



Guide to the Functions and Records of The Competition Authority

**Freedom of Information (Section 15 & Section 16)
Reference Guide**



The Competition Authority
An tÚdarás Iomáiochta

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SECTION 1: ACCESS TO INFORMATION

Introduction

The provisions of the Freedom of Information (FOI) Acts have applied to the Competition Authority ("the Authority") since 21st April 1998. The Acts establish three statutory rights:

- A right for each person to access information held by public bodies;
- A right for each person to have official information relating to himself/herself amended where it is incomplete, incorrect or misleading; and,
- A right to obtain reasons for decisions affecting oneself.

The Acts assert the right of members of the public to obtain access to official information to the greatest extent possible consistent with the public interest and the right to privacy of individuals.

The FOI Acts allow public access to information held by the Authority, which is NOT routinely available through other sources. Access to information under the FOI Acts is subject to certain exemptions and involves specific procedures and time limits.

This reference guide is compiled in accordance with the Freedom of Information Act 1997, as amended by the Freedom of Information Act 2003. All references in this manual to the Freedom of Information (FOI) Act or Acts refer to the 1997 Act as amended by the 2003 Act.

This guide has been prepared and published in accordance with the requirements of Sections 15 and 16 of the Acts. Its purpose is to facilitate access to official information held by the Competition Authority by outlining the Authority's structure and functions, the services it provides, the classes of records held and guidelines on how to make a request for information under the Freedom of Information Acts.

Section 15 - Freedom of Information Acts

Section 15 requires each public body to prepare and publish a manual setting out a general description of;

- Structure and organisation;
- Functions, powers, duties;
- Services it provides for the public and how these may be availed of;
- A general description of the rules and guidelines used in implementing its schemes and programmes (required to be published under section 16);
- Classes of records held and the arrangements for enabling the public to access such records;
- Names and designations of members of the staff of the body responsible for carrying out these arrangements (unless the publication

of this information could threaten the physical safety or well being of the person); and,

- Rights of review and appeal against the decisions of the body (including rights of review under these Acts).

Section 16 - Freedom of Information Acts

Section 16 of the Freedom of Information Acts, requires the Authority to publish a manual containing rules, procedures, practices, guidelines and interpretations used by the body and index of any precedents kept by the body which may be used in making decisions, determinations or recommendations under any enactment or scheme administered by the body, with respect to:

- Rights, privileges or benefits to which members of the public are or may be entitled;
- Obligations, penalties or other sanctions to which members of the public are or may be subject; and,
- Information in relation to the manner or intended manner of administration of any scheme.

Routinely Available Information

The Authority routinely makes information available to the public on its functions and activities. General information is available on the Authority's website, www.tca.ie, and is also contained in the Authority's Annual Reports and Strategy Statement.

This information will continue to be available free of charge from the Authority or on-line without the need to use the FOI Acts.

The FOI Acts allow public access to information held by the Authority which is not routinely available through other sources. Access to information under the Acts is subject to certain exemptions and involves specific procedures and time limits. This manual provides a guide to the structures of the Authority to help you access information under the FOI Acts.

How to Obtain Information under the FOI Acts

The following information/records come within the scope of the FOI Acts:

- Records containing personal data: You have a right to see all records containing personal information relating to yourself held by the Authority;
- Records containing personnel data: Personnel records are available to staff; and,
- Other records: Subject to a limited number of exceptions, all other records created in the Authority after 21 April 1998 are available on request. However, where records created after 21 April 1998 cannot be understood without access to records created before this date, then there is a right of access to the earlier records.

All applications under the FOI Acts should be addressed to:

Ciaran Quigley	Phone:	01 804 5408
Freedom of Information Officer	Fax:	01 804 5401
The Competition Authority	e-mail:	cq@tca.ie
Parnell House		
14, Parnell Square		
Dublin 1		

In order for a request for information/records to comply with the requirements of the FOI Acts and to enable the request to be dealt with as efficiently as possible:

- a) Your application should be in writing. (A sample application form is attached in Appendix A);
- b) Your application should also indicate that the information is sought under the Freedom of Information Acts;
- c) You should indicate if information is required in a particular form, e.g. photocopy, computer disk, etc.;
- d) You should give as much detail as possible to enable the Authority to identify the record(s). If you have difficulty in identifying the precise records you require we will be happy to assist you in preparing your request;
- e) You may be required to prove your identity, especially when requesting personal information so you may, therefore, be asked to produce your Passport, Driving Licence, Birth Certificate, etc.;
- f) You should include a daytime telephone number so that you can be contacted if it is necessary to clarify details of your request; and,
- g) You should pay the prescribed fee by cheque or bank draft made payable to The Competition Authority.

