ANNUAL REPORT ON COMPETITION POLICY DEVELOPMENTS IN IRELAND

-- 2006 --

This annual report is submitted by the Irish Delegation to the Competition Committee FOR DISCUSSION at its forthcoming meeting to be held on 6-7 June 2007.
Executive Summary

1. This report addresses the activities of the Irish Competition Authority and competition law developments in Ireland from January 1st, 2006 to December 31st 2006. Where possible developments that have occurred in early 2007 have also been highlighted, for example, updates on convictions for breaches of competition law in cases that have continued from 2006 are included.

2. 2006 was the year that saw the first criminal conviction on indictment for offences against the Competition Act. By the end of the year, with multiple successful prosecutions in the heating oil case in the west of Ireland, 15 criminal convictions in total were secured, including the first conviction and custodial sentence received by jury trial for Competition Act offences in Ireland and Europe. This represents a significant milestone not only in the development of the Competition Authority but more importantly, in the establishment of a competition culture in the State.

3. Enforcement action continued to consume a significant portion of the Competition Authority’s resources; for example:
   - On January 30th, 2007 Denis Manning pleaded guilty in the Central Criminal Court to one charge, that he did “aide and abet the members of The Irish Ford Dealers Association” in “directly or indirectly fixing the selling price of motor vehicles” between July 1st 2002 and June 30th 2003. Mr. Manning is the first person to be found guilty under the 2002 Act. He was sentence to a 12-month suspended sentence and fined €30,000.
   - In July 2006, the High Court found against the Competition Authority in proceedings against the Beef Industry Development Society (BIDS). The Competition Authority appealed the High Court’s decision to the Supreme Court. In March 2007 the Supreme Court announced that a decision of the ECJ is necessary to clarify whether or not the agreement among beef processors to reduce capacity is incompatible with Article 81(1) of the Treaty establishing the European Community. We encourage agencies to contribute to any comments that may be made by their Member State on this matter.
   - In July 2006, the Competition Authority initiated proceedings in the High Court against the Irish Medical Organisation (IMO). The IMO is the national representative body for medial general practitioners (GP’s) and non consultant hospital doctors. The Competition Authority’s investigation concluded that the IMO by coordinating their activities through directing or recommending the fees GPs should charge had the object or effect of preventing, restricting or distorting competition in contravention of Section 4(1) of the competition Act 2002.

4. Increased Merger & Acquisition activity reflected the growing pace of change in the economy as a whole; the Competition Authority issued 96 reasoned decisions. Of the 96 cases, 93 were cleared at the initial stage of the decision making process; after a full investigation two were cleared without conditions and one was blocked.
   - The Competition Authority announced on October 26th, 2006 that it had decided to block the proposed acquisition of Leanort Group (Xtratherm) by Kingspan Group plc (Kingspan) on the grounds that such a transaction would substantially lessen competition in the manufacture and provision of insulation materials in the State.
5. Complementary to the Competition Authority’s enforcement activity, promoting the benefits of competition remained a core function of the Competition Authority. A number of key issues were the focus of the Competition Authority’s advocacy resources in 2006; namely:

- The Groceries Order;
- Electricity;
- The Legal Profession; and,
- The Private Health Insurance Market.

6. After a long advocacy campaign that encountered staunch resistance from producer interests, the Groceries Order was finally abolished via The Competition (Amendment) Act, 2006 which came into force on March 20th, 2006. Effectively retailers are, subject to the abuse of dominance provisions in Section 5 of the Act, free to sell groceries below cost. Subject to a ‘Competition Test’, the following conduct in the grocery trade is prohibited:

- Attempting to compel or coerce another Grocery Good Undertaking (“GGU”) to resell or advertise for resale any grocery goods at a fixed price or above a minimum fixed price;¹
- The application of dissimilar conditions to equivalent transactions with any GGU;²
- Compelling or coercing another GGU to make any payment or grant any allowance for the advertising or display of grocery goods;³ and,
- The compulsion or coercion by a ‘retailer’ of another GGU to make a payment or grant an allowance to the retailer for providing space for grocery goods within the first 60 days of the opening of a new retail outlet, the opening of a newly expanded or extended retail outlet or, the opening of a store to the public under new ownership.⁴

7. Official data from the Central Statistics Office shows that in the year since the abolition of the Groceries Order in March 2006, food prices have fallen by 0.1%, while general price inflation has risen 4.3% and the rate of inflation on items formerly covered by the Groceries Order fell by 0.6%. The Competition Authority assumed new responsibilities for the grocery sector, including undertaking a substantial monitoring project in the sector following the establishment of the new regulatory environment.

8. In 2006, energy policy was a highly debated issue. The Government published a Green Paper, Towards A Sustainable Energy Future. The Competition Authority welcomed many of the proposals contained in the Green Paper, but, arguing that the proposed reforms did not go far enough, urged the Government to commit, in particular, to structural reform of the electricity market. In March 2007 the Government published a Government White Paper, Delivering A Sustainable Future For Ireland. The Competition Authority especially welcomed the structural proposal that the ownership of electricity

¹ Section 15B (1)
² Section 15B (2)
³ Section 15B (3)
⁴ Section 15B (4)
transmission system should be transferred from the former statutory monopolist, the ESB, to the recently 
created transmission system operator, Eirgrid. The ESB has agreed to some limited divestment of 
generating plant. The promotion of competition in the electricity market in Ireland remains a key item on 
the Competition Authority’s agenda going forward.

9. In addition, 2006 saw the publication of the long awaited Final Report of the Legal Profession, if 
implemented in full, the report’s recommendations will create a more transparent and accountable legal 
system that is more responsive to clients’ needs.

10. On February 13th 2007 the Competition Authority published its report on competition in the 
Private Health Insurance market. The report was undertaken after a request by the Minister for Health 
and Children in December 2005. The Competition Authority found that competition in the Private Health 
Insurance market is constrained. Two other reports on Private Health Insurance in Ireland have been 
published since the Competition Authority’s report. The first was by the Health Insurance Authority, and 
the second was the output of an Advisory Group set up by the Minister for Health and Children to carry out 
a business appraisal of the private medical insurance market in Ireland. On April 25th, 2007 the Minister 
for Health and Children announced that Government had, arising from the three reports, approved a range 
of reform measures for the private health insurance market that aim to create a level playing field and 
enhance consumer choice.

11. In total the Competition Authority published four reports in 2006; the two other studies were:

- Final Report on Architects; and,
- Final Report on Optometrists.

12. Full reports and reasoned decisions are available on the Competition Authority’s website at 
www.tca.ie.

1. Changes to Competition Laws and Policies, Proposed or Adopted

1.1 Summary of new legal provisions of competition law and related legislation

1.1.1 Competition (Amendment) Act, 2006

13. In November 2005 the Minister for Enterprise, Trade and Employment announced his intention 
to amend the Competition Act, 2002 (“the Act”). The Competition (Amendment) Act, 2006 (“the 
Amendment Act”) came into force on Monday March 20th, 2006. The primary purpose of the amendment 
was to repeal, by primary legislation, the Restrictive Practices (Groceries) Order 1987 (“the Groceries 
Order”) in its entirety.

14. The Groceries Order, introduced in 1987, prevented retailers from selling certain grocery 
products below their net invoice price. All food items subject to processing other than freezing as well as 
alcoholic and non alcoholic beverages consumed at home and certain ‘household necessaries’ were 
covered by the Groceries Order. The ban applied to a product’s net invoice price and therefore did not 
allow for the inclusion of end of year loyalty discounts offered by suppliers to wholesalers or retailers 
when assessing the relevant cost benchmark (i.e., the invoice price). In practice this meant that retailers

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5 The Competition Authority made an extensive submission on the Groceries Order to the October 2005 
Competition Committee Roundtable on Resale Below Cost Laws and Regulations.
could not pass on substantial end of year ‘off invoice’ discounts to consumers in the form of lower prices. The Office of the Director of Consumers Affairs were responsible for enforcing the Groceries Order.

15. With the coming into force of the Amendment Act, retailers in the groceries sector are no longer subject to regulatory constraints in determining the price at which they wish to sell groceries. Effectively this means that retailers are, subject to the abuse of dominance provisions in Section 5 of the Act, free to sell groceries below cost.


