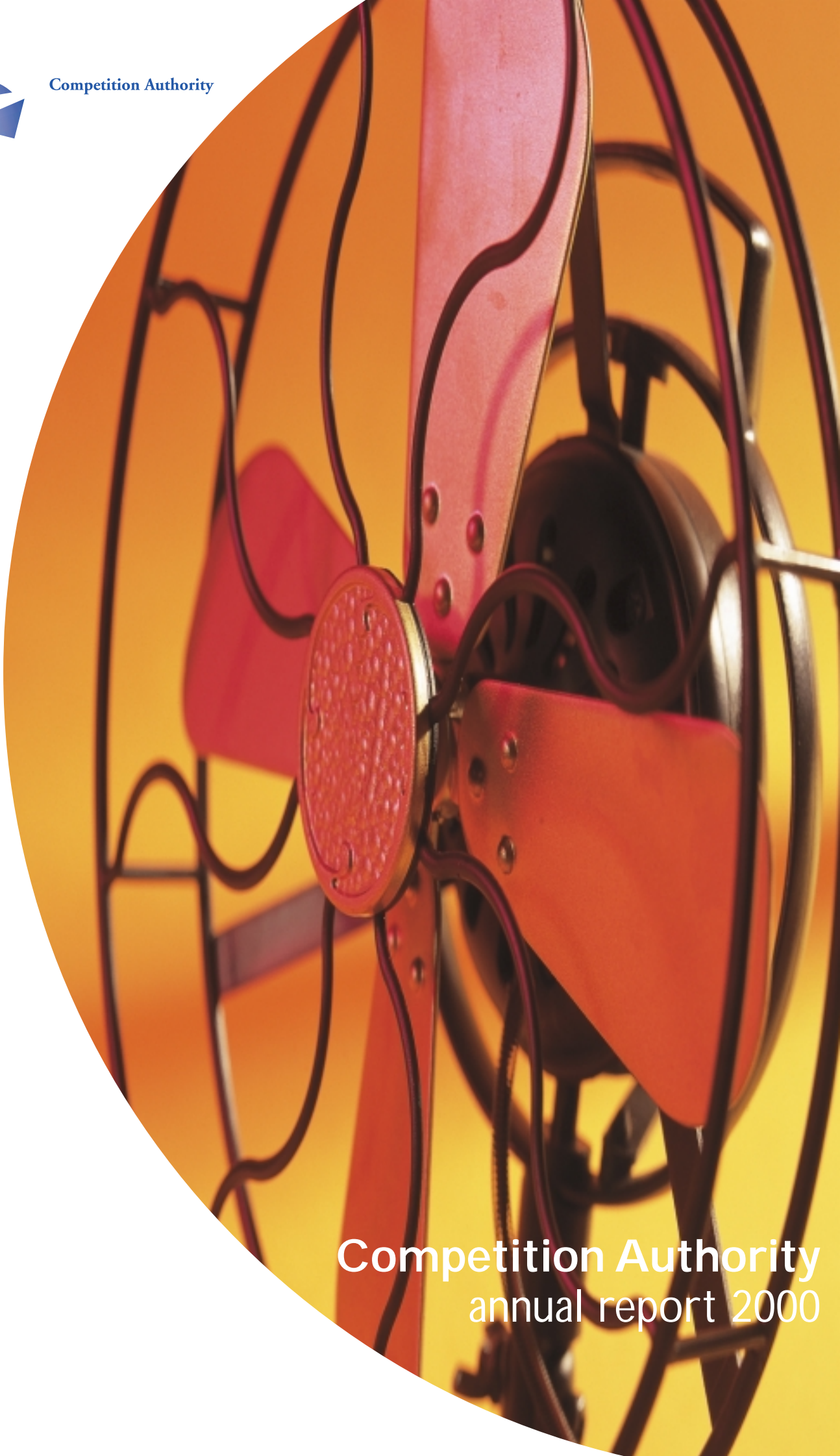




Competition Authority



Competition Authority
annual report 2000

30th April, 2001

**Mary Harney TD
Tánaiste and Minister for Enterprise, Trade and Employment
Kildare Street,
Dublin 2.**

Dear Tánaiste,

I have the honour of submitting to you the Annual Report of the Competition Authority for 2000, in accordance with Section 12 of the Competition Act, 1991.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'John Fingleton', written in a cursive style.

Dr. John Fingleton,

Chairman.

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Foreword



*Dr. John Fingleton,
Chairman of the Competition
Authority*

The year of 2000 saw the Competition Authority under the greatest strain since its foundation in 1991. The first half of the year was dominated by the continuing trend of staff departures that left it barely operational. As a result, the ability of the Authority to carry out its statutory and other functions was seriously and regrettably compromised and an unacceptably large and unprecedented backlog of open complaint and investigation files developed. Many of the notifications, advocacy papers and outstanding proceedings initiated by the Authority were also delayed.

Fortunately, the year ended on a somewhat happier note. The vacancies and five additional posts created in June 2000 were mostly filled by December, and the Authority was planning a series of training programmes for the New Year. A study by Deloitte and Touche had borne out the need for substantially increased resources, creating a certain degree of optimism about the

future of the Authority. The publication of the final Report of the Competition and Mergers Review Group (in May) had led to a government decision (in October) to introduce new legislation to improve competition law, including a decision to transfer mergers to the Authority. Finally, the Authority had moved to a new divisional structure that allocated resources in a transparent way to its broad range of activities.

The end of the year left the Authority facing important challenges. Immediately, these were the training of staff, the implementation of the new internal structure, getting the work programme back on track and establishing a funding base that would sustain the Authority's work. In the medium term, the proposed new legislation, implementation of the anticipated OECD Report on Regulatory Reform in Ireland, and the now well-advanced plan for the modernisation of European Competition policy represent opportunities, if properly managed and supported, for the Authority to play an important role in shaping the economic future of the country.


The Authority owes a debt to many organisations and individuals for cooperation or assistance during the year. This includes the offices of the Director of Telecommunications Regulation, the Commission for Electricity Regulation, the Commission on Aviation Regulation, the Director of Consumer Affairs, the Companies

Records Office, the Director of Public Prosecutions, An Garda Síochána, the Department of Public Enterprise and the Attorney General. Thanks are also due to the Department of Enterprise, Trade and Employment both for the many core services (finance, personnel, etc.) that they provide and to the Competition Policy Section, headed by Brian Whitney, that is responsible for the mandate and resources of the Authority. The Authority is grateful to Mr. Fergus O'Regan, Mr. Michael Buckley and Ms. Emma Boylan who acted as legal advisers to the Authority at various times during the year when the legal advisor positions within the Authority were vacant.

Within the Authority, I would like to thank my fellow Members, Isolde Goggin, Paul Gorecki, Patrick Massey and Declan Purcell for their enormous commitment to our common goals, and the Secretary of the Authority, Ciaran Quigley, for his efficient and calm management. The Authority is fortunate to have attracted talented, bright and enthusiastic people. Rather than thank each person individually here, I refer to the full list of staff in the Report itself and thank one and all. I would like to thank also staff of the Authority who left during the year to take up other employments and to wish them success in their careers.

At a personal level, I would like to thank a number of individuals who have given valuable time and/or counsel: Margaret Bloom, Damian Collins, Michael Collins, Etain Doyle, Gerald Fitzgerald, Eleanor Fox, James Hamilton, Paul Haran, Gerard Hogan, Niamh Hyland, Austin McNally, Simon Nugent, Frances Ruane and Andrew Whitaker.

Finally, I would like to thank the Tánaiste and Minister for Enterprise, Trade and Employment for her committed support, both for the Competition Authority and for its broad mission in promoting competition and economic efficiency in all sectors of the Irish economy.

A handwritten signature in black ink, appearing to read 'John Fingleton', written in a cursive style.

**John Fingleton,
Chairman.**

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.

Introduction

The Authority's annual report for 1999 reported that a number of staff resignations had caused the Authority some difficulties. Unfortunately, this trend continued well into 2000 to such an extent that the Authority was unable to fulfil its statutory duties satisfactorily. To a large extent, the Authority was a victim of its own success in attracting talented individuals and training them to a high standard, making them very attractive to other bodies in both public and private sectors. This is a problem that the Authority shares with many parts of the Civil Service. However, the use of short-term contracts, lack of flexibility in remuneration and the absence of a clearly defined career structure for specialist staff undoubtedly increased the challenge to the Authority in retaining valuable skilled individuals.