The Competition Authority is obliged to respond to your request within four weeks.

Rights of Review and Appeal

The FOI Acts set out a series of exemptions to protect sensitive information where its disclosure may damage key interests of the State or third parties. Where the Authority invokes these provisions to withhold information, the decision may be appealed. Decisions in relation to deferral of access, charges, forms of access, etc. may also be the subject of appeal.

Internal Review

You may seek an internal review within the Authority if:

- a) You are dissatisfied with the initial response i.e. refusal of information, form of access, charges etc.; or,
- b) You have not received a reply within four weeks of your initial application. This is deemed to be a refusal of your request and allows you to proceed to internal review.

Internal reviews will be carried out by an official of a higher grade to the official whose decision is being appealed.

Requests for internal review must be submitted within four weeks of the initial decision. The Authority must complete the review within three weeks and you will be notified in writing of the outcome. Internal reviews must normally be completed before an appeal is made to the Information Commissioner.

Requests for internal review should be submitted in writing to:

Ciaran Quigley
Freedom of Information Officer
The Competition Authority
Parnell House
14, Parnell Square
Dublin 1

Phone: 01 804 5408
Fax: 01 804 5401
e-mail: cq@tca.ie

Review by the Information Commissioner

Appeals in writing may be made directly to the Information Commissioner at the following address:

Office of the Information Commissioner
18 Lower Leeson Street
Dublin 2

Phone: 01 6395689
e-mail: info@oic.ie

Fees for Information Requests and for Reviews

Under the FOI (Amendment) Act 2003, charges now apply to certain FOI requests, applications for internal review and applications for review by the Information Commissioner. The following fees apply:

	Cost	Reduced Cost
Information Request	€15	€10
Internal Review	€75	€25
Review by the Information Commissioner	€150	€50

The Reduced Fee applies to medical card holders. There is no fee if your request refers to personal information. The position relating to the charging of fees for search and retrieval of records remains unchanged.

Search and retrieval costs

1. Section 47 of the FOI Acts provides that fees shall be charged as follows: In respect of personal records, fees shall be charged only in respect of the cost of copying the records actually released. Where a significant number of personal records are involved, the cost of search and retrieval of such records will be charged; and,
2. In respect of other (non-personal) information, fees shall be charged equal to the estimated cost of search, retrieval and photocopying of the records released. No charges may apply in respect of the time spent by public bodies in considering requests.

The level of fees is currently set as follows in accordance with Statutory Instrument No. 139 of 1998 as amended by No. 522 of 1998:

- €20.95 per hour - search and retrieval
- €0.04 per sheet for a photocopy
- €0.51 for a 3 and half-inch computer diskette
- €10.16 for a CD-ROM

A deposit may be payable where the total fee is likely to exceed €50.80. In these circumstances, the Authority will, if requested, assist the member of the public to amend the request so as to reduce or eliminate the amount of the deposit.

Waiver of search and retrieval costs

Fees may be waived in the following circumstances:

- Where the administrative and related costs involved in collecting a fee are likely to exceed the fee itself (i.e. up to €6.35 no fee should be charged);
- Where the information would be of particular assistance to the understanding of an issue of national importance; or,
- In the case of personal information, where such charges would not be reasonable having regard to the means of the requester.

SECTION 2: ORGANISATION AND STRUCTURE OF THE COMPETITION AUTHORITY

The Competition Act 2002

The Competition Act 2002 changed the status of the Authority from an office of the Department of Enterprise, Trade & Employment to an independent public body. The Competition Authority was originally established under the Competition Act 1991 and the Authority's role and functions were further developed under the Competition (Amendment) Act 1996. The 2002 Act considerably strengthened the Authority's powers and expanded its functions. Most parts of the Competition Act 2002 came into force on July 1st, 2002 with the merger function following on January 1st, 2003.

