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Annual Report on Competition Policy Developments in Ireland

-- 2016 --

21-23 June 2017

This report is submitted by Ireland to the Competition Committee FOR INFORMATION at its forthcoming meeting to be held on 21-23 June 2017.

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Executive Summary

1. In 2016, the CCPC made important strides in achieving its strategic objectives; including opening up a number of significant investigations into potential anti-competitive practices and behaviours across a range of sectors. Since our establishment in October 2014, we have invested considerable time in developing the structures required to create a dynamic and effective enforcement organisation with a 360-degree market perspective. This investment has started to pay off. We also undertook a significant recruitment programme across all functions.

2. An ongoing priority for the CCPC is the detection of bid-rigging particularly in public procurement. The rate of overcharge related to detected cartels worldwide is estimated to be between 20-30%, meaning that if only 5% of procurement processes were subject to bid-rigging, the extra cost to the lrish state would be in the region of €100m per year. During 2016, the CCPC opened an investigation and conducted 20 searches into potential bid-rigging in the procurement of publicly funded transport services. To both detect and deter bid-rigging, the CCPC is currently exploring screening for procurement processes which would systematically search for indications that bid-rigging may have occurred.

3. An area of major concern for the CCPC is information sharing. It is a fundamental principle of competition law that competitors make decisions and act independently of each other in the market. The CCPC has been proactive within the Irish market in this context. In 2016, we opened an investigation into motor insurance companies allegedly openly signaling upcoming increases in motor insurance premiums in the State. This investigation is on-going. In August 2016, the CCPC also concluded an investigation into potential anti-competitive information sharing between private motor insurers via a software product provided by an intermediary software services provider, Relay Software Limited (Relay). Following engagement with the CCPC, Relay and Allianz Plc, AXA Insurance Limited, Zurich Insurance Plc, RSA Insurance Ireland Limited and Sertus Underwriting Limited entered into Agreements and Undertakings with the CCPC.

4. Staffing and enforcement go hand in hand and in 2016, the CCPC started a significant recruitment campaign with a particular focus on fortifying our enforcement Divisions. In total, 29 new employees with expertise in a variety of backgrounds - including economics, law, and investigation - joined us in 2016, which bolstered both our enforcement and support Divisions. This led to an increase in activity in the second half of last year and this continued into 2017.

1. Changes to Competition Laws and Policies, Proposed or Adopted

1.1. Summary of new legal provisions of competition law and related legislation

5. Under the Competition and Consumer Protection Act 2014, the CCPC was given responsibility for ensuring compliance with new regulations, which govern aspects of the contractual relationships between food and drink suppliers and retailers and wholesalers in the grocery sector. On 1 February 2016, when the Regulations were published, the CCPC began fulfilling this new role. No new powers or responsibilities in relation to competition law were received.

1.2. Other relevant measures, including new guidelines

6. There were no other relevant measures.

1.3. Government proposals for new legislation

7. There were no other Government proposals for new legislation. However, for a number of years, there has been pressure in Ireland to exempt certain categories of the self-employed, from competition law in order to allow them to avail of the collective bargaining rights available to employees. A legislative proposal from an opposition political party is currently progressing through the Oireachtas (Parliament) which proposes to exempt certain categories of self-employed persons from Section 4 of the Irish Competition Act, 2002, which is closely modelled on Article 101 TFEU. If passed, the Bill would give the individuals affected the right to engage in collective bargaining, fix prices, organise industrial action etc. and as such the CCPC opposes this Bill.

2. Enforcement of competition Laws and Policies

2.1. Action against anti-competitive practices, including agreements and abuses of dominant positions

2.1.1. Summary of Activities

8. One of the core functions of the CCPC is to enforce competition law and to take legal action when we believe that the law has been broken. Enforcement work can be divided into two categories:

9. The first relates to hardcore cartels. These are treated as criminal breaches of competition law. As cartels are a criminal breach of the Act, they need to be proven beyond a reasonable doubt. Where the CCPC has enough evidence of a criminal cartel agreement, a file on that case is referred to the Director of Public Prosecutions (DPP) for prosecution on indictment. On conviction before the courts, individuals can face prison sentences and both individuals and companies can be fined.

