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## Foreword *by John Fingleton, Chairperson, The Competition Authority*

Vigorous competition drives growth in the economy, innovation in business and value for consumers. The struggle to win the business of customers starts with cutting prices, but goes further. Competing firms have strong incentives to seek out more efficient ways of doing business and this can enhance international competitiveness and assist in the long-term growth of the Irish economy.

Competition is a natural phenomenon and competition policy has an essential role where public and private restrictions prevent competition, harm consumers and damage the economy as a whole. Effective competition policy requires a balance between using enforcement of competition law to tackle private restrictions and using competition advocacy to tackle public restrictions.

Weak competition in the Irish economy is highlighted by consistently higher inflation in the non-traded sectors of the economy. In addition, an enormous number of markets in the Irish economy are highly concentrated indicating the importance of domestic competition policy.

Suppliers often justify high prices by reference to high costs. But costs are higher if competition is weak. So high costs specifically point to a problem with competition. The example of Aer Lingus, which has reduced costs by 30% in two years, shows how competition drives costs down and productivity up.

Increasing competition is not simply about transferring resources from producers to consumers by lowering prices. It is about driving cost reduction and more efficient ways of doing business. As such, it is central to productivity within companies and the whole economy. The considerable and growing empirical evidence of the positive relationship between competition and productivity growth is part

of the reason why many countries are putting more effective competition policies in place.

During 2003 there was increasing appreciation that competition policy is a central instrument in promoting growth and prosperity. Reports from many of the leading advisors to government on economic policy (e.g., National Competitiveness Council, Forfas, OECD, ESRI) highlighted both the weak state of competition, particularly in non-traded services, and the potential for competition policy to contribute to productivity growth. This is not just an Irish phenomenon; other countries, many of them our trading partners, have begun to place increasing emphasis on enhancing competition policy as an instrument to drive growth and competitiveness.

When Ireland joined the Euro, it gave up two related policy instruments, namely the ability to devalue and to set interest rates. This means that government must rely increasingly on microeconomic policies, such as increasing domestic competition in order to strengthen international competitiveness. The Euro has also increased price transparency across countries and therefore has amplified public perception that competition needs to improve.

Against this background, the work of the Authority has had a growing impact. Decisions taken in 2001 and 2002 to increase its resources and introduce new competition law began to show their effect during 2003. Competition has become a central part of public and political debate, in areas as diverse as groceries and transport.

During 2003, the Authority dealt with firms across almost all sectors of the Irish economy, large and small, domestic and multinational. The list includes, but is not confined to, banks, insurance companies, newspapers, petrol distributors, the professions

(lawyers, doctors, architects, engineers), pharmacists, the beef industry, farmers, grocery retailers and distributors, ferry companies, radio stations, printing businesses, pubs, bus transport, ports, airports and mobile phone companies.

Sometimes the impact of the Authority's work may not be either immediate or visible. A good example is increased price competition in the grocery sector. This was supported by two earlier enforcement actions by the Authority, one to support the entry of new supermarkets (Aldi and Lidl) into Ireland in 1997, and the other to prevent restrictions on competition in the milk market in 2000.

The Authority had a busy year in 2003 and this report outlines all the important activities. I would like to draw attention to a few significant elements.

First, the Authority took on the supervision of merger activity in the economy on 1st January. The new system has operated smoothly in its first year. The Authority has published reasoned decisions on 44 merger notifications within tight statutory deadlines. The Authority was also fortunate to attract a highly experienced international practitioner, Ted Henneberry, to head its merger work.

Second, there was considerable progress on the enforcement front. The Authority commenced a number of new court proceedings and, on foot of a file sent by the Authority, the Director of Public Prosecutions decided to bring a criminal case on indictment.

Third, the Authority introduced a number of significant innovations. One of these is its Enforcement Decision Series, which sets out in detail the Authority's reasoning in important cases that are settled before proceedings begin or where a substantial complex investigation reveals no breach

of the Act. The rationale for this move included increasing transparency about the Authority's analysis of competition, raising public accountability, and reducing legal uncertainty. A second innovation was the introduction of a new Complaints Screening System. The majority of complaints made to the Authority do not, on examination, raise competition concerns. The new system, which involves a three-stage process, enables the Authority to focus at an early stage on those that do raise competition concerns. Finally, in November, the Authority sought to enter an *amicus curiae* (literally "friend of the court") brief in private litigation. This is an important legal innovation designed to support informed and consistent outcomes in private litigation. The case will be heard in April 2004.

2003 was the first full year of the Authority's operation under new legislation and with close to its full complement of staff. For this reason, its output during the year provides the first opportunity to give an estimate of what the Authority can be expected to produce. An estimate based on a single year should be treated with caution, and is highly dependent on staffing levels and experience. With this caveat, I believe that it is reasonable in a full year to expect the Authority to produce:

- One full cartel investigation leading to criminal enforcement proceedings;
- A handful of other (mostly civil) investigations leading to proceedings or enforcement decisions because the case gets settled;
- Reasoned decisions on all notified mergers within the statutory deadlines; and
- One formal study, ongoing advocacy work on a small number of key sectors, and submissions on new legislation or policy developments as required.

Looking forward to 2004 it is clear that domestic competition will be increasingly vital for the Irish economy. Ultimately government decides the most important questions. Government policy affects the environment in which the Authority enforces competition law, from investigative powers, through legal processes to the level of sanction necessary to deter anti-competitive behaviour. Where, as is often the case, restrictions on competition result from government regulation, only action by government can effect change. In both areas challenges remain.

The absence of civil fines for breaches of competition law undoubtedly reduces compliance with competition law. It means that Ireland is out of step with most of its EU trading partners who, like the European Commission, rely on civil fines as a central element of competition policy. If, as some argue, there is a constitutional bar to civil fines, Ireland will need to invest more in public enforcement to maintain the same levels of compliance with competition law as our trading partners.

When it comes to domestic policy, strong vested interests are frequently successful in promoting their own agenda dressed up as 'protecting' consumers. In fact it is difficult to find examples where Ireland has embraced competition. European Directives forced the introduction of minimum levels of competition in the telecommunications and energy sectors. Similarly, enhanced competition in the aviation market in the past two years was largely driven by the refusal of the European Commission to contemplate state aid for Aer Lingus. In other areas such as taxis and pharmacies (where much remains to be done), legal advice or court actions have precipitated change.

The Competition Authority works in a target rich environment. In the last two years the Authority has made recommendations on how to improve

competition in the pharmacy sector, the retailing of alcohol and in the groceries sector, all of which remain outstanding. Over the next 12 months the Authority will look closely at the insurance sector, banking services and key professions including lawyers and doctors. Serious reform in any of these areas will bring real benefits to consumers. A comprehensive and co-ordinated approach to competition policy would add substantially to the international competitiveness of the Irish economy.

consumers

innovation

competition



## Enforcing Competition Law

Competition law is designed, primarily, to protect and benefit the consumer who has the right to purchase goods and services at a competitive price. Greater competition provides good value for consumers, stimulates business and enhances the economy as a whole. Anti-competitive behaviour by businesses, for example price fixing, results in consumers paying higher prices and undermines the competitiveness of the Irish economy.

One of the core functions of The Competition Authority is to enforce competition law and to bring legal proceedings when it believes breaches of the law have taken place. During 2003, the Authority applied for 21 search warrants, issued 62 witness summonses and undertook the first criminal prosecution under the Competition Act, 2002. The Authority also commenced or settled a number of cases in the High Court covering potential anti-competitive behaviour in important sectors of the economy such as beef processing, Credit Union services and the retail price of alcohol.

In addition, The Competition Authority initiated a publication series entitled 'Enforcement Decisions' in order to highlight the details of important competition issues which are settled without having to go through the court system. Six Enforcement Decisions were published in 2003 covering areas such as petrol prices, car insurance and newspapers.

### **New Complaint Screening System implemented**

In 2003, The Competition Authority implemented a new Complaint Screening System having conducted research into practice in other agencies. Screening focuses resources on the most substantive cases while ensuring that complaints which have little or no supporting evidence are disposed of quickly but fairly.

Complaints about potential breaches of competition law come to the Authority from members of the public, individual businesses, trade organisations,

public representatives and Government Departments. Fewer than 15% of complaints survive the initial screening process while less than 5% become fully fledged investigations.

In 2003, of the 200 complaints received, 174 did not survive initial assessment. However five cases did proceed to full investigation and made up half of the investigations initiated by the Authority during the year.

The Authority also carries out investigations based on its own initiative. Of the eight files open in this category during 2003, five proceeded through the screening process to become full investigations. The successful application of the screening system has allowed the Authority to focus on cases that are more likely to highlight breaches of competition law. The new Complaints Screening System follows a three-stage assessment process: -

- 1. Screening:** - involves a weekly screening of all complaints received. The object of this stage is to determine the validity or otherwise of the complaint, disposing directly of those that do not disclose a competition issue or an offence, and referring on to the evaluation stage those that require further scrutiny.
- 2. Evaluation:** - involves additional work to decide whether or not to progress to an investigation. Evaluation may involve background research, for example in the Companies Office, taking formal statements from complainants and third parties as well as an examination of the legal parameters of the case. The object is to identify cases suitable for investigation and efficiently close all others.
- 3. Investigation:** – on the direction of the Divisional Managers, and based on recommendations received from the case officers dealing with the matter, the Divisions will either initiate an investigation, or close the case.

