



The Competition Authority
 An tÚdarás Iomáiochta

Annual Report 2010

Table of Contents

A Message from the Chairperson	5
1. About the Competition Authority	9
<i>The Benefits of Competition</i>	9
<i>The Competition Authority's Structure and Functions</i>	12
<i>Working with other State Agencies</i>	15
<i>Identifying Anti-competitive Behaviour</i>	16
<i>Prioritisation of Cases</i>	19
2. Enforcing Competition Law	21
<i>Cases Before the Courts</i>	22
<i>Closed Investigations</i>	23
<i>National Asset Management Agency</i>	25
<i>Cartel Immunity Programme</i>	26
<i>Category Declarations</i>	26
<i>Use of Enforcement Powers</i>	28
3. Evaluation of Mergers and Acquisitions	31
<i>Efficient Merger Review Regime</i>	31
<i>The Financial Sector</i>	32
<i>Proposed Review of Guidelines for Merger Analysis</i>	32
<i>Merger Notifications during 2010</i>	32
<i>Mergers Cleared with Commitments</i>	34
4. Promoting Competition in Ireland	39
<i>Identifying Public Restrictions on Competition</i>	39
<i>Advice on Proposed Legislation, Regulation and Competition Issues</i>	42
<i>Analysing How Competition Works in Particular Sectors</i>	43
<i>Recommendations from Previous Reports</i>	45
<i>Raising Awareness</i>	49
5. International Work	51
<i>European Commission</i>	51
<i>European Competition Network</i>	52
<i>Organisation for Economic Co-operation and Development</i>	53
<i>International Competition Network</i>	53
<i>International Co-operation</i>	54
6. Corporate Services	55
<i>Finance</i>	55
<i>Freedom of Information</i>	55
<i>Human Resources</i>	55
<i>Customer Service</i>	56
A. Competition Authority Structure	57
<i>Competition Authority Members</i>	57
<i>Organisational Structure of the Competition Authority</i>	58
B. Mergers Notified to the Competition Authority in 2010	59
C. Statistics on Mergers Evaluated 2008-2010	63
D. Formal Submissions by the Competition Authority in 2010	64
E. Seminars, Speeches, Presentations & Papers	65

A MESSAGE FROM THE CHAIRPERSON

One of the Competition Authority's key roles in the current environment is to communicate the crucial role of competition policy in a downturn. Improving the country's competitive position is the key to ensuring that future generations can have a chance to enjoy the levels of opportunity and prosperity that we have seen in the past.

Competition can help the economy to recover its competitiveness. It brings dynamism. The greater the intensity of competition in the economy, the better able Irish firms will be to compete and succeed on a global level.

We are very aware of the difficulties facing businesses in these recessionary times, but anti-competitive conduct or protectionist policies are not appropriate responses.

Looking back at 2010, we can identify a number of high points for the Authority, as well as a number of very significant challenges.

In December, we completed a major investigation file for the Director of Public Prosecutions. The file concerns an extremely complex and substantial investigation that has required a major investment of our resources over a number of years. We recommended prosecution on indictment against a number of companies and individuals. Experience suggests that we will need to devote significant resources to meeting the requirements of the DPP in connection with the referral in 2011 and beyond.

Our long-running case against the Beef Industry Development Society Ltd. continued in 2010 and came to a successful conclusion early in 2011. This was a most important case for Irish and European competition law. I welcome the clear message that has come from the Courts, namely that a plan to restructure an industry by agreement between a group of competitors is likely to restrict competition and therefore breach national and EU law.

We continued work on competition in the professions in 2010 by publishing a substantial report into General Practitioner services. Our report identified a number of measures to improve access to GP services, improve consumer information and remove barriers to GPs establishing new practices. I am delighted to note that the Government has committed to implementing our Recommendations, both in the National Recovery Plan and the Memorandum of Understanding with the European Commission, the ECB and the IMF.

I am also very pleased to note that several more of our recommendations for pro-competition reforms have appeared as commitments in the National Recovery Plan and the Memorandum of Understanding, including those relating to regulation of the legal profession and legislating for civil fines in competition law cases.

Merger notifications were up in 2010 on the previous year by more than a third. In October 2010, the Centre for European Law and Economics published the findings of a 2009 survey of 257 experts from over 60 jurisdictions asking them to rank jurisdictions on the institutional efficiency of their merger review systems. The Irish Competition Authority, along with the Netherlands Competition Authority, was ranked first in the EU for institutional efficiency of its merger review system. Ireland and the Netherlands, along with the United States, shared second place in the global ranking of 60 jurisdictions.

In December 2010, we started a review of the Authority's Guidelines for Merger Analysis by holding a public forum to discuss a range of issues in light of international developments and recent Authority practice in relation to substantive merger analysis. This exercise provided valuable feedback for the Authority and will help us in preparing revised Guidelines for public consultation in 2011.

We also publicly consulted on our Cartel Immunity Programme in conjunction with the Director of Public Prosecutions. Having evaluated how the programme works in practice, and taking into account changes internationally in immunity and leniency models, we felt the time was right to propose changes to the existing model. The Authority and the Director of Public Prosecutions will publish a revised programme in the coming months.

The Cartel Immunity Programme is an important tool in the investigation and prosecution of cartels in Ireland, which continues to be a top priority for the Competition Authority. To date, 33 criminal convictions have been handed down to 18 undertakings and 15 individuals, with fines totalling more than €600,000, and suspended prison sentences ranging from three to 12 months.

2010 was also a very challenging year for the Authority. Continuing budget cuts, the embargo on public sector recruitment and implementation of the various schemes to reduce numbers in the public sector have resulted in substantially reduced resources, yet the workload – and indeed what the public rightly expects of us – remains relatively unchanged.

Staff numbers are down by a third. At present, the Authority has three Members and thirty-six staff members. What does this mean? Well clearly, it means that we have had to be ruthless in prioritising our resources. While we must respect the imperatives in terms of the public finances, it is fair to record what I believe is realistic for us to achieve in the coming period.

With the current level of resources we have (and can expect to continue to have), this is my assessment of what it is realistic to expect of us –

- we will focus our enforcement capacity on those cases that cause very serious harm to competition,
- we will meet the statutory deadlines in merger review but only through diverting resources where necessary from other statutory functions,
- we will focus our competition advocacy on the least resource-intensive forms of advocacy rather than carry out valuable market studies,
- we will comply with best practice corporate governance standards with as few resources as we can afford.

I do not find these things at all palatable to say, as I am a strong supporter of "doing more with less". I am simply setting out realistic expectations with the level of resource we have in the Authority, so that people do not expect the impossible from us.

Finally, matters regarding the proposed amalgamation of the Competition Authority with the National Consumer Agency – and indeed possibly other bodies – have not been finalised at the time of writing. These matters are likely to have a significant impact on our ability to meet targets set for 2011.

Changes in personnel at a senior level within the organisation, with the temporary replacement of two Members of the Authority and my own interim position as Chairperson, also contribute to the degree of uncertainty faced by Authority staff.

Despite these difficulties, we have achieved a great deal in the past year, and would intend to carry this on into the next.

I would like to thank my colleague Members and the staff of the Competition Authority for their continuing dedication and hard work in meeting these challenges head on. I am proud to have been asked to lead this organisation, and am very conscious of the crucial role we can play in national economic recovery. But I am especially proud of the commitment that everyone in the Competition Authority has shown to the implementation, on behalf of Irish consumers, of the objectives set out in our three-year Strategy.

A handwritten signature in black ink, reading "Declan Purcell". The signature is written in a cursive style with a large initial 'D' and 'P'.

Declan Purcell
Chairperson

22 February 2011

1. ABOUT THE COMPETITION AUTHORITY

The Benefits of Competition

Competition law is designed, primarily, to protect and benefit consumers, including business consumers. The Competition Authority's Mission Statement is **"to ensure that competition works well for consumers and the Irish economy"**.

Where there is a lack of competition, for example if there is a cartel or a monopoly in operation, businesses do not compete for customers. In such cases, the consumer suffers as a result of higher prices, less choice and lower quality. Prices can always be kept lower with competition than they would be in the absence of competition.

Competition benefits everyone: consumers, businesses and the economy as a whole. It keeps prices and costs down. It improves choice and quality for all. It fosters innovation in the form of new products and services and it supports economic growth.

These benefits arise because competition encourages businesses to compete for customers. When consumers benefit from competition, the economy does too. For example, when electricity costs fall due to greater competition, the cost of doing business falls. This makes Irish businesses more competitive at home and internationally, which, in turn, supports long-term economic growth.

The Role of Competition in Ireland's Economic Recovery¹

How can the Competition Authority contribute to the Smart Economy and to economic competitiveness?

Competition is a key factor in Ireland's competitiveness. Competition delivers to consumers and businesses what they need, at a price they can afford.

It's about innovating to get ahead of competitors and staying there.

It's about keeping business costs down. Or rather, it's about a constant battle to bring down the costs of doing business because that's what domestic and international competitors are doing.

Every sector of the Irish economy that's fully exposed to international competition knows that it has to innovate and constantly examine its costs and prices to get ahead of its competitors and to survive.

But the **non-traded sectors** of our economy face only local competition and yet they feed directly into the cost base of every exporting business in Ireland, including wage demands. Where local competition is stifled, this has a clear pass-through effect on Ireland's competitiveness. But injecting competition into non-traded sectors is something that's actually within our control.

¹ Adapted from the opening statement made by the Chairperson at the Annual Regulatory Forum held at Farmleigh on 26 February 2010.

The Competition Authority works with Government Departments and Regulators to identify innovative competition solutions to make Ireland more cost competitive.

Competition law also protects the public purse from attempts by service providers to collectively resist reductions in State spending. It outlaws the forming of cartels, which prevent the necessary adjustment of prices in our economy.

It's not that many years ago that there was only one Irish airline, one phone company and people felt locked in to one particular insurer. We take for granted now that

- businesses and consumers can fly to London and elsewhere for a fraction of what it used to cost,
- if you're not happy with your insurer you can now easily switch to another one, and
- we have a wide choice of communications suppliers, and you can make a phonecall to anywhere in the world virtually for nothing.

All this didn't happen by accident...

These benefits have come from the gradual introduction and promotion of competition across these sectors of the economy.

The Competition Authority has published many reports in the past decade identifying where more competition could be introduced to a variety of (mainly non-traded) sectors of the economy.

On the enforcement front, we've secured 30 criminal convictions for involvement in cartels in Ireland. Five years ago, getting an Irish jury to convict someone for price-fixing was seen by many as a pipe dream.

All this work has helped to build a *competition culture* in Ireland...

We now see letters to newspapers every day from consumers who question why they aren't getting more competition, more choice and better value for money in various sectors of the economy, from medicine prices to legal services, from public transport to doctors' fees.

The point is that Irish people now understand the benefits of competition a lot better and are now actively demanding these benefits in a wide range of areas. In other words, Irish people are turning from passive to active consumers and they increasingly support State action to promote competition.

These positive developments provide a strong platform to build on...

To do that, we in the Competition Authority are, first of all, acting to increase our detection of cartels, and particularly their prevention.

- In particular, the Authority is intensifying a roadshow this year for those involved in public procurement across the State - to raise awareness among people in Government Departments, Local Authorities and so on, who are in a strong position to spot cartels that target public funds.

- We're advising procurers of the pitfalls to avoid in tender design and what to look out for in submitted tenders.

There are still many sectors where anti-competitive public laws and regulations are holding back economic growth. So we're focusing our competition advice to Ministers, Departments and Regulators specifically on sectors identified by many Irish and overseas experts (the OECD, EU, National Competitiveness Council and so on), as key to economic recovery.

For example, in 2010 we advised

- the Department of Finance - on how to protect and improve competition in banking following restructuring of this sector, and
- the Commission for Energy Regulation on competition in electricity retailing.

We're also focusing this year on public transport and waste management.

We're intensifying our efforts to advise Government Departments on the implications for competition (and ultimately competitiveness) of their policy proposals.

A major challenge for the Competition Authority in 2010 is the conclusion of a wide-ranging review by the Department of Enterprise, Trade and Innovation of Ireland's competition legislation; legislation that will also provide for the amalgamation of the Authority with the National Consumer Agency.

- The most important new idea we've proposed for reform is the introduction of **civil fines** for breaches of competition law. These would be fines imposed by the **civil courts** – so that there would be a financial sanction for anti-competitive behaviour that falls outside of hardcore criminal cartels (there's no such sanction at the moment)
- The amalgamation of the Authority and the NCA is an opportunity to apply the most appropriate tools currently available to each agency separately, to ensure a coherent approach to both competition and consumer issues. A well equipped voice for competition and consumers can be a driver of competitiveness.
- It will be a significant challenge to merge two public bodies with quite different current structures, responsibilities and staff backgrounds.

The Government can also help promote competition in non-traded sectors by acting on previous recommendations by the Authority that haven't yet been implemented, for example on reforming the regulation of the legal profession.

The Competition Authority's Structure and Functions

The Competition Authority is an independent statutory body that enforces Irish and European competition law and advises Government Ministers and public authorities generally as set out in the Competition Act 2002.

The Act says that the Authority must comprise a Chairperson and between two and four whole-time Members chosen by a public appointments process. A quorum of at least three Members is required for formal decisions. The actual position at the end of 2010 was that we had a Chairperson and three Members, two of whom are temporary Members whose term is limited to 12 months (ending in July 2011). The remaining Member's term came to an end in February 2011, and he has since left the Authority².

We strive to make sure that competition works for the benefit of all consumers, including businesses, who buy products and services in Ireland. We do this by promoting competition in all sectors of the economy, by tackling anti-competitive practices and by increasing awareness of such practices.

- Where there is evidence of businesses engaging in anti-competitive practices, we can investigate and either bring civil proceedings in court, or send a completed file to the Director of Public Prosecutions in the most serious cases.
- The Competition Authority can also block mergers that would otherwise substantially lessen competition.
- We promote competition in the economy by advocating reform when Irish laws, regulations or actions restrict competition and harm consumers. We also advise the Government on how proposed legislation or regulations could affect competition.
- We have a duty to inform public authorities and the general public about competition issues and give general guidance on compliance with competition law.

