendations on the basis of its findings. The Authority’s recommendations are designed to be consistent with the six principles of good regulation as set out in the Government’s White Paper ‘*Regulating Better*’<sup>19</sup> i.e. *necessity, effectiveness, proportionality, transparency, accountability and consistency*. The Competition Authority does not itself have the power to reform the sectors which it examines as part of its studies. This is the role of Government and the public authorities responsible for regulating each sector.

Over time, there have been some welcome changes in a number of areas. In its July 2005 submission to the Department of Enterprise, Trade and Employment, the Competition Authority advocated the removal of the Groceries Order, pointing out that Ireland had become one of the most expensive countries in the Eurozone for food shopping. The Groceries Order was abolished in March 2006.

<sup>19</sup> See <http://www.betterregulation.ie/index.asp>

A number of the Authority's recommendations in relation to the Insurance, Banking and Health Insurance sectors have either been implemented or progressed. Of the 25 recommendations made in the Banking study, a total of 15 have been implemented so far.

Competition Authority recommendations to improve competition in professional services have also been, or will be, implemented. For example, the Minister for the Environment, Heritage and Local Government implemented three recommendations to make the proposed system for the regulation of architects more appropriate.

Below is a brief summary of the outcome of the various formal studies conducted by the Competition Authority since 1998.

REPORT (DATE)	RECOMMENDATIONS AND OUTCOME
Liquor Licensing (1998)	Four recommendations were directed to the Minister for Justice, Equality and Law Reform. These recommendations were designed to ensure that only issues directly relevant to the social dimension of the sale of alcohol such as the suitability of the applicant and premises and compliance with fire and health and safety regulations would be taken into account when considering an application for a licence. One recommendation, the removal of the 'one mile rule' was implemented in the Intoxicating Liquor Act, 2000.
Transport (1999)	A number of recommendations were made regarding the re-structuring and re-regulation of the rail and bus passenger transport market in the State. The report recommended that regulation should be minimal, proportionate, linked to clearly defined objectives and located as closely as possible to the market being regulated. The Government has signalled its intention to open the Dublin bus market to competition.
Insurance (2005)	The report contained 47 recommendations, to the Financial Regulator (IFSRA) (36), the Department of Transport (4), the Department of Finance (1), the Motor Insurance Bureau of Ireland (4), the Courts Service/Department of Justice, Equality and Law Reform (1) and insurance intermediaries generally (1). The Financial Regulator has addressed 21 recommendations and will address others in the context of its review of intermediaries.
Banking (2005)	The report contained 25 recommendations to the Financial Regulator (IFSRA) (3), the Department of Finance (6), the Irish Payment Services Organisation (IPSO) (10), the Irish Bankers Federation (IBF) (4) and banks (2). A total of 15 recommendations have been implemented by the Financial Regulator, the Department of Finance, the IBF, and IPSO. These include the introduction of switching codes for current accounts and changes to the governance of Ireland's payments systems.
Private Health Insurance Market (2007)	The report made 16 recommendations for promoting competition in the private health insurance market. The recommendations are designed to promote competition in private health insurance, within the limits of intergenerational solidarity, regardless of how the market evolves. Two recommendations have been implemented and eight have been progressed.

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**PROFESSIONS:**

Engineers (2004)	The Competition Authority found that competition in general was working well and made only two recommendations. The Institute of Engineers Ireland (now Engineers Ireland) has implemented the recommendation which was directed to it while no action is required at this time in relation to the recommendation directed to the Minister for the Environment, Heritage and Local Government.
Architects (2006)	11 recommendations were directed to the Minister for the Environment, Heritage and Local Government (6), the Royal Institute of the Architects of Ireland (RIAI) (2), the Law Society (1), Irish Public Bodies Mutual Insurances Ltd (1) and the Higher Education Authority (1). The Minister implemented three recommendations to make the proposed system for the regulation of architects more appropriate, by means of amendments to what is now the Building Control Act, 2007. The Higher Education Authority and the RIAI implemented the recommendations directed to them prior to the publication of the final report.
Optometrists (2006)	Five recommendations were directed to the Minister for Health and Children (2), the Health Service Executive (1), the Opticians Board/Association of Optometrists Ireland (1) and the Higher Education Authority (1). The Competition Authority is following up on whether progress has been made on implementing the recommendations.
Solicitors and Barristers (2006)	The report contained 29 recommendations directed to the Minister for Justice, Equality and Law Reform (13), the Law Society (3), the Bar Council (13) and Taxing Masters and County Registrars (2). The Bar Council implemented four of the recommendations prior to the publication of the final report and a further one since then. However, a comprehensive Legal Services Bill is needed to provide the root and branch reform recommended in this report. The President of the Law Society announced in December 2007 that solicitors are in favour of independent regulation.
Dentists (2007)	The Competition Authority found that competition in dental services was restricted and discouraged by an outdated system of regulation. 12 recommendations were directed to the Dental Council, the Department of Social and Family Affairs, the Minister for Health and Children and the Health Service Executive. The recommendations are designed to promote and enhance competition in dental services so that consumers get value for money while at the same time their health and safety is protected.

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The Competition Authority constantly reviews progress in relation to the implementation of recommendations from its studies. As part of this ongoing review, the Authority engages continually with those to whom recommendations are directed with a view to ensuring that the recommendations are implemented.