Mission Statement and High-Level Goals

The Authority's mission is to ensure that competition works well for consumers and the Irish economy; i.e. that markets can increase consumer welfare and consumer choice, through efficient pricing, innovation, and greater product quality and variety.

In order to implement its mission, the Authority will ensure that its actions reflect the following core professional values:

- 1 Diligence, intellectual rigour and achieving results;
- 2 Ethical standards and impartiality; and,
- 3 Openness, accountability and customer focus.

The Authority's high-level goals are to;

- Foster a culture of competition in Ireland by raising awareness and understanding of the benefits of competition, and of the Competition Authority's role, among policy makers, business and consumers.
- Enforce competition law against cartels, other anti-competitive agreements and abuses of dominance, giving the highest priority to those breaches which do the greatest harm to consumers.
- Implement the merger review regime efficiently, effectively and according to best international practice.
- Promote compliance with, and understanding of, competition law among businesses by helping them to know what competition law is and how to comply with it.
- Achieve increased competition where it is unnecessarily absent, limited or restricted, and protect competition where it already exists - by working with the Government and its Ministers, Government Departments and public authorities generally, and consumer and business representatives.

Structure and Staff of the Competition Authority

The Competition Authority is a collegiate body, which, under the Act, must have at least three and no more than five Members (including the Chairperson). The Minister for Enterprise, Trade & Innovation has

responsibility for appointing the Chairperson and Members of the Authority for a fixed term of up to 5 years.

In addition to the Chairperson and Members, the Authority is divided into six operational divisions staffed by people from a variety of backgrounds including law, economics, forensic investigation and public administration.

SECTION 3: THE COMPETITION AUTHORITY'S POWERS AND FUNCTIONS

The specific role and responsibilities of the Authority are set out in the Competition Act 2002. The operational functions of the Authority are outlined in some detail in the Authority's Strategy Statement 2009-2011 under the following headings:

- Enforcement
- Merger Review
- Competition Advocacy
- International Activities

Enforcement

The Competition Authority is responsible for enforcing sections 4 and 5 of the Competition Act, together with Articles 81 and 82 of the Treaty establishing the European Community ("the Treaty"). Articles 81 and 82 EC apply where anti-competitive practices may have an effect on trade between Member States of the European Union. Section 4 of the Competition Act and Article 81 EC each prohibit anti-competitive agreements. Such agreements may occur between firms that are competitors of each other or between firms that are not competitors, for example between distributors and retailers.

Section 5 of the Competition Act and Article 82 EC address anti-competitive behaviour by dominant firms, that is, firms with sufficient economic strength to inhibit competition in their respective markets. Sections 6 and 7 of the Competition Act provide that breaches of sections 4 and 5 of the Competition Act and Articles 81 and 82 EC may be prosecuted as criminal offences. However, breaches of section 5 of the Competition Act and Article 82 EC are typically seen as civil offences.

Anti-Competitive Agreements

A cartel is an illegal agreement between two or more competitors not to compete with each other. There are no pro-consumer benefits from cartels, and because they are blatantly anti-competitive, cartels are usually secret conspiracies. Cartels artificially raise prices, eliminate real consumer choice and deny consumers the benefits of innovation that would have arisen if a competitive market existed.

Most cartels fall into one or more categories of agreements or concerted practices:

- **Price fixing:** price fixing cartels aim to directly ensure that cartel members are able to charge higher prices for specific goods or services than they could if they competed with each other;
- **Market sharing:** market sharing cartels occur where cartel members agree among themselves to divide up the market or decide who should get a particular contract. Again, this enables cartel members to charge higher prices than if they competed;

- **Limiting production:** controlling the amount of goods or services provided is another way cartels can ensure that prices remain high; or
- **Bid rigging or collusive tendering:** occurs where competing undertakings agree on a strategy for how they will bid for a particular contract. For example, cartel members may agree to submit bids above a particular price or to arrange the bids so that one particular undertaking wins customers in a particular (economic or geographic) area. Cartel members may also agree with each other on the terms or conditions to be offered on a tender or agree to refrain from competing on a tender, or otherwise collude on competitive aspects of the tender process.

