



Competition Authority Annual Report, 1999.

Contents

| | Page |
|---|------|
| Foreword | 2 |
| Summary | 4 |
| Section 1 <i>Human Resources</i> | 10 |
| Section 2 <i>Enforcement</i> | 13 |
| Section 3 <i>Notifications</i> | 22 |
| Section 4 <i>Merger Referrals</i> | 27 |
| Section 5 <i>International Activities</i> | 30 |
| Section 6 <i>Competition Advocacy</i> | 33 |
| Annex 1 <i>Freedom of Information</i> | 38 |
| Annex 2 <i>1999 Work Programme Targets</i> | 39 |
| Annex 3 <i>Notifications made in 1999</i> | 43 |
| Annex 4 <i>Decisions and cases dealt with in 1999</i> | 45 |

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FOREWORD

1999 was a busy year for the Competition Authority. In the third full year since the Competition (Amendment) Act, 1996 gave it enforcement powers, the Authority continued to wage war on price-fixing, bid-rigging, market sharing and other forms of anti-competitive behaviour. The Authority also achieved its targets for dealing with notified agreements and mergers, and stepped up its efforts in the area of competition advocacy.

1999 also saw a number of developments at national and international level which are likely to have a dramatic effect on the work of the Competition Authority in the future. The Competition and Mergers Review Group continued its work, producing discussion papers on competition law and on the Groceries Order. The final report is expected in March 2000. Depending on the final report's recommendations and their implementation, the Authority may be given additional tasks and responsibilities in the future. At EU level, the Commission has proposed a radical decentralisation of the application of Community competition law to the Member States. And the OECD has identified international co-operation in the field of hard-core cartels as a priority for national competition authorities.

The potential exists for the Competition Authority to play an important role in shaping the country's economic future. However, this potential cannot be realised unless the Authority is given a realistic level of resources with which to work. At the time of writing, the Authority has a membership and staff of 15 - nine short of the level agreed when the 1996

Act was passed. Of the seven additional professional staff promised then, only three are in place, none of whom are on permanent contracts. It is impossible for the Authority to carry out its statutory functions if staffing commitments are not met. The Authority has outlined its requirements in a submission to the Department of Enterprise, Trade and Employment in July 1999. We trust that this important agency will be given the level of resourcing it requires.

Patrick Massey, Director of Competition Enforcement,

Isolde Goggin, Member,

Declan Purcell, Member.

4th April, 2000.

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.

Over the last number of years, since the Authority was given powers under the Competition (Amendment) Act, 1996 to investigate breaches of competition law and to take civil or criminal proceedings where necessary, the Authority has re-focused its priority activities to the extent that enforcement, i.e. investigating anti-competitive practices, is now the priority activity of the Authority. The increased enforcement activity has, however, been facilitated by a decrease in the number of agreements notified annually to the Authority rather than by any increase in resources in the Authority. The recent annual level of notifications is relatively small, especially when compared with the numbers notified in the first couple of years of the Authority's existence, thereby allowing the Authority to devote more of its available resources to enforcement.

On the other hand the second half of 1999 actually saw a reduction in the staffing resources of the Authority with the resignation of two of the permanent Members, including the Chairperson, two experienced economists and one of its legal advisors. The Chairperson, Professor Patrick Mc Nutt, at the end of 1999, indicated his intention to resign to take up an offer of employment in the private sector and Mr. William Prasifka, Member, resigned in November on his appointment to the Commission for Aviation Regulation.

While the Authority concentrated much of its resources on its enforcement activities, and particularly the investigation of alleged price-fixing and other types of cartel behaviour, a considerable amount of work was carried out by the Authority during 1999 on all of its core activities. The core objectives of the Competition Authority are:-

- To provide prompt enforcement of the Competition Acts
- To deal promptly and efficiently with agreements notified to it with requests for certificates and licences
- To provide the Minister with high quality advice when requested to do so under section 11 or 14 of the Competition Act, 1991 and in the case of referrals under the Mergers Acts
- To increase awareness of competition law and the need for increased competition among business and the general public.

Authority's Work Programme for 1999

The Authority produced a Work Programme for 1999 in which it outlined its core objectives above and set specific targets for itself by which it would achieve those core objectives. The Authority recognised in its Work Programme that these targets were ambitious and that their achievement depended to a large extent on various identified resource issues being successfully addressed. Unfortunately, not alone were these resource issues not successfully addressed but in fact the situation deteriorated significantly during the year with the resignations of two Members, two legal advisors and two economists. The Authority did not meet all of its targets during the year and resource issues played a major role in that regard. Details of those targets and the extent to which they were achieved are given in Annex 2 to this report.

Enforcement Activities

During the course of 1999 the Authority continued to receive large numbers of complaints of alleged breaches of the Competition Acts. As a result of investigations conducted during the course of the year the Authority decided to institute proceedings in respect of four complaints. In addition files on two of these cases were submitted to the Director of Public Prosecutions and the Authority decided to bring a summary prosecution in a fifth case.

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 has repeatedly indicated its determination to tackle such behaviour. 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. Since the passage of the 1996 Act, the Authority has received a very high number of complaints alleging cartel type practices. The high level of such complaints clearly demonstrates the need for vigorous enforcement of the Competition Acts. 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.

Notifications

1999 saw the Authority make further significant inroads into the number of notified agreements awaiting a decision. Parties to agreements between undertakings may notify them to the Authority under Section 7 of the Competition Act, 1991 after which the Authority may certify that, in its opinion, the agreements do not contravene the prohibition on anti-competitive arrangements in Section 4(1). Alternatively, the Authority may grant a licence to an agreement which contravenes Section 4(1) but where, in the Authority's opinion, 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 105 notified agreements were dealt with by the Authority during 1999 bringing the total number of notified agreements dealt with since October, 1991 to 1,357. The number of agreements awaiting a decision was reduced to 41.

1999 also saw the first High Court appeal against an Authority decision with the hearing of the appeal and judicial review by Murphy Brewery Ireland Limited, M.& J. Gleeson & Co., Comans Wholesale Limited and J. Donohoe Limited against Authority Decision No. 512 - Guinness Ireland Group/United Beverages Holdings Limited. The hearings in the High Court were concluded when the parties to the appeal and the parties to the agreement, the subject of the Authority's decision, reached a settlement. The judge ruled that each party should pay its own costs apart from the costs related to the hearing of the bias issue where the Authority's costs were to be paid by the appellants. The Authority has appealed the ruling on costs to the Supreme Court.

Merger Referrals

Under the provisions of the Mergers, Takeovers and Monopolies (Control) Acts, the Minister for Enterprise, Trade and Employment may refer a proposed merger or take-over to the Authority to consider whether the proposed merger would be likely to prevent or restrict competition, restrain trade or operate against the common good and the Authority must state its opinion in this regard. One such referral, involving two separate but related take-overs, were made during 1999 and the Authority's report was published in accordance with the provisions of the legislation.

Section 11 studies

Under Section 11 of the Competition 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. In 1999 the Authority initiated a study of licensing restrictions and other barriers and restrictions to entry into the rail and bus passenger transport market within the State and their impact on delivery of passengers by intercity rail, intercity buses and urban buses. Work on the study was postponed owing to the departure of Mr. Prasifka, who had been leading the study.

Competition Advocacy

The Authority continued its efforts to increase the level of awareness among business and consumers about competition in an effort 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. In this regard it published three discussion papers, addressed many conferences on a variety of subjects, organised in conjunction with the Faculty of Law UCD a conference on the implications of the European Commission's White Paper on Competition and made a number of media statements on important competition issues.

International Activities

Since its establishment in 1991, the Authority has provided technical assistance to competition agencies in Hungary, Estonia and Lithuania and taken part in EU and

OECD training seminars for officials in competition agencies in a number of Eastern European countries. In 1999, the Authority hosted a training visit from an official of the Cypriot Commission for the Protection of Competition and participated in further EU training seminars for Eastern European countries. The Authority continued in 1999 to develop its relations with other bodies and institutions abroad such as the Office of Fair Trading in the UK, the European Commission, the European Court of Justice, the OECD and the US Department of Justice.

Financial Statement

The Authority is funded by the Department of Enterprise, Trade and Employment and has its own subhead within the Department's Administrative budget. During 1999 the Authority entered into a Financial Autonomy Agreement with the Department, the objectives of which were:-

- (a) to improve efficiency and effectiveness in the Authority by delegating greater financial responsibility and control of resources to it, subject to overall financial disciplines expressed on a multi-annual basis;
- (b) to specify appropriate indicators of performance in respect of which the Department and the Authority will jointly assess the Authority's performance under the Agreement;
- (c) to specify the level of service which the Department will provide to the Authority in respect of those functions which remain with the Department;
- (d) to establish an agreed basis for regulating relations between the Department and Authority;
- (e) to improve the Department's capacity for policy formulation.