Table 1.1: Complaint Screening Process

	Complaints Received	Own Initiative	Total
Initial Assessment	200	-	200
Evaluation	26	8	34
Full investigation	5	5	10

Complaints Received 2003

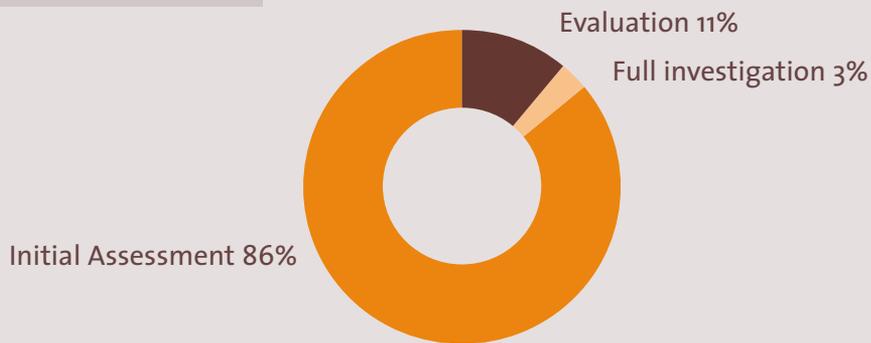


Table 1.2: Investigation & Enforcement Powers of The Competition Authority	
Investigation & Enforcement Powers	Description
Types of Investigations carried out	<ul style="list-style-type: none"> <li>• Criminal investigations</li> <li>• Civil investigations</li> <li>• Assessment of Mergers</li> <li>• Formal Studies</li> </ul>
Power of Entry and Search	Authorised officers can enter or search any premises or dwelling with a warrant issued by the District Court
Power to Seize Documents and Records	Authorised officers can seize documents/records on foot of a warrant issued by the District Court. (Statutory limit of 6 months applies to the retention of records after seizure)
Power to Summon Witnesses	The Authority can summon a witness to give evidence under oath. Witnesses have the same immunities and privileges as a witness before the High Court.
Power to require production of records and information	The Authority has the power to require production of records and information. Non-compliance is a criminal offence.
Power to require information from third parties	The Authority can obtain information from third parties, including professional advisors and financial institutions
Potential routes to settlement	<ul style="list-style-type: none"> <li>• <b>Criminal prosecution (on indictment)</b> – Brought by the DPP in Central Criminal Court following an investigation by The Competition Authority</li> <li>• <b>Criminal prosecution (summary)</b> – Brought in the District Court by The Competition Authority</li> <li>• <b>Civil Action</b> - Brought in the High Court by The Competition Authority in order to halt suspected anti-competitive behaviour</li> <li>• <b>Settlement without court action</b> – Where the parties involved recognise and remedy potential breaches of competition law</li> </ul>
Maximum level of Fines & Penalties	<ul style="list-style-type: none"> <li>• <b>Criminal (on indictment in the Central Criminal Court)</b> - €4 million or 10% of turnover, whichever is the greater and / or up to five years in prison</li> <li>• <b>Criminal (summary in the District Court)</b> - €3,000 and / or up to six months in prison</li> <li>• <b>Civil Action (by The Competition Authority)</b> – none</li> <li>• <b>Civil Action (by injured parties)</b> – Damages at the discretion of the court</li> </ul>
Appeal on use of Powers	The use of these powers by The Competition Authority can be challenged by way of judicial review in the High Court

### Use of Enforcement Powers

During 2003 The Competition Authority applied to the District Courts and was granted, 21 search warrants in relation to on-going investigations into anti-competitive behaviour.

These search warrants were executed by authorised officers of The Competition Authority with the assistance of the Garda Bureau of Fraud Investigation and local gardai around the country.

In addition, 69 summonses were issued by The Competition Authority during the year. The Authority is entitled to issue summonses to compel witnesses to give evidence under oath and to produce documents requested to authorised officers of the Authority. Failure to comply with these summonses is an offence under the Competition Act, 2002.

Table 1.3: Use of Enforcement Power	2003	2002	2001
Search Warrants	21	18	2
Summonses Issued	69	56	11

## Enforcement Divisions in The Competition Authority

The Cartels and Monopolies Divisions have primary responsibility within The Competition Authority for enforcing competition law, specifically the Competition Act, 2002. In addition, the Mergers Division has an enforcement role which is outlined in the next Chapter.

### The role of the Cartels Division

The Cartels Division investigates and prosecutes hard-core cartels such as those involved in price fixing, bid rigging and market allocation among competitors. These are often complex crimes which require specialist investigative skills. The Cartels Division employs a number of ex-members of An Garda Síochána, the Criminal Assets Bureau and other law enforcement agencies as well as an economist with a background in investigations and a legal advisor with experience of criminal prosecutions. In addition, two Detective Sergeants from the Garda Bureau of Fraud Investigation (GBFI) are seconded to work full-time with the staff of The Competition Authority.

Where it obtains evidence of a cartel, the Authority will submit a file to the Director of Public Prosecutions (DPP) with a recommendation that the parties involved be prosecuted. In other cases the Authority may itself bring a summary prosecution in the District Court.

From time to time the Cartels Division may also settle cases without recourse to court proceedings where the offending parties recognise and remedy their anti-competitive behaviour.

### The role of the Monopolies Division

The Monopolies Division mainly investigates allegations that individuals or companies have abused a dominant position in various sectors of the economy. Abusing a dominant position is illegal under Section 5 of the Competition Act, 2002, however holding a dominant position does not break the law. For an offence to occur, an individual or company must abuse that position. The Monopolies Division is also responsible for investigating non-cartel agreements which may be anti-competitive.

Where The Competition Authority forms the view that there has been a breach of the Act it can initiate legal proceedings in order to compel the parties to stop what is considered to be illegal activity. Such proceedings are generally civil (through the High Court), although criminal proceedings may be appropriate depending on the circumstances of each case. In order to fulfil its investigative role, the Monopolies Division comprises a multi-disciplinary team of five economists, two lawyers, two other investigators and shares a legal advisor with the Cartels Division.

Frequently a solution acceptable to the Authority is reached after extensive negotiations with the parties [see Statoil and Glassmatix case studies]. In addition, the Authority may also settle cases without recourse to the courts where the offending parties recognise and remedy their anti-competitive behaviour.

## Court Proceedings

### CRIMINAL CASES - INITIATED

*The Competition Authority v Ruaidhri Deasy, Paddy Harrington, Fintan Conway, Raymond O'Malley, Colm McDonnell and George O'Brien*

The first criminal prosecution under the Competition Act, 2002 was initiated during the year. In October 2003, Judge Flann Brennan of Drogheda District Court heard a case taken by The Competition Authority against members of the Irish Farmers Association, in relation to an alleged blockade at Drogheda Port on 31st August 2002 and an alleged agreement to restrict the distribution of wheat. The alleged blockade prevented the importation and unloading of wheat from the U.K. Judgement in this case is due in March 2004.

### INJUNCTION PROCEEDINGS

*The Competition Authority v Irish League of Credit Unions*

In July 2003, The Competition Authority sought an injunction to prevent the Irish League of Credit Unions (ILCU) from disaffiliating twelve credit unions. On disaffiliation these credit unions would lose access to the ILCU's Savings Protection Scheme (SPS). The Authority viewed this loss of access to the SPS as constituting a breach of the law as it would prevent these Credit Unions from accessing pooled resources to the value of 1% of their savings and therefore restrict competition in the market for credit union representation. In the course of the hearing, the ILCU furnished the High Court with an undertaking that it would not proceed with the disaffiliation proceedings against the 12 Credit Unions until a full hearing had taken place. (*High Court Record 2003 No: 8680 P*)

### CIVIL CASES - INITIATED

*The Competition Authority v Beef Industry Development Society*

In June 2003 The Competition Authority initiated High Court proceedings against the Beef Industry Development Society in an effort to halt what it believes to be an anti-competitive rationalisation programme within the beef industry. A date has yet to be set for hearing of this case.

An injunction was not sought in this case because the parties gave undertakings to The Competition Authority to withhold implementation of the proposed scheme pending the case being heard. (*High Court Record 2003 No 7764 P*)

*The Competition Authority v Irish League of Credit Unions*

Subsequent to the injunction hearing involving the Irish League of Credit Unions (ILCU) described above, The Competition Authority commenced High Court proceedings in July 2003 against the ILCU. The Authority is seeking a number of remedies including having the ILCU's Savings Protection Scheme made available to Credit Unions not affiliated to the ILCU. It is expected that the case will be heard during 2004. (*High Court Record 2003 No 8650 P*)

### CIVIL CASES - SETTLED

During 2003, The Competition Authority reached settlement in the High Court with a number of parties over allegations concerning anti-competitive behaviour.

*The Competition Authority v Glanbia PLC and Sligo Dairies*

In July 2003, Glanbia and Sligo Dairies gave undertakings in the High Court that they would comply with the terms of the Competition Act, 2002 and not enter into any agreement, or engage in any concerted practice, to fix the retail price of liquid milk. (*High Court Record 1999 No 6916 P*)



*The Competition Authority v Licensed Vintners Association*

In December 2003 the Licensed Vintners Association gave undertakings in the High Court in relation to allegations concerning price fixing of alcoholic drinks. (*High Court Record 1998 No 6687 P*)

*The Competition Authority v Patrick Jennings, Dermot Lally & others*

This case dates back to October 2000 when the Authority obtained an injunction against certain named farmers from blockading a dairy in Convoys, Co. Donegal. When this order of the court was ignored, the Court proceeded to consider committal proceedings and awarded costs to the Authority. The Defendants disputed these costs and therefore it was necessary for the Taxing Master of the High Court to adjudicate on the costs. In June 2003 the Taxing Master determined that the costs amounted to €22,666.45. The Authority is seeking recovery of this sum. (*High Court Record 2000 No. 11793 P*)

CIVIL CASES - ONGOING

*The Competition Authority v Dairygold Dairies and Superquinn*

Proceedings continued in the High Court against Dairygold and Superquinn over allegations concerning the fixing of the retail price of milk. In similar proceedings settlements were reached with Tesco in December 2002 and with Glanbia and Sligo Dairies in July 2003. (*High Court Record 1999 No 6916 P*)

*The Competition Authority v Vintners Federation of Ireland*

Proceedings continued in the High Court against the Vintners Federation of Ireland in relation to allegations concerning price fixing of alcoholic drinks. In similar proceedings settlements were reached with the Licensed Vintners Association in December 2003. (*High Court Record 1998 No 6658 P*)

*The Competition Authority v Soft Drinks Beer Bottlers Association*

Proceedings continued in the High Court against the Soft Drinks Beer Bottlers Association in relation to allegations concerning price fixing of soft drinks. (*High Court Record 1998 No 12162 P*)

AMICUS CURIAE (FRIEND OF THE COURT) APPLICATION:

*Calor Teoranta v. Tervas Limited and others*

The Competition Authority set a legal precedent in October 2003 when it made the first ever application to appear as *amicus curiae* (literally 'friend of the court') in the High Court. The application has been made in the case of *Calor Teoranta v. Tervas Limited and others*.

The case concerns an action taken by Calor for breach of contract against a number of its bulk Liquefied Petroleum Gas (LPG) customers who switched to Tervas as their supplier. The Authority's application to appear as *amicus curiae* is scheduled to be heard in April 2004. (*High Court Record 2003 No 5034 P*)

INTERNATIONAL LITIGATION

*F. Hoffmann - La Roche Ltd. v Empagran S.A.*

The Governments of Ireland, the UK and the Netherlands have joined together to file a brief as *amicus curiae* (friend of the court) in the US Supreme Court. The three Governments are opposed to US jurisdiction in private anti-trust cases where a foreign claimant seeks to recover damages from a foreign defendant for injuries not incurred in the US.

