

The Handbook of Competition Economics

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Overview

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Ireland was among the first countries to introduce criminal sanctions against hard-core cartel offences and one of the first EU member states to adopt the economics-based substantial lessening of competition (SLC) test of merger control. The competition landscape is provided for by the Competition Act 2002 and discharged principally by the Competition Authority and the higher courts. The use of professional economists has grown rapidly and there is a strong 'infrastructure' of specialist legal-economic services in respect of horizontal and vertical agreements, dominance, merger control, market studies, compliance programmes and other aspects of competition work.

Competitiveness agenda

Undoubtedly the most important and far-reaching event in the past year has been the arrival of the 'Troika' and the commencement of the National Recovery Plan – a comprehensive package of austerity measures involving the Irish authorities working under a detailed rescue strategy drawn up in agreement with the European Commission, the European Central Bank and the International Monetary Fund.

As well as setting out action plans with timetables to deal with the crises in the banking sector and the public finances, a central pillar of the National Recovery Plan is competitiveness, necessitating a key role for competition reform. The plan specifically mentions the legal, medical and pharmacy professions, and also provides for enhancing competition in open markets and encouraging growth in the retail sector.

Development of the Competition Authority

Notwithstanding the positive developments in the Irish competition environment over the last decade, the Competition Authority has faced opposition on a number of fronts, which is not surprising in a small country with well-organised vested interests. Until the arrival of the Troika, it was felt that competition policy had only muted support from the previous government: with a staff complement of almost 60 people, the actual

number of staff at the Authority currently stands at less than 40 and has little growth potential owing to the embargo on public sector recruitment, one of the manifestations of the severity of the austerity measures taken in response to the economic crisis.

However, with the Troika in town and a new government showing commitment to the competitiveness agenda, there is a sense that competition is coming to the fore of the policy agenda again and the minister for enterprise, who has a postgraduate degree in economics, is currently in the process of bringing the senior management of the Authority up to complement.

There is no doubt that the new head of the Authority will face a significant challenge in rebuilding the organisation and in managing the proposed merger with the National Consumer Agency, which makes sense in principle because it will bring together the demand- and supply-sides of market reform. Perhaps the biggest challenge will be advocating the message of competition in the midst of the most turbulent economic conditions in living memory.

Noteworthy recent developments

Merger notifications were up in 2010 on the previous year by more than one-third and a positive trend continues in 2011, which is interesting as a potential indicator of economic recovery because merger notifications tend to be regarded as a 'leading' indicator of economic performance, heralding possibly better times ahead.

In October 2010, the Centre for European Law and Economics published the findings of a survey showing that the Competition Authority, along with the Netherlands Competition Authority, was ranked first in the EU for institutional efficiency of its merger review system. With reduced staff numbers, the Irish Authority is performing admirably in discharging its merger control function; but this means diverting resources away from other functions, which could prove challenging if the number of merger notifications continues to grow.

The Authority has been publicly consulting on

its Guidelines for Merger Analysis and on its Cartel Immunity Programme. The latter is an important tool in the investigation and prosecution of cartels in Ireland, which continues to be top priority for the Authority. To date, 33 criminal convictions have been handed down to 18 undertakings and 15 individuals, with total fines of more than €600,000, and suspended prison sentences ranging from three to 12 months. The Merger Guidelines date back to 2002 and the Authority is also consulting with practitioners on a new Strategy Statement for 2012-14.

The Competition Authority's long-running case against the Beef Industry Development Society concluded in 2011. The message here is that any plan to restructure an industry by agreement between competitors is likely to restrict competition and therefore breach national and European competition law.

The coming years will be very exciting for practitioners – not least specialist economists – as the Irish competition environment continues its evolution.

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Established in 2010, PMCA Economic Consulting is the most rapidly growing practice of professional economists specialising in competition in Ireland. The firm is active in merger review, dominance cases, horizontal and vertical agreements, cartels, state aids, market studies, intellectual property and competition compliance programmes for organisations.

A large range of clients is served by PMCA in the public and private sectors in Ireland, the UK and internationally. PMCA prides itself on the professionalism and integrity of its work, which is based on appropriate economic principles and relevant facts put together in a compelling and competitive way for clients. PMCA also has links with the world's very best academic economists specialising in competition work.

PMCA was founded by Dr Pat McCloughan, a leading consultant economist with twenty years of professional experience. Before establishing PMCA in 2010, he had worked with another economic consultancy in Ireland and the UK since 2001. Between 1993 and 2001, he was based at the University of Liverpool, where he was a lecturer in Economics and, from 1998, was also director of undergraduate studies in the University's School of Management. During 1991-1993, he was a lecturer in Economics at the University of East Anglia (UEA), where he gained his PhD in 1993. His doctoral supervisors at UEA were Professors Stephen Davies and Bruce Lyons, two of Europe's leading academic economists researching in competition. Dr McCloughan's doctoral examiners included the late Professor Paul Geroski, former Professor of Economics at the London Business School and chairman of the Competition Commission in London.

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Questions and answers

How many economists do you employ?

Seventeen of 39 staff are economists.

Do you have a separate economics unit, or 'bureau'?

The Competition Authority does not have a separate economics unit. All divisions comprise multidisciplinary teams.

Do you have a chief economist (please give name and qualifications)?

The Competition Authority does not have a chief economist.

To whom does the chief economist report?

Not applicable.

Does the chief economist have the power to hire his or her own staff?

Not applicable.

How many of your economists have a PhD in Industrial Economics?

Four.

Does the agency include a specialist economist on every case team?

Case teams are typically multidisciplinary and will therefore include an economist. Almost every case team includes a specialist economist. The exceptions arise in cartels, which in Ireland are prosecuted at a criminal level – economic evidence is rarely produced in criminal trials and typically only at the stage when fines are considered.

Is the economics unit a ‘second pair of eyes’ during cases – is it one of the agency’s checks and balances?

The Competition Authority does not have a

separate economics unit. The Competition Authority has other cross-divisional mechanisms in place to ensure a ‘second pair of eyes’ – as well, of course, as the function of the Competition Authority’s board in that regard.

How much economics work is outsourced? What type of work is outsourced?

Economics work has been outsourced on various occasions, for example on some sector studies and specific mergers. However, the majority of economics work is done by the economists on the staff of the Competition Authority.

Organisation chart

