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**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS  
COMPETITION COMMITTEE**

DAF/COMP(2005)18/10  
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**ANNUAL REPORT ON COMPETITION POLICY DEVELOPMENTS IN IRELAND**

-- 2004 --

*This report is submitted by the Irish Delegation to the Competition Committee FOR DISCUSSION at its forthcoming meeting (1-2 June 2005).*

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## **Executive Summary**

1. This report addresses the activities of the Competition Authority and competition law and policy developments in Ireland from January 1 2004 to December 31<sup>st</sup> 2004. Where possible, later developments have been included and reported on.

2. There have been no substantive changes to domestic competition laws in Ireland since the enactment of the Competition Act 2002.

3. In terms of the enforcement of competition law, 2004 was the most active year in the history of the Authority. One very basic measure of activity is that the Authority was represented in court on over 100 days during the year. This is greater than all other court appearances since the Authority was established in 1991. The large number of court appearances, in respect of a handful of cases, reflects the fact that competition cases tend to be large and complex, and involve many preliminary and procedural questions. This is particularly so with criminal competition law, where the Irish Authority is the first in Europe to have brought cases.

4. The Authority's victory in the League of Credit Union case, the first full civil case resulting from public enforcement in Ireland, established that representative bodies are covered by the abuse of dominance provisions.

5. Merger activity was up 70% on 2003, and the Authority handled all of these notifications within, and often well within, the statutory deadlines. Five merger cases required detailed investigation. Of the over 130 mergers that the Authority has examined since it took over this function in 2003, only one, that between IBM and Scumberger, would have led to a substantial lessening of competition. This low number reflects well on the transparency and clarity of the Authority's approach to mergers, as set out in its Guidelines and reasoned decisions.

6. The Authority's advocacy work continued. In February, the Authority highlighted competition issues in the insurance broker market that preceded actions in this area abroad. In December, it found that weak competition among the banks on lending to small and medium sized enterprises meant that interest rate savings to the value of hundreds of millions of euro were not passed on to borrowers.

7. The Authority can advise on the competition implications of proposed legislation. The number of occasions on which it was asked to do so in 2004 was the highest yet. In most instances, its suggestions were taken on board. The competition-proofing of new legislation is an essential ingredient in avoiding laws that increase costs to business and consumers, and it is particularly encouraging that Government departments have begun to approach the Authority at the planning stage of new legislation. The Authority will continue to work constructively with these departments to find ways to achieve policy objectives without distorting competition.

8. 2004 ended well, with the announcement of an increase in resources to address the substantial increase in merger notifications. This had resulted in moving resources from both enforcement and advocacy in 2004. Once these resources are in place, the Authority expects to be able to insulate its planned enforcement and advocacy work from upsurges in merger notifications. The new resources will also enable the Authority to meet Ireland's obligations arising from the decentralisation of EU competition law on May 1<sup>st</sup> last.

## 1. Part I – Changes to competition law and policies

9. During the reporting period of this report, no new substantive competition legislation was introduced nor were any amendments made to existing competition legislation. The Competition Authority, has however, issued several guidelines, notices and documents all of which are available from the Competition Authority's website at [www.tca.ie](http://www.tca.ie).

### 1.1 *New legal provisions of competition law related legislation*

10. No new related legislation has been proposed during the reporting period.

### 1.2 *Other measures/ guidelines*

#### 1.2.1 *Declaration in the Cylinder Liquefied Petroleum Gas Market*

11. On 22nd March 2005, the Authority published the new Declaration in respect of exclusive purchasing agreements for cylinder LPG. On the 31st March 2005, the Authority published a Notice of Amendment to this Declaration. The amended Declaration enters into force on 15th April 2005 with an initial transitional period of 6 months for agreements entered into prior to 15th April 2005.

12. After careful consideration of all submissions received in response to its September 2004 Consultation Document, the Authority has decided to make a declaration allowing two-year exclusive dealer agreements. The Authority is satisfied that two-year exclusive dealer agreements satisfy all the conditions set down in Section 4(5) of the Competition Act, 2002.

