



**The Competition Authority**

An tÚdarás Iomaíochta

# **Sectoral Regulators and Competition Authorities – can we be friends ?**

**18<sup>th</sup> November 2009**

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# Outline

- Goals, Objectives and Resources
- Methodology,
- Approach
- Powers
- Expertise
- Interface and Relationships
- Informal Co-operation
- Forbearance
- Co-operation Agreements
- Regulatory Capture
- Conclusion



# Competition Agencies

- Competition Agencies focused on enforcing economy-wide competition law
- These laws are designed to enhance overall consumer welfare
- Their functions include cartel prosecution, dealing with issues of dominance and merger review across all sectors of the economy
  - Underlying assumption that:

*Healthy Competition maximises consumer welfare*



# Sectoral Regulators

- Sectoral Regulators are often charged with acting as a substitute for the market
  - Deal with Distributional Issues
  - Oversee Universal Service Obligations and industry standards
  - Set Market Prices
  - May use their powers to enforce structural and technological standards



# Methodology and Approach

## Competition Agencies

### Timing:

With the exception of mergers, functions are ex-post

### Intervention:

Investigate firms or sector after specific complaint

### Remedies:

Structural

## Regulators

### Timing:

Deal with issues ex-ante

### Intervention:

Continuously Monitor Regulated Firms

### Remedies:

Behavioural



# Powers & Expertise

## Competition Agencies

### Powers:

Go to court to obtain fines and sanctions

### Expertise:

- Legal
- Economic

## Regulators

### Powers:

Directly investigate and adjudicate on a range of matters

### Expertise:

- Legal
- Economic
- Accounting
- Technical



# Interface and Relationship

- Both Competition Agencies and Regulator share a common goal of enhancing consumer welfare.
- However, given their differing roles and functions, how the two institutions interact will have an impact on how they behave



# Co-operation Arrangements

Coordination between Competition Agencies and Sectoral Regulators is vital to avoid inconsistent application of policies

- Informal discussions and information sharing
  - Right to make submissions
  - Legally required consultation
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- Necessary to avoid
    - Duplication
    - Adoption of competition distorting policies





# Informal Co-operation

- Co-operation between Competition Agencies and Regulators can, in the right environment, work perfectly well on an informal basis, e.g. Finland, Ireland
- Benefits both sides, as potential issues can be flagged early and dealt with expediently:
  - for the Competition Authority, a potential competition problem can be avoided without sinking enormous resources into doing so
  - for both the Authority and Regulator, a public difference of opinion, and entrenched positions, are avoided



# Mandatory Consultation

- Competition Authority has an important role to play in the design and implementation of sector-specific regulatory mechanisms. This role derives from two factors.
  - Authority should be able to give its opinion on changes in other laws and regulations that concern competition, and this should be taken into account by those taking the regulatory decision
  - Sector-specific laws and regulations normally provide an explicit role for the Competition Agency.
  - In particular, it may be asked to determine whether effective competition exists in a market – or in a segment of a market – or whether one of the participants has potential market power.
  - Competition agencies better placed than regulators to decide this, also less self-interest in unnecessarily continuing such regulation



# Formal Co-operation Agreements

- Can ensure a good *Modus Vivendi* between Competition Agencies and Regulators
- Two essential features –
  - provisions for exchanges of information
  - provisions allowing one body to forbear to act on the basis that the other will act
    - Mandatory Forbearance
    - Regulator must when market forces achieve legislated objectives
    - Discretionary Forbearance
    - Regulator decides on appropriateness of regulation



# Exchange of Information

1. Each Party agrees that it will, on written request, in response to reasonable requests, give the other side any information in it has of a kind specified in the request. Where it does so, the provisions of any laws about the disclosure of information by the Respondent Party also apply to the Requesting Party.
2. The Requesting Party may ask that the request itself be considered confidential.
3. The Parties commit to use the information solely for the purposes described in the Request.
4. If the Requesting Party wishes to use the shared information for any other purpose it must first obtain the written approval of the other side.



# Forbearance to Act

- One party may agree to forbear to perform any of its functions in relation where satisfied that the other is performing the function
- Where a Party intends to forbear, it must first discuss the issue with the other side, inform it of its intention to apply forbearance, and give the other an opportunity to respond.
- Either Party may request the other to exercise forbearance in any particular case. The other may agree where it is satisfied that the requesting Party is performing functions in relation to that matter.
- Where one Party has agreed to forbear to perform its functions in any particular matter, it may inform any relevant third parties as it sees fit



# Sunsetting

- Competition Agency should be involved in ascertaining when continued economic regulation is justified
- Competition agencies better placed than regulators to decide this question and should have less self-interest in unnecessarily continuing regulation ?
- In some countries, regulators are statutorily required to forbear regulating once a sector is sufficiently competitive, and competition agencies are involved in determining whether that threshold has been met



# Regulatory Capture

- When dividing tasks between agencies and regulators be aware of danger of regulatory capture
  - Competition Authorities have an economy wide remit and hence safer from Regulatory Capture
  - Regulators often have a closer relationship with regulated firms – need to be more aware of the danger of capture by firms under their remit



# Conclusion

- As long as there are Competition Authorities and Sectoral Regulators, they need to work together
- They therefore need to understand each other
- Co-operation and coordination between them is essential

