

innovation

vigorous
competition
drives
productivity
growth,
innovation
and
value
for
all

the
economy
growth
productivity
innovation
and
value
for
all
consumers
in
the
economy

productivity

economy



productivity

Annual Report 2008



The Competition Authority
An tÚdarás Iomáiochta

Contents

Foreword

Section 1: Enforcing Competition Law

Section 2: Evaluation of Mergers and Acquisitions

Section 3: Promoting Competition in Ireland

Section 4: Policy & Corporate Services

Appendices

FOREWORD

In 2008 the Competition Authority continued to build on its previous achievements in what has proven to be a very challenging environment.

As a result of the difficult economic climate, we had fewer resources to do our job – this is both understandable and appropriate in the circumstances. However, as our record indicates, we continued to effectively achieve our statutory objectives in the face of these necessary cutbacks. This is a tribute to the expertise and dedication of our staff.

For some, the deteriorating economic situation has provided an opportunity to call into question the role of competition as a driver of productivity and even growth. In fact, competition policy has an even more important role to play than ever in Ireland's economic recovery. Economic downturns tend to be breeding grounds for cartels and other anti-competitive behaviour. Cartels and monopolies charge higher prices – resulting in reduced consumer spending and wasted public funds, both of which exacerbate a downturn in the economy.

Ireland now needs to be extra vigilant against cartels, mergers that lessen competition and other anti-competitive behaviour. Opening up the sheltered sectors of our economy to greater competition will drive down the cost of doing business in Ireland, making us more competitive and more attractive to foreign investment.

We welcome the announcement by the Tánaiste that the Government will formally respond to the recommendations of the Competition Authority as contained in our formal reports. This is an important signal of the Government's commitment to ensuring competitive markets across the economy. As noted herein, the Competition Authority has a considerable inventory of unimplemented recommendations. Addressing these will be a productive way for the Government to take a first step towards putting this new policy into practice.

In addition, we welcome the decision of the Government to amalgamate the Competition Authority with the National Consumer Agency. Such a combined function agency has wide international acceptance. Properly constituted and resourced, the new agency has the potential to be a stronger advocate and enforcer on behalf of the consumer than the two separate agencies have been to date.

On the enforcement front, we continued to make progress. With four additional criminal convictions this year, we have now convincingly established that criminal convictions for competition offences in Ireland are possible. In addition, proceedings have been initiated against two new cartels. Entering 2009, the Competition Authority has a significant inventory of criminal cases before the courts. This is both an indication of our success and a challenge on our limited resources.

As we build on our enforcement record, we must complete the job by ensuring that enforcement will be an effective deterrent of anti-competitive conduct. 2008 saw a growing public awareness of the seriousness of white collar crime and the need for it to be dealt with by an appropriate level of sanctions. The Competition Authority is an agency at the forefront of combating white collar

crime in Ireland. During the year, the Competition Authority organised a conference on the topic of sanctions for competition offences that was moderated by judges from the Supreme Court and High Court, and featured comments from the Attorney General. Together with an array of international enforcement officials, they brought home a very salient point – the need for serious and consistent sanctions for competition offences.

The health care sector continued to be an important sector in the work of the Competition Authority. The pressure on public finances requires that the Government focus on achieving ever greater efficiencies in this sector. Here, the Competition Authority is strongly of the view that the Competition Act is a potent ally of the Government in achieving this desirable end and our work to date will, I believe, assist the Government in providing better value for money in the health care market.

Wider afield, the European Court of Justice upheld the position of the Competition Authority in relation to the Beef Industry Development Society (BIDS) case. The ECJ upheld the position of the Competition Authority that agreements among competitors to orchestrate a coordinated industry consolidation are caught by Article 81(1) and therefore must be subjected to careful economic analysis prior to any exemption. This decision has great relevance to competition policy going forward given the temptation for other industries to attempt similar consolidations.

Merger activity was down on previous years, an inevitable result of the economic downturn. However, there was no shortage of challenging mergers before the Competition Authority and the year saw the blocking of only the third merger to date – the acquisition by Kerry Foods plc of Breeo Foods Limited and Breeo Brands Limited.

On the advocacy front, the Competition Authority made an important contribution to policy in the grocery market in completing the Grocery Monitor Project and publishing a comprehensive review of the effects of the retail planning system on competition in the grocery market. The report clearly sets out the many restrictions on competition of the planning system. The sooner the Government removes those restrictions, the faster the benefits of competition will come to consumers. Implementation of a number of previous Authority recommendations in 2008 resulted in clear benefits for consumers.

Finally, as always, I must pay tribute to the staff of the Competition Authority. During a time when many elements of the public service have come under increased scrutiny and frequently intense criticism, our staff can be proud of their achievements in what proved to be a difficult environment.



William Prasifka
Chairperson

1. 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.

The greatest harm to consumers comes from cartels: price-fixing, bid rigging and allocation of markets by competitors that 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.

The year 2008 proved to be an extremely busy one for cartel enforcement. At year end the total number of convictions secured for offences under competition law reached 23.¹ Four convictions were secured by the Director of Public Prosecutions (DPP) in 2008 in relation to the Competition Authority's investigation into price fixing of Citroen vehicles by members of the Citroen Dealers Association. Sentences were imposed against two undertakings and two individuals who pleaded guilty to fixing prices on Citroen cars. Fines of €12,000 and €20,000 were imposed against James Durrigan & Sons Limited and Ravenslodge Trading Limited, respectively. Mr. James Durrigan was sentenced to three months imprisonment, suspended for two years, in Dundalk Circuit Criminal Court and Mr. Jack Doran was sentenced to three months imprisonment, suspended for five years, in Trim Circuit Criminal Court.

Price Fixing Cases Awaiting Sentencing and Trial

Prior to the end of 2008, three further guilty pleas were also entered by two individuals and one undertaking being prosecuted on indictment by the DPP in the Dublin Circuit Criminal Court in connection with the Citroen Dealers Association investigation.² Sentencing in those three cases is scheduled to take place on 30th April 2009 (see table 1.2 below). There are a further nine prosecutions remaining before the Circuit and Central Criminal Courts in connection with the alleged price fixing of Citroen motor vehicles³ (see table 1.2 below).

First Suspects Charged with Bid Rigging

Prosecutions commenced in 2008 demonstrate the fruits of the Competition Authority's investigative focus on bid rigging in addition to price fixing cases which were the early focus of enforcement by the Authority. Bid rigging, or collusive tendering, is a form of cartel behaviour, where those involved agree in advance on who will win a tender. Bid rigging occurs when two or more firms agree not to bid against one another for a tender or contract, or agree on their individual bids, to supply goods or services. Alternatively competing

¹ This total includes one conviction in connection with price fixing of petrol; 17 in connection with fixing the price of heating oil; and 5 in connection with fixing the price of motor vehicles.

² *DPP v Gowan Motors (Parkgate) Limited, Brian Smyth, and Michael Patrick Gibbs.*

³ On 26th January 2009, further guilty pleas were entered in connection with this investigation by four accused, as detailed in the table below.

firms may allocate specific customers or types of customers or geographic areas to one another, so that competitors will not bid (or will submit only a complementary bid) on contracts offered by a certain class of potential customers which are allocated to a specific firm. In return, that competitor will not competitively bid to a designated group of customers allocated to other firms in the agreement. This enables each firm to set prices knowing that the others will not undercut them.

Collusive tendering in public sector procurement is particularly harmful to society as it diverts funds that could be used to provide other worthwhile services to the public. When Government agencies pay higher prices for goods and services the taxpayer ends up paying more.

In November 2008, the DPP charged eight individuals in connection with alleged bid rigging offences under the Competition Act 2002. The accused are charged with entering into illegal agreements in respect of a tender competition for the provision of domestic waste collection services in County Mayo.⁴ Six defendants were sent forward to the Central Criminal Court on 15th December 2008. A trial date of 23rd June 2009 has been set for the joined cases, by the Central Criminal Court which will be sitting in Galway for the trial.

Summary proceedings were commenced by the Competition Authority in October 2008 in Athenry District Court against three parties in connection with alleged bid rigging of a contract for hedge-cutting and vegetation clearance services put out to tender by Iarnród Éireann/Irish Rail.⁵ Jurisdiction was refused by the District Court on the basis that in the Judge's view the case was non minor and therefore not appropriate to be tried in the District Court. The DPP consented that this case be returned for trial to the Central Criminal Court, as provided by section 11 of the Competition Act 2002. The defendants appeared before the Central Criminal Court on 15th December 2008.

⁴ *DPP v Pádraig Hughes, DPP v Paul Francis Gleeson, DPP v Stanley Bourke, DPP v Patrick McGrath, DPP v Declan McGrath, DPP v Wheeley Environmental Refuse Services Limited, DPP v Bourke Waste Removal Limited, and DPP v McGrath Industrial Waste Limited.*

⁵ *DPP v Oliver Dixon; DPP v Oliver Dixon (Hedgecutting & Plant Hire) Limited; and, DPP v John Joe McNicholas t/a John Joe McNicholas Plant Hire.*

Cartel Immunity Programme

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 unaffiliated with the Cartels Division. The Cartel Immunity Programme 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.

1.1 Criminal Cases Taken by the DPP on Foot of Competition Authority investigations

Heating Oil Cartel

DPP -v- Pat Hegarty

The trial of the last remaining defendant in the Heating Oil case, Mr. Pat Hegarty, came on for hearing at Galway Circuit Criminal Court on 21st May 2008.

On the morning of the trial, counsel for the accused, Mr. Eddie Walsh SC, moved a motion to quash the indictment against his client. The basis of this motion was that under the Competition (Amendment) Act 1996, the accused's alleged guilt was contingent upon there being a finding that the company, Fate Park Limited, trading as Sweeney Oil/Rabbitt Oil, of which the accused was a manager, had committed an offence which in turn required a conviction in existence recorded against Fate Park Limited. The accused is described on the indictment as being a manager of Fate Park Limited, trading as Sweeney Oil/Rabbitt Oil. No prosecution had been initiated against Fate Park Limited, trading as Sweeney Oil/Rabbitt Oil, in respect of the alleged price-fixing agreement.

Mr. Vaughan-Buckley SC, for the DPP, resisted the defence application to quash the indictment on the basis that a jury could convict the accused once it is satisfied that the company had committed the offence in question, and it was not necessary formally to convict the company in order to be so satisfied.

After listening to extensive submissions made by both the prosecution and the defence, Judge Groarke agreed to the request made by the prosecution to state a case to the Supreme Court on this matter. The Judge sent the following question forward to the Supreme Court for adjudication:

The Question:

The opinion of the Supreme Court is therefore sought in relation to the following questions of law: Where an individual is prosecuted pursuant to section 3(4)(a) of the Competition Act 1996:

(a) Whether an adjudication as to whether the relevant undertaking has committed an offence can be undertaken where no prosecution has been initiated against the undertaking.

(b) Whether it is necessary that the undertaking be convicted of the offence before the individual can be convicted.

The case stands adjourned pending the outcome of the Case Stated in the Supreme Court. No date for the hearing of that matter has as yet been set.

Citroen Dealers Association Cartel

In 2007, the DPP proffered charges against six Citroen dealerships and seven individual officers and directors of those undertakings, alleging that they agreed to fix prices and to implement those agreed prices on the sales of Citroen cars, contrary to Sections 4 of both the Competition Act 2002 and the repealed Competition Act 1991 (as amended). The DPP also proffered

charges against the Secretary of the Citroen Dealers Association alleging that he had aided and abetted the alleged price fixing agreements by dealers.

In 2008, two individuals and two companies pleaded guilty to the price fixing charges and were convicted and sentenced in the Circuit Criminal Court. A summary of these cases is set out in Table 1.1 below.

Three additional guilty pleas were entered in the Dublin Circuit Criminal Court on 24th November 2008 and sentencing has been scheduled for those cases on the 30th April 2009. It can also be reported that at time of writing two further individuals and two further companies pleaded guilty to price fixing in the Central Criminal Court on 26th January 2009 and they will be sentenced later in 2009. The current position of those cases, which have yet to be finalised by the Courts, is as set out in Table 1.2 below.

Proceedings Instituted By the DPP Against Citroen Dealerships, their Officers and Directors

DPP -v- James Durrigan and James Durrigan & Sons Limited.

On 8th May 2008, before Judge Michael O'Neill in Dundalk Circuit Court, Mr. James Durrigan and James Durrigan & Sons Limited. pleaded guilty to one count each of entering into an agreement which had as its object the prevention, restriction or distortion of competition in the motor vehicle trade in Leinster by directly or indirectly fixing the selling price of Citroen vehicles. James Durrigan and Sons Limited, was fined €12,000 and Mr. James Durrigan was sentenced to three months imprisonment, suspended for two years. Sentencing Mr. Durrigan, Judge O'Neill stated that price fixing seriously affected the consumer as it distorted the market value of the product.

As a consequence of his conviction under the Competition Act 1991, and pursuant to Section 160(1) of the Companies Act 1990, Mr. James Durrigan is automatically disqualified, for a period of five years from the date of his conviction, from appointment as or acting as an auditor, director or other officer of any company.

DPP -v- Jack Doran and Ravenslodge Trading Limited

On 28th October 2008, in Trim Circuit Court, with Judge Michael O'Neill again presiding, Ravenslodge Trading Limited, trading as Jack Doran Motors, and Mr. Jack Doran both pleaded guilty to one count each of entering into an agreement which had as its object the prevention, restriction or distortion of competition in the motor vehicle trade in Leinster by directly or indirectly fixing the selling price of Citroen vehicles. Ravenslodge Trading Limited was fined €20,000 and Mr. Jack Doran was sentenced to three months imprisonment, with the sentence suspended for five years.

As a consequence of his conviction under the Competition Act 1991, and pursuant to Section 160(1) of the Companies Act 1990, Mr. Jack Doran is automatically disqualified, for a period of five years from the date of his conviction, from appointment as or acting as an auditor, director or other officer of any company.

DPP -v- Gowan Motors (Parkgate) Limited, Michael Patrick Gibbs and Brian Smyth

On 28th April 2008, Gowan Motors (Parkgate) Limited, Mr. Michael Patrick Gibbs, and Mr. Brian Smyth sought leave to challenge their prosecution by

way of judicial review. As part of this process the defendants were granted a stay on their prosecutions. On 21st November 2008, all three accused applied to the High Court to have the stay lifted indicating that they did not intend to pursue their judicial review action. The judicial review proceedings were subsequently struck out on 2nd December 2008.

On 24th November 2008, Gowan Motors (Parkgate) Limited, Michael Patrick Gibbs, and Brian Smyth pleaded guilty before the Dublin Circuit Criminal Court to entering into agreements to fix the price of Citroen motor vehicles contrary to section 4 of the Competition Act, 1991, as amended by the Competition Act 1996. The sentencing hearing on these cases is set down for 30th April 2009.