#### 1.2.2 *Declaration and Notice in Respect of Vertical Agreements and Concerted Practices*

13. On January 1, 2004, the Declaration entered into force. A transitional period of 6 months was provided for during which time an earlier Decision of the Competition Authority (No. 528) continued to apply to agreements entered into prior to 1st January 2004. The Declaration applies to certain categories of vertical agreements and concerted practices, which fall under Section 4(1) of the Competition Act ('the Act') but in the Competition Authority's opinion, generally comply with the conditions set out in Section 4(5). The Declaration provides exemption to those agreements falling within its scope.

14. 14. The Competition Authority also issued a Notice at the same time as the publication of the Declaration. 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.

#### 1.2.3 *Notice in respect of legal representation of persons attending before the Competition Authority*

15. The Notice was published by the Competition Authority on July 28, 2004 pursuant to the function conferred on it by section 30(1)(d) of the Competition Act, 2002 ("the Act"). Its purpose is to give guidance to businesses and legal practitioners on the Authority's policy in relation to the legal representation of persons attending before the Authority, consistent with the right of the public in the integrity and effective functioning of the Authority's investigative processes.

#### 1.2.4 *Enforcement Decision Series No. E/05/001, E/04/002 and E/04/001*

16. Section 30(1) (g) of the Competition Act 2002 gives the Authority the function of "carrying on such activities as it considers appropriate" to inform the public about competition issues. Accordingly, the

Authority has decided to publish reasoned 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.

17. The Authority selects investigations that: (1) create a precedent; (2) are of public interest (e.g. the investigation is in the public domain, the issue has been subject to considerable debate and discussion) or (3) raise issues of interest or complexity. In publishing this series, the Authority hopes to facilitate increased transparency and predictability in the enforcement of the Act, thus resulting in greater legal certainty and in a reduction in compliance costs for undertakings. The investigations selected by the Competition Authority for publication have been resolved, either because no breach of competition law has been found or because the anti-competitive behaviour has been rectified.

18. In the reporting period, the Competition Authority published two decisions in the Enforcement Decision Series, with a third decision published in the first quarter of 2005.

19. In Decision No. E/05/001, the Competition Authority considered alleged predation by the Drogheda Independent Company Limited in the market for advertising in local newspapers in the greater Drogheda area. Decision No E/04/002 considered agreements between the Irish Actors' Equity SIPTU and the Institute of Advertising Practitioners in Ireland concerning the terms and conditions under which advertising agencies will hire actors. Decision E/04/001 considered an acquisition by Monaghan Middlebrook Mushrooms of Carbury Mushrooms. All decisions in the Enforcement Decision Series are available from the Competition Authority website at [www.tca.ie](http://www.tca.ie).

### ***1.3 Government proposals for new legislation***

20. While the Authority continues to deal with a full caseload of competition issues arising from the existing stock of regulation, there is, of course, also a regular flow of proposals for new legislation.

21. This was recognised by the Oireachtas in 2002, when it gave the Authority the specific function of advising the Government, Ministers and Ministers of State about the implications for competition of proposed legislation. Thus, the Authority regularly advises Government Departments and Agencies on the effect on competition, if any, of new policy proposals under consideration. In doing so, the Authority seeks to highlight competition concerns and pre-empt any negative consequences for consumers that newly framed policies might (inadvertently or otherwise) bring.

22. In 2004, the Advocacy Division responded to over 30 such requests for advice from Government Departments and other public sector bodies, in the form of meetings, written comments or a combination of both. Many different economic sectors were involved, for example:

- the Authority advised the Department of Health and Children on the appropriate regulatory structure and level of transparency to be applied to the regulation of certain health and social care professions;
- the Authority met with the Department of the Environment and Local Government to advise on its study of the waste sector in light of complaints received by the Authority related to the waste sector;
- the Authority advised the Enterprise Strategy Group on the role of competition in the development of Ireland's enterprise sector and competitiveness.

## 2. Part II – Enforcement of Competition laws and policies

Table 1. Investigation &amp; 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	<p>Authorised officers can seize documents/records on foot of a warrant issued by the District Court</p> <p>Statutory limit of 6 months applies to the retention of records after seizure</p>
Power to Summon Witnesses	<p>The Authority can summon a witness to attend before it and to be examined on oath.</p> <p>Witnesses have the same immunities and privileges as a witness before the High Court.</p>
Power to require production of records and information	<p>The Authority has the power to require production of records and information.</p> <p>Non-compliance is a criminal offence.</p>
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 (or the Circuit Criminal Court under the 1991 Act) 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

## **2.1 Action against anticompetitive practices, including agreements and abuses of dominant positions**

23. In terms of enforcement of competition law, 2004 was the most active year in the history of The Competition Authority. Using its investigative and enforcement powers, as set out in Table 1 above, The Authority applied for 24 search warrants and issued 58 witness summonses in relation to the Authority's criminal and civil investigations, merger investigations, merger assessments and the Authority's study of the Irish Banking sector. The Authority undertook the first criminal prosecution under the Competition Act 2002 in 2004, the first criminal trial in Europe on competition matters.