The Authority assisted the Department of Enterprise, Trade and Employment in preparing the brief on behalf of the Irish Government.

#### SETTLEMENTS WITHOUT COURT ACTION

##### *Graphic Business Design Association (GDBA):*

Where appropriate The Competition Authority is open to finding resolutions outside of the court system. This case involved a tender for three annual reports and a strategic management report. Due to an objection over some of the terms in the tender document, the GDBA instructed its members to boycott the tender in question.

In the course of meetings and interviews between The Competition Authority and the Chairman of the GDBA, potential breaches of competition law were highlighted, specifically areas of conflict between the Practice Directory of the GDBA and Section 4 of the Competition Act, 2002.

A subsequent Emergency General Meeting (EGM) of the GDBA removed all conflicting instructions contained in the Practice Directory. The Authority has decided to take no further action in this case.

#### **New Publication Series: Enforcement Decisions**

In June 2003, The Competition Authority published the first document in its Enforcement Decision Series. In order to inform the public about competition issues, the Authority decided to publish details of decisions concerning selected investigations where it has closed a file, either because it has found no breach of the Competition Act, 2002 or settled the case.

The Authority hopes that the publication of enforcement decisions on a regular basis will increase transparency and predictability in the enforcement of the Competition Act, 2002. Other aims of the series are to provide greater legal certainty and a reduction in compliance costs for business.

The Authority selects investigations that:

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

**Table 1.4: Enforcement Decisions published by The Competition Authority in 2003**

<b>Publication Date:</b>	<b>Description of Decision:</b>
13th December 2003	Agreements between The Irish Times Limited and newspaper retailers allegedly fixing the retail price of The Irish Times newspaper (Decision Number E/03/004)
13th December 2003	Agreements between Independent Newspapers (Ireland) Limited and newspaper retailers allegedly fixing the retail price of Independent newspaper titles (Decision Number E/03/003)
8th December 2003	Agreements between Statoil Ireland Limited and motor fuel retailers allegedly fixing the retail price of motor fuels in Letterkenny (Decision Number E/03/002)
28th August 2003	The selection, introduction, implementation and operation of the Glassmatix motor vehicle repair estimation system by a Consortium of; Allianz Ireland plc, AXA Insurance Limited, Hibernian General Insurance Limited and Royal & Sun Alliance Insurance plc, in the State. (Decision Number E/03/001)
11th June 2003	The Increase in the Wholesale Price of Electronic Top-Up by Vodafone Ireland Limited (Decision Number E/02/001)
11th June 2003	The Reduction in Travel Agents' Commissions by Aer Lingus plc. (Decision Number E/02/001)

#### **Working with other state agencies**

During 2003, The Competition Authority worked very closely with a number of other law enforcement agencies in the State to promote compliance with competition law.

#### **The Director of Public Prosecutions**

One complete investigation file was forwarded to the Director of Public Prosecutions (DPP) in March 2003 with a recommendation from the Authority for trial on indictment. The DPP has decided to bring criminal proceedings in this case.

When the DPP feels there is a justifiable case, his Office takes over full responsibility for any further enforcement action. In such cases the Chief Prosecution Solicitor's Office takes charge of proceedings on behalf of the DPP and prepares a Book of Evidence to be served on the accused.

#### **Garda Bureau of Fraud Investigation**

During the year the Authority's relationship with the Garda Bureau of Fraud Investigation (GBFI) continued to develop. Two Detective Sergeants from GBFI have been seconded to work in the Cartels Division of The Competition Authority since March 2002 and significant assistance to the Authority is provided in terms of computer forensics and additional personnel at crucial times, such as the execution of search warrants.

#### **Other Law Enforcement Agencies**

In order to carry out its investigative functions, The Competition Authority works in co-operation with law enforcement agencies such as the Office of the Director of Corporate Enforcement, the Criminal Assets Bureau and the Revenue Commissioners. During 2003, the common issues discussed with these agencies included computer forensics, as well as arrest, detention and prosecution procedures.

#### **Regulators**

The Competition Authority will often be asked to examine situations in sectors of the economy for which an independent regulator has been appointed by the Government, e.g., electricity, natural gas, aviation. While public enforcement of the Competition Act rests with the Authority at all times, in some circumstances it is appropriate for the Authority to liaise with the relevant regulatory agency to resolve such matters.

A regulator may be able to achieve a satisfactory outcome more quickly by exercising its regulatory powers than the Authority could in legal proceedings. In this way the Authority can ensure that consumers are guaranteed a timely and effective result. The Authority has entered into co-operation agreements with the Broadcasting Commission of Ireland, the Commission for Energy Regulation, the Commission for Aviation Regulation, the Office of the Director of Consumer Affairs (ODCA) and the Commission for Communications Regulation.



### **New Guidelines for Business**

The Competition Authority adopted a new *“Declaration and Notice in Respect of Vertical Agreements and Concerted Practices”* on 1st January 2004 following a public consultation process held in 2003.

The Declaration applies to certain categories of vertical agreements and concerted practices, which fall under Section 4(1) of the Competition Act, 2002, but in the Authority’s opinion generally comply with the conditions set out in Section 4(5). The Declaration provides exemption or safe harbour to those agreements falling within its scope. The purpose of the Notice is to give guidance to businesses and legal practitioners on the types of vertical agreements and concerted practices that do not generally infringe Section 4(1) of the Act. The Notice has no legal effect and is for guidance purposes only. The new Notice and Declaration brings the Irish approach to vertical agreements more in line with that of the EU Commission, thereby aiding self-assessment and minimising compliance costs for businesses.

A transitional period of six months will operate from 1st January 2004 to 30th June 2004. During this time the previous Notice and Category Licence Distributors and Reseller will continue to apply to agreements entered into prior to 1st January 2004.

### **Decentralisation of EU Competition Law**

From 1st May 2004, Member States will take on greater responsibility for investigating breaches of EU competition law. These new procedures, under EU Regulation 01/2003, are designed to modernise and decentralise EU competition law enforcement and will bring considerable additional work to The Competition Authority.

Throughout 2003 the Authority was closely involved in the preparations for the new EU procedures including the creation of a Manual of Procedures, and has chaired the sub-committee on the “Exchange of Information for Investigating Cross-border Breaches of Competition Law.” The Authority also undertook legal research to advise the Department of Enterprise, Trade and Employment in relation to the implementation of this EU Regulation. The Authority is a fully active member of the European Competition Network which has been created to administer the huge flows of information and contacts that will follow from this decentralisation.

## Case Studies from The Competition Authority Enforcement Decision Series

### **Newspapers to amend business practices considered anti-competitive by The Competition Authority (published 13th December 2003)**

The Competition Authority announced details in December 2003 of its investigation into allegations that the price at which retailers sold newspapers was fixed. The Competition Authority also announced details of separate agreements it reached with Independent Newspapers (Ireland) Limited and The Irish Times Limited in which both companies would amend their terms and conditions of business as well as their contracts with newspaper retailers.

As a result of these assurances, The Competition Authority decided to discontinue its investigation as it related to Independent Newspapers and The Irish Times. The Competition Authority also decided to refrain from taking enforcement action in the courts for so long as Independent Newspapers and The Irish Times comply with the terms of those assurances.

### **The Competition Authority uncovers agreement by Statoil to keep petrol prices artificially high (published 8th December)**

The Competition Authority published, in December 2003, details of its investigation into alleged fixing of the retail price of fuel by Statoil and its retailers in Letterkenny Co. Donegal. Following an investigation lasting more than 2 years The Competition Authority determined that Statoil's "Price Support Agreement" with its retailers was anti-competitive.

Following the decision of The Competition Authority to initiate legal proceedings, Statoil agreed to terminate its Price Support Agreement across the country. Statoil also gave a number of undertakings to The Competition Authority not to introduce or continue to implement any support scheme with elements that the Authority had found objectionable.

### **The Competition Authority reaches agreement with Insurance Companies to resolve competition concerns (published 28th August 2003)**

The Competition Authority published a Decision Note in August 2003 outlining the undertakings given by four Insurance Companies relating to the selection, introduction, implementation and operation of a computerised estimation system for motor vehicle repairs. The Insurance Companies who signed 'Acknowledgements and Undertakings' with The Competition Authority were Allianz Ireland plc, Axa Insurance Limited, Hibernian General Insurance Limited and Royal & Sun Alliance Insurance plc.

In summary, the agreement reached between The Competition Authority and the Consortium addressed the Authority's competition concerns, while promoting the potential benefits to consumers of the Glassmatix system. These potential benefits include cost reduction and improvement in the time taken to complete motor vehicle repairs compared to opinion time based methods. These cost savings, if passed on to the consumer, have the potential to lower insurance premiums.



## Assessment of Mergers and Acquisitions

# competition

Effective merger policy is vital for a competitive economy – a merger that substantially lessens competition can affect consumers and the relevant sector of the economy. Mergers between firms can be good for consumers by promoting efficiency and reducing unnecessary costs. In that sense, mergers can promote an efficient, dynamic economy. However, mergers between competitors can increase the firms' market power and allow them to raise prices to the detriment of consumers.

The Competition Authority automatically assesses mergers above a certain size and all mergers in the media sector. The Authority has a month (called Phase 1) to evaluate these and the vast majority are passed within that time-frame. If there are serious competitive issues, then the merger may go into Phase 2, where there is another three months to decide whether to allow or prohibit the merger.

The first year of merger enforcement showed the value of a transparent process, where over 90% of mergers were cleared in Phase 1, and formal decisions were published. This has helped create increasing certainty for business as to whether a deal is likely to be approved, while ensuring that potentially anti-competitive mergers are carefully analysed by the Authority.

The mergers notified to the Authority in 2003 demonstrate the vital areas of the Irish economy which are affected, sectors such as food production, media, internet/software and air travel. Inefficiency or high prices resulting from a lack of competition in such sectors could negatively affect all Irish consumers.

### **New function of The Competition Authority**

The Competition Authority took over the full function of assessing mergers and acquisitions on 1st January 2003. Previously, mergers had been assessed primarily by the Department of Enterprise, Trade and Employment. The Competition Act, 2002 provides for a system whereby mergers above a turnover limit (€40 million) and all media mergers are automatically "notified" to the Authority. In addition, the Authority assesses mergers below the turnover threshold, if significant competition issues are involved.

Under the new system the Authority determines whether or not a merger will lead to a "*substantial lessening of competition*". The Authority also publishes reasoned decisions on cases in order to increase transparency, predictability, and accountability in the process of merger regulation.

