

Competition Authority Annual Report, 1998

Contents

Summary	2
Human Resources	6
Enforcement	8
Notifications	20
Merger Referrals	28
Section 11 Studies	32
Liaison with other Competition Agencies	37
Competition Advocacy	39
Annex 1	42
Annex 2	43
Annex 3	44

Summary

Competition Authority Mission Statement

To promote greater competition in every sector of the Irish economy by tackling anti-competitive practices, thereby contributing to an improvement in economic welfare.

During the course of 1998 the activities of the Competition Authority were directed toward the achievement of the objectives set out in its mission statement, in accordance with the various functions assigned to it under the Competition Acts 1991 to 1996. These include:

- * Investigating and bringing court proceedings against alleged anti-competitive practices;
- * Taking decisions in respect of agreements notified by the parties involved;
- * Studying and analysing any practice or method of competition in any sector of the economy, either on its own initiative or in response to a request by the Tanaiste;
- * Reporting to the Tanaiste on any proposed mergers referred to the Authority in accordance with the provisions of the Mergers Act.

During 1998 the Authority undertook an extensive amount of work under each of these headings.

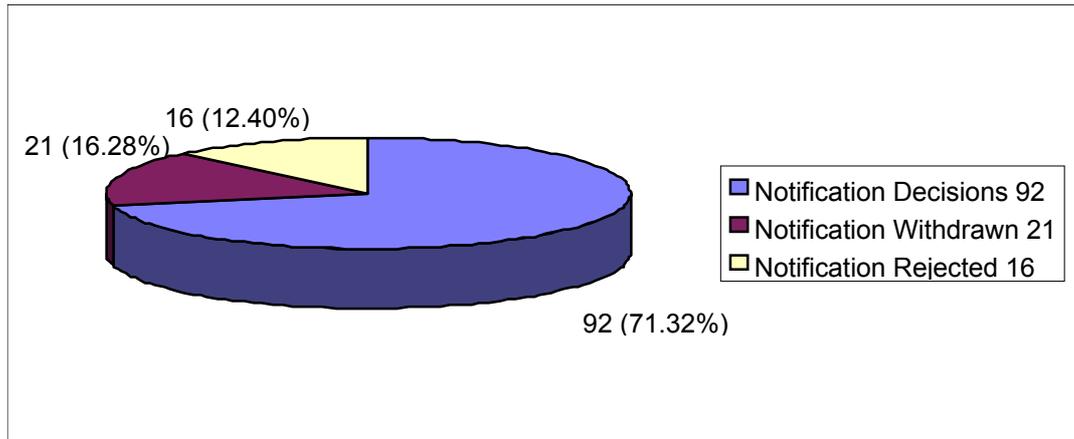
The Authority's determination to tackle anti-competitive practices in the economy was reflected in an increased level of enforcement activity during 1998 involving a number of investigations and legal actions against alleged anti-competitive practices. The Authority has stated on numerous occasions that it regards price fixing and other types of cartel behaviour as constituting serious breaches of competition law and investigations into allegations of price fixing are its top priority. There can be no justification for such practices. Price fixing and other cartel type practices are designed to increase prices for consumers and to impose unnecessary costs on the economy. The message to business is that such practices are simply not acceptable and in all cases where it has evidence of cartel type behaviour the Authority will bring proceedings.

The main developments on enforcement are summarised below.

- * Three cases brought by the Authority involving alleged price fixing were settled when the defendants furnished undertakings to the Court not to engage in certain practices.
- * The Authority also instituted proceedings against both the Licensed Vintners Association and the Vintners Federation of Ireland and a number of their members following an investigation carried out in the latter part of 1997 and early months of 1998. These cases were still waiting to be heard at the end of the year.
- * The Authority decided to bring proceedings against a number of suppliers and retailers alleging a breach of Section 4(1) following an investigation into the liquid milk trade during the second half of 1998. It also referred a file on the investigation to the Director of Public Prosecutions.
- * The Authority also decided to bring proceeding against Telecom Eireann alleging an abuse of dominant position contrary to Section 5.

The Authority also dealt with a large number of agreements notified to it by the parties involved under Section 7 of the Act. The Authority may certify that, in its opinion, agreements do not contravene the prohibition on anti-competitive arrangements in Section 4(1). Alternatively it may grant a licence to an agreement which contravenes Section 4(1) where the agreement is beneficial. Such decisions provide legal protection to firms engaged in legitimate business practices and provide guidance on the Authority's interpretation of Section 4(1). A total of 129 notified agreements were dealt with by the Authority during 1998 bringing the total number of notified agreements dealt with since October 1991 to 1249. The number of agreements awaiting a decision was reduced from 250 to 132 by year end.

TABLE 1: *Notifications dealt with in 1998*



Under Section 11 of the 1991 Act, the Authority may study, analyse and report on any aspect of competition in any sector of the economy either on its own initiative or in response to a request from the Tanaiste. The Authority regards this power as a very important one enabling it to examine arrangements which may restrict competition but which do not involve breaches of either Section 4 or 5 of the 1991 Act. These include statutory or other regulatory impediments to competition. During 1998 the Authority produced two Section 11 studies. The first of these involved the Authority's *Interim Report into the Retail Drinks Market* and this was the first own initiative Section 11 study undertaken by the Authority since the 1996 Act gave it such powers. The other Section 11 study considered agreements relating to the installation of mobile phone masts on Garda stations and was prepared at the request of the Tanaiste.

As part of its role of promoting competition, the Authority also seeks to increase the level of awareness among business and consumers about competition. Such measures are designed to encourage greater compliance by business with the provisions of the legislation and to foster an awareness among the public at large regarding the types of business practices which are not acceptable. To this end it published three discussion papers during 1998 while members and staff addressed a number of conferences on a variety of topics.

Under the provisions of the Mergers Act, the Minister for Enterprise, Trade and Employment may refer a proposed merger or take-over to the Authority to consider the likely effects on competition. Two such referrals were made during 1998 and the

Authority's reports were published in accordance with the provisions of the legislation.

In addition to discharging its statutory functions the Authority also provided technical assistance to the Lithuanian State Competition and Consumer Protection Office. Since the Authority was established in 1991 it has provided technical assistance to competition agencies in Hungary, Estonia, Lithuania and taken part in EU and OECD training seminars for officials in competition agencies in a number of Eastern European countries.

A further significant development in 1998 was the appointment by the Tanaiste of an additional member to the Authority. This brought the number of members up to the maximum level of five permanent members permitted under the legislation for the first time since the Authority was established in October 1991.

At the end of 1998 the Authority's web page went live and contains information about the Authority as well as the Authority's ten most recent decisions. The web page may be accessed at <http://www.irlgov.ie/compauth>.

Human Resources

Members of the Authority

Chairperson:	Professor Patrick McNutt
Director of Competition Enforcement	Mr. Patrick Massey
Member	Ms. Isolde Goggin
Member	Mr. William J. Prasifka
Member	Mr. Declan Purcell

Prof. Patrick McNutt, Oxford graduate, was previously Professor of Political Economy at the University of Ulster and Director of the Centre for Research in Economics & Law. From 1982 to 1994, he was lecturer in economics at the Department of Economics, UCG and has lectured in US, UK and New Zealand.

Patrick Massey is an economist and a graduate of Trinity College Dublin. He previously worked at NIHE Limerick, DKM Economic Consultants and the New Zealand Treasury. He has been a member of the Authority since October, 1991.

Isolde Goggin graduated from Trinity College Dublin in 1980. She spent the next nine years working for Telecom Eireann and completed an MBA in UCD in 1988. After working in Brussels from 1989 to 1991, she returned to Ireland to work as a Business Unit Manager with Ericsson Systems Expertise Ltd until her appointment to the Competition Authority in 1996.

William Prasifka is a graduate of Columbia University School of Law and is a member of the bar of the State of New York. Prior to joining the Authority he was a private legal consultant, first in New York and then in Dublin, advising in the areas of Irish, European and American competition law.

Declan Purcell was appointed to the Competition Authority in April, 1998 by the Tanaiste and Minister for Enterprise, Trade and Employment. He had previously

worked in the Department of Enterprise, Trade and Employment in a wide range of management positions; these included responsibility at various stages for policy development in relation to industry, human resource development and company law.

The staff of the Authority as at 31 December, 1998 consisted of one Assistant Principal Officer, two legal advisors, four economists, two Higher Executive Officers, two Executive Officers and eight Clerical Officer posts bringing its staff complement to nineteen. However, at the end of 1998 the Authority still had one vacancy for an economist and for most of the year had an unfilled executive officer vacancy. Full details of the Authority's staff structure are set out below.

Staff of the Competition Authority as at 31 December, 1998:

Assistant Principal Officer:	Ciaran Quigley, Secretary to the Authority;
Higher Executive Officers:	Ann Geraghty, Catherine Ryan;
Executive Officers:	Garrett Greene, Bernadette Byrne;
Clerical Officers:	Joan Sheahan, Declan Keegan, Ann O'Donnell, Margaret O'Rourke (job sharing), Michelle Ryan, Stephen Lalor, James Bourke, Audrey Lyons and Laraine Cooper (job sharing);
Legal Advisors:	Daragh Daly and Noreen Mackey;
Economists:	Una Brady, Tony Shortall, Patrick Kenny, Leonie Allen and one vacancy.