The Authority's financial allocation for 1999 was £1,083,000 of which £888,000 was allocated in respect of pay, overtime, allowances and employers' PRSI while the remaining £195,000 was allocated to non-pay items such as building maintenance,

heating/lighting, office and computer equipment and supplies, travel expenses, post and telephone charges, advertising costs, training etc.

By the end of 1999 the Authority had used a total of £890,000 (or 82%) of its budget allocation - £731,000 of its pay allocation and £159,000 of its non-pay allocation - resulting in a total saving of £193,000. This saving arose mainly from the non filling of staff vacancies during the year.

Section 1 - Human Resources

Members of the Authority

| | |
|--|-----------------------------------|
| <i>Chairperson:</i> | <i>Professor Patrick Mc Nutt*</i> |
| <i>Director of Competition Enforcement</i> | <i>Mr. Patrick Massey</i> |
| <i>Member</i> | <i>Ms. Isolde Goggin</i> |
| <i>Member</i> | <i>Mr. Declan Purcell</i> |
| <i>Member</i> | <i>Mr. William Prasifka**</i> |

**Prof. McNutt announced in December, 1999 his intention to resign with effect from 7th January, 2000.*

*** Mr. Prasifka resigned in November, 1999 on his appointment to the Aviation Commission.*

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.

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, 1999 consisted of one Assistant Principal Officer, one legal advisor (and one vacancy), four economists (and one vacancy), two Higher Executive Officers, two Executive Officers and seven Clerical Officers (one vacancy). In the second half of the year, in addition to the resignations of two Members, a number of other staff of the Authority resigned. Ms. Mackey, legal advisor, resigned to take up employment in the public sector and Mr. Shortall and Mr. Kenny, economists, resigned to take up employment in the private sector. By year's end arrangements were being made to fill the resultant vacancies.

Staff of the Competition Authority as at 31 December, 1999.

Assistant Principal Officer: Ciaran Quigley, Secretary to the Authority.
Higher Executive Officers: Ann Geraghty and Catherine Ryan.
Executive Officers: Garrett Greene and Bernadette Byrne.
Clerical Officers: Declan Keegan, Stephen Lalor, Audrey Lyons, Laraine Cooper (job-sharing), Sara O'Donoghue, Kieran Crossan, and Celine Monks (job-sharing).
Legal Advisor: Daragh Daly***, Vacancy.
Economists: Una Brady, Leonie Allen, Colette Hegarty and Caeman Wall, Vacancy.

****At the beginning of 2000, Mr. Daly resigned his position in the Authority.*

Training

Conscious of its obligation to assist staff to develop to their full potential, the Authority organised a number of training measures during the year aimed at teaching new skills and developing existing skills in the interests of both the Authority and of individual staff members. In addition staff in the Authority also attended training courses provided by the Training Unit and the I.T. Unit of the Department of Enterprise, Trade and Employment. Among the in-house Authority training measures undertaken during the year was an intensive investigative interviewing techniques course, induction courses for new professional staff and a series of in-house seminars

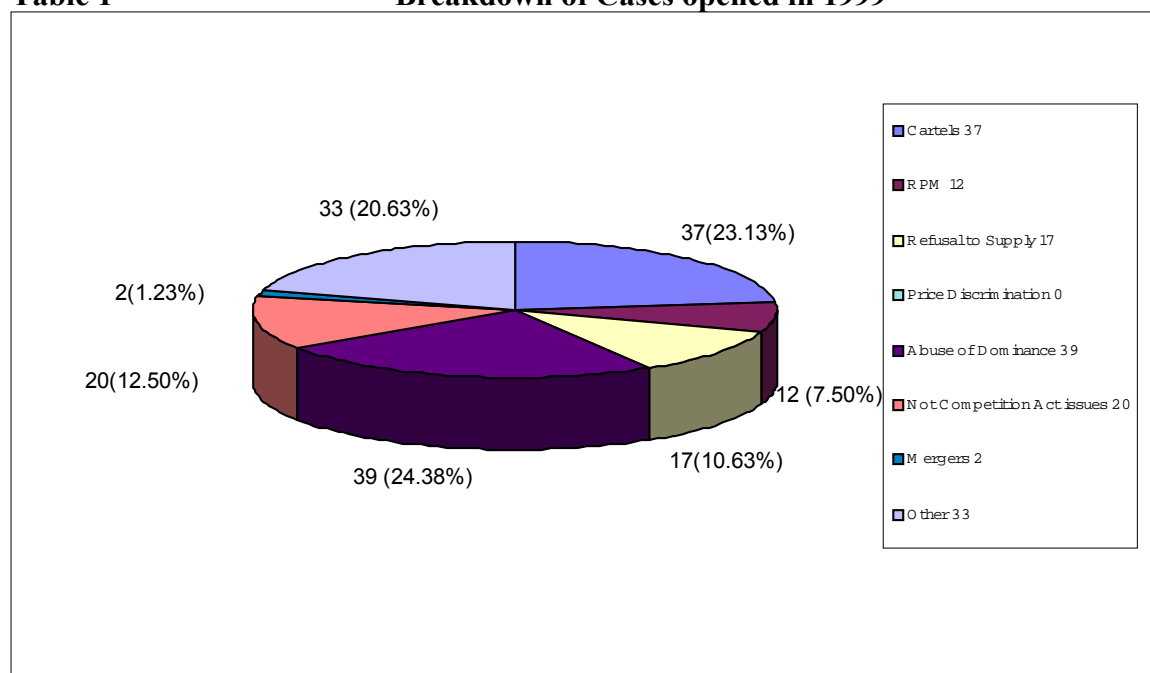
on competition law and economics topics. Two seminars were given by an Australian competition law enforcement official who worked with the Authority for 3 months while two Authority members who attended a US Justice Department Anti-Cartel Enforcement Workshop in Washington subsequently conducted a one day version of the workshop for enforcement staff in the Authority. Training in website maintenance was also provided to a number of staff.

Section 2 - Enforcement

During the course of 1999 a total of 160 complaint files were opened by the Authority, the same as in the previous year. These included 11 files which were opened on an own initiative basis, the remaining 149 being opened on foot of complaints received. A further 95 files were carried over from 1998. Investigations in four cases resulted in Authority decisions to institute proceedings under Section 6 of the 1991 Act as amended. In two of these cases files were also sent to the Director of Public Prosecutions. In a fifth case the Authority decided as a result of the investigation, to bring a summary prosecution. A total of 101 cases were closed during the year, compared with 181 in 1998. Thus by the end of the year there were 154 cases open. The decline in the number of cases closed is due partly to the fact that during the course of the year it was necessary to divert resources away from less serious cases to work on investigations of alleged cartels.

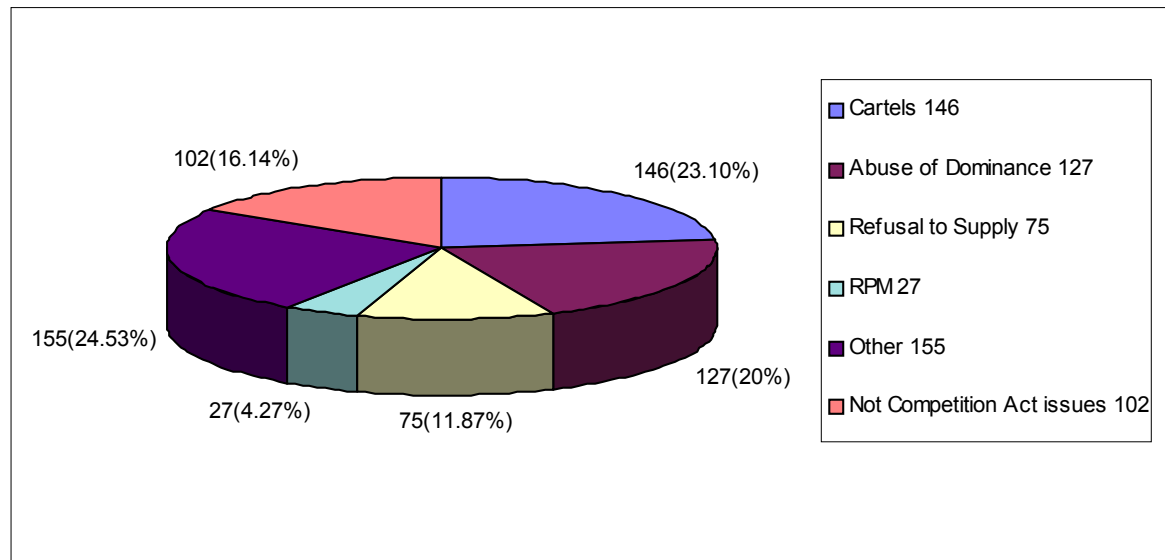
Details of the cases opened in 1999 are given in the chart below. The most common single complaint involved alleged abuse of a dominant position (39 cases) and price fixing/cartel activities (37 cases).