### **Merger notifications during 2003**

The Competition Authority received 47 merger notifications in 2003. The majority of mergers presented no substantive competition issues and the vast majority (43) were cleared within the one-month initial assessment period (Phase 1). In addition one case was sent to the European Commission for assessment under Article 22 of the EU Merger Regulation 4064/89.

The Authority opened full investigations (Phase 2) into three mergers during the year. The three sectors involved were beef processing, radio and ferries. The merger in the beef sector was cleared in November, while the radio and ferries investigations continued into 2004. (See Appendix 2 for a full list of mergers notified to The Competition Authority in 2003).

### **Media Mergers**

On 1st January 2003 the turnover thresholds for media mergers were removed by Ministerial Order. This means that any merger in the media sector, including newspapers, radio and broadcasting, must be notified to The Competition Authority.

The Competition Act allows for the possibility that a media merger cleared by the Authority on competition grounds can still be prevented by the Minister for Enterprise, Trade and Employment on public interest grounds.

During 2003, twelve mergers were classified as media mergers and by the end of the year eleven were cleared by the Authority on competition grounds. None of these mergers were prohibited by the Minister. The Authority will make a determination on the remaining media merger in 2004.

### **Mergers below notification thresholds**

Mergers below the turnover thresholds (€40 million) may also have the potential to limit competition. In particular, they may breach Sections 4 and/or 5 of the Competition Act which, as described in earlier sections, ensure companies do not act to the detriment of consumers. A merger notified to the Authority (either above or below the threshold)

enjoys protection from prosecution under the Competition Act, 2002.

After investigating a number of such mergers, on 30th September the Authority issued a Notice (N/03/001) stating its policy with regard to such transactions. In essence, if after a preliminary examination, the Authority considers the transaction may raise competition concerns, it will contact the parties to determine whether they wish to notify voluntarily. If the parties do not voluntarily notify, the transaction will be assessed as to whether it breaches Sections 4 and/or 5. The issue of this Notice gives parties clarity about how the Authority will treat non-notifiable mergers, while ensuring that such deals do not harm competition and consumers.

The Authority conducted a number of inquiries of this nature during 2003, one of which involved a detailed investigation of a merger between the State's two largest mushroom producers. This merger was ultimately cleared and an Enforcement Decision published on the Authority's website.

## **The role of the Mergers Division in The Competition Authority**

The main role of the Mergers Division is to perform the statutory task of analysing and giving decisions on notified mergers within the specified time-period. The Division also analyses below-threshold mergers using Sections 4 and 5 of the Competition Act. Finally, it represents Ireland at European Commission meetings on merger cases and merger policy.

The Mergers Division has Edward Henneberry as its Director. It also has a Legal Advisor plus a Divisional Manager. The Division has three case officers who deal with the bulk of the notifications, plus one staff member who provides administrative support.

## Merger Procedures in Ireland (Competition Act, 2002)

### Merger Test: Substantially lessen competition

The test used to decide whether a merger should be allowed or not is whether it will substantially lessen competition in the markets affected by the merger. This is the test used in the UK, and a similar version was recently adopted by the European Commission. It allows for a focus purely on how competition and consumers are affected by the transaction.

### Notification Thresholds

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

### Mergers below thresholds

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

### Media Mergers

Mergers that are below threshold that involve a media business must be notified to the Authority – this is due to a Ministerial Order made on 1st January, 2003. Here, the Act defines a media business quite widely, including any business that has interests in newspapers, radio, television, telecoms, etc. The Act also specifies that a media merger that has been allowed by the Authority can be prohibited by the Minister on public interest grounds.

### Phase 1 investigation

Phase 1 is a one-month initial examination of the merger, which is generally sufficient for it to be cleared. Over 90% of mergers in 2003 were cleared in Phase 1.

### Phase 2 investigation

Phase 2 is an extra three-month period to conduct a detailed examination of the transaction and the market.

### Assessment

In Phase 2, if the Mergers Division has serious competition concerns, it may issue an Assessment of the transaction to the parties during the period. This sets out the Division's concerns, and allows the parties to respond to them. The Authority will make a decision on whether to allow or prohibit the merger at the end of Phase 2.

### Clearance by Minister for Enterprise, Trade & Employment

In media mergers, if the Authority clears the merger, it is sent to the Minister for Enterprise, Trade and Employment, who has 30 days to decide if she wants to prohibit it on public interest grounds (set out in the Act) including issues such as diversity of ownership. If she does not do so, the merger can go ahead.

### Appeal to the Courts

If a merger is prohibited, the parties have 60 days to decide if they wish to make a full appeal to the High Court on whether the transaction should be allowed. If they do, then the Court will decide on whether the decision of the Authority is justified.

### European Union Merger Regulations

The process of revising the EU Merger Regulation continued and was successfully concluded in 2003. The Competition Authority and the Department of Enterprise, Trade and Employment represented Ireland on the European Council Working Party responsible for the process.

The Authority argued that the EU dominance test should be replaced by the substantial lessening of competition test (SLC) which currently applies in Ireland. The Authority presented its case through the European Council and in a number of submissions. Ultimately, a dual test, containing both SLC and dominance, was adopted. Other changes included a number of jurisdictional changes which will allow EU mergers to be sent more easily to specific Member States if thought appropriate (Article 9) or sent to the European Commission from the Member States (Article 22).

The Authority also contributed actively to the Commission's formulation of its Merger Guidelines which will be published in 2004. In addition Authority staff attended EU Advisory Committee meetings on major merger cases.

### Mergers notified to the European Commission

In November 2003, the Authority considered asking the Competition Directorate of the European Commission for jurisdiction over the transaction whereby Royal Bank of Scotland (owner of Ulster Bank) would acquire First Active. The Authority considered the issues involved, specifically in relation to the residential mortgage market.

Such a referral could be sought according to the procedure set out in Article 9 of the EU Merger Regulation 4064/89. The Competition Authority can only make such a request if it believes the proposed

merger will have a significant competitive effect in Ireland. Following examination of the matter, with extensive co-operation from the parties, the Authority decided not to make an Article 9 request. The Commission subsequently cleared the transaction.

The Authority also participated in an Article 22 request during 2003. This is the reverse of an Article 9 request where a number of European Competition Authorities together send a merger to the European Commission. This was only the third time that this had occurred, and the first time Ireland was involved.

### Conference on the new Merger regime in Ireland

In October, the Authority organised a conference to assess the new merger regime. Speakers included Phillip Lowe, Director General of DG Competition, European Commission, Richard Whish, Professor of Competition Law at Kings College, London and many other experienced practitioners.

The conference afforded the Authority an opportunity to present its views on the first 10 months of merger enforcement, and also to allow practitioners to give their reactions and concerns to the Authority's approach. The conference was attended by nearly 100 delegates.

### Case Study: Printing Merger (Smurfit Web Press and Lithographic Universal)

In May 2003, The Competition Authority was notified of a proposed merger between Smurfit Web Press and Lithographic Universal. These were two of the largest printing companies in the State, and a merger between the two might give cause for competition concerns.

The Authority analysed whether the two companies would be able to exercise market power and thus raise the price of their services for consumers.

The two main lessons of the case were:

- i a potentially complex case can be analysed in Phase 1. The transaction was cleared within seven weeks which included a formal request for information from the Authority. This demonstrates that difficult cases can be resolved, where appropriate, without having to go into Phase 2;
- ii that foreign competition can be an important check on the market power of Irish firms, and thus can ensure that competition is intense in Ireland.

After a detailed investigation, involving considerable analysis and communication with the merging parties customers, the Authority concluded that the transaction would not substantially lessen competition. This was due to a number of factors, including the existence of a variety of other domestic printers who would exercise a check on the parties, but particularly due to advances in printing technology that meant that foreign printers could easily compete for domestic print orders.



## Promoting Competition in Ireland

No matter how many cases The Competition Authority takes to the courts, lobby groups can seek to put in place legislative restrictions which undermine competition. What may be presented as pro-consumer policies can sometimes have serious anti-competitive effects. Past examples have included restricting the number of taxis or pharmacies. Anti-competitive effects occur where the policy used interferes in sectors of the economy far beyond the level necessary to achieve its aim.

Enforcement and advocacy are the core tools available to a competition authority. Enforcement, the more traditional tool, involves the application of competition laws to the behaviour of firms. Advocacy focuses instead on public restrictions on competition that may arise from laws, regulations or administrative practice. Advocacy and enforcement have a common aim, namely to remove restrictions on entry and rivalry in markets. What distinguishes them is the source of the restrictions and the method of their removal.

With enforcement, the mechanism is the legal process of applying competition law and a court is ultimately the decision-maker. With advocacy, the mechanisms and decision makers are more varied, for example decision-makers may be Government Ministers, the Oireachtas, regulatory bodies or local authorities.

The Competition Authority is an advocate for competition in various ways. Through studies of particular sectors of the economy the Authority examines regulations and practices that potentially restrict competition and seeks to have anti-competitive restrictions abolished or replaced. The Authority regularly advises Government Departments and Agencies on policies under consideration and on existing anti-competitive

restrictions which have been brought to its attention. Finally, the Authority raises awareness of the benefits of competition generally by speaking to interested parties, making presentations, and keeping the public informed of its activities.

### **Progress on Statutory Studies undertaken by The Competition Authority**

The Competition Authority is currently undertaking three formal studies under Section 30 of The Competition Act, 2002. The focus of these studies is to examine important areas of the economy based on a number of criteria.

#### **1. The Insurance Sector**

##### **(Motor, Employers' Liability and Public Liability)**

In September 2002, the Authority launched a study of non-life insurance jointly with the Department of Enterprise, Trade and Employment. The Insurance Study was initiated against a background of steeply rising prices and, in some cases, lack of availability of insurance.

During 2003, a number of consultants were appointed to assist the Authority and Department in carrying out research into motor, employers' liability and public liability insurance.

- **Cass Business School**, City University, London were commissioned in April 2003 to undertake research on the economics and regulation of insurance.
- **Vincent Hogan and Colm Harmon** of University College, Dublin were commissioned in March 2003 to carry out research on the prospects of empirical analysis on the non-life insurance markets under consideration.
- **Europe Economics**, London were commissioned in July 2003 to carry out theoretical and empirical analysis of competition in the relevant insurance markets.

- **Dorothea Dowling** was asked in September 2002 to provide expert knowledge and carry out an analysis of the 2002 insurance annual returns (published December 2003).

