

IRELAND*(2000)***Summary**

1. The Competition Authority undertook, during 2000, an extensive amount of work in accordance with the functions assigned to it under the Competition Acts, 1991 and 1996 with the purpose of achieving its objective to promote greater competition in every sector of the Irish economy by tackling anti-competitive practices, thereby contributing to an improvement in economic welfare.

Enforcement Activities

2. During the course of 2000 the Authority received 251 complaints about a variety of alleged contraventions of the Competition Acts. This was the highest annual number of complaints to the Authority since it was given enforcement powers in 1996. While investigation of complaints, particularly new complaints, was largely curtailed during the year due to staffing shortages the Authority recorded its first criminal prosecution when Estuary Fuels Limited was prosecuted in Limerick District Court in October. Later that month, the Authority also took court action against a group of farmers engaged in an illegal blockade of a dairy in Co. Donegal. Investigations of other cases continued as did preparatory work for court proceedings which the Authority initiated and reported on previously. At the end of 2000, the Authority had 340 open complaints or investigations, a number that it considers to be unacceptably high.

Notifications

3. While the Authority recorded the highest number of complaints received in a year in 2000, it also recorded the lowest number of agreements notified to it under Section 7 of the Competition Act, 1991. Only ten notifications were received in 2000, the lowest number of notification since the Authority was established in 1991. Parties to agreements between undertakings may notify them to the Authority under Section 7 of the Competition Act, 1991 after which the Authority may certify that, in its opinion, the agreements do not contravene the prohibition on anti-competitive arrangements in Section 4(1). Alternatively, the Authority may grant a licence to an agreement which contravenes Section 4(1) but where, in the Authority's opinion, the agreement is beneficial. Such decisions provide legal protection to firms engaged in legitimate business practices and provide guidance on the Authority's interpretation of Section 4(1). The Authority may also refuse to certify or licence a notified agreement, which, in its opinion, contravenes the Act. By the end of 2000, the Authority had dealt with 1,371 of the 1,408 notifications made to it since 1991. The Authority dealt with 14 notifications during 2000 and thus had 37 cases on hand awaiting a decision at year's end.

Merger Referrals

4. During the year 341 mergers were notified to the Minister for Enterprise, Trade and Employment.

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Competition Advocacy

5. The Authority completed a study of licensing restrictions and other barriers and restrictions to entry into the rail and bus passenger transport market within the State and their impact on delivery of passengers by intercity rail, intercity buses and urban buses. This study was initiated under Section 11 of the Competition Act which provides that the Authority may study, analyse and report on any aspect of competition in any sector of the economy. The Authority's report of its study, which will be published by the Authority during 2001, was submitted to the Department of Public Enterprise in response to its invitation for views on its policy paper "A New Institutional and Regulatory Framework for Public Transport".

6. On 31 March 2000, the Tanaiste and Minister for Enterprise, Trade and Employment requested the Authority, under Section 11 of the Competition Act, 1991 to undertake a study into the implementation by local authorities of the Casual Trading Act, 1995 with a view to assessing the impact of that legislation on competition in local markets and to consider certain public interest objectives associated with the implementation of the legislation. While a certain amount of preliminary work on the study had been carried out by year's end, the Authority's resource difficulties, already alluded to in this report and expanded upon at Section IV, prevented further progress. The Authority expects to complete the study in 2001.

7. The Authority also published a new set of explanatory booklets aimed at business and consumers, published two discussion papers, commenced work on updating its website, addressed a variety of conferences and seminars and engaged in an increased amount of media work, all aimed at increasing the awareness of competition law in Ireland.

8. Members and other staff of the Authority made submissions to relevant bodies, contributed articles to newspapers and gave interviews to the broadcast media on a wide range of subjects, including liberalisation of the utilities, pharmacies, groceries, taxis, retailing, and the sale of alcohol.

9. The Authority believes that awareness of competition policy and the Authority increased significantly during 2000. Evidence of this is seen in the 64% increase in the number of complaints and in the fact that the rate of complaints increased steadily during the year. Indications in early 2001 were that this trend was set to continue.

Other Activities

10. In addition to the Authority's ongoing commitments at EU and OECD level in representing Ireland at EC Advisory Committee meetings and at the OECD's Committee on Competition Law and Policy, 2000 brought new commitments. The OECD Regulatory Review process and the ongoing discussions at EU level on the modernisation of Regulation 17 placed enormous demands on scarce Authority resources during the year. The OECD review required attendance at various meetings in Dublin and Paris and considerable involvement in the process itself. Similarly, the frequent, sometimes weekly, meetings in Brussels as part of the modernisation of Regulation 17 process required active participation at these meetings and substantial preparatory work.