Table 1 Breakdown of Cases opened in 1999



Since the 1996 Act came into force the Authority has opened a total of 634 complaint files. Details of the nature of these cases are given in the chart below.

Table 2 **Cases opened since 1996**



In the two and a half years since the passage of the 1996, Act, there have been 146 complaints alleging price fixing or other cartel type behaviour with a further 127 cases alleging abuse of a dominant position. In the period up to the end of 1999 the Authority has decided to issue proceedings in respect of 11 cases of alleged cartel behaviour. The 11 cases in which proceedings have been brought involve 26 of the complaints received to date. In addition, in the case of a further 3 complaints, the matter was resolved without proceedings while in 8 cases the file was closed on the grounds that there was no evidence of the existence of a cartel. At year end, 109 of the cartel complaints remained open and investigations were ongoing in respect of a number of these cases.

The continued high number of complaints of alleged cartels is a matter for serious concern. The figures reflect the fact that in some instances there may be more than one complaint about the same behaviour. In addition, in a number of instances, preliminary investigation indicated that the complaint was based on unfounded suspicion. At the same time cartel-type practices are normally conducted in a highly

covert manner and it is inevitable that there are other cases which have not yet come to the Authority's attention. 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. Cartel investigations require considerable resources as they frequently require examination of hundreds of documents and detailed interviews with a large number of individuals. The high level of complaints suggests that greater resources need to be deployed to combat such behaviour.

During the course of 1999, the Director of Competition Enforcement conducted a number of investigations into alleged serious breaches of the Acts. The Authority decided to issue proceedings in five cases following investigations by the Director of Competition Enforcement and to bring a summary prosecution in respect of a sixth case. Three cases where proceedings were instituted by the Authority in 1998 had still to go to trial at the end of 1999. In two cases, a file was submitted to the Director of Public Prosecutions with a recommendation that criminal proceedings should be instituted. Several other investigations were still ongoing at the end of the year.

Authority officers conducted a number of searches of premises in accordance with the provisions of Section 21 of the 1991 Act, as amended. In addition, a number of 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.

Details of Individual Cases.

(I) Beer and soft drinks wholesalers

In late 1998 the Director began an investigation into the wholesale distribution of packaged beer and soft drinks. This followed a number of newspaper and magazine reports, including one that an employee of one of the companies had instituted proceedings against his employers claiming, *inter alia*, that he had been unfairly treated for refusing to participate in price-fixing arrangements involving other wholesalers. A separate complaint was also received from a retailer in Munster. Authority officers conducted searches of 11 licensed wholesalers' premises located

throughout Connacht and Munster in March 1999. A number of individuals were subsequently interviewed by Authority officers. Based on the Director's recommendations, the Authority decided to institute proceedings against six licensed wholesalers alleging that they had directly or indirectly fixed prices of packaged beers and soft drinks and engaged in other practices contrary to Section 4(1). A file on this case was also sent to the DPP .

(II) Soft Drink and Beer Bottlers Association

Based on information uncovered during the course of the investigation described in the previous paragraph, the Director decided to extend the scope of the investigation to other parts of the country. Authorised officers conducted searches of the offices of the Soft Drink and Beer Bottlers Association (SDBBA) and two wholesalers, one based in Dublin and a second in Wexford. As a result of this investigation the Authority decided to institute proceedings against the SDBBA and the two wholesalers concerned under section 6 of the 1991 Act, as amended, alleging that they had directly or indirectly fixed prices for packaged beers and soft drinks. A file was also sent to the DPP .

(III) Bread

Based on newspaper reports in late 1998, the Director decided to investigate the distribution and retailing of bread. Representatives of a major supermarket multiple were interviewed. In April, authorised officers conducted searches of four bakeries. Representatives of these firms were subsequently interviewed by Authority officers. As a result, the Authority decided to institute proceedings under Section 6 against three bakery firms alleging that they had directly or indirectly fixed bread prices.

(IV) Motor Fuels

Since early 1997, the Authority has received almost 30 complaints alleging price fixing in respect of motor fuels. Over the past two years the Authority has carried out periodic price surveys in a number of large urban centres and has interviewed many

of the complainants. During the Autumn, authorised officers carried out searches of the premises of four oil companies. In addition, the premises of another company which was a trade association representing oil distributors, was also searched. A number of individuals were interviewed. In November 1999 the Authority issued summonses to the Chief Executives of a further six oil suppliers, requiring them to produce various documents to the Authority. The Authority decided to bring a summary prosecution against one of the smaller oil companies in respect of certain practices. The investigation was ongoing at the end of the year.

(V) Home heating oil

The Authority has also received several complaints in respect of home heating oils. Authorised officers conducted searches of the premises of eight oil distributors in the Munster region during December. Representatives of a further four oil distributors in the region were interviewed. The investigation was ongoing at the end of the year.

(VI) Other Proceedings Issued.

During 1998 the Authority instituted separate proceedings against the Vintners Federation of Ireland (VFI) and the Licensed Vintners Association (LVA) and several members of both associations. Both these cases had still to come to trial at the end of 1999. The Authority also decided during 1998 to institute proceedings against Glanbia, CMP Dairygold, Sligo Dairies, Tesco (Ireland) and Superquinn following an investigation into the liquid milk trade. These proceedings had also still to come to trial at the end of 1999.

In the latter part of 1998 the Authority wrote to Telecom Eireann informing it that unless certain practices concerned were terminated, it would institute proceedings under Section 6. Following a refusal by Telecom to discontinue the behaviour involved, the Authority issued proceedings in April alleging that Telecom's refusal to grant unbundled access to the local loop constituted an abuse of a dominant position contrary to Section 5 of the 1991 Act.

(VII) Other Cases.

At the end of September, Cityjet made a complaint to the Authority claiming that it feared Aer Lingus might engage in behaviour which could constitute an abuse of a dominant position following an announcement by the latter that it proposed to commence flights between Dublin and London City Airport. Following Aer Lingus' entry on to the route, the Director began an investigation of its behaviour. On 23 December, the Authority issued a summons to the Group Chief Executive of Aer Lingus requiring him to appear before the Authority on 17 January 2000, to be examined on oath and to produce a number of documents in respect of Aer Lingus' services between Dublin and London.

In a number of other cases, the Authority intervened and managed to resolve matters without having to institute court proceedings. A number of these cases are now outlined.

In November a German discount grocery retailer, Aldi, opened two supermarkets, one in Dublin and one in Cork. The Aldi stores began selling milk at 89p per 2 litres. Following newspaper reports of approaches by the Irish Farmers Association (IFA) to Aldi, officers of the Authority interviewed a number of Aldi executives. The director wrote to the General Secretary of the IFA indicating his concerns about media reports that the IFA might take action to prevent Aldi selling milk at this price. The Director pointed out that Aldi were entitled to sell milk at whatever price they chose, provided they were in compliance with the Groceries Order, and to purchase milk from whomever they chose, and that any actions designed to force them to raise the price would, in the Authority's opinion, constitute a breach of Section 4(1). As no reply was received from the IFA, the Authority issued a statement indicating that it had written to the IFA on the matter. IFA members held a one-day meeting outside the Cork store. Subsequently, another supermarket multiple announced that it was cutting its prices on a number of products including milk in stores located close to the Aldi outlets. The Authority decided that no further action was required in the circumstances.

In three cases of alleged refusal to supply, the firms which were the subject of the complaints were located outside the State. The Authority referred the cases to the EU

Competition Directorate on the grounds that the latter was in a better position to investigate claims that the refusal to supply was due to an understanding between the supplier and competitors of the parties who made the complaints, and the files were closed.

In 1997, the Director launched an investigation into alleged Resale Price Maintenance (RPM) on sports clothing and equipment following the announcement by the Office of Fair Trading (OFT) in the UK that two suppliers had given undertakings to cease operating RPM in respect of replica football kits sold in the UK. The Authority wrote to one of the suppliers whose football kits are sold in Ireland, pointing out that, in its view, RPM would constitute a breach of the Competition Acts. The supplier replied and stated that it did not operate RPM in Ireland. The Director also wrote to the majority of sports retail outlets in the State, pointing out that, under the Competition Acts, suppliers could only recommend prices, that retailers were free to set their own prices and that any arrangements between suppliers and retailers to fix the retail price would constitute a breach of the Acts. In 1999 the OFT announced that it had secured agreement by the Premier League soccer clubs that they would not seek to have suppliers operate RPM in respect of their replica kits.