A significant proportion of the background work for this study has been undertaken during 2003. A consultation paper which contains initial findings and questions for a public consultation process was published in February 2004. The Authority's final report is scheduled for publication in the second quarter of 2004.

## 2. The provision of Banking Services (Non-investment Banking)

In August 2003, a background analysis of the Irish Banking Sector and related competition issues was published by The Competition Authority. This research was carried out by economic consultants LECG on behalf of the Authority.

Following this analysis, the focus of the Authority's Banking Study was narrowed to a number of key markets in order to allow for in-depth analysis and ensure the Study is manageable and coherent. Conclusions from the markets chosen, Personal Current Accounts (PCAs) and Loans to Small and Medium Enterprises (SMEs), will have wider applications in the Irish Banking Sector.

The Authority then published a consultation document seeking information and views from relevant parties on the choice of markets and on issues relating to competition in those markets. The Authority received a significant number of substantial submissions in response and has embarked on a full assessment of the markets for PCAs and Loans to SMEs. This assessment will be completed in 2004. (see page 31 for more details on The Competition Authority's Study of the Irish Banking Sector)

## 3. The Construction, Medical & Legal Professions

By the end of 2004 The Competition Authority will have completed its study into eight professions in the construction, medical & legal sectors. The Professions Study covers Engineers, Architects, Veterinary Surgeons, Solicitors, Barristers, Medical Practitioners, Dentists and Optometrists.

During 2003, significant progress was achieved on the Professions Study. In March a background analysis of the eight professions was published following 12 months of work carried out by Indecon Economic Consultants on behalf of The Competition Authority. In addition reports on the Engineering and Architectural professions were published in August and November respectively. These reports contained draft recommendations and a number of focused consultation questions. Following a consultation period final recommendations will be issued in 2004. (see Table 3.1 & Appendix 1 for more details of The Competition Authority's Study of the Professions in Ireland)

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Table 3.1: Professions Study: Potential anti-competitive issues identified by Indecon Economic Consultants

	Engineers	Architects	Solicitors	Barristers	Veterinary Surgeons	Medical Practitioners	Dentists	Optometrists
Barriers to Entry <sup>1</sup>		🚩	🚩🚩🚩	🚩🚩🚩	🚩🚩🚩	🚩🚩🚩🚩	🚩🚩🚩	🚩
Rivalry <sup>2</sup>	🚩🚩	🚩🚩	🚩	🚩🚩	🚩	🚩🚩	🚩	🚩
Demarcation <sup>3</sup>			🚩🚩	🚩🚩	🚩		🚩	🚩
Organisational Form <sup>4</sup>			🚩🚩	🚩	🚩	🚩	🚩	
Other								🚩

Note: Each Flag represents an issue highlighted by the Indecon report see Appendix 1 for detailed breakdown of issues.

**Footnotes**

1. Barriers to Entry: Limits or restrictions on individuals entering a particular profession.
2. Rivalry: How current professionals compete for business e.g. through price, quality and innovation.
3. Demarcation: Rules or practices which limit competent professionals offering the same services.
4. Organisational Form: Restrictions on organising in tandem with other professionals or as limited companies.

### **Advice to Government**

The Competition Authority advises Government Departments and Agencies by responding to invitations to comment on policy proposals and requests for submissions via public consultations.

In 2003, for example, the Authority formally advised the Department of Transport on the regulation of bus services outside Dublin, the Department of Communications, Marine and Natural Resources on port services, and the Commission for Electricity Regulation on trading arrangements in the market for electricity. The Authority has recommended structural reform in all these areas, to be based on the principles of better regulation: a clear rationale, evidence-based decision-making, transparency, non-discrimination, objectivity, relevance and proportionality.

The Authority also made a submission, in October 2003, on the role of competition and regulatory reform, to the Enterprise Strategy Group established by the Tanaiste. The focus of the submission was on creating the conditions conducive to competition in markets for non-traded goods and services. This in turn will benefit enterprise and improve Ireland's competitiveness by lowering the cost base of Irish firms and creating a culture of innovation motivated by meeting consumer demand. (See Appendix 4 for a full list of submissions made by the Authority in 2003.)

### **Appearance before Oireachtas Committees**

During the year The Competition Authority was invited twice to attend the joint Oireachtas Committee on Enterprise and Small Business.

In February the Chairperson of the Authority, John Fingleton discussed the issue of insurance reform and outlined details of the Authority's Study on Competition in the (non-life) Insurance Market.

Dermot Nolan appeared before the Committee in November to discuss reform of the EU Merger Regulations.

### **Speeches and Presentations**

The Competition Authority is regularly invited to provide speakers at conferences on various issues and sectors of the economy. In 2003, Authority staff presented on issues covering competition in health care, electricity, transport and professional services. (See Appendix 5 for a list of over 60 speeches and presentations made by staff of the Authority in 2003.) The Authority's aim in giving these presentations is to raise awareness of the benefits of competition for all sectors of Ireland's economy. Competition lowers prices and improves service for consumers and makes Ireland a good place in which to do business.

## **The role of the Advocacy Division in The Competition Authority**

The Advocacy Division identifies public restrictions on competition, advocates reform of anti-competitive restrictions, and promotes pro-competition policy making, as set out in section 30 of the Competition Act, 2002.

Public restrictions on competition may arise from laws, regulations or administrative practice. The Authority seeks reform where the restriction is not justified by another policy aim which benefits consumers, such as environmental concerns, or it restricts competition far in excess of the level necessary to achieve the pro-consumer aim. The Advocacy Division regularly advises Government Departments on the effects on competition of legislation being proposed or under review (see Appendix 4), and makes recommendations to Government, its Departments and Agencies, on anti-competitive restrictions identified in the course of an Authority study or a complaint received by the Authority.

The Authority also promotes the case for competition generally, through speeches, presentations and representation (see Appendix 5).

# Competition is Essential for Lower Prices and the Health of the Irish Economy

**John Fingleton, Chairperson,  
The Competition Authority**

Recent surveys have shown that Ireland is becoming one of the most expensive countries in the European Union. Food items are no exception to this trend. In 1995 food prices in Ireland were 11% below the EU average. By 2002 Irish prices had raced ahead to 14% above the EU average. This 25% differential is absurd in a food-producing nation, whose farmers are increasingly concerned by falling farm gate prices. It raises serious questions about the level of competition in the manufacturing, distribution and retailing of food in Ireland.

The direct benefits to shoppers of competition in the sector are obvious. If food prices in Ireland could be brought in line with the average EU level, it would be the equivalent to a 2% pay increase for somebody earning the average industrial wage. The benefits would be even more pronounced for those on lower incomes who spend a higher proportion of their earnings on food. For a couple living on a non-contributory old age pension a saving of €550 on their annual shopping bill would be the same as a 4.6% increase in income. Greater competition in the distribution and retailing of food would lead to a substantial increase in real living standards for all Irish consumers.

Two pieces of legislation restrict competition in this area. The Groceries Order prevents shops from selling below the invoice cost and thus restricts price competition. The Retail Planning Guidelines prevent shops over a certain size from opening. This restricts competition, especially from retailers who use superior efficiency, scale and innovation to drive prices down. The combination of both measures undoubtedly means higher prices and reduced variety for consumers. The protectionist arguments we now hear

against greater competition in the retail sector are identical to those made against Ryanair almost 20 years ago. At that time, many consumers genuinely feared the unknown and were persuaded that competition would lead to chaos or disruption. Instead, the airline market has expanded, contributing to tourism and exports, and fares have fallen enormously. Consumers can have confidence that greater competition can deliver similar benefits in the retail and distribution markets.

A recent article in this newspaper by Jim Power, Chief Economist at Friend's First warned against "knee jerk" reactions to our current high rate of inflation. As Chairman of The Competition Authority I'm in full agreement that there are no "quick fixes" and that long-term solutions are required.

Competition policy is one of the essential ingredients to improve productivity and as a consequence help to bring down inflation. However competition policy does not provide fast or simple solutions to macro-economic problems such as high inflation, production capacity or the immediate impact from changes in exchange rates.

There is increased recognition that competition, properly implemented, can deliver benefits in terms of increased trade, lower prices to consumers and greater economic growth over time. This view is based on long-term analysis of economic policy and is supported by the direct experiences of consumers from the liberalisation of air travel and taxis.

How competition can work to the advantage of the Irish consumer and the economy in general is best illustrated by example. Ryanair entered the airline business in the 1980s at a time when there was very little competition and very high prices. While the full effect of this

competition did not really have an impact until the 1990s, there are very few who can deny the knock-on effects. Prices of flights in and out of Ireland have fallen dramatically while at the same time the number of flights and choice of destination have vastly improved.

In addition to improving choice for individual travellers there has been a substantial positive effect on tourism and business because of lower costs. While travel agents and Aer Lingus have felt the pressure of this competition there is no doubt that the gains for the consumer and the economy have far exceeded any discomfort.

The entry of Bank of Scotland into the Irish mortgages market has reduced profit margins and increased competition among the financial institutions. This has had a direct result on the monthly repayments of mortgage holders.

For taxi users more needs to be done to ensure the continuation of a quality service, however the issuing of new licences has led to strong benefits, including reduced queues.

It is not surprising that there are many who argue and lobby heavily against competition in order to protect their own interests. The standard argument used is that competition will lead to chaos, and would damage the people most in need of these services. Time and again, these claims have proved unfounded after the event.

The role of The Competition Authority is to look after the interest of the Irish consumer. The potential benefits of a competitive economy are very much based around greater innovation in order to meet consumer demand. These benefits include lower prices as well as increased variety and quality of products and services.

*This article first appeared in the Irish Independent on 7th July 2003*

## Study into the Irish Banking Sector

The Competition Authority published a background analysis and a consultation paper in August 2003 as part of its *“Study of Competition in the Provision of Non-investment Banking Services in Ireland.”*

The Authority decided to narrow the focus of the Study to a number of key markets. This allows the Authority to look at these key areas in detail and is designed to keep the Study focused, coherent, and manageable. The markets chosen are:

- 1. Personal Current Accounts and,**
- 2. Loans to Small and Medium Sized Enterprises.**

The Authority chose to narrow the scope of the study because of the importance of these services to consumers, businesses and the economy in general.

**Personal current accounts (‘PCAs’) were chosen for a number of reasons including:**

- Current Accounts are ubiquitous – most households hold at least one PCA;
- Current Accounts are a core banking service and may act as a ‘gateway’ product to other banking services such as the provision of loans and other forms of credit;
- There may be few economic alternatives to Current Accounts – while PCAs provide a means of safe keeping deposits and, via overdraft facilities, access to credit, it is the money transmission facility provided through PCAs that is difficult to replicate in other banking products.

