



November 2009



The Competition Authority
An tÚdarás Iomáiochta

Guide to Competition Law and Policy for Consumers

Contents

About the Competition Authority	02
Benefits of competition	03
Promoting competition	03
Mergers and acquisitions	04
Anti-competitive behaviour	05
Abuse of dominance	05
Cartels	06
The harm caused by cartels	06
Detecting cartels – warning signs	07
Investigating cartels and other anti-competitive behaviour	08
Penalties for breaches	08
Private actions	09
Stopping anti-competitive behaviour – how you can help	09
Gathering and preserving evidence	10
What will the Competition Authority do?	10
Confidentiality	11
Can the Competition Authority give advice or comment on investigations?	11
More information	12



About the Competition Authority

The Competition Authority's mission is *"to ensure that competition works well for consumers and the Irish economy."*

Consumers are at the core of the Competition Authority's mission statement, and we are striving to make sure that competition works for the benefit of all consumers who buy products and services in Ireland. Competition occurs where a firm seeks to win customers by offering better service, more choice and lower prices than other firms.

The Competition Authority is a legal body that is responsible for enforcing Irish and European competition law in Ireland. We have the power to step in if there is evidence that businesses are involved in anti-competitive practices, such as price-fixing cartels, or that businesses are abusing their dominant position. The Competition Authority can also block mergers between businesses that would substantially reduce competition and harm consumers.

This benefits everyone: consumers, businesses and the Irish economy as a whole. Competition keeps prices down and improves the choices consumers have and the quality of goods and services they get. This process supports economic growth.

The Competition Authority also has a wider duty to promote competition in the economy. We do this by calling for reform when Irish laws, regulations or actions restrict competition. We advise the Government on how proposed legislation or regulations could affect competition. This prevents future problems for consumers. In this way, the Competition Authority gives a voice for consumers in policy making. We also promote competition by telling public authorities and the public about competition issues.

The Competition Authority's investigations have meant that businesses and people have been successfully prosecuted for running illegal cartels. The Competition Authority has also studied various areas of the economy. As a result, there is now more competition in dental services, grocery selling and bus transport. We continue to campaign for reforms that would benefit consumers.

Benefits of competition

Promoting competition

Competition benefits everyone: consumers, businesses and the economy as a whole.

Competition has many benefits:

- It gives the consumer more choice.
- It makes sure the consumer gets value for money.
- It encourages businesses to create new and better products and services.
- It supports economic growth.

This is because competition encourages businesses to work harder to win customers. Consumers benefit as they have a choice of providers competing for their money by offering better prices and better quality. When consumers benefit from competition, the economy does too. For example, when electricity costs fall because of greater competition, the overall cost of doing business also falls. This makes Irish businesses more competitive, which supports long-term economic growth.

When there is a lack of competition, for example when there is a cartel or a monopoly, businesses do not compete for customers. In these cases, the consumer suffers because there are higher prices, less choice and lower quality.

Irish consumers have seen the benefits competition can bring. We know from our experience that consumers got more choice, better prices, improved service and more new goods and services when the airline industry, the taxi industry, intercity buses, radio licensing and the electricity sector were opened up to competition.

One of the Competition Authority's duties is to promote competition in the economy by:

- studying areas of the economy to look at levels of competition,
- identifying State laws or administrative practices that have a bad impact on competition,
- advising the Government, its ministers and agencies about how any proposed legislation or regulations affects competition,
- advising public authorities about competition issues, and
- telling the public about competition issues.

Competition can be restricted by State laws, regulations or administrative practice. This means that consumers do not get the benefits of competition.

If the Competition Authority finds that the State is restricting competition unnecessarily, we make recommendations for reform.

Examples of such restrictions on competition include:

- An industry or profession setting too many entry requirements, for example requiring people to obtain qualifications that are not necessary to do a job
- An industry or sector having a long-term legal right to a monopoly in producing a good or service, for example up until recently the Government gave the Electricity Supply Board exclusive licence to provide electricity
- A ban on advertising of prices.



Mergers and acquisitions

Because of the Competition Authority's recommendations:

- Supermarkets can compete for customers by offering cheaper prices.
- Dentists face competition from a new regulated profession of Clinical Dental Technicians.
- It is much easier to change your personal current account to another bank.

Mergers between businesses take place when companies combine to create a larger company. An acquisition is where one company buys another one outright. Mergers can be good or bad for consumers.

- Good mergers lead to a more efficient business that passes on some of those savings to its consumers.
- Bad mergers lead to a situation where one or more businesses have the power to raise their prices to consumers. They substantially reduce competition and consumers suffer.

The Competition Authority has to be told of any mergers that involve companies worth over a certain amount of money. We then have the power to block a merger if we find that it will substantially reduce competition and harm consumers.

The Competition Authority aims at all times to make sure that we review mergers in good time so that good mergers are not held up. At the same time, the Authority actively protects the interests of consumers.



