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**ROUNDTABLE ON CHANGES IN INSTITUTIONAL DESIGN OF COMPETITION AUTHORITIES**

-- Note by Ireland --

**17-18 December 2014**

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*More documents related to this discussion can be found at <http://www.oecd.org/daf/competition>.*

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English - Or. English

## IRELAND

### 1. The new Irish Competition and Consumer Protection Commission

1. On 31 March 2014, legislation was introduced in the Irish Parliament to amalgamate the Irish Competition Authority and National Consumer Agency, to create new rules for dealing with media mergers and to regulate the relationship between suppliers and retailers in the grocery sector. The legislation was enacted on 28 July 2014 and commenced on 31 October 2014.

2. This amalgamation was first announced in the then Government's Budget of October 2008. To understand its somewhat tangled history, and the reasons for the delay, it is necessary to delve a little into Ireland's recent economic history.

3. On 14 November 2013, Ireland became the first EU Member State to successfully exit its bailout programme. Over the three years of the programme, a continuation of the tough budgets which began in 2008 has brought Ireland's public finances back on a sustainable path. Our debt-to-GDP ratio has stabilised, economic growth has returned, unemployment is falling, although at 11% is still unacceptably high. On balance, the bailout programme has achieved its main objectives of restoring stability to both the public finances and the banking system. Catastrophe has been avoided but, as the Greek general Pyrrhus observed, another victory like this will be the ruin of us.

### 2. Background

4. The economic crisis that hit Ireland stemmed from an uncontrolled property boom and the resulting collapse in the domestic financial system, which was heavily exposed to the property market. By mid-2007, well before the international financial crisis had gotten into full swing, Irish house prices began to fall from the peak levels. As house prices fell, demand for new houses fell sharply. With domestic construction activity collapsing and the world economy entering a severe recession, Irish real GDP declined by 10% over 2008 and 2009.

5. The bursting of the property bubble had an immediate and very severe impact on all aspects of the Irish economy. Government finances had come under strain due to the shortfall in tax revenue from VAT on new houses and stamp duty on the sale of second hand houses, while, from a position of near full employment, the number out of work rose to nearly 15%. Following the decision to offer a blanket guarantee to all deposits and liabilities of the Irish banks in 2008 the Irish Government found it impossible to borrow money on international markets when the scale of the banking collapse emerged. In a series of "austerity" budgets beginning in 2008, taxes were raised, current spending was cut back and capital spending was all but halted. Taken together, the adjustment amounted to €28.8 billion or the equivalent of 18% of 2012's level of GDP and represent one of the largest budgetary adjustments seen anywhere in the advanced economic world in modern times

6. In 2010, against the backdrop of a sharp increase in its sovereign bond yields, the Irish Government agreed to the provision of €85 billion in financial support by Member States of the European Union and the IMF on the basis of specified conditions.

7. The package had a total value of €85 billion comprising external loans amounting to €67.5 billion. The external loans came from the European Financial Stabilisation Mechanism (€22.5 bn), the European Financial Stability Facility (€17.7 bn), and bilateral loans from the United Kingdom, Sweden and Denmark (€4.8 bn), the IMF (€22.5 bn) and Ireland's own contributions (€17.5 bn) from its National Pension Reserve Fund (NPRF) and other domestic cash resources.

### **3. Amalgamation proposal**

8. As part of his Budget presentation in October 2008, the then Minister for Finance announced that the National Consumer Agency ('NCA') and the Competition Authority (TCA) were to be merged into a single entity.

9. There was no preliminary study and no further stated rationale for the decision. The fact that it was announced without any consultation with the parties involved and by the Minister for Finance and not the Minister with direct responsibility for competition and consumer policy, indicated that the merger was motivated primarily by the need for cost savings.

