

**IRELAND***(1997)***Summary**

1997 was the first full year in which the Authority had the benefit of the powers conferred on it by the Competition (Amendment) Act, 1996 to enforce competition law. The staffing of the Authority has been increased to reflect this increased responsibility. During the course of 1997 a total of 220 complaint files were opened, including nine cases which were commenced on an 'own initiative' basis. A further 52 cases had been carried forward from 1996. A total of 156 complaint files were closed during the year. 40 of these related to cases carried over from 1996 while 116 involved new complaints opened during the course of 1997. By the end of the year, therefore, the Authority had a total of 116 complaints on hand of which 12 were complaints originally received during 1996. The Authority decided to institute proceedings in two cases.

During the year, 23 notifications of agreements were made to the Authority bringing the total of notifications since the Act came into force to 1 370. The Authority disposed of 46 notifications in 1997, bringing the total disposed of to date to 1 120. The Authority took 13 decisions in 1997, bringing the total decisions to 489.

During the year, 201 mergers were notified to the Minister under the Mergers Acts. One was referred to the Authority for investigation. Another one was referred and subsequently the referral was withdrawn. No mergers were prohibited in 1997.

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**Annual Report on Developments in Ireland**

**I. Changes in Competition Law and Policies Adopted or Envisaged**

There were no changes in Irish competition law and policy in 1997.

**II. Enforcement of Competition Laws and Policies**

*Action against anti-competitive practices.*

(a) *Under the 1972 Act - the work of the Director of Consumer Affairs.*

(b) *Under the 1991- 1996 Acts - the work of the Competition Authority*

Enforcement Activities

Notifications

Decisions

**III. Mergers and Concentrations**

*Competition Authority*

(i) *The Blockbuster/Ardnasillagh Merger Proposal*

(ii) *The Guinness Ireland Group/United Beverages Holdings Merger Proposal*

*Statistics on Concentrations*

**I. Changes in Competition Law and Policies Adopted or Envisaged**

1. There were no changes in Irish competition law and policy in 1997.

**II. Enforcement of Competition Laws and Policies*****Action against anti-competitive practices******(a) Under the 1972 Act - the Work of the Director of Consumer Affairs***

2. In previous reports the Director of Consumer Affairs referred to his concerns about the lack of transparency in the published terms of supply of the major sugar supplier. He wishes to report that work continued during 1997 with the company involved, resulting in considerable progress being made in the determination of the level of detail appropriate for inclusion in the published terms for wholesalers/retailers.

***(b) Under the 1991- 1996 Acts - the work of the Competition Authority*****Enforcement Activities**

3. During the course of 1997 a total of 220 complaint files were opened, including nine cases which were commenced on an 'own initiative' basis. A further 52 cases had been carried forward from 1996. A total of 156 complaint files were closed during the year. 40 of these related to cases carried over from 1996 while 116 involved new complaints opened during the course of 1997. By the end of the year, therefore, the Authority had a total of 116 complaints on hand of which 12 were complaints originally received during 1996.

4. In the case of four complaints the Director of Enforcement and other authorised officers obtained a warrant and conducted a search in accordance with the provisions of the Competition Act, 1991.

5. The most common complaints involved alleged price fixing or cartels, nearly 26 per cent of all complaints. During the course of the year, the Authority decided to institute proceedings in two cases which are expected to come before the courts during 1998. In a number of other cases investigations, which were ongoing at the end of the year, are expected to result in proceedings being instituted. There was also a large number of complaints alleging abuse of a dominant position. Very many of the latter concerned State enterprises. The other significant group of complaints related to refusal to supply.

6. Details of a number of specific cases dealt with by the Authority during 1997 are outlined below.

7. The Director of Enforcement commenced an investigation into a possible cartel in the road haulage industry in late May. In early June a large number of hauliers began blockading sections of Dublin Port. The Authority applied for and was granted an ex parte injunction, on 6 June, under Section 6 of the 1991 Act, as amended. The injunction was lifted after the defendants in the case gave undertakings to the Court not to engage in any further blockade, pending a full hearing of the case. The Authority expects that the case will be heard in 1998.