Anti-competitive behaviour

Abuse of dominance

The Competition Authority has a particular role in preventing anti-competitive behaviour. This behaviour can be in many forms.

A cartel is a type of anti-competitive behaviour that is always harmful to consumers. It is an illegal agreement between two or more competitors not to compete with each other. Cartels usually involve a secret conspiracy among many businesses. Their aim is to make more profit at the expense of their customers. This means that consumers pay more for goods and services. This is a crime against the consumer. You can read more about cartels on pages 6 to 7.

Other agreements may breach competition law when they have anti-competitive effects. For example, agreements between manufacturers and the distributors of products, or between distributors and retailers, can sometimes be anti-competitive.

Anti-competitive behaviours deprive consumers of the benefits of competition:

- They reduce the choice consumers have.
- They cause consumers to pay more.
- They deprive consumers of new products and services.
- They undermine economic growth.

Businesses that hold a powerful position in relation to their competitors and their customers are not allowed to behave in certain ways that are anti-competitive. Holding a dominant position is not illegal in itself. But if a business exploits its dominant position to stifle competition, then it is anti-competitive. If a business tries to eliminate their competitors or stop new competitors emerging by abusing their dominant position, this can be a breach of competition law.

For example, if company A is the only actual or potential supplier of a particular item – say, copper wire – it would most likely be considered to have a dominant position in supplying that item. Say copper wire is an essential input when manufacturing another, secondary product: electric cable. Company A produces electric cable as well as copper wire. Other companies produce electric cable too and need company A's copper wire to do so. If company A refuses to supply the essential copper wire, this might be considered an abuse of its dominant market position.

In effect, if company A, as the dominant supplier of the essential input, refuses to supply its competitors, it leaves them unable to compete in supplying the secondary product. This would likely be an abuse of company A's dominance.

Cartels

Cartels are the most serious form of anti-competitive behaviour.

So going after cartels is the Competition Authority's top priority.

Cartels are illegal throughout the European Union and cartels are recognised as the most serious breach of competition law throughout the world.

In Ireland, cartels are hard-core breaches of competition law. Any businesses and people who are found guilty of hard-core cartel offences can face a number of penalties, including fines and prison sentences.

Going after cartels is the Competition Authority's top priority. However, investigating cartels is difficult and complex. This is partly because cartels usually involve a secret conspiracy among many separate businesses and people.

There are different types of cartels:

- Price fixing cartels agree the price they all charge for goods or services.
- Market sharing cartels agree on which locations or group of customers they each sell to.
- Limiting production cartels control the amount of goods or services they produce to make sure prices stay high.
- Bid rigging or 'collusive tendering' cartels agree how they will each tender or bid for a contract for goods or services to fix the outcome so that the business or public agency pays more for those goods or services.

Cartel agreements do not have to be in writing. Unwritten agreements or co-ordinated practices among competitors are also illegal.

The Competition Authority relies heavily on the information given by the people who discover cartels. Anyone with information should bring it to us. Of course, any information you give the Competition Authority is treated as strictly confidential. Please see the section 'confidentiality' on page 11 for more information.

The harm caused by cartels

"Cartels... cause a transfer of consumers' money to themselves

They are offensive and abhorrent... They are in every sense anti-social."

- Mr Justice William M. McKechnie, 23rd March 2009

Many Irish consumers and businesses have probably been the victims of a cartel without ever realising it.

A cartel that adds even a few cents to the price of a product can earn large profits from all consumers. The longer the cartel lasts, the bigger the harm to consumers.

Detecting cartels – warning signs

One of these warning signs does not necessarily mean there is a cartel. But you should be suspicious if you notice *many* of them. The fact that prices are the same, or change at the same time, is not enough to establish that there is a cartel.

Warning signs of price fixing:

- Signs that competitors are giving confidential or sensitive business information to each other.
- Any evidence that two or more sellers of a particular product have agreed to price or discount their products in a certain way.
- Price changes by a number of sellers of very similar products.
Has the range of prices on offer suddenly got smaller?
Have price discounts suddenly changed?
- Price changes that happen in a regular and similar way over time.
- The use of similar phrases or explanations when price changes are announced.

Warning signs of market sharing:

- Any evidence that two or more sellers of a product have agreed not to sell to each other's customers.
- If you are told by a business that it cannot sell to you because of an arrangement it has with a competitor.
- Use of phrases such as "that competitor should not have sold to you because it is not his territory".

Investigating cartels and other anti-competitive behaviour

Penalties for breaches

The Competition Authority goes after hard-core cartels by investigating cases and preparing files for the Director of Public Prosecutions (DPP) and recommending criminal prosecution.

For cases of anti-competitive behaviour that are not hard-core, the Competition Authority tries to stop the behaviour and harm to consumers. When a business or group of businesses refuses to stop its behaviour, the Competition Authority goes to the High Court.