**Loans to small and medium sized enterprises (‘SMEs’) were chosen because:**

- SMEs are an important source of employment and growth within the economy;
- SMEs do not have easy access to capital markets to meet their financing requirements;
- SMEs have few non-bank alternatives, especially with respect to working capital loans.

### **Background to the Banking Study**

In September 2002, The Competition Authority (the ‘Authority’) announced that it would undertake a Study of Competition in the Provision of Non-investment Banking Services in Ireland

The decision to study the banking sector was informed by a number of criteria including:

- **The economic importance of the sector** – over 4% of Gross National Product (GNP) is attributable to the banking sector and banking impacts virtually on all other sectors of the economy;
- **Indications of the level of competition in the sector** – many markets for consumer and business banking services are highly concentrated;
- **The existence of barriers to entry** – the sector is heavily regulated and incumbents have a long established presence in the market, which may make new entry into the sector more difficult;
- **The extent of public interest** – competition in the banking sector, or the perceived lack thereof, has attracted much attention from media, political and other sources.

**The Study is being conducted in Phases. Phases 1 and 2 are now complete. It is anticipated that the Study will be completed in 2004.**

**Phases 1 – 4 are as follows:**

- **Phase 1** involved a background analysis of the Irish banking sector and competition issues that arise in banking sectors more generally – the LECG Phase 1 Report was published in August 2003 to accompany the consultation paper;
- **Phase 2** involved narrowing the focus of the Study to a number of key markets
- **Phase 3** will involve a full competitive assessment of the markets chosen for further study in Phase 2;
- **Phase 4** will involve the drafting of conclusions and recommendations to Government, industry participants and other relevant parties.

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## Administration & Corporate Services

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In order to maximise the impact of The Competition Authority's work it is important that the organisation as a whole operates smoothly and efficiently. What are sometimes considered invisible support services are in fact vital to the enforcement, mergers and advocacy work of the Authority.

These support services are focused on facilitating the core functions of the Authority as well as assisting the Authority's direct customers including complainants, firms and individuals under investigation, parties involved in mergers, elected representatives, lawyers, civil servants and journalists.

### Finance

The Authority is funded by way of an annual grant from the Department of Enterprise, Trade and Employment. In 2003 the Authority's grant was €3.508m. At time of writing the provisional, unaudited outturn for the year was expenditure of €3.326m, leaving a surplus of €0.182m. This surplus arose from a number of vacant positions in the Authority during 2003 that the Authority was unable to fill because of office accommodation constraints. However additional office accommodation is due to be made available to the Authority early in 2004 which will allow it to fill the remaining positions.

### Recruitment

The Authority has been responsible for its own recruitment since the coming into effect of the Competition Act in July 2002. During the course of 2003 the Authority completed four separate public recruitment competitions for appointments as Communications Manager, Finance Officer, Secretary and Head of Administration and Divisional Manager of the Advocacy Division. The Authority also advertised a competition to recruit economists to fill a number of vacant positions and it is anticipated

that appointments from this competition will be made in the first quarter of 2004. The Authority made other appointments during 2003, particularly at Analyst/Case Officer level, arising from recruitment competitions held at the end of 2002.

In total, the Authority made thirteen appointments during 2003. By the end of the year (excluding the Members of the Authority and the two seconded Gardai) sixteen of the staff of the Authority were direct employees of The Competition Authority while the remaining sixteen staff are civil servants of the Department of Enterprise, Trade and Employment assigned to the Authority.

### External Communications

Informing the public about the work of The Competition Authority and about competition policy in general continues to be a priority for the organisation. The Authority's website ([www.tca.ie](http://www.tca.ie)) is constantly updated to ensure that it provides the most comprehensive information possible on areas such as merger notifications, enforcement decisions, studies and news releases.

The Authority places considerable importance on its relationship with the media. In 2003 the Authority issued 21 news releases and held two formal media briefings. In addition members and staff contributed to numerous debates in the print and broadcast media on a variety of competition-related issues. During the year the Authority implemented a new telephone system and installed a search engine on its website in order to more efficiently handle enquiries from members of the public, the legal profession and the business community.

### **Freedom of Information**

During 2003 The Competition Authority received six requests under the Freedom of Information Act 1997 (FOI) compared with nine requests in 2002 and fourteen in 2001.

Two of the requests received in 2003 were granted in part, one was withdrawn as the Authority was in a position to facilitate the request outside the parameters of FOI and three were refused. These were refused on grounds connected to the fact that the records requested related to on-going investigations.

Of the six requests made, three were from businesses, one from an academic and two from individual members of the public.

### **The role of the Corporate Services Division in The Competition Authority**

The Corporate Services Division was renamed during 2003 and was previously known as the Chairperson's Division. The new name more accurately reflects the work of the Division which provides internal support for the enforcement, mergers and advocacy work of the Authority as a whole. This support includes administration & IT services, finance, human resources, and general resource management. In addition, the Division coordinates the national and international representation function of the Authority and manages public relations for the organisation.

The Division employs the Secretary to the Authority, Communications Manager, Finance Officer, Legal researcher, an IT officer and three other administration staff.

### Membership of The Competition Authority

The members of The Competition Authority during 2003 were:

John Fingleton	Chairperson
Declan Purcell	Director of Advocacy Division
Paul Gorecki	Director of Monopolies Division
Terry Calvani	Director of Cartels Division (Acting Director of Mergers Division from Jan to Aug 2003)
Edward Henneberry	Director of Mergers Division (From Sept 2003)

**John Fingleton** was appointed Chairperson of The Competition Authority in May 2000. John previously lectured at Trinity College Dublin from 1991 until April 2000. He is vice Chairperson of the International Competition Network, Chairperson of the Association for Competition Economics and a member of the National Competitiveness Council.

**Declan Purcell** was first appointed to The Competition Authority in April 1998 and was reappointed for a further five year term in 2001. Declan previously worked in the Department of Enterprise, Trade and Employment and in its predecessor, the Department of Industry and Commerce, for over twenty years.

**Paul Gorecki** took up his appointment as a Member of The Competition Authority in June 2000. He worked for the Canadian competition authorities for several years before joining the Economic Council of Canada in 1978. In 1992 he moved to Northern Ireland as Director of the Northern Ireland Economic Council.

**Terry Calvani** became a Member of the Authority on 20th May 2002. Previously he was a partner in the antitrust practice group of Pillsbury Winthrop LLP, resident in both its San Francisco and Washington, D.C. offices. Terry was Commissioner of the US Federal Trade Commission (1983-1990) and was acting Chairman of the Commission during 1985 and 1986.

**Edward Henneberry** took up his appointment as a Member of the Authority in September 2003 and became Director of the Authority's Mergers Division. Prior to his appointment to the Authority he was a partner in Howrey Simon Arnold & White's Antitrust Practice Group in Washington, DC. Edward previously worked for five years as a trial attorney with the Antitrust Division of the US Department of Justice.

## Organisational Structure of The Competition Authority (reflects staff positions on 31st December 2003)

Since 2001 the Authority has had an organisational structure whereby each of the five distinct areas of responsibility is headed by a Member of the Authority

Division	Advocacy	Mergers	Corporate Services	Cartels	Monopolies
Member	Declan Purcell	Edward Henneberry	John Fingleton	Terry Calvani	Paul Gorecki
Functions	Study, analysis and advocacy of competition in liberalised markets and where the State restricts competition	Merger notifications and enforcement	Coordination, administrative services, public relations and external/international representation	Investigation and prosecution of and enforcement against hard-core cartels under Section 4	Investigations and enforcement in abuse of dominance cases and for non-cartel (horizontal and vertical) agreements under Sections 4 and 5
Divisional Manager	Carol Boate	Dermot Nolan	Ciarán Quigley	Ray Leonard	Vivienne Ryan
Legal Advisor	Noreen Mackey			David McFadden	
Communications Manager			Mark Garrett		
Analyst/Case Officer	John Evans Colm Treanor Andrew Rae Anne Ribault O'Reilly	Reuben Irvine Vanessa Holliday <sup>1</sup> Rosemary O'Loughlin Patrick Neill <sup>2</sup>	Linda Ni Chualladh	Colette Hegarty Derek Charles Patrick D'Arcy Catherine Kilcullen Michael Prendergast <sup>3</sup> Tony Mulligan <sup>4</sup>	Emily O'Reilly Ibrahim Bah Paku Khan Barry O'Donnell Vanessa Fenton
Higher Executive Officer		Ann Geraghty	Olive O'Malley (Finance Officer)		
Executive Officer			Sandra Rafferty Stephen Lalor		Maura O'Donoghue
Clerical Officer			Elizabeth Heffernan Laraine Cooper		Pat Downey

- 1 Vanessa Holliday from the Australian Competition and Consumer Commission worked in The Competition Authority from February 2003 on a work exchange programme
- 2 During 2003 Patrick Neill was based in the Australian Competition and Consumer Commission on a work exchange programme
- 3 Detective Sergeant Michael Prendergast is on secondment to The Competition Authority from the Garda Bureau of Fraud Investigation
- 4 Detective Sergeant Tony Mulligan is on secondment to The Competition Authority from the Garda Bureau of Fraud Investigation