24. A significant milestone was achieved when the Authority won its case against the Irish League of Credit Unions relating to deposit protection services.

25. 2004 also marked the first time that the Authority intervened as Amicus Curiae in domestic and international cases.

## **2.2 Significant cases**

### **2.2.1 Criminal Cases (taken by the Director of Public Prosecutions (DPP))**

*The DPP v Michael Flanagan, Con Muldoon, Muldoon Oil, James Kearney, All Star Oil, Kevin Hester, Corrib Oil, Mor Oil, Alan Kearney, Sweeney Oil, Gort Oil, Pat Hegarty, Cloonan Oil, Ruby Oil, Matt Geraghty Oil, Declan Geraghty, Fenmac Oil & transport, Michael McMahon, Tom Connolly, Eugene Dalton, JP Lambe, Sean Hester, Hi-Way Oil, Kevin Cunniffe*

26. In April, May & June of 2004 the Director of Public Prosecutions (DPP) initiated proceedings against 24 defendants in 11 district courts across the west of Ireland. The charges relate to allegations of fixing the price of gas oil and kerosene and follow an investigation by The Competition Authority who passed a file on the matter to the DPP in 2003. Books of evidence were served on the defendants and all were returned to Galway Circuit Court for trial on indictment.

27. In October 2004 the DPP indicated that he wished to proceed with an initial group of five defendants. In December 2004 counsel for four of the defendants made an application to Galway Circuit Court to move the trial to the Dublin Circuit Criminal Court on the grounds that they were unlikely to get a fair trial in Galway as potential jurors were likely to have been customers of one or more of the defendants. The application was granted and the trial will continue in the Dublin Circuit Criminal Court during 2005.

### **2.2.2 Criminal Cases (taken by The Competition Authority)**

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

28. In March 2003 the Competition Authority secured criminal convictions in the District Court in Drogheda against six members of the farming community for breaches of Section 4 of the Competition Act 2002 arising from a blockade and a meeting, which had as its object the prevention of unloading a cargo of grain from the UK. The convictions were appealed by the defendants and the case was heard *de novo* in the Circuit Court in Dundalk where, in October 2004, three convictions were upheld and the Probation Act applied to the convicted parties.

2.2.3 *Civil Cases taken by The Competition Authority*

*The Competition Authority v Irish League of Credit Unions*

29. In October 2004 the High Court found in favour of The Competition Authority in the Authority's proceedings against the Irish League of Credit Unions (ILCU). This was the first ever court decision in an abuse of dominance case brought by the Authority.

30. The High Court ordered that the ILCU grant access to its Savings Protection Scheme (SPS) to any credit union satisfying certain entry criteria that agree to abide by rules of participation.

31. 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 access to pooled resources to the value of 1% of their savings and therefore restrict competition in the market for credit union representation. The statement of claim and the full text of the judgment is available on the Authority's website [www.tca.ie/courtdecisions.html](http://www.tca.ie/courtdecisions.html)

32. In January 2005, The Competition Authority was informed that the ILCU intends to appeal the High Court's decision to the Supreme Court.

*The Competition Authority v Beef Industry Development Society*

33. 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.

34. It is the Authority's contention that certain of the Society's activities constitute a breach of Section 4 of the Competition Act 2002. 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 case has been set for hearing in June 2005.

*The Competition Authority v Dairygold Dairies and Superquinn*

35. 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*

36. 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*

37. 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)

#### 2.2.4 *Intervention by Competition Authority as Amicus Curiae*

##### *Calor Teoranta v. Tervas Limited and others*

38. The Competition Authority made an application in October 2003 to seek leave to appear as *amicus curiae* (literally 'friend of the court') in the High Court in the case of *Calor Teoranta v. Tervas Limited and others*.