In Ireland, only a court can decide that competition law has been broken. The Competition Authority does not itself give out any fines or other penalties for anti-competitive behaviour.

Businesses and people found guilty of hard-core cartel offences can get fines and/ or prison sentences.

- A business or person who is convicted on indictment before a judge and jury can get a fine of up to 10% of its turnover or €4 million, whichever is greater.
- A person found guilty of an offence may also be put in prison for up to five years.

Under Irish company law, a company director convicted of a criminal offence under competition law will be automatically disqualified from acting as a company director for five years.

The court can give out such severe penalties because cartel behaviour is a very serious crime.

Any person or business that helps the cartel can also be found guilty of a criminal offence. People have been successfully prosecuted and received suspended prison sentences for the crime of aiding and abetting a cartel.

Stopping anti-competitive behaviour – how you can help

Private actions

The Competition Authority cannot get back money for anyone who believes they have been overcharged because of a cartel. Anyone injured by anti-competitive behaviour may bring a private civil action, but not criminal, under Irish competition law.

If successful, the action may lead to an injunction (a court declaration against the behaviour) and the person or business bringing the claim may receive money, known as damages. It is possible that the injured person or business can get exemplary damages. This is compensation that is more than the actual damages and serves to deter other forms of anti-competitive behaviour.

The Competition Authority needs the help of consumers, businesses, employees and the public in uncovering cartels.

Members of the public, employees, individual businesses, trade organisations, public representatives, Government departments and public agencies should report any anti-competitive behaviour they suspect to the Competition Authority.

Please include as much information as possible.

You can report anti-competitive behaviour to the Competition Authority through:

- Complaint forms on our website: www.tca.ie
- Email: complaints@tca.ie
- Phone: 1890 220 224 (international: + 353 1 8045400)
- Fax: + 353 1 8045401
- Writing to: The Competition Authority, Parnell House, 14 Parnell Square, Dublin 1.

Gathering and preserving evidence

What will the Competition Authority do?

If there is a criminal prosecution, the people or businesses must be proved guilty “beyond reasonable doubt”. To help the Competition Authority in its investigation, it is very important that you gather and preserve all available evidence as soon as you suspect a cartel. Cartel arrangements are usually made secretly and can be difficult to detect. Watch out for the warning signs listed on page 7 of this booklet. Keep a note of what you observe.

Evidence can be in many forms, such as letters telling you of price changes, notes of telephone conversations and records of meetings.

You should keep any documents exactly as you got them and not make any extra notes or marks on them. You should carefully record and document everything, no matter how unimportant it may appear at the time. Even minor details may be crucial.

You should make notes at every stage. You should include details of conversations with representatives of the businesses allegedly involved, together with details of times, dates and the location where these conversations happened. You can never make too many notes.

Please also do these things if you suspect a business may be abusing a dominant position.

As a first step, the Competition Authority will check whether we can deal with the issue under competition law. When the issue is within our remit, we may be able to resolve it quickly without the need for legal action. We may need to investigate some issues in more detail to decide their importance. A few cases go all the way to court. We make every effort to complete investigations as quickly as possible.

The Competition Authority has a screening system to focus our resources on the larger cases while making sure that we deal with the rest quickly but fairly. In all matters, the Competition Authority’s focus is to protect the competitive process throughout the economy for the benefit of the public.



Can the Competition Authority give advice or comment on investigations?

Confidentiality

Our policy and obligations

Any information you give the Competition Authority is treated as confidential.

It is the Competition Authority's policy not to:

- talk about individual investigations,
- reveal who the person who has complained is during an investigation,
- give the names of organisations or people being investigated, or
- give information to the media.

However, the Competition Authority may have to disclose confidential information if required to do so by law. We may be required to disclose information to:

- apply and enforce competition law,
- prevent a crime from being committed, and/or
- inform legal proceedings (such as a court hearing anti-competitive behaviour).

Your responsibilities

The Competition Authority asks that you avoid talking about individual investigations or giving information to the media. In particular, you should not let the people or businesses suspected of being involved in anti-competitive activities know that you have made, or are going to make, a complaint to the Competition Authority. This will only warn a cartel or dominant business and could mean that evidence is removed or destroyed.

We cannot represent anyone in the same way that a solicitor does.

Neither do we:

- give legal advice - this is the role of the legal profession,
- comment publicly on whether or not we are investigating a particular alleged anti-competitive behaviour, or
- comment on the progress of any investigation.

More information

More information on the Competition Authority is available on our website: www.tca.ie

To contact us

- Email: info@tca.ie
- Phone: 1890 220 224 (international: + 353 1 8045400)
- Fax: + 353 1 8045401
- Write to: The Competition Authority, Parnell House, 14 Parnell Square, Dublin 1.

Disclaimer

This booklet does not give legal advice. Individuals should refer to the competition legislation and obtain independent legal advice when questions of law arise or if a particular situation causes concern.