DPP -v- John McGlynn

The DPP instituted proceedings against Mr. John McGlynn in June 2007 alleging that he aided and abetted members of the Citroen Dealers Association to commit an offence, namely 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, if proven, is contrary to Section 4(1) and 6 of the Competition Act 2002, as provided for by Section 7(1) of the Criminal Law Act 1997.

On 28th January 2008, Mr. John McGlynn was granted leave by the High Court to challenge his prosecution by the DPP by way of judicial review. The trial of Mr. McGlynn, due to commence on 3rd March 2008 was adjourned, pending the outcome of judicial review proceedings against the DPP. These Judicial Review proceedings are to come before the High Court for determination during 2009.

Current Status in Citroen Dealers Association cases

At the time of writing it can be reported that on 26th of January 2009, Mr. Patrick Duffy, Patrick Duffy Motors (Newbridge) Limited, Mr. Bernard Byrne and Finglas Motors (M50) Limited all entered guilty pleas. Sentencing has been scheduled as per table 1.2 below.

Table 1.1: Prosecutions Disposed of in 2008

Defendant	Hearing Date	Result
James Durrigan & Sons Limited	8 th May 2008	€12,000 fine
James Durrigan	8 th May 2008	3 month prison sentence – suspended for 2 years.
Ravenslodge Trading Limited	28 th October 2008	€20,000 fine
Jack Doran	28 th October 2008	3 month prison sentence – suspended for 5 years.

Table 1.2: Prosecutions Ongoing at Year End

Defendant	First Court Appearance	Status
John McGlynn	5 th June 2007	Adjourned pending determination of Judicial Review Proceedings.
Bursey Peppard Limited	7 th January 2008	Case due for trial 23 rd March 2009.
James Bursey	9 th January 2008	Case due for trial 23 rd March 2009.
Patrick Duffy Motors (Newbridge) Limited	9 th January 2008	Sentencing scheduled for 23 rd March 2009.
Patrick Duffy	9 th January 2008	Sentencing scheduled for 23 rd March 2009.
Finglas Motors (M50) Limited	4 th February 2008	Sentencing scheduled before Dublin Circuit Criminal Court 17 th June 2009.
Bernard Byrne	14 th February 2008	Sentencing scheduled before Dublin Circuit Criminal Court 17 th June 2009.
Gowan Motors (Parkgate) Limited	4 th February 2008	Guilty plea entered on 24 th November 2008. Sentencing hearing to be held in Dublin Circuit Criminal Court 30 th April 2009.
Michael Patrick Gibbs	4 th February 2008	Guilty plea entered on 24 th November 2008. Sentencing hearing in Dublin Circuit Criminal Court 30 th April 2009.
Brian Smyth	4 th February 2008	Guilty plea entered on 24 th November 2008. Sentencing hearing in Dublin Circuit Criminal Court 30 th April 2009.

Irish Rail Cases

DPP -v- John Joe McNicholas trading as John Joe McNicholas Plant Hire, Oliver Dixon and Oliver Dixon (Hedgecutting & Plant Hire) Limited

On 14th October 2008, at Athenry District Court, the Competition Authority initiated summary proceedings against John Joe McNicholas t/a John Joe McNicholas Plant Hire, Oliver Dixon and Oliver Dixon (Hedgecutting & Plant Hire) Limited. Pursuant to Section 8(9) of the Competition Act 2002, the Competition Authority initiated these proceedings with the intention of prosecuting the case summarily. The three defendants were each summoned before Athenry District Court to answer charges that they each entered into an agreement on 15th January 2007, which had as its object the prevention, restriction or distortion of competition in the trade of the provision of vegetation clearance services by directly or indirectly agreeing a minimum tender price to be submitted to Iarnród Éireann-Irish Rail.

On 14th October 2008, the Competition Authority indicated to the District Court Judge, Judge Joseph Mangan, that the Competition Authority intended to prosecute the case against these three defendants summarily. Summary offences under the Competition Act 2002, may result in fines of up to €3000 and custodial sentences of up to a maximum of 6 months in prison. After hearing an outline of the case from an Authorised Officer of the Competition Authority Judge Mangan declined jurisdiction and indicated that the cases should be tried by a higher court. Subsequently on 11th November 2008 books of evidence were served on the three accused; two undertakings and an individual. All three defendants were returned for trial to the Central Criminal Court on 11th November 2008.

The DPP is now prosecuting these matters before the Central Criminal Court. All three defendants appeared before Mr. Justice Carney in the Central Criminal Court sitting in Dublin on 15th December 2008 when the cases were adjourned into the list to fix dates for trial in January 2009.

Current Status Irish Rail cases

At the time of writing, it can be reported that on 26th January 2009, John Joe McNicholas t/a John Joe McNicholas Plant Hire, Oliver Dixon, and Oliver Dixon (Hedgecutting & Plant Hire) Limited. were on the list to fix dates in the Central Criminal Court. On that date, the Court scheduled trial for 2nd November 2009.

The table below summarises the court proceedings to date.

Irish Rail Cases

Date	Court	Result
14 th October 2008	Athenry District Court	<ul style="list-style-type: none"> • Summary prosecutions instituted. • First Appearance. • Jurisdiction Declined. • Adjourned for preparation and service of the books of evidence.
11 th November 2008	Athenry District Court	<ul style="list-style-type: none"> • Books of evidence served. • Returned for trial to the Central Criminal Court.
15 th December 2008	Central Criminal Court (Dublin)	<ul style="list-style-type: none"> • First Appearance • Adjourned to the 26th January 2009⁶.

Mayo Waste Disposal Cases

DPP -v- Stanley Bourke, Bourke Waste Removal Limited, Patrick McGrath, Declan McGrath, McGrath Industrial Waste Limited, Paul Gleeson, Wheeley Environmental Refuse Services Limited T/A Wers Waste, and Pdraig Hughes

In early December 2008 at Castlebar, Tuam, and Westport District Courts the DPP initiated proceedings against Mr. Stanley Bourke, Bourke Waste Removal Limited, Mr. Patrick McGrath, Mr. Declan McGrath, McGrath Industrial Waste Limited, Mr. Paul Gleeson, Wheeley Environmental Refuse Services Limited T/A Wers Waste, and Mr. Pdraig Hughes. The proceedings were initiated for offences contrary to Section 4(1) and 6 of the Competition Act 2002. All of the defendants, except for Mr. Pdraig Hughes, had been summoned to answer charges of entering into an agreement between 24th of August 2005 and 2nd of September 2005, which had as its object the prevention, restriction or distortion of competition in the provision of domestic waste collection services in County Mayo. Mr. Pdraig Hughes had been summoned to answer charges of aiding and abetting the three named waste businesses in the commission of said offence in County Mayo.

Books of evidence were served on the accused and the accused were returned for trial to the Central Criminal Court.

On 15th December 2008, all of the defendants, except for Mr. Paul Gleeson and Wers Waste, had their first appearance in the Central Criminal Court. Mr. Gleeson and Wers Waste appeared before the Central Criminal Court on 26th January 2009.

⁶ These matters have been since been set down for trial before the Central Criminal Court on 2nd November 2009.

Current Status in Mayo Waste cases

At the time of writing, it can be reported that on 23rd February 2009, Mr. Stanley Bourke, Bourke Waste, Mr. Patrick McGrath, Mr. Declan McGrath, McGrath Waste, Mr. Pdraig Hughes, and Wheeley Environmental Services were on the list to fix dates in the Central Criminal Court. The Court scheduled trial for 23rd June 2009 with the Central Criminal Court sitting in Galway.

The table below summarises the court proceedings to date.

Mayo Waste Cases

Date	Court	Result
3 rd December 2008	Castlebar District Court - Patrick McGrath, Declan McGrath, McGrath Industrial Waste Limited, and Pdraig Hughes	<ul style="list-style-type: none">• First appearance.• Books of evidence served.• Returned to the Central Criminal Court.
4 th December 2008	Westport District Court - Stanley Bourke and Bourke Waste Removal Limited	<ul style="list-style-type: none">• First appearance.• Book of evidence served.• Returned to the Central Criminal Court.
5 th December 2008	Tuam District Court - Paul Gleeson and Wheeley Environmental Refuse Services Limited	<ul style="list-style-type: none">• First appearance.• Book of evidence served.• Returned to the Central Criminal Court.
15 th December 2008	Central Criminal Court - Patrick McGrath, Declan McGrath, McGrath Waste, Pdraig Hughes, Stanley Bourke, and Bourke Waste	<ul style="list-style-type: none">• First appearance.• Adjourned to 26th January 2009.

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 to the District Court for search warrants in order to assist its investigations of alleged breaches of the Act. During 2008, the Competition Authority secured and executed seven search warrants in relation to ongoing investigations into allegations of 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 40 witness summonses during the year. The Competition Authority can issue summonses to compel witnesses to attend before it to give evidence under oath and/or 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	2008	2007	2006	2005	2004	2003	2002
Search Warrants	7	10	9	42	24	21	18
Summonses	40	18	38	46	58	69	56

1.3 [Guidance on the Application of Competition Law](#)

Public Consultation on Collective Action in the Community Pharmacy Sector

In October 2007, the Competition Authority commenced an investigation into alleged collective action by pharmacy contractors in response to attempts by the Health Service Executive (HSE) to modify the reimbursement to be received for services provided under various drugs schemes administered by the HSE, known as the Community Drugs Schemes. In the course of this investigation, the Competition Authority came to the view that it might be helpful to consider the possibility of issuing a declaration pursuant to section 4(2) of the Competition Act 2002, or guidance pursuant to section 30(1)(d), specifically addressing the circumstances at issue.

Accordingly, on 11th October 2008, the Competition Authority launched a public consultation to explore the nature and extent to which independent pharmacy undertakings may act collectively with respect to the setting of terms and conditions, including fees, for the supply of services by community pharmacies. In the consultation document published in tandem with the public consultation, available at www.tca.ie, the Competition Authority sets out its understanding of the applicable Irish and EC competition law provisions, and discusses potential mechanisms by which independent undertakings may have a degree of collective input into the setting of contractual terms and conditions, within the parameters of the law. Seven questions were identified in the document to which the Competition Authority invited specific responses from interested parties, as well as more general comments on the document and process as a whole. The closing date for submissions was 28th November 2008. The Competition Authority is currently in the process of reviewing the submissions received and hopes to come to a decision on any further action to be taken by early 2009.

HSE Enforcement Decision

The Competition Authority, on 10th October 2008, published an Enforcement Decision (ED/01/008) on *Alleged anticompetitive conduct by the Health Service Executive* relating to the administration of the Community Drugs Schemes.

The Competition Authority publishes information on selected investigations, in order to inform the public about competition issues and increase transparency in the enforcement of the Competition Act 2002. Other aims of publishing such information are to provide greater legal certainty and a reduction in compliance costs for business.

The Competition Authority publishes Enforcement Decision Notes only on selected investigations that:

- Create a precedent;
- Are of public interest (e.g. the investigation is in the public domain, the issue has been subject to considerable debate and discussion); and,
- Raise issues of interest or complexity.

The HSE is the State body responsible for the provision of health services to the general public. The Competition Authority received a number of complaints alleging that the HSE had breached sections 4 and 5 of the Competition Act 2002 in relation to the various schemes it administers for the provision of prescription drugs to the general public; the Community Drugs Schemes. Having conducted a preliminary examination of the complaints, the Competition Authority came to the view that the activities of the HSE fell outside the Competition Act in each instance. It was furthermore considered beneficial to publish an enforcement decision setting out its position on these issues. The enforcement decision addresses two specific activities of the HSE: negotiating with the representative bodies of the pharmaceutical industry in Ireland to reduce the ex factory price of certain pharmaceutical drugs; and purchasing community pharmacy services from private sector pharmacy undertakings under the Community Drugs Schemes.

For the purposes of the Competition Act, an undertaking is any individual, body corporate or unincorporated body of persons engaged for gain in the provision, supply or distribution of goods or the provision of a service. In light of this statutory definition and its interpretation by the Irish courts, the Competition Authority has taken the view that the HSE is not an undertaking for the purposes of the Competition Act when engaging in the activities at issue. In addition, to the extent that the activities may affect trade between Member States, the Competition Authority has taken the view that the HSE is not an undertaking for the purposes of EC competition law when engaging in these activities. In arriving at this view, the Competition Authority has considered and applied both the public authority and the solidarity exceptions to the concept of undertaking that have been developed in EC law. The Competition Authority's reasoning on these questions is set out in full in the enforcement decision which is available on its website at www.tca.ie.

Solus Agreements

In 1993 the Competition Authority granted a Category Licence to exclusive purchase agreements of less than 10 years for the resale of petroleum products in service stations. These agreements are known as *solus*

agreements. This Category Licence⁷ expired on 30th June 2008, and was replaced by a Category Declaration⁸, which itself will expire on 30th June 2010.

Following a public consultation, the Competition Authority decided to issue a Category Declaration. The Declaration will, with minor changes, have the effect of renewing the Category Licence until 30th June 2010, when it will fall to be reviewed as part of the Authority's scheduled review of the Verticals Declaration. It is likely that the Verticals Review will move to a five year exemption period; therefore any ten year solus agreements concluded during the currency of this Declaration are unlikely to enjoy the protection of any verticals exemption from 2010 onwards.

There has been a radical transformation of the market for resale of petrol since 1993. Firstly, there has been a dramatic reduction year on year in the numbers of petrol stations. Secondly, the size of petrol stations has increased significantly. Thirdly, there has been consolidation in the sector, and, finally, petrol stations now incorporate convenience shopping and this makes up an increasing part of their business, contributing to increased footfall and a diversity of income streams for forecourt retailers.

The most significant change in the Category Declaration is the removal of the ban on **maximum** Resale Price Maintenance. The Declaration will now apply to solus agreements where the supplier specifies a certain price above which motor fuels must not be sold by retailers.

1.4 Civil Cases Taken by the Competition Authority

The Competition Authority v Beef Industry Development Society

In November 2008, the European Court of Justice delivered a very favourable decision in the *Beef Industry Development Society (BIDS)* case. This concerned a proposed rationalisation of the beef processing industry – led by a group of beef processors – which the Competition Authority challenged before the High Court as an anti-competitive agreement, contrary to Article 81 EC. Mr Justice McKechnie, in 2006, took the view that the agreement did not have the object or effect of restricting competition and so did not breach Article 81 EC, a holding that the Competition Authority has appealed to the Supreme Court. BIDS came before the ECJ by way of an Article 234 EC reference, made by the Supreme Court in March 2007, which asked whether an agreement in the form of the BIDS scheme had the *object*, as distinct from the effect, of preventing, restricting or distorting competition, contrary to Article 81(1) EC.

On 4th September 2008, Advocate General Trstenjak delivered her Opinion in the BIDS case. She noted that there is no exhaustive list of "object"

⁷ Under the Competition Act 1991, which has since been repealed and replaced by the Competition Act 2002, the Competition Authority was empowered to grant a licence, known as a category licence to any agreement, decision or concerted practice which in the opinion of the Authority, contributed to improving the production or distribution of goods or provision of services or to promoting technical or economic progress, while allowing consumers a fair share of the resulting benefit. Accordingly, where certain specified criteria were met, a category of agreement, decision or concerted practice which would otherwise likely breach section 4 of the Act could be exempted by means of the granting of a licence.