Enforcement

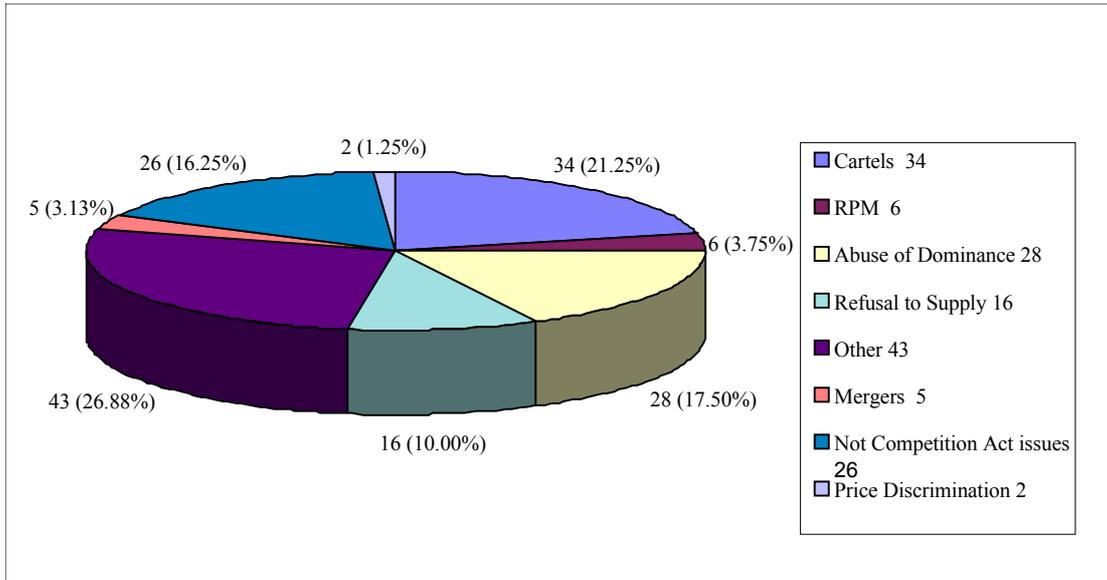
During the course of 1998 the Director of Competition Enforcement conducted a number of investigations into alleged serious breaches of the Acts. Three cases brought by the Authority were dealt with by the Courts during the course of the year, while the Authority issued proceedings in a further two cases and these had still to go to trial at the end of the year. In one case a file was submitted to the Director of Public Prosecutions with a recommendation that criminal proceedings should be instituted. The authority also decided to institute proceedings under Section 6, as amended in the same case. Several other investigations were still ongoing at the end of the year.

Authority officers conducted a total of 12 searches of premises in accordance with the provisions of Section 21 of the 1991 Act, as amended. In one instance a complaint was referred to the Gardai alleging that officers were obstructed in the conduct of a search contrary to the provisions of Section 21(3) of the 1991 Act, as amended. In addition, in the case of two investigations, summonses were issued compelling individuals to appear before the Authority and produce documents in accordance with paragraph 7 of the Schedule to the 1991 Act, as amended.

During the course of 1998 a total of 160 complaint files were opened by the Authority compared with 220 during 1997. Ten cases were opened on an own initiative basis the remaining 150 being opened on foot of complaints received. A further 116 files were carried over from 1997. A total of 181 cases were dealt with during the course of the year, compared with 156 in 1997. Thus by the end of the year there were 95 cases open.

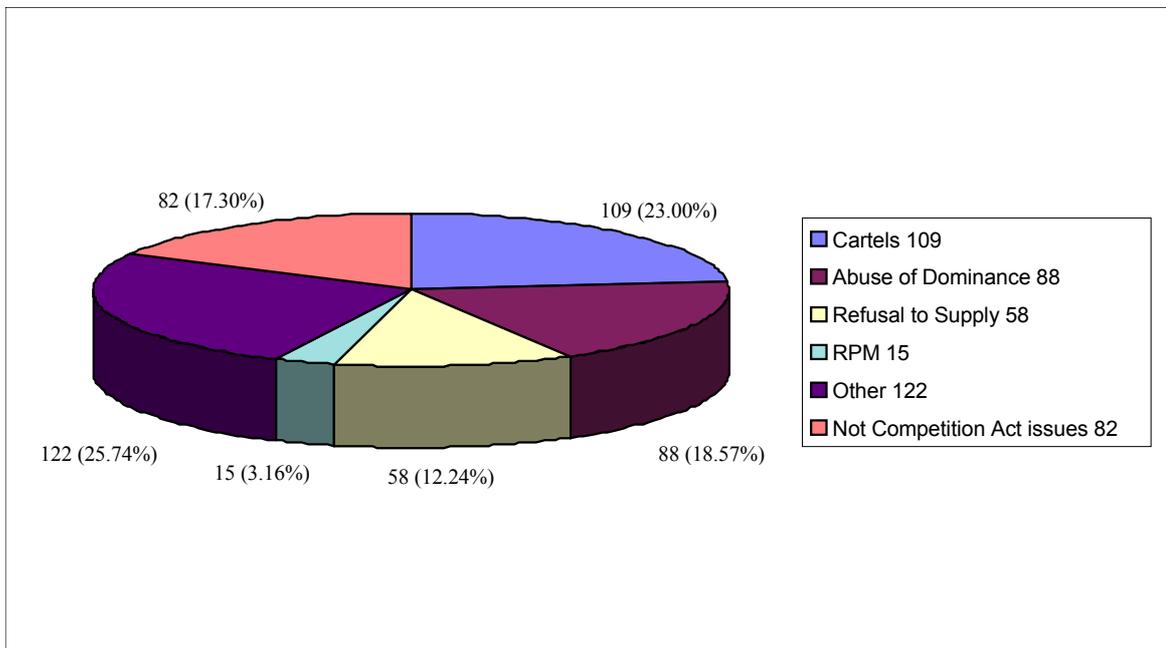
Details of the cases opened in 1998 are given in the chart below. The most common single complaint type involved alleged cartel activities. There were 34 such cases. A further 28 cases involved alleged abuse of a dominant position. In the vast majority of such cases the alleged offenders were State companies.

Table 2 -Breakdown of cases opened in 1998



Since the 1996 Act came into force the Authority has opened a total of 474 complaint files. Details of the nature of these cases are given in the chart below.

Table 3 - Details of complaint cases opened since 1996 Act



In the two and a half years since the passage of the 1996 Act, there have been 109 complaints alleging price fixing or other cartel type behaviour with a further 88 cases alleging abuse of a dominant position. The figures reflect the fact that in some instances there may be more than one complaint about the same behaviour. In addition it may be clear from even a preliminary investigation that the complaint is

based on nothing more than an unfounded suspicion. As against this, the reality is that cartel agreements are generally secretive in nature, particularly since the introduction of criminal penalties in the 1996 Act. There is therefore good reason to believe that the number of cases reported to the Authority represents only a proportion of the number of actual cases. Price fixing on this scale represents a serious cost to consumers and to the economy as a whole and illustrates clearly the need for vigorous and effective competition legislation.

Details of Individual Cases.

(I) Irish Travel Agents Association.

In April 1997, the Irish Travel Agents Association announced that its members would not sell Ryanair tickets unless that company reversed a decision to reduce the commission rates paid to agents. The Authority wrote to the ITAA indicating that, unless it reversed this decision, the Authority would institute proceedings under Section 6 of the 1991 Act, as amended. The ITAA indicated in a letter dated 11 April 1997, that it would reverse the decision and inform its members accordingly.

It subsequently emerged that a large number of ITAA members were not selling Ryanair tickets. Following further investigations by the Director, including a search of the ITAA offices on foot of a warrant issued under Section 21 of the Act, the Authority decided to institute proceedings against the ITAA and a number of individual travel agents alleging that they were parties to an agreement/decision or a concerted practice whereby they would not sell Ryanair tickets unless it paid them higher rates of commission for such sales and that such arrangements were in contravention of Section 4(1) of the 1991 Act. The Authority was concerned that any arrangement involving a boycott of a particular airline would reduce competition in the market and deny consumers access to low-price air fares and that it was in the public interest that such actions should be prevented.

On 27th July, 1998 the ITAA gave undertakings to the High Court that it would not organise meetings, circulate members or take any other actions to implement or organise a boycott or take any actions which were designed to encourage ITAA

members not to sell Ryanair products. The individual travel agents concerned also gave undertakings not to take any steps to boycott Ryanair products with a view to forcing Ryanair to increase commission on its airline tickets. The agents involved were Portlaoise Travel Limited, Club Travel Limited, Tony Bond Travel, Sunset Tours & Travel and Arrow Tours. The defendants also agreed to pay the Authority's legal costs.

(II) Irish Veterinary Union

Following the passage of the 1996 Act, the Minister referred to the Director of Enforcement a complaint from the ICMSA alleging that the Irish Veterinary Union (IVU) and its members were engaged in price fixing in respect of fees charged to farmers for carrying out compulsory TB tests. In April 1997 the Authority received a complaint from an individual farmer alleging that, when they had gone to a vet who was prepared to carry out TB testing for a lower rate than that charged by IVU members, local vets had refused to supply any other services.