Price fixing, market sharing, limitations on sales and outputs, and bid rigging are considered “hardcore” offences, because they represent a fraud on the consumer (and the Exchequer), and carry the most stringent sanctions including fines, imprisonment and disqualification from acting as a company director. The Competition Authority may investigate an alleged cartel either on foot of a complaint received by it or on its own initiative. The Competition Authority usually seeks to have hardcore cartel cases dealt with in the criminal courts. Where sufficient evidence can be obtained, the Competition Authority will submit a file to the Director of Public Prosecutions with a recommendation that the parties involved be prosecuted. The Director of Public Prosecutions’ office is responsible for bringing prosecutions on indictment in the State. The Competition Authority itself may bring a summary prosecution in the District Court.

The Competition Authority also investigates non-hardcore offences such as non-hardcore *horizontal agreements* and *vertical agreements*. Non-hardcore horizontal agreements between competitors can include agreements on research and development, group purchasing and standard-setting. Such agreements may have been entered into for reasons other than the elimination of competition, but nonetheless may breach section 4 of the Competition Act because of the resulting anti-competitive effect. Vertical agreements are agreements between firms that are not competitors, but are linked through a distribution chain, such as those between manufacturers and distributors. Other examples include agreements between distributors and retailers, licensors and licensees and franchisors and franchisees. Most agreements of this sort benefit consumers and do not damage competition; those that are deemed to be in contravention of competition law are normally resolved by civil proceedings in the High Court.

Abuse of Dominance

Under section 5 of the Competition Act and Article 82 EC, it is prohibited for an undertaking, or a collectively dominant group of undertakings, to “abuse” a dominant position. Being dominant, or collectively dominant, is not in itself an offence. A dominant position essentially means a business can act independently of its competitors and consumers, that is, it is strong enough to operate without having to take account of the reaction of its competitors or consumers. A business may be dominant simply because it is performing the best, for example, by offering consumers high-quality products at lower prices than its competitors. In order for a breach of section 5 of the Competition Act or Article 82 EC to occur the business must be behaving in a manner that restricts or damages competition.

Behaviour that may be prohibited by section 5 of the Competition Act includes:

- Directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions;
- Limiting production, markets or technical development to the prejudice of consumers;
- Applying dissimilar conditions to equivalent transactions with other trading parties, thereby putting them at a competitive disadvantage; and
- Making the conclusion of contracts subject to the acceptance by other parties of supplementary obligations which by their nature or according to commercial usage have no connection with the subject of such contracts.

The dividing line between aggressive competition and abuse of a dominant position can often be blurred, and determining whether a dominant firm's conduct is pro or anti-competitive involves a weighing of specific facts and economic evidence. (By contrast, cartels do not involve any pro-consumer or pro-competitive benefits.). Breaches of section 5 of the Competition Act are usually brought before the civil courts, not the criminal courts, by the Competition Authority. Pursuant to section 14 of the Competition Act, it is possible that a firm found to have abused a dominant position would be subject to divestiture, requiring the sale of assets in order to break up the firm.

For further information consult the following documentation which is available on the Authority's website www.tca.ie:

Legislation	Competition Act 2002
Relevant Documentation	<ul style="list-style-type: none"> • Competition Authority, Strategy Statement 2009-2011 • Competition Authority, Notice in respect of Vertical Agreements and Concerted Practices (N/03/002 & N/03/002 amended) • Competition Authority, Notice in respect of Agreements between Suppliers and Resellers (N/02/002) • Competition Authority & the Director of Public Prosecutions, Cartel Immunity Programme • Notice in Respect of Collective Action in the Community Pharmacy Sector (N/09/001) • Notice on Activities of Trade Associations and Compliance with Competition Law (N/09/002)

Merger Review

The Authority is responsible, under Part 3 of the Competition Act, for reviewing certain mergers and acquisitions. Mergers are a mechanism used by businesses to restructure in order to compete and prosper. Mergers can be beneficial to consumers, businesses and the overall economy, while serving the interests of business through promoting efficiency and reducing unnecessary costs. However, some mergers could have adverse effects on competition, thereby harming consumers. Mergers require the use of structured economic analysis to determine whether they will lead to a substantial lessening of competition. Effective and timely merger review allows beneficial mergers that promote an efficient and dynamic economy, while prohibiting mergers that substantially lessen competition and harm consumers.