10. The second relates to abuse of dominance and anti-competitive agreements which do not amount to a cartel, for example vertical agreements. These are treated as civil breaches of competition law. Under Irish law, in civil cases the CCPC can only seek a declaration that the behaviour is unlawful and secure and injunction directing the undertaking cease the behaviour. There is no provision for fines in civil cases.

11. In summary in 2016;

- We issued 12 witness summons and 11 formal requirements for information in the course of investigating potential breaches of competition law.
- We opened 24 new files and closed 13 relating to potential criminal breaches of competition law.
- Three competition related investigations were opened into the following areas: potential price signaling in the private car insurance market, the conduct of the Irish Property Owners Association and potential bid-rigging in publically funded transport services.

- Three competition related investigations were closed - two of which were closed with commitments from the parties involved.

2.1.2. Criminal Investigations

12. The detection of cartels is a high priority for the CCPC, particularly bid-rigging in public procurement. In 2016, the Central Criminal Court confirmed that the trial of an individual and undertaking charged with entering into a bid-rigging agreement in the flooring sector would proceed in April 2017. This follows a CCPC investigation into allegations of anti-competitive activity in the industrial flooring sector and the submission of a file to the Director of Public Prosecutions. Both the individual and undertaking have since entered guilty pleas and are due to be sentenced on 31 May 2017.

13. The CCPC also opened an investigation into potential bid-rigging in the procurement of publicly funded transport services. In July 2016, Authorised Officers from the CCPC carried out 20 searches in a number of locations with assistance from An Garda Síochána, including a Detective Sergeant from the Garda National Economic Crime Bureau. This investigation is ongoing.

2.1.3. Non-cartel investigations

14. Along with investigating breaches of competition law relating to cartels, the CCPC also investigates suspected anti-competitive conduct, which does not fall within the definition of a cartel. In 2016 the CCPC was active in investigating potential anti-competitive arrangements and information sharing.

- In September 2016, the CCPC announced an investigation into suspected breaches of competition law in the private motor insurance sector. The investigation related to participants allegedly openly signalling upcoming increases in motor insurance premiums in the State. A number of witness summonses and Requests for Information (RFIs) were issued to major motor insurance providers as well as industry groups representing insurers and brokers. This investigation is ongoing.
- In August 2016, the CCPC completed an investigation into potential anti-competitive information sharing between private motor insurers via a software product provided by an intermediary software services provider, Relay Software Limited (Relay). Following engagement with the CCPC, Relay and Allianz Plc, AXA Insurance Limited, Zurich Insurance Plc, RSA Insurance Ireland Limited and Sertus Underwriting Limited entered into Agreements and Undertakings with the CCPC. The Agreements and Undertakings imposed clearly defined restrictions on these insurance companies in relation to their access to commercially sensitive information of competing insurance companies via intermediary software systems.
- In January 2016, the CCPC completed an investigation into the display of minimum recommended rates for tour guide services on the Approved Tour Guides of Ireland’s (ATGI) website. The investigation found that the publication of a list of recommended minimum rates on the ATGI website meant that consumers – in this case tourists and tour operators - did not benefit from normal price competition between tour guides. The CCPC directed the ATGI to remove the list from its website and to inform its members that tour guides must decide individually what price they charge for their services.

15. In late 2016 the CCPC also opened and concluded and investigation into the Irish Property Owners Association (IPOA). In December 2016, the IPOA released a press statement in response to Government legislation introducing rent controls in the private residential rental sector. In this statement, the IPOA stated that following a meeting of its members, property owners were considering a range of potential measures, including the introduction of a number of new charges to tenants and the withdrawal from State-sponsored rental schemes.