Authority officers conducted an investigation into the allegations during the course of which they interviewed a number of individual farmers as well as representatives of the IFA and ICMSA. In February authorised officers from the Authority carried out a search of the IVU offices on foot of a warrant issued under Section 21 of the 1991 Act, as amended. During the course of the search they copied a number of documents. These included a newsletter issued to IVU members dated 29 March 1996 which included a list of '*recommended minimum fees*' and stated that it was '*vital that these minimum charges are strictly adhered to subject to your normal credit policies. There should be much greater contact with and co-operation between neighbouring practices in this regard. The IVU branch will facilitate this.*' In a subsequent newsletter dated 24 March 1997 reference was made to recommended minimum fees for other clinical services and it was stated that: '*It is stressed that these recommended fee guidelines are minimum standards only. However, it is the Union's view that no practice should be charging below these levels. Branches will be asked to do what they can to reproduce the co-operation seen in relation to TB fees in bringing fees up to these and improved levels. Obviously where your current fees are above this level you should continue charging as before.*'

The Authority brought court proceedings against the IVU under Section 6 of the 1991 Act, as amended. The proceedings were settled on 19th October 1998 after the IVU gave undertakings to the court that it would not recommend minimum fees to be charged by its members for carrying out annual testing for TB and Brucellosis and/or for providing clinical veterinary services. It further undertook to inform its members that :

1. any agreement regarding the charging of such minimum fees;
2. the operation of any recommended minimum fee system; and
3. the refusal to provide clinical services to farmers who refuse to pay such recommended fees

were contrary to Section 4 of the Competition Act, 1991. The IVU also agreed to pay the Authority's costs.

(III) IRHA

The Director began an investigation into a possible cartel in the road haulage industry in May 1997 following complaints that the Irish Road Haulage Association (IRHA) had written to various firms indicating that IRHA members had agreed minimum rates for the transport of freight to and from Dublin Port and would not provide services to any customer at rates below these levels. On foot of this Authority officers carried out a search of the IRHA offices on 22 May. In early June a large number of hauliers began blockading sections of Dublin Port. The Authority applied for an ex parte injunction against the IRHA and a number of individual hauliers on 6 June, because it believed that the blockade was intended to secure customers' agreement to the proposed rates. An injunction was granted and was subsequently lifted when the defendants gave undertakings not to engage in any further blockade, pending a full hearing of the case.

The Authority's case against the IRHA and the other defendants began in the High Court on 20 October 1998. The action was settled on 27th October 1998 when the defendants agreed to a Court declaration that they had engaged in a concerted practice to fix prices for road haulage services to and from Dublin Port between January and June of 1997. The defendants also gave undertakings to the Court that they would not

engage in price fixing contrary to Section 4(1) of the Competition Act and they would not engage in the blockading of Dublin Port and the surrounding areas in order to achieve any increase in prices for haulage services. The IRHA also agreed to an order for costs in favour of the Authority.

(IV) Other Proceedings Issued.

An investigation was launched into the pub trade following newspaper reports of increases in drink prices in October 1997, in the wake of the lifting of a Price Freeze Order by the Minister. Following certain inquiries, authorised officers conducted a search of the offices of the Vintners Federation of Ireland (VFI) in late November. Subsequent searches of the offices of the Licensed Vintners Association (LVA) and the Limerick City branch of the VFI were carried out in January and February 1998. As a result of the investigation, the Authority instituted separate proceedings against the VFI and the LVA and a number of individual publicans alleging that they had engaged in agreements/decisions and/or concerted practices to increase drink prices by a set amount in the Summer of 1996 and in October/November 1997 and to fix margins in respect of certain alcoholic beverages on an ongoing basis.

During 1997 the Director wrote to Avonmore Waterford Group plc (AWG) and a number of multiple and symbol groups regarding the liquid milk trade in Dublin. In early 1998 allegations that certain parties were involved in arrangements to fix the retail price of milk were made to the Authority. A follow-up investigation was launched. Between August and November 1998 a total of nine searches were carried out by authorised officers of a number of dairies and supermarket multiples. In one case the Authority referred to the Gardai allegations that officers were obstructed in the course of their search in breach of Section 21(3) of the 1991 Act. In addition to these searches the Authority interviewed a number of individuals engaged in milk supply and retailing.

In December the Authority decided to refer a number of matters to the Director of Public Prosecutions with a recommendation that criminal prosecutions be brought against a number of parties in respect of activities discovered during the course of the

investigation. The Authority also decided to bring civil proceedings under Section 6 of the 1991 Act, as amended, in respect of these and a number of other practices.

During the course of the investigation the Authority became aware of a proposal by AWG to acquire control of Athboy Co-Op. The Authority brought proceedings under Section 6 of the 1991 Act, as amended, seeking an interlocutory injunction to prevent the acquisition on 10th November, 1998. It was agreed by the defendants, AWG and Athboy, at the outset that there was a fair issue to be tried. However, the Court refused to grant the injunction on the basis of the balance of convenience. The full matter is yet to be heard.

The Authority received a number of complaints regarding the activities of Telecom Eireann during 1997 and 1998. Following investigations into a number of these cases, the Authority decided that in two instances there was, in its opinion, evidence of a possible abuse of a dominant position. The Authority decided to write informing Telecom that unless the practices concerned were terminated, it would institute proceedings under Section 6. The position had not been resolved by the end of the year. The Authority wrote in similar fashion to RTE following a complaint about its code for advertisements by commercial radio stations. Again the issue had not been resolved by year end.

(V) Other Cases.

In a number of other cases the Authority intervened and succeeded in resolving matters without having to institute court proceedings. A number of these cases are now outlined.

In February 1997 the Authority received a complaint alleging that the Association of Consulting Engineers in Ireland had written to Aer Rianta informing it that it would urge its members not to take part in a competitive tendering process in respect of a proposed terminal extension being undertaken by Aer Rianta in Dublin Airport. When contacted by the Authority the ACEI claimed that they felt that the competitive tendering process was in breach of Department of Finance guidelines. Following an investigation it appeared that, in fact, a number of firms had tendered for the project.

The Authority was nevertheless concerned that the ACEI should have threatened such action. The Authority wrote to the ACEI in January 1998 informing it that, in the Authority's view, such actions were in breach of the Competition Act and that it would bring proceedings in the event of any repetition.

A number of complaints were received during 1997 and early 1998 concerning the practices of the Examiner newspaper. In particular these concerned the fact that different retailers were supplied on different terms. During the course of inquiries it emerged that the Examiner had entered an agreement with certain trade associations whereby it agreed to supply members on certain terms, while other new retailers of the newspaper would be supplied on less favourable terms. The Authority raised the matter of this agreement with the Examiner. In December 1997 the Examiner stated that it had terminated this agreement in July 1997. In January 1998 the Authority wrote to the Examiner and pointed out that any agreements or understanding to apply dissimilar terms to equivalent transactions which placed some parties at a competitive disadvantage were in breach of the Acts.

As noted in last year's Annual Report, the Authority wrote to the three largest firms in the Outdoor Advertising business during 1997 concerning the terms of their standard rental agreements and in particular the restrictive termination provisions contained in such agreements. David Allen agreed to amend its agreements in September 1997. In early 1998 both More O'Ferrall and TDI/Metro agreed to similar amendments to their rental agreements with landlords of premises where advertising hoardings are situated.

In December 1997 the Department of Education complained to the Authority about possible collusive tendering on a building project financed by the Department. The Authority investigated a total of 32 other tenders for similar works paid for by the Department in previous years. On the basis of the information contained in the files it was not possible to take any further action. The Authority nevertheless believes that state agencies need to be alert to the dangers of collusive tendering and continues to encourage them to contact it in respect of any suspicious tender.

In May 1997 the Authority received a complaint about BGE in respect of the construction of a CHP power plant in an industrial premises in Dublin City. The Authority held discussions with BGE to clarify BGE's obligations under the Competition Acts. The Authority indicated that, in its view, BGE could not charge different prices to firms buying similar quantities of gas where those firms were in competition with one another, nor could it offer more favourable terms to a firm in which it had an interest where doing so placed a rival firm at a disadvantage. In addition the Authority indicated that in setting charges to competitors for the use of the interconnector and the gas pipeline, BGE could not set charges which were less favourable than those applying to itself. The Authority had ongoing discussions with BGE regarding the setting of access charges for use of the transmission network. During the course of 1998 the Authority commenced a second investigation into the prices and terms on which BGE supplied gas to certain of its industrial and commercial customers in order to ensure that BGE's terms were not discriminatory. This investigation was still ongoing at the end of the year.

In July 1997 the Director received a complaint about the proposed acquisition by Guinness Ireland Group (GIG) of the 70% shareholding in UBH which it did not already own. The issue was also the subject of a notification by GIG. The Authority dealt with the matter in the context of that notification and its decision is described elsewhere in this Report.