The level of resignations in such a short period of time had a serious impact on the level of service that the Authority could provide. In the course of those difficulties, the then Director of Competition Enforcement requested the Tánaiste to relieve him of the duties particular to the post on the grounds that he was unable to carry them out due to lack of staff and resources. Around the same time, the Authority was forced to postpone investigations of new complaints of anti-competitive practices due to the lack of available resources.

Following the appointment of a new Chairman of the Authority, the Tánaiste announced an increase in the staff resources of the Authority from twenty four to twenty nine while the Authority secured agreement that recruitment to the Authority for specialist staff would be on the basis of permanent positions. New promotional structures were put in place so as to offer a proper career structure in the Authority and recruitment to fill existing vacant positions as well as the new positions was expedited. By the end of the

year the Authority had filled twenty-five of its twenty-nine positions and set about an intensive training programme of its new staff so as to position itself to carry out all of its statutory functions with renewed vigour.

Of the twenty-five staff with the Authority on December 31st, seventeen joined during 2000. The substantial benefits and increased output that would be possible with such a large increase of enthusiastic new staff during 2000 will undoubtedly be constrained by the enormous scale of the loss of experienced staff during 1999 and 2000. While some staff turnover is inevitable, and it may be desirable to have a “revolving-door” policy, the magnitude of turnover in 1999/2000 was both regrettable and excessive and would be unsustainable in the long term.

Authority’s Work Programme 2000

In its work programme for 2000 the Authority outlined an ambitious set of targets by which it intended to achieve its core objectives. Because of the staffing difficulties outlined above, the Authority was unable to meet its own targets or provide a satisfactory level of service to complainants and the public generally. However, the Authority invested considerable resources in the latter half of 2000 in recruiting new staff and training them to meet the challenges ahead in 2001 and beyond.

Towards the end of 2000, the Authority began to put in place a new internal organisational structure involving five divisions, each directed by a Member of the Authority and with clearly defined roles and functions. Of particular significance was the creation of a Division on regulated markets under Isolde Goggin’s direction. This recognised the increasing role played by the Authority in advocating competition in areas where the State itself is the primary source of the restriction. This new divisional structure, which came into place formally on January 1st 2001, is as follows:

Division	Functions	Director
Cartel Enforcement	Investigations and prosecution of cartels and other matters with a possible criminal element	Patrick Massey
Monopoly Enforcement	Investigations and prosecutions in abuse of dominance cases and for non-cartel (horizontal and vertical) agreements	Paul Gorecki
State Restrictions	Competition advocacy in markets where the State restricts competition and liberalising markets.	Isolde Goggin
Competition Policy	Notifications, studies, and merger referrals, and preparation for undertaking the full merger function.	Declan Purcell
Chairman's office	Coordination, central services and administration, public relations and external/international representation.	John Fingleton

Enforcement Activities

During the course of 2000 the Authority received 251 complaints about a variety of alleged contraventions of the Competition Acts. This was the highest annual number of complaints to the Authority since it was given enforcement powers in 1996. While investigation of complaints, particularly new complaints, was largely curtailed during the year the Authority recorded its first criminal prosecution when Estuary Fuels Limited was prosecuted in Limerick District Court in October. Later that month, the Authority also took court action against a group of farmers engaged in an illegal blockade of a dairy in Co. Donegal. Investigations of other cases continued as did preparatory work for court proceedings which the Authority initiated and reported on previously. At the end of 2000, the Authority had 340 open complaints or investigations, a number that it considers to be unacceptably high.

Notifications

While the Authority recorded the highest number of complaints received in a year in 2000, it also recorded the lowest number of agreements notified to it under Section 7 of the Competition Act, 1991. Only ten notifications were received in 2000, the lowest number of notifications since the Authority was established in 1991. 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). The Authority may also refuse to certify or licence a notified agreement, which, in its opinion, contravenes the Act. By the end of 2000, the Authority had dealt with 1,371 of the 1,408 notifications made to it since 1991. The Authority dealt with 14 notifications during 2000 and thus had 37 cases on hand awaiting a decision at year's end.

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 case was referred to the Competition Authority but was immediately withdrawn by the parties and so was not examined.

A Government decision, referred to elsewhere in this report, was made during the year to transfer responsibility for mergers from the Minister for Enterprise, Trade and Employment to the Competition Authority and this will occur when the necessary legislation has been passed by the Oireachtas. Following this decision, the Authority was invited to sit, jointly with the Department of Enterprise, Trade and Employment, on the EU Advisory Committee on Concentrations from October 2000.

Competition Advocacy

The Authority completed 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. This study was initiated under Section 11 of the Competition Act which provides that the Authority may study, analyse and report on any aspect of competition in any sector of the economy. The Authority's report of its study, which will be published by the Authority during 2001, was submitted to the Department of Public Enterprise in response to its invitation for views on its policy paper "A New Institutional and Regulatory Framework for Public Transport".

On 31 March 2000, the Tánaiste requested the Authority, under Section 11 of the Competition Act, 1991, to undertake a study into the implementation by local authorities of the Casual Trading Act, 1995 with a view to assessing the impact of that legislation on competition in local markets and to consider certain public interest objectives associated with the implementation of the legislation. While a certain amount of preliminary work on the study had been carried out by year's end, the Authority's resource difficulties, already alluded to in this report, prevented further progress. The Authority expects to complete the study in 2001.

The Authority also published a new set of explanatory booklets aimed at business and consumers, published two discussion papers, commenced work on updating its website, addressed a variety of conferences and seminars and engaged in an increased amount of media work, all aimed at increasing the awareness of competition law in Ireland.

Members and other staff of the Authority made submissions to relevant bodies, contributed articles to newspapers and gave interviews to the broadcast media on a wide range of subjects, including liberalisation of the utilities, pharmacies, groceries, taxis, retailing, and the sale of alcohol.

The Authority believes that awareness of competition policy and the Authority increased significantly during 2000. Evidence of this is seen in the 64% increase in the number of complaints and in the fact that the rate of complaints increased steadily during the year. Indications in early 2001 were that this trend was set to continue.

Other Activities

The Authority's workload during 2000 also involved several once-off but time-consuming management and policy issues which required substantial Authority input. The high rate of staff resignations that occurred in 1999 and in 2000, referred to earlier in this summary, resulted in a major recruitment process. While the actual recruitment was done by the Civil Service and Local Appointments Commission, a considerable amount of time was spent by the Authority in the preparatory work and in the selection procedures. The Deloitte & Touche organisational review of the Authority, also referred to elsewhere in



The Tánaiste Mary Harney, addressing a reception hosted by the Authority in September 2000 to mark its ninth anniversary.

this report, consumed a considerable amount of Authority time during the year. In addition to the work on formulating terms of reference for the study and selection of the consultants etc, two Members of the Authority and the Authority's Secretary were on the project board that oversaw the conduct of the study while substantial assistance and consultation was provided to Deloitte & Touche for the duration of the study. Indeed, in the aftermath of the report much time has been allocated by the Authority to implementing those recommendations that are within its power to implement. This process is likely to continue in 2001 and beyond.

In addition to the Authority's ongoing commitments at EU and OECD level in representing Ireland at EC Advisory Committee meetings and at the OECD's Committee on Competition Law and Policy, 2000 brought new commitments. The OECD Regulatory Review process and the ongoing discussions at EU level on the modernisation of Regulation 17 placed enormous demands on scarce Authority resources during the year. The OECD review required attendance at various meetings in Dublin and Paris and considerable involvement in the process itself. Similarly, the frequent, sometimes weekly, meetings in Brussels as part of the modernisation of Regulation 17 process required active participation at these meetings and substantial preparatory work.

On the domestic policy front, the Authority's detailed and considered response to the recommendations contained in the CMRG report was time consuming as was its work in the latter part of the year in formulating proposals for an immunity programme and working with the Department of Enterprise Trade and Employment on the detail of new consolidated competition legislation as decided by the Government in October 2000.

Financial Statement

The Authority is funded by the Department of Enterprise, Trade and Employment with which it has a Financial Autonomy Agreement and under which it has its own subhead within the Department's Administrative budget.