Proposed mergers over certain financial thresholds (which are outlined in section 18(1)(a) of the Competition Act) must be notified to the Competition Authority. Mergers below those financial thresholds may still give rise to anti-competitive effects that can be detrimental to consumer welfare, and so the Competition Act allows for such mergers to be notified voluntarily to the Authority. This permits the merging parties to gain legal certainty as otherwise, unless they were cleared, such mergers might run the risk of enforcement action under section 4 or 5 of the Competition Act.

Since the commencement of Part 3 of the Competition Act 2002, when reviewing proposed mergers the Authority employs the Substantial Lessening of Competition ("SLC") test. The SLC test is widely recognised as being at the forefront of international best practice for merger review.

After an initial investigation of the proposed merger (Phase 1) the Competition Authority may clear the merger or proceed to a full investigation (Phase 2). Phase 1 is generally a one month initial examination of the merger; the period for review may be longer if the Competition Authority requests further information or receives proposals from the parties to address concerns raised by the Authority.

The Authority may carry out a full investigation (Phase 2) where it is unable to determine after a preliminary examination that a merger will not lead to a "substantial lessening of competition". Phase 2 is an additional period during which a more detailed examination of the transaction is undertaken. After a full investigation of the proposed merger, the Competition Authority will determine whether the merger:

- May be put into effect;
- May be put into effect subject to conditions; or,
- May not be put into effect.

Media mergers are approached differently under the Competition Act. The Competition Act allows for the possibility that a media merger, cleared by the Competition Authority on competition grounds, can still be prohibited by the Minister for Enterprise, Trade and Innovation on specified public interest grounds, including plurality and diversity. In addition, certain media mergers must be notified to the Competition Authority, irrespective of the turnover of the businesses involved. Statutory Instrument No. 122 of 2007 requires the notification of:

- All mergers or acquisitions in which two or more of the undertakings involved carry on a "media business" in the State; and

- All mergers or acquisitions in which one or more of the undertakings involved carries on a “media business” in the State and one or more of the undertakings involved carries on a “media business” elsewhere.

Legislation	Competition Act 2002
Relevant Documentation	<ul style="list-style-type: none"> • Competition Authority, Strategy Statement 2009-2011 • Competition Authority, Notice in respect of the Review of Non-Notifiable Mergers and Acquisitions (N/03/001) • Competition Authority, Notice in respect of Guidelines for Merger Analysis (N/02/004) • Competition Authority, Notice in respect of Certain Terms used in Section 18(1) of the Competition Act, 2002 (N/02/003) • Competition Authority, Notice in respect of Agreements involving a Merger and/or a Sale of Business (N/02/001) • Notice in respect of certain terms used in Part 3 of the Competition Act, 2002 (amended) [N/02/003 as amended]

Competition Advocacy

In addition to its law enforcement and merger review functions, the Competition Authority has a number of functions coming under the general heading of competition advocacy, as outlined in section 30 of the Competition Act. This involves a duty to promote competition in the economy in a number of ways:

- Advising the Government, its Ministers and agencies, about the implications for competition of proposed legislation or regulation;
- Identifying and commenting on the effects on competition of existing laws or administrative practices;
- Studying and publicising how competition operates in the economy; and
- Advising and informing the general public, as well as public authorities, about competition issues.

Legislation	Competition Act 2002
Relevant Documentation	<ul style="list-style-type: none"> • Competition Authority, Strategy Statement 2009-

	<p>2011</p> <ul style="list-style-type: none"> • Guide to Competition Law and Policy for Businesses • Guide to Competition Law and Policy for Consumers • The Detection and Prevention of Collusive Tendering
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International Activities

There is an important international aspect to the work of the Competition Authority. The Authority's international role stems primarily from its role, alongside the European Commission and national competition authorities in other Member States, in enforcing Articles 81 and 82 EC. The competition provisions of the Treaty establishing the European Community, which prohibit anti-competitive agreements and abuses of dominance, correspond closely to sections 4 and 5 of the Competition Act. The European Competition Network, which is composed of the Commission and the national competition authorities of the various Member States, was established in 2004 to facilitate co-operation in the consistent application of Community competition rules through arrangements for information sharing, assistance and consultation.