In August 1998 the Director received a complaint regarding a new 'Optisave Contract' which the ESB was offering to a number of its larger customers. From February 2000 such customers will be free to purchase electricity from other suppliers under the terms of an EU Directive introducing competition in the electricity industry. The agreements offered some price reductions to customers where a better load balance between night and day consumption of electricity is achieved. The Authority objected to a clause which provided that, following liberalisation of the market, a customer who was offered electricity on cheaper terms by a competing supplier would have been required to give details of such an offer to the ESB (while not naming the other supplier) and to allow it an opportunity to lower its prices. The customer would only have been allowed to switch to another supplier in the event that the ESB failed

to match or offer a lower price, in which case the customer would have been required to give the ESB six months notice of termination. The agreement also provided that, where the ESB reduced its prices in response to a competing offer, the customer could not submit a second offer for six months from the date the price was reduced.

Customers were also prevented from submitting alternative offers to the ESB in advance of the market being opened up to competition. When discussions with the ESB failed to resolve the issue, the Authority informed the ESB that it would institute proceedings if the ESB did not remove these provisions. The ESB subsequently agreed to delete the clause to which the Authority had objected and to amend the agreements to provide that either party may terminate on giving three months notice.

In February 1998 a UK firm complained to the Authority about the Football Association of Ireland. The firm wished to organise a 5 a side soccer tournaments and wished to have official referees for such games but claimed that the FAI was refusing to grant its permission. Following approaches by the Authority the FAI agreed to reconsider the firm's request. The Authority informed the company accordingly and the file was closed.

The FAI were the subject of another complaint received in February 1998. On this occasion parties interested in having a Scottish Football League club relocate to Dublin, while continuing to participate in the Scottish League, complained that the FAI were abusing a dominant position in seeking to prevent them doing so. The Authority decided to take no action on foot of the complaint on the basis that it was an issue which would be better dealt with under the freedom of establishment provisions of the Rome Treaty rather than under domestic competition law.

In November 1998 the Authority received a complaint concerning the ESB's contracts of employment for its staff wherein it was alleged that the ESB had introduced lengthy non-compete clauses into such contracts. However, the complainant indicated that it could recruit necessary staff elsewhere in the event that it wished to enter the electricity market in Ireland and so the Authority decided that no action was warranted.

In two cases of alleged refusal to supply there was some evidence to suggest that suppliers were refusing to supply products to particular retailers as a result of approaches by rival retailers. One of these involved animal feeds and another involved slimming products. The Authority wrote to the suppliers and to the retailers informing them that, in its view, for a supplier to acquiesce to such demands would constitute an arrangement which was in breach of the Acts. In both instances the suppliers concerned indicated that they would be prepared to supply the retailers who had made the complaints.

Two other instances where the Authority decided to take no action merit some mention. In one instance a magazine publisher complained that a major multiple was refusing to sell a particular issue of the magazine because it included special promotional material for a rival multiple retailer. In the Authority's view the multiple concerned was not in a dominant position in the relevant market and there was therefore no question of any breach of the Acts since they do not prohibit unilateral actions by non dominant firms. In another instance a firm complained about a central billing system being operated by a wholesaler which supplies grocery products to a leading symbol group. The firm had declined to participate in the central billing arrangement because it considered that the discount being sought for such participation were too high and was complaining that it was then excluded from supplying the shops which were participating in the central billing system. The Authority decided that the central billing arrangements were a legitimate means for the retailers to purchase collectively from suppliers and thereby seek to buy on better terms than would be possible were they to act on an individual basis and that the purpose of such arrangements was to enable the retailers to compete more effectively with multiple groups. It is essential to the success of such arrangements that the retailers purchase all their supplies through the central billing arrangements and as the supplier had declined to participate in such arrangements, the Authority concluded that further action was not justified.

In a large number of cases complainants failed to respond to Authority requests for further information to support the allegations made in the complaints received. In the majority of such cases the Authority has little option but to close the file for lack of

evidence. In the case of any complaint alleging a potentially serious breach of the Acts, the Authority makes every effort to obtain further information from the complainant rather than close the file.

(VI) Matters outside the scope of the Competition Acts

25 of the complaints received during 1998 were deemed to involve matters which did not come within the scope of the Competition Acts. Many of these related to statutory or regulatory impediments to competition. One case involved alleged arrangements to prevent exports of motor vehicles to another Member State and this matter was referred to DGIV of the European Commission as potentially coming within the scope of Article 85(1) of the Treaty of Rome. Some of these complaints involved the activities of public sector entities such as local authorities and VECs which were engaging in commercial activities and providing services in competition with private sector organisations. These complaints mainly related to the fact that such entities were exempt from VAT or were effectively in receipt of State subsidies in one form or another and that they therefore enjoyed an unfair competitive advantage. While such assistance may distort competition by conferring a competitive advantage on such entities, such measures do not constitute a breach of the Competition Acts since they do not involve agreements between undertakings or an abuse of a dominant position by an undertaking.

NOTIFICATIONS

The position at the start of 1998

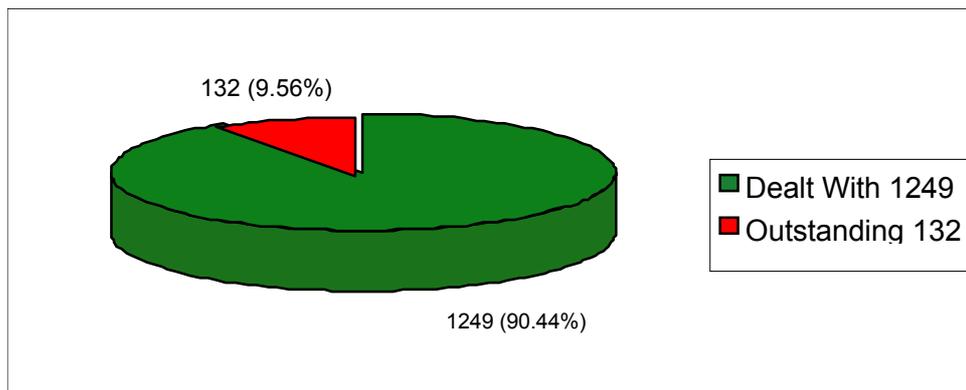
At the end of 1997, the Authority had dealt with 1120 out of 1370 agreements notified to it, leaving 250 notifications to be dealt with.

Notification of agreements in 1998

During the course of 1998, 11 notifications were made to the Authority. A list of these notifications is contained in Annex 2. Two of the notifications related to sale of business agreements and two were standard credit card affinity agreements. The

remaining seven notifications were a joint purchasing agreement, an exclusive distribution agreement, a franchise agreement, an industrial vehicle dealer agreement, a non-exclusive licensing agreement, a financial services agreement and an exchange of information agreement. So, by the end of 1998 a total of 1,381 notifications had been made to the Authority since the commencement of the Act.

TABLE 4: *Notifications: 1991 to 1998*



Many agreements which would otherwise be notifiable are now covered by the Authority's Category Certificate for Mergers and Category Certificate and Licence in respect of agreements between Suppliers and Resellers. Businesses do not need to notify arrangements which are covered by these decisions in order to benefit from them and so the Authority expects the current low rate of notifications to persist.

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Decisions taken by the Authority

The Authority took 43 decisions in 1998 and disposed of a total of 129 notifications during the year. There was a total of 21 withdrawals of notified agreements in 1997 and 16 agreements were rejected by the Authority as being incomplete. Many of the withdrawals followed enquiries made by the Authority of the notifying parties. The position at the end of 1998 is summarised below:

TABLE 5: *Number of notifications received, dealt with and on hands for each of the 8 years and a combined total of same.*

	1991	1992	1993	1994	1995	1996	1997	1998	Total
Notifications received by year	14	1159	67	34	38	35	23	11	1381
Notifications dealt with by end 1998	14	1062	62	29	32	23	18	9	1249
Notifications on hand	-	97	5	5	6	12	5	2	132

By the end of 1998, 90% of notifications that had been received by the Authority since the commencement of the Act had been disposed of. The main features of the more important decisions taken during 1998 are described below and a list of decisions taken and notifications disposed of is contained in Annex 3.

Dalgety Agriculture Ltd

Among the forty three decisions made by the Authority during 1998, a number related to intellectual property rights. In Dalgety Agriculture Ltd (Decisions 502 to 505) the Authority certified that the exclusive know-how licensing agreements and ancillary trade mark agreements did not contravene Section 4(1) of the Competition Act. In its assessment, the Authority argued that there should not be a presumption that intellectual property rights create market power and said that where market shares were relatively small and where there was effective competition, licensing simply allowed the parties to transfer their know-how. In its assessment of the conditions of competition the Authority drew particular attention to the fact that the licensee's market share was insignificant.

Bord Telecom Eireann/L M Ericsson Holdings Ltd

In its decision on the Bord Telecom Eireann/L M Ericsson Holdings Ltd notification (Decision No. 506) the Authority considered the economics of R & D (Research and Development) and intellectual property rights and said that human capital accumulation and R&D expenditure were directly linked with improvements in technology and with the introduction of new technologies. It acknowledged that while there might be some concerns that research co-operation between competitors might lead to collusive behaviour, this would not occur if the parties to the research joint venture were not competitors. It was the view of the Authority that such concerns were not an issue in this particular case and so it certified that, in its opinion, the agreement did not contravene Section 4(1) of the Act.