39. The Authority's application to appear as *amicus curiae* was scheduled to be heard in April 2004. However Before The Competition Authority's application could be heard the parties to the proceedings agreed to a stay of proceedings pending the outcome of The Competition Authority's review of competition in the market for bulk LPG. (*High Court Record 2003 No 5034 P*)

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

40. In 2004 the Governments of Ireland, the UK and the Netherlands joined together to file a brief as *amicus curiae* (friend of the court) in the US Supreme Court. The three Governments opposed 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.

41. This was an important case as it threatened to undermine the enforcement of competition law in countries outside of the US. The Authority assisted the Department of Enterprise, Trade & Employment in preparing the brief on behalf of the Irish Government.

#### 2.2.5 *Working with other State agencies*

42. During 2004, 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. In December 2004 the Authority directed that one complete investigation file be forwarded to the Director of Public Prosecutions (DPP) with a recommendation from the Authority for trial on indictment. The DPP has made a preliminary indication that he will bring criminal proceedings in this case.

44. 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.

##### An Garda Síochána

45. 47. During the year the Authority's relationship with the Garda Bureau of Fraud Investigation (GBFI) continued to develop. Members from GBFI have been seconded to work in the Cartels Division as Authorised Officers of The Competition Authority since March 2002. An Garda Síochána continues to provide significant assistance to the Authority in terms of document & computer forensics as well as additional personnel at crucial times, such as the execution of search warrants. Members of all ranks in Garda Divisions across the country provided considerable assistance. 2004 also saw the first presentation to Members of An Garda Síochána of an In-Service training course on the relevance and scope of the Competition Act 2002 as it impacts on criminal investigations.

## 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 (“CAB”) and the Revenue Commissioners. During 2004, the common issues discussed with these agencies included computer forensics, the consequences of the Judgement of the Supreme Court in the matter of CAB vs. Dylan Creaven and others 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., communications, energy 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. Regulators 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 Competition Authority has entered into co-operation agreements with the Broadcasting Commission of Ireland, the Commission for Energy Regulation, the Commission for Aviation Regulation, and the Office of the Director of Consumer Affairs.

49. In 2004 the Authority worked closely with the Commission for Communications Regulation (ComReg) assisting it in its market review process. The Authority participated in ComReg’s market review examining the level of competition in telecommunication markets to determine whether or not continued regulation is justified. The most notable market analysis in which The Competition Authority was involved in 2004 was ComReg’s finding that Vodafone and O<sub>2</sub> collectively have significant market power in the wholesale market for mobile access and call origination. This decision was finalised in December 2004.

50. 52. Throughout the year The Competition Authority has also relied upon its co-operation agreement with ComReg to avoid duplication of activities and ensure the most efficient use of resources by the agencies. For example, in March 2004, The Competition Authority decided to refer a complaint from IFA Telecom about eircom to ComReg. This decision was taken on the basis that ComReg was the agency best placed to deal with the issues raised by the complaint relating to Eircom’s campaign to win-back customers it had lost to Carrier Pre-selection (CPS) operators. Nevertheless, The Competition Authority continues to monitor activity in the telecommunications sector both independently and through its contacts with ComReg.

### 2.2.6 *Decentralisation of EU Competition Law*

51. Since 1<sup>st</sup> May 2004, The Competition Authority has 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 bring considerable additional work to The Competition Authority.

52. Throughout 2004 The Competition Authority has participated in the development and implementation of a European Competition Network, which is used to keep member states informed of activities that may involve the application of EU law and to administer the huge flows of information and contacts between member states.

53. Since 1<sup>st</sup> May 2004 The Competition Authority has examined all complaints under domestic and EU competition law. 20 of the 293 queries received from complainants in 2004 were deemed to have a cross-border element. Twelve of these were progressed to further evaluation by the enforcement divisions. Two investigations (one of which combines complaints from 3 separate businesses) have been commenced under Section 30(1)(b) of the Competition Act, 2002. The Competition Authority notified these and two other investigations to the European Competition Network under the provisions of Article 11(3) of Regulation 01/2003. The enforcement divisions are currently evaluating the remainder of these complaints to determine the appropriate course of action.

### **2.3 Mergers and acquisitions**

#### *2.3.1 Statistics on number, size and type of mergers notified and/or controlled under competition laws*

54. The number of mergers reviewed by The Competition Authority increased by over 70% in 2004. The Authority attributes the substantial increase in merger notifications to the improving economic climate in which companies are investing and targeting growth.