**THE ROLE OF THE ADVOCACY DIVISION IN THE COMPETITION AUTHORITY**

The Advocacy Division identifies public restrictions on competition, advocates reform of anti-competitive restrictions, and promotes pro-competition policy making, as required by Section 30 of the Competition Act, 2002.

Public restrictions on competition may arise from laws, regulations or administrative practice. The Competition Authority advocates reform where competition is restricted more than is necessary to protect consumers, and where the adverse effects of restricting competition are more than necessary to pursue another public policy goal.

The Advocacy Division regularly advises Government Departments and public agencies on the effects on competition of legislation being proposed or under review, and makes recommendations to Government, its Departments and agencies, on anti-competitive restrictions identified in the course of a study or a complaint received by the Competition Authority.

The Competition Authority also promotes the case for competition generally, through speeches, presentations and representation.

## SHOULD SELF-REGULATION FOR SOLICITORS BE SCRAPPED?

*Yes - Declan Purcell says no one can both represent and regulate a profession and it is time to put consumers first.*

Solicitors in Ireland regulate themselves, with the full authority of the law behind them to do it. Is that how it should be? Is that how other professions are regulated? Or the way it is done elsewhere? The answer to all three questions is no.

Other jurisdictions with similar legal systems - England and Wales, Australia and New Zealand - have all moved away from self-regulation to independent oversight. The trend in Ireland too is towards independent statutory regulation. The medical and pharmacy professions have independent statutory regulators, courtesy of government legislation. So does dentistry. And banking. And private health insurance. The list goes on.

So is the legal profession somehow unique or special, or above all others in insisting on running its own affairs? No - the old paternalistic model of trusting a profession to protect consumers carries too much potential for conflicts of interest. It is time this was recognised, and the power to regulate solicitors' affairs was taken away from them.

The proper role of the Law Society is as a representative body for solicitors, to act in the interest of solicitors. The role of an independent regulator, on the other hand, is to act in the interests of consumers and in the public interest. The representative and regulatory roles regularly collide and, where they do, the consumer is the loser. There is increasing evidence that many solicitors think so too. As one prominent solicitor said recently, *'I don't think the Law Society can continue going forward riding both horses'*.

Let's look at a few examples of this conflict in practice.

- 1 The Law Society spends huge sums on advertising campaigns to encourage you to engage a solicitor but very little on promoting consumer awareness of your rights when dealing with a solicitor.
- 2 The Law Society has lobbied to protect its monopoly on conveyancing, despite the clear consumer benefits of opening up this market.
- 3 The Law Society has also maintained its monopoly on solicitors' training by refusing to publish guidelines by which other schools (e.g. universities) might provide this.
- 4 The Law Society has failed to act effectively against known consistent abuses by solicitors, waiting instead until a scandal unfolds - and there have been plenty of them in recent years.

You simply cannot combine regulatory and representative functions in one organisation, in this case the Law Society. It just doesn't work. It doesn't inspire consumer or public confidence.

To resolve these conflicts, we need to establish a fully independent legal services commission, backed by legislation, with these powers: to determine how, and from whom, solicitors should get their training; to lay down proper ethical and conduct standards; to inspect solicitors' activities; and to apply meaningful and proportionate punishment for any wrongdoing.

Such an independent commission would promote the consumer's interest and provide consumer information, much as the Financial Regulator does.

An independent commission might well have representatives on its board of those it is supposed to be regulating, but the important point is that they should not control the system. The reforms planned by the Government in relation to legal complaints and legal costs are very welcome, but they don't go far enough. Independent regulation is needed to restore public confidence.

Solicitors in England and Wales have now agreed to split the roles of regulation and representation, and to the creation of an independent regulator. Their counterparts here should do the same; if they don't, the Government should decide this for them.

As for public accountability, let us not be diverted by claims that solicitors are ultimately regulated by the High Court. While the President of the High Court does have a role in relation to the ultimate disciplining of individual solicitors, the fact is that solicitors hold most of the strings when it comes to regulating the affairs of the profession.

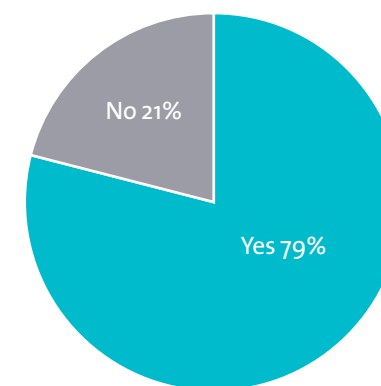
The foundations for self-regulation in the solicitors' profession have been crumbling for years, as problem after problem surfaces, and the litany of complaints becomes ever longer and louder. We should not hold on any longer to a discredited self-regulatory system that has lost the public's confidence. Of all the professions, one would expect solicitors, who claim such an integral role in vindicating citizens' rights, to accept they should be regulated in a manner that inspires public confidence - in other words independently of themselves.

Justice must not only be done, it must be seen to be done.

**Declan Purcell is a member of the Competition Authority and director of its Advocacy Division**

This article first appeared in the Irish Times on Monday, November 12th, 2007 in a *'Head 2 Head'* with Ken Murphy, Director General of the Law Society of Ireland. The results of the Irish Times' online poll question *'Should self-regulation for solicitors be scrapped?'* indicated that 79% were in favour of self-regulation being scrapped while 21% were against.