MBNA International Bank Ltd/Affinity Groups

In Decision no. 522 the Authority certified that the Affinity Agreement between MBNA International Bank Ltd and various Affinity Groups did not contravene Section 4(1) of the Act. Under the agreement Affinity groups sold the use of their databases to MBNA enabling MBNA to target current credit card holders and likely credit card holders with application forms for the MBNA credit card. In its assessment, the Authority considered that the relevant market, the issuance of credit cards and the provision of credit card services, was competitive. The Authority took the view that the market for issuing credit cards was opening up in the State and said that the emergence of MBNA in the State and the existence of other potential entrants, notably UK based, augured well for competition in this market.

Dekra Eireann Teoranta/Franchisees/Agents

Dekra Eireann Teoranta notified two sets of arrangements relating to the introduction of road-worthiness testing for all private cars more than four years old. Dekra was one of the bidders for the national car testing franchise. At the time of the decisions the contracts had not been awarded. The Department of the Environment and Local Government had issued a brief for consultants, which indicated that a single contract would be awarded to cover the whole country, for a ten-year period. The Department stated that the proposed levels of test and re-test fees would be a key criterion in the selection of a franchisee. After the contract had been awarded, any adjustment in the

level of fees would be subject to the approval of the Minister. The Authority wrote to the Department of the Environment and Local Government expressing its concern that the proposed arrangements would seriously restrict and distort competition in the market for the supply of vehicle testing services. The selected franchisee would not be exposed to any form of competition for ten years. During that period customers would be unable to select their preferred supplier, and prices would be fixed so that any cost reductions through improved technology or process efficiency would not be passed on to consumers. The Department replied that they were satisfied that the arrangements would protect the interests of the consumer. The franchisee would be appointed on a competitive basis. The Department was satisfied that it did not come within the ambit of the Competition Acts, as far as the proposed car testing scheme was concerned. The Authority, in Decision 516, refused a certificate or licence to one set of arrangements notified by Dekra. It licensed the other under its Category Licence for Franchise Agreements (Decision No. 372).

Guinness Ireland Group Limited/United Beverages Holdings Ltd.

On 4 September 1997 Guinness Ireland Group (GIG) notified to the Authority the arrangement whereby it would acquire 69.24% of the total issued share capital of United Beverages Holdings (UBH), bringing its total shareholding in the company to 100%, with a request for a certificate. This request was subsequently amended to one for a certificate or, in the event of a refusal by the Authority to issue a certificate, a licence. On 17 June 1998 the Authority, as decision no. 512, granted a licence to the agreement, subject to certain conditions. These conditions were that GIG would, not later than 15 January 1999, reduce its shareholding in Cantrell & Cochrane (“C&C”) to below 10%; relinquish all rights to representation on the board of C&C; and waive its first option on C&C shares. The decision was subsequently appealed by Murphy Brewery Ireland Limited and by M & J Gleeson & Co., Comans Wholesale Limited and J. Donohoe Limited - the first time that an appeal had been lodged against an Authority decision. The same parties also applied for judicial review of the Authority’s decision. The combined cases were due to be heard in January 1999.

Category Certificate/Licence in respect of agreements between Suppliers and Resellers.

Since the coming into effect of the Competition Act in October, 1991 a large number of agreements involving exclusive and non-exclusive distribution, exclusive purchasing, franchising and selective distribution have been notified to the Authority and many of these agreements were dealt with through a combination of category licences and individual certificates and licences. With the imminent expiration at the end of 1998 of the Authority's existing Category Licence for Exclusive Distribution the Authority reviewed its existing category licences and individual certificates and licences for non-price vertical restraints. The Authority concluded that, in certain circumstances, non-price vertical restraints were not anti-competitive and identified a category of such agreements which, in its opinion, did not contravene Section 4(1) of the Act. The Authority also identified a second category of such agreements which could also normally be regarded as satisfying the conditions for the grant of a licence laid down in Section 4(2).

Consequently, the Authority decided, as Decision No. 528, to publish a new Category Certificate/Licence in respect of agreements between suppliers and resellers. The decision applies to vertical agreements between undertakings which operate at different stages in the supply chain in respect of the same product or service whereby one party supplies the product or service to another party for resale. It therefore includes, for example, agreements between manufacturers, importers and suppliers on the one hand and distributors, wholesalers and retailers on the other. The vertical agreements concerned include exclusive distribution, exclusive purchasing, franchising and, for the first time, selective and non-selective distribution.

The Authority had been aware for some time that the existing category licences were unsuited to the task of ensuring legal certainty of contractual relations in an economic context where distribution structures and techniques were changing rapidly. The Authority considered that the new Category Certificate/Licence was more in tune with modern economic analysis of business behaviour, that it delivered a greater

degree of legal certainty and that, in many respects, it reflected an attempt by the Authority to respond to the new environment of business agreements.

In preparing the Category Certificate/Licence in respect of agreements between suppliers and resellers, the Authority published a draft of the document and organised an open seminar in September at which the Authority explained its thinking behind the published draft and listened to the views of business and the legal profession. The Decision was published on the 11th of December, 1998 and by the end of the year 41 notified agreements had been dealt with under the certificate/licence.

Withdrawals and Rejections of Notifications

During 1998 a total of 21 notifications were withdrawn, most of them following enquiries by the Authority. They comprised notifications that were withdrawn by the parties concerned where the Authority had sought further information on or clarification of the agreements or where the agreements were said to have been terminated . A list of all withdrawals is contained in Annex 3.

The Authority rejected a total of 16 notifications during the year mostly on the grounds that, despite a number of requests, there was insufficient information submitted on which to take a decision or where on examination it was found that the agreements were not notifiable under the legislation. The full list of notifications rejected during 1998 is listed in Appendix 3 also.

Merger Referrals

The Coillte Teoranta/Balcas Limited Merger Proposal

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On 27 January, 1998, the Tanaiste and Minister for Enterprise, Trade and Employment referred to the Competition Authority the proposed acquisition of the majority of the issued share capital of Balcas Limited by Coillte Teoranta in accordance with Section 7 of the Mergers and Take-overs (Control) Acts, 1978 to 1996. The Authority transmitted its report to the Tanaiste on 6 March, 1998. Mr. Prasifka, Mr. Massey and Ms. Goggin were responsible for the preparation of the Authority's report and the Chairman's minority report was published as an annex to the Authority's report.

The Authority stated in its report that by virtue of its 97% market share of roundwood sales in the State in 1996, Coillte enjoyed a dominant position in that market. The Authority said that Coillte's dominance was sustained not only by its near monopoly over roundwood sales but also by three significant barriers to entry to the market:

1. the phytosanitary ban on imports of raw, unbarked timber into the State,
2. high transport costs of forestry products relative to product value, and
3. the long lead time between tree planting and harvesting.

The Authority contended that because of these three barriers to entry, Coillte would continue to have a dominant position in the roundwood market in the State for the foreseeable future. The Authority considered that the critical issue raised by the proposed take-over of Balcas by Coillte was the effect of the take-over on the dominance of Coillte in the roundwood market and took the view that a strengthening or increase in that dominance would be sufficient justification for blocking the take-over. In coming to this view the Authority relied on the EC Merger Regulation (4064/89) which provides that a merger which "creates or strengthens a dominant position as a result of which effective competition would be significantly impeded is incompatible with the common market" and should be prevented by the Commission.

The Authority considered also that Balcas had a competitive significance greater than its market share because of its ability to act independently of Coillte in that it alone had significant alternative sources of supply. As a result Balcas was capable of undercutting Coillte's prices by bringing cheaper product into the State. It was the Authority's view therefore that as the elimination of Balcas as an independent actor would strengthen the dominance of Coillte by allowing it (Coillte) to sustain higher prices for its sales, the take-over was likely to restrict competition in the State and operate against the common good. It also considered that there were other restrictions on competition likely to occur as a result of the proposed take-over. After the take-over, Coillte would, according to the Authority, be both the dominant/sole supplier to its customers in the State as well as a competitor. These circumstances, the Authority felt, were likely to increase the ability of Coillte to abuse its dominant position in the State and restrict competition.

In the Authority's opinion, the proposed acquisition of the majority of the issued share capital of Balcas by Coillte was likely to restrict competition in the State and was likely to operate against the common good. The Authority therefore recommended that the transaction not be allowed to proceed.

On 9th April, 1998 the Tanaiste and Minister for Enterprise, Trade and Employment announced that she had accepted the majority report of the Competition Authority and had signed an Order under Section 9 of the Mergers, Take-overs and Monopolies (Control) Act, 1978 prohibiting the take-over. The Tanaiste published the Authority's report with commercially sensitive information omitted (Pn 5168).

The Ladbroke (Ireland) Ltd/Coral Leisure (Ireland) Ltd Merger Proposal

On 1st April, 1998, the Tanaiste and Minister for Enterprise, Trade and Employment referred to the Competition Authority, in accordance with Section 7(b) of the Mergers and Take-overs (Control) Acts, 1978 to 1996, the proposed acquisition of Coral Leisure (Ireland) Limited by Ladbroke Limited. The Authority transmitted its report on 7 May, 1998. The investigation of the proposed merger was carried out by the Chairperson, Ms. Goggin and Mr. Prasifka.

The Authority considered that the proposed transaction would have little or no impact on competition in the Irish off-course betting market. The market, pre -merger, was in the view of the Authority either not concentrated or moderately concentrated and the post-merger increase in concentration would be relatively small. The Authority stated that the market was and would remain, after the completion of the merger, competitive with ease of entry conditions.