In 1998, a retail outlet in Cork City alleged that it had been refused supplies of a certain brand of golf shoes by the Irish distributor because it had been selling the shoes at a discount compared to the recommended price. Authority officers interviewed the retailer concerned and took a formal statement from him and from one of his employees. The Authority wrote to the distributor concerned pointing out that, in its view, refusal to supply a retailer for selling products at a discount would constitute a breach of the Acts. After a number of exchanges, the distributor indicated to the Authority that they would resume supplies and would not seek to prevent the retailer selling the shoes at whatever price he chose.

Another complaint received during 1998 involved arrangements between the Pharmaceutical Society of Ireland and Trinity College Dublin for the training of pharmacists. Investigations revealed that the Royal College of Surgeons of Ireland had instituted private proceedings under Section 6 in this case. The matter had still to

come to trial at year end. The Authority decided that there was no scope for it to take further action pending the outcome of the proceedings.

Two separate complaints were received during 1998 regarding an agreement between UCD and AIB for the exclusive right to provide banking services on the UCD campus at Belfield. The Authority had previously issued a certificate in respect of an earlier agreement between UCD and Bank of Ireland which had expired. Following an investigation the Authority concluded that there was no need to alter its views as expressed in the certificate decision and decided to take no further action.

During 1999, the Director opened an own-initiative investigation following newspaper reports concerning an alleged proposal by Independent Newspapers to acquire control of a local newspaper in Kerry, known as *The Kingdom*, given that Independent Newspapers already owned a rival newspaper, *The Kerryman*. In the event no such transaction proceeded and the Authority decided to close the file on the matter.

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

20 of the complaints received during 1999 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. The Director received one complaint from an individual who felt that the individualisation provisions of the December 1999 Budget introduced by the Minister for Finance might be contrary to competition law. The complainant was informed that the Minister for Finance in introducing the

Budget did not constitute an undertaking and so the question of a breach of the Acts did not arise.

Section 3 - Notifications

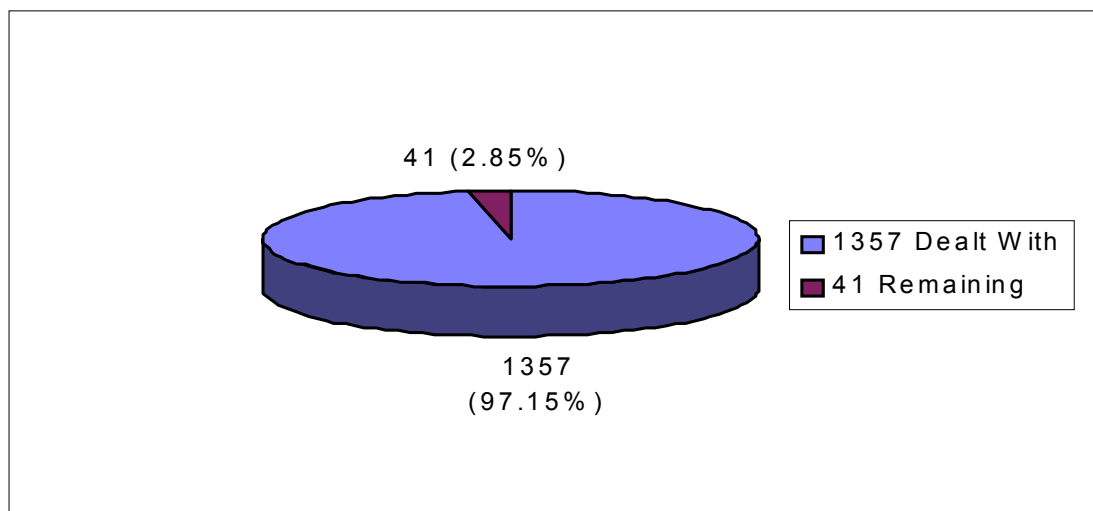
The position at the start of 1999

At the end of 1998, the Authority had dealt with 1,249 of the 1,381 cases notified to it since October 1991, leaving it with 132 cases on hand.

Notification of Agreements in 1999

During the course of 1999, seventeen agreements were notified to the Authority under Section 7 of the Competition Act, 1991, as amended, compared with 11 notifications in 1998. A list of these notifications is contained in Annex 3. Four of the notifications related to sale of business agreements, two were authorised dealership agreements, two were exclusive manufacturing/distribution agreements and two were agreements as to scales of fees and charges. The remaining seven notifications were an agency agreement, a production music agreement, an exclusive concession agreement, a franchise agreement, an exclusive purchasing agreement, a joint purchasing agreement and a services agreement. By the end of 1999, a total of 1,398 notifications had been made to the Authority under Section 7 since the commencement of the Act.

Table 3 **Notifications 1991 to 1999**



Many agreements which would otherwise be notifiable are now covered by the Authority's Category Certificate for Mergers (Decision no. 489) and the Category Certificate and Licence in respect of Agreements between Suppliers and Resellers (Decision no. 528). Businesses do not need to notify arrangements which are covered by these Decisions in order to benefit from them. The existence of these category certificates and licence has contributed to the low rate of notifications to the Authority under Section 7 and, in the Authority's view, this situation will persist.

Decisions taken by the Authority

The Authority made 44 Decisions in 1999 and disposed of a total of 108 notifications during the year. There was a total of 31 withdrawals of notified agreements in 1999 and 16 notified agreements were rejected by the Authority as being incomplete. Many of the withdrawals followed enquiries made of the notifying parties. In a number of other cases, the Authority made formal decisions to close files without considering the merits or otherwise of granting a certificate or issuing a licence, as the agreements had terminated and a decision to certify or license the agreements would have had no legal effect.

Table 4 - Number of notifications received, dealt with and on hand for each of the 9 years and a combined total of same.

| | 1991 | 1992 | 1993 | 1994 | 1995 | 1996 | 1997 | 1998 | 1999 | Total |
|---|-------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|--------------|
| Notifications received by year | 14 | 1,159 | 67 | 34 | 38 | 35 | 23 | 11 | 17 | 1,398 |
| Notifications dealt with by end 1999 | 14 | 1,134 | 66 | 32 | 38 | 33 | 23 | 9 | 8 | 1,357 |
| Notifications on hand | 0 | 25 | 1 | 2 | 0 | 2 | 0 | 2 | 9 | 41 |

By the end of 1999, over 97% of notifications that had been received by the Authority since the commencement of the Act had been disposed of. A list of the decisions made and notifications disposed of during 1999 is contained in Annex 4, while the main features of some significant Decisions made by the Authority during the year are described below.

MCPS/MCPSI/Various Agreements (Decision Nos. 569 and 573, CA/483/92E, CA/485/92E, CA/487/92E, CA/490/92E, CA/492/92E, CA/495/92E, CA/498/92E, CA/499/92E, CA/8/99)

Mechanical Copyright Protection Society Limited (MCPS) and its Irish subsidiary, Mechanical Copyright Protection Society Ireland Limited (MCPSI), originally notified a total of 18 agreements with (a) members of MCPS on the one hand, (b) licensees and other users of copyright musical works, on the other. A number of the originally-notified agreements were withdrawn, or rejected or certified by the Authority, and these Decisions concerned a total of 9 agreements. The Authority had previously made a number of Decisions on agreements involving another copyright collecting society, IMRO.

The Authority considered that the MCPS Membership Agreement, as a series of individual agreements between an association of undertakings and its members, was horizontal in nature, rather than being a standard agency agreement. It further considered that, since MCPS controlled the bulk of the relevant market, a requirement that members could only join if they appointed MCPS as sole and exclusive agent, distorted competition by acting as a formidable barrier to entry into the market, that it led to the possibility of horizontal price-fixing, and that it contravened Section 4(1) of the Act. The Authority also found generally that the Society's series of Standard User Agreements amounted to horizontal agreements to fix prices, and that they also contravened Section 4(1) of the Act.

The Authority re-iterated its view that, in the vast majority of cases, horizontal price-fixing arrangements would not meet any of the conditions for the grant of a licence. However, it did recognise the very peculiar nature of this particular market, and was satisfied that collecting societies filled an indispensable intermediary role between composers and users. Such a regime benefited both composers (who could rely on the

society to act on their behalf) and users (who could legally use copyright material in a legally safe and uncomplicated manner). Having considered all aspects of the matter very carefully, the Authority was satisfied that the agreements notified satisfied all of the requirements set out in Section 4(2) of the Act, and it granted a licence for a period of fifteen years.

