



**COMPETITION COMMITTEE**

**ANNUAL REPORT ON COMPETITION POLICY DEVELOPMENTS  
IN IRELAND**

**2003**

## Executive Summary

1. The Competition Authority had a busy year in 2003 and this report outlines all the important activities.

2. First, the Authority took on the supervision of merger activity in the Irish economy on 1st January 2003. The new system has operated smoothly in its first year. The Authority has published reasoned decisions on forty-four merger notifications within tight statutory deadlines. The Authority was also fortunate to attract a highly experienced international practitioner, Edward Henneberry, to head up its merger work from September.

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

4. Third, the Authority introduced a number of significant innovations. One of these was 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.

5. A second innovation was the introduction of a new filtering system for complaint files. 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 complaints that do raise competition concerns and to deal more rapidly and effectively with the concerns of people who take the trouble to complain to the Authority.

6. Finally, in November, the Authority sought leave to enter an *amicus curiae* brief in private litigation. The case will be heard in April 2004.

7. 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 in a full year. 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 is 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.

8. 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.

9. 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.

10. The Competition Authority works in a target-rich environment. In the last two years, the Authority has published 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 twelve 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.

### **Enforcing Competition Law**

11. 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 twenty-one search warrants, issued sixty-nine 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.

12. 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**

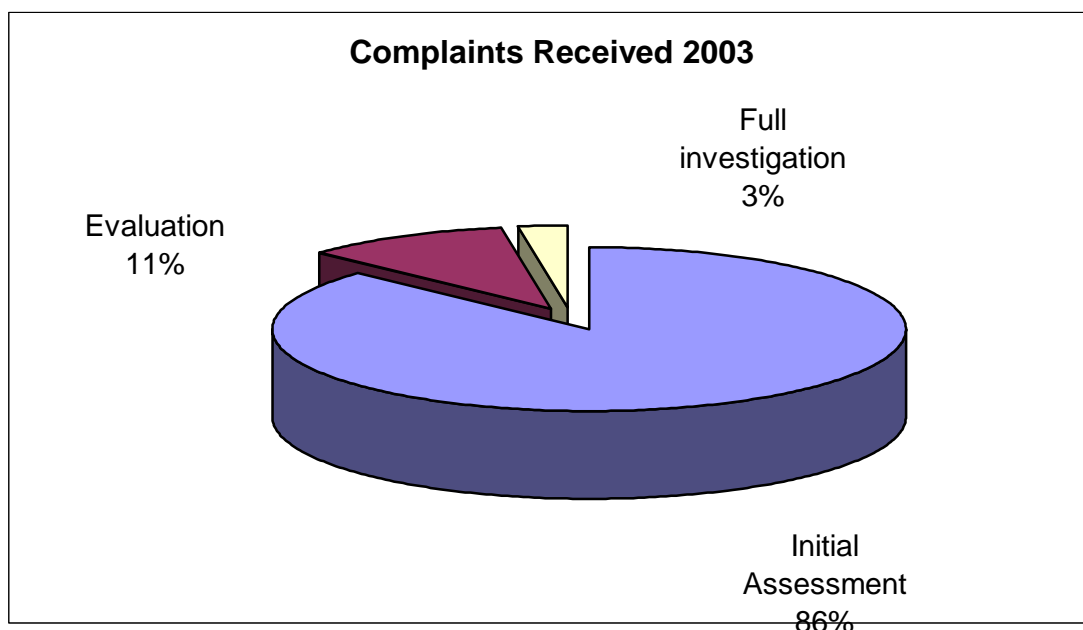
13. In 2003, The Competition Authority implemented a new complaint screening system having conducted research into practice in other agencies. Screening focuses resources on the most substantive cases while ensuring that complaints, which have little or no supporting evidence, are disposed of quickly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

14. 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.

15. In 2003, of the two hundred complaints received, one hundred and seventy-four 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.

16. 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 System 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.

Stage of the Screening System	Complaints Received	Own Initiative	Total
Initial Assessment	200	-	200
Evaluation	26	8	34
Full investigation	5	5	10



### Use of Enforcement Powers

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

18. 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.

19. In addition, sixty-nine summonses were issued by The Competition Authority during the year. The Authority may 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.

	2003	2002	2001
Search Warrants	21	18	2
Summonses Issued	69	56	11

## Court Proceedings

### *Criminal Cases Initiated*

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

20. 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 31<sup>st</sup> 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. In March 2004, the six defendants were found guilty and ordered to pay a total of €20,000 in fines and expenses.

### *Injunction Proceedings*

*The Competition Authority v Irish League of Credit Unions*

21. 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 (competition) law as it would prevent these Credit Unions from access to 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 twelve Credit Unions until a full hearing had taken place.

### *Civil Cases Initiated*

*The Competition Authority v Beef Industry Development Society*

22. 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.

23. 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.

*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.

*Civil Cases Settled*

24. 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*

25. 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.