Should self-regulation for solicitors be scrapped?



Article reproduced courtesy of the Irish Times

# Policy & Corporate Services

## Finance

The Competition Authority is funded by way of annual grant from the Department of Enterprise, Trade and Employment. In 2007, the Competition Authority's grant was €6.1 million. The Competition Authority's accounts are subject to audit by the Comptroller & Auditor General and the audit of the 2007 accounts is unlikely to be completed until the second quarter of 2008. However, at the time of writing, the provisional unaudited outturn for 2007 was expenditure of €4.8 million, roughly similar to expenditure in 2006. The under-spend arose mainly from the existence of a number of vacancies throughout the year.

## Freedom of Information

The Competition Authority received five requests under the Freedom of Information Acts in 2007, three more than in 2006. All five requests were of a non-personal nature. Three of the requests were part granted with access to some documents being refused while the other requests were refused. In the case of one of the applications where access to documents was part granted and in the case of one of the applications where access was refused, the applicants appealed the decisions. Both decisions were upheld on internal review. While the low level of requests to the Competition Authority is probably partly due to the general decrease in freedom of information requests to public bodies, the Competition Authority attributes the low level of requests more to its proactive policy of openness and transparency as demonstrated by the huge volume and variety of documents that it publishes.

## Recruitment

The Competition Authority carries out its own recruitment of staff. The Authority conducted three public recruitment competitions in 2007 from which it made eight appointments arising from vacancies that carried over from 2006 or arose in 2007. 2007 saw an increase in the rate of turnover of staff in the Competition Authority over recent years. Of the 13 persons who left employment in the Competition Authority in 2007, eight joined other public sector bodies, two took up employment in the private sector and two persons seconded temporarily to the Competition Authority returned to the public bodies from which they had been seconded.

## International Commitments

The Policy division is responsible for the co-ordination of the Competition Authority's international commitments.

### European Competition Network (ECN)

The ECN was established, on foot of Regulation 1/2003, to ensure that European Union (EU) competition law is applied consistently across all Member States. The objective of the ECN is to build an effective legal framework to challenge companies who engage in cross-border business practices which restrict competition and are anti-consumer. Membership of the ECN is compulsory for all Member States.

During 2007, the Competition Authority was active in three of the four ECN Working Groups and five of the seven ECN Sectoral Subgroups that met during the year as well as being active in all Plenary, Director General and Expert Meetings. In addition to the activities of the ECN, the Competition Authority also attended Oral Hearings and Advisory Committee meetings relating to breaches of EU competition law.

### Organisation for Economic Co-operation and Development (OECD)

Ireland is a member of the OECD by governmental agreement. The OECD provides a setting for its 30 member governments to discuss economic, social and governance policy issues and experience. The OECD also acts as an independent source for policy research and analysis. The OECD consists of Committees which focus on a wide range of policy issues. The Committee responsible for competition policy is the Competition Committee.

The Competition Committee promotes market-oriented reform by actively encouraging and assisting decision-makers in government to tackle anti-competitive practices and regulations. The Competition Authority attends the meetings of the Competition Committee of the OECD and its two associated working parties: Working Party 2 on Competition and Regulation and Working Party 3 on Co-operation and Enforcement. The Competition Committee and its associated Working Parties meet in Paris three times a year; meetings regularly feature 'roundtable' discussions on substantive policy issues. Member countries are invited to make submissions in advance of roundtables, and these are all published at a later stage, together with a Background Report by the OECD Secretariat and a synthesis of the Discussion.

During 2007, the Competition Authority made two roundtable submissions to Working Party 2 on Competition in the Legal Profession and Taxi Services Regulation and Competition. The Competition Authority made four roundtable submissions to Working Party 3 on *Public Procurement; How to provide Effective Guidance to Business on Monopolisation/Abuse of Dominance; Potential Pro-competitive and Anti-competitive Aspects of Trade/Business Associations; and Managing Complex Merger Cases*. The Competition Authority also made three submissions to the Competition Committee on *Dynamic Efficiencies in Mergers; Evaluation of Competition Authorities and Refusals to Deal*. In February 2007, Working Party 3 held a full day program with Public Prosecutors on Cartel Matters; the Competition Authority and two prosecutors from the DPP attended and contributed to this meeting.

### International Competition Network (ICN)

The Competition Authority is a member of the International Competition Network (ICN). The ICN seeks to provide competition authorities with a specialised yet informal venue for maintaining regular contact and addressing practical competition concerns. The Irish Competition Authority is active in three of the network's working groups: the Unilateral Conduct Working Group (UCWG), the Merger Working Group (MWG) and the Cartels Working Group (CWG). For the first half of 2007, the Irish Competition Authority sat on the ICN steering group.

The Competition Authority chairs the Merger Investigation and Analysis Subgroup of the MWG. At the 2006 ICN Annual Conference the subgroup published the ICN Merger Guidelines Workbook. The publication of the Workbook followed the completion of a two year long work plan and involved co-operation with several agencies. In 2007, as a follow-up to the Workbook and the ICN Remedies Project and Investigative Techniques Handbook produced in 2005, the Competition Authority and the UK Office of Fair Trading co-hosted a workshop aimed at competition agency staff lawyers and economists. The workshop explored substantive issues in merger review. There were 116 participants at the workshop, including 31 speakers and moderators, from 42 countries covering all five continents. The Competition Authority reported on the outcomes of the workshop at the ICN Annual Conference in Moscow in May.