AIB Bank/University College Dublin (Decision No. 575; CA/9/99)

Allied Irish Banks notified an agreement whereby University College, Dublin granted them the sole concession to operate a bank branch on the UCD campus for a period of ten years from 1 March 1999. The arrangement had previously been the subject of a complaint to the Authority, which was closed on the grounds that there was no evidence of a contravention of the Competition Acts. In issuing a certificate to the notified arrangements, the Authority noted that, in a number of earlier decisions, it had already indicated its view that exclusive concession agreements to use premises in a building complex for the purposes of a banking business did not contravene Section 4(1) of the Competition Act, 1991, when alternative facilities are available to consumers. In this instance, each constituent part of the campus covered by the agreement had a minimum of fourteen branches of financial institutions owned by competitors within a radius of two miles. The Authority therefore considered that the notified agreement did not contravene Section 4(1) of the Competition Act, 1991.

Hampden/Homebase (Decision No. 542; CA/23/96)

The Authority considered a franchise agreement, dated 18 March 1996, between Homebase Ltd. and Hampden Group plc, relating to stores selling DIY goods, kitchens, lighting and gardening tools and equipment. Homebase is a UK company which is a wholly-owned subsidiary of J. Sainsbury plc and is the master franchiser of a number of such stores. J. Sainsbury plc also has a 29.9% shareholding in Hampden, and has the right to nominate two directors (out of seven) to its board. In its decision, the Authority noted that this shareholding was sufficient to bring Hampden and Homebase under common control, according to the criteria in the Mergers Act and the

Authority's Category Certificate for Mergers. The Authority also noted that the other shareholdings in Hampden were largely institutional and that the largest shareholding was 7.3%. The Authority therefore concluded that, given the position of the major shareholder vis-à-vis the other shareholders, the agreement was not, in fact, an agreement between separate undertakings but rather was an assignment of functions between different parts of the same organisation. As the undertakings involved were not competitors, the Authority considered that the notified agreement did not contravene Section 4(1) and accordingly issued a certificate.

Withdrawals and Rejections of Notifications

During 1999, a total of 31 notifications were withdrawn, most of them following enquiries by the Authority of the notifying parties. 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 4.

The Authority rejected a total of 6 notifications during the year, mostly on grounds that, despite a number of requests by the Authority, 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 1999 is contained in Annex 4.

Section 4 - Merger Referrals

(i) Princes Holdings Limited / Suir Nore Relays Limited Merger Proposal

(ii) Liberty Media Al Inc./ Aringour Limited Merger Proposal

On 4 October, 1999, the Tanaiste and Minister for Enterprise, Trade and Employment referred to the Competition Authority the proposed acquisition of the entire issued share capital of Suir Nore Relays Limited (“Suir Nore”) by Princes Holdings Limited (“PHL”) and the proposed acquisition of the entire issued share capital of Aringour Limited (“Aringour”)/CMI by Liberty Ireland AL, Inc (“Liberty”) in accordance with Section 7 of the Mergers, Take-overs and Monopolies (Control) Acts, 1978 to 1996. The Tanaiste requested the Authority to issue a report to her not later than 8 November, 1999 and the Authority transmitted its report to the Tanaiste on that date. Mr. Prasifka, Ms. Goggin and Mr. Purcell were responsible for the preparation of the Authority’s report.

The Authority held the view that, while the market in which the companies concerned operated in Ireland was that of television transmission, it was clear from an analysis of technological and regulatory trends that the telecommunications market was also relevant to the Authority’s consideration of the transaction. It was apparent to the Authority that telecommunications and broadcasting, which have traditionally been separate markets, will overlap in the future.

The Authority agreed with the notifying parties that competition in the television transmission market occurs among, rather than within, platforms and considered that in the broadcasting sector of the market the different cable and MMDS companies did not compete with each other due to regulatory constraints. The effect of this situation was that a customer of one provider, if dissatisfied with the service, could not ask another provider for supply instead. The Authority considered that, in relation to the television transmission market, while the number of substantial participants in the cable/MMDS market would effectively be reduced to two, post merger, the proposed mergers would have no effect on competition.

Turning to the telecommunications market, the Authority expressed the view in its report that competition in this market in Ireland was still in its infancy but said that the advent of a substantial new competitor to the market was to be welcomed. In submissions to the Authority, it was stated that the acquisition by Liberty of Aringour/CMI would mean that existing customers of CMI would be able to avail of digital and interactive services sooner than if CMI were to remain a stand-alone entity. The Authority considered that the consolidation of a number of cable/MMDS companies with relatively small geographically dispersed subscriber bases into a single entity with a larger, more integrated subscriber base may have a beneficial effect on competition in the telecommunications sector. The Authority concluded that, on the grounds that the effects of the mergers would be neutral for the cable/MMDS market and potentially positive in the telecommunications market, the mergers were unlikely to prevent or restrict trade in any goods or services and would not be likely to operate against the common good.

The Authority reached the view that the proposed transactions raised no competition or broader cultural concerns in relation to concentration in the media generally and considered that the proposed transactions would have no adverse effect on continuity of supplies or services, level of employment, rationalisation of operations in the interests of greater efficiency, research and development, increased production, access to markets or on employees. The Authority also considered it likely that the proposed transactions would have a positive effect on regional development since they will make available advanced television and telecommunications services outside Dublin, and that the effect of the transactions on consumers was likely to be positive.

In the Authority's opinion, the proposed acquisition of the entire issued share capital of Suir Nore Relays Limited by Princes Holdings Limited and the proposed acquisition of the entire issued share capital of Aringour Limited by Liberty Media AL, Inc 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 transaction be allowed to proceed without conditions.

On 6 January, 2000, the Tanaiste announced that she had accepted the Authority's conclusion that the mergers be allowed to proceed and had therefore approved the mergers. The Tanaiste published the Authority's report with confidential material omitted (Pn 5795).

Section 5 - International Activities

The Competition Authority, during 1999, continued its efforts to develop good working links with similar and related organisations in other countries with the aim of facilitating the sharing of expertise and best practice. The Authority also represented Ireland at international fora such as the EU and the OECD.

In February, 1999, the Authority hosted a visit from Mr. John Bridgeman, Director General and officials from the UK Office of Fair Trading, during which the Director of Competition Enforcement briefed them about the conduct of investigations in preparation for the coming into force of the new UK Competition Act. The Authority hosted visits also from the Greek Minister of State for Commerce and from Mr. Alex Schaub, Director General and Mr. John Temple Lang of Directorate General (Competition) of the European Commission.

In June, Prof. McNutt, Mr. Massey and Ms. Mackey visited the European Court in Luxembourg at the invitation of Judge Murray of the Court of Justice, Judge Cooke of the Court of First Instance and Advocate General Fennelly. During the visit, they had a series of discussions about competition law and about the reforms proposed in the European Commission's White Paper.

In September, 1999, the Authority hosted a visit from Mr. Christos Solomonides of the Commission for the Protection of Competition, Cyprus, during which a schedule of lectures and briefings on aspects of the Authority's work was delivered.

Mr. Massey and Ms. Goggin attended a two day cartel workshop organised by the US Department of Justice in Washington DC on 30 September and 1 October. The workshop was attended by cartel investigators from over 30 countries. While in Washington, Mr. Massey and Ms. Goggin held a series of bilateral meetings with officials from the Antitrust Division of the Department of Justice, the Federal Trade Commission and the Federal Communications Commission.

In October, an official of the Australian Competition and Consumer Council, Ms. Jennifer Green, commenced a three month term with the Authority during which her duties included the provision of in-house seminars on investigating anti-competitive practices, comparing Australian and Irish enforcement practices and overseeing a review of existing legislation with a view to recommending possible amendments in light of the Authority's experience since the commencement of the 1996 Act.

Throughout the year the Authority maintained, at various levels, regular contact with competition authorities in the EU and the US.

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 81 and 82 of the Amsterdam Treaty (formerly 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.

During 1999, the European Commission published a White Paper on Modernisation of the Rules Implementing Articles 85 and 86 of the EC Treaty and established a working group on which the Authority was represented. In November, 1999, the Authority co-hosted a seminar on the implications of the proposals in the White Paper and details of that seminar are given elsewhere in this report. The Commission also published a Regulation (Commission Regulation (EC) No. 2790/1999 of 22 December, 1999) on the adaptation of Article 81(3) of the Treaty to categories of vertical agreements and concerted practices. The Authority participated in the reviews of various drafts of this document and furnished observations on the drafts.