The Authority was also of the view that no market power would accrue to the merged entity in the off-course market because of the presence of new products and the presence of both price and non-price competition in the market. Ease of entry and the proliferation of smaller independent bookmakers throughout the country would, according to the Authority, ensure a degree of contestability in the market. The Authority also pointed out that the provision of S.I.S. (satellite information services), for example, would continue to facilitate entry into the market. It was the Authority's view that as the nature of the Irish market was conducive to ease of entry and a guarantor of continued competition in the market the proposed transaction was unlikely to prevent or restrict competition in the State.

The Authority stated that it did not believe that the proposed merger was likely to have any adverse effect on continuity of supplies or services, level of employment, regional development, rationalisation of operations in the interests of greater efficiency, research and development, increased production, shareholders and partners, employees or consumers.

In the Authority's opinion, the proposed acquisition of the entire issued share capital of Coral by Ladbrokes was unlikely to prevent or restrict competition or restrain trade and was unlikely to operate against the common good. The Authority therefore recommended that the proposed transaction be allowed to proceed without conditions.

On 3rd July, 1998, the Tanaiste announced that she had accepted the Competition Authority's conclusion that the merger be allowed to proceed and had therefore approved the merger. The Tanaiste published the Authority's report with confidential material omitted (Pn 5795).

Section 11 Studies

Report of investigation of the Eircell Proposal to locate antennas at Garda sites/masts.

On 14th July, 1998, the Tanaiste and Minister for Enterprise, Trade and Employment requested the Authority, under Section 11 of the Competition Act, 1991, to undertake a study and analysis into a proposal submitted by Eircell whereby it would locate mobile phone antennas at 260 Garda sites/masts around the country for a period of 15 years.

The Authority's terms of reference were that arising from the Eircell proposal it undertook to study and analyse the competition issues concerning the proposal and the practices to be adopted in granting competing utility operators access to State owned facilities.

Eircell had proposed that it would locate mobile phone antennas at 260 Garda sites/masts around the country for a period of 15 years. 223 of these sites were included in an agreement which was reached with Esat Digifone in early 1997 allowing it access to 418 Garda station sites.

The Authority reported to the Tanaiste on 28th August 1998. The report concluded that the Garda masts were not an essential facility to enter the mobile telephony market. Accordingly, the essential facilities doctrine, which provides for the fair and non-discriminatory access of all competitors to the essential facility, should not be applied to the Garda masts. The report recommended that, for a short period, the Garda authorities should not enter into any agreement which had the effect of foreclosing access to the Garda sites to a third operator. The Authority stated that the Eircell proposal would result in the total capacity of the masts being exhausted by Eircell and Esat thus depriving any other operator of equal access. The period, according to the Authority, needed to be no longer than 6 months during the course of which the third operator should be given an opportunity to form its own proposal for entry to the Garda sites. This, said the Authority, would facilitate the third operator

entry into the mobile phone market. The Authority stated that after the six month period the Garda authorities should be free to pursue whatever commercial arrangements they wanted with any provider of mobile telephony services.

The Authority in its report summarised its views in general on the practice to be adopted in granting competing utility operator access to State owned facilities. The Authority's views were as follows:-

1. State organisations should be free to enter into commercial transactions with any or all entrants subject to the general principles of competition law.
2. State organisations should award access to their facilities to the entrant who offers the most advantageous terms and therefore those organisations should encourage competitive bidding for access to facilities.
3. State organisations should avoid entering into any arrangement with an entrant which would have the effect of restricting its ability to fully exploit the commercial potential of its facilities. It should not therefore, for example, enter into any agreement that prevented it from selling available capacity to any potential bidder or prevented it from making that potential facility available.

The Tanaiste published the Authority's report on 26th November, 1998 with commercially sensitive information omitted.

Interim Drinks Study

On 30 January, 1997 the Competition Authority decided to invoke its powers under the Competition (Amendment) Act, 1996, to undertake, on its own initiative, a study of the retail drinks market. The terms of reference were to undertake a study and analysis of the liquor licensing laws and other barriers to entry, and their impact on competition in the retail drinks market within the State. The terms of reference were framed to focus on structural barriers generally beyond the scope of Sections 4 and 5 of the Competition Act, 1991.

The Authority published its terms of reference and invited submissions from interested parties by 7 March, 1997. The Authority received 26 submissions and held 19 meetings with interested parties. In addition, the Authority received information from the Office of the Director of Consumer Affairs, the Revenue Commissioners and Bord Failte. The Central Statistics Office provided the Authority and its consultants with access to the latest available data relevant to the retail drinks market.

On 23rd September, 1998, the Authority published an interim study in which it recommended that the licensing laws be amended to provide for more liberal rules of entry. In particular, the Authority called for the repeal of the prohibition on the granting of new licences and for the repeal of other provision in the licensing laws which prohibit entry on competition grounds.

The Authority recommended the retention of those restrictions on entry which relate to qualitative criteria directly relevant to the social dimension of the sale of alcohol such as the suitability of the applicant or premises, compliance with fire and safety and health regulations and with all applicable planning provisions.

In its study, the Authority found that the liquor licensing laws as constituted were a formidable barrier to entry into the retail drinks market. With limited exceptions, new licences could not be issued and entry was practical in most cases only by purchasing an existing licence which in itself was geographically constrained. In this way, the Authority contended that market entry and exit were linked.

The Authority found substantial empirical evidence of the distorting effects of the licensing laws on competition such as:-

- the persistence of a significant price differential (6 - 10%) for a range of alcoholic products (stout, spirits, lager, foreign lager) for on-sales between Dublin and non-Dublin areas controlling for differences in consumer expenditure patterns across regions,
- the non-existence of a stable price differential for alcoholic products for off-sales between Dublin and non-Dublin areas and the existence of cheaper prices for the same in Dublin, and
- the non-existence of any significant price differential for fast food meals products between Dublin and non-Dublin areas.

The Authority also found that Dublin had higher demand for alcohol due to disproportionate increases in population, income and demographic mix and that the demand for licences did not keep pace with these increases in demand.

The Authority concluded that all of the restrictions inherent in the system of licensing pubs made it impossible for the market to function efficiently and in the best interests of the consumer. It said that any serious attempt to reform the licensing laws had to address the fundamental problems outlined in its report and recommended the reconstitution of the licensing laws with the following features:

- the repeal of the prohibition on the granting of new licences as contained in Section 2 of the Licensing (Ireland) Act, 1902;
- the repeal of any provisions protecting existing establishments from market entry (such as the “One Mile Rule” as contained in Section 20 of the Intoxicating Liquor Act, 1962);
- the repeal of any provisions granting existing establishments the right to object to market entry based on the effect of such entry on competitors;

- the retention of only those legal barriers which relate to qualitative criteria directly relevant to the social dimension of the sale of alcohol (suitability of applicant and premises, compliance with fire, health and safety and planning provisions).

Liaison with other Competition Agencies

During 1998 the Competition Authority continued to develop good working links with similar and related organisations in other countries which facilitated the sharing of expertise, and to represent Ireland at EU and OECD level.

In May, the Authority hosted a visit of three representatives of the Lithuanian State Competition and Consumer Protection Office under the aegis of the EU's PHARE programme. A schedule of lectures and briefings on aspects of the Authority's work was organised for the Lithuanian delegation.

The Authority was represented at the TAIEX Working Group in Vilnius, Lithuania in September. The working group considered Block Exemptions under Article 85(3) of the Treaty of Rome and their effect on national law. Mr. Prasifka, who represented the Authority, outlined the approach taken by the Irish Competition Authority to vertical agreements, namely its consideration, at that time, of the publication of a category certificate and licence on vertical agreements. The Authority subsequently published its category certificate and licence later in the year as reported elsewhere in this report.

In October Ms. Leena Passi, a senior research officer from the Office of Free Competition in Finland commenced a three month placement with the Authority under the EU's Karolus Programme.

European Union

The Advisory Committee on Restrictive Practices and Dominant Positions is the body which the EU Commission is required to consult before enforcing EU competition policy in relation to enterprises. Articles 85 and 86 of the Treaty of Rome set down the basic principles of EU policy in this regard which the European Commission is responsible for enforcing and under Regulation 17/62 the Commission is required to consult with the Advisory Committee. The Committee consists of a representative from each Member State and Ireland is represented by either the Authority or the

Department of Enterprise, Trade and Employment, depending on the nature of the case before the Committee. The Chairperson attended the bi-annual meetings of directors general of national competition authorities and acted as Rapporteur for the Opinion of the Advisory Committee in case no. IV/36.010/F3 - AAMS.

OECD

The Authority is represented at the OECD Committee on Competition Law and Policy (CLP) which serves as a continuing forum for discussion by national competition authorities of member States and observer States regarding measures to control restrictive business practices and anti-competitive behaviour. Among the topics discussed in at CLP meetings in 1998 were interaction between competition and regulation in the insurance sector, regulatory reform in the U.S., public procurement and collusive tendering, competition and regulation in the broadcasting sector and horizontal boycott agreements.

Competition Advocacy

Discussion Papers

The Competition Authority believes that it is important to increase public awareness of the benefits of competition and the need to eliminate anti-competitive behaviour. To this end, during 1998, the Authority published its interim study into the drinks industry (referred to earlier under Section 11 Studies), published a further three discussion papers in its series, delivered a number of papers on competition related issues and participated in a number of media interviews.