The Authority also participates in international fora as a means of promoting best practice within the agency. International organisations such as the Organisation for Economic Cooperation and Development and the International Competition Network support the development of best practice in competition law and policy. The Authority is an active participant in each of these organisations.

Internal Support Services

The central administrative and support functions in the Authority include:

- Ensuring and monitoring compliance with our various statutory requirements as a corporate body and under the Government's Codes of Practice for Governance of State Bodies through the development of clear policies and procedures.
- Ensuring effective management and coordination of the Authority's business and strategic planning processes, so as to ensure that targets are met and that the strategic direction of the Authority's activities is consistent with its Strategy Statement.
- Ensuring the efficiency and effectiveness of the internal control systems by undertaking an internal audit programme in consultation with the Authority's Internal Audit Committee, thereby giving the necessary assurance to management on the systems of control.
- Delivering a financial management service that promotes and contributes to the effective use of the Competition Authority's financial resources through the delivery of economy, efficiency, value for money and promptness in expenditure.
- Managing the Competition Authority's human resources so as to maintain a skilled and motivated team dedicated to achieving the Competition Authority's Strategic Goals.

- Providing for our staff a safe and supportive working environment and equitable people management services.
- Providing opportunities for skills development through the formulation of an annual training plan based on the business needs of the Competition Authority and the individual personal development needs of staff.
- Providing a reliable, secure and effective Information and Communications Technologies (“ICT”) service and produce a new three year ICT plan that will define the technical direction and framework for developments in the Competition Authority’s infrastructure.
- Managing the provision of timely legal services within the Competition Authority so as to give clear and consistent legal advice to the Competition Authority and its staff, and in particular, to advise on statutes, legal requirements, and effective performance of legal processes and procedures.
- Maintaining effective and responsive lines of communication with the Minister for, and Department of, Enterprise, Trade and Employment so as to optimise the necessary two-way flow of information.

Legislation	Competition Act 2002
Relevant Documentation	<ul style="list-style-type: none"> • Competition Authority, Strategy Statement 2009-2011

Powers

Summary of Investigation & Enforcement Powers

Powers	Description
Types of Investigations carried out	Criminal investigations, Civil investigations, Assessment of Mergers, Formal Studies
Power of Entry and Search	Authorised officers can enter or search any premises or dwelling with a warrant issued by the District Court
Power to Seize Documents and Records	Authorised officers can seize documents/records on foot of a warrant issued by the District Court (Statutory limit of 6 months applies to the retention of records after seizure)
Power to Summon Witnesses	The Authority can summon a witness to give evidence under oath. Witnesses have the same immunities and privileges as a witness before the High Court.
Power to require production of records and information	The Authority has the power to require production of records and information. Non-compliance is a criminal offence.
Power to require information from third parties	The Authority can obtain information from third parties, including professional advisors and financial institutions
Potential routes to settlement	<ul style="list-style-type: none"> • Criminal prosecution (on indictment) – Brought by the DPP in Central Criminal Court (or the Circuit Criminal Court under the 1991 Act) following an investigation by the Authority • Criminal prosecution (summary) – Brought in the District Court by the Authority • Civil Action - Brought in the High Court by the Authority in order to halt suspected anti-competitive behaviour • Settlement without court action – Where the parties involved recognise and remedy potential breaches of competition law
Maximum level of Fines & Penalties	<ul style="list-style-type: none"> • Criminal (on indictment in the Central Criminal Court) - €4 million or 10% of turnover, whichever is the greater and / or up to five years in prison • Criminal (summary in the District Court) - €3,000 and or up to six months in prison • Civil Action (by The Competition Authority) – none • Civil Action (by injured parties) – Damages at the discretion of the court
Appeal on use of Powers	The use of these powers by the Authority can be challenged by way of judicial review in the High Court

Summary of Merger Procedures (Competition Act, 2002)