consumers

innovation

competition



## Appendix 1: Potential anti-competitive issues highlighted by the Indecon Report on the Professions (March 2003)

	ENGINEERS	ARCHITECTS	SOLICITORS	BARRISTERS
<b>BARRIERS TO ENTRY</b>		The way in which 'grandfather' independent architects and some members of the Group of Independent Architects in Ireland (GIAI) will be assessed for entry to the proposed new register of architects could act as a barrier to entry to the profession	The Law Society's monopoly on the provision of professional courses for trainee solicitors is likely to restrict the number of entrants to the profession.	The King's Inns monopoly on the provision of the Diploma in Legal Studies course, a conversion course for those seeking admission to train as barristers, is likely to restrict the number of entrants to the profession.
			The requirement that Solicitors whose second or subsequent place of qualification is Northern Ireland or England & Wales have 3 years post-qualification experience in the jurisdiction in which their qualification was subsequently obtained before entering the Roll of Solicitors in Ireland may act as an entry barrier to the Irish profession.	The King's Inns monopoly on the provision of the Barrister-at-Law (BL) degree course is likely to restrict the number of entrants to the profession.
			The Requirement that Barristers have three years post-qualification experience in order to transfer to practices as Solicitors is likely to act as a barrier to entry to the solicitor's profession.	The absence of remuneration of devils during their period of pupillage is likely to act as an entry barrier to the profession.
<b>RIVALRY</b>	The continued publication of the historical ACEI/IEI fee scales (on the ACEI's website) could restrict or distort competition	The RIAI does not have recommended, mandatory or minimum scales of charges. It does, however, publish information on the levels of charges based on surveys and market rates as a way of informing consumers/clients. This practice is likely to restrict competition on the market.	With the exception of personal injury services, the restrictions on comparative advertising and the prohibition on solicitors making unsolicited approaches to clients or members of the public in any area of the law is likely to restrict normal competitive behaviour on the market for solicitors' services.	The rules preventing barristers from advertising are likely to restrict the operation of competition between barristers.
	The advertising codes of the ACEI and the IEI act as a barrier to entry for new practices and could restrict normal competitive behaviour among firms.	The RIAI's restrictions on paid and print media advertising are likely to restrict competition in the market for architectural services in Ireland.		The prohibition on clients directly accessing the services of barristers in all areas of work (including contentious work) is likely to restrict competition between barristers.
<b>DEMARCATIION</b>			The restrictions on solicitors based in Northern Ireland and England & Wales, together with lawyers from other EU Member States, providing conveyancing, trust and probate services in Ireland, in the same way they can provide other legal services in Ireland, are likely to restrict competition on the market for these particular services in Ireland.	The customs and traditions serving to minimise the number of 'solicitor advocates' in the superior courts limit the supply-substitutability between the two branches of the legal profession and therefore are likely to restrict competition on the market for barristers' services.
			The absence of a system of licensed conveyancers reduces competition in this segment of the market.	The prohibition on fully qualified employed barristers (having fulfilled the pupillage requirements as well as being called to the Bar) competing with practising barristers (members of the Law Library) is likely to restrict competition on the market for barristers' services.
<b>ORGANISATIONAL FORM</b>			The Prohibition on solicitors forming limited liability partnerships and companies hinders the profession in competing internationally and may reduce economic efficiency.	The requirement that barristers operate only as sole practitioners and the prohibition on barristers forming multidisciplinary practices with other professionals are likely to restrict competition in the market for barristers' services.
			The prohibition on solicitors practising with members of other professions is likely to reduce competition and innovation.	

	VETERINARY SURGEONS	MEDICAL PRACTITIONERS	DENTISTS	OPTOMETRISTS
<b>BARRIERS TO ENTRY</b>	The position of one institution as the sole provider of veterinary education in Ireland amounts to a monopoly, which has the potential to act as a barrier to entry to the veterinary profession and adversely affect potential competition in the marketplace.	The limitation on the number of study places available at the Irish schools of medicine acts as a constraint on graduate entry to the medical profession in Ireland and is therefore likely to limit potential competition.	The absence of registration status for suitably qualified denturists and dental technicians is likely to result in a barrier to entry to the profession and therefore adversely affect potential competition in the market.	The limitation on the number of study places available for the Optometry degree course acts as a barrier to entry to the profession and is likely to constrain potential competition.
	The restriction of study places available at the UCD Faculty of Veterinary Medicine points to a significant constraint on entry to the profession, which is likely to act as a barrier to potential competition.	The process of registration of doctors wishing to transfer from other countries to practise in Ireland constitutes a potential barrier to entry within the medical profession.	The transfer arrangements in relation to dentists from non-EU countries wishing to practise in Ireland are likely to act as a barrier to entry to the profession and constrain potential competition in the market.	
	The absence of recognition of non-EU/EEA trained veterinary surgeons wishing to practise in Ireland results in a barrier to entry and may constrain potential competition in the profession.	The process of determination of the number of consultant posts and the filling of such posts is such that the supply of consultants is not sufficiently responsive to the demand for specialised healthcare and acts as barrier to competition within the profession.	The limit on the number of places at Irish Schools of Dentistry acts as a barrier to entry to the profession and is therefore likely to constrain competition in the market for dental services.	
		The process of creation of GMS posts and the filling of vacancies may act as a barrier to entry to the medical profession by restricting the creation and development of new and potentially more innovative GP practices, limiting the choice of GPs available to patients and constraining competition.		
<b>RIVALRY</b>	The restrictions placed on advertising by veterinary surgeons are likely to be harmful to normal competitive behaviour and constrain the entry of new and more innovative veterinary practices.	The practice of referral of patients to specialist consultants in most cases is likely to be harmful to consumer interests through increasing the cost of access for patients specialised healthcare services.	The restrictions placed on advertising by dentists, by constraining normal competitive behaviour, are likely to adversely affect competition in the dentists' profession.	The controls on advertising by optometrists are likely to be harmful to normal competitive behaviour within the profession.
		The restrictions placed on advertising by doctors limits the availability of information to patients and could restrict competition between practitioners.		
<b>DEMARCATIION</b>	The limitation on the scope of practice of veterinary nurses constrains entry into the market of a new independent branch of the profession and therefore limits potential competition in the profession.		The restriction that dental hygienists must work under the supervision of dentists is likely to constrain the entry of new practices operated by hygienists, reduce the overall supply of dental services and adversely affect competition and consumer interests.	The restrictions concerning the prohibition on the sale of readymade spectacles or other visual aids by persons other than registered medical practitioners or opticians is unduly restrictive from a competition perspective.
<b>ORGANISATIONAL FORM</b>	The prohibition on the formation of limited liability practices by veterinary surgeons is likely to constrain the growth of veterinary practices and the entry of new and possibly more efficient practices.	The tradition within the medical profession precluding the practice by GPs of medicine within limited liability structures is likely to constrain the growth of GP practices and the entry of new and possibly more efficient practices.	The prohibition on the practice of dentistry by corporate bodies is likely to constrain the growth of practices and the entry of new and possibly more efficient dental practices.	
<b>OTHER</b>				The composition of membership of the Opticians Board should include specific consumer representatives.

## Appendix 2: Mergers Notified to The Competition Authority in 2003

Notification No – Parties Involved	Industry	Date Notified	Status*
M/03/047 - Electra Partners / Aliplast NV	Metals	24/12/03	Cleared 23/01/04
M/03/046 - JPMP Capital / IMO	Finance and Car Wash	24/12/03	Cleared 23/01/04
M/03/045 - Maiden Acquisition Company Ltd / Northern	Foods Ireland Food and Beverage	24/12/03	Cleared 23/01/04
M/03/044 - MMRJ / Dennis Eagle	Financial / Vehicles	22/12/03	Cleared 22/01/04
M/03/043 - 3i Group / Hyva	Components for Commercial Vehicles	22/12/03	Cleared 22/01/04
M/03/042 - Abbott Laboratories / i-STAT	Health Care	22/12/03	Cleared 22/01/04
M/03/041 - Alpha Newspaper Group / Midland Tribune	Publishing	17/12/03	Cleared 16/01/04
M/03/040 - Alpha Newspaper Group / Veldtstar	Publishing	17/12/03	Cleared 16/01/04
M/03/039 - 3i Group/HSS Hire Service Group	Hire of Tools & Equipment	16/12/03	Cleared 16/01/04
M/03/038 - Bank of Bermuda / HSBC Holdings	Financial Services	12/12/03	Cleared 12/01/04
M/03/037 - General Electric / IFG Group	Financial Services	05/12/03	Cleared 05/01/04
M/03/036 - 3i Group/Trinity Mirror	Publishing	01/12/03	Cleared 31/12/03
M/03/035 - Stena / P&O	Ferry Services	07/11/03	Phase 2 Investigation
M/03/034 - Classic Copyright / Boosey & Hawkes	Music	24/10/03	Cleared 19/11/03
M/03/033 - Scottish Radio Holdings / FM104	Media	23/10/03	Sent to Minister 05/02/04
M/03/032 - Abacus Direct / AZ Direct	Direct Marketing	13/10/03	Cleared 31/10/03
M/03/031 - Stafford Holdings / Clashfern Holdings	Oil	06/10/03	Cleared 06/11/03
M/03/030 - News Corporation / Hughes	Media	10/09/03	Cleared 09/10/03
M/03/029 - Dawn Meats / Galtee Meats	Meat	09/09/03	Cleared 20/11/03
M/03/028 - General Electric / Transamerica	Finance	04/09/03	Cleared 02/10/03
M/03/027 - Guardian Media / Trader Media	Publishing	08/08/03	Cleared 26/08/03
M/03/026 - Abbott / Zone	Perfect Health Food	01/08/03	Cleared 19/08/03
M/03/025 - CVC Funds / IG Group	Betting	30/07/03	Cleared 19/08/03
M/03/024 - Lisheen / Ivernia West	Mining	28/07/03	Cleared 22/08/03
M/03/023 - ICC / BMR	Health/Fitness	24/07/03	Cleared 13/08/03
M/03/022 - The Agricultural Trust / The Irish Field	Publishing	11/07/03	Cleared 06/08/03
M/03/021 - L.E. Pritchitt & Co. Limited / Lakelands Dairies Co-Operative Society	Grocery	20/06/03	Cleared 17/07/03
M/03/020 - ARG Equation Limited / March U.K. Limited	Home shopping catalogue and retailing	18/06/03	Cleared 15/07/03
M/03/019 - Haléns Holdings AB / March U.K. Limited	Home shopping catalogue	18/06/03	Cleared 15/07/03
M/03/018 - Hewlett-Packard / Ericsson	Information Technology	17/06/03	Cleared 17/07/03
M/03/017 - Bayer AG / Makroform GmbH	Plastics	16/06/03	Cleared 08/07/03
M/03/016 - GUS Ireland / March UK	Publishing	16/06/03	Cleared 15/07/03
M/03/015 - Royal Bank of Scotland Group plc / Churchill	Insurance Group Insurance	13/06/03	Cleared 08/07/03
M/03/014 - Gardiner Group / Elektra Funds	Electronic Security Equipment	29/05/03	Cleared 16/06/03
M/03/013 - 3i Group Investments / Rosenlew Group	Flexible Bulk Containers	29/05/03	Cleared 19/06/03
M/03/012 - Smurfit Ireland Ltd / Lithographic Universal Ltd	Printing	28/05/03	Cleared 17/07/03
M/03/011 - General Electric Company / Crompton Corporation	Silicone	16/05/03	Cleared 13/06/03
M/03/010 - Thomas Crosbie / Smurfit Communications	Media	30/04/03	Cleared 26/05/03
M/03/009 - Philips / Accton	Wireless Networking	28/04/03	Cleared 26/05/03
M/03/008 - DHL / Airborne Inc	Postal	25/04/03	Cleared 21/05/03
M/03/007 - Soros / Polymerlatex	Latex	11/03/03	Cleared 28/03/03
M/03/006 - Mercer / Oliver Wyman	Management Consulting	04/03/03	Cleared 03/04/03
M/03/005 - Ryanair / Buzz	Airline	28/02/03	Cleared 24/03/03
M/03/004 - General Electric / Agfa	Testing Equipment/Systems	17/02/03	Referred to EC 01/04/03
M/03/003 - Microsoft / Placeware	Web Conferencing software	17/02/03	Cleared 09/04/03
M/03/002 - BASF / Honeywell	Engineering plastics	12/02/03	Cleared 01/04/03
M/03/001 - Musgrave Ltd / Express Checkout	Grocery	12/02/03	Cleared 13/03/03

\* Merger cleared at Phase 1 unless otherwise stated.