55. High levels of merger activity are usually associated with a growing economy, and most mergers can be beneficial to consumers by promoting efficiency and reducing unnecessary costs. Some mergers between competitors can increase a firm's market power and allow them to raise prices to the detriment of consumers. It is therefore vital that effective, timely merger enforcement allows beneficial mergers thus promoting an efficient, dynamic economy, while prohibiting ones that lessen competition.

56. The Competition Authority took over the full function of assessing mergers and acquisitions on 1<sup>st</sup> January 2003. Previously, mergers had primarily been the responsibility of the Department of Enterprise, Trade & Employment.

57. Only transactions where the parties involved meet substantial thresholds are required to submit their deals for assessment by The Competition Authority (except in media mergers where no threshold applies and all deals must be notified).

58. The mergers notified to the Authority in 2004 demonstrate the important areas of the Irish economy which are affected, sectors such as food production, large retailers, media and IT/software. Inefficiency or high prices resulting from a lack of competition in such sectors could negatively affect all Irish consumers/

- the number of mergers notified to the Authority increased from 47 in 2003 to 81 in 2004;
- during the year the Authority also finalised its work on 13 transactions which were notified in 2003 and whose deadlines extended into 2004;
- all transactions were analysed within the statutory time period;
- 89 of the 94 transactions assessed during 2004 were cleared during the initial (Phase 1) investigation;
- the Authority conducted five full (Phase 2) investigations - three were initialled in 2004 and two were carried over from 2003.

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

60. 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.

61. During 2004, 16 mergers were classified as media mergers and by the end of the year 13 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 three media mergers in early 2005.

62. The last twelve months has also provided a number of important milestones for The Competition Authority in its merger activity.

- for the first time under the Competition Act, 2002 the Authority prohibited a merger (IBM/Schlumberger);
- also for the first time, conditions were added to two deals;
- a transaction was formally withdrawn by the parties involved, again this was a first.

<b>OVERVIEW OF MERGERS</b>	<b>2004</b>	<b>2003</b>
<b>Notified Mergers</b>	<b>81</b>	<b>47</b>
required notifications (Section 18(1))	81	46
voluntary notifications (Section 18(3))	0	1
<b>Non-notified Merger investigations (Sections 4 / 5)</b>	<b>0</b>	<b>1</b>
<b>Carried from previous year</b>	<b>13</b>	<b>0</b>
carried as Phase 1	11	0
carried as Phase 2	2	0
<b>Referred from the EU Commission (ECMR Art 9)</b>	<b>0</b>	<b>0</b>
<b>TOTAL CASES</b>	<b>94</b>	<b>48</b>
of which media mergers	15	12
of which entered Phase 2 in year of notification	3	3
of which entered Phase 2 in year previous to notification	2	
<b>Cases Withdrawn</b>	<b>1</b>	<b>0</b>
Withdrawn at Phase 1	0	0
Withdrawn at Phase 2	1	0
<b>Determinations Delivered</b>	<b>83</b>	<b>44</b>
Phase 1 Determination	80	42
Phase 1 Determination with proposals	0	0

<b>OVERVIEW OF MERGERS</b>	<b>2004</b>	<b>2003</b>
Phase 2 Determination without conditions	1	1
Phase 2 Determination with conditions	1	0
Phase 2 Prohibition	1	1
<b>Referral to EU Commission (ECMR Art 22)</b>	<b>0</b>	<b>0</b>
<b>Carried to next year</b>	<b>11</b>	<b>13</b>
Carried as Phase 1	10	11
Carried as Phase 2	1	2

### 2.3.1 Summary of significant cases

#### Mergers which required a Full Investigation (Phase 2)

63. The Competition Authority may carry out a detailed examination of a transaction if after a preliminary investigation (Phase 1) the Authority has been unable to conclude that the transaction will not “substantially lessen competition”. In 2004 the Authority initiated three Phase 2 investigations;

- a merger in the wholesale pharmacy sector (M/04/020 Uniphar/Whelehan) was cleared in July 2004;
- a transaction in the Information Technology Business Recovery sector (M/04/032 IBM/Schlumberger) was prohibited in October 2004;
- a DIY Retail / Building Merchant merger (M/04/051 Grafton/Heiton) was cleared in early January 2005.