The Competition Authority is active in two subgroups of the CWG: General Framework Subgroup and Enforcement Techniques Subgroup. The Competition Authority contributed, along with the UK OFT and the ACCC, to the preparation of the chapter on cartel '*Case Initiation*' for the Anti-Cartel Enforcement Manual and presented the chapter to the ICN membership in Moscow. The Competition Authority also played an active role in the ICN Cartel Workshop held in El Salvador in November 2007.

The Competition Authority also provides input in drafting the Report on Objectives of Unilateral Conduct Laws, Assessment of Dominance being prepared by the UCWG.

### European Competition Authorities (ECA)

The Competition Authority is a member of the European Competition Authorities (ECA). The ECA provides a forum for discussion between National Competition Authorities in the European Economic Area. Members of the ECA include competition authorities from EU Member States, the European Commission, Member States of European Free Trade Area and the EFTA Surveillance Authority. The ECA seeks to improve co-operation between competition authorities and contribute to the efficient enforcement of national and European law. In 2006, a new Working Group on Sanctions was established and this group was also active in 2007.

### Strategy Statement

The Competition Authority is required under Section 33 of The Competition Act, 2002 to produce a Strategy Statement outlining the specific strategies and performance indicators it expects to meet over the short to medium term. The current Strategy Statement covers the period from 1st January 2006 to 31st December 2008. While the Competition Authority looks forward to continued incremental expansion, the focus of its strategy is no longer on building capacity, but rather about discharging its functions in the most timely, efficient and effective way possible.

### THE COMPETITION AUTHORITY'S 2006–2008 STRATEGY

The Competition Authority's 2006-2008 Strategy Statement outlines the next stage in the development of the organisation. It is a strategic plan which looks forward to continued incremental expansion of the Competition Authority. The focus of the Strategy Statement is on discharging the Competition Authority's functions in the most timely, efficient and effective way possible.

The Competition Authority's Strategy Statement was developed following extensive consultation with internal and external stakeholders. As a maturing agency the Competition Authority has moved away from building up its capacity to concentrating on improving the quantity and quality of its 'outputs' and their delivery.

The Strategy Statement outlines the Competition Authority's strategic plan in three stages:

#### Stage 1 addresses the question:

'What are the Competition Authority's objectives?'

Accordingly, this section begins with a statement of the Competition Authority's *Mission Statement and Goals*. This section also includes a description of the Competition Authority's roles, as conferred by statute.

#### Stage 2 addresses the question:

'What factors, internal or external, affect how the Competition Authority might achieve its objectives?'

This section considers first the internal environment and accordingly describes the Competition Authority's structure and resources. The external environment is then considered and anticipated future developments are outlined. *Critical Success Factors* are then described.

#### Stage 3 addresses the question :

'Given the environmental factors that the Competition Authority operates in, how best might the Authority achieve its objectives?'

This section outlines the Competition Authority's specific strategies for the period 2006–2008. Key performance indicators designed to allow the Competition Authority to assess how successful its strategies are in achieving its goals, are also described. The Competition Authority's *Mission Statement and Goals* are derived in large part from the functions of the Competition Authority as set out in the Competition Act, 2002. These functions include the enforcement of competition law, the review of mergers and competition advocacy.

## THE COMPETITION AUTHORITY'S 2006-2008 STRATEGY

The Competition Authority's Mission is:

'To ensure that competition works for the benefit of consumers throughout the Irish economy'

Making competition work for the benefit of consumers means ensuring that markets can increase consumer welfare and consumer choice, through efficient pricing, innovation, and greater product quality and variety. Since businesses are often 'consumers' themselves, making competition work well for consumers also means making competition work well for businesses.

### Competition Authority Goals

- Goal 1:** Ensure the fullest possible compliance with competition law;
- Goal 2:** Promote competition where it is absent, limited or restricted;
- Goal 3:** Raise awareness and understanding of the benefits of competition among policy makers, businesses and consumers;
- Goal 4:** Provide an effective and timely service to stakeholders, both internal and external; and,
- Goal 5:** Fulfil international obligations as well as contribute to the development of, and convergence to, international best practice in competition policy and enforcement.