There is also an important international aspect to our work. This stems primarily from our role, alongside the European Commission and national competition authorities in other Member States, in enforcing European competition law. As part of this role the Authority is a member of the European Competition Network to facilitate co-operation in the consistent application of Community competition rules. We are also involved with the Organisation for Economic Co-operation and Development, the International Competition Network and the European Competition Authorities, to promote best practice within the agency and to maintain knowledge of competition issues that are universal.

The work of the Competition Authority is organised into six divisions.³

² Dr Stanley Wong, Member and Director of the Mergers and Monopolies Divisions, left the Authority in February 2011.

³ Appendix A presents the Members and the staff of the Competition Authority by division.

Cartels Division

The Cartels Division, along with the Monopolies Division, investigates alleged breaches of competition law. The main focus of the Cartels Division's work is on the investigation and prosecution of hardcore cartels.

A cartel is an illegal agreement between two or more competitors not to compete with each other. Cartels typically involve a secret conspiracy among a number of businesses whose basic aim is to cause consumers to pay more for goods and services than they would in a competitive market. They are therefore crimes against the consumer. There are different types of cartels.

- **Price-fixing:** Competitors illegally agree the price for, or discounts on, goods or services.
- **Market-sharing:** Competitors illegally agree which locations each of them can or cannot operate in, or customers they can or cannot supply. They also divide locations and/or consumers up among competitors.
- **Limiting production:** Competitors illegally agree to control the amount of goods or services provided in order to ensure prices remain high.
- **Bid-rigging/collusive tendering:** Competitors agree in advance who will win a tender. This undermines competitive tendering and results in higher tender prices than would result from a competitive tendering process. These practices may take different forms but they all constitute criminal offences under the Competition Act because they all involve specifically prohibited activities (fixing prices, sharing markets or limiting access to goods or services).

Cartel agreements are serious offences under section 4 of the Competition Act 2002 and Article 101 of the Treaty on the Functioning of the European Union (TFEU). Businesses and individuals found guilty of hardcore cartel offences face serious penalties, including fines and imprisonment.

Cartels are criminal conspiracies that are often very complex and uncovering them requires specialised investigative skills. Staff who investigate cartels include former members of An Garda Síochána and of other law enforcement agencies involved in the investigation of complex white-collar crimes, as well as individuals with experience in competition law enforcement from other jurisdictions around the world. In addition, a Detective Sergeant with the Garda Bureau of Fraud Investigation (GBFI) is currently seconded to work full-time with the Cartels Division and is designated as an authorised officer of the Competition Authority.

Where we obtain enough evidence of a cartel, we submit a file to the Director of Public Prosecutions (DPP) and recommend that the parties involved be prosecuted on indictment. If we believe that the case is not serious enough to warrant prosecution on indictment, the Authority itself may bring a summary prosecution in the District Court.

Monopolies Division

The Monopolies Division also investigates alleged breaches of section 4 of the Competition Act 2002 and Article 101 TFEU. Agreements that are not considered hardcore cartels may still breach competition law where they have anti-competitive effects. For example, agreements between manufacturers and distributors of their products, or between distributors and retailers, can sometimes be found to be anti-competitive.

In addition, the Division investigates allegations that undertakings have abused a dominant position in a sector of the economy. Abusing a dominant position is illegal under section 5 of the Competition Act 2002 and Article 102 TFEU. Holding a dominant position does not break the law. However, exploiting a dominant position to stifle competition is anti-competitive. Attempting to eliminate your competitors or prevent new competitors emerging, by abusing your dominant position, can be a breach of competition law.

Where we form the view that there has been a breach of the Competition Act, we can bring legal proceedings to compel the parties to stop the illegal activity. Such proceedings are generally civil and take place either in the High Court or the Circuit Court. Criminal proceedings may be appropriate, however, depending on the circumstances of each case. In such circumstances, we prepare a file for the DPP, unless the case is one more appropriately prosecuted by the Authority itself in the District Court. To fulfil its investigative role, the Monopolies Division comprises a team of economists and lawyers.

It is often the case that we may reach an out-of-court settlement in a case involving an alleged breach where the offending parties recognise and remedy their anti-competitive behaviour. This settlement might occur after we have threatened proceedings, or during an investigation when the undertakings concerned agree to cease or amend the behaviour concerned.

Because many of the matters the Monopolies Division deals with raise complex legal and economic issues, the Division devotes a substantial portion of resources to developing guidance for businesses about how they may best comply with competition law. Such guidance is given through the publication of Decision Notes or Guidance Notes arising from market-specific investigations. These Notes are for guidance only and are not legally binding. We can also issue declarations that broad categories of agreements, if they comply with certain conditions, are not prohibited by section 4 of the Competition Act.

Mergers Division

Mergers above a certain financial threshold must be notified to the Competition Authority. The main role of the Mergers Division is to perform the statutory task of reviewing, analysing and preparing our reasoned determinations on notified mergers and acquisitions within the specified time period. We have the power to block a merger where we find that it will lead to a substantial lessening of competition.

Assessing mergers can involve a number of steps. First is a review period (phase 1), after which we will make a decision to either clear the merger or go to a full investigation (phase 2). Our deadline for making phase 1 determinations is usually one month from the notification date, though this can change.

If we are unable to conclude that a merger will not lead to a substantial lessening of competition after phase 1, we may go to a phase 2 full investigation. A decision must be made on a phase 2 investigation within four months of the notification date. This decision may be to clear the merger, clear it with conditions or to block the merger.

We can also investigate mergers below the notification thresholds, under section 4 and section 5 of the Competition Act.

Advocacy Division

We have a statutory duty to promote competition in the economy. We do this mainly through the Advocacy Division, though all divisions promote awareness of the role of competition and competition law in the Irish economy. The Division's core functions are to raise awareness of the role of competition and its benefits, and to advise public policy-makers. Specifically, the Division

- gives advice to Government Departments, public authorities and other stakeholders on the implications for competition of policies and policy proposals, including proposed legislation,
- analyses areas of the economy where competition may be absent, limited or restricted, and
- identifies workable solutions to increase competition (where we identify it as absent, limited or restricted) and follows up on their implementation.

Where we find that competition is being unnecessarily restricted by the State, we make recommendations for reform. Examples of such restrictions on competition include

- excessive requirements to enter an industry or profession,
- a long-term legal right to a monopoly, and
- a ban on price advertising.

Corporate Services Division

The Corporate Services Division performs the central administrative and support functions for the Competition Authority. This includes corporate governance, financial management, human resource management and development, information technology and legal support services.

Strategy Division

The Strategy Division is a new division that came into being in June 2010. The focus of the Division is on aspects of our work that can contribute to maximising our effectiveness, to ensure that we get the most from our resources. The Division's key functions are

- to lead the planning, development and implementation of our overall strategy,
- to evaluate our overall effectiveness on a continuing basis,
- to raise awareness of the benefits of competition and our role and work to key stakeholders.

Working with other State Agencies

While public enforcement of the Competition Act rests primarily with the Competition Authority, it is often appropriate for us to liaise with relevant regulatory agencies to resolve matters. We are often asked to examine situations in sectors of the economy in which the Government has appointed an independent regulator, e.g. communications, energy and aviation. To help co-operation, avoid duplication and ensure consistency, we have co-operation agreements with several regulators and agencies.

This is particularly the case with the Commission for Communications Regulation (ComReg) which, since 2007, has power to enforce competition law jointly with the Competition Authority in relation to electronic communications services, electronic communications networks or associated facilities. The Authority and ComReg operate a co-operation agreement that facilitates the exercise of the two bodies' concurrent competition powers.

We have co-operation agreements with

- the Commission for Taxi Regulation,
- the Broadcasting Authority of Ireland,
- the Commission for Energy Regulation,
- the Commission for Aviation Regulation,
- the Health Insurance Authority,
- the Commission for Communications Regulation, and
- the National Consumer Agency.

We also work closely with a number of other law enforcement agencies in the State to promote compliance with competition law. For example:

The Director of Public Prosecutions: We operate a *Cartel Immunity Programme* jointly with the DPP. The Programme is described further below. It is designed to encourage participants to report cartels they are or have been involved in. Cartel participants can apply to the Authority in order to obtain immunity from prosecution in exchange for full co-operation with the Authority in the investigation of the case and with the DPP in any eventual prosecution.

Where we have completed a criminal investigation, we may refer a file to the DPP with a recommendation for prosecution on indictment. If the DPP decides to bring a prosecution, the Chief Prosecution Solicitor (CPS) takes charge of proceedings on behalf of the DPP and prepares a Book of Evidence to be served on the accused. We assist the DPP and the CPS as required, during the prosecution of the case.

An Garda Síochána: We regularly liaise with senior management of the Garda Bureau of Fraud Investigation (GBFI). A Detective Sergeant with GBFI is seconded to work in the Cartels Division as an authorised officer of the Competition Authority. An Garda Síochána continues to provide invaluable help to the Competition Authority at crucial times, such as during the execution of search warrants.

Identifying Anti-competitive Behaviour

Before we can take any action to stop anti-competitive behaviour, we need to be aware that it is taking place. Businesses and consumers are often best placed to identify anti-competitive practices. If you are aware of or suspect such behaviour we strongly encourage you to bring that information to us. Information from the public may be the first step in launching an investigation into the activities of undertakings involved in a cartel or an abuse of dominance. We are very interested in any information or evidence which suggests the presence of price fixing, bid-rigging, market-sharing or other anti-competitive behaviour.

You can report suspected anti-competitive behaviour to us by email, telephone or written correspondence. We put all complaints of alleged anti-competitive behaviour through a screening process to ensure they are appropriately assessed and considered. If the information suggests that there has not been a breach of competition law, we close the file on the matter. The box below gives more information on how we deal with complaints.

Making Complaints to the Competition Authority

Public complaints about anti-competitive behaviour are an important source of information for us. Individual consumers who suspect and report anti-competitive activity can help us greatly. Evidence of cartels and price-fixing from complaints we have received has given us valuable information and has resulted in successful investigations and prosecutions.

Complaints come to us from many sources, including members of the public, individual businesses, trade organisations and public representatives, as well as Government Departments and agencies. If you have information about anti-competitive activity we strongly encourage you to contact us.

Allegations that are accompanied by good evidence are of great benefit to us. When it comes to cartels, we are required to prove allegations to a criminal standard, that is, *beyond a reasonable doubt*. Therefore, complaints backed by solid evidence are most likely to result in an investigation. Where the information given with a complaint is enough to give us reasonable grounds to suspect a breach of the Competition Act 2002, we may launch a formal investigation.

Where the details of a complaint point to existing laws, regulations, or administrative practices by a Government Department or agency, which impose unnecessary restrictions on competition, we will highlight the issue and try to advocate for change both publicly and with the Government Department or body concerned.

We have a Complaint Handling Process which assesses every complaint we receive. The Complaint Handling Process focuses resources on the most substantive cases, while ensuring that we can deal quickly but fairly with complaints which have little or no supporting evidence.

The Complaint Handling Process has three steps

- screening,
- assessment,
- investigation.

As a first step, we will check that we can deal with the complaint under competition law. Complaints are then passed to the relevant division for further assessment where appropriate. In some cases, a complaint can result in an investigation leading to a number of possible actions, 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 cases, to change their behaviour so as to cure any competitive harm, or
- making recommendations to Government concerning changes in anti-competitive regulations.

Resolving complaints without legal action

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

Following an assessment 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.

Reporting Infringements of the Competition Act

The potential penalties for individuals and companies who commit hardcore cartel offences under the Competition Act include substantial fines and prison terms. Individuals and companies involved in such activity may consider applying for immunity from prosecution under the *Cartel Immunity Programme*, which is operated jointly by the Competition Authority and the Director of Public Prosecutions (DPP). Being the first individual or company to report cartel activity, to co-operate fully and give complete and full information to the Authority and the DPP, can offer substantial rewards. It could result in companies or individuals avoiding criminal prosecution, getting immunity from jail terms and avoiding substantial fines and additional penalties such as being barred from serving as an officer or director of a company under Section 160 of the Companies Act.

Companies who 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 under the Programme. Immunity can be granted to the company and its past and present employees.

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 be made to the Competition Authority's Immunity Officer. **The Cartel Immunity hotline number is 087 7631378.** The *Cartel Immunity Programme* has a marker system, which holds the position of possible immunity for the first individual or company to apply, and allows others to 'line up' 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.

There are protections in the Act for "whistle-blowers", people who report suspected breaches to us. For example, if you think that a company has breached the Act, you will not be liable for damages if you report it to us and it turns out that the offence did not take place, provided that you acted reasonably and in good faith. This protection also covers employees. It means that an employer cannot punish an employee who reports, in good faith, a suspected breach of the Competition Act to us.

Total Complaints Received by the Authority in 2010⁴	
Total received	235
Resolved at screening	109
Assessed	112
- ongoing	47
- resolved	65
Added to current investigations/work	14
<p>How to contact the Competition Authority with a complaint about a suspected breach of the law:</p> <p>Web complaint form: www.tca.ie/complaints.html Email: complaints@tca.ie Phone: LoCall: 1890 220 224 (intl.:+353-1-8045400) Fax: +353-1-8045401 Other: The Competition Authority, Parnell House, 14 Parnell Square, Dublin 1.</p>	

Prioritisation of Cases

In 2010 we reviewed the principles employed across the Competition Authority to select and prioritise projects and cases. The aim was to formalise, and review where appropriate, the process we use to determine which of our discretionary functions – which include market studies, investigations and legal proceedings – to allocate our scarce resources to. We expect to publish information on this topic in 2011.

⁴ These figures reflect all complaints received by the Authority in 2010, including 166 enforcement complaints.

2. ENFORCING COMPETITION LAW

The principal goal of competition law is to protect and benefit consumers, so they can purchase goods and services at a competitive price. Greater competition ensures good value for consumers, stimulates business and enhances the economy as a whole. Anti-competitive behaviour by businesses, for example price-fixing, results in consumers paying higher prices without any extra benefits and makes the Irish economy less competitive.

One of our core functions is to enforce competition law and to take legal action when we believe the law has been broken.

In some cases, where we are of the opinion there has been a breach of competition law, we will bring a civil case before the Courts. Other cases are closed following a settlement in which the offending parties recognise and remedy their anti-competitive behaviour. However, the majority of cases are closed following an internal finding that they do not involve a breach of the Act.