10. As part of an emergency Budget in April 2009, the Government introduced a number of measures to reduce public service staffing levels, including placing a moratorium on recruitment. At the time of the introduction of the recruitment ban, the Competition Authority's sanctioned staff complement was 59. By October 2010 the actual number of staff was 39, its lowest level since 2003. The National Consumer Agency, which was originally to have had a staff of 80, never reached this level and currently has a sanctioned headcount of 57, despite having been given additional statutory responsibilities in the area of financial consumer education. In addition, there was a period of turmoil in the leadership of Competition Authority. This was a collegiate body, with a Chairperson and between two and four other Members (all full-time executives). The National Consumer Agency had a Chief Executive who reported to a non-executive Board. Initially, it appears that the intention of the then Minister was to follow the latter structure, with the result that a number of Members of the Authority either resigned or were not reappointed at the end of their terms. This, coupled with delays in the legislation, meant that the Authority was in danger of becoming inquorate. Special legislation (the Competition (Amendment) Act 2010) had to be passed to allow the short-term appointments of full-time Members without an open public competition, as would otherwise have been required.

11. However following a review of the Memorandum of Understanding with the Troika in 2011, the Government committed to review the adequacy of resource levels in the Authority which led to the sanctioning of an additional ten posts for its enforcement function.

12. In the Spring of 2011, the Minister for Jobs, Enterprise and Innovation decided to carry out a public competition for appointments for a Chairperson and three Members of the Competition Authority, on the basis that these people would become the Chairperson and Members, respectively, of the Competition and Consumer Protection Commission on its formation. Thus the governance structure of the new Commission would be that of a collegiate body. Subsequently, the position of Chief Executive of the National Consumer Agency became vacant, and the position was advertised and filled on a similar basis.

13. The Government also undertook, in its Memorandum of Understanding on Specific Policy Conditionality with the Troika, to bring forward legislation to strengthen competition law enforcement in Ireland by ensuring the availability of effective sanctions for breaches of Irish competition law and Articles 101 and 102 TFEU as well as ensuring the effective functioning of the Competition Authority. This resulted in the enactment of the Competition (Amendment) Act 2012, which came into effect in July 2012.

14. Thus, over six years elapsed between the announcement of the amalgamation and its enactment. Obviously, the delay had negative effects on both legacy organisations. The current Minister is the fourth

since the announcement; both the NCA and the Competition Authority were on their third Heads at the time of amalgamation. Both have had to manage through a great deal of uncertainty in the last five years.

15. Even without the delay, however, such an amalgamation can be problematic. The previous organisations had different governance structures, different mandates and different staffing levels and grades. While both had a high level of expertise, in some cases the areas were different – competition law and economics in the Competition Authority, consumer law, consumer policy, marketing, communications and behavioural economics in the National Consumer Agency. This can lead to a level of misunderstanding and a fear on both sides that its expertise will not be appreciated in the new organisation – either that it will be dominated by pointy-headed economists who speak in impenetrable jargon, or that it will pay more attention to issues which resonate with consumers than to harder-to-explain competition cases. However, we are confident that the structure we have adopted maximises the synergies to be gained from the amalgamation while confronting and addressing the potential problems.

#### **4. Rationale for amalgamating competition and consumer agencies**

16. The rationale for amalgamation rests on the idea that combining competition enforcement, consumer protection and consumer awareness in one body will build a more effective organisation which is better equipped to foster a pro-competition culture across the economy. An independent authoritative body provides a source of consistent information to business and consumers about their rights, and provides administrative savings and skill enhancement through the pooling of information, skills and expertise. Competition authorities are expert in assessing how firms compete with one another thanks to an internationally accepted toolkit for competition analysis while the enforcement of consumer law brings awareness of problems that arise in business to consumer transactions even in markets that are competitive. In addition, the rapid rise of behavioural economics has given regulators deeper insight into how consumers actually make choices in competitive markets. The experience of deregulation has shown that supply side reform on its own is not sufficient to ensure that all consumers fully benefit from competition as there may be behavioural barriers which prevent consumers from making the best choices for themselves or indeed unfair commercial practices causing consumer harm before and after they buy. The increasing awareness of behavioural issues in competitive markets serves to reinforce the logic of having competition and consumer experts working side-by-side. In newly competitive markets there tends to be gaps in understanding among consumers and this confusion can be exploited by firms. This gap can be bridged by co-ordinating consumer and competition policy.

17. There are also operational advantages from having the competition and consumer functions within the one regulator. For example, a competition case might raise concerns about consumer harm due to market power but there might be insufficient evidence or constrained resources to bring an enforcement action. Having a single agency overseeing both competition and consumer protection allows the different courses of action to be considered simultaneously.