⁸ Following the enactment of the Competition Act 2002, the Competition Authority was given the power to issue category declarations, rather than category licences. Declarations also have the effect of exempting certain agreements from the scope of competition law. The power of the Competition Authority to issue licences and, latterly, declarations, stems from Article 81(3) of the EC Treaty, which similarly allows for exemptions to be granted to certain agreements.

agreements for the purposes of Article 81(1) EC. On the facts, she took the view that agreements of the type at issue are intended to limit the freedom of businesses to determine their policy on the market independently, representing, in essence “*the ‘buying off’ of competition*”. Consequently, she concluded that an agreement of this sort has as its object the restriction of competition and is therefore not compatible with Article 81(1) EC, where the other conditions laid down in that provision are also satisfied.

The ECJ, in its judgment of 20th November 2008, agreed with the arguments advanced by the Competition Authority and the Advocate General’s Opinion. The ECJ held that an agreement such as the BIDS arrangement “*conflicts patently with the concept inherent in the EC Treaty provisions relating to competition, according to which each economic operator must determine independently the policy which it intends to adopt on the common market.*” It therefore answered the Supreme Court’s question in the affirmative, that is, it held that an agreement in the nature of the BIDS arrangement has as its object the prevention, restriction or distortion of competition within the meaning of Article 81(1) EC.

The case now returns to the Supreme Court, which will continue hearing the Competition Authority’s appeal. The Supreme Court will decide how to apply the ECJ judgment in BIDS, as well as the potential application of Article 81(3) EC in the case. Article 81(3) EC sets out four conditions which must be met before any activity caught by 81(1) EC is exempt from its prohibitions. On this issue, it is worth noting that the High Court took the view, *obiter*, that the requirements of Article 81(3) EC were not satisfied on the facts, although the question will doubtless be determined anew by the Supreme Court.

Undertakings Received in the Retail Pharmacy Sector

During 2008 the Competition Authority concluded an ‘Agreement and Undertakings’ with four pharmacy contractors. This Agreement and Undertakings resolved concerns the Competition Authority had regarding an alleged concerted practice among the pharmacy contractors contrary to section 4(1) of the Competition Act 2002.

The Competition Authority initiated an investigation after it became suspicious of an anti-competitive concerted practice among pharmacy contractors in a large town in Ireland. The Authority found that the contractors had met and discussed the HSE proposal to reduce remuneration to them; one contractor circulated a sample letter to be sent to the HSE threatening suspension from participation in the Community Drugs Schemes to the others and they all sent a copy of this letter to the HSE.

The Competition Authority took the view that this amounted to a concerted practice contrary to section 4(1) of the Act. As a method of resolving complaints efficiently and effectively, with the best use of resources, the Authority concluded the Agreement and Undertakings with the four pharmacy contractors.

The Agreement and Undertakings constitute a promise from the pharmacists not, in the future, to engage in any concerted action which may breach section 4(1) of the Act. The Competition Authority has undertaken not to initiate legal proceedings against the relevant parties so long as they comply with the Agreement and Undertakings.

Metro/Joint National Readership Survey (JNRS)

In May 2006 the Competition Authority initiated an investigation following a complaint which was submitted on behalf of Metro, the free Dublin newspaper, with regard to the refusal of the Joint National Readership Survey (JNRS) to admit it to its readership survey. JNRS conducts a readership survey to measure the readership of newspapers and magazines that offer an advertising platform in Ireland. The JNRS survey is used by publications to sell advertising space to advertisers and advertising agencies acting on behalf of clients. All major daily newspapers, Sunday newspapers, evening newspapers and over 50 regional newspapers are included in the JNRS survey.

Metro's complaint was that the JNRS refusal makes it impossible for Metro to compete for advertising revenues in Ireland due to the fact that independently verifiable statistics on readership are essential before advertising agencies can justify spending significant amounts of money to place advertising in a publication on behalf of their clients.

As part of its investigation the Competition Authority obtained information from JNRS, publishers of newspapers and magazines, advertising agencies, media buying agencies as well as others. Subsequently, the Competition Authority advised JNRS of the following preliminary findings:

- free newspapers such as *Metro* would not be able to compete effectively for national brand advertising against major daily newspapers unless they are able to provide independent verifiable readership statistics such as provided by the JNRS survey;
- the ability to attract national brand advertising was important to the financial viability of *Metro* and other newspapers;
- there was no reasonable alternative to the JNRS survey in Ireland.

The Competition Authority was of the preliminary view that the refusal to include *Metro* and other free newspapers in the JNRS survey would distort competition in the market for the supply of national brand advertising in print media and thereby would be a breach of Section 4 and Section 5 of the Competition Act 2002. On foot of the Competition Authority investigation, the JNRS amended its admission criteria to provide for participation in its survey by free newspapers such as *Metro* without admitting any liability and in January 2008 the Competition Authority closed the investigation.

Table 1.4 Investigation & Enforcement Powers of the Competition Authority

Investigation & Enforcement Powers Types of Investigations carried out	Description
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	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
Power to require information from third parties	Witnesses have the same immunities and privileges as a witness before the High Court Non-compliance is a criminal offence
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"> ● Criminal prosecution (on indictment) – Brought by the DPP in Central Criminal Court (or the Circuit Criminal Court under the 1991 Act) following an investigation by the Competition Authority ● Criminal prosecution (summary) – Brought in the District Court by the Competition Authority ● Civil Action - Brought in the High Court by the Competition Authority in order to halt suspected anti-competitive behaviour ● Settlement without court action – Where the parties involved recognise and remedy potential breaches of competition law
Maximum Level of Fines & Penalties	<ul style="list-style-type: none"> ● Criminal (on indictment in the Central Criminal Court) - €4 million

or 10% of turnover, whichever is the greater, and/or up to five years in prison

- **Criminal (summary in the District Court)** - €3,000 and/or up to six months in prison

- **Civil Action (by the Competition Authority)** – Injunctive and declaratory relief in lieu of fines

- **Civil Action (by injured parties)** – Damages at the discretion of the Court

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, one member of the Garda Bureau of Fraud Investigation (GBFI) is currently seconded to work full-time with the staff of the Competition Authority and is designated as an Authorised Officer of the Authority.

Where evidence of a cartel is obtained, the Competition Authority will submit a file to the 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 four economists and four lawyers, as of 31st December 2008.

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.

Working with other State agencies

During 2008 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 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.

An Garda Síochána

The Division liaises with senior management of the Garda Bureau of Fraud Investigation (GBFI) on a regular basis. Detective Sergeants from GBFI have been seconded to work in the Cartels Division as Authorised Officers of the Competition Authority since March 2002. There is presently one Detective Sergeant from GBFI working with the Cartels Division. He 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.

Other Law Enforcement Agencies

In order to carry out its investigative functions, the Competition Authority works in co-operation with law enforcement agencies, such as the Office of the Director of Corporate Enforcement, the Criminal Assets Bureau and the Revenue Commissioners.

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.

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 complaints are assessed and assigned to the appropriate division. 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.

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

	2008	2007	2006	2005	2004
Total Received	386	397	419	413	293
Resolved at Preliminary Screening	177	211	247	328	212
Detailed Evaluation	135	88	72	61	25
- Ongoing	47	30	31	27	-
- Resolved	88	58	41	34	25
Added to current investigations/work	71	94	23	19	42
Full Investigations	3	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
Email: 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.

2. EVALUATION OF MERGERS AND ACQUISITIONS

Under Part 3 of the Competition Act 2002, the Competition Authority is responsible for reviewing certain mergers and acquisitions⁹. Mergers are a mechanism used by businesses to restructure in order to compete and prosper. Mergers can be beneficial to consumers, businesses and the overall economy, while serving the interests of business through promoting efficiency and reducing unnecessary costs. However, some mergers can have adverse effects on competition, thereby harming consumers. The evaluation of mergers and acquisitions requires the use of structured economic analysis to determine whether they will lead to a substantial lessening of competition. Effective and timely merger review allows beneficial mergers that promote an efficient and dynamic economy, while prohibiting mergers that substantially lessen competition and harm consumers.

The Competition Authority commenced its mergers and acquisitions function in January 2003. The main role of the Mergers Division is to perform the statutory function of reviewing, investigating and providing reasoned determinations on proposed mergers or acquisitions notified to the Competition Authority. The time periods within which this review must take place are specified in the Competition Act 2002. 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 with the amendment by Ministerial Order of the compulsory notification criteria for mergers involving media businesses.

It appears that, as a result of the changes to the Competition Authority's understanding of the "carries on business" requirement and to the compulsory notification criteria for mergers involving media businesses, the number of mergers and acquisitions, including "media mergers", has decreased significantly since 2006. This reduction means that the Authority is in a better position to focus resources on more complex mergers. These include, for example, the two Phase 2 investigations concluded in 2008.

All the above developments are discussed in further detail in the text below.

2.1 Merger Notifications During 2008

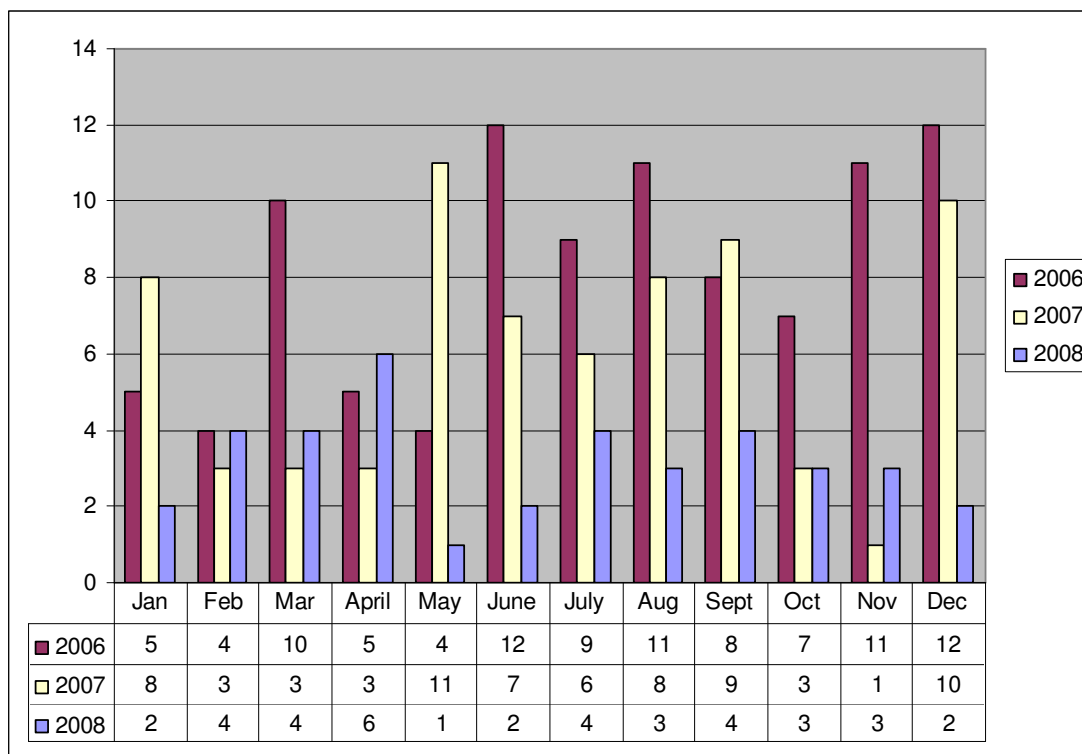
Only mergers in which the undertakings involved meet the monetary thresholds specified in the Competition Act 2002 must be notified for evaluation by the Competition Authority. However, no notification thresholds apply to certain mergers involving media businesses, which must be notified regardless of turnover.¹⁰

Figure 2.1 below shows the monthly comparisons of the notifications received by the Competition Authority for the period 2006 to 2008.

⁹ In this section the term 'mergers' is used to describe mergers and acquisitions.

¹⁰ See 2.3 below for further details.

Figure 2.1



The number of mergers and acquisitions notified to the Competition Authority decreased significantly in 2008. 38 notifications were received in 2008¹¹, compared with 72 in 2007 and 98 in 2006.

This decline is not surprising given the global economic downturn. However, this decrease can also be partly attributed to the Competition Authority's reinterpretation 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 little or no material link to the State being notified. On 12th December 2006, the Competition Authority published its revised understanding of the term.¹² 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. Part of the decrease in notifications may also be attributed to the amendment by Ministerial Order of the compulsory notification criteria for mergers involving media businesses (discussed further at 2.3 below).

¹¹ The figure includes a referral of Heineken's proposed acquisition of Scottish & Newcastle's business in Ireland, namely Beamish and Crawford, to the Authority from the EU Commission under Article 9 of the European Community Merger Regulation (ECMR) – Council Regulation No. 139/2004. See section 2.2 below for a discussion of the case (M/08/011 – Heineken/Scottish & Newcastle).

¹² See Decision No. N/02/003 *Notice in respect of certain terms used in Part 3 of the Competition Act 2002 (As amended, 12 December 2006)*, available on the Competition Authority's website, www.tca.ie.

Appendix B contains a full list of mergers notified to the Competition Authority in 2008. The following are various statistics regarding the Competition Authority's evaluation of mergers and acquisitions in 2008:

- The number of mergers notified to the Competition Authority decreased to 38 in 2008, from 72 notifications in 2007 and 98 notifications in 2006;
- During the year the Competition Authority also finalised its work on nine transactions which were notified in 2007 and whose deadlines extended into 2008;
- All transactions were analysed within the statutory time period;
- 36 of the 38 merger notifications received by the Competition Authority during 2008 were cleared during the initial (Phase 1) investigation, usually within one calendar month;
- In 2008, the Competition Authority initiated two full (Phase 2) investigations, one of which was blocked; and
- 2008 saw a decrease in the number of mergers involving media businesses that were notified to the Competition Authority. There were five such mergers notified to the Competition Authority compared with 15 notified in 2007.

Over the period 2003 to end 2008 the Competition Authority:

- was notified of 420 mergers and acquisitions (47 in 2003, 81 in 2004, 84 in 2005, 98 in 2006, 72 in 2007, and 38 in 2008); and,
- made determinations in respect of 412 of these notifications, six were withdrawn and two were still under investigation.

2.2 Mergers Requiring a Full (Phase 2) Investigation

The Competition Authority must carry out a detailed examination (Phase 2 investigation) of a transaction, if after a preliminary investigation (Phase 1) it has been unable to conclude that the transaction would not "substantially lessen competition". In 2008, the Competition Authority initiated two Phase 2 investigations:

- M/08/009 - the proposed acquisition by Kerry Group plc of Breeo Foods Limited and Breeo Brands Limited, blocked on 28th August 2008; and,
- M/08/011 - the proposed acquisition by Heineken B.V. of the Irish business of Scottish & Newcastle, namely, Beamish and Crawford, cleared on 3rd October 2008.