11. On the domestic policy front, the Authority's detailed and considered response to the recommendations contained in the Competition and Merger Review Group (CMRG) report was time consuming as was its work in the latter part of the year in formulating proposals for an immunity programme and working with the Department of Enterprise Trade and Employment on the detail of new consolidated competition legislation as decided by the Government in October 2000.

Annual Report on Developments in Ireland

I Changes in Competition Law and Policies Adopted or Envisaged

12. There were no changes in Irish competition law and policy in 2000.

II. Enforcement of Competition Laws and Policies

Action against anti-competitive practices.

13. Under the 1991- 1996 Acts - the work of the Competition Authority.

- Enforcement Activities
- Notifications
- Decisions

III. Mergers and Concentrations

Statistics on Concentrations

IV. Resources of Competition Authority

V. References to new reports and studies on competition policy issues

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I. Changes in Competition Law and Policies Adopted or Envisaged

14. In October 2000 the Minister for Enterprise, Trade and Employment announced that the Government had approved proposals to draft new consolidated competition legislation that would implement many of the recommendations made in the CMRG report. She confirmed that it was proposed to transfer responsibility for examining and deciding upon mergers and take-overs from the Minister to the Authority and that determinations would be on the basis of competition criteria only. The Minister said also that the new legislation would contain measures to strengthen competition enforcement by the Authority including the extension of powers of arrest and detention to competition law offences. At year's end the legislation was in the early stages of preparation by the Department of Enterprise, Trade and Employment.

II. Enforcement of Competition Laws and Policies

Action against anti-competitive practices

Under the 1991- 1996 Acts - the work of the Competition Authority

Enforcement Activities

15. During 2000 a total of 251 complaint files were opened by the Authority, just over 90 more than the previous year when the Authority opened 160 complaint files. These included 3 files that were opened on an own initiative basis, the remaining 248 being opened on foot of complaints received. A further 153 files were carried over from 1999. A total of 64 cases were closed during the year, compared with 101 in 1999. Thus by the end of the year there were 340 cases open, the largest number left open at the end of any year since the 1996 Act came into force. The most common single complaint involved alleged abuse of a dominant position (113 cases) and price fixing/cartel activities (83 cases).

16. Since the 1996 Act came into force the Authority has opened a total of 884 complaint files. It is noted that there was a considerable increase in the number of complaints made to the Authority about alleged anti-competitive behaviour in 2000 over the preceding couple of years. This can be attributed in large part to the increased awareness among the public about the Authority and its remit.

17. The reduction in the number of cases closed in 2000 over previous years is due mainly to the high turnover of staff during the course of the year and reference to this is made elsewhere in this report. The resultant vacancies did however impact particularly hard on the Authority's enforcement activities as many of the staff who left during 2000 had been working on enforcement investigations. Indeed for a number of months during the year, complainants were advised that, due to resource difficulties, the Authority was unable to initiate immediately an investigation of their complaints and advised them of their own right of private action under the 1991 Act.

Authority legal proceedings

Estuary case

18. The Competition Authority invoked its powers to bring criminal prosecutions in price fixing cases when it prosecuted Estuary Fuel Limited on charges of entering into and implementing an agreement to fix the price at which motor fuels were sold by a filling station in Tralee, Co. Kerry. This is the first time that a company has been prosecuted for price fixing under the Competition (Amendment) Act, 1996. Judge Tom O'Donnell in Limerick District Court imposed a fine of £500.00 in respect of each of the two charges. The case was heard on the 4th October 2000 and Estuary Fuel Limited pleaded guilty to two charges of breaching section 4(1) of the Competition Act. The Competition Authority considered that price fixing represented a serious breach of competition law because it effectively denied consumers the right to shop around and get the best possible deal.

19. In the early months of 1999 the filling station concerned began selling unbranded motor fuels at a significant discount to the prices charged by other filling stations in Tralee resulting in lower prices for motor fuels in the town. Evidence was presented by the Authority that Estuary Fuel Limited had subsequently entered into and implemented a written agreement in June of 1999 to supply motor fuels to that filling station subject to the station not selling diesel or unleaded petrol for less than 51.9p and 55.9p respectively. The Authority argued that such an agreement had the object of restricting price competition in respect of motor fuels in the town of Tralee.

Natural Dairies Limited

20. One week after the successful prosecution in Limerick District Court, the Authority was involved in another high profile court action. Acting on foot of a complaint received about a blockade in progress at the premises of Natural Dairies Limited in Convoy, Co. Donegal, the Authority sought, and was granted, an interim order by the High Court to restrain the blockade. The Authority sought the order because it believed that the primary purpose of the blockade by a number of individual farmers was to force up the retail price of a two-litre own-label carton of milk from 86p to 95p. It was the Authority's understanding that Natural Dairies Limited supplied Dunnes Stores Limited, a major supermarket chain, with its own-label milk. The Authority considered the blockade action to be a restriction on competition and as such a contravention of the Competition Acts. In particular, it was concerned that a blockade of this kind could, in itself and by its example, inflict serious damage on the competitive process. The Authority saw it of paramount importance to send a clear signal that businesses that compete to the benefit of consumers should not be punished or otherwise damaged by direct or indirect competitors. Retaliation in the market place via improved efficiency and more competitive prices and products is the only legitimate response that competitors should have to increased competition.