Where we have gathered sufficient evidence of criminal cartel agreements, we refer a file on that case to the Director of Public Prosecutions (DPP) for prosecution on indictment.

Reflecting our commitment to tackle the harmful effects of cartels, in 2010 we concluded a lengthy and complex cartel investigation and we referred a file to the DPP recommending prosecutions against a number of companies and individuals.

We also try to help businesses to comply with competition law by giving appropriate guidance. During 2010, we reviewed our guidance in the areas of vertical agreements and concerted practices, cylinder LPG distribution and motor fuels retailing.

In 2010, we received

- 31 new complaints of alleged criminal cartel behaviour, one of which has led to a detailed investigation being launched. Of the others, 21 were closed in 2010, and nine are still being evaluated.
- 135 new complaints of anti-competitive agreements and abuses of dominance, 112 of which were closed during the year.

We also completed the review of a number of complaints that were carried over from previous years. These included 12 complaints of alleged criminal cartel behaviour and 31 complaints of anti-competitive agreements and abuses of dominance.

Six criminal cartel investigations were ongoing throughout 2010. Three investigations were nearing completion at the end of 2010. In two of these, our investigations have found that there was no breach of the Competition Act. In the third case, sufficient evidence has not yet been uncovered to warrant recommending a prosecution to the DPP. One case was completed with a file sent to the DPP recommending prosecution on indictment, and the remaining two cases are still being actively investigated.

Seven civil investigations were ongoing during 2010. Of these, two investigations were concluded by the end of 2010. We ceased investigative

work on two files because of private actions taken by parties involved. Work is ongoing on the remaining three investigations.

Cases Before the Courts

The BIDS Case

During 2010, the *Competition Authority v Beef Industry Development Society* (BIDS) case came before the High Court. In January 2011, before the publication of this Annual Report, we won this case.

The importance of this case became clearer in 2010 with the decision by the European Commission to submit written observations to the Court. This is only the fourth time that the Commission has intervened in this way before a national court.

This case involved an agreement between competitors to reduce capacity in the Irish beef processing industry. The agreement involved the major players in the industry agreeing to pay those players who would voluntarily leave the industry. In return for that payment, the players leaving would agree to decommission their plants, refrain from using the associated lands for processing for a period of five years and sign a two-year non-compete clause with regard to processing anywhere in Ireland.

We took the view that the scheme was incompatible with both section 4(1) of the Competition Act 2002 and Article 101(1) of the Treaty on the Functioning of the European Union (TFEU) and took legal action in 2003. The case has gone through a number of stages since then.

- In July 2006, the High Court held that the agreement had neither the object nor the effect of preventing, restricting or distorting competition and therefore did not breach Article 101 TFEU.
- We appealed this judgment to the Supreme Court.
- In March 2007, the Supreme Court sought a preliminary ruling from the European Court of Justice (ECJ) on the question of whether an agreement like the BIDS agreement, where the competitors in that industry agreed between themselves to restructure the entire industry, had the object of restricting competition.
- On 20 November 2008, the ECJ found that the BIDS agreement had as its object the restriction of competition and is incompatible with Article 101(1) TFEU.
- On 3 November 2009, the Irish Supreme Court held that the BIDS agreement had infringed Article 101(1) TFEU. The Supreme Court remitted the case to the High Court to decide whether the conditions for exemption set out in Article 101(3) TFEU are satisfied.

During the High Court proceedings in 2010, the Commission decided to intervene in the case and submitted written observations pursuant to Council Regulation (EC) No 1/2003. Under Article 15(3) of that Regulation, the Commission may submit written observations to courts of the Member States where the coherent application of Articles 101 or 102 TFEU requires doing so.

Before the High Court had the opportunity to reach any decision on the application of Article 101(3) to the BIDS agreement, BIDS withdrew its claim

for exemption under Article 101(3) and agreed to pay a substantial contribution to our costs in the case.

Irish Rail Case

The Authority brought a summary prosecution in 2008 against two companies and one individual in connection with an investigation into alleged bid-rigging/price-fixing on a contract which Irish Rail put out to tender. The District Court refused jurisdiction on the basis that the case was serious and complex enough to be dealt with by a higher court. The DPP consented to the case being sent to the Central Criminal Court for prosecution on indictment. On 26 January 2009, the Court fixed a trial date for 2 November 2009.

These difficulties had been caused by a judicial review ruling in the unrelated case of *Reade -v- Judge Reilly & the DPP* [2007] IEHC44, which affected the jurisdiction of the Circuit (and Central) Criminal Court to hear cases where a District Court Judge had declined jurisdiction. Previously, such cases were then automatically sent forward for trial on indictment before a higher court.

The DPP withdrew the case in January 2010 in light of the Supreme Court's jurisdictional ruling. In March 2010, the DPP again initiated a prosecution on indictment to be heard by the Central Criminal Court and a trial has been fixed for June 2011.

Heating Oil Cases

As mentioned in previous annual reports, the DPP has already secured 17 convictions in the 'heating oil cases'. This involved the prosecution of companies and directors who were found guilty of engaging in illegal price-fixing as members of a home heating oil cartel in the west of Ireland. One case remains as part of this investigation, the *DPP v Patrick Hegarty*.

In this case, the defendant challenged the legality of the proceedings against him. His legal challenge is based on the fact that no proceedings were issued against the company he was employed by and that his company was never convicted of the alleged competition law offence. The defendant has argued that he cannot be convicted of an alleged cartel offence unless his employer (which is alleged to have been part of the cartel) is first convicted of the offence.

The Circuit Court referred this question of law to the Supreme Court for adjudication (a process known as a 'consultative case stated'). In November 2010, the Supreme Court heard the parties' submissions and will issue its judgment in the matter in 2011. If the Supreme Court finds in favour of the DPP, then the prosecution of the alleged offence against the accused person can proceed to trial.

Closed Investigations

We conducted a number of investigations during 2010, three of which were concluded during the year. As there was no evidence to suggest that an offence was committed under the Act, we decided to close these investigations without taking any further action.

Below are two examples of complaints alleging anti-competitive behaviour and the action that we took.

Poolbeg Incinerator

During 2010, we assessed a complaint alleging that the contract for the operation of the proposed Poolbeg Waste-to-Energy Incinerator contained breaches of competition law. There were a number of aspects to this complaint. Some aspects of the investigation have been completed while other aspects are continuing.

The Poolbeg incinerator is to be constructed and operated by Dublin Waste-to-Energy Ltd. (DWEL) on behalf of Dublin City Council (DCC) and the other Dublin area local authorities. DWEL is a joint venture between Dong Energy Generation AS and Covanta Energy. The agreement between DWEL and DCC is set out in a Public Private Partnership (PPP) contract.

Under the terms of the contract, DCC must, for each year of the lifetime of the contract, provide enough waste to fill an agreed proportion of the incinerator's capacity.

The Irish Waste Management Association (IWMA), the trade association representing private waste management companies in Ireland, complained to us that various terms of the contract breached both section 4 (anti-competitive agreements) and section 5 (abuse of dominance) of the Competition Act 2002.

In relation to section 4 of the Act, one of the IWMA allegations was that the contract contained price-fixing arrangements amounting to a hardcore breach of the Act. After careful examination of the contract, we concluded that the contract is like a partnership arrangement where the two parties are sharing the benefits and risks of an enterprise. The contract therefore provides for discussions and consultations between the parties on many aspects of the management of the facility, including pricing. We are satisfied that the provisions for consultation between DCC and DWEL, when analysed in the context of the overall contract, do not amount to a breach of the Act.

The IWMA also complained that the scale of the incinerator, and the fact that DCC is a public body with statutory functions in relation to waste management, meant that DCC and/or DWEL were dominant in the waste processing market in the Dublin area. One of the allegations under section 5 of the Act was that DCC and/or DWEL would engage in conduct that could amount to an abuse of dominance in the waste processing market. We examined this issue closely and found that the alleged abuses were unlikely, given the current structure of the waste processing market and the related waste collection market.

After a detailed evaluation of the various aspects of the complaint, we found that, while the incinerator and the PPP contract would affect the market for waste collection and disposal, it would not affect these markets in an anti-competitive way.

The IWMA also made complaints relating to DCC's role as both the issuer of waste collection permits and a competitor in the waste collection market in Dublin. Our investigation into this aspect of the complaint is continuing.

Pay-TV Exclusivity in Apartment Developments

In 2009, we published a Guidance Notice and an Enforcement Decision Note in relation to Pay-TV exclusivity in apartment developments. This arose from complaints that some apartment residents were unable to switch to another pay-TV provider because of exclusivity arrangements agreed between the original pay-TV service provider and the developer during the building

construction phase. We found that exclusivity agreements of two years or less are unlikely to breach the Competition Act, but that agreements lasting longer than two years need to be assessed on a case-by-case basis.

During 2010, we concluded the assessment of a group of exclusivity agreements relating to a number of new developments in Dublin, including Carrickmines Green, Archers Wood and Belfry Hall. At these developments, Digigate, the exclusive TV provider, had intended to retain exclusivity for a period that went significantly beyond two years. We raised our concerns with Digigate and secured the removal of the exclusivity. Digigate stated that anybody who currently used the services of Digigate could stop doing so if they wished, and that other TV service providers could access the developments in question. Based on this successful outcome, we closed our investigation.

We will continue to assess, on a case-by-case basis, pay-TV exclusivity agreements that are longer than two years' duration.

National Asset Management Agency

The Government established NAMA on 21 December 2009 in response to the Irish financial crisis. NAMA is

*"an asset management company that will acquire good and bad loans from participating institutions. It will manage these assets (hold, dispose, develop or enhance them) with the aim of achieving the best possible return for the taxpayer on the acquired loans and on any underlying assets over a 7-10 year timeframe."*⁵

Under section 215(1) of the NAMA Act 2009, NAMA's activities with respect to the acquisition of bank assets are exempt from the Competition Act 2002. However, NAMA's conduct post-acquisition of assets still falls within the remit of the Act. We will be monitoring NAMA's conformity with the Act after the transfer of assets.

In February 2010, under the EU State Aid rules, the European Commission approved the NAMA scheme as a measure to "*remedy a serious disturbance in the economy of a Member State*". However, in light of the potential effects of the NAMA scheme on European competition law, the European Commission required and obtained a commitment by the Irish authorities to "*report on a yearly basis to both the Commission and the Irish national competition authorities*" on the use of NAMA's post-acquisition powers. This is due to happen later in 2011. The Commission noted that this requirement "*will allow the Commission and the Irish competition authorities to take any action they consider adequate if they deem that NAMA's use of its powers has resulted in competition distortions.*"⁶

5 The National Asset Management Agency: A Brief Guide (30 March 2010) <http://www.nama.ie/Publications/2010/NAMABriefGuide30March2010.pdf>

6 European Commission decision on the Establishment of a National Asset Management Agency: Asset relief scheme for banks in Ireland.

In addition, certain provisions of the NAMA Act 2009 explicitly refer to the Competition Act 2002, for example:

- Section 202(6) states that it is not an offence for a person to disclose confidential information to the Competition Authority where the information gives rise to a reasonable suspicion that there has been a contravention of competition law.
- Section 203 provides that, where NAMA suspects that a participating institution has contravened competition law, NAMA must report the information which leads to that suspicion to the Competition Authority.
- Section 208(11) provides that the Minister for Finance may not approve a restructuring or business plan for a participating institution where that plan does not comply with Irish or European competition law.

Cartel Immunity Programme

An important tool for uncovering criminal cartels is the Cartel Immunity Programme. We run this Programme jointly with the DPP. In 2010, we carried out a review of the Programme to ensure that it continues to reflect best international practice.

Proposed Revision of the Cartel Immunity Programme

The Cartel Immunity Programme allows an applicant to be granted immunity from prosecution for cartel offences in return for providing information that leads to the prosecution of the other cartel members. The Programme has been instrumental in providing important sources of evidence for the investigation of alleged cartel activity. The Programme has been in place since December 2001 and we decided in 2010 to review its operation in practice.

In July 2010, the Authority and the DPP published a consultation paper with proposed revisions to the Programme and invited submissions from interested parties. We received submissions from domestic law firms, the Law Society of Ireland and from a number of important international commentators, including the American Bar Association⁷, Competition Bureau Canada, the Australian Competition and Consumer Commission and from individual staff members of the New Zealand Commerce Commission.

In addition, the Irish Society for European Law (ISEL) hosted a discussion on the review of the Programme in July 2010. This discussion was chaired by the DPP, Mr James Hamilton, and addressed by the Director of the Authority's Cartels Division, Mr Gerald FitzGerald, with responses from Remy Farrell, BL, and David Phelan, solicitor. The revised Cartel Immunity Programme is set to be published in early 2011.

Category Declarations

The Competition Act allows us to declare in writing that a specified category of agreements, decisions or concerted practices are not considered to be anti-

⁷ A joint submission was received from the Association's Antitrust, Criminal Justice and International Law Sections.

competitive and are exempt from section 4 of the Act. We publish these views as *Declarations*.

During 2010, we reviewed all existing Declarations. In July we published a consultation document inviting submissions from interested parties on our proposals in respect of three Declarations.

1. The Vertical Agreements Declaration, which concerns commercial arrangements between parties at different levels of the distribution chain, such as suppliers and resellers.
2. The Cylinder Liquefied Petroleum Gas (LPG) Declaration, which concerns cylinder LPG exclusive purchasing agreements.
3. The Motor Fuels Category Declaration, which concerns exclusive purchasing agreements

The consultation document also sought comments on the text of a proposed new Bulk LPG Declaration.

We received 14 submissions. We report on the outcome in each case below.

Vertical Agreements Declaration

In the consultation document, we proposed to bring the Vertical Agreements Declaration into line with the new EU Verticals Block Exemption Regulation. We also proposed allowing the Vertical Agreements Notice to lapse without renewal. Those who made submissions broadly supported these proposals.

The new Category Declaration in respect of Vertical Agreements and Concerted Practices (D/10/001) came into force on 1 December 2010. It exempts certain categories of vertical agreements and concerted practices from the prohibition set out in section 4 of the Act. The new Declaration brings the Irish exemption into line with that of the European Commission.