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

Proposed Acquisition by Kerry Group plc of Breeo Foods Limited and Breeo Brands Limited, blocked on 28th August 2008 (M/08/009)

The Competition Authority concluded on 28th August 2008 that the proposed transaction, if allowed to proceed, would "substantially lessen competition" in three markets for food products in the State and therefore determined that the acquisition "may not be put into effect." This determination is under

appeal in the High Court. Both parties are involved in the production, distribution and supply of consumer foods. This decision followed five months of economic analysis and market inquiries by the Mergers Division.

The Competition Authority reached the following conclusions:

Relevant Markets

- (i) The relevant markets are:
 - a. The market for the production, distribution and supply of sausages in the State (sausages);
 - b. The market for the production, distribution and supply of puddings in the State (puddings);
 - c. The market for the production, distribution and supply of rashers in the State (rashers);
 - d. The market for the production, distribution and supply of poultry cooked meats in the State (PCM);
 - e. The market for the production, distribution and supply of non-poultry cooked meats in the State (NPCM);
 - f. The market for the production, distribution and supply of butter in the State (butter);
 - g. The market for the production, distribution and supply of spreads i.e., non-butter products in the State (spreads);
 - h. The market for the production, distribution and supply of natural cheese in the State (natural cheese); and,
 - i. The market for the production, distribution and supply of processed cheese in the State (processed cheese).
- (ii) The Competition Authority's analysis of the competitive effects of the proposed transaction concluded that in six of the markets under review the transaction would not lead to a substantial lessening of competition (SLC). These markets are: sausages, puddings, PCM, natural cheese, butter, and spreads.
- (iii) In three of the affected markets, the Competition Authority's analysis of the competitive effects of the proposed transaction concluded that the transaction would lead to SLC. These are the markets for rashers, NPCM and natural cheese. Each of these markets fell into the highest threshold of market concentration (Zone C of the HHI as described in the Competition Authority's Merger Guidelines) meaning that these are markets which would be defined as highly concentrated and more liable to raise competition concerns. A summary of the Competition Authority's findings in each of these markets is presented below.

Rashers:

- The merger sees the acquisition of the leading brand, Denny, of the second ranked brand, Galtee;

- Kerry's Denny brand and Breeo's Galtee brand are each other's closest competitor in the market for rashers. Post-acquisition, these two brands will account for [45-50]%, by value, of the rashers market;
- There are no credible alternative brands in the rashers market that will enable retailers to constrain the merged entity from raising prices permanently post-acquisition;
- New entrants will be unable to establish a sufficiently strong presence in the rashers market within a two-year period such that they will be able to constrain the merged entity from raising prices post-acquisition;
- Despite having a combined market share of [35-40]%, by value, private label rashers are not considered to be a sufficiently close competitor to Denny or Galtee. It is essential for retailers to stock the two "must have" rasher brands, i.e. Denny and Galtee; and,
- Retailers will be unable to credibly threaten to discipline the merged entity post-acquisition since (a) there are no credible alternative branded rashers suppliers, (b) entry of branded rashers will not be sufficient within a two-year period, and (c) private label rashers are not considered a sufficiently close competitor in the market and, thus, cannot be used to replace the merged entity's rashers offering.

Non-Poultry Cooked Meats:

- The merged entity will have a [45-50]% market share, by value, post-acquisition in comparison to the combined market share of the other brands in the non-poultry cooked market of [5-10]%, by value, with no one supplier having more than [0-5]%;
- Kerry and Breeo are each other's closest competitor in the market for non-poultry cooked meats;
- Private label's share of the non-poultry cooked meats market has declined from [50-55]% in 2005 to [45-50]% in 2007. Private label non-poultry cooked meats are not considered to be a sufficiently close competitor to Kerry or Breeo;
- There are no credible alternative brands in the non-poultry cooked meats market that will enable retailers to credibly threaten to discipline the merged entity from raising prices post-acquisition;
- New entrants will be unable to establish a sufficiently strong presence in the non-poultry cooked meats market within a two-year period such that they will be able to constrain the merged entity from raising prices post-acquisition; and,
- Retailers do not have sufficient countervailing buyer power to enable them to credibly threaten to discipline the merged entity post-acquisition because (a) there are no credible alternative branded non-poultry cooked meats suppliers, (b) entry of branded non-poultry cooked meats will not be sufficient within a two-year period, and (c) private label non-poultry cooked meats are not considered a sufficiently close competitor in the market and, thus, could not be used to replace the merged entity's non-poultry cooked meats offering.

Processed Cheese:

- The proposed merger would see the leading firm by market share, Kerry, on [35-40]%, acquire the second ranked firm by market share, Breeo, on [15-20]%;
- Post-acquisition, Kerry and Breeo will account for [55-60]% of the processed cheese market;
- The processed cheese market may be segmented by: (a) processed cheese slices; processed cheese snacks; and, processed cheese spreads. Kerry and Breeo's brands are each other's closest competitor in the slices segment of the processed cheese market. This segment accounts for approximately 40% of total sales in the processed cheese market;
- There are no credible alternative brands in the slices segment of the processed cheese market that will enable retailers to constrain the merged entity from permanently raising prices post-acquisition. The expansion of non-merging firms such as will not be sufficient to constrain the merged entity from permanently raising the price of processed cheese slices post-acquisition;
- New entrants will be unable to establish a sufficiently strong presence in the slices segment of the processed cheese market within a two-year period such that they will be able to constrain the merged entity from permanently raising the price of processed cheese slices post-acquisition;
- Private label processed cheese sales accounts for only [10-15]% of the processed cheese market and is not considered to be a close competitor to Kerry or Breeo's processed cheese products; and
- Retailers will be unable to credibly threaten to discipline the merged entity post-acquisition since (a) there are no credible alternative branded processed cheese slices suppliers, (b) entry of branded processed cheese slices will not be sufficient within a two-year period, and (c) private label processed cheese is not considered a close competitor in the market and, thus, cannot be used to replace the merged entity's processed cheese slices offering.

Acquisition by Heineken B.V. of the Irish business of Scottish and Newcastle, namely, Beamish and Crawford (M/08/011)

On 3rd October 2008, the Competition Authority announced that it had approved the acquisition by Heineken N.V. of Beamish & Crawford plc.

On 12th February 2008, Heineken N.V. notified the European Commission of the proposed acquisition by Heineken of certain assets (including brands) relating to the businesses operated by Scottish & Newcastle plc in Belgium, Finland, Ireland, Portugal and the United Kingdom. On 3rd April 2008, the Commission referred the proposed acquisition by Heineken of the Irish company Beamish & Crawford plc to the Competition Authority. This referral constitutes a notification under the Competition Act 2002.

On 1st August 2008, 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 (Phase 1) investigation, where the

Competition Authority had been unable to conclude without further investigation that the transaction would not substantially lessen competition.

This merger is important for a number of reasons: (i) this is the first time part of a merger notified to the European Commission was referred back to the Competition Authority under the European Commission Merger Regulation (ECMR), and (ii) the Competition Authority undertook perhaps one of the most exhaustive market definition analyses and concluded that the narrow market definition, by type of beer, was most appropriate, whereas in the past competition agencies have often found it unnecessary to conclude on this issue.

Following an extensive investigation the Competition Authority reached the following conclusions:

Relevant Product Market

The Competition Authority concluded that there were four relevant product markets in this case:

- (i) the production and supply of lager to the on-trade channel;
- (ii) the production and supply of lager to the off-trade channel;
- (iii) the production and supply of stout to the on-trade channel; and,
- (iv) the production and supply of stout to the off-trade channel.

The geographic dimension of each of these relevant product markets was the State.

Determination

The Competition Authority determined that the proposed transaction would not lead to coordinated or unilateral effects in any of these markets and therefore would not substantially lessen competition. In order to assess the likely effects on competition of the proposed transaction, the Competition Authority conducted an extensive analysis of a number of factors such as the market position of the merged entity, the existence or lack of barriers to entry and parallel imports, the degree of countervailing buying power on the part of the merged entity's customers, closeness of competition between the products of the merged entity and the removal of a "maverick firm".

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 Competition Act 2002 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 little or no material link to 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 22 in 2006 and 17 in 2007 to five in 2008; and,
- all mergers involving media businesses notified since 21st March 2007 have had a material link to the State.

Media Merger Statistics

Of the five media mergers notified in 2008:

- three involved the acquisition of print publications;
- four were cleared by the Competition Authority by the end of the year and one was carried over into 2009; 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 2008

Notification	Date of Notification	Economic Sector	Date of Decision
M/08/003 – Independent News and Media Holdings (Ireland) / Champion Printing Limited	12 th February 2008	Newspaper publishing and printing	10 th March 2008
M/08/007 Irish Times Limited / Relevance Publishing Limited	5 th March 2008	Newspaper publishing and printing	25 th March 2008
M/08/021 TV3 Television Network Limited / Kish Media Limited	25 th July 2008	Production of television programs and television broadcasting	18 th August 2008
M/08/024 General Electric Company / Carnival Film and Television Limited	20 th August 2008	Drama programming in the UK	8 th September 2008
M/08/038 Alpha Publications Limited / Herald Publishing and Printing Company Limited	23 rd December 2008	The regional newspaper publishing sector	22 nd January 2009

Report of the Advisory Group on Media Mergers

Under the Competition Act 2002, the Competition Authority is obliged to provide an opinion concerning the application of the “*relevant criteria*” as defined in the Act to the Minister for Enterprise, Trade and Employment in respect of Phase 2 media mergers. The Competition Authority has, on a number of occasions, expressed its dissatisfaction with this situation on the basis that the relevant criteria are matters outside its area of expertise. The relevant criteria relate to diversity/plurality of views in the Irish public sphere, the strength and competitiveness of media businesses indigenous to the State and the dispersion of media ownership amongst individuals and other undertakings.

In order to address this issue, the then Minister, Micheál Martin T.D., established in March 2008 an Advisory Group on Media Mergers to review the current legislative framework regarding the public interest aspects of media mergers in Ireland. In particular, the Group was asked to examine the *relevant criteria* specified in the Act, by reference to which the Minister considers media mergers.

In its submission to the Group, the Competition Authority stated that,

“... it is not within its expertise to develop a definitive opinion with respect to the relevant criteria.... Section 23(7) of the [Competition] Act obliges the Competition Authority to do something outside its area of expertise.”

In order to enable it to reach its recommendation, the Group consulted widely on the question raised by the Minister. The Group received fourteen submissions and held meetings with the Competition Authority, the Joint Oireachtas Committee on Enterprise, Trade and Employment and the Joint Oireachtas Committee on Communications, Energy and Natural Resources. In addition, the Group received a number of separate comments from public representatives.

In its report published in January 2009, the Advisory Group agreed with the submission of the Competition Authority and recommended that the Authority should neither be required to form nor to furnish an opinion on the application of the relevant criteria; its role should be limited to assessing the effect on competition of media mergers in the State.

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 that ensure that companies do not act to the detriment of consumers.

After investigating a number of such mergers, on 30th September 2003, the Competition Authority issued a Notice (N/03/001) stating its policy with regard to such transactions. This Notice gives parties clarity about how the Competition Authority would 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 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 the opportunity to make a voluntary notification. Where the parties choose not to make a voluntary notification, the Competition 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 Competition 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 2008, the Competition Authority did not carry out an assessment of any merger below the notification thresholds.

2.5 Merger remedies

In 2007 the Competition 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 Competition Authority in merger notifications. However, there were no mergers in 2008 in which divestiture proposals were made by the parties to the transactions.

It is the Competition Authority's intention in 2009 to produce guidelines of its own in relation to remedies aimed at addressing identified competition concerns and in particular in relation to offers of structural divestiture. Up until now, the Competition Authority has drawn heavily on the European Commission Notice on Remedies Acceptable under Council Regulation (EEC) No. 139/2004 and under Commission Regulation (EC) No. 802/2004 and on

the EU Commission Best Practice Guidelines for divestiture commitments including the model texts for divestiture commitments and trustee mandates.

2.6 Changes to Merger Review

On 15th October 2008, the Oireachtas passed the Credit Institutions (Financial Support) Act 2008 (the 2008 Act), which was enacted in the public interest to: (i) provide financial support to banks in order to maintain the stability of the financial system in the State and (ii) modify certain provisions of the Competition Act in order to allow the Minister for Finance to review and make a decision in any merger or acquisition (within the meaning of section 16 of the Competition Act) in the banking sector which meets the criteria set out in section 7(1) of the 2008 Act. The 2008 Act does not therefore remove the Competition Authority's jurisdiction over all bank mergers, only those that meet the criteria set out in section 7(1)¹³.

Pursuant to sections 7(6) and (7) of the 2008 Act, the Minister for Finance may consult with the Competition Authority and the Competition Authority shall provide any advice, information and assistance reasonably requested by the Minister for Finance. Under section 7(12) of the 2008 Act, the Minister for Finance, after consultation with the Minister for Enterprise, Trade and Employment, the Governor of the Central Bank, the Central Bank and the Competition Authority, may

... approve a merger or acquisition ... even if he or she forms the opinion that the result of the merger or acquisition will be to substantially lessen competition in markets for goods or services in the State but that the merger or acquisition is necessary having regard to any or all of the following:

- *maintenance of the stability of the financial system in the State;*
- *the need to avoid a serious threat to the stability of credit institutions;*
- *the need to remedy a serious disturbance in the economy of the State.*

The Competition Authority will work closely with the Department of Finance to ensure that it discharges its functions under the Credit Institutions (Financial Support) Act 2008 as may be requested by the Minister for Finance.

2.7 Advisory Committee on Concentrations

The European Commission is required under the European Commission Merger Regulation to seek the opinion of the Advisory Committee on Concentrations before adopting a merger decision. As part of its international obligations the Competition Authority proactively participated on the Advisory Committee on Concentrations. On 6th May 2008, the Competition Authority served as Rapporteur in Comp/M.4854- TomTom /Tele Atlas – Advisory Committee.

¹³ The relevant criteria under section 7(1) are: (i) the proposed merger or acquisition involving a credit institution is necessary to maintain the stability of the financial system in the State; and, (ii) there would be a serious threat to the stability of that system if the proposed merger or acquisition did not proceed.

Merger Procedures in Ireland (Competition Act 2002)

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 hurt 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 mergers notified in 2008 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 wants to request the Competition Authority to conduct a full (Phase 2) investigation.

Where the Competition Authority clears a media merger after a Phase 2 investigation, the Minister has 30 days within which 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 the statutory task of reviewing, analysing and writing reasoned determinations to the Authority on notified mergers and acquisitions within the specified time period. 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.

3. 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. This is achieved primarily through the Advocacy Division whose functions are to raise awareness of the role of competition, and its benefits, and to advise public policy makers on the implications for competition of existing and proposed legislation, regulations and other relevant decisions. Specifically, the Division:

- provides advice to Government Departments, Public Authorities and other stakeholders on the implications of competition policy for other policy areas and policy proposals;
- analyses areas where competition may be absent, limited or restricted; and,
- identifies workable solutions to increase competition (where it is identified as absent, limited or restricted) and follows up on their implementation.