64. The Authority also concluded two Phase 2 investigations that had been opened in 2003.

- a transaction in the radio sector (M/03/033 Scottish Radio Holdings/FM 104) was cleared in February 2004 with a number of conditions, mainly relating to divestiture by Scottish Radio Holdings of interests in other stations;
- a transaction in the ferry sector, (M/03/035 – Stena/P&O) was withdrawn by the parties at the end of February 2004. An Assessment had being issued, identifying serious competitive concerns. This transaction was also being considered by the UK Competition Commission, which liaised with the Authority on the matter, before deciding to block the transaction, thus prompting the withdrawal of the notification in Ireland.

#### International Mergers and Merger Policy

65. Large transnational mergers are notified directly to the European Commission. May 2004 saw the introduction of a reformed Merger Regulation, which primarily changed the substantive test and jurisdictional guidelines governing notification. The Authority had contributed extensively to the reform of this process. (Details of are available on the Authority’s website [www.tca.ie](http://www.tca.ie))

66. The Authority also contributed actively to the Commission’s formulation of its Merger Guidelines which were published early in 2004. In addition Authority staff attended EU Hearings and

Advisory Committee meetings on major merger cases, such as Oracle/Peoplesoft. (Details of are available on the Authority's website [www.tca.ie](http://www.tca.ie))

67. In December 2004, the Authority was asked by the Commission for its input regarding divestments following its decision in case M.3354 *Sanofi/Aventis*. (Details of are available on the Authority's website [www.tca.ie](http://www.tca.ie)). A condition of approval by the Commission was that Sanofi divest its ownership of the drug Zimovane, a sleep-inducing drug. The Commission's appointed Trustee asked the Authority its view on a potential purchase of the divested drug by an Irish company, which controlled the rights to a close substitute for Zimovane. The Authority could not conclude that the transaction would not result in a substantial lessening of competition, and recommended to the Commission that the Irish buyer be allowed to acquire Zimovane only if it divested its interest in the close substitute for Zimovane within a six-month period. Ultimately, Zimovane was sold to another buyer, but the case demonstrated the ability to work closely with the Commission on cases of mutual interest.

68. The Authority also actively participated in the International Competition Network (ICN). The Director was co-chair of the analytical sub-group on mergers, and taught in the major conference organised by the ICN in Brussels in October. The Authority also participated in the drafting of the ECA principles on merger review.

### **3. Part III – The role of competition authorities in the formulation and implementation of other policies**

69. In addition to its law enforcement and merger regulation functions, The Competition Authority also has a duty to promote competition in the economy in a number of ways:

- identifying and commenting on the effects on competition of any existing laws or administrative practices;
- advising the Government, its Ministers and agencies, about the implications for competition of proposed legislation or regulation;
- studying and publicizing how competition operates anywhere in the economy;
- advising and informing the public, and public authorities, about competition issues generally.

#### **3.1 Identifying public restrictions on competition**

70. Public restrictions on competition may manifest themselves in many different, and often very subtle, ways. Excessive restrictions on entry to a business or profession, legislation conferring monopoly rights on a particular firm, prohibitions on advertising, are just some examples of public restrictions on commercial freedom to compete on level terms for the custom of consumers. They are distinguished from private restrictions, which are more relevant to the Authority's Enforcement and Merger Regulation functions. The end result is the same, however – less value for money for consumers and less choice.

71. The Authority is made aware of some public restrictions on competition through its own study and observation of individual markets; others are specifically drawn to the Authority's attention by complaints from businesses and the general public. The Authority comments on such restrictions, and advocates for their removal or reform by responding to public invitations to comment on particular sectors or issues and through media appearances, both written and broadcast.

72. A full list of formal submissions made by the Authority in this manner in 2004 is available from the Competition Authority's website at [www/tca.ie](http://www/tca.ie). They included three separate submissions to the Department of Communications, Marine and Natural Resources and the Commission for Energy Regulation on the structure of the Irish Electricity Market. The Authority has identified a number of obstacles and issues which need to be addressed before an effective, fully-functioning, competitive electricity market can develop on the island of Ireland:

### *3.1.1 Vertical Separation*

73. There must be full vertical separation of the ESB into its component parts (generation, transmission, distribution and supply) in a legal, operational and commercial sense. The separation of ownership of electricity generation from transmission infrastructure is particularly important.