16. Competition law expressly forbids a trade association from coordinating the business conduct of its members, including the terms and conditions under which they are prepared to supply a product or service. The investigation was closed in January 2017 with the IPOA signing a binding Agreement and Undertaking. By signing this Undertaking the IPOA made a number of binding commitments, which included a commitment to retract the December press statement, to inform its members that that the setting of rents and charges in the private rental sector are matters for individual landlords and their tenants and to introduce a competition law compliance programme for its members.

17. The CCPC also has an ongoing investigation into potential anti-competitive practices in the supply of bagged cement in Ireland. A search conducted at the premises of Irish Cement (a subsidiary of CRH) in May 2015 was subject to High Court action to prevent the CCPC from examining certain emails seized. It was argued by CRH that these emails were unrelated to the business of Irish Cement and therefore the CCPC was not entitled to seize them. On 5 April 2016 the High Court ruled against the CCPC, following which in May of that year, we were granted leave to appeal to the Supreme Court.

2.2. Mergers and acquisitions

2.2.1. Statistical Overview

18. During the course of 2016 the CCPC issued 71 Determinations, 11 of which relate to transactions notified at the end of 2015[1] with 64 Determinations issued for transactions notified during 2016[2]. The adjustment in the length of time the CCPC has to review a proposed merger saw the number of days change from calendar days to working days bringing the Irish merger regime more in line with the EU merger regime. For mergers notified between 1 January 2016 and 31 December 2016, the CCPC took an average 26 working days to issue a Phase 1 decision compared with 24 working days in 2015.[3] The timelines in individual cases varied from 12 to 30 working days depending, for example, on the complexity of the transaction and the nature of the competition issues involved.[4]

[1] Two of these 11 cases were subject to extended Phase 1 investigations.

[2] One proposed transaction notified to the CCPC during 2015 (M/16/041 – Marino Point/Port of Cork) was withdrawn by the parties since the transaction as notified did not proceed.

[3] The CCPC aims at all times to make sure that mergers are reviewed in a timely manner so that mergers which do not raise competition concerns are not held up. However, since our role is to actively protect the interests of consumers the CCPC will not issue a determination until it has completed a thorough review of each of the transactions notified.

[4] This excludes those merger reviews which required either an extended Phase 1 or a Phase 2 Investigation.

19. Of the 71 Determinations issued in 2016 five (7% of cases) required either an extended Phase 1 investigation or a full (Phase 2) investigation (see Table 1). While the CCPC did not prohibit any mergers during 2016, formal commitments to alleviate competition concerns were required and provided in 2 cases (2.8%), namely M/16/040 – Bons Secours/Barringtons Hospital and M/16/008 – PandaGreen/Greenstar.

Table 1. Extended Phase 1 and Phase 2 Merger Investigations, 1 January 2016 to 31 December 2016.

Extended Phase 1	Phase 2*
M/15/059 – Paddy Power/Betfair M/15/077 – Uniphar/Murray Medical M/16/040 – Bons Secours/Barringtons Hospital M/16/044 – INM/CNML	M/16/008 – PandaGreen/Greenstar

2.2.2. Summary of significant cases

Extended Phase 1 Merger Investigations

M/15/059 – Paddy Power/Betfair

20. On 8 September 2015, Paddy Power and Betfair announced that they had reached an agreement on the terms of a recommended all-share merger of Paddy Power and Betfair, to be implemented by way of a scheme of arrangement of Betfair. The parties notified the transaction to the CCPC on 20 October 2015. Both Paddy Power and Betfair are international multi-channel betting and gaming companies offers betting, casino games, poker and bingo to consumers in regulated jurisdictions through the internet, by telephone and in licensed betting offices ("LBOs") located in the United Kingdom and in the State.

21. In order to determine whether the proposed transaction might result in a substantial lessening of competition (SLC) the Commission examined the competitive impact of the proposed transaction in three potential markets:

- the provision of online betting services (encompassing both online fixed-odds betting and online exchange betting) in the State;
- the provision of online fixed-odds betting services in the State; and
- the provision of online gaming services in the State.