17. Section 15A of the Amendment Act contains three important definitions:

- A definition of ‘grocery goods’ that relates only to food and drink sold for human consumption that is intended to be sold as groceries. This definition does not include so called ‘household necessaries’ as defined by the 1987 Order;
- A definition of a ‘Grocery Goods Undertaking’ (“GGU”) for which the provisions in Section 15B relate to; and,
- A definition of ‘retailer’ which is a GGU that sells or resells ‘grocery goods’ directly to consumers.

18. Section 15B of the Amendment Act contains provisions relating specifically to GGUs. Subject to a ‘Competition Test’, the following conduct in the grocery trade is prohibited:

- Attempting to compel or coerce another GGU to resell or advertise for resale any grocery goods at a fixed price or above a minimum fixed price;
- The application of dissimilar conditions to equivalent transactions with any GGU;

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6 Section 15B (5) states that conduct described in 15B shall not be prohibited unless that conduct has as its object or effect the prevention, restriction or distortion of competition in trade in any grocery goods in the State or in any part of the State.

7 Part 2A operates without prejudice to Part 2 of the Parent Act, i.e., the Competition Act, 2002. It is therefore possible for a Grocery Goods Undertaking to infringe Section 4 or 5 and Section 15B for the same offence.

8 Part 2A operates without prejudice to Part 2 of the 2002 Act. It is possible therefore that a GGU could infringe Sections 4 or 5 and also Section 15B.

9 A GGU is defined as an undertaking that is engaged for gain in the production, supply or distribution of ‘grocery goods’. However, an undertaking will not be considered to be a GGU if it produces, supplies or distributes ‘grocery goods’ such as additives, ingredients or processing aids for a use other than resale by a ‘retailer’.

10 Section 15B (1)

11 Section 15B (2)
Compelling or coercing another GGU to make any payment or grant any allowance for the advertising or display of grocery goods;12 and,

The compulsion or coercion by a ‘retailer’ of another GGU to make a payment or grant an allowance to the retailer for providing space for grocery goods within the first 60 days of the opening of a new retail outlet, the opening of a newly expanded or extended retail outlet or, the opening of a store to the public under new ownership.13

19. Section 15C provides the Competition Authority and private parties with a right of action for breach of Section 15B. Breaches of the prohibitions in 15B are civil in nature.14

20. Official data from the Central Statistics Office shows that in the year since the abolition of the Groceries Order in March 2006, food prices have fallen; see Figure 1. The Competition Authority assumed new responsibilities for the grocery sector, including undertaking a substantial monitoring project in the sector following the establishment of the new regulatory environment.

![Figure 1: Grocery Price Inflation since April 2006 (April 2006=100)](image)

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12  Section 15B (3)
13  Section 15B (4)
14  All other breaches of the Act are potentially criminal in nature.
1.2 Other relevant measures, including new guidelines

1.2.1 Guidance on Collective Negotiations relating to the Setting of Medical Fees

21. In September 2005, the Competition Authority concluded an investigation into the way in which fees for consultants’ services are negotiated between consultants and private health insurers. The Competition Authority’s view from that investigation was that the actions of the consultants’ representative body, namely the Irish Hospital Consultants Association (“the IHCA”), in the context of those negotiations, amounted to price fixing in breach of Section 4(1)(a) of the Competition Act, 2002 (“the Competition Act”).

22. The Competition Authority published a consultation document in January 2006 to determine the scope of guidance that could be provided in respect of collective negotiations relating to the setting of medical fees. The consultation arose as a consequence of the Agreement and Undertaking furnished by the Irish Hospital Consultants Association to the Competition Authority in 2005 as the IHCA had requested additional guidance on compliance as part of the settlement. The aim of the Consultation Document was to get a better understanding of the way in which fees for consultants’ services are negotiated between consultants and private health insurers.

23. The Competition Authority is concerned that within the discussions that take place between hospital consultants (and their representative bodies such as the IHCA and Irish Medical Organisation) and private health insurers, there may be conduct amongst consultants which breaches the Competition Act.

24. The objective of the Competition Authority issuing guidance is to ensure that consultants are aware of the prohibitions contained in the Competition Act, 2002 as they apply to them and to assist them in complying with the Competition Act, 2002.

1.2.2 New Procedures for the Review of Mergers and Acquisitions

25. After a consultation process undertaken in 2005, the Competition Authority published the following two new sets of procedures on its website and these became applicable from March 1st, 2006:

- Revised Procedures for the Review of Mergers and Acquisitions: This document outlines the procedures for dealing with mergers and acquisitions notified to the Competition Authority and updates the pre-existing procedures in light of the Competition Authority’s experience since 2003.

- Procedures for Access to the File in Merger Cases: This document provides guidance to businesses and legal practitioners on the Competition Authority’s policy in relation to access to its file by the merging parties in the course of the Competition Authority’s review of mergers and acquisitions.

1.2.3 Notice in respect of certain terms used in Part 3 of the Competition Act, 2002

26. After a consultation with external stakeholders, the Competition Authority, on December 12th, 2006 made two amendments to Notice N/02/003, now entitled “Notice in respect of certain terms used in Part 3 of the Competition Act, 2002”.

27. First, Article 3 was amended to clarify the Competition Authority’s understanding of the term “carries on business”. The Competition Authority now understands that term as including undertakings that either (a) have a physical presence in the island of Ireland and make sales or supply services to customers
in the island of Ireland, OR that, without having a physical presence in the island of Ireland, have made sales into the island of Ireland of at least €2 million in the most recent financial year.

28. Second, a new Article 5 was inserted to provide the Competition Authority’s understanding of the phrase “within 1 month after” as used in Section 18(1) and Section 21(2) of the Act. The Article provides in essence that where that phrase is used in either section, the month will be calculated by including the date after which the month is expressed to run. Thus, where notification must be made “within 1 month after” the date on which an agreement has been concluded, the date of conclusion of the agreement will be counted as the first day of the calendar month. The month will then expire on the day before the corresponding date in the following month.16

29. The amended Notice came into immediate effect on December 12th, 2006. However, in respect of Article 5 the Competition Authority allowed notifying parties a period of grace, which expired on March 1st, 2007, to amend their practice accordingly.

1.2.4 *Competition Law Enforcement Decision Series*

30. As part of its programme to provide guidance on the application of the Competition Act, 2002, the Competition Authority publishes on its website an Enforcement Decision Series which contains information about the disposition of certain investigations where no legal proceedings were initiated.

31. The Competition Authority publishes enforcement decision notes only on selected investigations that:

- Create a precedent;
- Demonstrate the Competition Authority’s approach to a particular competition issue on which it has not previously opined;
- 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.

E/06/001 TicketMaster Ireland

32. In March 2006 the Competition Authority published details of its investigation into alleged abuses of dominance by TicketMaster Ireland.

33. The Competition Authority’s investigation focused on the market for outsourced ticketing services for events of national or international appeal in the island of Ireland. Following its investigation, which lasted over two years, the Competition Authority concluded that TicketMaster Ireland’s conduct did not constitute an abuse of a dominant position (contrary to Section 5 of the Competition Act, 2002); nor do agreements between TicketMaster Ireland and the two largest event promoters prevent, restrict or distort competition (contrary to Section 4 of the Competition Act, 2002).

34. The Competition Authority’s investigation did highlight one issue of potential concern relating to the degree of transparency in ticket price information. However an absence of transparency in price

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16 For example, if an agreement is concluded, a bid is made, or the “appropriate date” falls on 12 April, one calendar month after will end on 11 May.
information is not a breach of competition law. Therefore the Competition Authority brought this issue to
the attention of the Office of the Director of Consumer Affairs and the National Consumer Agency.

35. The Competition Authority’s investigation was prompted by complaints from thousands of
consumers (including a complaint petition signed by in excess of 8,000 individuals) concerning:

- The price or face value of tickets sold by TicketMaster Ireland;
- The level of TicketMaster Ireland’s booking fees. These fees are payable by the end
  consumer when purchasing a ticket. The booking fee depends on the method of purchase
  (i.e., Internet/telephone, event venue box office, or retail agent). In 2004, for example,
  TicketMaster Ireland’s booking fees varied from zero to a maximum of €5.95 per ticket;
  and,
- The alleged exclusive agreements between TicketMaster Ireland and the largest event
  promoters currently operating in the island of Ireland, MCD Productions Limited and Aiken
  Promotions.