The Authority was also represented at the bi-annual meetings of Directors General of Competition by the Chairperson; the Chairperson also acted as Rapporteur for the Opinion of the Advisory Committee in Case No. IV/34.780 - Virgin/British Airways. On two occasions during the year, Authority staff assisted the Commission's Competition Directorate General in the conduct by the Commission of searches in Ireland. These searches formed part of investigations being carried out by the Commission involving Irish undertakings.

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 at CLP meetings in 1999 and in which the Authority took an active role were competition in professional sectors, competition developments in the WTO, enforcement priorities, oligopolies, competition in local services and airline mergers and alliances.

The Committee on Competition Law and Policy is currently undertaking a review of regulatory reform in each member State. As part of this process, individual member countries are subject to a detailed examination by two other member States on the progress made by them to date. There are normally two such in-depth reviews carried out at each CLP meeting and in 1999 the Authority acted as one of the examiners in the review of Spain.

Section 6 - Competition Advocacy

In the belief that it is important to increase public awareness of the benefits of competition and the need to eliminate anti-competitive behaviour, the Authority organised a conference on the EU White Paper proposals, published a number of discussion papers, addressed a number of conferences and third level educational colleges and participated in a number of media interviews.

Conference on EU White Paper

On 12 November, 1999 the Authority, in conjunction with the Faculty of Law, UCD, hosted a conference in the O'Reilly Hall, Belfield entitled "*The White Paper and the Development of Competition at National and EU Level*". The European Commission's White Paper promised the most radical shake-up of the EU competition regime since the foundation of the EEC in 1958. In particular, the paper proposed the abandonment of the existing highly bureaucratic administrative regime of notifying agreements for approval, coupled with a pledge by the Commission to devote most of its resources to pursuing serious breaches of the competition rules. In tandem with that, the Commission proposed much closer co-operation between the Commission and national competition authorities in pursuit of anti-competitive arrangements.

In recognition of the fact that such changes clearly have major implications for the operation of both EU and national competition law, the Authority, in conjunction with UCD Faculty of Law, organised a conference with the purpose of considering those implications and what they will mean and to provide a key insight into the likely future direction of competition policy in Ireland in the years ahead. The conference was addressed by Dr. John Temple Lang, Director, Directorate General Competition of the European Commission, by Mr. John Clark, a consultant with the Competition Law and Policy Division of the OECD and former Deputy Assistant Attorney General in the US, by Mr. Patrick Massey, Director of Competition Enforcement in the Authority, by Judge John Cooke of the European Court of First Instance, Luxembourg

and by Dr. Martin Howe, former Director of Competition Policy in the UK's Office of Fair Trading.

Discussion Papers

Discussion Paper No. 7 - published in July, 1999, was entitled "*Competition and Regulation in Public Utility Industries*" and was written by Mr. Patrick Massey, Director of Competition Enforcement and by Mr. Tony Shortall, an economist with the Authority. The paper analysed proposals for the liberalisation of gas, electricity and telecommunications in Ireland and considered the difficulties for competition arising from the natural monopoly features of these industries.

Discussion Paper No. 8 - entitled "*Competition, Parallel Imports & Trademark Exhaustion: Two Wrongs from a Trademark Right*" was published in December, 1999. The authors of the paper were Professor Patrick McNutt, Chairperson of the Authority and Mr. Patrick Kenny, an economist with the Authority, and the views put forward in the paper were those of the authors and did not necessarily reflect the views of the Authority. The paper was set against the background of recent European Court of Justice judgements and differing positions between the EU and the US on the principle of trademark exhaustion. The paper presented an overview of recent EU jurisprudence and an economic analysis of the exhaustion issue.

Discussion Paper No. 9 - was the Authority's response to the Competition and Merger Review Group's "*Proposals for Discussion in relation to Competition Law*". In its response, which was published in December, 1999, the Authority welcomed the publication of the Competition and Merger Review Group's proposals, on the grounds that it was appropriate for competition law and policy to be reviewed on a periodic basis, with the review covering both technical amendments and wider issues confronting a government body entrusted with the application of Competition Law in Ireland. However, while supporting a number of the recommendations in the report, especially in relation to the interaction between competition law and industry-specific regulation and the reduction of unnecessary legislative impediments to competition, the Authority considered that the report appeared to concentrate largely on issues,

such as the notification system, which are of limited relevance to all but a small number of firms and their advisors, while missing out on the opportunity to recognise the importance of competition and of vigorous enforcement of competition law in a modern economy. However, the Authority broadly endorsed the report's recommendations on the interaction between competition law and sector-specific regulation.

Other Published Papers

The Authority published its response to the Minister for Public Enterprise's *Invitation to Comment on Governance and Accountability Arrangements in the Regulatory Process*. This again referred to the Competition and Merger Review Group's findings on the interaction between competition law and sector specific regulation.

Other activities

The Authority arranged a meeting with the Chief Executive of the Chambers of Commerce of Ireland at which the Authority explained its functions and provided copies of its various Guidance Notes. The Authority also arranged a series of lectures to business students in third level institutions throughout the country. The Authority continued to meet and discuss matters of mutual interest with the Office of the Director of Telecommunications Regulation on an informal basis, pending the conclusion of the consultation process on "*Governance and Accountability Arrangements in the Regulatory Process*". The Authority also established contact with the Commission for Electricity Regulation and the newly appointed Aviation Regulator.

Website

The Authority continued to develop its website (<http://www.irlgov.ie/compauth>) with the addition to the site of all of its published discussion papers, its responses to various issues and its one hundred or so most recent Decisions. In addition to its most recent Decisions, the first two hundred Authority Decisions have also been added to the site and the remaining Decisions will appear on the site during 2000.

Conferences Addressed

Prof. McNutt

- September, 1999 University College, London - Plenary lecture to conference on modernisation of EU competition policy.
- December, 1999 University of Limerick - Guest lecturer.

Mr. Massey

- 4 March, 1999 IBEC Competition Council - Presentation on the Authority's enforcement priorities.
- 15 April, 1999 ICTU - Presentation on the Authority's enforcement priorities.
- 13 May, 1999 University of Limerick - Presentation to MBA class on the work of the Authority.
- 12 November, 1999 Competition Authority/UCD Faculty of Law conference on EC White Paper - Paper on the Authority's enforcement priorities.

Ms. Goggin

- 17 June, 1999 SIPTU Conference for Local Authority Professional Officers on Public Procurement - "*Think Competition*".
- 6 September, 1999 IBEC Telecommunications Policy Committee - Competition and Regulation.

Mr. Prasifka

- 26th January, 1999 Independent Liquour Licensing Reform Group - "*Reform of the Liquor Licensing Laws*".
- 17th/18th May, 1999 Forecourt Retailing Conference - "*Reform of the Liquor Licensing Laws*".
- 29th June, 1999 Competition Press conference - "*Copyright and Competition Law*".
- 1st October, 1999 Competition Press conference - "*Merger Review Group Report -- Authority's Response*".

Ms. Mackey

- 12 May, 1999 University of Limerick - Paper on the European Commission's White Paper Proposals.

Annex 1

Freedom of Information Act, 1997.

The Freedom of Information Act, 1997, which came into effect on 21st April, 1998 established 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 effecting 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 Freedom of Information Act the Authority has published a 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 Act. The guide, which is available from the Authority free of charge in hard copy and on its web site, also sets out the rules, procedures, practices, guidelines and precedents used by the Authority.

During 1999, the Authority received six requests for information under the Act. One of the requests was part granted, three were refused, one was withdrawn and a decision on the sixth had not been made by year's end. Of the six requests made to the Authority during the year, three were made by journalists and three by the business community. None of the Authority's decisions had been appealed to the Information Commissioner.

Annex 2

Targets set in 1999 Work Programme to achieve Core Objectives

Core Objective 1 *To provide prompt enforcement of the Competition Acts*

- Targets**
- In the case of the most serious complaints, i.e. those concerning alleged cartels, to respond within seven days.

 - To contact the complainant within one month of the original complaint if further information is required.

 - To review all ongoing complaints on a quarterly basis to assess progress and consider further action.

Comment on achievement

In respect of cartels, the target was to respond within 7 days. Of 37 cartel cases opened, 11 were own initiative cases leaving 26 actual complaints to the Authority, of which one was anonymous. Of the 25 complaints, 12 were responded to within the 7 day target (48% success rate).

In all other cases, the target was to acknowledge each complaint within 7 days and to request further detailed information where necessary within one month. 123 such complaints were received, of which 4 were anonymous. Of the remaining 119 cases, 71 were acknowledged within one week (60% success rate). 20 of the 119 cases were found not to be Competition Act issues and were therefore closed without the necessity to seek further information from the complainant. Of the 99 remaining cases, 35 were followed up within the month (35%).