21. In public comments on its action at the time the Authority stated that its primary focus in taking the action was to safeguard the competitive process so that consumers could continue to enjoy the benefits of competition in the market. It pointed to the dramatic reduction in the price of a two-litre own-label carton of milk from £1.14 to 86p, a reduction which the Authority attributed to increased competition in the market. The Authority described any concerted action to try to force up retail prices as anti-competitive and anti-consumer.

22. The Interim Court Order was made against two named individuals as well as all other persons having notice of the order. While the blockade ended on Sunday 15th October, the Authority was granted an Interlocutory Injunction by the High Court on 16th October restraining farmers from taking further blockade action at the premises. On 13th November the High Court heard a motion of attachment and

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committal against a number of named individuals who had participated in the blockade. The Court awarded the Authority its costs on an indemnity basis and made it clear that the Authority should recover costs on the highest basis available, in other words that the Authority should be entitled to recover all of its legal costs involved in pursuing the notice parties.

Other cases in which legal proceedings are pending

23. The Authority has a number of cases in which it has legal proceedings pending in respect of contraventions of the Competition Acts, some of which have been reported previously in Authority annual reports. While work on these proceedings continued during 2000 it was not possible to have any of them, save for the Estuary case referred to above, heard in Court. The Authority anticipates however that several of these cases will be determined in the Courts during 2001.

Notifications

24. At the end of 1999, the Authority had dealt with 1,357 of the 1,398 cases notified to it since October 1991, leaving it with 41 cases on hand. During the year it received 10 new notifications, and closed 14, leaving it with 37 open notifications at the end of the year.

Notification of Agreements in 2000

25. During the course of 2000, ten agreements were notified to the Authority under Section 7 of the Competition Act, 1991, as amended, compared with 17 notifications in 1999. A list of these notifications is contained in Annex 2. The notifications covered a recommended scale of fees agreement, a standard loan agreement, a motor dealer agreement, a sale of business agreement, a sale of financial services agreement, a franchise agreement, an exclusive purchase agreement, a gas tolling agreement and a standard franking machine licence agreement. By the end of 2000, a total of 1,408 notifications had been made to the Authority under Section 7 since the commencement of the Act.

26. Many agreements which would otherwise be notifiable are now covered by the Authority's Category Certificate for Mergers (Decision no. 489) and the Category Certificate and Licence in respect of Agreements between Suppliers and Resellers (Decision no. 528). Businesses do not need to notify arrangements that are covered by these decisions in order to benefit from them. The existence of these category certificates and licence has contributed to the low rate of notifications to the Authority under Section 7 and, in the Authority's view, this situation will persist.

Decisions

27. The Authority made 8 formal Decisions in respect of notified agreements in 2000 and disposed of a total of 14 notifications during the year. By the end of 2000, over 97% of notifications that had been received by the Authority since the commencement of the Act had been disposed of. All of the Authority's decisions are available on its website.

III. Mergers and Concentrations

28. During the year 341 mergers were notified to the Minister for Enterprise, Trade and Employment. Under the provisions of the Mergers, Take-overs and Monopolies (Control) Acts, the Minister for

Enterprise, Trade and Employment may refer a proposed merger or take-over to the Authority to consider whether the proposed merger would be likely to prevent or restrict competition, restrain trade or operate against the common good and the Authority must state its opinion in this regard. One case was referred to the Authority but was immediately withdrawn by the parties and so was not examined by the Authority.

29. A Government decision, referred to elsewhere in this report, was made during the year to transfer responsibility for mergers from the Minister for Enterprise, Trade and Employment to the Competition Authority and this will occur when the necessary legislation has been passed by the national parliament. Following this decision, the Authority was invited to sit, jointly with the Department of Enterprise, Trade and Employment on the EU Advisory Committee on Mergers from October 2000.

Statistics on Concentrations

30. Concentrations notified to the Minister for Enterprise, Trade and Employment under the Mergers and Take-overs (Control) Act, 1978, as amended, in 1998 and 1999 were:-

	1999	2000
Carried forward	12	20
Notified in year	273	341
Outside Act	167	231
Did not proceed / Withdrawn	6	5
Allowed	100	105
Prohibited	-	-
Referred to the Competition Authority	2	1 (case withdrawn)
Carried forward to next year	18	21

IV. Resources of the Competition Authority

31. The staff of the Authority as at 31 December, 2000 consisted of five Members, two legal advisors, two solicitors (and one vacancy), two Senior Economists, five economists and nine support staff (and three vacancies) bringing the total employed in the Authority to 25. This compared with a total of 18 persons employed with the Authority at the end of 1999.

