COMPETITION ENFORCEMENT AGENCIES

HANDBOOK 2019

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Competition Enforcement Agencies Handbook 2019

A Global Competition Review Special Report

This article was first published in May 2019

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Competition Enforcement Agencies Handbook 2019

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ISBN: 978-1-83862-222-0

Printed and distributed by Encompass Print Solutions
Tel: 0844 248 0112

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CONTENTS

Global Competition Review's 2019 edition of the *Competition Enforcement Agencies Handbook* provides full contact details for competition agencies in over 100 jurisdictions, together with charts showing their structure and a Q&A explaining their funding and powers. The information has been provided by the agencies themselves and by a panel of specialist local contributors.

The *Competition Enforcement Agencies Handbook* is part of the *Global Competition Review* subscription service, which also includes online community and case news, enforcer interviews and rankings, bar surveys, data tools and more.

We would like to thank all those who have worked on the research and production of this publication: the enforcement agencies and our external contributors.

The information listed is correct as of April 2019.

Global Competition Review
London
April 2019

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Brian McHugh
Member of the Commission

Patrick Kenny
Member of the Commission

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Member of the Commission

Questions and answers

How long is the head of agency's term of office?
Five years.

When is he or she due for reappointment?
October 2021.

Which posts within the organisation are political appointments?
None.

What is the agency's annual budget?
The Competition and Consumer Protection Commission's (CCPC) budget allocation in 2019 is €12.5 million. The CCPC's budget allocation in 2018 was €12.2 million.

How many staff are employed by the agency?
At the end of 2018, there were 102 staff employed at the CCPC.

To whom does the head of the agency report?
The independence of the CCPC is guaranteed by statute. The chairperson is accountable to the Public Accounts Committee in respect of the CCPC's use of public money and must appear before other parliamentary committees where invited. The CCPC also has an oversight & performance delivery agreement (OPDA) with the Department of Business, Enterprise and Innovation. The OPDA sets out how the CCPC's functions are performed and the metrics that are used to assess this performance.

Do any industry-specific regulators have competition powers?
Yes.

If so, how do these relate to your agency's role?
Section 19 of the Competition and Consumer Protection Act 2014 allows the CCPC to enter into agreements with certain prescribed bodies to cooperate in performing their respective functions relating to:

- consumer protection and welfare issues; or
- competition issues between undertakings.

This allows for cooperation, avoids duplication and ensures consistency between the CCPC and other

statutory bodies. The CCPC has cooperation agreements with the:

- Commission for Communications Regulation;
- Central Bank of Ireland;
- Commission for Energy Regulation;
- Broadcasting Authority of Ireland;
- Commission for Aviation Regulation;
- Health Insurance Authority; and
- National Transport Authority.

May politicians overrule or disregard authority's decisions? If they have ever exercised this right, describe the most recent example.

The Competition and Consumer Protection Act 2014 allows for the possibility that a media merger, which the CCPC has cleared on competition grounds, to be blocked by the Minister for Communications, Climate Action and Environment on grounds relating to the public interest in protecting media plurality. In one instance, the parties abandoned the merger during the period of the minister's review. This right has never been exercised.

Following the financial crisis and for purposes of ensuring financial stability in relation to financial institutions that received support from the state, section 54 of the Credit Institutions (Stabilisation) Act 2010 provides that parts 2 and 3 of the Competition Act 2002 and section 7 of the Act of 2008 will not apply with respect to:

- the issue of shares in a relevant institution to the minister or to a nominee of the minister under a direction order;
- the appointment of a special manager to a relevant institution;
- the acquisition or disposal of an asset, or all of the assets, of a relevant institution or a liability of that institution by a special manager or under a direction order; or
- a transfer under a transfer order.

Section 96 of the Central Bank and Credit Institutions (Resolution) Act 2011 provides that parts 2 and 3 of the Competition Act 2002 (as amended) will not apply to the appointment of a 'special manager' or to certain other actions undertaken in respect of relevant financial institutions pursuant to the 2010 Act.

Does the law allow non-competition aims to be considered when your agency takes decisions?

When exercising its competition law functions, the CCPC only makes decisions on competition grounds. However, in the context of the CCPC's broader work, such as market studies, the CCPC has a dual competition and consumer mandate that informs how the CCPC identifies and address issues in markets, as demonstrated in the CCPC's report into the domestic waste collection market.

Which body hears appeals against the agency's decisions? Is there any form of judicial review beyond that mentioned above? If so, which body conducts this? Has any competition decision by the agency been overturned?