Discussion Paper No. 4 - contained an examination of the economics of vertical restraints and considered the implications of their treatment under competition law. The author of the paper was Mr. Patrick Massey, Director of Competition Enforcement at the Authority and the views expressed in the paper did not necessarily reflect the views of the Authority.

Discussion Paper No. 5 contained a submission made by the Authority in response to a request for submissions by the Department of Public Enterprise in respect of its proposed directives on third party access to the natural gas transmission network. The paper was prepared on behalf of the Authority by Mr. Patrick Massey, Director of Competition Enforcement and Mr. Tony Shortall, an economist with the Authority. The paper examined the main economic characteristics of the gas industry and considered the potential for competition in the market. It considered also the setting of access charges for use of the transmission system and analysed the Department of Public Enterprise proposals before concluding with various recommendations.

Discussion Paper No. 6 was published by the Authority on 1st December, 1998 and was entitled "Solving Dublin Taxi Problems". The paper was written by the Chairperson of the Authority, Prof. Patrick McNutt and by Mr. Patrick Kenny, an economist with the Authority and the views put forward in the paper were those of the authors. In the paper, the authors expressed the view that Dublin's taxi problem could

not be solved unless the transferability of taxi licences brought about by the Road Traffic (Public Service Vehicles)(Licensing) Regulations, 1978 was removed. They said also that the taxi problem in Dublin was characterised by a secondary market for taxi plates and that as demand for taxis in the city progressively increased, profits accruing from owning a taxi plate increased accordingly thereby driving up the price of taxi plates on the secondary market.

Conferences Addressed

Prof. Patrick McNutt

27 February, 1998 Strathclyde University Business School - "Efficiency in Competition Policy: 'Expendible' Competitors and Making Defendants Whole".

27 March, 1998 ICEL Seminar on Competition Policy, Dublin - "The Landscape of Public Enforcement: Some Myths and Realities".

Mr. Massey

13 October, 1998 Competition Press Seminar - Comments on Competition and Merger Review Group Proposals.

Mr. Massey also delivered one off lectures to students in University of Limerick and Trinity College Dublin.

Mr. Massey & Mr. Shortall

22 January, 1998 Department of Public Enterprise forum on the future of the electricity industry

17 October, 1998 Dublin Economics Workshop Conference, Kenmare - "Competition and Regulation in Public Utility Companies".

Ms. Goggin

16 June, 1998 2nd Irish Annual Competition Law Review - “The operation of the 1996 Competition (Amendment) Act - Two years on”.

Mr. Prasifka

16 April, 1998 The Liberal Institute, Prague - “An Economic Critique of European Competition Policy”.

Mr. Kenny

17 October, 1998 Dublin Economics Workshop Conference, Kenmare - “Solving Dublin Taxi Problems, Urban-Sharecroppers v Rentseekers”.

Prof. Patrick McNutt, Chairperson

Patrick Massey, Director of Competition Enforcement

Isolde Goggin, Member

William Prasifka, Member

Declan Purcell, Member

29th April, 1999.

Annex 1

Freedom of Information Act, 1997.

On 21st April, 1998, the Freedom of Information Act, 1997 came into effect. The Act establishes three new statutory rights:

- a legal right for each person to access information held by public bodies:
- a legal right for each person to have official information relating to him/herself amended where it is incomplete, incorrect or misleading, and
- a legal right to obtain reasons for decisions affecting oneself.

The Act asserts the right of members of the public to obtain access to official information to the greatest extent possible consistent with the public interest and the right of privacy of individuals. In accordance with Sections 15 and 16 of the Act, the Authority published its Guide to the functions of and records held by the Authority. The purpose of the guide is to facilitate access to official information held by the Authority by outlining the structure and functions of the Authority, details of the services it provides and how they may be availed of, information on classes of records it holds and information on how to make a request under the Freedom of Information Act. The guide also sets out the rules, procedures, practices, guidelines and precedents used by the Authority.

By the end of 1998, the Authority had received 5 requests for information under the Act. Two of the requests were part-granted, two were refused and one was withdrawn. The Authority also received one request for an internal review of an earlier decision taken by it under the FoI Act. None of the Authority's decisions had been appealed to the Information Commissioner by the end of the year. Of the five requests made to the Authority, four were by the business community and one was made by a journalist.

Annex 2

Notifications made in 1998

<u>Notification No</u>	<u>Parties</u>
CA/1/98	MBNA International Bank Limited/Affinity Groups. Standard Credit Card Affinity Agreement
CA/2/98	MBNA International Bank Limited/AGF Irish Life Holdings Plc. Standard Credit Card Affinity Agreement
CA/3/98	DIT/Other Regional Technical Colleges. Joint Purchasing Agreement
CA/4/98	Iveco Ford Truck Ltd/Truck Dealers International(TDI). Exclusive Distribution
CA/5/98	Dekra Eireann Teoranta/Sub Franchisees. Franchise Agreement
CA/6/98	Titan Wheel International/Tracktech Inc. Sale of Business (Asset Purchase Agreement)
CA/7/98	Toyota Ireland/Motor Dealers. Industrial Vehicle Dealer Agreement.
CA/8/98	Esat Telecommunications Ltd/Esat Telecom Group/CIE/Iarnrod Eireann. Non exclusive licence to lay cables
CA/9/98	Fiat Auto Financial Services Ltd/Bank of Ireland Finance Ltd. Financial Services Agreement
CA/10/98	Animal & Plant Health Association/ & Others. Exchange of Information Agreement
CA/11/98	Aer Lingus Group Plc/FLS Industries A/S/Team Aer Lingus Ltd. Sale of business and ancillary maintenance agreements.

Annex 3

Decisions and cases dealt with in 1998

I. Individual Decisions

<u>Decision No.</u>	<u>Notification No.</u>	<u>Parties</u>	<u>Decision</u>
372	CA/5/98	Dekra Eireann Teoranta/Sub Franchisees	Licence
	CA/109/92E	Conoco Ireland Limited/Independent Dealers	Licence
489	CA/5/97	Tedcastle Oil Products Ltd/Thomas and Kathleen Higgins	Certificate
	CA/29/96	Hays Plc./William and Barbara Fox Mills.	Certificate
	CA/4/97	Liam Van Veen/Sean Van Veen	Certificate
	CA/14/97	Aqua-Trans International Limited/Bowland Limited	Certificate
	CA/6/98	Titan Wheel International/Tracktech Incorporated	Certificate
490	CA/15/97	Statoil Ireland Limited/Clare Oil Company Limited	Certificate
491	CA/16/97	Statoil Ireland Limited/Rabbitt Oil Company Limited	Certificate
492	CA/18/97	Statoil Ireland Limited/Shreelawn Oil Company Limited	Certificate
493	CA/22/97	Statoil Ireland Limited/Baldoyle Oil Company Limited	Certificate
494	CA/919/92E	Cannon Hygiene Products Ltd/Initial Services Limited	Certificate
495	CA/30/93	Irish Insurance Federation/Members	Refusal
496	CA/801/92E	Omintron Ltd/Cryptovision A/S/Tandberg A/S	Certificate
497	CA/31/96	ACC Bank/ Leinster Branch IRFU	Certificate
498	CA/32/96	Delphi Software Ltd/Sub-Contractors	Certificate

499	CA/33/96	Delphi Software Ltd/Clients	Certificate
500	CA/1137/92EX	Snowcream Limited/Milkmen	Certificate
501	CA/10/97	TDI Metro Ltd/Metro Poster Advertising Ltd	Certificate
502	CA/516/92E	Dalgety Agriculture Ltd 1/Spillers Ltd; T Hill & Co. Ltd	Certificate
503	CA/517/92E	Dalgety Agriculture Ltd 2/Spillers Ltd; T Hill & Co. Ltd	Certificate
504	CA/518/92E	Dalgety Agriculture Ltd/Spillers Ltd; E Morris & Son	Certificate
505	CA/519/92E	Dalgety Agriculture Ltd/Spiller Ltd; E Morris & Son	Certificate
506	CA/683/92E	Bord Telecom Eireann/LM Ericsson Holdings Limited	Certificate
507	CA/14/96	Burmah Castrol (Ireland) Ltd/The Hirer	Certificate
	CA/14/96	Burmah Castrol (Ireland) Ltd/The Hirer	Certificate
508	CA/17/96	Coras Iompair Eireann/TDI Metro Ltd,	Certificate
509	CA/23/97	TDI Metro Ltd/ Roadshow Advertising Ltd	Certificate
510	CA/3/98	Dublin Institute of Technology/Other Regional Technical Colleges	Certificate
511	CA/8/97	First Rate Bureau de Change/The Minister for the Marine	Certificate
513	CA/268/92E	Lee Strand Co Operative Creamery/Distributors	Certificate
514	CA/383/92E	Minister for Tourism, Transport and Communication/Dublin Airport Restaurants	Certificate
515	CA/34/95	Bride and Blackwater Valley co-operative Dairy Society	Certificate
516	CA/20/97	Dekra Eireann Teoranta/Sub Franchisees	Refusal