The Authority's financial allocation for 2000 was £1,219,000 (€1,547,811) of which £917,000 (€1,164,350) was allocated in respect of pay, overtime, allowances and employers' PRSI while the remaining £302,000 (€383,461) 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 2000 the Authority had used a total of £1,038,000 (€1,317,988) (or 85%) of its budget allocation — £637,000 (€808,823) of its pay allocation and £401,000 (€509,165) of its non-pay allocation resulting in a total saving of £181,000 (€229,823). This saving arose mainly from the non-filling of staff vacancies during the year. The overspend on non-pay, which arose primarily from once-off expenditure on the retention of outside legal advice and the cost of an organisational study, was accommodated by savings made in respect of unused pay allocation.

Section 1 — Human Resources & Organisational Structure

Members of the Authority

<i>Dr. John Fingleton</i>	<i>Chairman</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>Dr. Paul Gorecki</i>	<i>Member</i>

John Fingleton was appointed Chairman of the Competition Authority in March 2000 and took up the position in May 2000. He was appointed Director of Competition Enforcement in June 2000. Dr. Fingleton took a BA at Trinity College Dublin (1983-1987) and degrees of M.Phil. (1989) and D.Phil. (1991) at the University of Oxford. He was a lecturer in Trinity College Dublin from 1991 until April 2000 and continues as a research associate of the Department of Economics. John Fingleton is a visiting professor at the Université Libre de Bruxelles and was a visiting scholar at the University of Chicago during which time he worked with National Economics Research Associates.

Patrick Massey has been a Member of the Competition Authority since its establishment in October 1991 and was the Authority's Director of Competition Enforcement from 1996 until June 2000. He is an economist and a graduate of Trinity College Dublin and previously worked at NIHE Limerick, DKM Economic Consultants and the New Zealand Treasury.

Isolde Goggin graduated from Trinity College Dublin with an engineering degree and worked for the following nine years with Telecom Eireann (now Eircom) during which time she completed an MBA in UCD. After working in Brussels with the European Commission 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 having previously worked in the Department of Enterprise, Trade and Employment and in its predecessor, the Department of Industry and Commerce, for over twenty years. During that time he held a wide range of management positions that included responsibility, at various stages, for policy development in relation to industry, human resource development and company law.

Dr. Paul Gorecki graduated from University of London with a BSc.(Econ) in 1969 after which he took an MA in economics at Queen's University, Ontario, Canada and a PhD at the London School of Economics. After working for the Canadian competition authorities for several years, Dr. Gorecki joined the Economic Council of Canada in 1978 before becoming Director of the Northern Ireland Economic Council in 1992. He took up his appointment as a Member of the Competition Authority in June 2000.

Competition Authority Staff

Following the departure of a significant number of staff to take up offers of employment elsewhere, 2000 was a busy year in terms of recruitment to the Authority. In addition to filling vacancies arising from the various resignations, the Authority's staff complement was increased by the Tánaiste in June 2000 from twenty four positions to twenty nine. The five additional permanent posts sanctioned were two senior economist and three solicitor positions and followed an interim recommendation arising from the organisational review of the Authority by Deloitte & Touche. The additional posts brought to twelve the number of permanent specialist positions in the Authority made up of two Senior Economist and five economist positions and two Legal Advisor and three solicitor positions.

Staff of the Competition Authority as of 31st December 2000.

By the end of 2000, twenty-five of the twenty-nine positions in the Authority had been filled. Of the four remaining positions, three were administrative positions and one was a solicitor position. The following list gives the details of the staff at 31st December 2000 and indicates the enormous recruitment activity that happened in the second half of the year.

Name	Position	Year Joined
Ciaran Quigley	Secretary to the Authority	1998
David McFadden	Legal Advisor	2000
Philip Andrews	Legal Advisor	2000
Patrick Kenny	Senior Economist	2000
Dermot Nolan	Senior Economist	2000
Colette Hegarty	Economist	1999
Tressan McCambridge	Economist	2000
Vivienne Ryan	Economist	2000
John Evans	Economist	2000
Carol Boate	Economist	2000
David Hodnett	Solicitor	2000
Patrick Neill	Solicitor	2000
Ann Geraghty	Higher Executive Officer	1991
Catherine Ryan	Higher Executive Officer	1991
Maura O'Donoghue	Executive Officer	2000
Joanne Keegan	Clerical Officer	2000
Stephen Lalor	Clerical Officer	1996
Sandra Rafferty	Clerical Officer	2000
Laraine Cooper (J/S)	Clerical Officer	1998
Elizabeth Heffernan (J/S)	Clerical Officer	2000
Ethna Duignan	Clerical Officer	2000

Training Programme

In its work programme for 2000 the Authority stated that it would organise training specific to the work carried out by the Authority and facilitate the attendance of staff on training courses organised by the Department of Enterprise, Trade and Employment. With the departure of experienced staff and the resultant recruitment of so many new staff to the Authority during the year, staff training and development became a high priority activity. A wide variety of training was undertaken, particularly in the second half of the year. Much of the training was provided by the Authority in-house with a series of seminars on the principles of competition, EC competition law, communication skills and

competition law enforcement. Indeed it was on the latter category of competition law enforcement to which most training time was allocated. In addition to in-house training, staff of the Authority attended external courses and seminars in Ireland and abroad, while IT training was provided by the Department of Enterprise, Trade and Employment. The Authority is funding the pursuit by a number of staff of formal work related courses of further education.

Organisational Review

In April 2000 Deloitte & Touche, Management Consultants, commenced an organisational review of the Competition Authority at the request of the Authority and the Department of Enterprise, Trade and Employment. This review was financed from the Authority's budget. The purpose of the exercise was to undertake a thorough and full review of the structure, operations, resource requirements, business processes and IT systems in place in the Authority and to make clear recommendations on the streamlining and improvement of its processes and systems, including also an indication of necessary staffing levels. The objectives also required that account be taken of the position of appropriate comparator organisations at home and abroad and in that regard international comparators in the US, the UK, Sweden and Finland were examined. The Office of the Director of Telecommunications Regulation (ODTR) and the Health and Safety Authority (HSA) were examined in the context of home comparator organisations.

The conduct of the study was overseen by a project board representative of the Authority, the Department of Enterprise, Trade and Employment and Deloitte & Touche. The study was completed in October 2000 and the final report contained many recommendations spanning a variety of headings. These recommendations were made in regard to the existing legislation and did not anticipate changes made via legislation or otherwise as a result of the Report of the Competition and Mergers Review Group. The main recommendations related to the following:-

- Structure and Roles – the possible establishment of an Executive Board and/or an external advisory panel.

- Independence of the Authority – establishing the Authority as a corporate independent body.
- Functions and Workload – the restructuring of the Authority into five separate functional divisions.
- Work Processes – the development of better teamwork within the Authority.
- Staffing – an increase in Authority’s staff complement from twenty-nine to forty-four.
- Staff Development – the establishment of a career structure within the Authority.
- Organisational culture – the introduction of improved avenues of communication between all categories of staff.
- Physical Resources – the allocation of additional office space to allow for an improved physical layout.
- Public Perception – increased emphasis on PR.
- Information Systems and Use of Technology – the establishment of greater control for the Authority over its IT and other systems.

At year’s end some of the recommendations contained in the report had been implemented while others were under consideration by the Department of Enterprise, Trade and Employment. Specifically, the Authority had put in place the necessary arrangements to restructure itself into five distinct divisions with a Member as Director of each Division with effect from 1 January 2001, while together with the Department of Enterprise, Trade and Employment, it had put in place a career structure for specialist staff. New avenues of internal communication had been developed and a significant amount of staff training had been engaged in with regard to public relations.

Competition and Merger Review Group

Another report published during the year of relevance to the Competition Authority was the final report of the Competition and Merger Review Group (CMRG). The report, which was published by the Tánaiste in May 2000, contained forty recommendations, the majority of which would impact on the Competition Authority. It recommended for instance that:-

- the Authority should have the power to apply EU competition law in Ireland,
- the Authority should be an independent body,
- mergers currently notified to the Department of Enterprise, Trade and Employment should in future be notified to the Authority,
- the Authority should have the power to hold elective hearings in criminal cases and impose fines, and
- the Authority should have additional resources to undertake its tasks.