#### **5. The Competition and Consumer Protection Act 2014**

18. This Act 2014 has three main components:

- The merger of the National Consumer Agency and the Competition Authority to create the Competition and Consumer Protection Commission,
- The regulation of certain practices in the grocery goods sector; and
- Changes to media mergers to include a public interest test which will be the responsibility of the Minister for Communications.

19. In addition, competition law enforcement was strengthened by amendments to the Criminal Justice Act 2011. These allow, *inter alia*, the ability to split questioning of suspects into shorter sessions over a longer period rather than having to do so in one session as was previously the case and the compelled disclosure of documents which may be legally privileged. Following the compelled disclosure, application to the High Court must be made for determination of whether the information is legally privileged or not.

## **6. Functions of the Competition and Consumer Protection Commission**

20. The Competition and Consumer Protection Commission's role can be described as promoting consumer and economic welfare by enforcing consumer protection and competition law, informing and advocating on consumer and competition issues, helping consumers make informed decisions and ultimately intervening in markets to make Ireland a better place to do business and to be a consumer.

21. We will provide a one-stop consumer information and education service via our websites, helpline and public awareness activities. We will also have specific responsibilities in relation to the safety of consumer products, personal finance education, and the regulation of grocery sector business relationships.

22. The functions of the Commission are, as outlined in the Competition and Consumer Protection Act 2014:

- To promote competition;
- To promote and protect the interests and welfare of consumers;
- To carry out an investigation, either on its own initiative or in response to a complaint made to it by any person, into any suspected breach of the relevant statutory provisions, that may be occurring or has occurred, Article 101 or 102 of the Treaty on the Functioning of the European Union, that may be occurring or has occurred, or notwithstanding their repeal, the Competition (Amendment) Act 1996 and the Competition Act 1991, that has occurred;
- To enforce the relevant statutory provisions;
- To encourage compliance with the relevant statutory provisions, which may include the publication of notices containing practical guidance as to how those provisions may be complied with;
- To set the strategic objectives for the Commission; and
- To ensure that appropriate systems and procedures are in place to achieve the Commission's strategic objectives and to take all reasonable steps available to it to achieve those objectives.

23. The Commission's responsibilities may be summarised as follows:

## **7. Competition Law**

24. The Commission is responsible for enforcing Irish and European competition law in Ireland. Cartels constitute serious white collar crime and the Commission will employ its full range of powers of investigation to bring these crimes to the Director of Public Prosecutions for prosecution.

25. Other infringements of competition law include firms with a dominant position in a market abusing that position or agreements between competitors that lessen competition but are not ‘hard core’ cartels. It is our role to ensure that suspected anti-competitive behaviours will be investigated and the Commission will work to identify and take appropriate steps to terminate anticompetitive conduct.

26. Proposed mergers, acquisitions and takeovers of firms within specific turnover thresholds will be required to be notified to the Commission in advance of their execution for approval. The Commission will assess whether they substantially lessen competition.

## **8. Consumer Law**

27. The Commission will be responsible for enforcing a range of consumer legislation including European Directives such as the Unfair Commercial Practices Directive, Unfair Terms in Consumer Contracts, E-commerce and the Consumer Rights Directive. These cover all transactions between a business and a consumer across the economy. Some of the more detrimental breaches (such as car clocking) are criminal offences prosecuted through the courts – and the new Commission will be able to select from a range of enforcement tools to tackle less serious but nonetheless unacceptable practices that mislead, are unfair or otherwise harm consumers.

## **9. Grocery Sector Regulations**

28. The Commission will promote compliance with a new regulatory regime in the grocery sector aimed at ensuring balance and transparency in commercial relationships between suppliers and retailers. Compliance will be maximised through the effective and balanced use of the range of strategies and powers available. This will involve risk-based enforcement activity, establishing appropriate relationships with grocery goods undertakings and developing legally sound and practical procedures and guidelines for implementation of the regulations.

## **10. Product Safety**

29. The Commission’s role in Product Safety comes mainly from the EU’s General Product Safety Directive and the related sector specific regulations, e.g. the Toy Safety Directive, and the Low Voltage Directive. The Commission will also be the ‘Ireland’ point of contact for RAPEX, the European Rapid Alert System for Product Safety. The NCA, which performed this role before the amalgamation received approximately 2500 RAPEX alerts per annum – all of which must be followed up.