All cases on hand were reviewed on a quarterly basis.

The Authority was disappointed with its performance in this area but believes it to be a reflection on the lack of resources available to it to investigate effectively the level of complaints that it receives. Furthermore, it is the Authority's belief that

performance in this area is likely to deteriorate further in 2000, given that the drop in resources which began in mid-1999 is unlikely to be arrested until mid-2000 at the earliest.

Core Objective 2 *To deal promptly and efficiently with agreements notified to it with requests for certificates or licences.*

- Targets**
- To activate all of the remaining cases;

 - To deal with 100 notifications;

 - To eliminate all remaining 1992 cases;

 - To conduct a review of exclusive distribution agreements in respect of cylinder liquid petroleum gas, arising from the expiry in mid-1999 of the existing Category Licence in that sector.

Comment on achievement

This is an area in which the Authority was satisfied that it largely achieved its targets. 108 notified agreements were dealt with during 1999 as detailed in Section 3 of this report. In relation to its target to eliminate all remaining 1992 cases, of the 97 such notifications on hand at the beginning of the year, 72 were dealt with by year end. The remaining 25 cases notified in 1992 were activated during the year but were not finalised as outstanding issues in relation to each of the cases remained to be resolved. The review of exclusive distribution cases in the cylinder liquid petroleum gas sector was completed.

Core Objective 3 *To provide the Minister with high quality advice when requested to do so under sections 11 and 14 of the Competition Act, 1991 and in the case of referrals under the Mergers Act.*

Target - To provide high quality, clearly written advice on all mergers referred to it, within the specified timescale.

Comment on achievement

Two such referrals were made together to the Authority by the Minister during 1999 which were examined by the Authority in one report. The Authority's report was completed within the timescale requested and is reported on in Section 4 of this report.

Core Objective 4 *To increase awareness of competition law and the need for increased competition among business and the general public.*

Targets

- To carry out at least one detailed sectoral study under Section 11 of the Competition Act on its own initiative;
- To carry out any studies, under Section 11 or 14 of the Competition Act, requested by the Tanaiste;
- To highlight concerns about anti-competitive behaviour in the market and to promote greater awareness among the business community by publishing three Discussion Papers, holding two seminars on competition issues, and by engaging with the business community in particular on a more systematic and sustained basis.

Comment on achievement

The Authority initiated a study under section 11 of the 1991 Act into licensing restrictions and other barriers and restrictions to entry into the rail and bus passenger transport market within the State and their impact on delivery of passengers by

intercity rail, intercity buses and urban buses. However work on the study was postponed in November, 1999 owing to the resignation of Mr. Prasifka who was leading the study. No section 11 or 14 studies were requested by the Tanaiste. The Authority published 3 Discussion Papers during the year as targeted and addressed a variety of conferences in an effort to highlight concerns about anti-competitive behaviour and to promote greater awareness of the benefits of competition. The Authority also hosted a major conference on the European Commission's White Paper on competition policy. A combination of the amount of work involved in organising the White Paper conference and the limited resources available in the Authority prevented it from hosting the second targeted conference.

Annex 3

Notifications made in 1999

| <u>Notification No.</u> | <u>Parties</u> |
|-------------------------|--|
| CA/1/99 | Aer Lingus Group plc./TEAM Aer Lingus Limited/Compania Hispano Irlandesa de Aviacion S.A/TEAM FLS Aerospace Limited/Sale of business agreement |
| CA/2/99 | Beamish & Crawford/Miller Brewing Company - Exclusive Manufacturing and Distribution agreement |
| CA/3/99 | Health Ireland Partners Limited/G.P Care Systems Development Limited/Sale of Business Agreement |
| CA/4/99 | Tennant & Ruttie Distribution Limited/The Wrigley Company Limited/Exclusive Distribution Agreement |
| CA/5/99 | Hibernian Insurance Co. Ltd/Bank of Ireland Insurance Services Ltd - Agency Agreement |
| CA/6/99 | Warburg, Pincus Equity/Cognotec AutoDealing Ltd/Khanada Ltd - Subscription, Sale and Purchase Agreement |
| CA/7/99 | Futura Frames - Shareholders Agreement. |
| CA/8/99 | MCPS/MCPSI/Production (Library) Music Side Agreement |
| CA/9/99 | Allied Irish Banks, plc/University College Dublin - Exclusive Concession of Banking Services |
| CA/10/99 | National Union of Journalists/Regional Newspapers Association of Ireland - Agreement for Fees and Charges |
| CA/11/99 | Flogas Authorised Dealer Agreements - 2 Year Authorised Dealer Agreements |
| CA/12/99 | Flogas Authorised Dealer Agreements - 5 Year Authorised Dealer Agreements |
| CA/13/99 | National Schoolwear Centres/Vincent McElwain and Frances McElwain - Franchise Agreement |
| CA/14/99 | Calor Teoranta/ Ovanville Limited T/A The Camden Appliance Centre - Exclusive Purchasing Agreement |
| CA/15/99 | Dublin Institute of Technology & 14 other Third Level Educational Institutions - Joint Purchasing Agreement |

- CA/16/99 Irish Hospital Consultants Association (IHCA)/Voluntary Health Insurance Board (VHI)/BUPA Ireland - Recommended Scale of Fees and Charges Agreement,
- CA/17/99 Connaught Airport Development Company/Knock Cargo Handling Limited - Services Agreement (Cargo Handling).

Annex 4

Decisions and cases dealt with in 1999

I. Individual Decision

| <u>Decision No.</u> | <u>Notification No.</u> | <u>Parties</u> | <u>Decision</u> |
|---------------------|--|---|-----------------|
| 533 | CA/11/93 | Unisolutions/Dascom/Manix | certificate |
| 534 | CA/28/94 | Odenberg Engineering/Inspectron | certificate |
| 535 | CA/31/94 | Odenberg Engineering/Inspectron | certificate |
| 536 | CA/985/92E | Malting Company / Beamish & Crawford | certificate |
| 537 | CA/22/96 | Cahill May Roberts Ltd/ Elizabeth Arden Ltd | certificate |
| 538 | CA/24/95 | Cahill May Roberts Ltd/ Guerlain Ltd. | certificate |
| 539 | CA/1/97 | Johnstone Paints/Circle Paints Ltd | certificate |
| 540 | CA/25/96 | E.R. Squibb & Clonmel Healthcare Ltd | certificate |
| 541 | CA/21/97 | Trinity College Dublin Students' Union (TCDSU), STA Travel Limited (STA Travel) | certificate |
| 542 | CA/23/96 | Hampden Group / Homebase | certificate |
| 543 | CA/696/92E CA/652/92E CA/695/92E | Warner-Lambert / Elan Pharma / Hornsea Hornsea / Elan Warner-Lambert /Hornsea | file closed |
| 544 | CA/544/92E | Gilbeys/Pedrotti | certificate |
| 545 | CA/994/92E | Bimeda Chemicals Limited/Orion Yhtyma Oy | certificate |
| 546 | CA/991/92E | Clonmel Chemicals Company Limited / Ethical Pharmaceuticals Limited | certificate |

| | | | |
|-----|--|---|-------------|
| 547 | CA/990/92E | Green Science & Micro-Bac International | certificate |
| 548 | CA/1045/92E | Irish Life Assurance plc/First National Building Society | certificate |
| 549 | CA/724/92 | Irish Life Assurance plc/Registered Irish Life Insurance Brokers | certificate |
| 550 | CA/725/92 | Irish Life Assurance plc/Registered Irish Life Insurance Agents | certificate |
| 551 | CA/915/92E | Bewleys Manufacturing Ltd & Butlers Irish Confectionery/Others | certificate |
| 552 | CA/768/92E | J Donohoe Ltd/Bubble Up International Ltd (The Monarch Company) | certificate |
| 553 | CA/34/96 | Dynochem Ireland Limited/Irish Fertiliser Industries Limited (Urea Supply Agreement) | certificate |
| 554 | A/35/96 | Dynochem Ireland Limited/Irish Fertiliser Industries Limited (Urea Formaldehyde Concentrate Agreement) | certificate |
| 555 | CA/16/96 | Burmah Castrol (Ireland) Ltd. / Motor Fuels Equipment Loan Agreements | certificate |
| 556 | CA/274/92E | Moulinex S.A./ Glen Dimplex/ Irish Sugar plc | certificate |
| 557 | CA/526/92E | Sunkist/C&C | file closed |
| 558 | CA/228/92E | Sanbra Fyffe Ltd/Share Purchase Agreement | file closed |
| 559 | CA/50/92E | Curust Financial Service Limited/ Loewe-Lack-Werk Otto Loewe GmbH & Co. K.G. | file closed |
| 560 | CA/774/92E CA/776/92E CA/777/92E CA/778/92E | BTE/Motorola Ltd/Eirpage Ltd BTE/Motorola Ltd/Eirpage Ltd Eirpage Operating Agreement BTE/Motorola Ltd/Eirpage Ltd | file closed |
| 561 | CA/30/96 | Hampden/Allied Carpets | certificate |