### *3.1.2 Structural Solution*

74. Horizontal Separation of ESB's generating capacity into a number of competing units - whether through a combination of plant disposal, tolling arrangements and other contractual arrangements - will tackle the dominance of the ESB in electricity generation and bring third parties directly into the market.

### *3.1.3 Interconnection*

75. 77. Greater interconnection, with Britain and Northern Ireland, will have many benefits for the Irish consumer, particularly in terms of increased security of supply.

## **3.2 Advising on proposed legislation and regulation**

76. In 2004, the Advocacy Division responded to over 30 such requests for advice from Government Departments and other public sector bodies, in the form of meetings, written comments or a combination of both. Many different economic sectors were involved, for example:

- the Authority advised the Department of Health and Children on the appropriate regulatory structure and level of transparency to be applied to the regulation of certain health and social care professions;
- the Authority advised the Enterprise Strategy Group on the role of competition in the development of Ireland's enterprise sector and competitiveness.

77. Staff of the Authority also participated in the work of two external working groups:

### **3.3 Better Regulation Group, Department of the Taoiseach**

78. Existing public restrictions on competition often stem from policy decisions which pre-date competition law - for example, the previous restrictions on the number of taxis. In many other cases, they arise as undesirable side-effects from legislation enacted for otherwise perfectly sound public policy reasons. Of course, they may also be the result of successful lobbying by particular interests for statutory restrictions to protect them from competition. What they all represent, in reality, is what the OECD has termed "*underlying policy biases of producer over consumer interests*".

79. A common theme which pervades much of the Authority's work in promoting competition across the economy is the need to regulate better. The Authority has been highlighting this issue especially since the OECD's 2001 report on *Regulatory Reform in Ireland*.

80. As a member of the High Level Group on Regulation, the Authority enthusiastically endorsed the Government's 2003 White Paper "*Regulating Better*", which set out the core principles of good regulation.

81. It is now firm Government policy that economic regulation should be necessary, *effective and proportionate*, and that it should be carried out in a manner which is *transparent, consistent and accountable*. The Authority continually promotes this message to policy makers and regulators throughout the public sector, and is an active participant of the *Better Regulation Group* set up by the implementation of the White Paper.

### **3.4 Auctioneering and Estate Agency Review Group, Department of Justice, Equality and Law Reform.**

82. In 2004, the Authority participated in this review group. The working group will make recommendations for any changes necessary in terms of structure or legislation to ensure a proper and appropriate auctioneering and property letting service to the public. The Authority advises on the likely effect on competition, if any, of proposals under consideration and promotes the principles of better regulation.

### **3.5 European Competition Day**

83. As part of Ireland's Presidency of the European Union The Competition Authority hosted a conference in Dublin Castle to mark European Competition Day, on 29 April 2004. The aim of European Competition Day is to promote awareness of the benefits of competition. The theme for this European Competition Day was "Promoting Competition for the Benefit of Consumers." The conference was attended by 170 delegates from over twenty countries.

## **4. Part IV – Resources of Competition Authorities**

### **4.1 Resources Overall**

#### **4.1.1 Annual Budget in Euro and USD)**

<b>Budget 2004</b>		<b>Change vis-à-vis 2003</b>
<b>Euro</b>	<b>4.13 million</b>	<b>.83 million</b>
<b>USD<sup>1</sup></b>	<b>5.32 million</b>	<b>1.07 million</b>

### **4.2 Human Resources (person years applied to)**

#### **4.2.1 Number of employees and background**

<b>Economists<sup>2 3 4</sup></b>	<b>19</b>
<b>Lawyers</b>	<b>9</b>
<b>Other professionals<sup>5 6</sup></b>	<b>7</b>
<b>Support Staff<sup>7 8</sup></b>	<b>12</b>
<b>All staff combined</b>	<b>47</b>

4.2.2 *Human recourses (person years applied to activities)*

84. This breakdown is not available from the Competition Authority.

4.3 *Period covered by the above information*

85. The figures quoted above covers the period January 01, 2004 – December 31, 2004.

**5. Part V: Summaries of references to new reports and studies on competition policy issues**

**5.1 *Studying how competition operates in particular sectors***

86. The Authority looked in 2004 at many areas of the economy, and assessed whether competition was being distorted or prevented by public restrictions. In particular, it continued three in-depth Studies of competition in particular sectors of the economy. In these Studies, the Authority examines regulations and practices that potentially restrict competition, and seeks to have anti-competitive restrictions abolished or replaced. It also seeks to study how competition works in the sector concerned, and to identify behaviour which, although not necessarily breaching competition law, nevertheless inhibits competition.