## **11. Educating and Informing Consumers about their Rights**

30. The Commission will have an extensive role in helping consumers make informed decisions and be active market participants. In order to do this, they must be aware of their rights. As part of the Commission’s role in educating consumers it will be conducting public awareness campaigns on topical issues of concern, providing and promoting on-line information and responding to a significant number of consumer queries (the NCA received 56,000 calls and emails from consumers in 2013 and had well over a million hits on its website).

## **12. Research**

31. The Commission will adopt an evidence-based approach to prioritisation of its work, supported by a programme of robust and innovative research. Research priorities will include sectoral research, consumer behaviour and monitoring international best practice.

### **13. Advising Government**

32. The Commission has the function of advising the Irish Government and its agents on how proposed legislation or regulations could affect competition and/or consumers. This prevents future problems for consumers and business who want to compete on the merits. In this way, we give a voice to consumers in the policy-making process.

### **14. Advocacy**

33. The Commission also has a general function to promote competition and consumer interests in the economy. We will give effect to this function by calling for reform when Irish laws, regulations or actions by State bodies restrict competition or go against consumers' interests.

34. In addition, where we wish to change the behaviour within an industry and such behaviour does not constitute a breach of consumer and competition law, we may decide to advocate to a trader directly or via a regulatory or representative body.

### **15. Personal Finance Information and Education**

35. The Commission has a specific obligation under its legislation in relation to personal finance information and education. This is funded by way of a levy on regulated financial services providers which is ring-fenced. Under Section 21 of the Central Bank Reform Act, 2010, a levy prescribed under subsection (1) shall relate only to the Agency's performance of its functions referred to in section 8(3)(ha). This means that levy funds, including pay expenditure, cannot be allocated to the Commission's work outside these functions.

36. The actions under the remit include working on financial education programmes for schools, in the workplace and in collaboration with voluntary groups and NGOs.

### **16. Organisation Structure**

37. The Competition and Consumer Protection Commission will deliver on its legislative mandate in a way that maximises its resources by combining competition and consumer protection functions within one organisation, while avoiding gaps in delivery. The organisation structure is one that aims to achieve the maximum in terms of efficiency, integration and utilising the skills of the staff of both legacy organisations.

38. The Competition and Consumer Protection Commission will be governed by an Executive Chairperson and Commissioner structure. The Competition and Consumer Protection Act allows for a Chairperson and between two and six Commissioners, who will act in a collegiate manner. Isolde Goggin was appointed designate Chairperson of the Competition and Consumer Protection Commission on taking up her role of Chairperson of the Competition Authority in 2011. Ms Goggin is supported in her role by four Commissioners; Stephen Calkins, Gerald FitzGerald, Patrick Kenny and Karen O'Leary, the former Chief Executive of the National Consumer Agency. All were appointed designate Commissioners on taking up their roles in the previous organisations.

### **17. Divisional Structures**

39. The twelve functional areas can be grouped in three broad sets of activities:

- Investigation/enforcement activities

- Essential specialist/support functions
- External engagement with consumers, business, policy makers and the media

40. Each of the four Commissioners will have executive responsibility for certain Divisions. The Executive Office will report directly to the Chairperson.

41. The CCPC’s Divisions will also participate in relevant activities of international organisations and bodies, such as the European Competition Network, the International Competition Network and the Organisation for Economic Co-operation and Development (OECD).

Figure 1.



## 18. Investigation/Enforcement

### 18.1 Criminal Enforcement

42. At the core of the Commission’s mission is to root out and tackle anti-competitive and anti-consumer practices. The Criminal Enforcement Division will direct all investigations of criminal competition matters and criminal consumer law breaches, vehicle crime such as car clocking offences and pyramid schemes. In fulfilling this remit, the Division will direct all investigations of criminal competition law breaches and vehicle crime and ensure that:

- The Commission uses the full range of its powers, including additional powers under the Competition and Consumer Protection Bill 2014 in pursuing white collar crimes such as cartels and price-fixing;
- All investigations of criminal activities are conducted in a timely and efficient manner, meeting the standards required for the successful investigation and prosecution of criminal cases; and
- A proactive approach is taken to identifying and addressing anticompetitive conduct.