### Appendix 3: Status of Merger Cases in 2003

<b>Notified Mergers</b>	<b>47</b>
required notifications (Section 18(1))	46
voluntary notifications (Section 18(3))	1
<b>Non-notified Merger investigations (Sections 4 / 5)</b>	<b>1</b>
<b>Carried from previous year</b>	<b>0</b>
carried as Phase 1	0
carried as Phase 2	0
<b>Referred from the EU Commission (ECMR Article 9)</b>	<b>0</b>
<b>TOTAL CASES</b>	<b>48</b>
of which media mergers	11
<b>Cases Withdrawn</b>	<b>0</b>
Withdrawn at Phase 1	0
Withdrawn at Phase 2	0
<b>Third Party Submissions Received</b>	<b>8</b>
<b>Determinations Delivered</b>	<b>33</b>
Phase 1 Determination without conditions	32
Phase 1 Determination with conditions	0
Phase 2 Determination without conditions	1
Phase 2 Determination with conditions	0
Other	0
<b>Referral to EU Commission (ECMR Article 22)</b>	<b>1</b>
<b>Carried to next year</b>	<b>13</b>
Carried as Phase 1	11
Carried as Phase 2	2

## Appendix 4: Formal Submissions made by The Competition Authority in 2003

Submission Number:	Submission to:	Summary of Recommendations	Status
S/03/006	Enterprise Strategy Group	Creating the conditions conducive to competition in markets for non-traded goods and services will benefit enterprise and improve Ireland's competitiveness by lowering the cost base of Irish firms and creating a culture of innovation motivated by meeting consumer demand.	Enterprise Strategy Report due in Summer 2004
S/03/005	Law Reform Commission on its Consultation Paper on multi-party litigation (class actions)	That the Commission consider possible alternatives to the class action procedure. In particular: a wider role for the Attorney General, empowering regulatory bodies to sue on behalf of consumers, improving the existing representative action.	Report not yet published
S/03/004	Minister for Environment & Local Government on the review of the floorspace cap on retail warehouses	The removal of the uniform restriction on the size of retail warehouses would benefit consumers through lower prices and an increase in the range and quality of goods available.	Review due to be completed by March 2004
S/03/003	Department of Communications, Marine and Natural Resources on the findings and recommendations of the High Level Review of Ports	Structural reform in the port sector. Regulation should be introduced to deal with access issues only where competition is ineffective. Any port mergers should be subject to a merger review similar to any merger notified under the Competition Act, 2002.	Policy review in the Department is on-going
S/03/002	Commission for Energy Regulation - Irish Electricity Trading Arrangements Second Options Paper	The Authority expressed broad support for the CER's preferred model for new trading arrangements. On a broader policy agenda the Authority strongly indicated that meaningful structural reform of the sector would be required if the benefits of market liberalisation were to be realised.	The CER is moving ahead with its plans for the new trading system. CER has stated that it does not have the power to initiate structural reform along the lines advocated by the Authority.
S/03/001	Comments on the Report on the Regulation of Bus Services Outside the Greater Dublin Area for the Department of Transport	The market failures requiring Government intervention are not clearly identified by the report. The report does not recognise the need for a more liberal regime.	Policy review in the Department is on-going

## Appendix 5: Speeches & Presentations

Title	Forum	Date	Person
Monopoly Enforcement in Ireland	Trinity College Dublin	15 January	John Fingleton
Criminal Antitrust Enforcement in Ireland	IBEC Dublin	2 February	Terry Calvani
Convergence & Devolution in Antitrust	American Bar Association, New York	5 February	Terry Calvani
The EU Merger Regulation	“The Challenges facing competition policy in Spain and Europe”, Madrid	20 February	John Fingleton
Criminal Antitrust Enforcement in Ireland	IBEC, Cork	28 February	Terry Calvani
Insurance and Work of the Authority	Joint Oireachtas Committee for Enterprise & Small Business, Dublin	4 March	John Fingleton
International Competition Coordination	Conference Board, New York	18 March	John Fingleton
Developments in Irish and EU Competition Policy	Harvard University, Boston	19 March	John Fingleton
Seminar on Competition policy	New York University, New York	8 April	John Fingleton
The Strategy and Work of The Competition Authority	MBA Association Dinner, Dublin	14 April	John Fingleton
Corporate Governance: A Competition Policy Perspective	Centre for Corporate Governance, UCD, Dublin	28 April	John Fingleton
Work of Competition Authority	IBEC Competition Council, Dublin, IBEC, Dublin	29 April	John Fingleton
Irish competition policy	Laois Association/Chamber of Commerce, Laois	9 May	John Fingleton
Relevance of Competition Policy to Enterprise and Industry	Enterprise Ireland Board, Glasnevin, Dublin	12 May	John Fingleton
Competition policy and inflation	Government Anti-inflation group, Gov Buildings	14 May	John Fingleton
The Professions Study	Waterford Institute of Technology	20 May	Declan Purcell
Competition Policy and Economics	Law Society -Solicitors PPC, Law Society, Dublin	22 May	Declan Purcell
Reform of the EU Merger Regulation	Union Internationale des Avocats Roundtable, Dublin	23 May	John Fingleton
Impact of Modernisation in Ireland	Union Internationale des Avocats, Dublin	23 May	Terry Calvani
The Challenge of Advocacy	FIPRA, Cork	24 May	John Fingleton
Reply to Commissioner Monti	Institute of European Affairs, Dublin	26 May	John Fingleton
Competition for the Merger Test Market	Charles River Associates Conference, London	4 June	John Fingleton
Overview of the Work of The Competition Authority	Office of Fair Trading, London	5 June	John Fingleton
De-monopolising Ireland	EU Competition Law conference, Florence	6 June	John Fingleton

Title	Forum	Date	Person
More work of the Competition Authority	IBEC Competition Council, Dublin	11 June	John Fingleton
The Challenges of Competition Advocacy	Competition Law and Policy in a Global Context, IBA Conference, Mexico	26 June	John Fingleton
Competition and Industrial Policy	Forfás, Dublin	2 July	John Fingleton
Modernisation: Challenges for the Smaller Member States	Regulation Policy Institute, Oxford Univ	15 July	Terry Calvani
Emerging Issues from the Perspective of a Smaller Member State: Convergence, Devolution & Criminalisation	Max Planck Institute, Munich	18 July	Terry Calvani
Work of the Authority	Department of Finance, Dublin	24 July	John Fingleton
The Competition Act, 2002	ICOS/UCC Programme for Directors of Dairy Co-operatives, Portlaois	2 September	Paul Gorecki
Food Prices and Grocery Sector	Department of Agriculture Consumer Panel, Dublin	11 September	Anne Ribault - O'Reilly
Mind the Gap: Reforming the EU Merger Regulation	IBA Conference, San Francisco	15 September	John Fingleton
Competition and Healthcare in Ireland	US Federal Trade Commission and Department of Justice Joint Hearing on Healthcare, Washington DC	30 September	Declan Purcell
The Effectiveness of the Irish Competition Law Regime. Balancing Enforcement and Activity	Competition Press Conference, Dublin	1 October	John Fingleton
International Enforcement of Competition Law	Canadian Bar Assoc. Ottawa	3 October	Terry Calvani
Should Canadians Mimic U.S. Private Rights of Action?	Canadian Bar Assoc. Ottawa	3 October	Terry Calvani
Opening address	Mergers Conference, Dublin	10 October	John Fingleton
Competition brings benefits and challenges.	Dublin Economic Workshop, Kenmare	11 October	John Fingleton
Competition and Regulation in the Irish Transport Sector	Dublin Economic Workshop, Kenmare	11 October	Anne Ribault - O'Reilly
Competition in the Irish Health Sector	Dublin Economic Workshop, Kenmare	12 October	John Evans
How to prevent The Competition Authority from knocking on your door – A review of competition law and competition law compliance in Ireland.	Law Society Corporate and Public Sector Committee Seminar, Dublin	13 October	John Fingleton
An Overview of Irish Competition Policy	NUI, Maynooth	22 October	John Fingleton
Enforcement of Cartel Law in Ireland	Annual International Conference on Antitrust Law & Policy Conference. New York	23 October	Terry Calvani
Regulation of Professional Services	Conference on the Liberal Professions, Brussels	28 October	John Fingleton
Criminal Antitrust Enforcement in Ireland	Southern Law Association, Cork	30 October	Terry Calvani

Title	Forum	Date	Person
Competition in Ireland	German-Irish Chamber of Industry and Commerce, Dublin	13 November	Declan Purcell
Competition Authority Policy and Enforcement in the Irish Electricity Sector: Implications of Recent Market Developments	Sunday Business Post National Power Conference, Dublin	18 November	John Evans
Efficiencies in Mergers	American Chamber of Commerce Conference, Brussels	18 November	Edward Henneberry
Food Prices and Grocery Sector	Department of Agriculture Consumer Panel, Dublin	20 November	Anne Ribault - O'Reilly
Competition in the Irish Health Sector	Association of Anaesthetists Annual Meeting, Dublin	22 November	Declan Purcell
Competition Authority Policy and Enforcement in the Irish Electricity Sector: Implications of Recent Market Developments	SMi Energy Conference, Dublin	27 November	John Evans
Competition and Inflation	Fine Gael National Conference, Galway	9 November	John Fingleton
The Competition Authority: a key player in Competition Policy in Ireland	University of Limerick	1 December	Anne Ribault - O'Reilly
Cooperation in EU Merger Policy	British Institute of International Comparative Law 2nd Annual Merger Control Conference, London	2 December	John Fingleton
The Pros and Cons of Low Prices	Swedish Competition Authority, Stockholm	5 December	Paul Gorecki
Enforcement and Advocacy in Regulated Markets	Italian Competition Day, Rome	9 December	John Fingleton

