



**AN BILLE IOMAÍOCHTA (LEASÚ), 2011
COMPETITION (AMENDMENT) BILL 2011**

*Mar a tionscnaíodh
As initiated*

ARRANGEMENT OF SECTIONS

Section

1. Definition.
 2. Amendment of section 8 of Principal Act.
 3. Amendment of section 14 of Principal Act.
 4. Right of action of competent authority.
 5. *Res judicata*.
 6. Amendment of section 160 of Companies Act 1990.
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ACTS REFERRED TO

Companies Act 1990	1990, No. 33
Competition Act 2002	2002, No. 14
Competition Acts 2002 to 2010	
Probation of Offenders Act 1907	7 Edw. 7, c.17



**AN BILLE IOMAÍOCHTA (LEASÚ), 2011
COMPETITION (AMENDMENT) BILL 2011**

BILL

entitled

5 AN ACT TO AMEND THE COMPETITION ACT 2002; TO
AMEND THE COMPANIES ACT 1990; AND TO PROVIDE
FOR MATTERS CONNECTED THEREWITH.

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

1.—In this Act “Principal Act” means the Competition Act 2002. Definition.

10 2.—Section 8 of the Principal Act is amended— Amendment of
section 8 of
Principal Act.

(a) in paragraph (a) of subsection (1), by the substitution of
“class A fine” for “fine not exceeding €3,000”,

(b) in paragraph (b) of subsection (1), by—

15 (i) the substitution of “€5,000,000” for “€4,000,000” in
each place that it occurs, and

(ii) the substitution of “10 years” for “5 years”,

(c) in paragraph (a) of subsection (2), by the substitution of
“class A fine” for “fine not exceeding €3,000”,

20 (d) in paragraph (b) of subsection (2), by the substitution of
“€5,000,000” for “€4,000,000”,

(e) in paragraph (a) of subsection (3), by—

(i) the substitution of the following subparagraph for
subparagraph (i):

25 “(i) in paragraph (a), ‘class E fine’ were
substituted for ‘class A fine’ and refer-
ences to imprisonment were dis-
regarded, and”, and

(ii) the substitution of “€50,000” for “€40,000” in subpar-
agraph (ii)(I),

30 (f) in paragraph (b) of subsection (3), by—

(i) the substitution of the following subparagraph for subparagraph (i):

“(i) in paragraph (a), ‘class E fine’ were substituted for ‘class A fine’, and”,
and 5

(ii) the substitution of “€50,000” for “€40,000” in subparagraph (ii),

and

(g) the insertion of the following subsections:

“(11A) Section 1(1) of the Probation of Offenders Act 1907 shall not apply in relation to an offence under section 6 or 7. 10

(11B) Where a person is convicted of an offence under this Act the court shall order the person to pay to the relevant competent authority a sum equal to the costs and expenses, measured by the court, incurred by that competent authority in relation to the investigation, detection and prosecution of the offence, unless the court is satisfied that there are special and substantial reasons for not so doing. 15 20

(11C) Any sum paid to the competent authority pursuant to an order under subsection (11B) shall be disposed of by that competent authority in such manner as the Minister for Public Expenditure and Reform directs.”.

Amendment of section 14 of Principal Act.

3.—Section 14 of the Principal Act is amended by— 25

(a) the deletion of subsection (2),

(b) the deletion, in subsection (3), of “or (2)”,

(c) the substitution, in subsection (5), of “The following reliefs, or any of them, may be granted to the plaintiff in an action under subsection (1)” for “Without prejudice to subsection (7), the following reliefs, or any of them, may be granted to the plaintiff in an action under subsection (1)”, 30

(d) the deletion of subsection (6),

(e) the substitution of the following subsection for subsection (7)— 35

“(7) Without prejudice to subsection (5), where in an action under subsection (1) it is finally decided by the Court that an undertaking has, contrary to section 5, abused a dominant position, the Court may, by order, either— 40

(a) require the undertaking to discontinue the abuse, or

(b) require the undertaking to adopt such measures for the purpose of— 45

(i) its ceasing to be in a dominant position, or

(ii) securing an adjustment of that position,

as may be specified in the order (including measures consisting of the sale of assets of the undertaking) within such period as may be so specified.”,

(f) the deletion, in subsection (8), of “or (2)”, and

(g) the insertion of the following subsection:

“(10) In this section ‘injunction’ means—

(a) an interim injunction,

(b) an interlocutory injunction, or

(c) an injunction of indefinite duration.”.