In October 2000 the Tánaiste announced that the Government had approved proposals to draft new consolidated competition legislation that would implement many of the recommendations made in the CMRG report. She confirmed that it was proposed to transfer responsibility for examining and deciding upon mergers and take-overs from the Minister to the Authority and that determinations would be on the basis of competition criteria only. The Tánaiste said also that the new legislation would contain measures to strengthen competition enforcement by the Authority including the extension of powers of arrest and detention to competition law offences. At year's end the legislation was in the early stages of preparation by the Department of Enterprise, Trade and Employment.

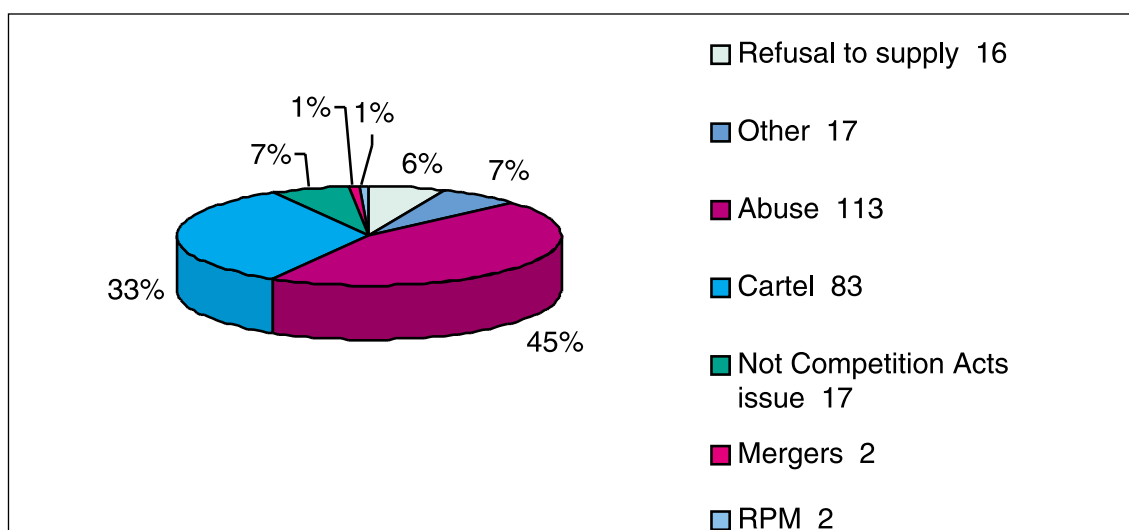
Section 2 – Enforcement

During 2000 a total of 251 complaint files were opened by the Authority, just over 90 more than the previous year when the Authority opened 160 complaint files. These included 3 files that were opened on an own initiative basis, the remaining 248 being opened on foot of complaints received. A further 153 files were carried over from 1999. A total of 64 cases were closed during the year, compared with 101 in 1999. Thus by the end of the year there were 340 cases open, the largest number left open at the end of any year since the 1996 Act came into force.

The reduction in the number of cases closed in 2000 over previous years is due mainly to the high turnover of staff during the course of the year and reference to this is made elsewhere in this report. The resultant vacancies did however impact particularly hard on the Authority’s enforcement activities as many of the staff who left during 2000 had been working on enforcement investigations. Indeed for a number of months during the year, complainants were advised that, due to resource difficulties, the Authority was unable to initiate immediately an investigation of their complaints and advised them of their own right of private action under the 1991 Act.

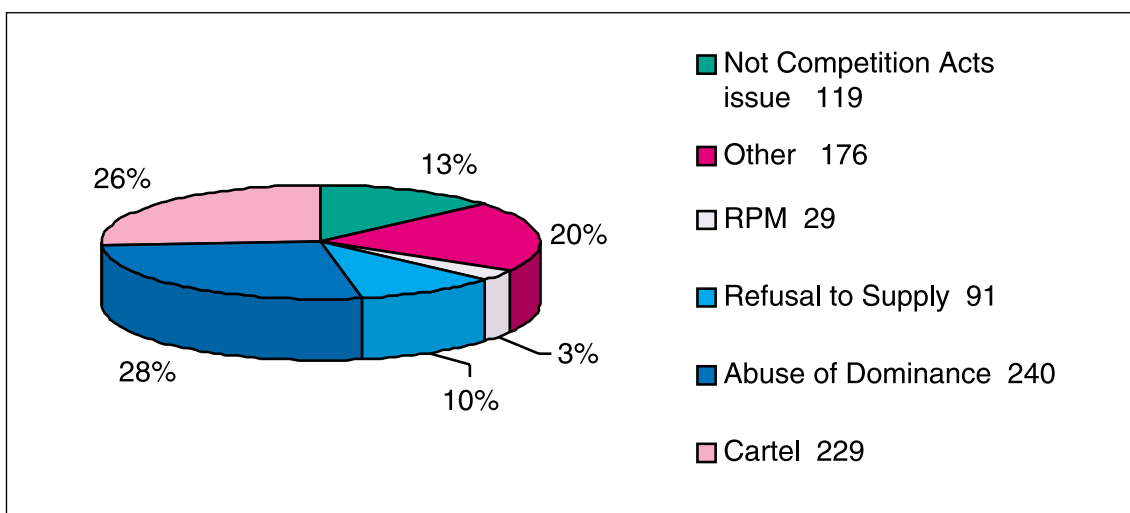
Details of the cases opened in 2000 are given in the chart below. The most common single complaint involved alleged abuse of a dominant position (113 cases) and price fixing/cartel activities (83 cases).

Table 1 Breakdown of Cases opened in 2000



Since the 1996 Act came into force the Authority has opened a total of 884 complaint files. Details of the nature of these cases are given in the chart below. It is noted that there was a considerable increase in the number of complaints made to the Authority about alleged anti-competitive behaviour in 2000 over the preceding couple of years. This can be attributed in large part to the increased awareness among the public about the Authority and its remit.

Table 2 Cases opened since 1996



Authority legal proceedings

Estuary case

The Competition Authority invoked its powers to bring criminal prosecutions in price fixing cases when it prosecuted Estuary Fuel Limited on charges of entering into and implementing an agreement to fix the price at which motor fuels were sold by a filling station in Tralee. This is the first time that a company has been prosecuted for price fixing under the Competition (Amendment) Act, 1996. Judge Tom O'Donnell in Limerick District Court imposed a fine of £500.00 in respect of each of the two charges. The case was heard on 4th October 2000 and Estuary Fuel Limited pleaded guilty to two charges of breaching section 4(1) of the Competition Act. The Competition Authority considered that price fixing represented a serious breach of competition law because it effectively denied consumers the right to shop around and get the best possible deal.

In the early months of 1999 the filling station concerned began selling unbranded motor fuels at a significant discount to the prices charged by other filling stations in Tralee resulting in lower prices for motor fuels in the town. Evidence was presented by the Authority that Estuary Fuel Limited had subsequently entered into and implemented a written agreement in June of 1999 to supply motor fuels to that filling station subject to the station not selling diesel or unleaded petrol for less than 51.9p (€0.66) and 55.9p (€0.71) respectively. The Authority argued that such an agreement had the object of restricting price competition in respect of motor fuels in the town of Tralee.

Natural Dairies Limited

One week after the successful prosecution in Limerick District Court, the Authority was involved in another high profile court action. Acting on foot of a complaint received about a blockade in progress at the premises of Natural Dairies Limited in Convoy, Co. Donegal, the Authority sought, and was granted, an interim order by the High Court to restrain the blockade. The Authority sought the order because it believed that the primary purpose of the blockade by a number of individual farmers was to force up the retail price of a two-litre own-label carton of milk from 86p (€1.09) to 95p (€1.21). It was the Authority's understanding that Natural Dairies Limited supplied Dunnes Stores Limited with its own-label milk. The Authority considered the blockade action to be a restriction on competition and as such a contravention of the Competition Acts. In particular, it was concerned that a blockade of this kind could, in itself and by its example, inflict serious damage on the competitive process. The Authority saw it of paramount importance to send a clear signal that businesses that compete to the benefit of consumers should not be punished or otherwise damaged by direct or indirect competitors. Retaliation in the market place via improved efficiency and more competitive prices and products is the only legitimate response that competitors should have to increased competition.