The Division fulfils this role in a number of ways including:

- the identification and analysis of restrictions on competition in various sectors;
- raising awareness of any unnecessary restrictions on competition through published reports and other means;
- making submissions to Government Departments and other bodies, often by way of responses to public consultation processes; and,
- meeting relevant stakeholders.

3.1 Identifying Public Restrictions on Competition

Public restrictions on competition have the effect of forcing consumers to pay more for services. They increase business input costs making business less competitive. They allow sheltered sectors of the economy to free-ride on exposed sectors, and reduce productivity and growth in the economy as whole. Therefore, identifying and removing public restrictions on competition is of utmost importance.

In 2008 the Competition Authority continued to raise awareness and call for the removal of anti-competitive laws and regulations. While private restrictions (i.e. anti-competitive agreements and cartels) are more visible to consumers, the end result is the same - less value for money, less choice for consumers and higher costs to both consumers and business.

Appendix C contains a full list of formal submissions made by the Competition Authority during 2008. These include a number of submissions made to Government Departments and State bodies in response to public consultation processes. For example, the Competition Authority made submissions to the Government's Alcohol Advisory Group on the *Review of Legislation Governing the Sale and Consumption of Alcohol* and to the Department of Health and Children in respect of proposed Pharmacy Business Regulations. Copies of the Competition Authority's submissions are available from the Competition Authority's website, www.tca.ie. A summary of the Competition Authority's submission to the Government's Alcohol Advisory Group is outlined below.

Submission to the Government's Alcohol Advisory Group

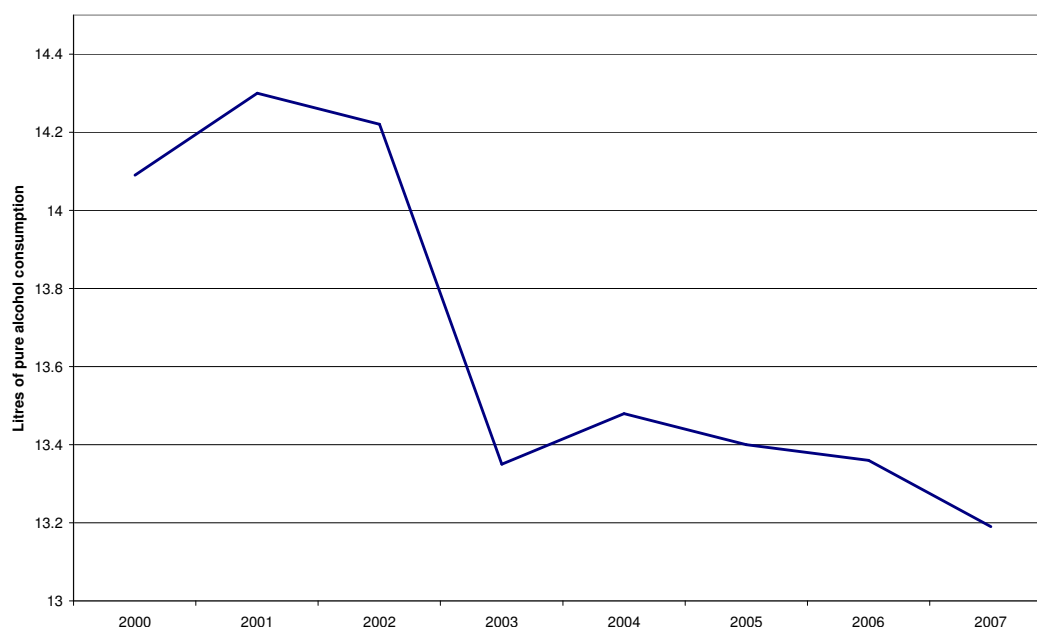
In January 2008, the Minister for Justice, Equality and Law Reform established an Advisory Group (Alcohol Advisory Group) to examine key aspects of the law governing the sale and consumption of alcohol. The issues examined by the Alcohol Advisory Group included:

- the increase in the number of supermarkets, convenience stores and petrol stations with off-licences and the manner and conditions of sale of alcohol products in such outlets, including below unit-cost selling and special promotions;
- the increasing number of special exemption orders permitting longer opening hours which are being obtained by licensed premises around the country; and
- the use, adequacy and effectiveness of existing sanctions and penalties, particularly those directed towards combating excessive and under-age alcohol consumption.

The submission by the Competition Authority focused on the first of these matters, and was concerned with the implications of imposing restrictions on the price of alcohol in off-licensed premises.

Looking at recent trends in the price and consumption of alcohol the Competition Authority found that, since the abolition of the Groceries Order in March 2006, the price of alcohol sold by the off-trade fell by 3% between March 2006 and December 2007. However, the Authority found that this had not led to an increase in overall alcohol consumption; alcohol consumption per person aged 15 years and over actually fell from 13.36 litres in 2006 to 13.19 litres in 2007, continuing the downward trend from a peak in 2001 of 14.09 litres per person aged 15 years and over.

Figure 3.1 Alcohol Consumption per Person aged 15 Years and Over, 2000-2007



Source: Government Alcohol Advisory Group, Submission of the Competition Authority, S/08/001, January 2008, p5.

The Competition Authority's submission demonstrated that introducing either a ban on below unit-cost selling or minimum price regulations would simply serve to promote and protect the profit margins of those who sell alcohol, would penalise the moderate consumer, and were contrary to the aims of reducing excessive alcohol consumption. The Competition Authority also highlighted the practical difficulties encountered when trying to enforce such a ban.

Instead, the Competition Authority recommended that, if the Government was minded to increase the price of alcohol as a means of discouraging consumption, taxation (and in particular excise taxes) would be a more targeted measure which could be used to raise prices, and the income would accrue to the Exchequer rather than to the alcohol seller.

The submission by the Competition Authority contributed to the successful prevention of a re-introduction of a "groceries order" type regime for alcohol products. The Alcohol Advisory Group did not recommend the introduction of either a ban on below unit-cost selling or minimum price regulation of alcohol.

3.2 Advice on Proposed Legislation, Regulation and Competition Issues

The Competition Act 2002 gives the Competition Authority the specific function of advising the Government, Ministers and Ministers of State about the implications for competition of proposed legislation. In carrying out this function, the Authority regularly highlights competition concerns and seeks to pre-empt any negative consequences for consumers and the economy in general.

In addition to commenting on specific draft legislation and making formal public submissions, 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 2008, the Competition Authority advised Government Departments and public bodies on many issues covering a wide range of economic sectors, including, for example:

- The Competition Authority advised the Society of Chartered Surveyors on its Code of Conduct for Business Surveyors and Quantity Surveyors that the provision therein would not be likely to prevent, restrict or distort competition.
- The Competition Authority prepared a report for the Minister for Enterprise, Trade and Employment, following the EU Competition Directorate Decision which prohibited MasterCard from charging retailers its multilateral interchange fee for facilitating MasterCard transactions. The Authority's advice was sought regarding the implications of these actions for the Irish retailer. The Authority reported that the decision is expected to have little impact on intra EU commerce as the multilateral interchange fee (MIF) applied to just 5% of MasterCard's total traffic within the EU. Charges applied by MasterCard members in Ireland to Irish retailers are not affected by the Decision. MasterCard are in ongoing discussions with the Commission about a suitable remedy.

Designing Effective Regulation in Ireland

Declan Purcell, Member of the Competition Authority and Director of its Advocacy Division outlined a number of important issues in designing effective regulation in Ireland in a speech to the First Annual Review of Irish Regulatory Affairs, Dublin, in October 2008. The following is an edited version of the speech; the full version is available at www.tca.ie.

Public ambivalence about regulation

There is an uneasy tension underlying the creation of regulators in Ireland. First of all, it is not always clear in every case that the necessity for creating a new regulatory body has been completely thought through. It sometimes seems to be simply a reaction to some public outcry, coupled with a reluctance on the part of the relevant Government Department to create a new regulatory framework which it must then operate itself. Far better, the thinking goes, to create an independent regulatory body, at maximum distance from the Department concerned.

But then, no sooner has one been set up, it seems, than questions start to be raised about the regulator's accountability and performance, and allegations are made that they are either not doing their jobs, or that they are "out of control". This in turn creates unease in the minds of policy-makers, who then feel obliged to create ways to re-assert control over the regulator, whether through enabling Ministers to issue policy directions, or by some other means. In this context the current Minister for Finance noted in 2007 that "we have gone down the road a little too far — I am not talking about the Department of Justice, but right across the range of Government business — of setting up agencies and bodies at one remove from the Government to whom the Government can then abdicate responsibility for dealing with certain matters."

The Minister's comments were echoed by the OECD Public Management Review Report, which confirmed that no country has actually decreased significantly the number of its agencies in the recent past. In fact, several

new regulatory bodies have been created in Ireland since the 2004 Government White Paper Regulating Better promised that new such bodies would only be created where there was a compelling case for doing so. In his 2009 Budget, the Minister decided to merge or abolish 41 agencies in a "first round of rationalisation proposals" highlighting that the Government's approach to this issue was informed by a set of central guiding principles. Included are a number of ideas that most people would welcome:

- Emphasis on the key relationship between the citizen and the State in the delivery of quality public services.
- Government Departments should be the primary locus of public policy formulation and advice for Ministers.
- However, it is appropriate to have separate agencies carrying out particular functions where specialist skills and expertise are required.
- Duplication and overlap of functions between agencies should be eliminated.
- The ongoing relevance of agencies should be continually re-assessed by examining whether the goal for which they were originally established has been achieved, is still relevant, or is unachievable.

Independence v Accountability

There is an interesting question about independence and accountability. Are these two concepts compatible? We hear a lot of talk about the need for regulators to "be accountable". What do we mean by this, exactly, given that we also set up such bodies to be "independent"? Independent of what, one might ask? In reality, most regulatory bodies are not as independent as they claim to be, or indeed as the rhetoric claimed they would be when they were established.

On the other hand, we also hear a lot of talk about making regulators "more accountable". What do we mean by this rather vague and multi-faceted term? It surely must mean, at the least, that a regulator is answerable to someone for money spent, for value for that money, and for meeting performance standards which have been clearly set out. Being accountable does not, on the other hand, mean being excoriated for taking a decision which may be correct, but unpopular.

The difficulty often is that the standards and outcomes expected of a regulatory body are not clearly set out somewhere with enough clarity to make that body accountable in a fair way. That somewhere should ideally be in legislation. But at minimum it should be in a Memorandum of Understanding between the relevant Minister and Regulator. Self-imposed targets and expectations in Strategy Statements prepared by Regulators themselves are arguably not enough.

The OECD Review particularly criticised the lack of systematic reporting and monitoring on performance, as between agencies and their sponsoring Departments. "Although reporting on performance targets also takes place through annual reports, and in some cases with line departments on an informal basis, there does not seem to be a long-term formal conversation between departments and agencies on agency performance."

The regulated – always one step ahead?

New regulation is sometimes demanded by producer interests "in the public

interest”, or “in the interests of consumers”. We should be wary of such claims, particularly where the regulation sought is economic in nature. The reality may well be that a new regulatory system may actually serve the economic interests of producers, and be to the detriment of consumers. A whole new set of forces comes into play when a regulatory system is set up. No matter how good a regulatory body is at the job of regulating, it is never going to have as much information available to it as the entities it is trying to regulate. The result of this is that “while the formal legal power is held by the regulator, the operation and outcomes are often determined by the leading market players”. So in many cases, regulators spend a lot of their time playing catch-up, which makes the job extremely difficult. So is it expecting too much of a regulatory body to stay ahead of the game and regulate effectively? Not at all – it depends totally on setting out clearly what it is we expect from regulators, and not placing unreal and unattainable objectives and standards on them.

Should regulatory bodies always be “public”?

There is a natural intuition that regulation must, by definition, always be carried out by a public service body. But here’s a thought – if you want to regulate people’s behaviour, you could see at least some forms of regulation as public services that are little different from any other, in principle. Is there any reason why many regulatory functions could not, in principle, be carried out by a body outside the public sector? We have already put a number of regulatory functions out to private tender – vehicle clamping and the NCT service are two cases in point. Whatever you may think about having your car clamped, or failing an NCT test, no-one would deny the efficient and effective outcomes that these arrangements have produced. And one supposes that the services involved are not being operated at a loss – either to the public purse or to the companies concerned.

So long as the State’s expectations are clearly specified, along with demanding performance standards, what better accountability is there than to lose the contract the next time it is awarded!

We sometimes hear demands being made for the “sunsetting” of regulatory bodies – in other words that their lives should be finite where appropriate. One would not expect a public sector regulatory body to willingly sunset itself out of existence – but a periodic review of a regulatory contract would make this a lot more possible and real.

Independent Regulation v Self-Regulation

While the Competition Authority has continually advised Departments that new regulatory bodies should only be established where it can be shown to be strictly necessary, and that there is no other alternative, we are nonetheless left with the problem of self-regulation. A particular case in point is the legal profession, which is almost entirely self-regulating. Events over the last few years have shown that self-regulation by the legal profession in Ireland simply does not work, and that the only way forward is the creation of an independent regulatory body to regulate its activities. This is what the Authority has recommended.

3.3 Analysing How Competition Operates in Particular Sectors

The Grocery Monitor Project

Following the abolition of the Groceries Order in March 2006, the Minister for Enterprise, Trade and Employment asked the Competition Authority –

"to review and monitor the structure and operation of the grocery trade for the foreseeable future to see how it responds to the new legislative environment".

The request was further elaborated on in the Government's Social Partnership Framework Agreement, *Towards 2016*, published in June 2006.

During 2008, the Competition Authority, as part of the Grocery Monitor Project, published three Reports which examined –

- market structure and competition at the wholesale and retail levels,
- retail pricing trends, and
- the effects of the planning system on expansion and entry at the retail level.

Any assessment of the impact of the new regulatory environment on the structure and operation of the grocery sector required an understanding of the grocery supply chain and how it and the various constituent operators have evolved over time. In order to facilitate the manageability of the Project, it was decided to focus on the retail and wholesale levels of the grocery sector from 2001 to 2006.

The first two Reports were therefore essentially descriptive in nature. While competition at the retail and wholesale levels was described in some detail, the Reports did not offer any conclusions as to whether any conduct or practice in the sector was in breach of Irish or EC competition laws. Any such conclusions could only be made as part of an investigation and enforcement action undertaken by the Competition Authority and decided by the Courts.

Grocery Monitor Report No. 1

The first Report, *A Description of the Structure and Operation of Grocery Retailing and Wholesaling in Ireland: 2001 to 2006*, was published on 9th April 2008, and described the market structure at the wholesale and retail levels of the Irish grocery sector.