**5.2 *Motor, Employers' and Public Liability Insurance***

87. 2004 saw the final phase in the Authority's joint study of non-life insurance with the Department of Enterprise, Trade and Employment, starting with the publication on 18th February 2004 of its preliminary report and consultation paper: "*Competition Issues in the Non-Life Insurance Market*". The Report's findings focused on barriers to entry and rivalry in the insurance market and identified a number of specific issues giving rise to competition concerns.

88. At the same time, the Authority published all of the research it commissioned into competition in the market, and related work, to assist public information and debate. This was followed by detailed consultation with all interested parties. The Authority's final report and recommendations to improve competition in non-life insurance for the benefit of Ireland's consumers and businesses will be published in March 2005.

**5.3 *Non-investment Banking Services***

89. In December 2004, the Authority published a Report and Recommendations on competition in the provision of non-investment banking services in Ireland, the most substantial part of the Authority's study. The Report was prepared by the Authority's consultants, LECG. This followed extensive research throughout 2004, including detailed analysis of documentation provided to the Authority, interviews conducted with senior bank executives, and meetings with third parties. The Report shows that competition in the Irish banking sector is not working well for consumers. For example:

- there are high switching costs for customers who want to move between banks;
- there are high barriers facing banks that want to offer new services to customers;
- small businesses are not getting competitive working capital loans.

90. The sources of these problems are both the structural arrangements and the behaviour of the banks personal banking customers and small and medium enterprises. The Authority is consulting all stakeholders on the proposed remedies to the problems identified in the Report. The Authority's own final recommendations will be published in the first half of 2005.

#### **5.4 *The Construction, Medical & Legal Professions***

91. The Professions Study is analysing competition in the market for professional services, focusing on engineers; architects; solicitors; barristers; veterinarians; dentists; optometrists; doctors. The Authority's strategy, in each case, is to release a preliminary report first, containing initial proposals for improving competition. This allows a period for consultation and responses from interested parties, before issuing a final report containing recommendations for change. 2004 saw some delay in the study, due to pressure of work elsewhere in the Authority. The final report on the engineering profession was released in late November. It said that competition in the sector generally operated positively, mainly due to a light regulatory framework and few restrictions imposed by professional bodies. Significant progress was made during 2004 on four of the other professions. A final report on architects will issue in early 2005, as will preliminary reports on solicitors, barristers and veterinarians.

#### **5.5 *Raising awareness of competition***

92. The Authority continued in 2004 to raise awareness of the role of competition in general terms. Through public speaking invitations and by making presentations at conferences, Members and Staff promoted awareness of the role of competition in Ireland's economy and continued to draw attention to identified specific problem areas. In 2004, Members and Staff presented on competition issues in areas as diverse as health care, electricity and retailing. Our Annual Report for 2004 available at [www.tca.ie](http://www.tca.ie) contains a list of over 60 speeches and presentations made by Members and Staff in 2004.

93. The Authority's aims in giving these presentations are to raise awareness of the benefits of competition for all sectors of the economy, to promote understanding of competition law and policy, and especially to highlight concerns about the adverse impact of inappropriate public restrictions on competition.

**NOTES**

1. Exchange Rate as of May 2nd 2005.
2. Colm Treanor was on secondment to The Competition Authority and moved to the Dept of Community, Rural & Gaeltacht Affairs in December 2004
3. Janet McCoy worked in The Competition Authority on a temporary contract between January and November 2004
4. Cora Rattigan worked in The Competition Authority on a temporary contract between March and August 2004
5. Detective Sergeant Michael Prendergast is on secondment to The Competition Authority from the Garda Bureau of Fraud Investigation
6. Detective Sergeant Tony Mulligan is on secondment to The Competition Authority from the Garda Bureau of Fraud Investigation
7. Ann Geraghty retired from The Competition Authority in September 2004
8. Maura O'Donogue was on secondment to the Competition Authority and returned to the Department of Enterprise Trade and Employment in March 2004.