517	CA/13/97	Irish Farmhouse Holiday Association/Members	Certificate
518	CA/642/92E	Donnelly Doyle Flynn Hanlon and Brannelly/Eastcastle/JWT/WPP	Certificate
519	CA/6/95	Stellar International Ltd/ Dontinga Investments BV/Celtic International Insurance Company Ltd	Certificate
520	CA/826/92E	Institution of Chartered Accountants in Ireland/Bye-Laws	Certificate
521	CA/9/98	Fiat Auto Finance Services Limited/Bank of Ireland Finance Limited	Certificate
522	CA/1/98	MBNA International Bank Ltd (Credit Card Affinity Agreement)	Certificate
523	CA/2/98	MBNA International Bank Ltd/AGF Irish Life Holdings plc	Certificate
524	CA/744/92E	Poldy's Fresh Foods/Birds Eye Walls Ltd	Certificate
525	CA/962/92E	Irish Life Assurance/Irish Intercontinental Bank	Certificate
526	CA/224/92E	Nitrigin Eireann Teoranta/Irish Fertiliser Industries	Certificate
527	CA/824/92E	Coillte Teoranta/Sawmills	Refusal
528	CA/81/92E	Rover Ireland Ltd/Dealers	Certificate
	CA/192/92E	Motor Import Ltd/Dealers	Certificate
	CA/227/92E	Seat/Hispano Cars Ltd	Certificate
	CA/317/92E	Volvo Trucks Ltd (GB) Ltd/Irish Commercial Sales Ltd.	Certificate
	CA/624/92E	Automobiles Peugeot/Gowan Distributors	Certificate
	CA/637/92E	Sony (UK) Ltd/Dealers	Certificate
	CA/638/92E	Universal Honda Ltd/Dealers	Certificate
	CA/639/92E	Universal Honda Ltd/Honda Motor Ltd.	Certificate

CA/640/92E	Gowan Distributors ltd/Dealers	Certificate
CA/681/92E	Sony (UK) Ltd/Sony Centre	Certificate
CA/699/92E	Gallic Distributors Ltd/Automobile Citroen S.A./Dealers	Certificate
CA/700/92E	Gallic Distributors Ltd/Automobile Citroen S.A.	Certificate
CA/714/92E	General Motors Distribution Ireland Ltd/(Sales and Service Agreement 1992	Certificate
CA/780/92E	MMC Commercials Ltd (Mitsubishi Cars)	Certificate
CA/781/92E	MMC Commercials Ltd (Mitsubishi Trucks)	Certificate
CA/803/92E	Heron Suzuki (Ireland) Ltd/Dealers	Certificate
CA/803/92E	Heron Suzuki (Ireland) Ltd/Dealers	Certificate
CA/968/92E	Lanes Group Ltd/Dipetane International	Certificate
CA/1024/92E	Daimler Benz A.G/Motor Distributors Ltd	Certificate
CA/1025/92E	Mazda Motor Corporation/Motor Distributors Ltd	Certificate
CA/1026/92E	Volkswagenwerk AG/Motor Distributors Ltd	Certificate
CA/1027/92E	Mazda Motor Corporation/Motor Distributors Ltd	Certificate
CA/1028/92E	Motor Distributors Ltd (Mazda/Xedos)	Certificate
CA/1029/92E	Motor Distributors Ltd (Mazda Dealers)	Certificate
CA/1030/92E	Motor Distributors Ltd /Volkswagenwerk AG/Audi Dealers	Certificate
CA/1031/92E	Motor Distributors Ltd (Mercedes Benz)	Certificate
CA/1/94	Chanel Ltd/Daelgate Ltd/Retailers	Certificate

	CA/13/94	Esturary Fuel Ltd/Collins Oil Products Ltd	Certificate
	CA/19/94	Daelgate Ltd/Retailers	Certificate
	CA/10/95	Sumitomo Electric Hardmetal Ltd/Fengarín Engineering Ltd	Certificate
	CA/6/96	Prestige & Collections Ltd/Distributors	Certificate
	CA/7/96	Parim Ltd/Distributors	Certificate
	CA/28/96	Maxol Ltd/Area Distributors	Certificate
	CA/7/97	Yale Security Products Ltd/Polycell Rawplug Ireland Ltd	Certificate
	CA/11/97	Nissan Ireland/Motor Dealers	Certificate
	CA/12/97	Toyota Ireland/Lexus Dealers	Certificate
	CA/4/98	Iveco Ford Truck Ltd/Truck Dealers International	Certificate
	CA/7/98	Toyota Ireland/Industrial Vehicle Dealers	Certificate
	CA/1/96	Esso Ireland Ltd/Jones Oil Ltd	Licence
	CA/2/96	Esso Ireland Ltd/Suttons Oil Ltd	Licence
	CA/3/96	Esso Ireland Ltd/Three Rivers Oil Ltd	Licence
529	CA/35/93	Gallaher/Ritmeester	Licence
530	CA/701/92E	Gallic Distributors Ltd/Motor Vehicle Loan Agreement and Mortgage	Certificate
	CA/702/92E	Gallic Distributors Ltd/Motor Vehicle Loan Agreement and Mortgage	Certificate
531	CA/625/92E	Gowan Distributors Ltd/Motor Vehicle Loan Agreement and Mortgage	Certificate
	CA/626/92E	Gowan Distributors Ltd/Motor Vehicle Loan Agreement and Mortgage	Certificate
532	CA/82/92E	Rover Ireland/Motor Vehicle Loan Agreement	Certificate

II. Withdrawals

<u>Notification No.</u>	<u>Parties</u>	<u>Date of Withdrawal</u>
CA/38/93	Mac Publishing Ltd/Donal McAuliffe	08/04/98
CA/1095/92E	Conoco Ireland Limited/Reckitt and Coleman	21/04/98
CA/8/95	Bell Freight Transport Group Limited/H.E.S Beheer N.V, H.E.S Transport B.V, Oranet Ltd	21/04/98
CA/9/95	Bell Freight Transport Group Limited/Oranat Ltd/FC Hucker & Others/Natwest Ventures Investments Ltd and Others	21/04/98
CA/10/96	The St. Paul International Insurance Company Ltd/ARB Underwriting Ltd/Cathal O'Brien/Bernard Butler/St. Paul (UK) Ltd	18/06/98
CA/11/96	The St. Paul International Insurance Company Ltd/ Cathal O'Brien	18/06/98
CA/767/92E	J Donohoe Limited/Pepsi-Cola Company	26/06/98
CA/397/92E	Masterfoods Limited/Valley Ice Cream Limited	30/06/98
CA/398/92E	Masterfoods Limited/Valley Ice Cream Limited/Delamont Limited	30/06/98
CA/794/92E	Nynex Corporation/Telecom Phonewatch Limited	14/08/98
CA/793/92E	Bord Telecom Phonewatch/ BTE Nynex Security Systems	14/08/98
CA/703/92E	Association of Consulting Engineers/Institution of Engineers of Ireland	14/08/98

CA/115/92E	British Shoe Company (Concessionaires)/Retailers	14/08/98
CA/795/92E	Bord Telecom Eireann Phonewatch/Telecom Agreement	14/08/98
CA/773/92E	Bord Telecom Eireann/Minitel Communications and Others	19/08/98
CA/771/92E	Minitel Communications Limited/Intelmatique SA	19/08/98
CA/772/92E	Bord Telecom Eireann/Minitel Communications & Others	19/08/98
CA/770/92E	Bord Telecom Eireann/Intelmatique SA/ Minitel Communications and Others	19/08/98
CA/684/92E	Bord Telecom Eireann/Alcatel Ireland Limited	18/11/98
CA/685/92E	Bord Telecom Eireann/LM Ericsson Limited	18/11/98
CA/1093/92E	Moremiles Tyres Services/Goodyear	11/12/98

III. Rejections

<u>Notification No.</u>	<u>Parties</u>	<u>Date of Rejection</u>
CA/267/92E	Burke Egan & Co. Limited/ Retailers	08/01/98
CA/749/92E	Reflex Investments Plc./ Harris Adacom Ltd	13/03/98
CA/964/92E	Wexford Creamery Ltd/Wexford Milk Producers Limited	10/04/98
CA/769/92E	Minitel Communications Limited/Philips Electronics (Ireland)	10/07/98
CA/281/92E	Wessel Industries Ltd/Volex Group.	10/07/98
CA/282/92E	Wessel Industries Ltd/BICC Cables Ltd	10/07/98
CA/158/92E	Beaver Distribution Limited/Robert Bosch GmbH.	14/08/98
CA/798/92E	BTE Phonewatch Ltd/Customers	14/08/98
CA/796/92E	Telecom Phonewatch Ltd/ Licence	14/08/98
CA/797/92E	Telecom Phonewatch Ltd/Customers	14/08/98
CA/1106/92E	Cambridge Investments Ltd/Industrial Credit Corporation	03/09/98
CA/67/93	Cyanamid of Great Britain Ltd/Eastern Health Board	13/11/98
CA/316/92E	Irish Refrigeration Enterprise Associations/Department of Agriculture and Food	18/11/98
CA/60/92E	Lithographic Universal Ltd/CCA Ireland Ltd	13/11/98
CA/19/97	Coillte Teoranta/Sawmills	11/12/98
CA/6/97	Donegal Oil Company/Teague Diver	15/12/98