36. The Competition Authority concluded that the promoter, in conjunction with the artist, sets the
price or face value of the ticket sold by TicketMaster Ireland.

37. High-profile artists perform only a limited number of concerts worldwide each year. Promoters in
the island of Ireland compete aggressively with promoters in other countries to convince high-profile
artists to perform in Ireland by offering them sufficiently attractive terms. Therefore, high-profile artists
have strong bargaining power in their negotiations with promoters and can command substantial
appearance fees, which, in turn, are reflected in the ticket price that consumers pay.

38. TicketMaster Ireland currently accounts for 100% of the market for outsourced ticketing services
for events of national or international appeal. However TicketMaster Ireland is constrained from exploiting
this position because:

- MCD Promotions and Aiken Promotions have the incentive to minimise the booking fee
  charged by TicketMaster Ireland to the end consumer. Outsourced ticketing services are like
  any other input purchased or contracted by the promoters for the concert or other event
  package they put together for sale to the consumer; and
- MCD Promotions and Aiken Promotions have strong countervailing buyer power vis-à-vis
  their ticketing service provider, TicketMaster Ireland. If TicketMaster Ireland will not agree
to the booking fees demanded by the two major promoters, they can credibly threaten to
either switch to another ticketing service provider or set up their own ticketing facilities.

39. Based on its investigation the Competition Authority concluded that competition takes place for
the contracts awarded by MCD Promotions, Aiken Promotions and others, rather than on an event by event
basis.

1.3 Government proposals for new legislation

40. On February 14th, 2007 the Minister for Enterprise, Trade and Employment stated in a debate in
the Senate “my Department will be reviewing the operation of the Competition Act 2002 during the current
year and will bring forward proposals for legislative change when that is considered warranted.”
2. Enforcement of competition Laws and Policies

2.1 Action against anti-competitive practices, including agreements and abuses of dominant positions

2.1.1 Criminal Cases brought by the Director of Public Prosecutions

The Director of Public Prosecutions v Michael Flanagan trading as Flanagan Oil, Con Muldoon, Muldoon Oil Limited, James Kearney, Cloonan Oil Limited, Ruby Oil (Roscommon) Limited, Kevin Hester, Sean Hester, All Star Oil Limited, Alan Kearney, Mor Oil Limited, Pat Hegarty, Sweeney Oil Limited, Declan Geraghty, Matt Geraghty Oil Limited, Michael McMahon, Fenmac Oil & Transport Limited, Tom Connolly, Eugene Dalton Snr., Corrib Oil Company Limited, Kevin Cunniffe, Hi-Way Oil (Galway) Limited, JP Lambe,

41. In 2004 the Director of Public Prosecutions (DPP) initiated proceedings against the 24 accused referred to above. The charges proffered against the various individuals and corporate undertakings related to allegations of fixing the retail price of heating oil, which is made up of either gas oil or kerosene. The prosecution of these 24 accused followed an investigation by the Competition Authority which referred a file on the matter to the DPP in 2003. A summary of the outcome of proceedings is detailed in Table 1.

42. In the majority of cases the defendants changed their pleas and entered guilty pleas to one charge each on the Bill of Indictment. In these cases, except for that of JP Lambe, the DPP entered a *nolle prosequi* in relation to the second charge before the court, i.e. the charge in relation to Kerosene.

43. J.P. Lambe had pleaded guilty in Dublin Circuit Criminal Court on the 27th October 2005 to both counts on the bill of indictment for aiding and abetting Corrib Oil Company Limited in price-fixing. He was sentenced on March 6th, 2006 by Judge Catherine Delahunt on one count on the Bill of indictment to a period of 6 months imprisonment, suspended for a period of 12 months and fined €15,000. The second count on the Bill of indictment was taken into account. Judge Delahunt in sentencing Lambe said that:

"Without your talent, acumen and knowledge of this business, the kind of distortion before the court today could not have functioned to any sort of significant level."

44. This is the first custodial sentence received by an individual in Ireland or Europe for a Competition law offence. To date, Lambe’s fine is the largest single fine levied by an Irish court on either an undertaking or individual for a competition law offence.

45. Michael Flanagan trading as Flanagan Oil decided to contest the charges made out against him and a jury was empanelled. The trial lasted three days. The jury deliberated for 2 Hours and 4 minutes before returning unanimous guilty verdicts on both counts of the bill of indictment against Michael Flanagan trading as Flanagan Oil for his part in the price-fixing conspiracy. Judge Groarke fined Michael Flanagan trading as Flanagan Oil €3,500 in total. In sentencing Michael Flanagan judge Groarke commented:

"Those engaged in cartels and involved in the fixing of prices are doing so only with the motivation of greed, and with nothing to be gained but financial profit. That is why the legislature takes such a serious view of it...I could well see circumstances where persons convicted by a jury could be subjected to terms of imprisonment."

46. Judge Groarke acknowledged that Michael Flanagan trading as Flanagan Oil was a minnow surrounded by sharks in the oil distribution business and stated that he would take this into account when sentencing him.
Other comments by Judge Groarke during the sentencing of other defendants were as follows:

“These businessmen went into this with their eyes wide open and knew that what they were doing was criminally illegal. It was about greed…”

“The law applies to the small man just as much as for the bigger man.”

He pointed out that his views on this type of activity were now well known…”being involved in a cartel was theft”.

At the time of writing there is still one trial outstanding; this is due to begin on May 9th 2007.