In addition, we developed a new Guidance Notice (N/10/01) for businesses on how to assess their vertical agreements and the difference between the Declaration and the EU's Vertical Block Exemption Regulation. In essence, the guidance in the new Notice amounts to a statement that, when assessing vertical agreements or concerted practices, we will follow, with limited exceptions, the European Commission's approach.

The most significant change is that the Declaration now applies to vertical agreements on condition that, among other things, the market share of the buyer is less than 30%. In the old Declaration, this buyer market share threshold only applied to vertical agreements containing exclusive supply obligations. The new Declaration also modifies some of the previous hardcore restrictions, that is, those restrictions that *never* benefit from the exemption given by the Declaration.

One difference between the new Declaration and the EU Vertical Block Exemption Regulation relates to buyer pools. Article 2(2) of the EU's Vertical Block Exemption features an exemption for retailer buyer pools, where no individual member (or its connected undertakings) of a buyer pool has an annual turnover in excess of €50 million. Some submissions suggested that the Irish Declaration should contain similar terms. We decided that the financial thresholds used in the EU's Vertical Block Exemption would not be appropriate in an Irish context.

A review of the Vertical Agreements Declaration will take place after 6 years. The new Vertical Agreements Declaration is due to expire in 10 years on 1 December 2020.

Cylinder LPG Declaration

As proposed in the consultation, we have allowed the Cylinder LPG Declaration (D/05/001) to continue in force without amendment until its expiry date (31 March 2015). This Declaration concerns exclusive purchasing agreements for cylinder LPG, that is, where a reseller agrees with a supplier to sell a particular brand of Cylinder LPG. The Declaration limits exclusive agreements in the Cylinder LPG market to two years' duration.

Complying fully with the terms of the Declaration will give suppliers of Cylinder LPG a safe harbour from prosecution under competition law.

Motor Fuels Declaration

Our consultation sought views on a proposal to allow the Motor Fuels Declaration to lapse. In general, the submissions were in favour of our proposals and no compelling reasons were offered for the Declaration to continue.

We decided that it was appropriate, given the changes to the market, to allow the Motor Fuels Declaration to expire on 30 November 2010. Agreements relating to garage forecourts now fall for consideration under the Verticals Declaration, which came into effect on 1 December 2010.

Bulk LPG

We also sought submissions on whether to issue a Declaration in respect of the Bulk LPG market. We have not yet made a decision on this issue. We are carrying out further research into how competition works in this market and we plan to make a decision in 2011 on whether or not to make a Declaration.

Use of Enforcement Powers

Under the Competition Act, we have extensive powers for use in our enforcement work. These powers enable us to obtain information where it is unlikely to be produced voluntarily, or where it has already been refused.

Table 1: Use of Enforcement Powers in 2010

Enforcement Power	2010
Search Warrants	0
Summonses	2

Table 2: Investigation & Enforcement Powers of the Competition Authority

Investigation & Enforcement Powers	Description
Types of investigations carried out	<ul style="list-style-type: none"> • Criminal investigations • Civil investigations • Assessment of mergers • Formal studies
Power of entry and search	Authorised officers 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 can seize documents/records with a warrant issued by the District Court
Power to summon witnesses and to require the production of records and information	<p>The Competition Authority can summon a witness to be examined under oath and can require production of records and information from that witness</p> <p>Witnesses have the same immunities and privileges as a witness before the High Court</p> <p>Non-compliance is a criminal offence</p>

Table 3: Penalties and Remedies

Maximum level of fines & penalties	<p>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</p> <p>Criminal (summary in the District Court) - €3,000 and/or up to six months in prison</p> <p>Civil Action (by the Competition Authority) – Injunctive and declaratory relief in lieu of fines</p> <p>Civil Action (by injured parties) – Damages at the discretion of the Court</p>
------------------------------------	---

3. EVALUATION OF MERGERS AND ACQUISITIONS

Mergers and acquisitions are a way for businesses to restructure in order to better compete and prosper. However, some mergers can have a negative effect on consumer welfare by, for example, leading to an increase in price or a reduction in output. That is, they substantially lessen competition, and consumers (including businesses) suffer.

Mergers above a certain financial threshold must be notified to us. We aim at all times to make sure that we review mergers in a timely manner so that mergers which are good for the economy and consumers are not held up. At the same time, we actively protect the interests of consumers and we have the power to block a merger where we find that it will lead to a "substantial lessening of competition".

In 2010, we received 46 merger notifications. The number of mergers and acquisitions notified significantly increased in 2010 compared to 2009. The number of media mergers notified also increased in 2010 compared to the previous two years. We expect this trend to continue into 2011.

During 2010, we made an application for a priority hearing of the Supreme Court appeal in the Kerry/Breeo case. This application was not granted and the case is still awaiting a hearing date.

Efficient Merger Review Regime

We strive to have an efficient merger review regime and our success in achieving this was recognised in 2010. The Centre for European Law and Economics published the results of a project evaluating and comparing the institutional efficiency of merger review systems worldwide. The project evaluated merger review systems and measured

- efficiency,
- independence,
- predictability,
- technical ability,
- flexibility, and
- reliability.

The results were based on survey responses by 257 leading merger control experts from 60 different jurisdictions. The results were compiled into the Global Merger Control Index 2010 in which Ireland was placed second behind Canada. Among the 27 EU Member States, the survey found Ireland and the Netherlands to be the most efficient merger review systems.

The Financial Sector

The *Credit Institutions (Financial Support) Act 2008* provides that some proposed mergers and acquisitions involving credit institutions⁸ must be notified to the Minister for Finance instead of to the Competition Authority. In 2010, to the best of our knowledge, no mergers were notified under this statute. However, we have participated in designing sectoral commitments for the Irish banking sector along with the Department of Finance, the National Consumer Agency and the Financial Regulator.

Proposed Review of Guidelines for Merger Analysis

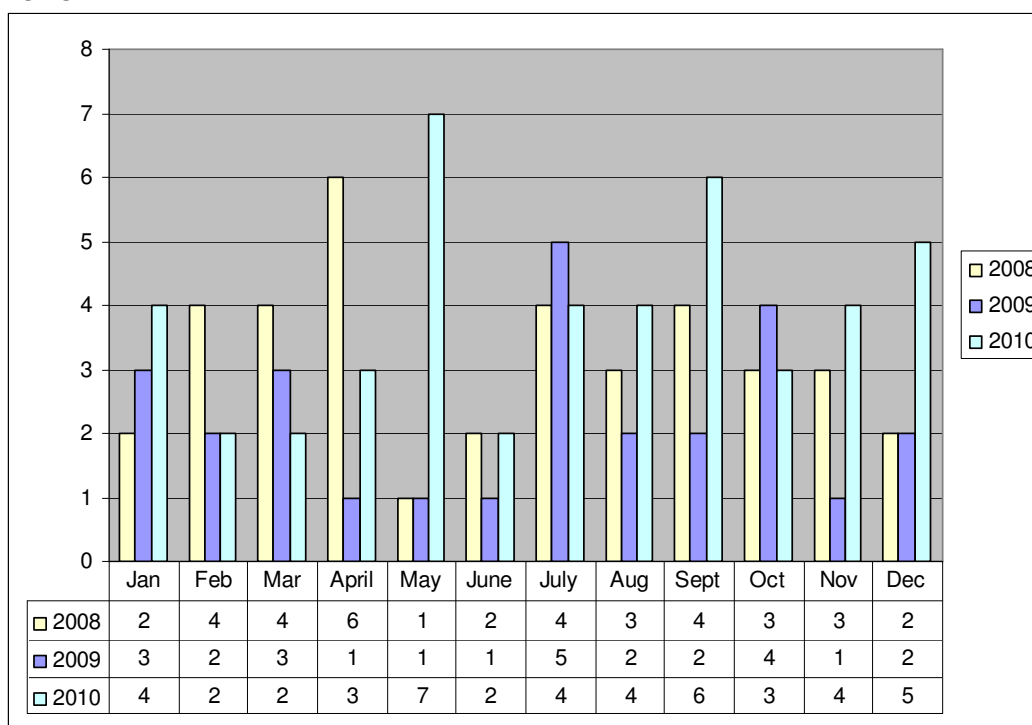
In December 2010, we launched a public consultation seeking comments from interested parties and practitioners on how the Merger Guidelines could be revised and updated. The Merger Guidelines are intended to offer guidance on how we decide on whether or not a merger or acquisition will result in a substantial lessening of competition. For more details on the public consultation please see the press release in the News Releases section of our website at www.tca.ie

Merger Notifications during 2010

Mergers involving parties that meet the monetary thresholds in the Competition Act 2002 must be notified to us for evaluation. However, certain mergers involving media businesses must be notified regardless of their turnover.

Figure 1 below gives a comparison of the number of merger notifications we received in 2008, 2009 and 2010.

Figure 1: Monthly comparisons of the notifications received by the Competition Authority for the period 2008 to 2010



⁸ This requirement applies to credit institutions meeting the criteria set out in section 7(1) of the *Credit Institutions (Financial Support) Act 2008*. The 2008 Act does not therefore remove the Competition Authority's jurisdiction.

Appendix B contains a full list of mergers notified in 2010. From the 46 cases notified in 2010, a number of statistical points can be highlighted.

- 8 media mergers were notified.
- We finalised our work on three transactions which were notified in 2009 and whose deadlines extended into 2010. In one of those cases, we decided, in January 2010, to carry out a full (phase 2) investigation.
- We analysed all transactions within the statutory time period.
- We issued eight Requirements for Further Information in three merger assessments.
- We cleared 40 of the 46 merger notifications received in 2010 during the initial (Phase 1) investigation, usually within one calendar month.
- We cleared one merger notification in Phase 1 subject to conditions.
- One merger notification moved to full investigation (Phase 2) in 2010.
- We carried forward six merger notifications into 2011.

Appendix C gives more detailed statistics on mergers evaluated between 2008 and 2010.

Mergers Requiring a Full (Phase 2) Investigation

We must carry out a detailed examination (phase 2 investigation) of a transaction, if after a preliminary investigation (phase 1), we have been unable to conclude that the transaction would not substantially lessen competition. In 2010, we initiated two phase 2 investigations.

Greenstar/Veolia

On 22 October 2009, we were notified of the proposed acquisition by Greenstar Holdings Limited of sole control of Veolia Environmental Services (Ireland) Limited. The assessment of this case carried over into 2010 and on 7 January 2010 we made a decision to move to a phase 2 investigation.

We considered a number of markets as part of our investigation. These were

- the provision of waste management services in the Greater Dublin Area (GDA) to either large or small commercial & industrial (C&I) customers,
- the provision of waste management services in the South-East region to either large or small C&I customers,
- the provision of waste management services in Cork City and County to either large or small C&I customers,
- the market for the sale of recyclable materials, and
- the market for the management of recycling facilities on behalf of County Councils.

On 11 March 2010, having completed our investigation, we formed the view that the result of the proposed transaction would not be to substantially lessen competition and therefore could be put into effect.

Barnett/Origin/Hall

On 11 November 2010, we received a notification that W&R Barnett Limited would acquire joint control of R&H Hall Limited by acquiring 50% of the share of R&H Hall from Origin Enterprises plc. Following completion, Origin Enterprises plc and W&R Barnett Limited would jointly control R&H Hall Limited.

We proceeded to a phase 2 investigation on 8 December 2010, as we were unable to reach a determination that the proposed acquisition would not lead to a substantial lessening of competition in any market for goods or services in the State. We carried forward this investigation into 2011 and we cleared the transaction in January 2011.

Mergers Cleared with Commitments

ESB/NIE

Following an extensive phase 1 assessment, we cleared with commitments the proposed transaction whereby Electricity Supply Board (ESB) would acquire, among other things, sole control of Northern Ireland Electricity plc and its subsidiaries (NIE). The transaction was notified on 5 August 2010,

During the assessment we considered a number of different markets. These were

- the provision of engineering consultancy services in the State,
- the provision of high voltage electricity installation services in the State,
- the transmission and distribution of electricity in the State, and
- electricity generation and wholesale supply in the Single Electricity Market.

We identified one area of concern during the course of our assessment. This concern was that, post-acquisition, ESB would be in a position to acquire and use commercially sensitive information gained from its ownership of NIE to the competitive advantage of their generation and supply business activities on the island of Ireland.

On 29 October 2010, we cleared the merger after accepting a proposal from ESB which satisfied our concerns. The proposal formed part of the basis for our decision and is therefore binding on ESB.

Alpha Newspaper Group/Newry Democrat - Call Option Agreement

Notifying parties may enter into other forms of agreements that are related to a notified transaction but are not themselves notifiable. We consider that all such agreements should be brought to our attention as part of the notified transaction. Failure to do so may lead to unnecessary delay in the assessment of a notified transaction.

In the case of M/10/030 - *Alpha Newspaper Group/Newry Democrat*, the existence of a Call Option Agreement was not brought to our attention as part of the notified transaction. This resulted in an extended phase 1 assessment during which we issued two Requirements for Further Information (these are

formal requests for information from the parties that stop the clock, this process is explained further in Merger Procedures in Ireland at the end of this chapter).

We formed the view that the Call Option Agreement was related to the proposed transaction and should have been included in the notification of the proposed transaction. The parties disagreed with this view. The parties later informed us that the Call Option Agreement was terminated. On receipt of this information and after conducting the analysis, we considered that the proposed transaction would not lead to a substantial lessening of competition in the State.

Rescue Mergers

Due to the financial crisis and economic downturn, a number of companies have found themselves in financial difficulty. In 2010, the Competition Authority was notified of a number of mergers where one or more of the undertakings concerned were in financial difficulty, and in some cases a *failing firm* argument was made.

The following three cases are examples of rescue mergers notified to the Authority in 2010. In all of these cases, we used our discretion to reduce the number of days for third party submissions to expedite the assessment process.

In these cases, we did not consider it necessary to specifically assess whether there was a *failing firm*, that is, a firm whose assets would exit the market in the absence of the proposed transaction. Rather, in all three cases, our competition analysis indicated that there were enough grounds to clear the merger irrespective of whether the target undertaking would exit the market.

Club Travel/Budget Travel

On 22 January 2010, we were notified of the proposed transaction whereby Club Travel Limited would acquire sole control of Budget Travel Limited (in liquidation). We cleared the notified transaction involving Club Travel and Budget Travel within 25 days, 17 working days. We recognised the need to expedite the review process, given that Budget Travel was in liquidation, having ceased trading on 25 November 2009.