## COMPETITION AUTHORITY MEMBERS



**William Prasifka**  
Chairperson



**Declan Purcell**  
Advocacy



**Carolyn Galbreath**  
Cartels



**Paul Gorecki**  
Mergers



**Stanley Wong**  
Monopolies



**ORGANISATION STRUCTURE OF THE COMPETITION AUTHORITY (REFLECTS STAFF POSITIONS ON 31st DECEMBER 2007)**

Division	Advocacy	Mergers	Corporate Services	Cartels	Monopolies	Policy
Members	Declan Purcell	Paul Gorecki	William Prasifka	Carolyn Galbreath	Stanley Wong	William Prasifka
Functions	Study, analysis and advocacy of competition in markets where the State restricts competition and liberalising markets	Merger notifications, review and enforcement	Human Resource Management, Finance, Administrative support, ICT, Public Relations	Investigation and prosecution of and enforcement against hard-core cartels under Section 4	Investigations and enforcement in abuse of dominance cases and non-cartel (horizontal and vertical) agreements under Sections 4 and 5	Analytical support for other divisions, principally the Mergers Division. Management and co-ordination of international work. Development of information and training structures. Development and implementation of policies and strategy.
Divisional Managers	Carol Boate	Cormac Keating	Ciarán Quigley	Vivienne Ryan	Patrick Kenny	John Evans
Legal Advisors			Noreen Mackey, David McFadden			
Communications Manager			Clodagh Coffey			
Case Officers	Ciarán Aylward, Paloma Repullo Conde, Cathal Hanley, Andrew Rae, Dave O'Connell.	Ibrahim Bah, Victoria Balaguer, Anne Ellis, Barry O'Donnell.		John Burke, Michael Downey, TJ Fitzpatrick, Catherine Kilcullen, Eksteen Maritz, Kenneth McGreevy, †Joe McLoughlin, †Tony Mulligan, Elisa Ryan, Sinead Sinnott, Joseph Walser.	Aoife Brennan, Kieran Coleman, Niamh Dunne, Theunis Kotze, Han Nie, Anne Ribault O'Reilly.	Janet McCoy, Kathryn MacGuill, Michele Pacillo.
Higher Executive Officers			James Plunkett (IT Manager)			
Executive Officers			Sandra Rafferty, Stephen Lalor, Pat Downey			
Clerical Officers			Elizabeth Heffernan, Laraine Cooper, Robert Holmes, Sandra Brennan, Susie Bregazzi			

†Detective Sergeants Tony Mulligan and Joe McLoughlin are on secondment to the Competition Authority from the Garda Bureau of Fraud Investigation.

# Appendices

## APPENDIX A: STATISTICS ON MERGERS EVALUATED 2005-2007

	2007	2006	2005
<b>Notified Mergers</b>	<b>72</b>	<b>98</b>	<b>84</b>
required notifications (Section 18(1))	71	97	84
voluntary notifications (Section 18(3))	1	1	0
<b>Carried from previous year</b>	<b>9</b>	<b>7</b>	<b>11</b>
carried as Phase 1	8	7	10
carried as Phase 2	1	0	1
<b>Referred from the EU Commission (ECMR Art 9)</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>TOTAL CASES</b>	<b>81</b>	<b>105</b>	<b>95</b>
of which media mergers	20	22	23
of which entered Phase 2 in year of determination	3	3	1
of which entered Phase 2 in year previous to determination	1	0	1
<b>Cases Withdrawn</b>	<b>2</b>	<b>2</b>	<b>1</b>
Withdrawn at Phase 1	2	2	1
Withdrawn at Phase 2	0	0	0
<b>Determinations Delivered</b>	<b>70</b>	<b>94</b>	<b>87</b>
Phase 1 Determinations cleared without proposals	64	91	80
Phase 1 Determinations with proposals	2	0	5
Phase 2 positive Determinations without conditions or proposals	3	2	0
Phase 2 Determinations with proposals	1	0	0
Phase 2 Determinations with conditions	0	0	2
Phase 2 Prohibitions	0	1	0
<b>Referral to EU Commission (ECMR Art 22)</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>Carried to next year</b>	<b>9</b>	<b>9</b>	<b>7</b>
Carried as Phase 1	9	8	7
Carried as Phase 2	0	1	0

## APPENDIX B: MERGERS NOTIFIED TO THE COMPETITION AUTHORITY IN 2007

Notification	Industry	Date Notified	Status
M/07/001 - Motorola/ Netopia	Broadband access equipment	04 January 2007	Completed
M/07/002 - Eason/ Menzies/ E M News Distribution	The wholesale distribution of newspapers and magazines	05 January 2007	Completed
M/07/003 - GE/ Vetco	Onshore and offshore oil and gas production supplies	08 January 2007	Completed
M/07/004 - Industri Kapital/ Magotteaux	Products and services to industries where comminution processes are essential in the manufacturing of finished products	11 January 2007	Completed
M/07/005 - River Newspapers NI/ Olok	Media sector, in particular, that of regional newspapers	12 January 2007	Completed
M/07/006 - GMG/Saga	Media	17 January 2007	Completed
M/07/007 - McNamara/Conrad International/ECHPL	Operation of hotels/ provision of hospitality services	26 January 2007	Completed
M/07/008 - CBS Outdoor/ Haveco	Marketing and media solutions	31 January 2007	Completed
M/07/009 - UTC/ SFS Fire Services	Fire protection	13 February 2007	Withdrawn
M/07/010 - Irish Times/ Gazette Group	The newspaper publishing and advertising sector	27 February 2007	Completed
M/07/011 - Great-West Lifeco/ Putnam	Asset management	28 February 2007	Completed
M/07/012 - Bord na Móna/ AES	Commercial and Domestic waste management and recycling	07 March 2007	Completed
M/07/013 - Quinn Group/ BUPA Ireland	Health insurance and occupational health employee assistance	09 March 2007	Completed
M/07/014 - Danish HoldCo/ Dako Denmark	The Production of reagents and instruments for in vitro diagnostics	26 March 2007	Completed
M/07/015 - MDP/ Topps	Confectionery and entertainment	04 April 2007	Completed
M/07/016 - GS Capital Partners/ Alliance Atlantis Communications	GS Capital Partners is engaged in providing private equity and investments in a broad range of sectors, including the entertainment/media sector, on a worldwide basis. The Assets being acquired from Alliance Atlantis comprise the rights to co-produce and distribute the CSI Franchise throughout the world	03 April 2007	Completed
M/07/017 - Fulsá/ Mater Private Healthcare	Private Healthcare Services	27 April 2007	Completed