**Table 1: Outcome of Proceedings as of April 30th 2006 against 24 Defendants in the Heating Oil Case**

<table>
<thead>
<tr>
<th>Defendant</th>
<th>Current Status</th>
<th>Result if appropriate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Michael Flanagan</td>
<td>Found guilty by a jury in Galway Circuit Criminal Court (2nd March 2006)</td>
<td>€3,500 fine</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Sentenced 2nd March 2006</td>
</tr>
<tr>
<td>Con Muldoon</td>
<td>Plead guilty in Galway Circuit Criminal Court (28th February 2006)</td>
<td>€1,000 fine</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Sentenced 10th March 2006</td>
</tr>
<tr>
<td>Muldoon Oil</td>
<td>Plead guilty in Galway Circuit Criminal Court (28th February 2006)</td>
<td>€3,500 fine</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Sentenced 10th March 2006</td>
</tr>
<tr>
<td>James Kearney</td>
<td>Not prosecuted (25th April 2006)</td>
<td>Nolle prosequi</td>
</tr>
<tr>
<td>All Star Oil</td>
<td>Plead guilty in Galway Circuit Criminal Court (9th March 2006)</td>
<td>€7,500 fine</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Sentenced 10th March 2006</td>
</tr>
<tr>
<td>Kevin Hester</td>
<td>Not prosecuted (9th March 2006)</td>
<td>Nolle prosequi</td>
</tr>
<tr>
<td>Corrib Oil</td>
<td>Plead guilty in Dublin Circuit Criminal Court (2th October 2005)</td>
<td>€15,000</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Sentenced 23rd January 2007</td>
</tr>
<tr>
<td>Mor Oil</td>
<td>Plead guilty in Galway Circuit Criminal Court (9th March 2006)</td>
<td>€7,500 fine</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Sentenced 10th March 2006</td>
</tr>
<tr>
<td>Alan Kearney</td>
<td>Not prosecuted (9th March 2006)</td>
<td>Nolle prosequi</td>
</tr>
<tr>
<td>Defendant</td>
<td>Current Status</td>
<td>Result if appropriate</td>
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<tr>
<td>-------------------------</td>
<td>--------------------------------------------------------------------------------</td>
<td>------------------------------------------------------------</td>
</tr>
<tr>
<td>Sweeney Rabbitte Oil</td>
<td>Trial due to commence in May 2007 in Galway Circuit Criminal Court</td>
<td>Awaiting trial</td>
</tr>
<tr>
<td>Pat Hegarty</td>
<td>Trial due to commence in May 2007 in Galway Circuit Criminal Court</td>
<td>Awaiting trial</td>
</tr>
<tr>
<td>Cloonan Oil</td>
<td>Plead guilty in Galway Circuit Criminal Court (25th April 2006)</td>
<td>€12,500 fine</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Sentenced 18th May 2006</td>
</tr>
<tr>
<td>Ruby Oil</td>
<td>Plead guilty in Galway Circuit Criminal Court (25th April 2006)</td>
<td>€10,000 fine</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Sentenced 18th May 2006</td>
</tr>
<tr>
<td>Matt Geraghty Oil</td>
<td>Plead guilty in Galway Circuit Criminal Court (9th March 2006)</td>
<td>€7,500 fine</td>
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<tr>
<td></td>
<td></td>
<td>Sentenced 10th March 2006</td>
</tr>
<tr>
<td>Declan Geraghty</td>
<td>Not prosecuted (9th March 2006)</td>
<td>Nolle prosequeui</td>
</tr>
<tr>
<td>Fenmac Oil &amp; Transport</td>
<td>Plead guilty in Galway Circuit Criminal Court (21st March 2006)</td>
<td>€7,500 fine</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Sentenced 21st March 2006</td>
</tr>
<tr>
<td>Michael McMahon</td>
<td>Plead guilty in Galway Circuit Criminal Court (21st March 2006)</td>
<td>€1,500 fine</td>
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<tr>
<td></td>
<td></td>
<td>Sentenced 21st March 2006</td>
</tr>
<tr>
<td>Tom Connolly</td>
<td>Indication that Nolle Prosequi will be entered in due course</td>
<td>Awaiting sentencing</td>
</tr>
<tr>
<td>Eugene Dalton Snr.</td>
<td>Plead guilty in Dublin Circuit Criminal Court (2th October 2005)</td>
<td>€10,000</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Sentenced 23rd January 2007</td>
</tr>
<tr>
<td>JP Lambe</td>
<td>Plead guilty in Dublin Circuit Criminal Court (27th October 2005)</td>
<td>Six months in jail (suspended) and €15,000 fine</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Sentenced 6th March 2006</td>
</tr>
<tr>
<td>Sean Hester</td>
<td>Plead guilty in Galway Circuit Criminal Court (9th March 2006)</td>
<td>€1,500 fine</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Sentenced 10th March 2006</td>
</tr>
<tr>
<td>Defendant</td>
<td>Current Status</td>
<td>Result if appropriate</td>
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<tr>
<td>-----------------</td>
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<td>-------------------------------------</td>
</tr>
<tr>
<td>Hi-Way Oil</td>
<td>Plead guilty in Galway Circuit Court (9th March 2006)</td>
<td>€7,500 fine</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Sentenced 10th March 2006</td>
</tr>
<tr>
<td>Kevin Cunniffe</td>
<td>Plead guilty in Galway Circuit Court (9th March 2006)</td>
<td>€1,500 fine</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Sentenced 10th March 2006</td>
</tr>
<tr>
<td>Gort Oil</td>
<td>Plead guilty in Galway Circuit Court (25th April 2006)</td>
<td>€7,500 fine</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Sentenced 25th April 2006</td>
</tr>
</tbody>
</table>

**The Director of Public Prosecutions v Denis Manning**

49. In April 2006, the Director of Public Prosecutions initiated proceedings against Denis Manning in Cork District Court. Denis Manning was summoned to court to answer two charges alleging that he aided and abetted the Irish Ford Dealers Association and its members in the implementation of agreements to fix the selling prices of Ford motor vehicles within the State between May 2001 and June 2003. The first of the two charges related to an alleged offence under the 1991 Act as amended and the second of the two charges related to an alleged offence under the 2002 Act.

50. Under Section 7 of the Criminal Law Act 1997, individuals who are found guilty of aiding and abetting the commission of an offence prohibited by Section 4 of the Competition Act are guilty in the same manner as if they committed the actual competition offence.

51. On January 30th, 2007 Denis Manning pleaded guilty in the Central Criminal Court to one charge, that he did “aide and abet the members of The Irish Ford Dealers Association” in “directly or indirectly fixing the selling price of motor vehicles” between July 1st 2002 and 30 June 2003, contrary to the Competition Act 2002. Mr. Manning is the first person to be found guilty under the 2002 Act. On February 9th, 2007 Denis Manning was sentenced to a 12-month suspended sentence and fined €30,000.

**The Director of Public Prosecutions v Pat Morgan**

52. The Competition Authority issued Mr. Pat Morgan, Managing Director of Tru Gas Limited, in 2004 with a witness summons under Section 31 of the Competition Act. Mr. Morgan refused to attend for examination under oath on foot of that witness summons. The Competition Authority made a complaint to An Garda Siochana. On completion of their investigation of the Competition Authority’s complaint, the Gardai forwarded their investigation file to the DPP who in turn decided to prosecute Pat Morgan for an offence under Section 31 (4)(a) of the Competition Act 2002 (failing to appear before the Competition Authority on foot of a witness summons). The case was heard in the Dublin Metropolitan District Court on the 22nd December 2005 and on completion of the case the Judge found the facts of the case proven.

53. However, at the request of the Competition Authority, the Judge agreed to adjourn sentencing of Mr. Morgan to February 6th 2006 so as to allow Mr. Morgan time to comply with the Section 31 witness summons and provide the information that had originally been sought by the Competition Authority from him. Pursuant to this order of court, Mr. Morgan complied with the witness summons served on him by the Competition Authority and provided the Competition Authority with the information sought from him. On
February 6th 2006 Mr. Morgan was given the benefit of Section 1(1) of the Probation Act by the District Court Judge.

2.1.2  Cases brought by the Competition Authority

The Competition Authority v Beef Industry Development Society

54. In July 2006, the High Court found against the Competition Authority in proceedings against the Beef Industry Development Society (BIDS). These legal proceedings challenged an agreement to rationalise the beef processing industry which the Competition Authority believed would constitute a breach of Section 4 of the Competition Act and Article 81 of the Treaty establishing the European Union.

55. Mr. Justice McKechnie found that the Competition Authority had failed to produce credible evidence to show that the agreement, if implemented, would breach Article 81(1) of the Treaty by preventing, restricting and distorting competition in the relevant markets. The High Court judge also found that one of the requirements of Article 81(3) was not met. In particular, he expressed a view that BIDS had failed to adduce sufficient evidence to prove that consumers would receive a fair share of the cost savings which he found would result from rationalisation.

56. The Competition Authority appealed the High Court’s decision to the Supreme Court. On March 8th, 2007, the Supreme Court announced that a decision of the ECJ is necessary to determine whether or not certain matters raised in legal proceedings between the Competition Authority and the Beef Industry Development Society (BIDS) are in breach of EU competition law.

57. The Supreme Court is asking the ECJ to clarify whether or not the agreement among beef processors to reduce capacity is “to be regarded as having as its object, as distinct from effect, the prevention, restriction or distortion of competition within the common market and therefore, incompatible with Article 81(1) of the Treaty establishing the European Community?”

The Competition Authority v Irish Medical Organisation

58. On July 3rd 2006, the Competition Authority initiated proceedings in the High Court against the Irish Medical Organisation (IMO). The IMO is the national representative body for medical general practitioners (GPs) and non consultant hospital doctors. Following a complaint in February 2005, the Competition Authority began an investigation into possible price fixing in breach of Section 4(1) of the Competition Act 2002. This related to certain services provided by GPs to life insurance companies, namely Private Medical Attendant’s Reports (PMARs) and medical examinations.

59. The Competition Authority’s investigation concluded that the IMO, by coordinating their members activities through directing or recommending the fees GPs should charge for PMARs and medical examination reports, had the object or effect of preventing, restricting or distorting competition in contravention of Section 4(1) of the Competition Act 2002.

60. The Competition Authority is seeking from the High Court:

- A declaration that the IMO’s conduct was in breach of the Competition Act, 2002;
- A permanent injunction preventing the IMO from engaging in similar conduct in the future; and,
- Costs of the proceedings.
The Competition Authority v Superquinn

61. Proceedings continued in the High Court against Superquinn over allegations concerning the fixing of the retail price of milk. In similar proceedings, settlements were reached with Tesco in December 2002, with Glanbia and Sligo Dairies in July 2003 and with Dairygold in March 2004.