An Post/PostPoint

On 19 May 2010, we were notified of the proposed transaction whereby An Post would acquire sole control of a wholly owned subsidiary of Postbank Ireland Limited. The proposed transaction arose in the context of the orderly wind-down of Postbank announced on 26 February 2010. We completed our assessment of this transaction on 31 May 2010, 13 days after receiving the notification.

Pilgrim (Oaktree Group)/MHL & MCL

In this case, we reduced the time period for third party submissions from the usual ten days to five days, in order to facilitate a quick assessment of the notified transaction. McInerney Homes Limited and McInerney Contracting Limited were in examinership and, on consideration of the specific details of the case, we agreed to change the time limit for third party submissions. We completed our assessment of this transaction on 3 December 2010, 10 days after receiving the notification.

Mergers Involving Media Businesses

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 blocked by the Minister for Enterprise, Trade and Innovation on public interest grounds.

2010 saw an increase in the number of media mergers notified to us. **Table 4** below provides a summary of the eight notified media mergers in 2010.

Table 4: Notified Media Mergers in 2010

Notification	Economic Sector	Date of Notification	Status	Acquired
M/10/007 - Trinity Mirror / Guardian Media	Newspaper publishing and the operation of digital sites associated with their newspaper titles	05/03/2010	Cleared (phase 1)	Trinity Mirror plc
M/10/008 - Lebedev / Independent	Newspaper publishing	25/03/2010	Cleared (phase 1)	The Independent & The Independent on Sunday
M/10/009 - UPC / Broadworks	Retail multi-channel pay TV market, broadband market	06/04/2010	Cleared (phase 1)	UPC Communications Ireland Ltd
M/10/012 - MLM Management Ltd/Gaiety Investments Ltd/Setanta/JV	Television broadcasting	05/05/2010	Cleared (phase 1)	Setanta Sports Channel Ireland Limited and Setanta Sports Hibernia S.a.r.l
M/10/017 - Metropolis / Medical Publications	The print media sector	28/05/2010	Cleared (phase 1)	Irish Medical Times & MMS Ireland
M/10/020 - BSkyB / Virgin Media TV	Television broadcasting and the sale of television advertising airtime	04/06/2010	Cleared (phase 1)	Virgin Media Television
M/10/026 - Northern & Shell Broadcasting / CLT - UFA Holdings	Television broadcasting	20/08/2010	Cleared (phase 1)	CLT-UFA Holdings Limited
M/10/030 - Alpha Group / Newry Democrat	Local newspaper publishing sector	06/09/2010	Cleared (phase 1)	Newry Democrat

The Minister for Enterprise, Trade and Innovation made no order during 2010 to either carry out a full investigation under section 22 of the Competition Act 2002 or to prohibit a media merger from being put into effect.

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 U.K., and a similar version is used by the European Commission. It allows for a focus purely on how the transaction will affect competition and consumers.

Notification thresholds

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

Mergers below threshold

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

Pre-notification (optional)

Parties to a transaction may contact us before formally notifying a merger. Pre-notification discussions can help parties in preparing a notification form, and offer the opportunity to provide an introductory explanation about, among other things, the business activities of the notifying parties, their customers, their competitors, the manner in which prices are negotiated and the route to market.

Preliminary investigation (phase 1)

Phase 1 is a one month initial examination of the merger, which is generally enough for it to be cleared. The one month review period can be extended where we formally request additional information from the parties (a process referred to as a Requirement for Further Information) or where the parties submit proposals with specific measures designed to address concerns we have raised.

Full investigation (phase 2)

We may carry out a full (phase 2) investigation where we are 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 we conduct a detailed examination of the transaction and the market(s) in which the parties operate.

Assessment

During a phase 2 investigation, if we are still concerned about competition issues, we will serve a paper on the parties setting out these concerns. The parties will be invited to respond to the issues raised in this paper.

Appeal to the Courts

If a merger is prohibited, the parties have one month to decide if they wish to appeal to the High Court. The Court may annul the Competition Authority's determination, confirm it, or confirm it subject to modifications.

4. PROMOTING COMPETITION IN IRELAND

Difficult economic times have led to a renewed focus on the key role that competition policy can play in regenerating the Irish economy. Alongside our law enforcement role, we have a statutory duty to promote the benefits of competition throughout the entire economy and to advise policy-makers on how the application of the principles of fair and open competition throughout the economy can help to achieve better policy outcomes.

In 2010, the Advocacy Division focused its activities on advising Government Departments and public bodies on a range of competition-related matters. A noticeable feature of 2010 was the renewed effort by the public sector to achieve better value for money as budgets came under increasing pressure. The Government itself is one of the largest consumers of goods and services in the Irish economy and it is therefore essential that it can buy goods and services at reasonable prices. In designing policies, Government Departments are increasingly aware of the need to consider the impact of various policy options on competitiveness.

Among the issues the Division examined in 2010 were

- the reform of bus licensing legislation,
- the deregulation of the retail electricity sector,
- waste management costs, and
- the need for reform of the State's system for subsidising GP services.

Identifying Public Restrictions on Competition

State laws, regulations and administrative practices can, and often do, restrict competition. This means that consumers do not get the benefits of competition. We refer to these as *public restrictions on competition*.

Public restrictions on competition often force consumers to pay more for services. They also increase business input costs, making businesses less competitive. They allow sheltered sectors of the economy to be subsidised by internationally exposed sectors and reduce productivity and growth in the economy as a whole. Therefore, identifying and removing public restrictions on competition is of utmost importance. The end result of public restrictions is the same as with private ones - less value for money, less choice for consumers and higher costs to both consumers and business.

Bus licensing

In September 2010, we made a submission to the National Transport Authority's (NTA) public consultation on its *Draft Guidelines for the Licensing of Public Bus Passenger Services*. We were concerned that the Draft Guidelines would, if implemented as initially drafted, be anti-competitive.

In particular, the Draft Guidelines did not reflect the positive benefits which competition can bring, and appeared to create unnecessarily high barriers to entry to providing commercial bus services. We were also concerned about the extent to which Dublin Bus and Bus Éireann routes are deemed to be "Public Service Obligation" routes (non-commercial routes) and therefore

exempt from the licensing system. We made 10 proposals to the NTA to amend the Draft Guidelines.

When the final Guidelines appeared in December 2010, we were pleased to note that they had clearly taken on board our concerns. The new Guidelines are an important step forward in introducing greater competition in the commercial bus service sector.

For example, for the first time in Ireland, the Guidelines allow someone to compete for the licence to provide an *existing* commercial bus service *better* than the current provider. The NTA will look at the application from the view of public transport users and can award the licence to the new applicant *instead of* the existing provider. This means that companies have equal opportunity to provide a service to commercial bus passengers.

We have highlighted the need for greater competition in public bus services for over a decade. Previously, the Transport Act 1932 governed the licensing of bus services. The 1932 Act gave Bus Éireann and Dublin Bus a very significant competitive advantage and curtailed the expansion of private bus operators. The Public Transport Regulation Act 2010 and the new Guidelines together represent a significant change in the regulatory regime in favour of competition.

However, for bus services to be fully competitive in Ireland bus companies should also have equal opportunity to compete to provide the *subsidised* (Public Service Obligation) services currently provided by Bus Éireann and Dublin Bus. These subsidised services are exempt from the licensing system set out in the Guidelines. We will continue to advocate competitive tendering of subsidies for bus services, rather than the monopoly held by Bus Éireann and Dublin Bus.

Electricity

We made a submission to the Commission for Energy Regulation's (CER) consultation on a *Roadmap for Deregulation of the Electricity Retail Market* in February 2010. The consultation was timely, given that competition in retail electricity supply has finally become a reality with the entry of Bord Gáis Energy and Airtricity into the domestic household market, which was previously dominated by ESB.

We emphasised the need for strong regulatory oversight of the electricity sector, as there is a delicate balance to be struck between ensuring that well-informed consumers get the benefits of competition while also ensuring that vulnerable consumers are protected.

While the entry of Bord Gáis Energy and Airtricity has given consumers greater choice, we recommended that the CER should conduct further studies of consumer attitudes - to see if there are barriers which may inhibit consumers from switching supplier even when it is beneficial for them to do so.

Competition between rival electricity suppliers can only work effectively if well-informed consumers are able to

- understand the effect on their bills of price changes,
- compare prices in a meaningful way, and
- switch easily to another supplier.

Up to now the CER has, quite rightly, focused its resources on ensuring that the structural elements of the supply side of the market are in place so that all electricity suppliers compete on a level playing field. The demand-side issues deserve similar attention.

While welcoming the arrival of competition among retail electricity suppliers, we highlighted that further market reforms are needed to build on the market-opening initiatives that have already taken place. Competitive conditions could be improved by

- removing any remaining costs to consumers shopping around for electricity,
- removing any perception that switching from ESB may jeopardise service quality,
- raising awareness of the ease of options for switching,
- ownership unbundling of the network from the supply business,
- rolling out smart metering.

Waste management

We made a submission to the Department of the Environment, Heritage and Local Government in January 2010 regarding its *Draft Statement of Waste Policy*. We emphasised that competition policy is compatible with waste policies, and that competition in the waste management sector can keep collection costs down for businesses and households.

We made six recommendations.

- The proposed national framework plan and nationally administered arrangement should incentivise competition among waste management service providers at each level of the waste management hierarchy and allow flexibility for the introduction of new technology.
- The national framework plan should carefully balance the benefits from economies of scale and the benefits of competition.
- The proposed national administrator of waste regulation (instead of administration by local authorities) should not have any responsibility for price setting.
- A flexible system of levies in line with stated public policy objectives would be better than directing waste to particular treatment facilities.
- Competitive tendering is preferable where side-by-side competition does not appear to work well for consumers.
- Where competitive tendering is introduced, practical issues involved in designing the tender must be carefully considered in order to maximise the number of credible tenders.

Appropriately regulated competition in the waste sector is essential in helping Ireland achieve environmental goals at a competitive cost.

Appendix D contains a full list of our formal submissions in 2010. Copies of all our submissions are available from our website (www.tca.ie).

Advice on Proposed Legislation, Regulation and Competition Issues

The Competition Act 2002 gives us 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, we seek to highlight competition concerns and pre-empt any negative consequences for consumers.

In 2010, we advised many Government Departments and other public sector bodies in this way, as illustrated by the table below. A notable feature of 2010 was the wide range of topics on which Government Departments and public authorities sought advice.

Table 5: Advice provided in 2010

Department/Public Body	Topic
Department of the Environment, Heritage and Local Government	EU Directive on packaging waste Competitive tendering in waste collection Retail planning guidelines Competition policy and environmental policy
Department of Health and Children	General Medical Services (GMS) scheme and GPs Role of the State in provision of nursing home places
Department of Social Protection	Home Benefits Scheme
Department of Agriculture, Fisheries and Food	Competition policy in the context of the "Food Harvest 2020" strategy
Financial Regulator	Widespread restructuring of the banking sector
Department of Finance	Commitments given to the European Commission for reform of the banking sector to meet EU state aid rules
Health Service Executive	Competition Authority recommendations re GP training and reform of the GMS contract

National Transport Authority	Guidelines for the licensing of public bus passenger services
Department of Transport	Implementation of recommendations contained in Competition Authority's 2005 report on non-life insurance
Review Group on State Assets and Liabilities	Competition and privatisation
EU Commission and the International Monetary Fund	The role of competition policy in facilitating economic recovery
Forfás	Competition and competitiveness
Bord Bia	Competition law
Property Services Regulatory Authority	Minimum educational requirements to be an estate agent, auctioneer or property management agent
National Consumer Agency	Food price comparison websites
Department of Enterprise, Trade and Innovation	28 different topics

Competition throughout the domestic economy is the best means of ensuring that Irish firms remain competitive on world markets. The need for improved competitiveness has become a central concern of economic policy as our export sector will lead the way towards a broader economic recovery.

Analysing How Competition Works in Particular Sectors

We have published 12 comprehensive market studies since the enactment of the Competition Act 2002. 2010 saw a number of important developments regarding the recommendations in these reports.

- First, more recommendations were implemented (see details below).
- Second, in April the Government published its first statement reviewing the progress made in relation to our recommendations.⁹ The Government also announced its decision to revisit this matter on a half-yearly basis. Throughout 2010, we supported the Department of Enterprise, Trade and Innovation in its role of co-ordinating the Government's review of progress made on our recommendations.

⁹ <http://www.deti.ie/press/2010/20100408a.htm>

- Third, a number of recommendations that have not yet been implemented appeared in the Memorandum of Understanding agreed between the Irish Government, the EU and the IMF in the *Programme for Financial Support for Ireland* as part of the package of specific policy measures which must be implemented. These also feature in the National Recovery Plan 2011-2014. Some of our other recommendations were included in the commitment Ireland gave to the EU Commission to implement a package of measures to support the restoration of competition in the Irish banking sector.

The publication of the final part of our report on *Competition in Professional Services: General Medical Practitioners*, in July 2010, ended our series of studies of competition in the professions. This is the first report to fall within the Government commitment to “publish a whole-of-Government response to recommendations contained in reports of the Competition Authority within nine months of their publication”.¹⁰ This means that the Government is due to respond to our recommendations by March 2011.

General Medical Practitioners

This report focused on the operation of the General Medical Services (GMS) system through which the State provides GP services free-of-charge to public patients. A GMS contract is very valuable to GPs and very few practices in Ireland operate without one. Qualified GPs have no automatic entitlement to obtain such a contract.

We found that the system for awarding GMS contracts favours established GP practices and protects them from competition from newly-qualified GPs. This limits the number of GP practices in Ireland, reduces patient choice and creates less pressure for GP practices to compete on price for private patients.

We made five recommendations to the Minister for Health and Children, the Health Service Executive and the Irish Medical Organisation. The recommendations involve the removal of practices which protect established GP practices from competition and changes in the process for determining payments to GPs under the GMS.

- All qualified GPs should be entitled to obtain a contract to treat public patients, subject only to meeting general suitability criteria.
- GPs in possession of such a contract should be free to set up in, or move to, the location of their choice.
- Decisions to award a contract in a particular area should not have to take the viability of existing GP practices in the area into account.
- The system for awarding contracts should not favour applicants who already hold such a contract.
- Payments to GPs under the scheme should be decided **unilaterally** by the Minister for Health and Children and not by agreement with the Irish Medical Organisation.