The Authority's analysis found the following:

Wholesale Sector

- The wholesale level of the grocery supply chain appears to be concentrated. The two largest wholesaler-franchisors (Musgrave and BWG) accounted for almost 80% of the grocery goods wholesale turnover generated in the State during 2006;
- The relative market position of each of the six wholesaler-franchisors remained unchanged between 2001 and year end 2006, and shares of turnover were relatively stable over the period as no new wholesaler-franchisor entered the market; and
- The trend at wholesale level is toward greater integration with retailers.

Retail Sector

- The retail level of the grocery supply chain is relatively concentrated. The two largest vertically integrated retailers (Tesco and Dunnes) between them accounted for almost 35% of the grocery goods vertically integrated retailer turnover generated in the State during 2006;
- The number of vertically integrated retailers almost doubled since 2001, as did the amount of floor space they occupied;
- Affiliated retailer groupings (eg, Centra, Spar) saw similar growth over the period;
- There appears to be a long-term trend toward consolidation in the retail market structure. Grocery retailing capacity is becoming more concentrated in fewer and bigger outlets; and
- The number of retail outlets belonging to independent (non-affiliated) retailers fell by 44% between 2000 and 2006, reflecting a longer-term trend in the independent sector. Between 1977 and 2006, the number of retail outlets belonging to independent retailers fell by 63%.

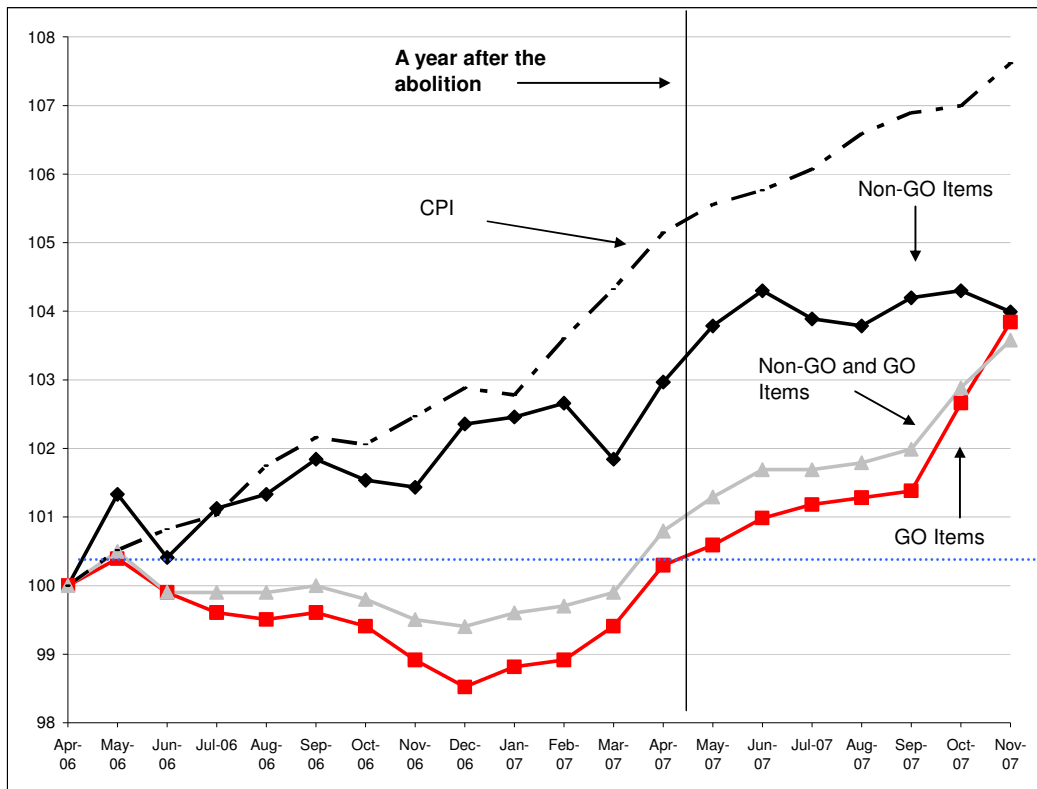
Grocery Monitor Report No. 2

The second Report, *Price Trends in the Irish Retail Grocery Sector: A Description of the Evolution of Retail Grocery Prices between 2001 and 2007*, was published at the same time as Report no. 1 and provided a description of retail pricing trends in the grocery sector from 2001 to 2007.

One of the effects of the Groceries Order¹⁴ was to limit price competition among retailers. Specifically, retailers were prohibited from selling below the net invoice price set by their suppliers. This limited the extent to which retailers could entice consumers with price promotions by criminalising the passing on of invoice discounts. In light of the direct impact on consumers, the Competition Authority analysed aggregate trends in retail grocery prices. Figure 3.2 summarises the evolution of prices of Groceries Order (GO) items, Non-Groceries Order (Non GO) items, and all consumer goods and services (CPI) over the period April 2006 to November 2007.

¹⁴ The Groceries Order was revoked on 20th March 2006.

Figure 3.2 Price Trends for Groceries Order and Non-Groceries Order Items after April 2006 (April 2006 = 100)



Source: *Price Trends in the Irish Retail Grocery Sector: A Description of the Evolution of Retail Grocery Prices between 2001 and 2007*, Grocery Monitor: Report No. 2, March 2008, p15.

Overall, for the period from April 2006 to November 2007, the price of:

- GO items increased by 3.8%;
- Non-GO items increased by 4.0%;
- all grocery items increased by 3.6%; and,
- all consumer goods and services increased by 7.6%.

However these overall trends mask contrasting developments within two defined subsets.

First, during the nine month period directly following the removal of the Groceries Order, the price trends for GO items and Non-GO items appeared to behave very differently. The price trends moved in opposite directions, with the price of GO items falling and the price of Non-GO items rising. Therefore, the immediate effect of the removal of the Groceries Order was a price readjustment of a downward price trend for GO items.

Second, since the beginning of 2007, the price trends for GO items and Non-GO items behaved similarly, with both trends rising. Towards the end of 2007, the rise in the price of GO items was steeper and this was attributed to the rise in world commodity prices of certain agricultural products such as wheat.

Grocery Monitor Report No. 3

The third Report of the Grocery Monitor Project, *The Retail Planning System as Applied to the Grocery Sector: 2001 to 2007*, was published on 10th September 2008 and examined how the planning system can influence the

type of grocery retailers that trade in Ireland, where they locate, what they offer consumers and the prices that consumers pay.

The Report found that, despite the growth in the number and size of grocery retail outlets in Ireland since 2001, the planning system acts as a barrier to competition in grocery retailing in three ways:

- restrictions on the *size* of a grocery retail outlet;
- restrictions on *where* a grocery retail outlet can locate; and,
- *uncertainty* regarding planning permission can raise the cost and delay the arrival of a new retail outlet.

The Report made seven recommendations to the Department of the Environment, Heritage and Local Government. Implementation of these recommendations does not require a dramatic change in Irish planning policy, but rather a refocusing of the system to better accommodate competition and consumer issues.

The seven recommendations with respect to the operation and implementation of the retail planning system are:

- the removal of blanket caps on grocery retail space;
- an end to the discrimination against discount stores;
- the removal of emphasis on past projections of floorspace requirements;
- inclusion of an assessment of competition in checks of local development plans;
- recognition that competition from new retail centres benefits local consumers;
- undertaking a formal survey of consumers regarding attitudes and preferences in relation to store sizes;
- additional research on ways to limit vexatious appeals by competitors.

Professions Studies

Since 2002, the Competition Authority has been engaged in a series of major studies on competition in eight professions, to examine how competition works in the professions concerned, and to identify behaviour which, although not necessarily breaching competition law, nevertheless inhibits competition. The Authority published its sixth report in this series in 2008, namely the Veterinary Practitioners Report. The Report is available on the Competition Authority website www.tca.ie. The final study in the series - the Study of Competition in the Medical Profession (General Practitioners) - is scheduled for completion in 2009.¹⁵

Veterinary Practitioners – Final Report

The Competition Authority's Final Report on Competition in the Veterinary Profession was published on 19th June 2008. The Report found that, while recent legislation has gone a long way towards modernising the veterinary profession, there are still a number of reforms needed if consumers and the wider agricultural community are to truly benefit from competition.

For instance, rules made by the Veterinary Council discourage vets from competing with one another; in particular, they forbid vets from advertising

¹⁵ Although there are eight professions which are being examined there will be only seven reports published, since solicitors and barristers were reported on in a single report on the "Legal Profession".

their prices or offering discounts. An increasing number of vets are choosing to focus on pet care rather than farm work. This is happening at a time when consumers are demanding increasing assurance regarding animal herd health and higher standards of traceability. This presents an opportunity for the Department of Agriculture and Food to consider new ways of delivering important veterinary services such as TB testing.

The Report contains five recommendations aimed at improving competition and ensuring a modern regulatory system that protects the health of animals and the general public, while at the same time delivering value for money to consumers.

The five recommendations are:

- monitor the number of vets providing food animal services;
- consider of the introduction of lay TB testing;
- remove all unnecessary restrictions on advertising services;
- remove restrictions on touting; and,
- allow corporate bodies to supply veterinary services.

The recommendations aim to give consumers and the agricultural sector more information about the price of veterinary services; they encourage vets to offer new and better services to all end consumers, both farmers and non farmers; and they provide the basis for ensuring an adequate long-term supply of veterinary services in the State.

3.4 Raising Awareness of Competition

The Competition Authority continues to raise awareness of the positive role that effective competition has in the economy. Members and staff of the Competition Authority endeavour to promote awareness and draw attention to specific issues through 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 2008.

Members and staff also gave speeches or presentations on competition matters to a wide range of audiences throughout 2008. Appendix D contains a full list of speeches and presentations given during the year.

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 2008. The Competition Authority hosts public seminars with a distinguished list of Irish and international guest speakers. Details of the seminars hosted in 2008 are set out at table 3.1. In addition, on 22nd November, the Competition Authority hosted a conference on Sanctions, Fines and Settlements in Cartel Cases: Developments and Deterrence in the EU and Ireland. The seminar was moderated by Justices from the Supreme Court and High Court and explored a number of topics. Details are contained in table 3.2 below.

Table 3.1 Competition Authority External Seminars 2008

<i>Date</i>	<i>Title</i>	<i>Speakers</i>
6 th June	White Paper on Damages Actions	<ul style="list-style-type: none"> • Dr Rainer Becker, Competition Directorate, European Commission • Ms Fanny-Marie Brisdet; Senior Government Policy Advisor, the Netherlands • Dr Vincent Power, Partner and Head of A&L Goodbody's EU and Competition Group
1 st October	Cartel Leniency	<ul style="list-style-type: none"> • Dr. Kirtikumar Mehta, Director of Cartels, Competition Directorate, European Commission • Peter McCormick, Office of the Director of Public Prosecutions • Philip Andrews, Partner and Co-Head of the McCann FitzGerald Competition, Regulated Markets & EU Law Group • David McFadden, Legal Advisor to the Competition Authority

Table 3.2 Conference on Sanctions, Fines and Settlements in Cartel Cases: Developments and Deterrence in the EU and Ireland

<i>Topic</i>	<i>Moderator</i>	<i>Panel/Speaker</i>
Cartel Sanctions: The EU Perspective	The Honourable Mr. Justice John Cooke, former judge of the European Court of First Instance and designee to the High Court	<ul style="list-style-type: none"> • Mr. Michael Collins, SC, Chairperson of the Bar Council, • Mr. Gerald Fitzgerald, Consultant, McCann Fitzgerald, • Mr. Donncadh Woods, Deputy Head of Unit, European Commission, DG Competition
The Economics of Cartel Fines and Sanctions	The Honourable Mr. Justice Nicholas Kearns of the Supreme Court	<ul style="list-style-type: none"> • Dr. Gregory Werden, Senior Economic Counsel, United States Department of Justice, Antitrust Division
Member State Experience With Sanctions, Fines and Settlements	The Honourable Mr. Justice Niall Fennelly of the Supreme Court	<ul style="list-style-type: none"> • Attorney General, Mr. Paul Gallagher, SC, • Mr. Ali Nikpay, Senior Director, Policy, Office of Fair Trading, • Ms. Monique van Oers, Director, Legal Department, Netherlands Competition Authority

3.5 Appearances Before Oireachtas Committees

The Chairperson of the Competition Authority met the Joint Oireachtas Committee on Enterprise, Trade and Employment on 19th March 2008 to discuss the work of the Competition Authority. The Chairperson appeared before the same Committee on 29th October 2008 to discuss the Competition Authority's three reports into the Grocery Sector. The Chairperson outlined how the Retail Planning Guidelines were having an anti-competitive effect on the sector and how reform of the Retail Planning Guidelines would benefit consumers through more competition in groceries.

The Chairperson of the Competition Authority also appeared twice before the Joint Oireachtas Committee on Transport. On 21st May 2008 the Chairperson attended the Committee's meeting discussing the likely impact of a reintroduction of quantitative restrictions on taxi licences. At the meeting the Competition Authority stressed that the removal of the restriction on the number of taxis had been of great service to consumers and that its re-introduction would be detrimental to them. On 8th October 2008, the Chairperson appeared before the Committee regarding the competition aspects of the liquid fuel sector. The Chairperson outlined for the Committee the Authority's successful prosecution, through the DPP, of a price-fixing cartel in heating oil in the west of Ireland.

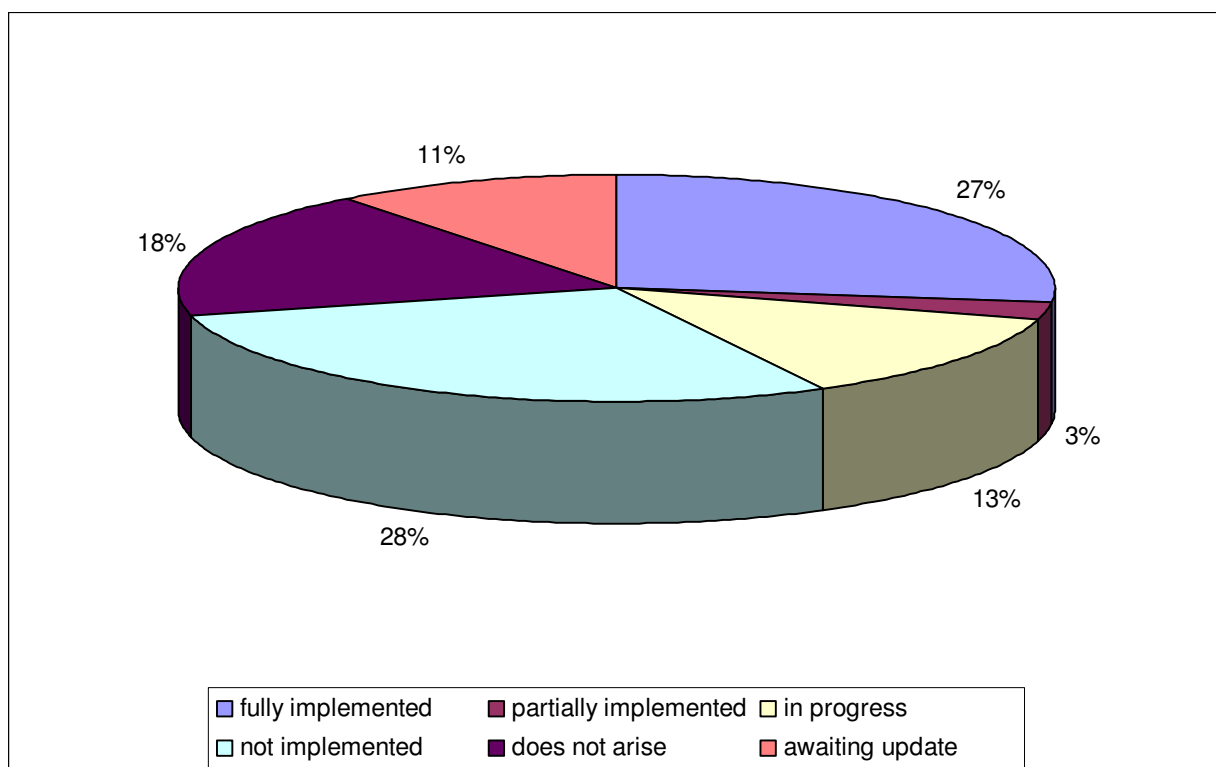
3.6 Previous Reports and Recommendations of the Competition Authority

The Competition Authority has made many recommendations to improve competition in a variety of sectors across the economy. Some of these recommendations have been implemented, but many remain outstanding. The Authority continuously follows up with those bodies to whom its recommendations are addressed, with a view to implementation.