**APPENDIX B: MERGERS NOTIFIED TO THE COMPETITION AUTHORITY IN 2007**

M/07/018 - BNY/ Mellon	Financial Services	04 May 2007	Completed
M/07/019 - Agricultural Trust/ Irish Catholic	Specialist weekly periodicals	09 May 2007	Completed
M/07/020 - Alchemy/ A-Wear	Retail sale of womenswear in the UK and Ireland	10 May 2007	Completed
M/07/021 - Thomas Crosbie Holdings/ WKW FM	Media	11 May 2007	Completed
M/07/022 - Thomas Crosbie Holdings/ South East Broadcasting	Media business	11 May 2007	Completed
M/07/023 - MDP/ CDRV	Distribution of laboratory equipment and chemicals. Also, providing customers with services such as storeroom management, product procurement, supply chain integration, technical services and laboratory bench top delivery	15 May 2007	Completed
M/07/024 - Verizon Business/ Cybertrust	Security services	15 May 2007	Completed
M/07/025 - 3i Group/ Foster Group	Architectural services	14 May 2007	Completed
M/07/026 - State Street/ IFIN	Financial Services, particularly the provision of domestic and global securities services to institutional investors. In Ireland, both State Street and IFIN are active in the fund custody and fund administration markets.	23 May 2007	Completed
M/07/027 - Britvic/ C&C	The soft drinks sector (both the manufacturing and wholesaling of soft drinks)	24 May 2007	Completed
M/07/028 - Citigroup/ BISYS	Financial services generally and in particular the provision of fund services	31 May 2007	Completed
M/07/029 - NTL/ Clane	Retail pay TV	01 June 2007	Completed
M/07/030 - GDG/ AEPL	Space heating products, domestic appliances, air extrusion and shower products	06 June 2007	Completed
M/07/031 - Galco/ Sperrin/ Sperrin	The provision of steel corrosion protection systems	12 June 2007	Completed
M/07/032 - Alchemy/ Calyx	IT services	13 June 2007	Completed

**APPENDIX B: MERGERS NOTIFIED TO THE COMPETITION AUTHORITY IN 2007**

M/07/033 - Oldcastle Precast/ Carson	Grade-level enclosures and accessories	18 June 2007	Completed
M/07/034 - AXA IMPEE/ Diana Group	The Diana Group is a supplier of natural extracts, flavours and functional ingredients to specific sectors of the pet food and food & beverage industries	22 June 2007	Completed
M/07/035 - Investec/ Kensington	Residential mortgages	28 June 2007	Completed
M/07/036 - Intesa/ Pirelli RE	Real estate facility management	02 July 2007	Completed
M/07/037 - Bank of Scotland/ Polypipe	Piping and sanitary systems	06 July 2007	Completed
M/07/038 - Musgrave/ J&J Haslett	Food wholesale and grocery distribution in Northern Ireland	17 July 2007	Completed
M/07/039 - EBS/ Britannia	Financial services	30 July 2007	Completed
M/07/040 - Communicorp/ SRH	Radio broadcasting	30 July 2007	Completed
M/07/041 - Origin/ Odlum	Flour milling and oatmeal milling	31 July 2007	Completed
M/07/042 - Mellon/ AAMGSS	Financial services	01 August 2007	Completed
M/07/043 - One51/ Hegarty/ A1 / Galway Metal	Recycling of scrap metal	10 August 2007	Completed
M/07/044 - Barclays/ Global Refund	Financial services	17 August 2007	Completed
M/07/045 - CACEIS/ Olympia Capital/ Winchester/ Brooke	Financial services	20 August 2007	Completed
M/07/046 - Smart Telecom/ E-nvi	The Irish electronic communications sector comprising the provision of multi-channel TV, telephony and broadband services	20 August 2007	Completed
M/07/047 - LGIV/ City Channel	Production of television programmes and television broadcasting	22 August 2007	Completed
M/07/048 - News Corporation/ Dow Jones	Newspaper publishing	27 August 2007	Completed
M/07/049 - LBBW/ Sachsen LB	The wholesale banking sector, in particular relating to global financial products markets	30 August 2007	Completed
M/07/050 - Universal/ Sparrowhawk	Media	04 September 2007	Completed
M/07/051 - Siteserv/ Sierra	Construction	10 September 2007	Completed
M/07/052 - Standard Chartered/ Pembroke	Aircraft leasing, finance and management services	12 September 2007	Completed
M/07/053 - VION/ Oerlemans	Food	18 September 2007	Completed
M/07/054 - Novasep/ PharmaChem	Pharmaceuticals – chemical design and products	19 September 2007	Completed