The first two parts of our Report, published in 2009, gave an overview of the GP profession and identified competition concerns relating to GP training programmes and restrictions on advertising.

¹⁰ *Building Ireland's Smart Economy*, 2008, and the Renewed Programme for Government, 2009.

Following on from these recommendations, the Government included a commitment in its National Recovery Plan 2011-2014 that *"all the restrictions on appropriately trained General Practitioners who wish to hold GMS contracts will be abolished"*.

This commitment was reiterated and expanded in the EU/IMF Memorandum of Understanding (December 2010), which includes, under a list of actions to be completed by the end of Q3-2011, *"removing restrictions on GPs wishing to treat public patients"* and also *"eliminating restrictions on the number of GPs qualifying"*. Implementing recommendations 1-4 and recommendation 6 of our report would meet this commitment.

Medical Council registration of GPs

Shortly after the publication of part III of our GPs Report, we responded to a public consultation by the Medical Council on its *Draft Rules on Registration*. We pointed out that proposed new rules on registration for medical practitioners should not impose unnecessary obstacles on suitably-qualified or appropriately-trained doctors who wish to work in Ireland. This is particularly important given that, in certain specialties such as GPs, there is a shortage of doctors.

It is reasonable to ask an overseas-trained doctor to produce evidence that their training and qualifications are "equivalent" to that of an Irish-trained doctor. It is important, however, that the process for assessing "equivalence" is transparent, clear and objective. Applicants should be able to see quickly whether they meet the required standards and, if not, should be able to see what steps they need to take to meet the requirements.

We recommended a number of different actions to the Council.

- Develop reciprocity arrangements with as many countries as possible. This would enable the Council to process individual applicants as quickly as possible.
- Set down a clear timetable for this process.
- Ensure that, where the Council has delegated the process for reviewing overseas applications to Recognised Bodies in particular medical specialties, these Bodies must develop reciprocal arrangements with appropriate countries. The Council should set down a timetable for them to complete this work.
- Establish a clear timetable for the applications process and ensure that Recognised Bodies meet the timelines set down in that process.

We asked the Council to review the criteria set down by the Irish College of General Practitioners (ICGP) in assessing non-EU GPs who wish to register as a Specialist GP, particularly the requirement that all applicants complete one year full-time or equivalent part-time training in an Irish general practice. We also asked that the Council provide an effective appeals procedure for non-EU GPs whose applications are rejected by the ICGP.

Recommendations from Previous Reports

Outlined below is the work done and progress made in 2010 in relation to each of our previous 11 reports. Areas where the Government gave a commitment to the EU/IMF that mirrors one of our recommendations are also

indicated. The year in brackets indicates the year that the Report involved was published.

Retail-related Import and Distribution (2009)

Our report urged the Government to bring down the costs of doing business in Ireland and to reduce the mark-up paid to pharmacies. The latter was done in 2009 and the former is a long-term challenge.

Groceries (2008)

Our Retail Planning Report made seven recommendations aimed at adjusting the *Retail Planning Guidelines* to better promote competition. Among these was the recommendation that the Department of the Environment, Heritage and Local Government amend the *Retail Planning Guidelines* so as to require local authorities undertaking "health checks" of the retailing in their area to include a competition dimension. After consultation with the Department, we developed a methodology in 2010 which enables local authorities to get an indication of the degree of retail competition in their area, the results of which they could consider when preparing development plans and assessing planning applications. The Department is currently reviewing this advice.

Our Report also recommended that the *Retail Planning Guidelines* be amended to recognise that competition from new retail centres benefits local consumers. In 2010, we gave further advice to the Department on how this recommendation could be implemented, and this is also currently being reviewed by the Department.

2010 also saw the start of a focused review of the *Retail Planning Guidelines* by the Department of the Environment, Heritage and Local Government. Mr Ciarán Cuffe, TD, Minister of State with special responsibility for planning and heritage, announced that, among the principles which would guide the review would be that

"Competition to the benefit of the consumer should be maintained and enhanced".

The Department prepared and published an Issues Paper for public consultation. We made a submission to this consultation in July, highlighting the recommendations of the Retail Planning Report, and in particular the need to refocus the Guidelines to better accommodate competition and consumer issues.

The EU/IMF programme of financial support for Ireland commits the Government to conducting a study on the economic impact of eliminating the cap on the size of retail premises by quarter three of 2011.

Veterinary Practitioners (2008)

The Veterinary Council of Ireland confirmed to us that they had removed the previous ban on advertising of prices and the ban on practitioners touting for business, in line with the two recommendations we addressed to the Council in our 2008 Report. The Department of Agriculture, Fisheries and Food has not yet implemented any of the three recommendations addressed to it in our Report.

Dentists (2007)

The Dental Council has previously implemented three significant recommendations

- creating a new profession of clinical dental technician,
- engaging with training providers to establish courses in clinical dental technology, and
- allowing dentists the freedom to advertise their prices and services.

In 2010, the Dental Council indicated that it may withdraw its ban on dentists offering discounts in 2011. The Department of Health and Children has indicated that the remaining recommendations in our Report will be addressed in the context of a new National Oral Health Policy and new legislation.

Private Health Insurance (2007)

In this Report, we recommended that Vhi Healthcare should be regulated under the same terms as its rivals, once capital requirements were met. In May 2010, the Government announced it would invest up to €300 million in Vhi Healthcare and place the company on the market.

Our Report also recommended that the Minimum Benefits system should be reviewed. In July 2010, the Health Insurance Authority began a public consultation process on Minimum Benefits in the Irish Private Health Insurance Market.

The rest of the recommendations in this Report have been implemented, with one exception. Vhi Healthcare continues to cancel the travel insurance policies of customers who switch from Vhi Healthcare to an alternative health insurance provider.

Solicitors & Barristers (2006)

At the start of 2010, 11 of the 29 recommendations we made in our Report had been implemented. The Law Society has either implemented or progressed all of the recommendations we addressed to it. While the Bar Council has implemented many of the recommendations we made to it, the Council has not implemented our key recommendations to allow direct access to barristers for legal advice and to allow barristers to operate in groups. The Minister for Justice and Law Reform has implemented just one of 12 recommendations we made to his Department.

However, 2011 will see the implementation of the most important recommendation of the report - that the legal profession be subject to independent regulatory oversight, instead of the current system of largely self-regulation.

In 2010, the Government committed, in the EU/IMF Programme of Financial Support for Ireland, to establishing an independent regulator and implementing the outstanding recommendations of the Authority to reduce legal costs by the end of quarter three 2011. The Government also committed to increasing the use of tendering for the provision of legal services, as part of the *National Recovery Plan 2011-2014*.

Optometrists (2006)

In 2010, the Opticians Board made changes to the rules governing the professional conduct of registered optometrists. The new rules rescinded restrictions on canvassing and comparative advertising by optometrists. This change means that optometrists now have greater freedom to compete and promote their businesses. In October 2008, the Government announced that the Opticians Board would be subsumed into the Health and Social Care

Professionals Council. This had not happened by the end of 2010. However, when it does happen, it should lead to most of our remaining recommendations being implemented. This includes changing the composition of the Opticians Board to one that is representative of a large number of stakeholders.

Banking (2005)

In 2010, the Irish Government agreed a package of sectoral commitments to the EU Commission regarding the banking sector pursuant to the Commission's approval of the granting of state aid to the Irish banks. This package includes commitments to implement a number of recommendations contained in our Report on competition in non-investment banking. These measures aim to improve customer mobility and consumer protection.

As part of these commitments, the Central Bank has already placed the Irish Banking Federation's voluntary switching codes on a statutory basis and plans to include a number of pro-competition requirements in the revised Consumer Protection Code. These include our recommendations that current account holders should be able to access their current account history (going back 12 months for personal customers and 36 months for small business customers) free of charge annually. The Financial Regulator began a public consultation on its proposed revisions to the Consumer Protection Code at the end of 2010.

Architects (2005)

Most of the 13 recommendations in our Report have been implemented or are on their way to being implemented, now that there is a new statutory Register of Architects. In 2010, the Law Society of Ireland revised its guidelines for solicitors (regarding opinions on compliance with building regulations) to reflect the existence of the new statutory register.

Non-life Insurance (2005)

The Financial Regulator has addressed all of the recommendations in our report that it had the power to address. Some recommendations were not implemented by the Regulator, as they were overtaken by other events which rendered them unnecessary. Others appear in the revised Consumer Protection Code that is currently the subject of a public consultation. The Department of Transport is currently examining the recommendations we made to it in the Report and we will continue to advocate their implementation in 2011.

Engineers (2003)

One recommendation in this report was that no further regulation should be imposed on the engineering profession without a Regulatory Impact Assessment. In 2010, Engineers Ireland formally submitted proposals to the Minister for the Environment, Heritage and Local Government seeking the introduction of further regulation on the engineering profession. Engineers Ireland argued that every engineering project that has an individual or public health or safety dimension, or is of significant value or cost, should be authorised by a Chartered Engineer.

We have reviewed these proposals and concluded that, based on the evidence presented in their proposal, Engineers Ireland has not made a valid case for further regulation of the profession. Increasing restrictions on who may provide certain engineering services would reduce competition in engineering services, leading to increased costs for such services without a clearly demonstrated benefit.

Raising Awareness

Raising awareness of the role of the Competition Authority and the benefits of competition is one of our key objectives. Therefore, communications plays a vital strategic role for us and forms part of the Strategy Division's functions. We aim to ensure legitimacy through the respect of consumers, businesses and policy-makers – our key stakeholder groups. It is important that the role that competition has to play as part of the solution to the economic crisis is recognised. Effective communication is therefore vital to the achievement of our objectives.

Education and Outreach

In 2010, we began a new education and outreach programme aimed at the business sector, which involved sending mailshots to all the Chambers of Commerce, the City and County Enterprise Boards, the SFA, ISME and IBEC, giving them copies of our information booklets and offering to give seminars to their members on competition law, policy and compliance. We made similar approaches to a large number of trade associations.

This met with a very positive response, and we will continue to build on this work in 2011 through delivery of the seminars and by targeting the public sector and third level education institutes with similar programmes.

Bid-Rigging Presentations

The Authority raised awareness of potential cartel activity with a programme aimed at procurement officials from public bodies. The initiative involves staff delivering presentations to public bodies involved in procurement. The programme highlights the warning signs of possible cartel behaviour between tenderers for public contracts. It also gives guidance on what to look out for and what to do if officials suspect anti-competitive tendering.

As part of this programme, we gave a number of presentations to individual Government Departments and centrally to officials through the Civil Service Training and Development Centre. We also presented to Public Affairs Ireland and IBEC. In addition an Authority representative sits on the Government Construction Contracts Committee, which is chaired by the Department of Finance.

Institute of International and European Affairs Seminar Series

A lot of work took place in 2010 to set up a new series of seminars which we will co-host with the Institute of International and European Affairs. The series will be entitled "*The Competition Enforcers*" and will involve a number of high profile people coming to Ireland to discuss competition matters. The series will start in 2011 with the inaugural seminar featuring Dr Alexander Italianer, Director General, DG Competition, European Commission.

Oireachtas Committees

The Chairperson, Mr Declan Purcell, appeared before the Committee on Public Accounts to discuss the findings of a report by the Comptroller and Auditor General into the high level of legal fees paid from the public purse to the legal teams engaged in the various tribunals of inquiry.

Mr Purcell told the Committee that the high legal fees paid to lawyers at the tribunals were an inevitable result of our outdated system of regulation which continues to restrict competition between lawyers. Our 2006 Report on Competition in the Legal Profession called for an independent Legal Services

Commission which would have overall responsibility for regulating the legal profession. The Law Society and the Bar Council could continue to have a role in the day-to-day regulation of the legal profession but these bodies would no longer carry out their current representative functions as well.¹¹

Internal Communications

We took a number of initiatives during 2010 to formalise and improve our approach to communications. The objective was to raise awareness among staff of policies and procedures relating to communications, as well as further staff training and development. Measures included the development of a Communications Policy for staff, Plain English training, media training and the development of supporting documents.

Plain English

Plain English is an initiative promoted by the National Adult Literacy Agency, (NALA). It aims to make information clearer and easier to understand. It is a style of presenting information that helps someone to understand it the first time they read it or hear it.

In 2010, we undertook to adopt the principles of Plain English in all communications, where appropriate, and all staff received training from NALA. We hope it will make all communications from the Authority easier to understand and will help to get our messages across to our key audiences effectively.

Media Coverage Research

In August 2010, we carried out research into the print media coverage we receive. The research covered the period from August 2009 to July 2010 and marked the first time we carried out such research. It was both qualitative and quantitative. The research gave some interesting insights into the coverage received by the Authority over that time period in the print media.

It showed that we are receiving a good return on investment in terms of public relations. When using advertising values as a way to quantify public relations coverage in print media, we are achieving a significant amount in value terms. In addition, the majority of the coverage we are receiving is either neutral or positive, with very little negative coverage.

However, it also pointed to some gaps in terms of the people our message is reaching, and this will steer some of the media strategies we will implement in 2011.

Speeches, presentations, seminars and articles

We also engage with other bodies, education institutes, the corporate sector and the media in our continuing efforts to engage with our stakeholders, raise awareness of the role of the Authority, the benefits of competition generally and in relation to specific matters. Members of staff regularly give public speeches, make presentations, write articles and give interviews on many topics. A list of these activities can be found in **Appendix E**.

¹¹ On 31 January 2011, the Committee on Public Accounts published a report entitled *Third interim report on the procurement of legal services by public bodies* in which the Committee fully endorsed our recommendations

5. INTERNATIONAL WORK

We continued to fulfil our EU obligations and maintained an active level of participation in international organisations in 2010. Our international work stems primarily from our role, alongside the European Commission and national competition authorities in other Member States, in enforcing European competition law (i.e., the competition provisions of the Treaty on the Functioning of the European Union).

The Authority is also Ireland's representative at the Competition Committee meetings of the Organisation for Economic Co-operation and Development and participates in other international fora as a means of promoting best practice within the agency and to maintain knowledge of competition issues that are universal.