The Competition Authority v Soft Drinks Beer Bottlers Association

62. The Competition Authority initiated legal proceedings in 1999 against a total of six companies in relation to allegations of price-fixing in the sale of packaged beer and soft drinks. Legal proceedings continue in the High Court against the sole remaining defendant in this case, Nash Beverages Limited.

2.1.3 Cases taken against the Competition Authority

Irish League of Credit Unions V The Competition Authority

63. The hearing of the appeal against the High Court judgment delivered in October 2004 in the Irish League of Credit Unions (ILCU) case took place last November 2006. The hearing had two and a half days duration and the Supreme Court judges gave no directions as to when the judgement will be delivered.

64. The decision of the Competition Authority to initiate proceedings in this case goes back to 2003 and was focused on a breach of Section 5 of the Competition Act and/or Article 82 of the Treaty establishing the European Union. In particular, the Competition Authority believed that the ILCU was abusing its dominant position by refusing access to its Savings Protection Scheme to non-affiliated credit unions.

2.1.4 Significant Investigations resolved without the need for court proceedings

JC Bamford Excavators v Equipment Company of Ireland

65. The Competition Authority resolved its investigation in the market for supply of JC Bamford Excavators Limited (JCB) agricultural and industrial products in Ireland by accepting the settlement terms offered by Equipment Company of Ireland Limited (trading as ECI-JCB) and Kellys of Borris Limited and

66. ECI JCB and Kellys of Borris established an independent joint venture company Ronason Limited (trading as ECI-JCB Agri (Kilkenny)) for the retail sales of JCB products in the south-east of Ireland. The Competition Authority had concerns that the arrangements involving ECI-JCB and Kellys of Borris, in relation to the operation of Ronason, breached Section 4 (1) of the Competition Act, 2002. The focus of the Competition Authority’s investigation was the exchange of commercially sensitive information between independent businesses and the restriction on Ronason from selling equipment outside of its assigned territory even when approached directly by customers (also known as passive sales).

67. The Competition Authority was satisfied that the commitments offered by ECI JCB and Kellys of Borris addressed its concerns and therefore decided to resolve its investigation without the need for court proceedings.
Competition Authority investigation into alleged boycott by TEAMS

68. The Competition Authority has secured undertakings from Travelsavers Educational and Marketing Services Limited (“TEAMS”) that the company and its employees will comply with the provisions of the Competition Act 2002. These undertakings have been secured by the Competition Authority on foot of an investigation, commenced in January 2005, into an alleged boycott by travel agent of Budget Travel products in response to Budget Travel’s decision to reduce the commission it paid to travel agents. The parties to the alleged boycott were all independent travel agent members of TEAMS.

69. To counteract the adverse effects of dropping its commission, Budget Travel undertook an aggressive advertising campaign in January 2005. As a consequence TEAMS’ recommendation had at most a neutral effect on Budget Travel’s business. (Budget Travel has since discontinued selling its products through independent travel agents.)

70. The evidence gathered by the Competition Authority in its investigation showed that the cited actions of TEAMS had been co-ordinated by a director of the company on his own initiative and without the knowledge of the parent company. (This fact was attested to in the course of separate High Court proceedings unrelated to the Competition Authority’s investigation.)

71. On the basis that TEAMS had taken measures to address the behaviour uncovered by the Competition Authority’s investigation the Competition Authority agreed to accept undertakings from the company that address its concerns to resolve matters. The undertakings provided to the Competition Authority that TEAMS will not engage in similar conduct again and TEAMS has written to its members informing them of each member’s obligations under the Act.

72. It is important to note that TEAMS could be held liable for the actions of its director under Section 6(6) of the 2002 Act even though they were not aware of his actions on the basis that he was acting within the scope of his employment with TEAMS.

2.2 Mergers and acquisitions

Table 2: A statistical overview of notified mergers evaluated in 2004-2006

<table>
<thead>
<tr>
<th></th>
<th>2006</th>
<th>2005</th>
<th>2004</th>
</tr>
</thead>
<tbody>
<tr>
<td>Notified Mergers</td>
<td>98</td>
<td>84</td>
<td>81</td>
</tr>
<tr>
<td>required notifications</td>
<td>97</td>
<td>84</td>
<td>81</td>
</tr>
<tr>
<td>voluntary notifications</td>
<td>1</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Carried from previous</td>
<td>7</td>
<td>11</td>
<td>13</td>
</tr>
<tr>
<td>year</td>
<td>7</td>
<td>10</td>
<td>11</td>
</tr>
<tr>
<td>carried as Phase 1</td>
<td>0</td>
<td>1</td>
<td>2</td>
</tr>
<tr>
<td>TOTAL CASES</td>
<td>105</td>
<td>95</td>
<td>94</td>
</tr>
<tr>
<td>of which media mergers</td>
<td>22</td>
<td>23</td>
<td>14</td>
</tr>
<tr>
<td>of which entered Phase 2</td>
<td>4</td>
<td>1</td>
<td>3</td>
</tr>
</tbody>
</table>

17 TEAMS is the Irish affiliate of a U.S. based company, Travelsavers International, Inc.


2.2.1 Summary of significant cases

Acquisition Tetra Laval Group of certain of the businesses of Carlisle Process Systems

73. The Competition Authority announced on August 10th 2006 that it had unconditionally approved the proposed acquisition by the Tetra Laval Group of certain of the businesses of Carlisle Process Systems.

74. The Competition Authority received notification of the proposed acquisition on May 10th 2006. On June 9th 2006, the Competition Authority announced its decision to carry out a full (Phase 2) investigation in relation to the proposed acquisition. This decision came after a preliminary investigation (Phase 1), where the Competition Authority had been unable to conclude without further investigation that the transaction would not substantially lessen competition.

75. The Competition Authority’s investigation of the proposed acquisition examined the effect on competition in the manufacture and supply of limited purpose equipment used in the processing of cheese products. Four areas of product overlap in the activities of the undertakings involved were identified: heat exchangers, cheese vats, cheddaring machines and block formers. However the only potential competition concern was in relation to block formers.

76. Since block formers are an essential element in cheddar cheese production the lack of a second source of block former supply, post-merger, would potentially have a detrimental impact on the ability of a competitor to compete with respect to full-line customer requirements. While the merger naturally gives rise to the removal of a competitor from the bidding markets, the Competition Authority’s investigation revealed that customers’ views were that the existence of two bidders in the market is sufficient for their purposes and that the merger did not eliminate all the alternative sources of supply of block formers.
77. This transaction was also investigated by the Office of Fair Trading (OFT) in the UK. Given the different competitive conditions in the UK the OFT found that the transaction raised serious competition problems which could only be assuaged by the implementation of a remedy package. From the perspective of customers in the State, the OFT remedy package ensured that customers have, compared to the post-merger alternative a greater choice of offering in respect of block formers.

78. Nevertheless post-merger and without the need to take into account the positive impact of the OFT remedy package on the relevant markets of concern in the State, the Competition Authority concluded that the proposed transaction would not lead to a substantial lessening of competition and it was cleared unconditionally on August 10th, 2006.

Acquisition Leanort Group (Xtratherm) by Kingspan Group plc (Kingpsan)

79. The Competition Authority announced on October 26th, 2006 that it had decided to block the proposed acquisition of Leanort Group (Xtratherm) by Kingspan Group plc (Kingpsan) on the grounds that such a transaction would substantially lessen competition in the manufacture and provision of insulation materials in the State.\(^\text{18}\)

80. This decision of the Competition Authority follows four months of economic analysis and market inquiries by the Mergers Division (the proposed transaction was initially notified to the Competition Authority on June 26th, 2006). The Competition Authority’s conclusions following its investigation are as follows:

a. The relevant market is the market for PU/PIR insulation materials.

b. The merging parties are the two largest providers of PU/PIR insulation materials in the State, and compete directly and closely against each other.

c. This market is characterised by:
   - a homogenous product;
   - high concentration;
   - high market share by the proposed merged entity;
   - limited growth potential in the market;
   - limited import competition; and,
   - sufficient excess capacity among industry operators to prevent entry.