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8. In mid-April the Irish Travel Agents Association (ITAA) announced that its members would not sell Ryanair tickets unless the latter company reversed a decision to reduce the commission rates paid to agents. The Authority wrote to the ITAA indicating that unless it reversed this decision, the Authority would institute proceedings under Section 6 of the Act. The ITAA indicated in a letter dated 11 April 1997, that it would reverse the decision and inform its members accordingly. Following further investigation by the Director of Enforcement, the Authority decided in December to institute proceedings against the ITAA and a number of individual travel agents, alleging that they were engaged in practices which were in breach of Section 4(1) of the 1991 Act.

9. The Authority decided to take measures to reduce the possible incidence of collusive tendering on public sector contracts. As part of this strategy it sent copies of its guidelines on detecting collusive tendering to over 200 public sector agencies in November and December. The Director of Enforcement gave a presentation on the guidelines to a forum on procurement for local authority officials in early December. A small number of complaints alleging collusive tendering were received by the Authority before the end of the year. In one instance the Authority's attention was drawn to the fact that the Construction Industry Federation circulated its members with the names of members intending to submit tenders for particular contracts before the closing date for the submission of tenders. The Director of Enforcement met the Director General of the CIF and informed him that unless this practice was discontinued immediately, the Authority would institute proceedings against the CIF. This was confirmed by letter to the CIF on 9 December, seeking an undertaking that the practice would be discontinued and stating that if such a commitment were breached the Authority would institute proceedings without further notice. On 23 December the Authority received a reply from the CIF indicating that the practice would be discontinued with effect from 1 January 1998. On that basis the Authority decided that no further action was required.

10. In late 1996 the Authority received a complaint alleging that attempts were being made to prevent certain retailers in the north-west of the country from selling a certain brand of milk which was retailing at a much lower price than other brands. Authority officials visited the region and interviewed representatives of wholesalers and a number of the retailers concerned about the allegations in the early part of 1997. The Authority continued to monitor the situation during the course of the year. As the milk was still being sold it was decided to close the file in December 1997.

11. In another case it was alleged that a UK manufacturer of hand tools had set the retail prices charged by its Irish distributors. The Authority contacted the supplier concerned who agreed not to engage in such behaviour.

12. Outdoor advertising billboards were the subject of another case. The standard rental agreements between the poster advertising companies and the site owners or landlords generally contained quite restrictive termination provisions. Specifically they provided that the agreements could only be terminated by giving 12 months notice on the anniversary of the effective date of the agreement. Some also included provisions giving the company first option on the site on termination and requiring site owners to disclose to the poster company if it had received any offers for the site. Planning restrictions meant that it was extremely difficult for firms to acquire new poster sites and therefore, in the Authority's view, the restrictive termination provisions in the standard agreements prevented firms acquiring existing sites thus impeding market entry. The Authority wrote to the three largest companies asking them to amend these provisions. By year end one had agreed to do so and replies were awaited from the other two.

13. The Authority dealt with two cases involving the National Lottery. In one case the Authority objected to a clause in the agency agreement which required retailers who had acquired a premises to discharge any debts to the National Lottery incurred by the previous occupant of the premises, before they could be appointed a National Lottery agent. The National Lottery agreed to amend this provision so that it would only apply where the new retailer was connected with the previous occupant.

14. Two cases carried over from 1996 concerned complaints about holiday accommodation brochures. Both brochures were published by representative bodies. In one case members were prevented from advertising in other similar brochures, while in the other the complainant alleged that the body had refused to admit him as a member and thus to advertise in the brochure. There was a separate Tourist Board brochure listing all approved holiday accommodation within the State, and there were various other brochures published by other trade associations. The Authority, therefore, did not believe that being excluded from the particular brochures in question prevented the complainants from competing for business, while the existence of a large number of different publications indicated that there were no serious barriers to prevent others from producing their own brochures. The cases were, therefore, closed.