European Commission

The Competition Authority is Ireland's representative 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 must hold an Oral Hearing where defendants or merging parties can voice their opinion. This can lead to an Advisory Committee where each Member State can articulate their opinions.

The Commission also consults with Member States on proposed enforcement practices, guidance, policies and legislation relating to Community competition law and policy. We fulfil this role through attendance at decision-making and other meetings, as well as making written and oral contributions to policy and case analyses. We do not attend all meetings but focus resources on those cases that have an (actual or potential) impact on Irish consumers and on the high level meetings that encourage the consistent and efficient application of European law.

In 2010, we attended one Oral Hearing (on mergers) and six Advisory Committees. As regards restrictive practices and dominant positions, we participated in Advisory Committee meetings reviewing

- the current regimes of assessing horizontal co-operation agreements,
- the motor vehicles block exemption regulations,
- the vertical block exemption guidelines and regulations, and
- the insurance block exemption regulations.

EU Merger Review Cases

In 2010, the Mergers Division followed the progress of and participated in the Advisory Committee hearings of two EU Merger Review cases. These were

- *Oracle/Sun Microsystems – Case No. COMP/M.5529*, and
- *Unilever/Sara Lee Body Care – Case No. COMP/M.5658*

EU Merger Working Group

In January 2010, the national competition authorities of the EU established a working group to exchange experience and foster more co-operation and convergence between agencies in the area of EU merger control. The European Commission chairs the working group, with two vice chairs chosen from among the members. The group met three times in 2010 and plans to meet three times again in 2011.

The Competition Authority and the German Bundeskartellamt are the first two vice-chairs of the new group. Both agencies have been asked to continue in this role for a second year, as they are currently overseeing the drafting of best practices on co-operation in merger review.

European Competition Network

Membership of the European Competition Network (ECN) is compulsory for national competition authorities of Member States. It was established in 2004 to facilitate co-operation in the consistent application of Community competition rules through arrangements for information sharing, assistance and consultation.

The ECN's objective 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.

In 2010 we attended two types of high level general meetings; the meeting of Directors' General and ECN Plenary meetings. We were also active in five Working Groups and six Sectoral Sub-groups.

We attended meetings of Working Groups dealing with

- Co-operation between Competition Authorities,
- Exemptions to Vertical Restraints,
- Horizontal Restraints,
- Cartels, and
- Chief Economists

The Sectoral Sub-groups we attended included those on Banking, Financial Services, Environment, Energy, Food and Motor Vehicles.

We also contribute to ongoing projects which include the convergence of the Member States' leniency programmes and the relationship between criminal and administrative investigative procedures.

The project to align leniency programmes throughout the EU is particularly relevant, given the revision of our own immunity programme. One outcome of the revision will be that our programme will be more aligned with the Commission's and other Member States' programmes. This, in turn, will help facilitate leniency applications on an EU-wide basis and thereby further improve cartel detection and prosecution in Europe.

Organisation for Economic Co-operation and Development

Ireland is a member of the Organisation of Economic Co-operation and Development (OECD). The OECD provides a setting for its 30 member governments to discuss economic, social and governance policy issues and experiences. The OECD also acts as an independent source for policy research and analysis. The OECD consists essentially of Committees whose work focuses on a wide range of policy issues. The Competition Committee is responsible for competition policy.

The Committee's main objective is to protect and promote competition as an organising principle of modern economies, based on the knowledge that vigorous market competition boosts growth and employment and makes economies more flexible and innovative. The Committee also promotes reform by actively encouraging and assisting decision-makers in Government to tackle anti-competitive practices and regulations.

Three times a year Authority representatives attend meetings of the Competition Committee, and its two associated working parties: *Working Party 2 on Competition and Regulation* and *Working Party 3 on Co-operation and Enforcement*. Meetings regularly feature "roundtable" discussions on substantive policy issues and member countries are invited to make submissions in advance of the roundtables. In 2010 we made three submissions on

- Collusion and Corruption in Public Procurement,
- Competition, Concentration and Stability in the Banking Sector, and
- Standard Setting.

These submissions are available on our website at www.tca.ie.

International Competition Network

The Competition Authority is a member of the International Competition Network (ICN). The ICN is a virtual network, it has no permanent Secretariat or sources of funding. It gives competition authorities a specialised yet informal forum for supporting the development of best practice in competition law and policy and addressing practical competition concerns. We are active in five of the ICN's working groups: Mergers, Advocacy, Unilateral Conduct, Agency Effectiveness and Cartels.

The Mergers Division is a co-chair of the Mergers Working Group, with the Antitrust Division of the United States Department of Justice (US DOJ). In 2009-2010, the Working Group published two recommended practice documents for merger analysis. The Mergers Division took the lead in drafting the document "*Failing Firm/Exiting Assets*" with the US DOJ leading on "*Market Definition*". These recommended practice documents have further added to the extensive work product of the Working Group. They are available at: <http://www.internationalcompetitionnetwork.org/>.

The Advocacy Working Group continued its work on the ICN Market Studies Handbook in 2010; we helped to "road test" the full draft. The final version of the handbook will be published in 2011.

The Cartels Division is an active member of the Cartels Working Group. The Division co-led the drafting and publication of Chapter 4 (Case Initiation) of the ICN's Anti-Cartel Enforcement Manual and provided substantial input to the drafting of Chapter 3 (Digital Evidence Gathering). The Division also provided speakers for discussion panels at the Annual ICN Conference in April 2010 and the Annual ICN Cartels Workshop in October 2010.

In 2010, the Agency Effectiveness Working Group drafted the first two chapters of an Agency Effectiveness Handbook. The Authority's Strategy Division contributed by reviewing the first chapter of the handbook on "*Strategic Planning and Prioritisation*" and helped in sourcing information for the second chapter on "*Effective Project Delivery*". The Division is also involved in a special project led by the Dutch Competition Authority (NMa) on competition and consumer welfare. This project is expected to conclude by early summer 2011.

We also continued our work with the Unilateral Conduct Working Group, which produced and presented a report on refusal to supply at the ICN's Annual Conference in 2010. The Working Group organised a two-day workshop on loyalty rebate and margin squeeze in Brussels, as well as a number of tele-seminars on remedies and antitrust enforcement in the pharmaceutical sector. The Working Group is currently drafting a workbook designed to help case handlers dealing with abuse of dominance cases and this will continue in 2011.

International Co-operation

As part of our international co-operation and capacity-building activities, we welcomed Mr Nirmal Mehrotra on secondment from the Indian Competition Commission. Mr Mehrotra joined the Mergers Division in August 2010 for two months.

6. CORPORATE SERVICES

Finance

The Competition Authority is funded by way of annual grant from the Department of Enterprise, Trade and Innovation. In 2010 the grant was €4.7m. Our accounts are subject to audit by the Comptroller & Auditor General and the audit of the 2010 accounts is unlikely to be completed until the second quarter of 2011. As a result, it is not possible for us to publish the Authority's audited accounts in our Annual Report, as required under the Code of Practice for the Governance of State Bodies, because the Competition Act obliges publication of the annual report within two months of the end of each year.

However, at the time of writing, the provisional, unaudited outturn for 2010 was expenditure of €3.9m. The reduction in the number of staff working in the Competition Authority, either through the Government's moratorium on recruitment to the public service or the delay in filling a number of vacancies at Member level, naturally led to a reduction in expenditure.

The Code of Practice also states that, in the interests of transparency and good governance, State bodies should publish in their reports details of the salary of the Chief Executive Officer. For the purposes of meeting this requirement, the Competition Authority considers its Chairperson to be its Chief Executive Officer. As mentioned elsewhere in this report, the then Chairperson of the Competition Authority resigned his position in March 2010 and it was not until April 2010 that Mr Declan Purcell was appointed by the Minister for Enterprise, Trade and Innovation to act as Chairperson. The Chairperson's annual salary is set by the Department of Finance in compliance with Government pay policy and is equivalent to the remuneration of a Deputy Secretary as set out in Appendix 1A of Department of Finance Circular E107/22/06, .i.e. €168,000. The Chairperson does not receive any bonuses or additional remuneration.

Freedom of Information

We received four requests under the Freedom of Information Acts in 2010. All four requests were of a non-personal nature. Three were part-granted with access to some documents being refused and the other request was withdrawn following consultation with the requestor.

Human Resources

In March 2009, the Government introduced a number of measures to reduce public service staffing levels, including placing a moratorium on recruitment and the introduction of incentivised career break and early retirement schemes. At the time of the introduction of the recruitment ban, the Competition Authority's sanctioned staff complement was 59. By the end of 2010, the number of people working in the Authority had fallen to 40. Departures in 2010 arose from the resignation in March of the Chairperson, William Prasifka, and in May the Director of the Cartels Division, Carolyn Galbreath. Mr Prasifka left to take up the position of Financial Services

Ombudsman. Two staff members retired in 2010 and another two commenced unpaid career breaks.

The resignations of Mr Prasifka and Ms Galbreath left the Authority inquorate for a number of months until the appointment under the Competition (Amendment) Act 2010, of Mr Gerald FitzGerald and Ms Isolde Goggin as temporary full-time Members. These appointments followed the enactment by the Oireachtas of amending legislation to enable the Minister for Enterprise, Trade and Innovation to appoint temporary Members to the Authority in circumstances where a permanent vacancy existed. The 2002 Act only provided for the appointment of temporary Members where there was a temporary vacancy.

As a result of the moratorium on recruitment, the number of people working in the Authority in 2010 was at its lowest level since 2003.

Customer Service

We have a Customer Charter in place as an expression of our commitment to ensuring that our customers receive the highest level of service possible. In the main we met these commitments. We acknowledged most of the correspondence we received within three days of receipt and many matters were resolved within 15 days. However, the nature of complaint investigation is such that the interim response commitments can be quite resource intensive. In view of the significant reduction in human resources, we will re-examine this commitment in 2011.

A. COMPETITION AUTHORITY STRUCTURE

Competition Authority Members as at 31 December 2010

Declan Purcell

Chairperson

**Director of Corporate Services Division and
Strategy Division**



Stanley Wong

**Director of Mergers Division and Monopolies
Division**



Gerald FitzGerald

Director of Cartels Division



Isolde Goggin

Director of Advocacy Division



Organisational Structure of the Competition Authority¹²

	Division					
	Strategy	Advocacy	Mergers	Corporate Services	Cartels	Monopolies
Members	Declan Purcell	Isolde Goggin	Stanley Wong	Declan Purcell	Gerald FitzGerald	Stanley Wong
Functions	Development and implementation of policies and strategy, internal and external communications and media relations, provision of Chairperson and divisional support, and strategy and business planning	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, legal services, administrative support, ICT	Investigation and prosecution of hardcore cartels under section 4	Investigation and enforcement in abuse of dominance cases and non-cartel (horizontal and vertical) agreements under sections 4 and 5
Divisional Managers	Vivienne Ryan	Carol Boate	Ibrahim Bah	Ciarán Quigley	Cormac Keating	John Evans
Legal Advisors				Noreen Mackey David McFadden		
Communications Manager	Clodagh Coffey					
Case Officers	Joseph Walser	Cathal Hanley Deirdre McHugh Kathryn MacGuill Han Nie	Barry O'Donnell Andrew Rae Elisa Ryan		John Burke Catherine Kilcullen Eksteen Maritz Daniel Kenna Joe McLoughlin ¹³ John McNally Aoife Brennan	Anne Ribault O'Reilly Haiyan Wang Janet McCoy Malachy Fox Victoria Balaguer
Higher Executive Officers				James Plunkett Sandra Rafferty		
Executive Officers	Pat Downey			Stephen Lalor Elizabeth Heffernan		
Clerical Officers				Mark Wilkinson	Sandra Brennan	
Project Interns						Kim Watts Patrick Keating

¹² Reflects staff actually working in the Authority on 31 December 2010.

¹³ Detective Sergeant Joe McLoughlin is on secondment from the Garda Bureau of Fraud Investigation.

B. MERGERS NOTIFIED TO THE COMPETITION AUTHORITY IN 2010

Notification	Economic Sector	Notification Date	Status
M/10/001 - Marsh UK Group Limited/HSBC	Non-life insurance distribution and reinsurance distribution	11/01/2010	Cleared (phase 1)
M/10/002 - One Equity Partners / GENBAND Inc/CVAS Business	Switching and routing hardware as well as software solutions for fixed and mobile networks	22/01/2010	Cleared (phase 1)
M/10/003 - Club Travel / Budget Travel (In Liquidation)	Travel sector	22/01/2010	Cleared (phase 1)
M/10/004 - Warburg Pincus & Co / SGL Limited	Safety and survival equipment	29/01/2010	Cleared (phase 1)
M/10/005 - Duke Street / Cardpoint / Alphyra / Payzone	Electronic transaction/payment services in the State (including, for example, in respect of electronic mobile phone top-up, utility top-up and bill payment and EFT processing)	09/02/2010	Cleared (phase 1)
M/10/006 - BNY Mellon / GIS	The provision of fund administration and custody services worldwide and in the State	26/02/2010	Cleared (phase 1)
M/10/007 - Trinity Mirror / Guardian Media	Newspaper publishing and the operation of digital sites associated with their newspaper titles	05/03/2010	Cleared (phase 1)
M/10/008 - Lebedev / Independent	Newspaper publishing	25/03/2010	Cleared (phase 1)
M/10/009 - UPC / Broadworks	Retail multi-channel pay TV market, broadband market	06/04/2010	Cleared (phase 1)
M/10/010 - RBS Plc (AAC Capital) / Cardinal Health	Provision of financial services and the pharmaceutical sector	13/04/2010	Cleared (phase 1)
M/10/011 - Investec / Rensburg Sheppards	Financial services	26/04/2010	Cleared (phase 1)