81. The merger would, therefore, lead to a significant lessening of competition through the removal from the market of a vigorous competitor to Kingspan and with the major competitor to the merged entity likely to accommodate any price rises instigated the merged entity.

Acquisition of Weyerhaeuser Europe Limited by Coillte Teoranta

82. The Competition Authority announced on November 10th 2006 that it had unconditionally approved the proposed acquisition by the Coillte Teoranta of Weyerhaeuser Europe Limited. The

\(^{18}\) Both parties are involved in the manufacture and supply of building insulation materials.
Competition Authority received notification of the proposed acquisition on August 22nd 2006. On September 21st 2006, the Competition Authority announced its decision to carry out a full (Phase 2) investigation in relation to the proposed acquisition.

83. The investigation and analysis conducted by the mergers Division of the Competition Authority in this particular case was undertaken with the following parameters and caveats:

- the analysis of the merger was concerned with the specific competitive effects that flow from the merger. These would appear to be primarily a combination that, as a result of the merger, Coillte is likely to have increased monopsony power in the purchase of pulpwood, combined with its existing market power in upstream markets such as roundwood. The fact that it has market power in these upstream markets is not a result of the merger;¹⁹

- while the Competition Authority’s Merger Guidelines typically use a two year time horizon in considering the competitive effects of a merger a longer time horizon – up to 20 to 25 years - was used in examining the impact of this merger, reflecting the production cycle of growing and harvesting trees;

- in examining each of these theories of consumer harm, the Competition Authority considered whether post-merger there is both the incentive and the ability for the merged entity to exploit its augmented portfolio of activities in a way that would harm consumers. This reflects that it is consumers that the SLC is concerned with not competitors or suppliers of the merger entity;

- when constructing a counterfactual in a merger case, it is usual to consider a scenario under which the merged entity has the potential to raise prices because of the merger. In this merger, the situation is different since the operation of the existing Timber Sales System (TSS) will, on the balance of probabilities, result in the maximum price being realised and the alleged impact of the merger is to allow this situation to continue rather than for the merger to result in a higher price compared to the present.

84. While both parties are involved in the manufacture and supply of wood products in the State the Competition Authority’s investigation of the proposed acquisition examined the effect on competition across a range of vertically related markets in the sector.

85. During its investigation the Competition Authority investigated in detail three alternative possible theories of consumer harm potentially caused by the proposed transaction:

- Tying theory - post-acquisition, Coillte could tie the sale of sawlog to pulpwood through long-term agreements with private forestry growers with the effect that the price of sawlog in the future is higher than it otherwise would be. Thus, final consumers will be denied the benefit of the expected reduction in the price of the outputs of the sawmills;

- Margin Squeeze theory - Coillte, post-acquisition, could squeeze the margins of sawmills by driving up the price of sawlog and driving down the price of woodchips. This increase in

¹⁹ Nevertheless the Competition Authority did note in its Determination of this merger that if it is incorrect in its analysis and competition problems occur as a result of the merger, then the Competition Authority has the power to investigate behaviour which it believes raise concerns under the Act. Thus, for example, if a large number of private forestry growers in the future were to enter into long-term agreements with Coillte that tie sawlog and pulpwood, the Competition Authority has the power to investigate whether such agreements raise any concerns under the relevant provisions of the Act.
sawlog prices would be passed on to final consumers by way of increased prices for the output of sawmills;

- Disincentive to entry theory - as a result of becoming a monopsony buyer of pulpwood post-merger, Coillte becomes a self sufficient supplier of pulpwood. Consequently, potential private forestry growers may be dissuaded from planting forests (or may postpone planting for a few years to see if alternative outlets for pulpwood develop in the meantime). The effect will be a reduction in the level of competition in the market for roundwood in 30-40 years time as Coillte’s market power will be larger than it would otherwise have been had entry taken place. This increased market power may translate into higher sawlog prices and, therefore, higher domestic processed timber prices.

86. The Competition Authority’s investigation found that none of the three theories of consumer harm stood up to serious scrutiny and as a result the merger would not lead to a significant lessening of competition.

3. The Role of Competition Authorities in the formulations and implementation of other policies

3.1 Identifying public restrictions on competition and advising on proposed legislation and regulation and competition issues

87. The Competition Authority continued in 2006 to raise awareness and call for the removal of anti-competitive laws and regulations. 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 and 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 Competition Authority’s enforcement and merger review functions. The end result is the same however, less value for money and less choice for consumers.

88. Table 3 contains a full list of formal submissions made by the Competition Authority. The Competition Authority regularly advises Government Departments and agencies on the effect on competition, if any, of new legislation or policy proposals under consideration. The Competition Act 2002 gives the Competition Authority the specific function of advising the Government, Ministers and Ministers of State about implications for competition of proposed legislation. In carrying out this function the Competition Authority seeks to highlight competition concerns and pre-empt any negative consequences for consumers.

89. In 2006 the Competition Authority responded on 19 occasions to requests for advice from Government Departments and public bodies covering a wide range of economic sectors and issues including for example:

- The Competition Authority advised the Irish Auditing and Accounting Supervisory Authority (IAASA) that there was not a public interest case to require the legal protection of the title “Accountant” and that introducing such a restriction would impose increased costs on both accountants and consumers;

- The Competition Authority advised the Joint Oireachtas Committee on Communications, Marine and Natural Resources on the draft Broadcasting Bill 2006, in relation to the proposed Broadcasting Authority of Ireland’s role, and the collection and use of television license fees;
The Competition Authority advised the Casino Review Group that proportionate regulation of casinos should emphasise eligibility criteria and consequently it would not be necessary to establish an upper limit on the number of casinos.

90. Staff of the Competition Authority also participated in the work of the following external working groups:

- Better Regulation Group (Department of the Taoiseach); and
- Better Regulation Sub-Group – Appeals & Penalties (Department of the Taoiseach).