#### Notifications

15. The number of notifications of agreements made to the Authority in 1997 was 23 compared to 35 in the previous year. Up to the end of 1997, a total of 1 370 notifications had been made, of which 1,120 had been dealt with at the end of 1997.

#### Decisions

16. During 1997 the Authority took 13 decisions and disposed of 46 notified agreements leaving 250 out of the total of 1 370 left to be dealt with. Some of the decisions are discussed below.

17. The Authority took two decisions involving resale price maintenance in the newspaper sector. In its decision in respect of the standard distribution agreement between the Irish Times Newspapers Limited and newspaper retailers, the Authority objected to a requirement that the newspaper be sold only at the cover price. The Authority was of the view that this provision prevented price competition between retail outlets and therefore breached the Competition Acts. After the issue of a Statement of Objections by the Authority, the company amended the offensive provision of the agreement and a certificate was issued. (Decision no. 477).

18. In its decision in respect of three agreements relating to the standard terms and conditions notified by Independent Newspapers Marketing Limited, the Authority was of the view that the agreements contained provisions which restricted entry to the newsagency trade, and required retailers to sell the newspapers only at the cover price, which prevented price competition between retail outlets. The Authority concluded that the agreements breached the Competition Acts and it therefore refused to issue a certificate or grant a licence to the notified arrangements. (Decision no. 482) The Authority is aware that, following these decisions, some price discounting of newspapers has occurred.

19. In its decision in respect of an agreement between a milk supplier and a milk distributor, who provided a doorstep delivery service, the Authority issued a certificate after the supplier agreed to inform the distributor that he was free to set his own resale prices and that wholesale prices would be set by negotiation with him and not with a trade association. (Decision no. 480).

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### Category certificate in respect of agreements involving a merger and/or a sale of business

20. This was the first category certificate (Decision no. 489) issued by the Authority since the Competition (Amendment) Act, 1996 provided for the issue of such category certificates. The category certificate indicated the Authority's view that an agreement between undertakings for the sale of a business was not automatically outside the scope of Section 4(1) of the Competition Act, 1991. However, it also stated that, in the Authority's opinion, in many cases a merger or sale of business would not have any adverse effect on competition and so would not contravene the prohibition on anti-competitive agreements in Section 4(1). The Authority defined, in the category certificate, circumstances in which such an agreement would not prevent, restrict or distort competition. It was hoped that this would assist businesses and reduce the need to notify agreements which were not anti-competitive. The circumstances defined by the Authority included those where post-merger market concentration levels were relatively low. Two different measures of market concentration may be used. The Authority took the view that a horizontal merger between two firms, where either firm had a market share of 35 per cent or more, should be subjected to individual scrutiny and such an agreement was specifically excluded from the coverage of the category certificate.

### III. Mergers and Concentrations

#### *Competition Authority*

##### *(i) The Blockbuster/Xtra-vision Merger Proposal*

21. On 18 December 1996, the Minister for Enterprise and Employment announced that he had decided to refer to the Authority for investigation in accordance with Section 7 (b) of the Mergers and Take-overs (Control) Act, 1978 to 1996, the proposal whereby Blockbuster Entertainment (Ireland) Limited would acquire the entire issued share capital of Ardnasillagh Limited (trading within the State as Xtra-vision Limited). The Authority transmitted its report to the Minister on 31 January 1997.

22. The Authority stated in its report that it considered that there were no horizontal effects as a result of the merger as the acquirer, Blockbuster, was not active in the Irish video rental or retail market. It examined the vertical effects of the merger and stated that the structure of the market upstream was competitive with the presence of large studios such as Warner, Columbia, Disney, and Polygram. It noted that while the structure of the downstream market was more concentrated, barriers to entry to this segment of the market were low.

23. The Authority noted that foreclosure may be a concern in an acquisition if the vertical link arising from the transaction created 'competitively objectionable barriers to entry'. The Authority was of the view that this was not a likely scenario in this particular transaction on the grounds that the vertical link established by the transaction was not substantial, and in this market, foreclosure was not a profit maximising strategy. Any attempt by Blockbuster, or a related company, CIC, to monopolise the market would be frustrated by the presence of rival studio distributors. Blockbuster would also want to continue sourcing video rentals from all the main studio distributors.