Figure 3.3 reports on the status of the recommendations made in a series of reports published by the Competition Authority since 2004.¹⁶ Of the 158 recommendations made to date, 27% have been fully implemented, 3% partially implemented and a further 13% are in progress.

¹⁶ A number of these studies commenced in 2002 but the final reports and recommendations were not published until 2004.

Figure 3.3 Status of Recommendations made by the Authority in Studies Published Since 2004



Source: The Competition Authority

The Competition Authority's recommendations have, over time, seen the introduction of some welcome changes in a number of areas which have brought benefits for consumers – (e.g. the abolition of the Groceries Order has allowed supermarkets to offer discounts; it is now easier for bank customers to switch bank accounts; consumers can now choose between going to a dentist or a clinical dental technician for dentures). Implementation of remaining recommendations will bring further benefits.

The Competition Authority's advocacy function would be more effective if the Government formally responded to the Authority's formal recommendations. In this regard, the Competition Authority welcomes the Government's announcement in *Building Ireland's Smart Economy: A Framework for Sustainable Economic Renewal* that it intends to "... publish a whole-of-Government response to recommendations contained in reports of the Competition Authority within nine months of their publication."¹⁷

Sectoral Studies

The following section gives more detail on the implementation of recommendations in the various Competition Authority studies in recent years. The Authority's Report on Veterinary Practitioners is described in more detail in section 3.3 above.

¹⁷ Government of Ireland (2008), *Building Ireland's Smart Economy: A Framework for Sustainable Economic Renewal*, p. 51.

Private Health Insurance (2007)

The study of Private Health Insurance was published in February 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. Many of the recommendations have already been implemented and a number are provided for in the recently-published Private Health Insurance Bill 2008. The Competition Authority thus expects that almost all of its recommendations will be implemented by the end of 2009. The main outstanding recommendation is that Vhi Healthcare should cease cancelling travel insurance policies where a customer switches from Vhi Healthcare to another health insurer.

Insurance (2005)

The Insurance Study was published in March 2005 and 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 is addressing others following its review of intermediaries.

Banking (2005)

The Banking Study was published in September 2005 and 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.

The Professions Studies

In addition to the above studies, the Competition Authority has, to date, undertaken studies and published reports on the following professions: Engineers, Architects, Solicitors and Barristers, Optometrists, Dentists and Veterinary Practitioners. The series will conclude in 2009 with a report on competition in the medical profession.

Engineers (2004)

The Competition Authority's report on Engineers was published in December 2004. The Authority found that competition in general was working well and made only two recommendations. The first recommendation, to the Institute of Engineers Ireland (now Engineers Ireland), to increase the transparency of accreditation of Engineering degrees, and for accreditation not to require IEI membership, has been implemented. The second recommendation, that any further regulation of the engineering profession should not be imposed without a Regulatory Impact Analysis (RIA), was directed to the Minister for the Environment, Heritage and Local Government and did not seek any specific action.

Architects (2006)

The Competition Authority's report on Architects was published in March 2006 and contained 11 recommendations, six of which have been implemented. Three of the Authority's specific recommendations to more clearly distinguish the regulatory and representative functions of the RIAI, made in the context of what is now the Building Control Act 2007, were implemented. However,

the Act continued to make the representative body (the RIAI) the statutory regulator. The Higher Education Authority and the RIAI implemented the recommendations directed to them prior to the publication of the final report to increase training options available for students.

A recommendation to the Irish Public Bodies Mutual Insurances Ltd. concerning overly restrictive professional indemnity insurance requirements for public contracts, has not been implemented. Other remaining recommendations require the new Register of Architects to be in place.

Optometrists (2006)

The Competition Authority's Report on Optometrists was published in June 2006 and contained five recommendations 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 Minister for Health and Children has indicated that the recommendation that optometrists should routinely provide State-funded eye examinations for children will be implemented. Similarly it is anticipated that recommendations to review optometry training places and to reform advertising restrictions will be implemented shortly. Two recommendations regarding the functions and composition of the Opticians Board have not yet been implemented. The Competition Authority is following up on whether progress has been made on implementing the recommendations.

Solicitors and Barristers (2006)

The Competition Authority's report on the legal profession, i.e. solicitors and barristers, was published in December 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). To date seven recommendations have been implemented, 17 have not been implemented, mostly concerning the establishment and operation of a system of independent regulation of the legal profession. In addition there are five recommendations, where some reform has taken place but not to the extent recommended by Authority.

Rules on advertising have been reformed for both solicitors and, to a lesser extent, barristers. In August 2008, the Law Society began offering a course entitled "Essentials in Legal Practice", a short course to be offered annually which makes it easier for barristers to switch to the profession of solicitor.

Significantly however, the root and branch reform recommended in the report, particularly in relation to the setting of standards for education and for professional behaviour, will not occur without action by the Department of Justice, (which has implemented just one recommendation) and the introduction of a comprehensive Legal Services Bill.

Dentists (2007)

The Competition Authority's report on Dentists was published in October 2007. The report contained 12 recommendations. To date, a new profession of Clinical Dental Technician has been introduced and the restrictions on advertising by dentists considerably relaxed, for example, dentists are now free to advertise their prices. A new National Oral Health Policy is being developed by the Department of Health and Children and the terms of reference include addressing the Competition Authority's recommendations to reform advertising restrictions, to amend the composition of the Dental Council and to increase the number of training places for dentists and other oral health care professionals.

4. POLICY & CORPORATE SERVICES

Finance

The Competition Authority is funded by way of annual grant from the Department of Enterprise, Trade and Employment. In 2008 the Competition Authority's grant was €6.78m. The Competition Authority's accounts are subject to audit by the Comptroller & Auditor General and the audit of the 2008 accounts is unlikely to be completed until the second quarter of 2009. However, at time of writing, the provisional, unaudited outturn for 2008 was expenditure of €5.95m. The underspend arose mainly from the existence of a number of vacancies throughout the year. A potential underspend of €720,000 was identified by the Competition Authority in June 2008 as part of a Government request to Departments and Agencies to critically examine potential savings in 2008 expenditure. Of this sum, €620,000 arose from the identification of payroll savings based on actual and projected staff vacancies during 2008 and the remainder from projected savings in non-pay expenditure. The savings identified by the Competition Authority were surrendered to the Department of Enterprise, Trade and Employment from its €6.78m budget allocation.

Freedom of Information

The Competition Authority received four requests under the Freedom of Information Acts in 2008, three less than in 2007. All four requests were of a non-personal nature. Three of the requests were completed in 2008 and the fourth was carried into 2009. Of the three requests dealt with, one was part granted with access to some documents being refused while the other two requests were refused. The reasons for refusing access to documents requested included the non-existence of the records requested, the confidential nature of records requested and the potential prejudicing of the effectiveness of Competition Authority investigations and enforcement of competition law by allowing access to particular records.

Recruitment

The Competition Authority carries out its own recruitment of staff pursuant to Section 39 of the Competition Act 2002. The Competition Authority conducted three public recruitment competitions in 2008 from which it made eight appointments arising from vacancies that carried over from 2007 or arose in 2008. In addition, one member of staff was recruited through a confined recruitment competition. Staff turnover in 2008 was much reduced over the previous year with four members of staff leaving as compared with thirteen in 2007. Of the four who left in 2008, two joined other public sector organisations, one took up employment abroad and the fourth returned to the public body from which they had been seconded.

International Commitments

The Competition Authority is active in a range of international fora. The Authority's international role stems primarily from its role, alongside the European Commission and national competition authorities in other Member States, in enforcing the competition provisions of the EC Treaty. The Competition Authority also participates in international fora as a means of promoting best practice within the agency and to maintain knowledge of competition issues that are universal.

European Competition Network (ECN)

Membership of the European Competition Network is compulsory for national competition authorities of Member States. It was established in 2004 as a requirement under EC Regulation 1/2003, to facilitate co-operation in the consistent application of Community competition rules through arrangements for information sharing, assistance and consultation. The objective of the ECN is to build an effective legal framework to challenge companies that are engaged in cross-border practices which restrict competition and are detrimental to consumer welfare.

The Competition Authority is the representative of Ireland for consultations by the European Commission relating to competition enforcement cases and initiatives in competition law and policy. Before adopting a decision relating to an abuse of dominance or a proposed merger, for example, the Commission is required to hold an Oral Hearing where defendants of merging parties can voice their opinion and this can lead to an Advisory Committee where each Member States can articulate their opinions. In addition, the Commission consults with Member States on proposed enforcement practices, guidance, policies and legislation relating to Community competition law and policy. The Competition Authority fulfils this role through attendance at decision-making and other meetings, as well as making written and oral contributions to policy and case analyses. The Authority does not attend all meetings but focuses its resources on those cases that impact on Irish consumers and on high level meetings on the consistent and efficient application of EU law.

In 2008 the Competition Authority attended three Oral Hearings alongside eight Advisory Committee meetings on enforcement issues. The Competition Authority also participated in the high level general meetings (all the ECN Plenary meetings and the Director General meeting). The Competition Authority was also active in four of the five ECN Working Groups and five of the eleven Sectoral Sub-groups that looked at issues in the following areas: Co-operation between Competition Authorities, Exemptions to Vertical Restraints, Leniency, Chief Economists, Banking, Health Insurance, Energy, Food, Competition & Consumers and Abuse of Dominance.

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 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 - three times a year. Meetings regularly feature "roundtable" discussions on substantive policy issues and member countries are invited to make submissions in advance of roundtables. These are all published at a later stage, together with a Background Report by the OECD Secretariat and a synthesis of the discussion.

In 2008 the Competition Authority made submissions on "*Land Use Restrictions as a Barrier to Entry*", on "*Anti-trust issues relating to Minority Shareholdings*", on "*Interlocking Directorates and Vertical Relations in Gasoline Retailing*", and on its experience in undertaking market studies. The Authority was also invited to present the findings of its report on competition in dental services in Ireland and is participating in a Drafting Group focusing on a report on "*Bid-rigging and Government Procurement*".

International Competition Network

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 supporting the development of best practice in competition law and policy and addressing practical competition policy concerns. The Competition Authority is active in three of the ICN's working groups: the Unilateral Conduct Working Group, the Merger Working Group and the Cartel Working Group.

The Competition Authority co-chairs the Merger Working Group with the Antitrust Division of the United States Department of Justice (US DOJ) and is chair of the ICN Subgroup in Merger Investigation and Analysis. Building on the success of the *ICN Merger Guidelines Workbook*, the Merger WG is currently exploring substantive areas in which to promote recommended practices for merger analysis. At the 2008 ICN Annual Conference the Competition Authority presented, in conjunction with the US DOJ, the first three initial topics for this work: legal framework for competition merger analysis, entry and expansion, and the use of market share-based thresholds and presumptions.

The Competition Authority is active in two subgroups of the Cartel Working Group: General Framework Subgroup and Enforcement Techniques Subgroup. In the General Framework Subgroup the Competition Authority made a submission on the reports "*Setting Fines in Cartels*" and "*Cartels Settlements*". In the Enforcement Techniques Subgroup the Competition Authority was active on drafting a chapter on "*Interviewing Techniques*" for the ICN "*Anti-cartel Enforcement Manual*". The Competition Authority also presented at ICN Cartel Workshop held in Portugal in October 2008.

The Competition Authority made submissions to the Unilateral Conduct Working Group's report on predatory pricing.

European Competition Authorities

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 European Free Trade Association Surveillance Authority. The ECA seeks to improve co-operation between competition authorities and contribute to the efficient enforcement of national and European law. The Competition Authority attended the annual meeting of the ECA in 2008.

The Competition Authority Strategy Statement

2008 marked the last year of the Competition Authority's previous Strategy Statement, which covered the period 2006-2008. During that period the

Competition Authority achieved some notable successes, as detailed in this and previous annual reports.

In January 2009, the Competition Authority published its Strategy Statement for the period 2009-2011. This document outlines the Competition Authority's goals for the next three years.

The focus of the 2009-2011 Strategy Statement is on discharging the Competition Authority's functions in the most timely, efficient and effective way possible. The 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 keystone to the Strategy Statement is the Competition Authority's Mission Statement. That mission is *"to ensure that competition works well for consumers and the Irish economy"*.

Making competition work well benefits consumers (including businesses) by ensuring that businesses (suppliers) operate in a manner that promotes choice, efficient pricing, service, innovation and product variety. More effective competition increases the productivity and competitiveness of the Irish economy as a whole and so the mission statement has been expanded to reflect the benefit to the overall economy that competition can deliver.

In order to fulfil its mission, the Competition Authority has set itself the following High Level Goals;

Raising Awareness Goal: Foster a culture of competition in Ireland by raising awareness and understanding of the benefits of competition, and of the Competition Authority's role; amongst policy makers, businesses and consumers.

Enforcement Goal: Enforce competition law against cartels, other anti-competitive agreements and abuses of dominance, giving the highest priority to those breaches which do the greatest harm to consumers.

Merger Review Goal: Implement the merger review regime efficiently, effectively and according to best international practice.

Compliance Goal: Promote compliance with, and understanding of, competition law among businesses by helping them to know what competition law is and how to comply with it.

Advocacy Goal: Achieve increased competition where it is unnecessarily absent, limited or restricted, and protect competition where it already exists - by working with the Government and its Ministers, Government Departments and public authorities generally, and consumer and business representatives.