In public comments on its action at the time the Authority stated that its primary focus in taking the action was to safeguard the competitive process so that consumers could continue to enjoy the benefits of competition in the market. It pointed to the dramatic reduction in the price of a two-litre own-label carton of milk from £1.14 (€1.45) to 86p (€1.09), a reduction which the Authority attributed to increased competition in the

market. The Authority described any concerted action to try to force up retail prices as anti-competitive and anti-consumer.

The Interim Court Order was made against two named individuals as well as all other persons having notice of the order. While the blockade ended on Sunday 15th October, the Authority was granted an Interlocutory Injunction by the High Court on 16th October restraining farmers from taking further blockade action at the premises. On 13th November the High Court heard a motion of attachment and committal against a number of named individuals who had participated in the blockade. In his judgement, Judge Smyth made a number of comments about the savagery of the protest and about the flagrancy of the infringement and he made it clear that he regarded the notice parties as having been in contempt of court by ignoring the original order granted to the Authority on 13th October. While he stated that the court had jurisdiction to impose fines in this case, he decided against doing so as he did not have any evidence as to the individual circumstances of the notice parties. He did however award the Authority its costs on an indemnity basis and made it clear that the Authority should recover costs on the highest basis available, in other words that the Authority should be entitled to recover all of its legal costs involved in pursuing the notice parties.

Other cases in which legal proceedings are pending

The Authority has a number of cases in which it has legal proceedings pending in respect of contraventions of the Competition Acts, some of which have been reported previously in Authority annual reports. While work on these proceedings continued during 2000 it was not possible to have any of them, save for the Estuary case referred to above, heard in Court. The Authority anticipates however that several of these cases will be determined in the Courts during 2001.



*Attorney General
Mr. Michael McDowell,
Dr. John Fingleton
Chairman and
Director of Public
Prosecutions
Mr. James Hamilton at the
Authority's Immunity
Conference in November.*

Proposed Immunity Programme

A major element of the Authority's work in relation to enforcement activities in 2000 centred on policy, particularly in relation to means of increasing its powers to detect and successfully prosecute cartels. In November, the Authority commenced a public consultation process on its proposal to formulate, in cooperation with the Director of Public Prosecutions, an immunity programme to assist in the investigation and prosecution of unlawful cartels. In that regard the Authority hosted a conference entitled "Boosting the Fight Against Criminal Cartels: Transplanting Immunity to Ireland". The conference examined the policy and legal issues surrounding the grant of immunity from prosecution to companies and individuals that assist the Competition Authority in its investigation and prosecution of unlawful cartels, with a view to introducing such a programme in Ireland.

The Authority identified the two major challenges in the successful prosecution of cartels as: first, detection (as they are by nature always secret) and, second, gathering solid evidence that will support the 'beyond-reasonable-doubt' criminal conviction standard. Immunity programmes in other countries give amnesty from prosecution to companies that self-report and cooperate with an investigation. Putting such a programme in place in Ireland could enable the Authority to identify cartels that would not otherwise come to light and to gather substantial evidence to prosecute the other companies and executives involved.

Immunity has become the most successful tool in the fight against cartels in other countries. In recent years, immunity cases in the United States have resulted in significant convictions; have brought in over one billion dollars in fines; and led to the imposition of lengthy prison sentences on colluding corporate executives. A successful programme also operates in Canada and similar immunity arrangements have recently been introduced in the EU, the UK, and Germany.

This conference was intended to initiate a public consultation process for the development of an immunity programme in Ireland and to learn from the experiences of other countries which already have immunity programmes in place. To that end the Authority invited a number of leading figures from other competition agencies to share

their experiences of how immunity had helped in the detection of cartels and invited experts in Irish law to comment on the introduction of similar programmes in Ireland. The conference was also addressed by Competition Authority personnel and was attended by the Director of Public Prosecutions, Mr. James Hamilton and by the Attorney General Mr. Michael McDowell, SC.

James Griffin, Deputy Assistant Attorney General from the U.S. Department of Justice spoke about the US involvement in the detection and prosecution of some of the largest international cartels. In order to give the audience an insight into the common characteristics of international cartels the speaker showed video footage of actual meetings between cartel members, which were filmed covertly by the FBI with the consent of a co-operating witness. These tapes highlighted the enormity of harm inflicted by cartels. In all cases, cartel members were fully aware of the criminal nature of their agreements and were willing to go to extraordinary lengths to cover up their actions. In many instances cartel members met to fix prices under the guise of a trade association meeting. The tapes also highlighted the utter contempt that cartel participants had for their victims (the consumer). Cartels were very sophisticated and well organised and agreements were policed to ensure that participants did not cheat. The public exposure of these conspiracies and the harm they cause had brought home to many people the seriousness of the threat that cartels pose to efficient market economies throughout the world.

Paul Crampton, a practicing lawyer in Canada with Davis, Ward & Beck and formerly of the Canadian competition agency spoke about the Canadian Immunity Programmes. The introduction of an immunity programme in Canada has resulted in a doubling in the number of cartel convictions and an exponential growth in the level of fines. As well as acting as a tool for detection and prosecution, an effective leniency programme acts a deterrent to cartel-type behaviour. Mr Crampton discussed the criteria for qualifying for immunity in Canada. In Canada the Competition Bureau will recommend immunity to the Attorney General either where the Bureau is unaware of an offence and the applicant is the first to disclose it or where the Bureau is aware of the matter but the party is the first to come forward. The applicant must not have been the ringleader nor the sole beneficiary of the activity. Applicants also have an obligation to make restitution where possible.

Full immunity is favoured over partial immunity since it provides greater incentive to come forward. Mr. Crampton believed that the two most important elements that Ireland needed to consider in developing an immunity programme were certainty and confidentiality.

Margaret Bloom, Director of Competition Policy from the Office of Fair Trading in the UK, presented a paper on the new UK immunity programme. Ms. Bloom told the conference that the UK immunity programme is modelled on the US policy rather than the EU policy. Total immunity from financial penalties is automatic, under the OFT policy, where an undertaking participating in a cartel is the first to come forward before an investigation has commenced and the OFT does not already have sufficient evidence to establish the existence of the alleged cartel. The undertaking must also provide all the information, documents and evidence available to it regarding the existence and activities of the cartel; maintain continuous and complete cooperation throughout the investigation; not have been the ringleader and refrain from further participation in the cartel.

Total immunity may also be granted where an undertaking is the first to come forward after an investigation has commenced – but before a rule 14 notice¹ has been issued – and the above conditions are also satisfied. In contrast to the case where an undertaking comes forward before an investigation has started, immunity is discretionary where they come forward later. A reduction in financial penalties of up to 50 per cent (i.e. partial immunity) is also available for undertakings which provide evidence of the existence and activities of a cartel before the rule 14 notice is issued but are not the first to come forward or do not meet all the above conditions.

The OFT also offer an ‘amnesty plus’ programme. An undertaking cooperating with an investigation in relation to cartel activities in one market may also be involved in a separate cartel in another market of which the OFT are unaware. Under ‘amnesty plus’ an undertaking can obtain an additional reduction in financial penalties on the first cartel if it provides information that qualifies for immunity on the second cartel.

John Handoll of William Fry, Solicitors, Dublin, presented a paper on using immunity to fight cartels in Ireland. Mr. Handoll discussed the benefits of an immunity programme in terms of facilitating detection and significant cost savings. He considered the nature of

¹ Equivalent to an EC ‘Statement of Objections’.

prosecutorial discretion in Ireland. While the Authority, the Minister and the DPP can each offer immunity, full immunity from criminal prosecution for an applicant would only be guaranteed if each of these authorities participated in a common immunity programme. Mr Handoll also outlined some of the conditions for a successful immunity programme. He emphasised that certainty, transparency and anonymity were essential elements of a successful immunity programme. The threat of criminal punishment also had to be credible and real before an immunity programme would work.

Mr. Patrick Massey, Director of the Cartel Division in the Competition Authority presented a paper entitled “New Strategies that Can Help Win the War Against Cartels”. Mr. Massey outlined why the Competition Authority had identified the tackling of cartels as a top priority. He estimated that cartels in Ireland were costing consumers in the region of £500m per annum. If the other inefficiencies (deadweight loss) that arise from cartels were to be included in this estimate, then the cost of cartels to the Irish economy would be in the region of £1bn. Experience elsewhere had shown that an immunity programme was a very effective tool for cracking down on cartels. However, for such a programme to work Mr. Massey stressed that the threat of detection had to be real. If the enforcement process was to be credible and cartels were to face a significant likelihood of being caught then additional resources would be needed.