24. In addition, studio distributors often had contractual obligations to maximise revenues for individual product and therefore were prohibited from denying certain customers access to product or from preferring one title in its portfolio to another. Because barriers to entry at retail level were low, it afforded entrants the possibility of poaching a subset of the incumbent's market share profitably.

25. The Authority noted that there was no appreciable facilitation of price collusion brought about as a result of the merger. The structure of the market, the nature of the product, the large number of players at retail level, the ease of entry into the market at retail level and the high level of non-price competition in the product market, diminished the likelihood of effective price collusion.

26. The Authority concluded that the proposed transaction would have little or no effect on competition in the Irish market for video rentals. It benefited Blockbuster because it allowed it to enter the Irish market via an efficient, profitable firm with high brand recognition. It allowed the owners of Ardnasillagh to realise their investment. The Authority had considered the possibility that the acquisition would lead to foreclosure, either of the retail market for product (films) to rivals of Paramount, or of the upstream market to rivals of Xtra-vision. The Authority did not consider that such foreclosure was likely as a result of the transaction. The acquisition would not reduce the actual level of competition in the market. Neither would it reduce the level of potential competition, as, due to the long lead times involved in building up a chain of retail outlets, Blockbuster would be unlikely to enter the market other than by acquisition. It was the Authority's view that the merger would not affect the likelihood of collusion or predatory pricing in the Irish video rental market.

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

28. On 20 February 1997, the Minister announced his acceptance of the Authority's conclusion that the merger be allowed to proceed. The Minister published the Authority's report, with commercially confidential material omitted, on 7 March 1997.

#### Guinness Ireland Group/United Beverages Holdings

29. On 8 August, 1997 the Tanaiste (Deputy Prime Minister) and Minister for Enterprise, Trade and Employment announced that she had decided to refer to the Authority for investigation, in accordance with Section 7(b) of the Mergers and Takeovers (Control) Acts, 1978 to 1996, the proposed acquisition of United Beverages Holdings by Guinness Ireland Group.

30. Following receipt of legal advice, the Authority informed the Tánaiste that, under the provisions of the Mergers and Takeovers (Control) Act, 1978 to 1996, it was precluded from investigating the proposed acquisition as it had been advised that the merger referral was invalid and that, under these circumstances, it would be improper for the Authority to continue to consider it. The merger had been notified to the Tanaiste's Department on 3 June 1997 and it had sought further information from the parties on 30 June which was received on 4 July. The Mergers and Takeovers (Control) Act, 1978 to 1996 provided that a referral must be made to the Authority within 30 days of receipt of the notification or, where further information is requested, within 30 days of receipt of such information. The merger had been referred to the Authority on 8 August 1997.

31. The Tanaiste withdrew the referral on 15 August. The proposed acquisition was subsequently notified to the Authority under the Competition Act on 4 September and was being examined at year end.

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*Statistics on Concentrations*

32. Concentrations notified to the Minister in 1996 and 1997 were:

	1996	1997
Carried forward	2	2
Notified in year	171	201
Outside Act	117	136
Did not proceed / Withdrawn	-	3
Allowed	50	61
Prohibited	-	-
Referred to the Competition Authority	2*	1**
Carried forward to next year	2	2

\* The following proposals were referred to the Competition Authority for further investigation and were subsequently approved by the Minister:

- (i) Unilever Ireland Ltd/Lyons Irish Enterprises Ltd;
- (ii) Blockbuster Entertainment (Ireland) Ltd/Ardnasillagh Ltd.

\*\* The proposed acquisition of United Beverages Holdings Ltd (UBH) by the Guinness Ireland Group (GIG) was referred to the Competition Authority for further detailed investigation. However, the Minister subsequently decided to withdraw the referral due to a procedural flaw. Following discussions with the Minister, GIG then agreed to voluntarily submit its agreement to takeover UBH to the Competition Authority seeking certification under the Competition Acts.