### Table 3: Formal Submissions made by the Competition Authority in 2006

<table>
<thead>
<tr>
<th>Submission Number:</th>
<th>Submission to:</th>
<th>Topic:</th>
<th>Summary of Recommendations:</th>
</tr>
</thead>
<tbody>
<tr>
<td>S/06/001</td>
<td>European Commission</td>
<td>Green Paper on Damages Actions for Breach of EC Antitrust Rules</td>
<td>The Green Paper asks whether there should be special rules on disclosure of documentary evidence, and, if so, what form it should take. The Competition Authority believes to harmonise procedural requirements across the EU in one field of law alone seems to have great potential for confusion. With that important caveat in mind, the Competition Authority considered the options as to the form the rules (if any) on disclosure should take.</td>
</tr>
<tr>
<td>S/06/002</td>
<td>The Irish Auditing and Accounting Supervisory Authority</td>
<td>Legal protection of the term “Accountant”</td>
<td>The Competition Authority is strongly of the view that there is no public interest case requiring legal protection of the term “Accountant” at this time. The current system provides for statutory protection for a key element of the work done by accountants in public practice but allows freedom in relation to other services they provide. The introduction of a system of legal protection of the term “Accountant” would impose a cost on accountants which would lead to an increase in costs for consumers.</td>
</tr>
<tr>
<td>Submission Number:</td>
<td>Submission to:</td>
<td>Topic:</td>
<td>Summary of Recommendations:</td>
</tr>
<tr>
<td>-------------------</td>
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<td>----------------------------</td>
</tr>
<tr>
<td>S/06/003</td>
<td>Department of Health and Children</td>
<td>Legislation to establish the Health Information and Quality Authority</td>
<td>The Competition Authority supports the establishment of the HIQA and the important role it will play in the provision of information to consumers of healthcare services. Improving the accessibility of information will empower consumers and enable them to make better informed decisions regarding their health and the services and treatments they choose to consume.</td>
</tr>
<tr>
<td>S/06/004</td>
<td>Business Regulation Forum</td>
<td>Reducing the burden of regulation on business</td>
<td>The Competition Authority identifies a number of sectors of the economy where competition problems are contributing significantly to business costs and can be remedied by regulatory reform. Better regulation of the banking, insurance, waste and electricity sectors will lead to more competition and will reduce business costs, allowing businesses to become more competitive, both in Ireland and abroad. The submission details recommendations made by the Competition Authority to better regulate each of these sectors to promote competition, following detailed critical analysis of the sector.</td>
</tr>
<tr>
<td>S/06/005</td>
<td>Department of Health and Children</td>
<td>Draft Medical Practitioners Bill 2006</td>
<td>Changes to the composition of the Medical Council are welcomed, as are the more streamlined registration process for medical practitioners from overseas, the improved fitness to practice regulations and the new role of the Health Service Executive in manpower planning for medical practitioners. A number of concerns still remain and these should be addressed to ensure that the new regulations work in the best interests of consumers of medical services.</td>
</tr>
<tr>
<td>Submission Number:</td>
<td>Submission to:</td>
<td>Topic:</td>
<td>Summary of Recommendations:</td>
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</tr>
<tr>
<td>S/06/006</td>
<td>Joint Oireachtas Committee on Communications, Marine and Natural Resources</td>
<td>Draft Broadcasting Bill 2006</td>
<td>The Competition Authority welcomes the thrust of the proposals in the Bill as an important step in ensuring that the public service remit is clearly defined and policed and that public service broadcasters are properly funded in a manner that minimises distortions on competition. The Competition Authority identifies a number of concerns with the proposals and makes recommendations intended to address these concerns.</td>
</tr>
<tr>
<td>S/06/007</td>
<td>Department of the Environment, Heritage and Local Government</td>
<td>Consultation Paper on Regulation of the Waste Management Sector</td>
<td>The Competition Authority sees no clear need for a waste regulator and pointed out that international evidence showed that competitive tendering is the best way to achieve lower per unit operating costs for the service provider and lower prices for consumers. If a waste regulator is appointed, the Competition Authority strongly recommends that the regulator should not have responsibility for price setting, either on a national or a regional basis.</td>
</tr>
<tr>
<td>S/06/008</td>
<td>Department of the Taoiseach</td>
<td>Consultation Paper on Regulatory Appeals</td>
<td>In order to provide the essential elements of a good regulatory appeals body i.e. expertise, efficiency and finality, the Competition Authority suggests that consideration be given to the establishment of a specialist court presided over by a High Court judge which would have available to it experts in the relevant areas of regulation who would attend, with the presiding judge, the entirety of the appeal.</td>
</tr>
<tr>
<td>S/06/009</td>
<td>Department of Communications, Marine and Natural Resources</td>
<td>Energy Green Paper</td>
<td>The Competition Authority recommends that a comprehensive programme of structural reforms takes place in the Irish electricity market to promote competition in generation and supply, provide the conditions for lower prices to end users, reduce barriers to entry, end ESB dominance, ensure security of supply and promote sustainability.</td>
</tr>
</tbody>
</table>

3.1.1 Energy

91. The Competition Authority has long advocated reform in the Irish Electricity market. In 2006 the Government published an Energy Green Paper, *Towards A Sustainable Energy Future*. The Green Paper contained many welcome proposals, such as creating a landbank of potential generation sites,
strengthening interconnectivity, and introducing an all-island wholesale electricity market by November 2007.

92. The Competition Authority made a submission to the Department of Communications, Marine and Natural Resources. In that submission the Competition Authority stated that the Government’s plans were insufficient to ease the rising cost of electricity that consumers are having to bear at present. The Competition Authority urged the Government to commit to structural reform of the electricity market by:

- Ownership unbundling of the transmission system, i.e., transferring ownership of the electricity grid from the ESB to Eirgrid;
- Addressing the ESB dominance in generation by splitting the ESB’s generation portfolio into a number of competing portfolios; and
- Promoting competitive outcomes in the design of an all-island wholesale market.

93. In March 2007 the Government published a Government White Paper, *Delivering A Sustainable Future For Ireland*. The Competition Authority especially welcomed the proposal that the ownership of electricity transmission system should be transferred from ESB to Eirgrid. In addition the ESB has agreed to divest plants and reduce its market share in order to have competition in electricity generation. However, competition in electricity generation will only work if the electricity transmission network is separate from the ESB. The promotion of competition in the electricity market in Ireland remains a key item on the Competition Authority’s agenda.

4. Resources of The Competition Authority

4.1 Resources Overall

<table>
<thead>
<tr>
<th>Budget</th>
<th>2006</th>
<th>2005</th>
<th>% Change</th>
</tr>
</thead>
<tbody>
<tr>
<td>Euro</td>
<td>5.8 million</td>
<td>5.07 million</td>
<td>14%</td>
</tr>
<tr>
<td>USD(^{20})</td>
<td>7.88 million</td>
<td>6.89 million</td>
<td></td>
</tr>
</tbody>
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4.2 Human Resources

<table>
<thead>
<tr>
<th>Category</th>
<th>Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lawyers</td>
<td>13</td>
</tr>
<tr>
<td>Economists</td>
<td>21</td>
</tr>
<tr>
<td>Other professionals and support staff</td>
<td>19</td>
</tr>
<tr>
<td><strong>Total Staff</strong></td>
<td>53</td>
</tr>
</tbody>
</table>

94. The figures quoted cover the period January 1\(^{st}\) 2006 to December 31\(^{st}\) 2006.

\(^{20}\) The exchange rate is according to GCI financial (http://www.gcitrading.com/converter.htm) on Wednesday, May 2\(^{nd}\) 2007.
5. **New Reports and Studies on Competition Policy Issues**

95. During 2006, the Competition Authority published four reports. The first three related to competition in professional services and the last was on competition in the Private Health Insurance market.

96. For the last number of years the Competition Authority has been engaged in a major study on Competition in Professional Services, examining eight different professions. The Competition Authority is using this study to examine regulations and practices that potentially restrict competition, and seeks to have anti-competitive restrictions abolished or replaced. The Competition Authority is also seeking to study how competition works in the profession concerned, and to identify behaviour which, although not necessarily breaching competition law, nevertheless inhibits competition.

97. The following reports were published in 2006 as part of the Professions Study:
   - Final Report on Architects.
   - Final Report on Optometrists.
   - Final Report on Solicitors and Barristers.

98. During 2007, the Competition Authority will continue its study of the professions and intends to publish its final report on the dental profession and commence work on reports on the medical and veterinary professions.

99. The following reports are all available on the Competition Authority’s website [www.tca.ie](http://www.tca.ie)

5.1 **Architects: Final Report**

100. The Competition Authority published its final report on competition issues associated with the architectural profession on March 7th 2006. The Competition Authority found that competition generally works well for consumers and for the economy as a whole.

101. The Competition Authority expressed concerns about negative consequences for consumers, and also some members of the profession, that would arise from some of the changes to the regulation of the architectural profession as outlined in the Building Control Bill 2005.

102. The Competition Authority’s primary concern centred on the proposed role for the Royal Institute of the Architects of Ireland (RIAI), the representative organisation for the vast majority of architects in Ireland. As initially proposed, the Building Control Bill 2005 would have established in law a conflict of interest. The RIAI would have the function of representing the interests of its members while at the same time being responsible for designing and implementing rules and practices to protect the public interest. To avoid the conflict of interest the Competition Authority recommended the establishment of an independent, transparent and accountable agency, an Architects Council of Ireland, to regulate the architectural profession.

103. The Competition Authority further recommended that, if the RIAI was to be responsible for the registration and regulation of architects, then the chairperson and the majority of members of the boards and committees outlined in the Building Control Bill 2005 should be from outside the profession, and that the chairpersons of the boards and committees should be appointed by the Minister for Environment, Heritage and Local Government. The RIAI’s role in creating a Code of Conduct for the profession also gave cause for concern.
104. In October 2006, the Minister for the Environment, Heritage and Local Government proposed amendments to the Select Committee on Environment and Local Government so that the chairperson and the majority of members of the boards and committees should be from outside the profession, and the chairpersons of the boards and committees should be appointed by the Minister for Environment, Heritage and Local Government. These amendments were agreed to by the Committee for inclusion in the legislation.