32. The Authority's annual report for 1999 reported that a number of staff resignations had caused the Authority some difficulties. Unfortunately, this trend continued well into 2000 to such an extent that the Authority was unable to fulfil its statutory duties satisfactorily. To a large extent, the Authority was a victim of its own success in attracting talented individuals and training them to a high standard, making them very attractive to other bodies in both public and private sectors. This is a problem that the Authority shares with many parts of the Civil Service. However, the use of short-term contracts, lack of flexibility in remuneration and the absence of a clearly defined career structure for specialist staff undoubtedly increased the challenge to the Authority in retaining valuable skilled individuals.

33. The level of resignations in such a short period of time had a serious impact on the level of service that the Authority could provide. In the course of those difficulties, the then Director of Competition Enforcement requested the Minister to relieve him of the duties particular to the post on the grounds that he was unable to carry them out due to lack of staff and resources. Around the same time, the

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Authority was forced to postpone investigations of new complaints of anti-competitive practices due to the lack of available resources.

34. Following the appointment of a new Chairman of the Authority, the Minister announced an increase in the staff resources of the Authority from twenty four to twenty nine while the Authority secured agreement that recruitment to the Authority for specialist staff would be on the basis of permanent positions. New promotional structures were put in place so as to offer a proper career structure in the Authority and recruitment to fill existing vacant positions as well as the new positions was expedited. By the end of the year the Authority had filled twenty-five of its twenty-nine positions and set about an intensive training programme of its new staff so as to position itself to carry out all of its statutory functions with renewed vigour.

35. Of the twenty-five staff with the Authority on December 31st, seventeen joined during 2000. The substantial benefits and increased output that would be possible with such a large increase of enthusiastic new staff during 2000 will undoubtedly be constrained by the enormous scale of the loss of experienced staff during 1999 and 2000. While some staff turnover is inevitable, and it may be desirable to have a “revolving-door” policy, the magnitude of turnover in 1999/2000 was both regrettable and excessive and would be unsustainable in the long term.

36. The Authority’s financial allocation for 2000 was £1,219,000 of which £917,000 was allocated in respect of pay, overtime, allowances and employers’ PRSI while the remaining £302,000 was allocated to non-pay items such as building maintenance, heating/lighting, office and computer equipment and supplies, travel expenses, post and telephone charges, advertising costs, training etc.

37. By the end of 2000 the Authority had used a total of £1,038,000 (or 85%) of its budget allocation - £637,000 of its pay allocation and £401,000 of its non-pay allocation resulting in a total saving of £181,000. This saving arose mainly from the non-filling of staff vacancies during the year. The overspend on non-pay, which arose primarily from once-off expenditure on the retention of outside legal advice and the cost of an organisational study, was accommodated by savings made in respect of unused pay allocation.

V. References to new reports and studies on competition policy issues

38. The Final Report of the Competition and Merger Review Group (CMRG) was published by the Minister in April 2000 and contained forty recommendations, the majority of which would impact on the Competition Authority. Among its recommendations were that:-

- the Authority should have the power to apply EU competition law in Ireland,
- the Authority should be an independent body,
- mergers currently notified to the Department of Enterprise, Trade and Employment should in future be notified to the Authority,
- the Authority would have the power to hold elective hearings in criminal cases and impose fines, and
- the Authority should have additional resources to undertake its tasks.

39. In October 2000 the Government approved proposals to draft new consolidated competition legislation that would implement many of the recommendations made in the CMRG report. At year’s end the legislation was in the early stages of preparation by the Department of Enterprise, Trade and Employment.

40. The Authority published two new discussion papers during 2000. In February 2000, the Authority published as a discussion paper its response to the Competition and Merger Review Group (CMRG) Report on the 1987 Groceries Order. While the overall recommendation of the CMRG Report was that the Groceries Order should be repealed, arguments were also put forward in favour of its retention. The Authority's discussion paper addressed these arguments and considered why the Groceries Order should be repealed. It concluded that the Groceries Order was in conflict with competition law in that it placed sectoral interests above those of consumers and protected competitors rather than the competitive process.

41. In October 2000 the Authority published a paper entitled "*Market Definition and Market Power in Competition Analysis: Some Practical Issues*". The paper described the different approaches that have been used by the courts to define markets in the US, EU and Ireland. It explored the different techniques for defining a market and argued that developments in the literature have rendered some of these techniques inappropriate for the purposes of competition analysis. Both of these papers are available on the Authority's web site at <http://www.tca.ie>.