## **18.2 Product Safety**

43. Unsafe consumer products can cause accidents, injuries and in extreme cases, deaths. Protecting consumers in Ireland from unsafe products is the primary aim the Product Safety Division, taking its legislative remit from five primary EU Directives, including the General Product Safety Directive, the Toy Safety Directive, the Personal Protective Equipment Directive, the Appliances Burning Gaseous Fuels Directive and the Low Voltage Directive. The Division will conduct market surveillance activities, investigate and follow-up complaints received using a risk-based approach and liaise with other market surveillance bodies, including Customs Authorities, to prevent unsafe products coming onto the Irish market.

44. The Division is also the Irish contact point for RAPEX which is a Europe-wide rapid alert system for unsafe products which circulates information on product recalls that have taken place in the European Union. As part of the RAPEX network, the Division is required to examine any information received about a product recall elsewhere in the EU and assess whether the product is relevant on the Irish market and then take appropriate action. The Division is also an active participant in a number of product safety related EU and domestic fora, ensuring that Ireland is at the forefront of developments in product safety across the EU.

## **18.3 Consumer Enforcement**

45. The Commission is responsible for enforcing a wide range of consumer legislation including European Directives such as the Unfair Commercial Practices Directive, Unfair Terms in Consumer Contracts, E-commerce and the Consumer Rights Directive. These cover all transactions between a business and a consumer across the economy. Therefore, the potential for breaches is high, given the sheer number of transactions that take place on a daily basis in a modern economy.

46. The Consumer Enforcement Division will lead the management of cases, ensuring that effective procedures for the selection and execution of enforcement activity are in place, delivering on the Commission's strategic approach.

## **18.4 Mergers**

47. Mergers are a mechanism used by businesses to restructure in order to compete and prosper. However, some mergers can have a negative effect on consumer welfare and on businesses by, for example, leading to an increase in price or a reduction in output. That is, they substantially lessen competition and buyers in that market, consumers, businesses and the State, suffer.

48. The Commission will have a statutory remit to review all mergers that reach the legal threshold for notification. This will be conducted in an efficient, timely and effective manner, managing the entire merger review process from pre-notification to appeals, if applicable. The Commission will actively protect the interests of consumers and will have the power to block mergers that it finds will lead to a "substantial lessening of competition".

49. The Division will also identify potentially anti-competitive mergers which have not been notified to the Commission and take appropriate action.

### **18.5 Competition Enforcement**

50. Anti-competitive practices are damaging to business, consumers, the State and the economy as a whole. For example, agreements between manufacturers and distributors of their products, or between distributors and retailers, can sometimes be found to be anti-competitive and be in breach of competition law. Abuse of market dominance is another example of a breach of competition law, where a business abuses its dominant position by exploiting its position to stifle competition or attempting to eliminate competitors or prevent new competitors emerging.

51. The Competition Enforcement Division will work to effectively identify and take appropriate steps to terminating anticompetitive conduct. This involves examining and processing complaints, investigating cases, determining and implementing optimum methods of case disposition, including initiating proceedings, litigation and securing voluntary compliance through negotiating settlements and securing undertakings.

## **19. Support/Specialist**

### **19.1 Corporate Services**

52. The Commission's Corporate Services Division ensures that the highest standards of corporate governance are met by the Commission and ensures that key tasks are performed to the satisfaction of internal and external users.

53. The Division's include the areas of finance, procurement, internal audit and Human Resources management.

### **19.2 Executive Office**

54. Ensuring that the Competition and Consumer Protection Commission is greater than the sum of its original parts will require investment in its strategic direction and supporting systems, and strong effective internal communications and governance.

55. Investing specific resources in this vital purpose, within a small unit reporting directly to the Chairperson, will support the Commission in creating a modern State agency that delivers joined-up thinking in markets across the economy.

### **19.3 Legal Services**

56. The Legal Services Division is responsible for the provision of high quality, solution-focussed legal advice and support to the Commission, Members of the Commissioners and Divisions, on all aspects of the organisation's work. Legal advice is provided in a consistent and timely manner and prioritised appropriately.