4.—The Principal Act is amended by the insertion of the following new section:

Right of action of competent authority.

“14A.—(1) The competent authority shall, in respect of any agreement, decision, concerted practice or abuse that is prohibited under section 4 or 5, or by Article 101 or 102 of the Treaty on the Functioning of the European Union, have a right of action under this subsection for relief against either or both of the following:

(a) any undertaking which is or has at any material time been a party to such an agreement, decision or concerted practice or has done any act that constituted such an abuse;

(b) any director, manager or other officer of such an undertaking, or a person who purported to act in any such capacity, who authorised or consented to, as the case may be, the entry by the undertaking into, or the implementation by it, of the agreement or decision, the engaging by it in the concerted practice or the doing by it of the act that constituted the abuse.

(2) An action under subsection (1) may be brought in the Circuit Court or in the High Court.

(3) Relief by way of injunction or declaration may be granted to the competent authority in an action under subsection (1).

(4) Without prejudice to subsection (3), where in an action under subsection (1) it is finally decided by the Court that an undertaking has, contrary to section 5, or Article 102 of the Treaty on the Functioning of the European Union, abused a dominant position, the Court may, by order either—

(a) require the undertaking to discontinue the abuse, or

(b) require the undertaking to adopt such measures for the purpose of—

- (i) its ceasing to be in a dominant position, or
- (ii) securing an adjustment of that position,

as may be specified in the order (including measures consisting of the sale of assets of the undertaking) within such period as may be so specified.

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(5) Where in an action under subsection (1) it is proved that the act complained of was done by an undertaking it shall be presumed, until the contrary is proved, that each (if any) director of the undertaking and person employed by it whose duties included making decisions that, to a significant extent, could have affected the management of the undertaking, and any other person who purported to act in any such capacity at the material time, consented to the doing of the said act.

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(6) In this section ‘injunction’ means—

- (a) an interim injunction,
- (b) an interlocutory injunction, or
- (c) an injunction of indefinite duration.”.

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Res judicata.

5.—Where, in proceedings under Part 2 of the Principal Act, a court finds, as part of a final decision in relation to the matters to which those proceedings relate, that an undertaking contravened section 4 or 5, or Article 101 or 102 of the Treaty on the Functioning of the European Union, then, for the purposes of any subsequent proceedings (other than proceedings for an offence) under that Part, the finding shall be *res judicata* (whether or not the parties to the said subsequent proceedings are the same as the parties to the first-mentioned proceedings).

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Amendment of section 160 of Companies Act 1990.

6.—Section 160 of the Companies Act 1990 is amended by—

(a) the insertion, in subsection (2), of the following paragraph:

“(hh) a person has contravened section 4 or 5 of the Competition Act 2002 or Article 101 or 102 of the Treaty on the Functioning of the European Union; or”, and

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(b) the insertion of the following subsection:

“(6B) An application to which paragraph (hh) of subsection (2) applies may be made by the competent authority (within the meaning of the Competition Act 2002).”.

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Short title, commencement and collective citation.

7.—(1) This Act may be cited as the Competition (Amendment) Act 2011.

(2) This Act shall come into operation on such day or days as the Minister for Jobs, Enterprise and Innovation may appoint by order or orders either generally or with reference to any particular purpose

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or provision and different days may be so appointed for different purposes or provisions.

(3) The Competition Acts 2002 to 2010 and this Act may be cited together as the Competition Acts 2002 to 2011.