105. The Competition Authority also made recommendations relating to a few areas where competition in architectural services was unnecessarily restricted:

- The eligibility of practically-trained architects to enter architectural competitions for public sector projects;
- The limits of the Law Society’s list on who can provide Opinions on Compliance with Building Regulations;
- The lack of flexibility in the levels of professional indemnity insurance recommended by the Irish Public Bodies Mutual Insurances Limited; and
- The need for flexibility in architectural education through the provision of part time and modular courses.

106. In its final report the Competition Authority also noted that various concerns, identified in its preliminary report, published in November 2003, have been addressed.

- The rules of the RIAI which unnecessarily restricted advertising by architects were removed in May 2004;
- The RIAI no longer publishes information showing percentage fees for different project types. The only fee information now published by the RIAI is contained in an independent survey which includes information on percentage, fixed and time based fees;
- There has been a significant increase in the number of architecture training places in Ireland with the opening of new schools of architecture in Waterford and Limerick in 2005. Another new school opened in Cork in 2006.

5.2 Optometrists: Final Report

107. The Competition Authority published its final report on competition issues associated with optometrists (commonly known as opticians) on June 22nd 2006.

108. The report found that the optometry profession is an example of a profession where competition is generally working well. However, the Competition Authority raised a number of minor concerns relating to rules and practices which may inhibit competition in the supply of optometry services. The Competition Authority made five recommendations designed to enhance and protect competition in optometry services. Implementation of these recommendations will:

- Reduce waiting times for certain school children who require eye examinations;
- Make it easier for new optometry practices to offer services to consumers;
• Make it easier for consumers to compare the price and range of optometry services on offer;
• Bring the composition of the Opticians Board into line with other regulators of health professions and the principles of better regulation; and
• Ensure a sufficient supply of optometrists to meet long-term demand for optometry services.

5.3 Solicitors and Barristers: Final Report

109. The Competition Authority published its final report on the legal profession on December 11th 2006. The Competition Authority found that, despite some recent reforms, the legal profession is permeated with unjustified and disproportionate restrictions on competition. These restrictions emanate primarily from the regulatory rules and practices of the Law Society, the Bar Council and King’s Inns but also from relevant legislation.

110. The Competition Authority recommended comprehensive new legislation – a Legal Services Bill – to address the competition concerns identified in the report. The legislation would establish an independent Legal Services Commission with overall responsibility for regulating the legal profession and the market for legal services. The Legal Services Commission would be an independent, transparent and accountable body, involving a wider group of stakeholders than the current model of self-regulation. The Law Society and the Bar Council would continue to have a role in the day-to-day regulation of the profession but would be required to separate their representative and regulatory functions.

111. The Competition Authority made a further 28 recommendations in the report, designed to remedy the problems it had identified in the legal profession. The most significant of these proposals include:

• Abolition of the King’s Inns and the Law Society’s control of professional legal education which facilitates their educational monopolies;
• The introduction of a profession of specialist conveyancers to bring down the price and increase the quality of service in conveyancing;
• Empowering consumers by requiring the Law Society and the Bar Council to actively provide useful and accessible information to consumers about their rights and about key features of legal services, such as how legal fees are determined;
• Extending access to barristers for legal advice, which is currently the privilege of an elite, to all members of the public;
• Allowing barristers to form partnerships;
• Requiring solicitors whose clients wish to switch to another solicitor to hand over the client’s file to the new solicitor;
• Removal of unnecessary restrictions on barrister and solicitor advertising;
• Allowing employed barristers to represent their employers in court, as employed solicitors do;
• Abolition of the practice by which Junior Counsel’s fees are set at two-thirds that of Senior Counsel; and,
• The establishment of a transparent and effective scheme for the awarding of the title of Senior Counsel, together with the opening up of the title to solicitors.

112. Prior to the publication of the final report on solicitors and barristers, a number of welcome initiatives took place – such as the Government’s proposals to create a Legal Services Ombudsman and initiatives to reform the area of legal costs. All who have looked at this profession have reached a similar conclusion – that the legal professions needs to move towards a more modern, transparent and accountable system. The recommendations in the Competition Authority’s final report complement these recent initiatives.

113. The root and branch reform recommended by the Competition Authority reflects the important and urgent need to create a modern system of regulation of the legal profession that is proportionate, accountable, transparent, flexible and responsive to the needs of consumers.

5.4 Competition in the Private Health Insurance Market

114. In December 2005 the Minister for Health and Children requested the Competition Authority and the Health Insurance Authority to report on “further measures to encourage competition in the health insurance market and the strategy or strategies which might be adopted in order to create greater balance in the share of the market held by competing insurers”.

115. On 13th February 2007, the Competition Authority published its report on Competition in the Private Health Insurance Market. The Competition Authority found that competition in the Private Health Insurance market is constrained:

• The combination of it being a voluntary system and founded on the concept of intergenerational solidarity. The legislative and regulatory framework designed to support this concept significantly limits the scope for competition in private health insurance; by definition, community rating, open enrolment, lifetime cover, the Minimum Benefit Regulations and risk equalisation prevent many of the key features of competition in insurance markets from emerging in private health insurance.\footnote{The Competition Authority does not assess the necessity, proportionality or appropriateness of these principles. The report focuses instead on the effects that these principles have on competition in the market.}

• The largest private health insurance provider, Vhi Healthcare, is not prudentially regulated as a health insurance undertaking. This situation arises from Vhi Healthcare’s continued exemption\footnote{The European Commission recently announced that it has decided to “send Ireland a formal request to submit its observations on the continued legality of the exemption of the Irish Voluntary Health Insurance Board (VHI) from certain EU rules on non-life insurance.” European Commission press release, 24th January 2007.} under Art. 4(c) of the 1973 EU First Non-Life Insurance Directive.

• There are many barriers to new health insurers entering the Irish market.

• Although the process of switching health insurer is simple and straightforward, some consumers have an incorrect perception that the process is difficult and cumbersome.

• The Minimum Benefit Regulations, in their current form, hinder innovation in product design and the development of limited cover plans.
116. The Competition Authority makes 16 recommendations in this report for promoting competition in the private health insurance market in Ireland, within the limits of intergenerational solidarity, including:

- Vhi Healthcare’s exemption from prudential regulation should be ended as soon as possible so that it becomes subject to the legal solvency requirements and corporate structuring rules that apply to other health insurers in Ireland;

- A package of measures should be introduced to provide consumers with useful and timely information to enable them to consider alternative private health insurance products, and to promote consumer awareness of the ease of switching health insurer;

- Vhi Healthcare should discontinue its practice of cancelling its MultiTrip Travel Insurance when its members switch health insurer;

- The Minimum Benefit Regulations should be modernised and the Health Insurance Authority should be allowed to approve limited cover plans, to allow more innovation in the market; and,

- The Health Insurance Authority should be given wider powers to enforce the Health Insurance Acts and formally assigned the function of promoting the interests of consumers.

117. Two other reports on Private Health Insurance in Ireland have been published since the Competition Authority’s report. The first was by the Health Insurance Authority, and the second was the output of an Advisory Group set up by the Minister for Health and Children to carry out a business appraisal of the private medical insurance market in Ireland. On April 25th, 2007 the Minister for Health and Children announced that Government had, arising from the three reports, approved a range of reform measures for the private health insurance market that aim to create a level playing field and enhance consumer choice, including:

- The VHI should become a conventional insurer authorised by the Financial Regulator by the end of 2008. The derogation from solvency requirements which the company enjoys will cease when it is authorised.

- The immediate publication of a VHI Bill. On enactment it will allow the VHI to establish subsidiaries to operate its ancillary activities such as travel insurance, the Swiftcare clinics etc. This measure will also remove the remaining powers of the Minister in relation to product development, pricing etc.

- The VHI will be directed to comply with the Financial Regulator’s Consumer Protection Code in the same manner as if it were an undertaking already regulated by the Financial Regulator.

- The amendment of the Risk Equalisation Scheme to give effect to the Health Insurance Amendment Act, 2007. This abolished the three year exemption from risk equalisation payments for new entrants. To encourage competition and new entrants, and having regard to proportionality, risk equalisation payments will be discounted by 20 per cent.

- The Health Insurance Authority (HIA) initiate a process of consultation with the health insurance industry and private healthcare providers on defining the level of health insurance which should be subject to community rating.