| | | | |
|-----|------------|---|-------------|
| 562 | CA/279/92E | Combined Performance Measurement Services Ltd | certificate |
| 563 | CA/8/96 | Hampden Group Plc/Reid Group Plc | certificate |
| 564 | CA/967/92E | ESM Paper Limited/Berghuizer Papierfabriek NV | file closed |
| 565 | CA/38/95 | Integrated Payment Systems Inc., American Express Travel Related Services/JWT (Forex) Limited | certificate |
| 566 | CA/4/99 | Tennant & Ruttie Distribution Ltd/The Wrigley Company Ltd | certificate |
| 567 | CA/35/95 | Irish Insurance Federation Register | certificate |
| 568 | CA/522/92E | Cadbury Ireland Limited/Premier Brands Limited | certificate |
| | CA/523/92E | Cadbury Ireland Limited/Premier Brands Limited | |
| 569 | CA/483/92E | MCPS/ Membership Agreement | licence |
| | CA/485/92E | MCPS/ Record Producer Agreement | |
| | CA/487/92E | MCPSI/ Schedule of Fees from Production Music Library Catalogues | |
| | CA/490/92E | MCPS/ Videogram Producers Licence Agreement | |
| | CA/492/92E | MCPS/ In-Flight Entertainment Licence | |
| | CA/495/92E | MCPSI/ Education Institution Licence | |
| | CA/498/92E | MCPS/ Production Music Code of Conduct (Facility Houses) | |
| | CA/499/92E | MCPS/ Production Music Code of Conduct (Production Companies) | |
| | CA/500/92E | MCPSI/ Synchronisation Licence | |
| 570 | CA/488/92E | MCPSI/ Radio Station Licence Agreement | certificate |
| 571 | CA/4/96 | ARAL, BP, IP, MOBIL and STATOIL | certificate |

| | | | |
|-----|------------|--|-------------|
| 572 | CA/686/92E | Bord Telecom Eireann/PostGEM Limited/Inet Limited | file closed |
| 573 | CA/8/99 | MCPSI/ Production (Library) Music Side Agreement | licence |
| 574 | CA/5/99 | Hibernian Insurance Company Limited/Bank of Ireland Insurance Services Limited | certificate |
| 575 | CA/9/99 | University College Dublin/Allied Irish Banks | certificate |
| 576 | CA/682/92E | Eirtrade Limited/International Network Services Ltd | file closed |

Decision 489 - Category Certificate in respect of Agreements involving a Merger and/or Sale of Business dated 02/12/97

| | | | |
|---------|--|----------|------|
| CA/1/99 | Aer Lingus Group Plc/FLS Industries AS | 24/03/99 | cert |
| CA/3/99 | Health Ireland Partners Limited/G.P Care Systems Development Limited | 09/04/99 | cert |
| CA/7/99 | Leo West, Leo West Enterprises Limited, Patrick and Catherine O'Sullivan, John Jordan, Kieran Collins and Tom Walsh, Classic Windows Ltd, Counteract ltd | 27/07/99 | cert |
| CA/6/99 | Warburg, Pincus Equity Partners LP/Warburg, Pincus Ventures International LP/Cognotec AutoDealing Ltd | 27/07/99 | cert |

Decision No. 528 - Category Certificate/Licence in Respect of Agreements between Suppliers and Resellers dated 04/12/98

| | | | |
|-------------|--|----------|---------|
| CA/37/93 | Tenants Ireland Limited/Publicans in Republic of Ireland | 12/02/99 | cert |
| CA/2/97 | Toyota Ireland/Motor Dealers | 22/02/99 | cert |
| CA/987/92E | Ewos Agriculture Ab/ Cross Vetpharm Group Ltd | 22/02/99 | cert |
| CA/1056/92E | Allegro Limited/Bewleys Coffee Ltd | 09/04/99 | licence |
| CA/1057/92E | Allegro Limited/Bewleys Tea Ltd | 09/04/99 | cert |
| CA/27/95 | Roche Products Ltd/Allphar Services Limited. | 27/07/99 | licence |

II. Withdrawals

| <u>Notification No.</u> | <u>Parties</u> | <u>date withdrawn</u> |
|-------------------------|---|-----------------------|
| CA/75/92E | Henry Ford & Sons/Ford Dealers Agreement | 01/02/99 |
| CA/344/92E | Colthurst/Elan | 12/02/99 |
| CA/370/92E | Bord Telecom Eireann/Golden Pages Directory Agreement | 17/02/99 |
| CA/371/92E | Bord Telecom Eireann Co. Ltd/Golden Pages Limited | 17/02/99 |
| CA/369/92E | ITT Info Services Ltd/ Golden Pages Ltd | 17/02/99 |
| CA/372/92E | ITT World Directories Ltd/Golden Pages | 17/02/99 |
| CA/995/92E | Clonmel Chemicals/Ethical Generics Ltd | 18/02/99 |
| CA/4/94 | T Sheridan Sales & Marketing Ltd/Georgio Beverly Hills Inc. | 02/03/99 |
| CA/33/93 | Grant Engineering Limited; Eopflam S.p.A. | 10/03/99 |
| CA/19/96 | Hampden Group Plc/Rosbys plc | 12/03/99 |
| CA/6/93 | Sigma Wireless Technologies Ltd/ Phillips Telecom | 22/04/99 |
| CA/484/92E | MCPSI/MCPS - Production Music Membership Agreement | 23/04/99 |
| CA/486/92E | MCPSI/MCPS - Agreement with RTE | 23/04/99 |
| CA/491/92E | MCPSI/MCPS - Domestic Radio Agreement | 23/04/99 |
| CA/494/92E | MCPSI/MCPS - Premier Telephone Agreement | 23/04/99 |
| CA/493/92E | MCPSI/MCPS - Background Music Operators Agreement | 23/04/99 |
| CA/497/92E | MCPSI Recording booths | 23/04/99 |
| CA/779/92E | Bord Telecom Eireann/Information Dealer Agreement | 30/04/99 |

| | | |
|------------|---|----------|
| CA/232/92E | Irish National Insurance Co Ltd/ARAG | 11/06/99 |
| CA/297/92E | Northern Telecom (Irl) Ltd/Sound Systems Ltd | 11/06/99 |
| CA/800/92E | Omnitrom Ltd/Crytovision A.S./Tandberg A.S. | 24/06/99 |
| CA/32/95 | Warner Lambert Export Ltd/ Plaistow Ltd/ Little Island/Parke Davis & Co. | 12/07/99 |
| CA/33/92E | Warner Lambert Export Limited/ Plaistow Limited, Warner-Lambert Company | 13/07/99 |
| CA/3/97 | Irish Auctioneers and Valuers Institute/IAVI Members | 27/07/99 |
| CA/572/92E | United Drug Distributors Ltd; Mundipharma Pharmaceutical Co. | 27/07/99 |
| CA/409/92E | Cahill May Roberts Ltd/ Fisons Pharmaceuticals Irl Ltd | 13/08/99 |
| CA/510/92E | Cadbury Beverages Limited/Batchelors Limited | 30/08/99 |
| CA/511/92E | Cadbury Beverages Limited/Batchelors Limited | 30/08/99 |
| CA/524/92E | Sunkist Soft Drinks Limited/Batchelors Limited | 30/08/99 |
| CA/373/92E | Combined Insurance Co. Of Ireland Limited/Agents | 08/10/99 |
| CA/775/92E | Bord Telecom/Motorola Limited/Eirpage Agency Agreement | 08/10/99 |

III. Rejections

| <u>Notification No.</u> | <u>Parties</u> | <u>date rejected</u> |
|-------------------------|--|----------------------|
| CA/496/92E | MCPS/Amateur Cinematographers Standard Recording Licence. | 14/05/99 |
| CA/54/92 | Natelex National Electronics Society Ltd | 14/05/99 |
| CA/559/92E | United Drug plc/Astra Pharmaceuticals Limited | 31/08/99 |
| CA/745/92E | Thomas De la Rue & Co/Jefferson Smurfit Group Plc | 31/08/99 |
| CA/1064/92E | Sherwin Williams/FLS Paints | 31/08/99 |
| CA/172/92E | Sisk Properties Limited | 12/11/99 |