



EU, COMPETITION AND REGULATED MARKETS

Competition and Consumer Protection Commission's Annual Report for 2016

by **Marco Hickey**

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The Competition and Consumer Protection Commission (CCPC) recently published its 2016 annual report, which is a useful overview of the CCPC's activities in its second full year of operation.

The CCPC is an independent statutory body with a dual mandate to enforce competition and consumer protection law in Ireland. It was established on 31 October 2014 after the amalgamation of the National Consumer Agency and the Competition Authority.

Merger Control

Merger control played a significant role in the CCPC's work during 2016.

- Sixty-seven merger notifications were made to the CCPC - down from the record-high of seventy-eight notified in 2015.
- The CCPC made seventy merger determinations during 2016, including on some notifications made in late 2015, with one of those 70 determinations being a Phase 2 determination (all the others were Phase 1 determinations).
- Some sixty-five transactions were cleared within thirty working days of the notification, with four being dealt with in an extended Phase 1 investigation: *Paddy Power/Betfair*, *Unipharm/Murray Medical*, *Bons Secours/Barringtons Hospital* and *INM/CML*; and one other case (*PandaGreen/Greenstar*) was a full Phase 2 case.
- The shortest Phase 1 case was dealt with in twelve working days.
- Phase 1 Determinations took on average twenty-six working days.
- Five media mergers were notified: *INM/Greer Publications*; *News Corp UK & Ireland/Wireless Group*; *Liberty Global/UTV Ireland*; *INM/CMNL* and *BBC & ITV – Britbox Joint Venture*.
- Two mergers were approved subject to commitments by the parties: *Bons Secours/Barringtons Hospital* and *PandaGreen/Greenstar*.
- One transaction notified, a joint venture between Marino Point Port Company and Port of Cork, was withdrawn by the parties before a final determination was issued. The CCPC's competitive assessment had been completed on the proposed transaction and therefore the parties forfeited the filing fees.

Cartels

Investigations in relation to cartels in 2016 included the following:

- An alleged bid rigging case in the flooring sector which was due to come to trial in 2017 (and has done so resulting in convictions).
- An investigation into potential bid rigging in the procurement of publicly funded transport services in the south and east of Ireland, which included an impressive number of searches -- twenty locations in July 2016 -- and the case is ongoing.

Motor Insurance

In 2016, the CCPC looked into the concerns expressed by consumers, media and the Government in relation to the motor insurance market. It had received 1,204 consumer contacts in relation to the motor insurance market generally. In September 2016, it addressed the Oireachtas Committee on Finance, Public Expenditure and Reform and An Taoiseach on this issue. This followed the opening of an investigation into potential anti-competitive price signalling in the market.

Cement

There is an ongoing investigation into alleged anti-competitive practices in the bagged cement sector. A search conducted at the premises of Irish Cement, a subsidiary of CRH, in May 2015 was subject to High Court action to prevent the CCPC from examining certain emails that were seized. It was argued by CRH that these emails were unrelated to the business of Irish Cement and therefore the CCPC was not entitled to seize them. On 5 April 2016, the High Court upheld the claim and ruled against the CCPC; then in May 2016, the CCPC appealed to the Supreme Court, and on 29 May 2017, the Supreme Court dismissed the appeal.

The Irish Property Owners' Association (IPOA)

The CCPC investigated the activities of the IPOA, an association of private rental accommodation landlords. Following a change in Government policy on rented accommodation, the IPOA issued a press release stating that property owners were considering a range of potential measures including the introduction of a number of new charges to tenants and the withdrawal from certain State-sponsored rental schemes. The IPOA agreed to withdraw the press release, reminded members of the need for independent action (i.e., not collective action) and to introduce a compliance programme.

Increased Powers for the CCPC

The CCPC has reiterated its appeal to be granted the powers impose sanctions by itself, i.e. without the need for court proceedings. The CCPC argues, as the Competition Authority did for many years, that it should have the option and ability to impose "administrative fines" and to not have to rely on the established route of the CCPC instituting civil proceedings or the Director of Public Prosecutions instituting criminal prosecutions in the courts.

Priorities for 2017

The report highlights that a "key priority for 2017 is to take enforcement action against firms engaging in information sharing and anti-competitive agreements." It also identifies bid-rigging, the need to prepare for the implications of Brexit and the need to keep Ireland attractive to foreign direct investment as ongoing challenges to address.

Consumer Protection

In the area of consumer protection, issues in telecommunications, motor vehicles/personal transport and clothing/footwear/accessories are targeted as being the top three concerns in terms of consumer contacts with the CCPC.

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