#### APPENDIX B: MERGERS NOTIFIED TO THE COMPETITION AUTHORITY IN 2007

M/07/055 – Bunzl/ DGD	Supply of the food-away-from-home sector or retail sector within the island of Ireland	19 September 2007	Completed
M/07/056 – Brunner/ Arnotts	Operation of retail stores and retail property development	24 September 2007	Completed
M/07/057 – Renault/ Glencullen	Wholesale distribution of Renault-branded motor vehicles in the Republic of Ireland	28 September 2007	Completed
M/07/058 – Eurocopter/ McAlpine	Helicopter distribution	28 September 2007	Completed
M/07/059 – Resolution/ Friends Provident	Life insurance and asset management sectors	11 October 2007	Withdrawn
M/07/060 – Imtech/ Suir	Engineering services	19 October 2007	Completed
M/07/061 – Newscorp/ NGT/ NGC-UK	The production and supply of television channels	26 October 2007	Completed
M/07/062 – Honeywell/ HHP	Manufacture of data collection and management solutions for in-premise, mobile, and transaction processing applications	05 November 2007	Completed
M/07/063 – Pearl/ Resolution	Life Insurance	12 December 2007	Active
M/07/064 – Johnston Press/ Clonnad	Regional newspapers and local free-sheet/community newsletters	12 December 2007	Active
M/07/065 – Royal London/ Resolution	The provision of life insurance, pension and investment products	13 December 2007	Active
M/07/066 – Bank of America/ LaSalle	Financial services	13 December 2007	Completed
M/07/067 – Capvest/ Drie Mollen	Tea and coffee production	14 December 2007	Active
M/07/068 – Nike/ Umbro	Design, development and marketing of sports apparel, footwear and equipment	21 December 2007	Active
M/07/069 – UTV/ FM104	Radio	21 December 2007	Active
M/07/070 – 3i/ Inspicio	Testing, inspection and analysing services	21 December 2007	Active
M/07/071 – Barclays/ Gardman	Wild bird care, garden products	21 December 2007	Active
M/07/072 – Carillion/ McAlpine	Construction and facilities management	24 December 2007	Active

#### APPENDIX C: FORMAL SUBMISSIONS MADE BY THE COMPETITION AUTHORITY IN 2007

Submission Number	Submission to:	Topic	Summary of Recommendations
S/07/001	National Public Procurement Policy Unit	Improving SME access to Public Procurement	Unnecessary procurement requirements may have the unintended effect of excluding appropriately qualified firms from markets or favouring large firms over smaller ones. The Competition Authority recommendations focus on issues relating to excessive insurance requirements, pre-qualification requirements, staff training, tender specifications and compliance issues.
S/07/002	Office of Fair Trading	Private Actions in Competition Law: Effective Redress for Consumers and Business	The Authority considers that the EU Commission should establish rules and policies to ensure that the right of private actions is effective in each Member State, that Member States should be obliged to introduce some form of collective litigation and that nothing ought to be done to favour a leniency applicant – provided always that damages are defined as compensatory.
S/07/003	Organisation for Economic Co-operation and Development (OECD)	OECD Review of the Irish Public Service	The Competition Authority recommends that the OECD should consider whether there is scope for greater use of competition and market prices to promote efficiency and value for money in the public service; whether, and to what extent, there is scope for the Government to formally adopt a policy of competitive neutrality and whether public procurement, as it currently operates promotes efficiency and value for money.
S/07/004	Department of Transport	Department of Transport Strategy Statement 2008-2010	Outdated regulations are restricting consumer choice and entrepreneurial initiative by preventing the emergence of real competition in the public transport market. The regulatory system needs to be radically overhauled in order to evolve and meet changing consumer demands. Overhauling regulations to allow for competition in the public transport market will also require the creation of structures to integrate information, fares and ticketing in order to provide customers with a seamless travelling experience.

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S/07/005	Department of Communications, Energy and Natural Resources (DCENR)	DCENR Strategy Statement 2008-2010	The Competition Authority stresses the need to introduce more competition into the Irish electricity market, principally by horizontally and vertically separating the ESB, and advocates that the Strategy Statement retains a clear focus on electricity and on delivering the actions laid out in the White Paper, particularly those involving structural reform.
S/07/006	The Medical Council	Medical Council's Review of Ethical Conduct & Behaviour	The Competition Authority's submission focuses on four main issues. The Authority recommends a number of specific reforms to liberalise current restrictions on doctor advertising. The Authority also recommends that there should be stronger support for the prescribing of generic medicines and more flexibility in the referral of patients particularly referrals between specialists. Finally, the Authority notes that guidelines regarding financial interests of doctors would need to be consistent with the Pharmacy Act, 2007, concerning beneficial interests in pharmacies.
S/07/007	Commission on Patient Safety and Quality Assurance	A Statutory System of Licensing for Public and Private Health Care Providers and Services	Statutory licensing systems have the potential to create unnecessary and harmful barriers to entry, depending on how they are designed and the nature of the problem(s) they are aimed at addressing. The Competition Authority recommends that any future licensing system be proportionate to the problem it wishes to address, and the criteria set by an independent body in a transparent manner that allows for innovation.
S/07/008	Department of Enterprise, Trade and Employment	Review of the Competition Act	The Competition Authority makes a number of suggestions that aim to improve the effectiveness of competition policy in the State. The submission proposes a number of measures that would allow for the introduction of stiffer financial penalties against those who obstruct investigations and tougher sentencing to deter anti-competitive conduct. The Authority also proposes changes to the current mergers regime.