*The Competition Authority v Licensed Vintners Association*

26. In December 2003 the Licensed Vintners Association gave undertakings in the High Court in relation to allegations concerning price fixing of alcoholic drinks.

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

27. This case dates back to October 2000 when the Authority obtained an injunction against certain named farmers from blockading a dairy in Convoy, 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 €2,666.45. The Authority is seeking recovery of this sum.

*Civil Cases Ongoing*

*The Competition Authority v Dairygold Dairies and Superquinn*

28. 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.

*The Competition Authority v Vintners Federation of Ireland*

29. 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.

*The Competition Authority v Soft Drinks Beer Bottlers Association*

30. Proceedings continued in the High Court against the Soft Drinks Beer Bottlers Association in relation to allegations concerning price fixing of soft drinks.

*Amicus Curiae (Friend of the Court) Application:*

Calor Teoranta v. Tervas Limited and others

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

32. 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.

*International Litigation*

F. Hoffmann – La Roche Ltd v Empagran S.A.

33. The Governments of Ireland, the UK and the Netherlands have joined together to file a brief as *amicus curiae* 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 & Employment in preparing the brief on behalf of the Irish Government.

***Settlements without Court action***

*Graphic Business Design Association (GDBA):*

34. Where appropriate, The Competition Authority is open to finding resolutions to potential breaches of competition law outside of the Court system.

35. 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.

36. 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.

37. 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***

38. 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.

39. 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.

40. 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); and
- raise issues of interest or complexity.

41. During 2003, the Authority published six Enforcement Decisions which are available to download from the Authority's website:

Publication Date:	Description of Decision:
13 <sup>th</sup> 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)
13 <sup>th</sup> 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)
8 <sup>th</sup> December 2003	Agreements between Statoil Ireland Limited and motor fuels retailers allegedly fixing the retail price of motor fuels in Letterkenny (Decision Number E/03/002)
28 <sup>th</sup> 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)
11 <sup>th</sup> June 2003	The Increase in the Wholesale Price of Electronic Top-Up by Vodafone Ireland Limited (Decision Number E/02/001)
11 <sup>th</sup> June 2003	The Reduction in Travel Agents' Commissions by Aer Lingus plc. (Decision Number E/02/001)

### *Working with other state agencies*

42. 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*

43. 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.

44. When the DPP is satisfied 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*

45. 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*

46. 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*

47. 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 and 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.

48. 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

*New Guidelines for Business*

49. The Competition Authority adopted a new "*Declaration and Notice in Respect of Vertical Agreements and Concerted Practices*" on 1<sup>st</sup> January 2004 following a public consultation process held in 2003.

50. 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.

51. A transitional period of six months will operate from 1<sup>st</sup> January 2004 to 30<sup>th</sup> June 2004, during which time the previous Notice and Category Licence in Respect of Agreements between Distributors and Reseller will continue to apply to agreements entered into prior to 1<sup>st</sup> January 2004.

*Decentralisation of EU Competition Law*

52. From 1<sup>st</sup> 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.

53. 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.

### **Assessment of Mergers and Acquisitions**

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

54. The Competition Authority took over the full function of assessing mergers and acquisitions on 1<sup>st</sup> 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.

55. 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 all cases. This increases transparency, predictability, and accountability in the process of merger regulation.

#### ***Merger notifications during 2003***

56. The Competition Authority received forty-seven merger notifications in 2003. The majority of mergers presented no substantive competition issues and the vast majority (forty-four) 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.

57. 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.

#### ***Media Mergers***

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

59. 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.

60. During 2003, twelve (12) mergers were classified as media mergers and by the end of the year eleven (11) 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 (to reflect mushroom case)***

61. 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, though a merger notified to the Authority (either compulsorily or voluntarily) enjoys protection from prosecution under the Competition Act, 2002.

62. After investigating a number of such mergers, on 30 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.

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

***European Union Merger Regulations***

64. 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.

65. 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).

66. 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***

67. 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.

68. 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.

69. 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*

70. 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.

71. 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.

**Status of Merger Cases at 31<sup>st</sup> December 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
Referral to EU Commission (ECMR Art 22)	1
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

## **Promoting Competition in Ireland**

72. 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.

73. 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***

74. 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' and Public Liability)***

75. 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.

76. 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 the Economics Department on 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. And finally Dortha Dowling was asked in September 2002 to provide expert knowledge and carry out an analysis of the 2002 insurance annual returns (published December 2003).

77. 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)***

78. 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.

79. 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.

80. 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.

### ***3. The Construction, Medical & Legal Professions***

81. 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.

82. During 2003, a 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.

#### ***Advice to Government***

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

84. 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.

85. 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.

#### ***Appearance before Oireachtas (Parliamentary) Committees***

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

87. In February 2003 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.

88. Dermot Nolan appeared before the Committee in November 2003 to discuss reform of the EU Merger Regulations.

***Speeches and Presentations***

89. 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.

90. Over sixty speeches and presentations were 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.

**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 more a more liberal regime.	Policy review in the Department is on-going