M/10/012 - MLM Management Ltd/Gaiety Investments Ltd/Setanta/JV	Television broadcasting	05/05/2010	Cleared (phase 1)
M/10/013 - Apax/Sophos	Provision of security software	10/05/2010	Cleared (phase 1)
M/10/014 - HP / PALM	Mobile handsets/ smartphones	14/05/2010	Cleared (phase 1)
M/10/015 - An Post / PostPoint	The provision of electronic transaction/payment products and services	19/05/2010	Cleared (phase 1)
M/10/016 - RBS / PIHL	Financial services and healthcare services	21/05/2010	Cleared (phase 1)
M/10/017 - Metropolis / Medical Publications	Print media	28/05/2010	Cleared (phase 1)
M/10/018 - Moy Park / O'Kane	The production of food from animal protein, in particular, poultry	28/05/2010	Cleared (phase 1)
M/10/019 - Barclays PLC / Tricorona AB	The investment and trading in environment-related market instruments	03/06/2010	Cleared (phase 1)
M/10/020 - BSkyB / Virgin Media TV	Television broadcasting and the sale of television advertising airtime	04/06/2010	Cleared (phase 1)
M/10/021 - Caird Capital / Maynard & Harris	The design and manufacture of plastic packaging products	05/07/2010	Cleared (phase 1)
M/10/022 - Mubadala / PIM Investment	The joint venture will be involved in the supply of investment products	28/07/2010	Cleared (phase 1)
M/10/023 - Barclays / Allied Glass	Barclays is a management company of private equity investment fund. Allied Glass is involved in the manufacture of glass containers / bottles.	30/07/2010	Cleared (phase 1)
M/10/024 - Gleeson / Gilbeys	The wholesale distribution of alcoholic and non alcoholic beverages (including wine) in the State	30/07/2010	Cleared (phase 1)

M/10/025 - Oaktree / Stolberg / Beluga	Financial services and the shipping industry	04/08/2010	Cleared (phase 1)
M/10/026 - ESB / NIE	Electricity transmission and distribution and provision of electrical installation services	05/08/2010	Cleared (phase 1)
M/10/027 - Northern & Shell Broadcasting / CLT - UFA Holdings	Television broadcasting	20/08/2010	Cleared (phase 1)
M/10/028 - Compass / VSG	Security services	26/08/2010	Cleared (phase 1)
M/10/029 - Kerry / Newmarket Co-operative Creameries	The milk production and processing sectors (cheese and whey in particular), the agri-stores trading sector and the retail sector	06/09/2010	Cleared (phase 1)
M/10/030 - Alpha Group / Newry Democrat	Local newspaper publishing	06/09/2010	Cleared (phase 1)
M/10/031 - CapVest / Origin Foods / Maiden	The Irish retail sector and Irish food service sector	13/09/2010	Cleared (phase 1)
M/10/032 - RBS (AAC Capital NEBO Sub LP) / NSL Services	Financial services	21/09/2010	Cleared (phase 1)
M/10/033 - Doughty Hanson / Equity Trust	Fund administration services	24/09/2010	Cleared (phase 1)
M/10/034 - Fexco / Goodbody	Stockbroking services, corporate finance services and economic consultancy services	24/09/2010	Cleared (phase 1)
M/10/035 - Permira Holdings / Creganna Solutions	Private equity investments and the manufacture and supply of minimally invasive medical devices	07/10/2010	Cleared (phase 1)
M/10/036 - Barclays / Total Fitness	The operation of health and fitness clubs in the State	12/10/2010	Cleared (phase 1)
M/10/037 - Pfizer / King	Animal health products in the State	29/10/2010	Cleared (phase 1)

M/10/38 – Barnett / Origin / Hall	Agricultural commodities	11/11/2010	Cleared (phase 2)
M/10/039 – Kingspan / CRH Insulation Europe	Insulation and packaging materials	19/11/2010	Cleared (phase 1)
M/10/040 – Unilever / Alberto Culver	Personal care products	23/11/2010	On-going (phase 1) assessment
M/10/041 – Pilgrim (Oaktree Group) / MHL & MCL	Construction and related services	24/11/2010	Cleared (phase 1)
M/10/042 – Elavon / Bank of America N.A.	Securitisation trust and administrative services	8/12/2010	Cleared (phase 1)
M/10/043 - Stena / DFDS	Provision of Irish sea ferry services - carriage of freight and passengers between Northern Ireland and England on the Irish Sea	17/12/2010	On-going (phase 2) assessment
M/10/044 - Tata Chemicals / Cheshire Salt	The manufacture and sale of salt products	17/12/2010	Cleared (phase 1)
M/10/045 - BMG / CHRYSALIS	Music Publishing	20/12/2010	Cleared (phase 1)
M/10/046 - Aesica / UCB SA	Pharmaceuticals	20/12/2010	Cleared (phase 1)

C. STATISTICS ON MERGERS EVALUATED 2008-2010

	2010	2009	2008
Notified Mergers	46	27	37
required notifications [section 18(1)]	46	27	37
voluntary notifications [section 18(3)]	0	0	0
Carried from previous year	3	2	9
carried as phase 1	3	2	9
carried as phase 2	0	0	0
Referred from the EU Commission (ECMR Art 9)	0	0	1
TOTAL CASES	49	29	47
of which media mergers	8	2	5
of which entered phase 2 in year of determination	1	1	2
of which entered phase 2 in year prior to determination	1	0	0
Cases Withdrawn	0	0	0
Withdrawn at phase 1	0	0	0
Withdrawn at phase 2	0	0	0
Determinations Delivered	43	26	45
Phase 1 determinations cleared without proposals	41	25	43
Phase 1 determination with proposals	1	0	0
Phase 2 positive determination without conditions or proposals	1	0	1
Phase 2 determination with proposals	0	0	0
Phase 2 determination with conditions	0	1	0
Phase 2 prohibition	0	0	1
Referral to EU Commission (ECMR Art 22)	0	0	0
Carried to next year	6	3	2
Carried as phase 1	5	3	2
Carried as phase 2	1	0	0

D. FORMAL SUBMISSIONS BY THE COMPETITION AUTHORITY IN 2010

Submission Number	Submission to	Topic	Summary
S-10-001	Commission for Energy Regulation	Retail Electricity Market	We emphasised the need for strong regulatory oversight and further reforms of the electricity sector. There is a delicate balance to be struck between ensuring that well-informed consumers derive the benefits of competition while also ensuring that vulnerable consumers are protected.
S-10-002	Department of the Environment, Heritage and Local Government	Retail Planning Guidelines	We reiterated relevant recommendations from our 2008 Retail Planning Report. In particular there is a need to refocus the Guidelines to better accommodate competition and consumer issues.
S-10-003	National Transport Authority	Licensing Public Bus Services	We recognised the progress made in creating a solid platform for the development of a vibrant and competitive public transport service in the creation of the National Transport Authority
S-10-004	Department of Transport	Transport Strategy Statement	We recommended that the 2010-2013 strategy should emphasise value for money and the direction of scarce public resources to where they are most needed. Where the private sector is willing and able to operate a service, the need for public subsidy should be re-examined.
S-10-005	Department of the Environment, Heritage and Local Government	Draft Statement of Waste Policy	We emphasised that competition policy is compatible with waste policies and competition in the waste management sector can keep collection costs down for businesses.
S-10-006	The Medical Council	Draft Rules on Registration	We emphasised that the process for assessing the qualifications and experience of overseas-trained doctors must be transparent, clear and objective.

E. SEMINARS, SPEECHES, PRESENTATIONS & PAPERS

Title	Forum	Date	Person
Criminal Enforcement of Competition Laws in Ireland	Anti-trust, Review of Competition Law	21 Jan	Carolyn Galbreath
The Future of the European Competition Network	Institute of International and European Affairs	02 Feb	Stanley Wong
Detecting Anti-competitive Practices in Public Procurement	Department of Transport	04 Feb	Eksteen Maritz Catherine Kilcullen
Detecting Anti-competitive Practices in Public Procurement	Public Affairs Institute	15 Feb	Eksteen Maritz Catherine Kilcullen
How the Competition Authority can Contribute to the Smart Economy	Annual Regulatory Forum, Farmleigh	26 Feb	Declan Purcell
Competition and Cartels in Public Procurement	DCU Strategic Procurement Seminar	11 Mar	Carolyn Galbreath
Pro-competition Intervention in Healthcare Markets	Scottish Competition Law Forum, Edinburgh	23 Mar	Declan Purcell
Opening Statement of the Competition Authority to the Committee of Public Accounts	PAC, Leinster House, Kildare Street	25 Mar	Declan Purcell
Criminalisation of Cartel Offences in Ireland	American Bar Association Spring Meeting	15 Apr	Carolyn Galbreath
The Role and Rights of Third Parties in Merger Review	ICN Annual Conference, Istanbul	27-29 Apr	Stanley Wong
Effective Project Management in Competition Agencies	ICN Annual Conference, Istanbul	27-29 Apr	Stanley Wong
Market Definition and Failing Firm/Exiting Assets	ICN Annual Conference, Istanbul	27-29 Apr	Stanley Wong
Competition Authority Cartels Division	ICN Annual Conference, Istanbul	29 Apr	Carolyn Galbreath
Internationalisation of Advocacy in Turkey	Symposium on Internationalisation of Advocacy in Turkey, Istanbul	30 Apr	Stanley Wong
Detecting Anti-competitive Practices in Public Procurement	Central Civil Service Training & Development Centre	12 May	John McNally
Discussant: Remedies to the adverse effects of buyer power	Trends in Retail: Private label, brands and competition policy	28 May	John Evans
Competition Law and Trade Associations	Irish Medical and Surgical Trade Association	03 Jun	John Evans

Detecting Anti-competitive Practices in Public Procurement	Department of Communications, Energy and Natural Resources	17 Jun	Eksteen Maritz Catherine Kilcullen
The Process of Merger Review: A Practical Guide	DG Comp training workshop to Competition Commission of India, New Delhi	15-17 Jul	Stanley Wong
Review of the Cartel Immunity Programme	Irish Society for European Law	27 Jul	Gerald FitzGerald
Detecting Anti-competitive Practices in Public Procurement	Department of Education	07 Sept	John McNally Catherine Kilcullen
Role of the Competition Authority	Fingal Rotary Club	13 Sept	Isolde Goggin
Digital Convergence and Competition Issues	Seoul International Competition Forum, South Korea	15 Sept	Stanley Wong
Use of Economics in Merger Review	Korea Fair Trade Commission, Seoul, South Korea	16 Sept	Stanley Wong
Competition in Primary Healthcare in Ireland	Co-operation and Competition Panel Conference, London	16 Sept	Declan Purcell Deirdre McHugh
Prioritisation and Public Expectations	OECD - Korea Policy Centre, Seoul, South Korea	17 Sept	Stanley Wong
From a Rock to a Hard Place – the Competition Authority 1998-2010	16 th Annual Competition and Regulatory Conference	07 Oct	Declan Purcell
Conference Chair	16 th Annual Competition and Regulatory Conference	07 Oct	Stanley Wong
Competition in Primary Healthcare in Ireland	Economic Conference, Kenmare	16 Oct	Carol Boate
Detecting Anti-competitive Practices in Public Procurement	Public Affairs Institute	19 Oct	John McNally Catherine Kilcullen
Merger Enforcement Trends	ICN Merger Workshop, Rome	03-04 Nov	Stanley Wong
Mock Arguments on Hypothetical Case	ICN Merger Workshop, Rome	03-04 Nov	Stanley Wong
Media Mergers Under the Competition Act 2002 (Ireland)	Roundtable on Public Policy and Merger Review, Autorità Garante della Concorrenza e del Mercato, Rome	05 Nov	Stanley Wong
Role of the Competition Authority and Enforcement of Competition Law	Competition Law and Public Policy seminar, Public Affairs Ireland	18 Nov	Stanley Wong
Role and Work of the Competition Authority	Department of the Environment, Heritage and Local Government	24 Nov	Carol Boate

Technology and Market Definition in Competition Analysis	Ministry of Industry and Information, Beijing, China	05 Dec	Stanley Wong
EU Perspective on Capacity Building in Asia on Competition Law and its Enforcement: An Insider-Outsider's View	6 th Annual Asian Competition Law Conference	06 Dec	Stanley Wong
Certificate in Civil Service and State Agencies Studies course	Institute of Public Administration training course	09 Dec	Ciarán Quigley
Detecting Anti-competitive Practices in Public Procurement	Central Civil Service Training & Development Centre	15 Dec	Joseph Walser Clodagh Coffey
Internationalisation of Merger Review: Some Challenges in Designing an Effective System	Article: Changes in Competition Policy over the Last Two Decades – Office of Competition and Consumer Protection, Warsaw	2010	Stanley Wong

the 1990s, the number of publications on the topic has increased steadily, and the number of authors has increased from 1 to 100.

There are a number of reasons for the increase in research on the topic. One reason is the growing awareness of the importance of the topic. Another reason is the increasing availability of data and methods for studying the topic. A third reason is the increasing interest in the topic among researchers and the public.

The following sections discuss the history of research on the topic, the current state of research, and the future of research on the topic.

The history of research on the topic can be traced back to the 1950s, when the first studies were published.

These studies focused on the relationship between the topic and the environment.

Over the years, the focus of research has shifted to the relationship between the topic and human health.

Today, research on the topic is multidisciplinary, involving researchers from a variety of fields.

The current state of research on the topic is characterized by a number of key findings.

These findings have led to a better understanding of the topic and its impact on human health.

The future of research on the topic is bright, with a number of new studies planned for the coming years.

These studies will focus on the relationship between the topic and human health, and will help to improve our understanding of the topic.

The following sections discuss the history of research on the topic, the current state of research, and the future of research on the topic.

The history of research on the topic can be traced back to the 1950s, when the first studies were published.

These studies focused on the relationship between the topic and the environment.

Over the years, the focus of research has shifted to the relationship between the topic and human health.

Today, research on the topic is multidisciplinary, involving researchers from a variety of fields.

The current state of research on the topic is characterized by a number of key findings.

These findings have led to a better understanding of the topic and its impact on human health.

The future of research on the topic is bright, with a number of new studies planned for the coming years.

These studies will focus on the relationship between the topic and human health, and will help to improve our understanding of the topic.

The following sections discuss the history of research on the topic, the current state of research, and the future of research on the topic.

The history of research on the topic can be traced back to the 1950s, when the first studies were published.

These studies focused on the relationship between the topic and the environment.

Over the years, the focus of research has shifted to the relationship between the topic and human health.

Today, research on the topic is multidisciplinary, involving researchers from a variety of fields.

The current state of research on the topic is characterized by a number of key findings.

These findings have led to a better understanding of the topic and its impact on human health.