### APPENDIX D: SPEECHES, PRESENTATIONS & PAPERS 2007

Title	Forum	Date	Person
Update on Developments in Ireland	American Bar Association	23 January	William Prasifka
Antitrust Goes Global: The Challenge of Managing Transnational Investigations and Litigation	International Air Transport Association Legal Symposium, Istanbul	11 – 13 February	Stanley Wong
Co-operation and Enforcement: Obstruction and Enforcement of Cartel Investigations in Ireland	OECD Competition Committee, Paris	20 February	David McFadden
Electricity Conference	Institute of European Affairs	21 February	William Prasifka
Market Studies – General Philosophies	UK DTI Seminar	21 February	Declan Purcell
Market Studies – Some Lessons Learned	UK DTI Seminar	21 February	Declan Purcell
Enforcement of Article 82 EC Treaty	Law Society, University of Limerick	28 February	Stanley Wong
The Advocacy Function of the Competition Authority	Visit by Bulgarian Competition Authority	7 March	Declan Purcell
Vertical Integration in the Pharma Sector	European Competition Network	15 March	Declan Purcell
Private vs Public Interest: The Strategic Use of Competition Law in Ireland by Private Interests	Amsterdam Centre for Law and Economics, University of Amsterdam, Workshop on Strategic Firm-Authority Interaction in Antitrust, Merger Control and Regulation, Amsterdam	16 March	Paul K Gorecki
Cartel Enforcement Update: Predicting a Bumpy Road Ahead for Cartels in Ireland	Irish Centre for European Law, Competition Law Update: Public and Private Enforcement	28 March	Carolyn Galbreath
Improving Merger Control in Ireland	Merger Control in Ireland: Prospect and Retrospect	11 April	Noreen Mackey
ECN and International Co-operation	American Bar Association, Washington DC	17 April	William Prasifka
Legal Profession	ICEL	24 April	William Prasifka
Hemat v Medical Council: Its Implications for Irish and EU Competition Law	Paper published in European Competition Law Review, Volume 28, Issue 5, pp. 284-293.	May	Paul K Gorecki & Noreen Mackey
US and European Antitrust Enforcement	International Association of Young Lawyers	10 May	William Prasifka

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Irish Experience with Non-Horizontal Mergers: Coillte/Weyerhaeuser	Seminar sponsored by the Competition Authority and the Institute of European Affairs, Dublin on Assessing Non-Horizontal Mergers	10 May	Paul K Gorecki
Report on the 2007 ICN Merger Workshop	International Competition Network Annual Conference, Moscow	13 May	John Evans
Anti-cartel Enforcement and Restrictive Practices Workshop	OECD Regional Centre for Competition, Budapest	21-25 May	David McFadden
Merger Working Group, Panel Discussion, Moderator of Breakout Sessions	6th International Competition Network Annual Conference, Moscow	30 May-1 June	Paul K Gorecki
Promoting Competition the Irish Electricity Market	Energy Ireland Conference	11 June	William Prasifka
The Competition Quandry: Betting the Company	Institute of Directors, London	11 June	David McFadden
How much competition can we expect in the Irish private health insurance market?	Sunday Business Post 'Health Summit 2007'	13 June	Carol Boate
Keeping Trade Associations on the Right Side of Competition Law Regulation and Competition	IBEC Staff Day: How to Run a Trade Association	5 July	Carolyn Galbreath
Presentation to EU Embassadors	Competition Law PPC II, Law Society	10 July	Noreen Mackey
Competition and Regulation	Public Affairs Ireland	11 July	William Prasifka
Enforcement of Irish and EC Competition Law	Seminar, Ulster Bank	16 July	William Prasifka
Competition and the Beverage Industry	Beverage Council of Ireland	13 September	Stanley Wong
Amendments to the Competition Act	Competition Press Conference	14 September	William Prasifka
Consumer Actions for Damages for Anti-Competitive Violations: UK Experience and Prospects in Ireland	Irish Institute for European Affairs	26 September	David McFadden
Cartel Criminalisation in Ireland and Europe: Can the United States Model of Antitrust Enforcement be Successfully Transferred to Ireland and Europe?	American Bar Association, Section of International Law, 2007 Fall Meeting	27 September	David McFadden
After-dinner speech	Canadian Bar Association, Annual Fall Competition Law Conference, Ottawa	1 October	Carolyn Galbreath
		11 October	Stanley Wong

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Taxi Regulation	OECD Competition Committee, Paris	15 October	Declan Purcell
Workshop leader	Annual EU Competition Policy Conference, American Chamber of Commerce to the EU, Brussels	22 October	Stanley Wong
A Big Court Case to Lose?	Published in Business and Finance, Volume 43, p. 59	26 October	Paul K Gorecki
Why Legislators Intervene to Tackle Market Power	University of Limerick	12 November	Patrick Kenny
Role and Function of the Competition Authority	Public Affairs Ireland Seminar	20 November	Declan Purcell
Consumer Policy	Institute of European Affairs	22 November	William Prasifka
Enforcing Competition Law	ISEL Competition Conference	23 November	William Prasifka
Competition in the Waste Sector	National Waste Summit	27 November	Declan Purcell
The Role of Economic Evidence in Merger Control in Ireland: Current and Future Practice	Paper published in European Competition Journal, Volume 3, No 2, pp. 497-524	December	Paul K Gorecki, Cormac Keating, and Brendan O'Connor



River in Glendalough, Co. Wicklow.