Merger Test: Substantially lessen competition
The test used to decide whether a merger should be allowed or not is whether it will " <i>substantially lessen competition</i> " in the markets affected by the merger. This is the test used in the UK, and a similar version was recently adopted by the European Commission. It allows for a focus purely on how competition and consumers are affected by the transaction.
Notification Thresholds
The thresholds for notification are derived from the company's turnover. Both companies must have yearly financial turnover of €40 million worldwide. Both of them must also carry on business in the island of Ireland, and at least one of them must generate €40 million turnover within the State. If these thresholds are triggered, then notification must be made.
Mergers below thresholds
Mergers that are below these thresholds may still give rise to anti-competitive effects which hurt consumers. The Act allows for such mergers to be notified voluntarily to the Authority, so as to gain legal certainty. This is partly because below-threshold mergers are still subject to enforcement action under Sections 4 and 5 of the Act, and the Authority has conducted investigations of such transactions.
Media Mergers
Mergers that are below threshold that involve a media business must be notified to the Authority – this is due to a Ministerial Order made on 1 st January, 2003. Here, the Act defines a media business quite widely, including any business that has interests in newspapers, radio, television, telecoms, etc. The Act also specifies that a media merger that has been allowed by the Authority can be prohibited by the Minister on public interest grounds.
Phase 1 investigation
Phase 1 is a one-month initial examination of the merger, which is generally sufficient for it to be cleared. Over 90% of mergers in 2003 were cleared in Phase 1.
Phase 2 investigation
Phase 2 is an extra three-month period to conduct a detailed examination of the transaction and the market.
Assessment
In Phase 2, if the Mergers Division has serious competition concerns, it may issue an Assessment of the transaction to the parties during the period. This sets out the Division's concerns, and allows the parties to respond to them. The Authority will make a decision on whether to allow or prohibit the merger at the end of Phase 2.
Clearance by Minister for Enterprise, Trade & Employment
In media mergers, if the Authority clears the merger, it is sent to the Minister for Enterprise, Trade and Employment, who has 30 days to decide if she wants to prohibit it on public interest grounds (set out in the Act) including issues such as diversity of ownership. If she does not do so, the merger can go ahead.
Appeal to the Courts
If a merger is prohibited, the parties have 60 days to decide if they wish to make a full appeal to the High Court on whether the transaction should be allowed. If they do, then the Court will decide on whether the decision of the Authority is justified.

SECTION 4: CLASSES OF RECORDS HELD

Reflecting the **role and functions** of the Authority the six separate divisions within the organisation hold different categories of records.

Advocacy Division

The Advocacy Division identifies public restrictions on competition, advocates reform of anti-competitive restrictions, and promotes pro-competition policy making, as set out in section 30 of the Competition Act, 2002. In addition, the Division coordinates the national and international representation function of the Authority and manages public relations for the organisation.

Public restrictions on competition may arise from laws, regulations or administrative practice. The Authority seeks reform where the restriction is not justified by another policy aim which benefits consumers, such as environmental concerns, or it restricts competition far in excess of the level necessary to achieve the pro-consumer aim. The Advocacy Division regularly advises Government Departments on the effects on competition of legislation being proposed or under review and makes recommendations to Government, its Departments and Agencies, on anti-competitive restrictions identified in the course of an Authority study or a complaint received by the Authority.

The Authority also promotes the case for competition generally, through speeches, presentations and representation.

Division	Categories of Records Held
Advocacy	<ul style="list-style-type: none">• Advice to Government• Formal Studies• General Correspondence• Position Papers• Public Notices• Submissions

Cartels Division

The Cartels Division investigates and prosecutes hard-core cartels such as those involved in price fixing, bid rigging and market allocation among competitors. Where it obtains evidence of a cartel, the Authority will submit a file to the Director of Public Prosecutions (DPP) with a recommendation that the parties involved be prosecuted. In other cases the Authority may itself bring a summary prosecution in the District Court. From time to time the Cartels Division may also settle cases without recourse to court proceedings where the offending parties recognise and remedy their anti-competitive behaviour.

Division	Categories of Records Held
Cartel enforcement	<ul style="list-style-type: none"> • Complaint files • Court Cases • General Correspondence • Legal Advice • Public Notices

Corporate Services Division

The Corporate Services Division provides internal support for the enforcement, mergers and advocacy work of the Authority as a whole. This support includes administration & IT services, finance, recruitment, human resources, and general resource management.