David M^cFadden, Legal Advisor with the Competition Authority, spoke about the purpose of the conference in terms of initiating a consultation process for the introduction of an immunity programme in Ireland and discussed the rationale for introducing such a programme in Ireland. An immunity programme would assist in the detection of cartel behaviour, lead to more successful prosecutions, and act as a deterrent to cartel activity. Mr M^cFadden described certainty and transparency as the most important elements in a successful immunity programme. He proposed that in order to qualify for immunity applicants should; be first to report, not have coerced or played the leading role, give full and continuing co-operation, take effective steps to terminate participation and where possible make appropriate restitution. Mr M^cFadden said that a consultation document, containing proposals for an immunity programme in Ireland, would be issued by the Competition Authority by the end of the year.

The Authority's conference concluded with a panel discussion in which panel members and conference attendees discussed issues raised during the conference and other issues about the introduction of an immunity programme into competition law. The panel consisted of some of the conference speakers and the Attorney General, Mr. Michael Mc Dowell, SC, the Director of Public Prosecutions Mr. James Hamilton, the Authority's Chairman Dr. John Fingleton, Mr. Damien Collins of McCann Fitzgerald Solicitors, and Ms. Andrea Rosen of the Office of the Attorney General, Canada.

A consultation document prepared by the Authority in conjunction with the Director of Public Prosecutions was subsequently published at the beginning of 2001 on which views and comments were invited.



Dr. John Fingleton with Minister for Labour, Trade and Consumer Affairs, Tom Kitt, T.D. who opened the Authority's Immunity Conference.

Section 3 — Notifications

The position at the start of 2000

At the start of 2000, the Authority had dealt with 1,357 of the 1,398 cases notified to it since October 1991, leaving it with 41 cases on hand. During the year it received 10 new notifications, and closed 14, leaving it with 37 open notifications at the end of the year.

Notification of Agreements in 2000

During the course of 2000, ten agreements were notified to the Authority under Section 7 of the Competition Act, 1991, as amended, compared with 17 notifications in 1999. A list of these notifications is contained in Annex 2. The notifications covered a recommended scale of fees agreement, a standard loan agreement, a motor dealer agreement, a sale of business agreement, a sale of financial services agreement, a franchise agreement, an exclusive purchase agreement, a gas tolling agreement and a standard franking machine licence agreement. By the end of 2000, a total of 1,408 notifications had been made to the Authority under Section 7 since the commencement of the Act.

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 that 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 8 formal Decisions in respect of notified agreements in 2000 and disposed of a total of 14 notifications during the year. By the end of 2000, 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

2000 is contained in Annex 3. All of the Authority's decisions are available on its website.

The table below provides information on the annual level of notification by year since the Authority was established in 1991 and the number of notifications for each of those years that have subsequently been dealt with by the Authority. Finally, the table shows the number of the notifications received in respect of each year that are still awaiting a decision by the Authority. So, for example, of 34 notifications received by the Authority in 1994, 32 had been dealt with by the end of 2000, leaving 2 awaiting a decision.

Table 3 — Number of notifications received, dealt with and on hand for each of the 10 years and a combined total of same.

1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	Total
Notifications received by year										
14	1,159	67	34	38	35	23	11	17	10	1,408
Notifications dealt with at 31/12/00										
14	1,142	66	32	38	34	23	11	10	1	1,371
Notifications on hand at 31/12/00										
0	17	1	2	0	1	0	0	7	9	37

Section 4 – Competition Advocacy

Introduction

The Authority has stated over recent years that one of its core activities is increasing awareness among business and the general public of competition law and the need for increased competition. To this end staff of the Authority have, during 2000, addressed various seminars, meetings and conferences on a range of competition related issues, have participated in various media interviews on television, radio and in print, and have published papers and documents with a view to publicising the need for increased competition in the economy. The Authority has also produced position papers on various competition policy issues in an effort to influence Government towards increased competition in particular areas.

Many serious constraints on competition in the economy as a whole have their basis in legislation or regulation. In other words, they arise from the actions of public authorities rather than of private firms. Anti-competitive regulation works against the interests of consumers and can inflict serious economic damage, as witnessed by the often-quoted examples of pubs and taxis. This type of restriction on competition cannot be tackled through the direct application of the competition laws. In recognition of the importance for the economy of vibrant competition in all sectors, the Authority has established a separate Division – the Regulated Markets Division – to put the case for competition and to monitor its application in sectors where it is being introduced.

In the past year, the Authority's advocacy work has been concentrated on three main areas:

- (i) **Liberalising markets:** Where sectoral regulators have been established (telecommunications, electricity and, most recently, aviation) the Authority has operational contacts with them on a wide range of issues. For example, in telecommunications, representatives of the Authority and of the ODTR have together tracked the proposed changes to the EU framework for regulation of the sector – changes which are themselves designed to bring the competition rules and

the sector-specific regulatory rules closer together. Day-to-day co-operation in resolving complaints, and in determining whether issues fall to be dealt with under competition rules or sectoral rules or both, is ongoing. In electricity, the Authority provided the Commission for Electricity Regulation with an opinion on the effects of gas capacity allocation for electricity generation. While the powers of the sectoral regulator for aviation did not come into effect until 2001, contact has been established through direct contact with his office and through quarterly meetings of the Chairman of the Authority and the three sectoral regulators.

- (ii) **Restricted markets:** The Authority has consistently advocated change in markets where regulations exist which protect the incumbents from competition and which penalise consumers without providing any proportionate benefits. After many years of discussion, 2000 finally saw the deregulation of the taxi market (albeit by the courts rather than by the regulators), with the Authority's preferred position of free entry being achieved. Similarly, the Authority has continued to promote the pro-consumer position adopted in its 1998 Interim Report on Liquor Licensing, through public debate and most recently through Ms Isolde Goggin's membership of the Liquor Licensing Commission established in December 2000 by the Minister for Justice, Equality and Law Reform. As mentioned in more detail below (see "Discussion Papers" and "Other Activities"), the Authority has pressed for the removal of provisions in the Groceries Order which create a "floor price" below which groceries cannot be sold. The Authority also continued to press for the removal of statutory restrictions in the pharmacy sector. At the end of 2000 the Minister for Health and Children announced his intention to review the operation of statutory regulations in this area and the Authority intends to contribute to that review.

- (iii) **Advice on new legislation:** In some cases, the Authority is consulted by the Competition Policy Unit of the Department of Enterprise, Trade and Employment on a draft bill or other legislative proposal, before it enters the public domain. In other cases, the Authority comments on legislative proposals which are in the public domain. Recent instances include inputs on retail planning, digital terrestrial television, railway infrastructure and proposals for regulation of health professionals.

Section 11 Studies

Transport

On 25th June 1999, the Competition Authority invoked its powers under Section 11 of the Competition Act, 1991, as amended by the Competition (Amendment) Act, 1996, to undertake, on its own initiative, a study of the rail and bus passenger transport market. The study was intended to analyse the structural barriers affecting the rail and bus passenger transport market and was conducted according to the following terms of reference:

“To undertake a study and analysis of the 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, in late 1999 the severe staff shortages experienced by the Authority, including the departure of the Member and economist principally concerned with the study, obliged it to suspend work on the study for a period. Meanwhile, the Department of Public Enterprise developed proposals for institutional and regulatory change in a number of areas², culminating in the publication of the policy paper, “A New Institutional and Regulatory Framework for Public Transport”, in August 2000. The Department invited submissions on this paper by 13 October 2000. In view of the short timescale proposed for institutional and regulatory reform, the Authority decided to complete the study in order to meet this consultation deadline. It is the Authority’s intention to publish the report during 2001.