In order to achieve success in the above goals the Competition Authority is to undertake a range of initiatives across its functions, including more engagement with stakeholders, more guidance on compliance with competition law and a more streamlined approach to case management. The success of these initiatives will be assessed each quarter and amended as necessary. Full details are available from the Competition Authority Strategy Statement 2009-2011.

COMPETITION AUTHORITY MEMBERS



William Prasifka
Chairperson



Declan Purcell
Advocacy



Stanley Wong
Monopolies



Carolyn Galbreath
Cartels



Paul Gorecki
Mergers

**ORGANISATION STRUCTURE OF THE COMPETITION AUTHORITY
(REFLECTS STAFF POSITIONS ON 31ST DECEMBER 2008)**

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 and communications	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 Mergers. Management and co-ordination of international work. Development of information and training structures, policy and strategy.
Divisional Managers	Cormac Keating	Ibrahim Bah	Ciarán Quigley	Vivienne Ryan	John Evans	Carol Boate
Legal Advisors			Noreen Mackey David McFadden			
Communications Manager			Clodagh Coffey			
Case Officers	Ciarán Aylward Cathal Hanley Andrew Rae Deirdre McHugh Kathryn MacGuill	Victoria Balaguer Anne Ellis Barry O'Donnell Michele Pacillo		John Burke TJ Fitzpatrick Catherine Kilcullen Eksteen Maritz Daniel Kenna Joe McLoughlin ¹⁸ Elisa Ryan Sinead Sinnott Joseph Walser John Gasaway	Aoife Brennan Kieran Coleman Niamh Dunne Theunis Kotze Han Nie Anne Ribault O'Reilly John McNally David Boyle David O'Connell	Janet McCoy Malachy Fox
Higher Executive Officers			James Plunkett Sandra Rafferty			
Executive Officers			Stephen Lalor Pat Downey Elizabeth Heffernan			
Clerical Officers			Laraine Cooper Sandra Brennan Mark Wilkinson Stephen Tighe			

¹⁸ Detective Sergeant Joe McLoughlin is on secondment to the Competition Authority from the Garda Bureau of Fraud Investigation.

APPENDICES

Appendix A: Statistics on Mergers Evaluated 2006-2008

	2008	2007	2006
Notified Mergers	37	72	98
required notifications (Section 18(1))	37	71	97
voluntary notifications (Section 18(3))	0	1	1
Carried from previous year	9	9	7
carried as Phase 1	9	8	7
carried as Phase 2	0	1	0
Referred from the EU Commission (ECMR Art 9)	1	0	0
TOTAL CASES	47	81	105
of which media mergers	5	20	22
of which entered Phase 2 in year of determination	2	3	4
of which entered Phase 2 in year previous to determination	0	1	0
Cases Withdrawn	0	2	2
Withdrawn at Phase 1	0	2	2
Withdrawn at Phase 2	0	0	0
Determinations Delivered	45	70	96
Phase 1 Determinations cleared without proposals	43	64	93
Phase 1 Determination with proposals	0	2	0
Phase 2 positive Determination without conditions or proposals	1	3	2
Phase 2 Determination with proposals	0	1	0
Phase 2 Determination with conditions	0	0	0
Phase 2 Prohibition	1	0	1
Referral to EU Commission (ECMR Art 22)	0	0	0
Carried to next year	2	9	7
Carried as Phase 1	2	9	6
Carried as Phase 2	0	0	1

Appendix B: Mergers Notified to the Competition Authority in 2008

Notification	Industry	Date Notified	Status
M/08/001 - SSE/Airtricity	Electrical energy generation and supply	09 January 2008	Completed
M/08/002 - Citigroup/Facey	Value-added distribution in the food, pharmaceutical, telecom and business solutions sector	31 January 2008	Completed
M/08/003 - Independent/Champion	Newspaper publishing and printing.	12 February 2008	Completed
M/08/004 - 3i/Alpharma	Pharmaceuticals	22 February 2008	Completed
M/08/005 - Collins Stewart/ISTC	Financial Services	26 February 2008	Completed
M/08/006 - CRH/Ancon	Construction Accessories	28 February 2008	Completed
M/08/007 - Irish Times/Relevance	Newspaper publishing and advertising	5 March 2008	Completed
M/08/008 - GE/Gama/TEL	Electricity Generation	19 March 2008	Completed
M/08/009 - Kerry/Breeo	Foods	21 March 2008	Completed
M/08/010 - IFP/C&D	Pet foods and beef processing	20 March 2008	Completed
M/08/011 - Heineken/Scottish & Newcastle	Production and distribution of beer and other beverages	3 April 2008	Completed
M/08/012 - JPMC/Bear Stearns	Banking and Financial Services	9 April 2008	Completed
M/08/013 - Hibernian/Vivas	Private health insurance	11 April 2008	Completed
M/08/014 - BWG/Mangan's	Grocery retailing and wholesaling	11 April 2008	Completed
M/08/015 - Ford/Lindsay	Motor vehicle distribution and servicing	16 April 2008	Completed
M/08/016 - Premier/Imprint	Provision of recruitment services	25 April 2008	Completed
M/08/017 - 3i/Uponor Private Healthcare	PE infrastructure utility pipe systems	9 May 2008	Completed
M/08/018 - ML Cayman/ Omega IV/Euromedic JV	Healthcare services	23 June 2008	Completed
M/08/019 - Sagem Securite S.A./SDU Identification B.V.	Electronic/identification security technology	30 June 2008	Completed

M/08/020 – IAWS Group plc/Hiestand Holding AG	Food	4 July 2008	Completed
M/08/021 – TV3 Television Network Limited/Kish Media Limited	Production of television programs and television broadcasting	25 July 2008	Completed
M/08/022 – Tesco PLC/TPF	Provision of life/non-life insurance services	30 July 2008	Completed
M/08/023 – DHC/Middenberm/TMF	Outsourcing services	31 July 2008	Completed
M/08/024 – GE/Carnival	Drama programming in the UK	20 August 2008	Completed
M/08/025 – Alchemy/Noonan	Facilities services in the UK and Ireland	25 August 2008	Completed
M/08/026 – ITW/AVCo	Weighing solutions for the industrial market and retail stores	27 August 2008	Completed
M/08/027 – Symantec/PC Tools	Security software products and services sector	1 September 2008	Completed
M/08/028 – EirGrid/SONI	Operation and Management of high voltage electricity plus the operation of the wholesale electricity market	10 September 2008	Completed
M/08/029 – OEP/J&J wound care business	Manufacture and supply of Medical products	19 September 2008	Completed
M/08/030 – Celsa/BRC/McMahon	(a) Reinforcing steel products at the upstream level and (b) Processing/distribution of reinforcing steel products for the building and construction industry at the downstream level	25 September 2008	Completed
M/08/031 – Aon/Benfield	Primary insurance and reinsurance distribution	6 October 2008	Completed
M/08/032 – First Choice/Sunshine Cruises	Tour operator activities	7 October 2008	Completed
M/08/033 – Sony/Sony NEC Optiarc	Electronic products	29 October 2008	Completed
M/08/034 – Celsa/ROM Group	Manufacture of reinforcing steel products at an upstream level and the distribution of steel products at a downstream level	7 November 2008	Completed
M/08/035 – Sagem/Printrak	Biometric identification solutions for identifying an individual including the relevant products,	7 November 2008	Completed

	maintenance and services associated with such solutions		
M/08/036 – Lloyds TSB/HBOS	Banking	21 November 2008	Completed
M/08/037 – RDF/Cyrte	The production and distribution of television programming	10 December 2008	Completed
M/08/038 – Alpha/The Herald	Regional Newspaper Publishing Sector	23 December 2008	Completed

Appendix C: Formal Submissions made by the Competition Authority in 2008

Submission Number	Submission to:	Topic	Summary of Recommendations
/08/001	The Alcohol Advisory Group	Review of Legislation Governing the Sale and Consumption of Alcohol	Calls by vested interests in the drinks industry for the reintroduction of a ban on below-unit cost selling of alcohol should be resisted. Fixing the price of alcohol makes the sale of drink more profitable across all retailers and bars. Guaranteed profit margins encourage the sale of alcohol and as such, they are contrary to the aim of reducing excessive alcohol consumption. Such measures would also legalise price-fixing arrangements, which are considered "hard-core" competition law breaches and punishable in Ireland by jail sentences of up to five years in prison. Price is just one factor affecting demand for alcohol. If the Government wishes to increase the price of alcohol to discourage consumption, it could use taxation (specifically, excise duties). Excise duties on beer have not increased in Ireland in well over a decade. The last increase in excise duties on spirits was in 2002. Thus the real value of the tax on alcohol in Ireland has been consistently falling.
S/08/002	The Department of Health and Children	Nurses and Midwives Legislation	The Competition Authority broadly welcomes the proposed legislation as another step in updating the body of legislation applicable to medical professionals. Of particular note is the statement that the primary role of An Bord Altranais is to protect the public interest rather than the narrower interests of any medical professional.
S/08/003	The Department of the Environment, Heritage and Local Government	Draft Waste Battery Regulations	There are a few areas where the draft regulations in their present form may negatively affect competition between providers of waste management services or between producers with obligations under the EU Waste Battery Directive. For instance, the provisions governing collective schemes are unnecessary as existing competition law already addresses the conduct of competing firms who may choose to engage in some form of collective action. Secondly, the role, composition and accountability of the registration body should be more clearly defined in the legislation.
S/08/004	Department of Health and Children	Pharmacy Business Regulations	Consumers should be given more information about the price of medicines. Pharmacists should be required to advise consumers, in advance of filling prescriptions, of the prices they propose to charge, broken down between product price and dispensing fee. Pharmacists

			should also be required to display the final price of all dispensed items on all prescription labels.
S/08/005	The Pharmaceutical Society of Ireland	Pharmacy Business (Registration) Regulations	The regulations provide that a separate application for registration must be made for each pharmacy outlet. The Competition Authority recommends that details of the ownership of multiple outlets should only be required once. Other rules governing the registration of pharmacy businesses should also be clarified.
S/08/006	Advisory Group on Media Mergers	Media Mergers	The Competition Authority's submission to the Advisory Group focuses on how media mergers are reviewed by the Authority under the Competition Act 2002 as well as setting out the Minister's role under the legislation. The Competition Authority takes the view that it is not within its expertise to develop a definitive opinion with respect to the non-competition criteria which the Minister may apply in assessing the proposed merger from a public interest perspective.
S/08/007	Department of Transport	Public Consultation on Sustainable Travel and Transport	Competition encourages public transport providers to provide services in the most cost effective way. Safety standards, cleanliness and comfort can be effectively controlled through the tendering process. The proposed Dublin Transport Authority presents an opportunity to open up city bus services to competition.
S/08/008	Office of the Director of Corporate Enforcement	ODCE's Corporate Strategy Statement	Based on the Competition Authority's experience, the ODCE should pursue individuals as a priority through the criminal courts as criminal proceedings against company directors have a strong deterrent effect. The ODCE should consider methods of ensuring that the various Circuit Court offices record the fact of a company director's conviction with the Companies Registration Office. Otherwise errant company directors may continue to act as directors despite their automatic consequential disqualification.

Appendix D: Seminars, Speeches, Presentations & Papers 2008

Title	Forum	Date	Person
Competition in Dental Services	OECD, Paris	18 February	Declan Purcell
International Cartels Conference: Panel Discussion - the Enforcer's Point of View on Management of Multi-National Investigations	British Institute of International and Comparative Law, London	26 February	Carolyn Galbreath
Competition Authority's Submission on proposed amendments to enforcement provisions in the Competition Act 2002	Irish Society for European Law: Competition Law Forum	12 March	David McFadden
Grocery Monitor Overview	Launch of Grocery Reports 1 & 2	9 April	William Prasifka
Merger Working Group, Chair, Plenary Panel discussion & moderator, breakout session	7 th International Competition Network Annual Conference, Kyoto, Japan	14-15 April	Paul K Gorecki
Merger Analysis by the Competition Authority	Five Years of Merger Control, Key Lessons & Emerging Issues - McCann Fitzgerald Dublin & London Offices	23 April	Paul K Gorecki
Competition in Bus Transport	IBEC Transport Council	1 May	Declan Purcell
Statement of the Chairperson on Taxi Licence Restrictions	Joint Oireachtas Committee on Transport	21 May	William Prasifka
Competition Law Compliance: A Cautionary Tale for Trade Association	IBEC Small Firms Association Meeting	22 May	Carolyn Galbreath
Trade Associations Briefing	IBEC Food and Drink Industry Meeting	23 May	Carolyn Galbreath
Grocery Monitor Overview	Food and Drink Industry Ireland	23 May	William Prasifka
Rent, Regulatory Reform and Rx	ESRI Policy Seminar	3 July	Paul K Gorecki
Making Competition Work in Public Procurement	Public Procurement Conference 2008	3 July	William Prasifka
The Supreme Court Judgment in the Irish League of Credit Unions Case: Setting New	Paper published in European Competition Law Review, Volume 29, Issue 9, pp.499-511	September	Paul K Gorecki

Standards or Misapplying Current Case Law			
Private v. Public Interest: the Strategic Use of Competition Law in Ireland by Private Interests	Paper published in World Competition, Volume 31, Issue 3, pp.401-420	September	Paul K Gorecki
The Retail Planning System	Launch of Grocery Report 3	10 September	William Prasifka
Institute of European Affairs and Competition Authority Seminar	Incentives for Breaking the Secrecy of Cartels: The EU Experience With Cartel Leniency	1 October 2008	Carolyn Galbreath David McFadden
Competition Law and the Community Pharmacy Sector	Irish Competition Law Annual Conference 2008	2 October	William Prasifka
Competition is Liberation	ISME Annual Conference	3 October	William Prasifka
Making Competition Work in Public Procurement	Government Construction Contracts Committee	8 October	Carolyn Galbreath & Catherine Kilcullen
Statement of the Chairperson on the Liquid Fuel Sector	Joint Oireachtas Committee on Transport	8 October	William Prasifka
Competition and Public Policy	Irish Economic Association DEW Kenmare Conference	12 October	William Prasifka
The Cartel Immunity Programme	Irish Society for European Law Competition Law Forum	15 October	Carolyn Galbreath
Economic Evidence in Merger Control	Irish Society of European Law Seminar	11 November	Paul K Gorecki
Criminalisation of Cartels	UHOS (Czech Competition Agency) Conference – Brno, Czech Republic	11 November	Carolyn Galbreath
Public Enforcement and Private Actions	'The Lawyer' Antitrust Litigation Conference, London	26 November	David McFadden
A Rough Guide to Irish Regulators	First Annual Review of Irish Regulatory Affairs	26 November	Declan Purcell
Complex Cartel Investigations	International Competition Network – Cartels Workshop	29 October	Eksteen Maritz
Competition and Productivity	Forfás	8 December	John Evans
Case Study of a Non-commercial Semi-state Body – the Competition Authority	Institute of Public Administration Certificate Course in Civil Service and State Agency Studies	10 December	Ciaran Quigley

