



Competition Authority wins beef industry case

The Competition Authority has won its case against the Beef Industry Development Society (BIDS). The case, which started in 2003, involved an agreement by members of BIDS to leave the beef processing industry in return for payment. The Authority took the view that the agreement was anti-competitive.

Following a ruling by the Court of Justice of the European Union that an agreement of this kind is illegal, the Supreme Court held that the BIDS agreement had infringed Article 101(1) of the Treaty on the Functioning of the European Union. The Supreme Court remitted the case to the High Court to allow BIDS the opportunity to argue that the agreement should be allowed on efficiency grounds. Before the High Court had the opportunity to reach any decision on this issue, BIDS withdrew its claim and agreed to pay a substantial contribution to the Competition Authority's costs in the case.

Commenting on the outcome, Dr Stanley Wong, Member of the Competition Authority, said, *"The Competition Authority is extremely pleased to have our position vindicated. The BIDS case is a very important case for Irish and European competition law. It proves that a plan to restructure an industry by a group of competitors is likely to be found to be illegal."*

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NOTES TO THE EDITOR

The BIDS case was a civil action brought by the Competition Authority in 2003 alleging that the Beef Industry Development Society had infringed Article 101 of the Treaty on the Functioning of the European Union (TFEU) by the plans it adopted for rationalising the Irish beef industry. These plans involved the major players in the industry agreeing to pay those players who would voluntarily leave the industry. In return for that payment, the players leaving would agree to decommission their plants, refrain from using the associated lands for processing for a period of five years and sign a two-year non-compete clause with regard to processing anywhere in Ireland.

The case has gone through a number of stages since its initiation in 2003:

- In July 2006, the High Court held that the agreement had neither the object nor the effect of preventing, restricting or distorting competition and therefore did not breach Article 101 TFEU.
- The Competition Authority appealed this judgment to the Supreme Court.
- In March 2007, the Supreme Court made a reference to the European Court of Justice (ECJ) pursuant to Article 234 EC (now Article 267 TFEU), asking whether an agreement in the form of the BIDS scheme had the object, as distinct from the effect, of preventing, restricting or distorting competition contrary to Article 101(1) TFEU.
- On 20 November 2008, the ECJ found that an agreement such as the BIDS agreement had as its object the restriction of competition and thus is incompatible with Article 101(1) TFEU.
- On 3 November 2009, the Irish Supreme Court gave its judgment by which it held that the BIDS agreement had infringed Article 101(1) TFEU. The Supreme Court remitted the case to the High Court to decide whether the conditions of Article 101(3) TFEU are satisfied.

Agreements that infringe Article 101(1) TFEU are held to be illegal unless the parties to the agreement prove pursuant to Article 101(3) TFEU that the benefits of the agreement outweigh its anti-competitive effects (so-called 'efficiencies defence').

During the High Court proceedings in 2010, the Commission decided to intervene as *amicus curiae* in this case and submitted written observations pursuant to Council Regulation (EC) No 1/2003. Pursuant to Article 15(3) of Regulation 1/2003, the Commission may seek to intervene as *amicus curiae* and submit written observations to courts of the member states where the coherent application of Articles 101 or 102 TFEU requires doing so.

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