The CCPC's functions under Irish competition law are primarily investigative. The CCPC does not currently have the power to make decisions in respect of breaches of Irish or EU competition law or adopt prohibition decisions or to make orders providing for remedies (procedural or structural) including interim relief. Instead, Irish competition legislation reserves such powers to the courts. Decisions of the courts are appealable to high courts. In criminal cases, the CCPC may institute summary prosecutions in the lower (district) courts, but for serious cartel cases, it refers completed files to the Director of Public Prosecutions (DPP), who has the sole responsibility in Ireland for prosecuting indictable offences. The DPP brings prosecutions under the Competition Act 2002 (as amended) before the Central Criminal Court, which is the criminal division of the High Court.

The CCPC's decisions on mergers may be appealed to the High Court. The only merger determination to be overturned by the High Court in Ireland occurred in 2009 and related to the acquisition of Breeo Foods Limited and Breeo Brands Limited by Rye Investments Limited, an indirect, wholly owned subsidiary of Kerry Group plc.

Has the authority ever blocked a proposed merger? If yes, please provide the most recent instances.

None since the establishment of the CCPC in October 2014.

Has the authority ever imposed conditions on a proposed merger? If yes, please provide the most recent instances.

Yes, in 2018, five transactions required formal commitments in order to obtain approval:

- M/18/009 – *BWG Foods/4 Aces*;
- M/18/031 – *Uniphar / SISK Healthcare*;
- M/18/042 – *Oaktree/Alanis/Lioncor (JV)*;
- M/18/016 – *Trinity Mirror/Northern & Shell* (Phase II determination); and
- M/18/036 – *Enva/Rilta* (Phase II determination).

Has the authority conducted a Phase II investigation in any of its merger filings? If yes, please provide the most recent instances.

Yes, in 2018, three mergers required a Phase II investigation:

- M/17/068 – *Irish Times/Sappho(Irish Examiner)*;
- M/18/016 – *Trinity Mirror/Northern & Shell*; and
- M/18/036 – *Enva/Rilta*.

Has the authority ever pursued a company based outside your jurisdiction for a cartel offence? If yes, please provide the most recent instances.

No.

Do you operate an immunity and leniency programme? Whom should potential applicants contact?

The CCPC operates a cartel immunity programme in conjunction with the Director of Public Prosecutions. Irish competition law does not permit the CCPC to operate a leniency programme.

What discounts are available to companies that cooperate with cartel investigations?

None.

Is there a criminal enforcement track? If so, who is responsible for it? Does the authority conduct criminal investigations and prosecutions for cartel activity? If not, is there another authority in the country that does?

Yes. Infringements of both domestic and European competition law in Ireland are treated as criminal offences under the Competition Act 2002. The CCPC investigates criminal breaches of the law and refers criminal cases to the Director of Public Prosecutions with the recommendation that the parties be prosecuted on indictment.

Are there any plans to reform the competition law?

Yes. The ECN+ Directive will have a significant impact on Irish competition law. This directive aims to ensure that national competition authorities have the appropriate tools to enforce EU competition law in a harmonised manner. At present Ireland is one of a very small number of European countries that will only allow for a company to be fined if a court finds that there has been a criminal breach of competition law. If an investigation does not reach a criminal standard, at present, the most the CCPC can achieve through the courts is to seek commitments from a business that they will cease the practice and obtain an injunction against them doing the same action again. However, financial sanctions cannot be imposed. Ireland is the only country in the EU that cannot introduce a leniency programme. The directive also requires leniency programmes in all member states.

When did the last review of the law occur?

The last review of competition law was completed in October 2014 when the Competition and Consumer Protection Act 2014, which amalgamated the Competition Authority and the National Consumer Agency, was enacted. The 2014 act largely brought together the existing legislation under which the two legacy organisations operated while also giving increased powers to the CCPC to investigate and enforce competition law breaches, including additional and increased enforcement powers in respect of serious competition offences, such as price-fixing, market sharing and bid-rigging.

Do you have a separate economics team? If so, please give details.

No.

Has the authority conducted a dawn raid?

Yes, the CCPC has undertaken a number of raids since its establishment. In 2018, one dawn raid was conducted.

Has the authority imposed penalties on officers or directors of companies for offences committed by the company? If yes, please provide the most recent instances.

The courts are responsible for imposing penalties for criminal breaches of the law. In 2018, the Court of Criminal Appeal increased a fine handed down to a former company director, from €7,500 to €45,000, for engaging in bid-rigging in the procurement of flooring contracts for major international companies between 2012 and 2013. This conviction followed the CCPC's investigation.

What are the pre-merger notification thresholds, if any, for the buyer and seller involved in a merger?

A merger or acquisition must be notified to the CCPC if, in the most recent financial year:

- the undertakings involved had a combined turnover in the Republic of Ireland of at least €60 million (increased from €50 million); or
- at least two undertakings involved had individual turnovers in the Republic of Ireland of at least €10 million (increased from €3 million).

Are there any restrictions on investments that involve less than a majority stake in the business?
Notification must be made if the parties reach the above thresholds. Parties are also required to notify the CCPC of any proposed media merger.

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ISBN 978-1-83862-222-0