The Authority, in its report, summarised its views on the public transport sector in general and on the proposals put forward by the Department of Public Enterprise on a new regulatory framework for public transport. The Authority’s views were as follows:

1. The Competition Authority considered that the development of the market for road and rail passenger transport in the State had been inhibited by the restrictive regulatory régime imposed by legislation. This legislation, much of which was explicitly intended to restrict road transport in order to protect the railways, has

² Cabinet Committee on Infrastructural Development and Public Private Partnerships, A New Institutional Framework For Public Transport. Department of Public Enterprise April, 2000 and Cabinet Committee on Infrastructural Development and Public Private Partnerships, Regulation Of The Bus Market In The Greater Dublin Area, Department of Public Enterprise May 2000.

proven to benefit neither mode. Moreover, it has operated against the public interest. Because of the restrictive nature of the regulation, competition has been limited and, in some cases, impossible. While the absence of competition has had a negative effect, conversely, the possible benefits of monopoly (in terms, for instance, of service integration) have not been realised.

2. The Authority welcomed the Department of Public Enterprise's proposals for the re-structuring and re-regulation of the rail and bus passenger transport market in the State. It considered that these proposals are both timely and constructive. In particular, it welcomed the opportunity for the private sector to participate in the public transport system.
3. The Authority believed that regulation should be minimal, proportionate, linked to clearly defined objectives and located as close as possible to the market regulated. It should also be separate from the operation of services. While detailed proposals have only been set out in relation to the Greater Dublin area, regulation of the market outside Dublin is also proposed for the future. It is not clear that any form of restrictions on the licensing of bus operators, other than those required to ensure the safety of passengers, is required in the long-distance market.
4. The Authority considered that, if state ownership of companies operating in the transport market is to be continued, the rationale for such ownership should be clearly set out.
5. It was recommended that consideration be given to the horizontal separation of Bus Éireann – for instance, into urban, long-distance and rural services – to avoid the risk or perception of cross-subsidisation.
6. The Authority also recommended that the organisation of the school bus service be re-evaluated with a view to promoting competition, perhaps on a regional basis.
7. Vertical separation of the railways (i.e. separate organisations for infrastructure and operations) should only be considered if there is a clear possibility of competition

developing in the operations sector. In order to test this out, a transitional phase involving pilot projects might be appropriate.

8. The franchising model seems appropriate for the bulk of services in the Greater Dublin area. However, other models may be appropriate, for instance, for the outer suburban or commuter-type routes, and the Authority considered it appropriate that the independent regulatory function should have the flexibility to develop alternative regulatory approaches for different markets.
9. The tendering process for franchises needs to be carefully designed in order to maximise the amount of information available to bidders and minimise the possibility of collusion. Passenger transport information must be made available to all bidders in good time.
10. Claims for subsidies should be rigorously evaluated, since experience in other industries has shown that not all such claims are justified.

Casual Trading Act Study

In March 2000 the Tánaiste requested the Authority to undertake a study with the following terms of reference:-

- *“To undertake a study of the manner in which the provisions of the Casual Trading Act, 1995 have been implemented by local authorities with a view to assessing the impact of that legislation on competition in local markets and, in particular, whether the measures employed by local authorities can reasonably be regarded as necessary for and proportionate to the achievement of public interest objectives relating, for example, to public order and safety”.*

The Tánaiste’s request to the Authority arose from concern regarding complaints received from casual traders concerning the operation of the Act by local authorities. In the main these complaints appear to have been concerned with the level of fees charged by local authorities and practical difficulties encountered by traders in complying with local authority conditions. While some preparatory work was carried out by the Authority

on the study, the resource difficulties encountered during the year prevented the Authority from making any significant progress with the study in 2000. It is the Authority's intention to complete the study during 2001 and report to the Tanaiste.

Discussion Papers

Since 1997 the Authority has published a series of discussion papers on a variety of competition related topics. The purpose of these papers is to generate or contribute to debate on particular issues. In 2000, the Authority published two such papers in this series bringing to eleven the number of papers published. All of the Authority's papers are posted on its website at www.tca.ie. Some of these papers express the views of individuals within the Authority while others are the express views of the Competition Authority on particular items and information on the status of the views expressed in each of the papers is stated in the respective documents.

Discussion paper No. 10 – was the Authority's response to the Competition and Merger Review Group Report on the 1987 Groceries Order. While the overall recommendation of the Competition and Mergers Review Group was that the Groceries Order should be repealed, arguments were also put forward in favour of its retention. The discussion paper addresses these arguments and considers why the Groceries Order should be repealed. The paper disputed the notion that removal of the Groceries Order would cause a reduction in the number of independent retailers. It showed that the number of independent retailers had in fact declined in the presence of the Groceries Order. The paper also questioned the argument that Irish suppliers needed the Groceries Order to protect them from the power of foreign multiples and discounters. Instead it was argued that affording Irish suppliers special treatment on the domestic market would only serve as an impediment to developing the scale and efficiency needed to compete on the European market. The paper described how the provisions of the Groceries Order may on the one hand fail to tackle genuinely anti-competitive behaviour, while on the other hand prevent practices which are not anti-competitive. Errors of this type could have serious adverse effects on the sector and the economy in general. The paper also showed how the Groceries Order was in conflict with competition law in that it placed sectoral interests above consumer interests, and protected competitors rather than the competitive process.

Discussion paper No. 11 — was entitled “Market Definition and Market Power in Competition Analysis: Some Practical Issues” and was written by Mr. Patrick Massey, Director of Cartels Division. The paper describes the different approaches that have been used by the courts to define markets in the US, the EU and Ireland. It explores the different techniques for defining a market and argues that developments in the literature have rendered these techniques inappropriate for the purposes of competition analysis. The paper emphasises how market definition is only a means to an end and that the ultimate consideration is establishing whether or not a firm has market power. Some methods for measuring market power directly, without the need to identify the relevant market first, are discussed. The advantages of these methods over traditional market definition approaches are discussed and it is argued that measuring market power directly would enhance the quality of decisions in competition cases.

Information Booklets

In April, the Tánaiste and Minister for Enterprise, Trade and Employment, Mary Harney, launched a new set of information booklets prepared by the Competition Authority.

The Authority made as one of its core objectives for 2000 the promotion of greater awareness among the business community and the wider public of the necessity to eliminate anti-competitive behaviour and of the benefits to business, consumers and the economy in general of greater competition. The publication of the information booklets was an important step in the achievement of this goal.

The “**Cartel Watch**” booklet identifies the pursuit of cartels as the Competition Authority’s top priority. It is intended to advise the public on the threat posed by cartels and advises them of the practices which might indicate that a cartel is at work. It is believed that increasing public awareness in this way will assist the Authority in its investigations and strengthen the Authority’s overall drive against cartels. The booklet describes the remedies available to anyone who has been the victim of unlawful cartel behaviour and details the procedure followed when somebody reports a cartel.

The “**Refusal to Supply**” booklet outlines for business the circumstances under which a refusal to supply might constitute a breach of the Competition Acts. It is intended to assist firms who may experience difficulties in obtaining supplies of products to decide

whether they may have legitimate grounds to make a complaint to the Authority and to provide the relevant information that the Authority will need in order to assess such a complaint.

The Authority published two booklets relating to its Category Certificate/Licence in respect of Agreements between Suppliers and Resellers. It published the actual decision itself, Decision 528, and an **“Explanatory Guide”** to the Category Certificate/Licence. These booklets are intended to simplify the rules for vertical agreements thereby reducing the need for firms to notify individual agreements to the Authority for approval. It does this by adopting market share thresholds to identify those agreements which come within the scope of the Category Certificate/Licence combined with a ‘black clause’ which defines what is not exempt under the Competition Acts. This should enable the Authority to focus its attention on those cases which are most detrimental to economic welfare.

The Authority’s category certificate in respect of **“Agreements involving a merger and/or sale of business”** was also published in booklet format. This sets out the circumstances under which an agreement for a merger or sale of business will not prevent, restrict or distort competition. The category certificate assists businesses in determining whether or not to notify agreements to the Competition Authority. The category certificate sets out pre and post merger market concentration thresholds to identify which agreements come within its scope. Consideration is also given to barriers to entry and the level of actual and potential competition in the market.