Division	Categories of Records Held
Corporate Services	<ul style="list-style-type: none"> • Administration • External Representation • Financial Accounts • Freedom of Information • General Correspondence • Information Technology • Personnel Files • Recruitment Files

Strategy Division

The Strategy Division coordinates the planning, development and implementation of strategy within the Authority. It evaluates the effectiveness of the work of the Authority on an ongoing basis identifying areas and means for improvement. The Strategy Division is also responsible for the Authority's communications function; the aim of which is to raise awareness of the benefits of competition and influence positive portrayal of competition policy and the Authority to key stakeholders.

Division	Categories of Records Held
Strategy	<ul style="list-style-type: none"> • General Correspondence • Public Notices • Third party submissions

Mergers Division

The main role of the Mergers Division is to perform the statutory task of analysing and giving decisions on notified mergers within the specified time-period. The Division also analyses below-threshold mergers using Sections 4 and 5 of the Competition Act. Finally, it represents Ireland at European Commission meetings on merger cases and merger policy.

Division	Categories of Records Held
Mergers	<ul style="list-style-type: none">• General Correspondence• Legal Advice• Merger Determinations• Merger Notifications• Public Notices

Monopolies Division

The Monopolies Division mainly investigates allegations that individuals or companies have abused a dominant position in various sectors of the economy. Abusing a dominant position is illegal under Section 5 of the Competition Act, 2002, however holding a dominant position does not break the law. For an offence to occur, an individual or company must abuse that position. The Monopolies Division is also responsible for investigating non-cartel agreements which may be anti-competitive.

Where the Authority forms the view that there has been a breach of the Act it can initiate legal proceedings in order to compel the parties to stop what is considered to be illegal activity. Such proceedings are generally civil (through the High Court), although criminal proceedings may be appropriate depending on the circumstances of each case. Frequently a solution acceptable to the Authority is reached after extensive negotiations with the parties. In addition, the Authority may also settle cases without recourse to the courts where the offending parties recognise and remedy their anti-competitive behaviour.

Division	Categories of Records Held
Monopoly enforcement	<ul style="list-style-type: none">• Complaint files• Court Cases• General Correspondence• Legal Advice• Pre-2002 Notifications• Public Notices

APPENDIX A: SAMPLE FOI APPLICATION FORM

(Section 7- Request for Access to Records held by The Competition Authority)

Please use BLOCK letters

Details of Applicant

Surname: _____

First Name: _____

Postal Address: _____

E-Mail Address: _____

Telephone Number(s):

Home: _____ **Business:** _____

For Office Use Only

Date FOI Request Received: _____

Identity Verified Consent Confirmed

Form of identity produced: Birth Certificate

Driving Licence Passport

Other: _____

Personal Information

Before you are given access to personal information relating to yourself, you may be asked to produce your Birth Certificate, Driving Licence, Passport or other form of identity.

Form of Access

My preferred form of access is: *(please tick as appropriate)*

to receive copies of the records by post

other – (please specify) _____

P.T.O.

Details of Request

In accordance with section 7 of the FOI Acts, I request access to records, which are:

(Please tick as appropriate) Personal Non-personal

(In the space provided **please describe the records as fully as you can**, as this will assist The Competition Authority's FOI personnel in dealing with your application. If you are requesting personal information, please state precisely in whose name those records are held. You will not normally be given access to the personal information of another person unless you have obtained the written consent of that person. **If you require more space to complete your description of records please attach a page.**)

I request the following records: _____

PLEASE SIGN HERE: _____

DATE: _____

Your application should be addressed to:

Ciaran Quigley
Freedom of Information Officer
The Competition Authority
Parnell House
14 Parnell Square
Dublin 1

Phone: 01 804 5408
Fax: 01 804 5401
e-mail: cq@tca.ie

If you require any assistance in completing this form please contact The Competition Authority at the address above. The FOI Executive is also available to provide assistance to persons with a disability to exercise their rights under the FOI Acts (e.g. accepting oral requests from requesters who are unable to read, print and/or write due to their disability, enabling the requester to inspect or have records explained to him or her).