57. The Division has responsibility for the instruction of external legal services providers and the supervision and management of same, including the day-to-day management of litigation in conjunction with the relevant Divisional Directors. Legal advisors will also train staff on legal issues and contributing to the overall professional development plans developed by the Commission.

58. The Division also represents the Division through participation in external events, such as lecturing, conferences and seminars.

#### **19.4 Integration**

59. From 31 October 2014, the Commission will be bi-located at premises at Harcourt Road and Parnell Square. This represents challenges in terms of integration, work practices and time management. The process of integration in a single premises is being given the upmost priority, with a temporary Division being established to lead the relocation project for the Commission, with responsibility for all logistics and project management.

### **20. External Engagement**

#### **20.1 Communications and Consumer Help**

60. The Commission has a broad range of external stakeholders, including consumers, businesses, the media, the legal sector, regulatory bodies and Government. In order to communicate effectively and develop programmes that address the information needs of these audiences, the Communications and Consumer Help Division will develop the Commission's strategic approach to external communications and manage and build the external reputation of the Commission.

61. In developing all communications programmes, online delivery, where appropriate, will ensure the widest reach for all activity in the most cost-effective manner. All online platforms will be assessed on an ongoing basis with a programme of continuous improvement. The Division will lead the provision of information to consumers via the consumer helpline, developing and operating the Commission's Consumer Help website and other online resources and proactive public awareness activity, aimed specifically at raising consumers' awareness of their rights.

62. The Division will also develop and operate Financial Education programmes, funded by a levy on the financial services industry. Programmes will be delivered using a range of channels, including through the workplace, education system and through GNOs.

#### **20.2 Regulation and Business Engagement**

63. The initial focus for this Division will be establishing the Commission's new grocery regulation regime. This will involve:

- Setting up an inspections regime to ensure compliance with the guidelines on the Grocery Code of Practice
- Establishing relationships with Grocery Goods Undertakings to ensure that they nominate compliance officers and have proper compliance processes and procedures in place
- Setting up regular meetings with compliance officers
- Setting up links with supplier organisations to ensure that they understand the provisions of the Grocery Undertakings Regulations
- Establishing Commission procedures as necessary, e.g. for complaints, dispute resolution, investigation and enforcement

64. The Division is also responsible for managing the annual licensing process for Credit Intermediaries and Pawnbrokers and ensuring compliance by these undertakings with their licensing obligations, liaising with the Central Bank and finance providers as appropriate

### **20.3 *Advocacy & Market Intelligence***

65. This Division has a wide remit, representing the interests of consumers and advancing the understanding and importance of competition and consumer protection in the economy. Among its functions are:

- Providing timely and relevant advice to Government, Government Departments and Public Authorities in the areas of Competition and Consumer Protection
- Representing consumer interests in appropriate fora / working groups
- Producing or procuring Market Studies or other market reports in the context of agreed priorities for own initiative work and at the request of the Minister for Jobs, Enterprise and Innovation
- Monitoring the status of previous recommendations made by the organisation and its legacy bodies

## **21. Next Steps**

66. The CCPC has already achieved one of its key milestones in that the amalgamated body has been operational from the moment it was established in law. There are a number of operational issues which are outside our control such as the location of a building to house the enlarged organisation but staff have reacted positively to the amalgamation and new divisions have been established and have hit the ground running.

67. All public agencies in Ireland are required by law to produce a strategic plan every three years and as a new body the CCPC will be required to produce a new Strategy Statement within six months of its formation. This statement will set out the key objectives, outputs and related strategies, including use of resources for the relevant period.

68. As the CCPC is a new organisation it is envisaged that a public consultation process will be held to ascertain stakeholder views before the Strategy Statement is finalised and published in 2015.

69. In the meantime our focus will be on the following:

- Further integrating our staff and supporting cross learning and collaborative working;
- Continuing important functions where projects were commenced by legacy organisations and using our pooled expertise to deliver results;
- Seeking additional resources to support the economy wide remit and additional functions that we have over and above the legacy organisations
  - Harnessing the expertise we have to help create and realise a meaningful strategy and to enhance the work of the new organisation in a way that we could not do when apart.