Other activities

The Authority appeared before two separate Joint Oireachtas Committees during 2000. In March 2000, the Authority made an oral presentation to the Joint Oireachtas Committee on Agriculture, Food and the Marine on the Authority’s investigation into alleged cartel activity within the meat processing industry. The Authority was invited to make its presentation in the aftermath of a blockade by the Irish Farmers Association of meat processing plants throughout the country in the early part of 2000. In the course of the blockade, allegations about cartels in the industry were made. It was widely known

that the Authority had previously initiated an investigation into the industry and it was in this context that the Authority was invited to appear before the Committee. In the course of its presentation, the Authority explained the background to cartel investigations generally and to the meat industry investigation in particular.

In April 2000, the Authority was invited to appear before the Joint Oireachtas Committee on Enterprise and Small Business to make an oral presentation on the issue of the proposed cap on the size of superstores and on the Groceries Order. The Authority's appearance before the Committee arose from the publication by the Committee of a report on Superstores on which the Authority had provided written views. In its oral presentation to the Committee, the Authority outlined its views on why it was opposed to a cap on the size of superstores and why it was opposed to the retention of the Groceries Order.

Section 5 — Representation

A significant portion of Authority work annually is representation at national and international fora. They vary from seminars, conferences etc., to which the Authority contributes, to active participation at formal policy formulation and decision making bodies. The Authority was as active in this whole area in 2000 as in any other year and indeed, if anything, its role in representation was more critical in 2000 than in any previous years given the far-reaching changes being proposed at EU level, the work of the OECD in its regulatory review of Ireland and, at home, the establishment of the Liquor Licensing Commission, to which Isolde Goggin, a Member of the Authority, was appointed. This Commission was established by the Minister for Justice, Equality and Law Reform in November, 2000 to provide advice to the Minister and the Government in relation to access to licences, the nature of premises that can be licensed, the distribution of licences and the licensing system. Ms. Goggin's appointment to the Commission allows the pro-consumer views of the Competition Authority to be articulated within an advisory body on policy formulation in an area where the Authority has for some time called for new pro-competition and consumer friendly laws.

Conferences Addressed

The Authority accepted a variety of invitations to address conferences, meetings, colleges etc. throughout the year. Among the speaking engagements were speeches by the Chairman, John Fingleton to the Chambers of Commerce Ireland Annual Dinner and the Law School of New York University, speeches by Isolde Goggin at the Competition Press Telecommunications Conference and at the Irish Communications User Group Annual Conference, speeches by Pat Massey to the Office of Fair Trading Cartel Conference in Brighton and the Dublin Economic Workshop in Kenmare and an address by Declan Purcell to a *Forum on the Need for Pharmacy Graduates* convened by the Higher Education Authority.

International Activities

The Authority maintained its role of representing Ireland at EU and OECD level. Staff of the Authority also attended various competition conferences, seminars and workshops

abroad in the interests of fostering good working relations with similar organisations and sharing expertise and best practice in the administration of competition law. Among conferences attended during 2000 were two international cartel workshops in Sweden and in the UK, the Fordham International Antitrust Law and Policy conference in New York, the ALI ABA Conference on Antitrust in the 21st Century and a conference in Maastricht on Current Developments in Competition Law.

European Union

The Advisory Committee on Restrictive Practices and Dominant Positions is the body that 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.

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 party, on which the Authority was represented by Declan Purcell, to progress the proposals. Arising from the publication of the White Paper and subsequent discussions, the Commission presented a draft regulation in September 2000 on which there have been intensive Council Working Party discussions since. The Authority has participated fully in this process which is expected to continue through 2001.

In essence, the draft Regulation proposes to decentralise responsibility for enforcing the EU Competition Rules from the European Commission to National Competition Authorities. Up to now, the European Commission had sole responsibility for such issues. In Ireland's case, investigation of complaints about anti-competitive agreements or behaviour potentially affecting trade with another Member State will, when the draft Regulation is finalised, be the responsibility of the Competition Authority. The proposals

will also involve the establishment of an electronic communications network involving national competition authorities throughout the EU as well as the Commission. If enacted in its present form, the Regulation would have an undoubted impact on the role, responsibilities and activities of the Authority.

The Authority was represented at meetings of the Directors General of Competition in the EU by the Chairman of the Authority, Dr. John Fingleton.

OECD

The Authority represents Ireland at the Committee on Competition Law and Policy (CLP) of the OECD and in that regard attended the three meetings of the committee in Paris in February, June and October. Among the issues discussed at those meetings were competition and regulation issues in the pharmaceutical industry and in the natural gas industry, vertical separation in regulated industries, hard core cartels and leniency programmes. The Authority was also actively involved in the OECD's Country Study of Ireland under its Regulatory Reform Project, the final report of which is due to be published in April 2001.

Annex 1

Freedom of Information Act, 1997.

The Freedom of Information Act, 1997 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 has published a guide to the functions of and records held by the Authority. The purpose of the guide, which is updated on a regular basis, 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 the classes of records it holds and information on how to make a request under the Act. The Authority's guide is available from the Authority, free of charge, in hard copy format and on its web site.

During 2000, the Authority received fifteen requests for information under the Act as compared with six received in 1999. One of the requests was granted in full, four were part-granted, nine were refused and one was withdrawn. Of the fifteen requests made, nine came from journalists, five from individuals and one from the business community. At the beginning of 2001, one of the Authority's decisions made in 2000 refusing access to particular records was appealed to the Information Commissioner.

Annex 2

Notifications made in 2000

<i>Notification No.</i>	<i>Parties</i>
CA/1/00	Irish Hospital Consultants Association (IHCA) / Irish Insurance Federation (IIF) / The Incorporated Law Society of Ireland – Recommended Fees for provision of hospital consultants services.
CA/2/00	Cahill May Roberts Limited / Retail Pharmacists – Loan Guarantee Scheme
CA/3/00	Cadbury Ireland Sales Limited / Retailers – Standard Loan Agreement
CA/4/00	Daewoo Ireland Limited – Dealer Agreement
CA/5/00	TDI Metro Limited / Signways Holdings Limited — Sale of Business Agreement
CA/6/00	The Governor and Company of the Bank of Ireland and USIT NOW Ltd.- Sole Financial Services Agreement
CA/7/00	The Wheelie Bin Cleaning Company (Ireland) Limited – Franchise Agreement
CA/8/00	The Draught Products and Beer Cooling Association / Kilkenny Cooling Systems Limited / Ryan Insulations Limited – Exclusive Purchase Agreement
CA/9/00	Dungarvan Energy Limited / Bord Gais Eireann – Gas Tolling Agreement
CA/10/00	An Post / Standard Franking Machine Licence Agreement

Annex 3

Decisions and cases dealt with in 2000

I Individual Decision

<i>Decision No.</i>	<i>Notification No.</i>	<i>Parties</i>	<i>Decision</i>
577	CA/8/98	Esat Communications Ltd./ CIE/Iarnrod Eireann	certificate
578	CA/15/99	Dublin Institute of Technology	certificate
579	CA/10/98	Animal and Plant Health/Others	certificate
580	CA/1048/92E	PPI /Assignment of Performing Right in Sound Recordings	licence
	CA/1049/92E	PPI / Music Videogram Mandate	licence
	CA/1050/92E	PPI / Dubbing Mandate	licence
	CA/26/96	PPI / Independent Radio Stations	licence
581	CA/225/92E	Nitrigin Eireann Teoranta / Irish Fertilizer Industries / Bord Gais Eireann	file closed
582	CA/319/92E	Edward Dillon & Co/ Jas. Hennessy Co. Ltd	certificate
583	CA/17/99	Connaught Airport Development Company Ltd./ Knock Cargo Handling Limited	certificate

584	CA/827/92E	Institute of Chartered Accountants in Ireland / Rules of Professional Conduct	certificate
	CA/828/92E	Institute of Chartered Accountants in Ireland / Ethical Guide for Members	certificate

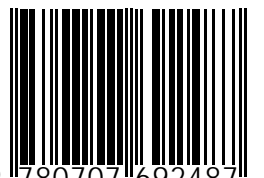
The Authority decided that the following notification came within the provisions of, and therefore benefited from Decision No. 528 – Category Certificate / Licence in Respect of Agreements between Suppliers and Resellers dated 04/12/98:

CA/7/00	The Wheelie Bin Cleaning Company (Ireland) Limited	certificate
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II. Rejections

<i>Notification No.</i>	<i>Parties</i>
CA/461/92E	Warner Music Ireland Ltd / Sony Music Entertainment (UK) Ltd

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