22. The CCPC concluded that the parties were not close competitors and that the merged entity would face significant competition from other players in the markets. Thus on 15 January, 2016 the CCPC cleared the transaction unconditionally.

M/15/077 – Uniphar/Murray Medical

23. On 22 December 2015, the CCPC received a notification of a proposed transaction whereby Uniphar Wholesale Limited, a subsidiary of Uniphar plc (Uniphar), would acquire sole control of the ostomy and urinary wholesale business (the Target Business) of Murray's Medical Equipment Limited (Murray's Medical).

24. Uniphar which is a public limited company headquartered in Dublin, has two main business divisions:

- Uniphar Wholesale which is a full-line wholesaler of pharmaceutical, healthcare, medical and veterinary products to pharmacies, hospitals and veterinary surgeons in the State; and,
- Allphar Services Limited (Allphar), which is a pre-wholesale logistic service provider for a similar set of products and acts as a sole agent and distributor in the State on behalf of manufacturers.

25. The seller Murray's Medical supplies community pharmacies with a wide range of medical products and the target business comprised the business of Murray's Medical pertaining to the wholesale supply of ostomy and urinary medical products to community pharmacies in the State.

26. The CCPC found both horizontal and vertical overlaps between the parties' activities in the State. The horizontal overlap arose since both parties supplied ostomy and urinary medical products to community pharmacies while the vertical overlap arose since the pre-wholesale division of Uniphar supplied wholesalers including the Target Business with ostomy and urinary medical products manufactured by third party manufacturers.

27. The CCPC undertook an extensive investigation, issuing a formal requirement for information and obtaining the views and evidence of competitors and customers. The theories of harm examined by the CCPC in this case included the possibility post-merger of coordinated effects, unilateral effects and foreclosure.

28. Coordinated effects, as explained in paragraph 4.23 of the Guidelines for Merger Analysis, occur when *"there is an incentive for firms to compete less intensively if it is profitable for them to do so. Implementing coordinated behaviour depends on the opportunity afforded by weak competitive constraints from actual or potential competition."* The Commission found that the proposed transaction would not make it sufficiently more likely that Uniphar and its primary competitor United Drug would engage in tacit coordinated behaviour so as to substantially lessen competition in the potential market for the wholesale supply of ostomy and urinary medical products to community pharmacies in the State.

29. In terms of the possibility of unilateral effects post-merger the CCPC's investigation found that Uniphar would only have the incentive to exercise market power by reducing its discounts and/or service quality post-merger if it would be profitable to do so.

30. Following an in-depth review of the internal documentation and a rigorous examination of the evidence of third parties the CCPC found that Uniphar would not have the ability to exercise market power by reducing its discounts and/or the frequency of its deliveries post-transaction and that any such attempt by Uniphar post-transaction is likely to prompt community pharmacies to switch to United Drug.

31. The CCPC also considered whether the merger would provide Uniphar with the ability and incentive to foreclose its rival full-line wholesalers and found that manufacturers of ostomy and urinary medical products would not allow their pre-wholesaler to limit supplies of their products to wholesalers in the State. Thus Uniphar would have limited ability to restrict supplies of ostomy and urinary medical products to wholesalers following the merger. On 23 March, 2016 the CCPC issued an unconditional clearance Determination to the parties.

M/16/040 – Bons Secours/Barringtons Hospital

32. On 24 August 2016, the CCPC received a notification whereby Bon Secours limited was proposing to acquire Barringtons private hospital. This was the first private hospital merger notified to either the CCPC or its legacy organisation, the Competition Authority.

33. Bon Secours, a private company registered in the State is a not for profit organisation founded in 1824 by the Bon Secours Sisters. The Bon Secours group is the largest independent hospital group in the State, with four technologically advanced hospitals located in Cork, Dublin, Galway and Tralee, and a Consultation Centre in Limerick and a Care Village in Cork. Barringtons Hospital which is private company owned by two individual shareholders is the only private hospital in Limerick city. It operates an elective (i.e. non-emergency) surgical hospital and provides a somewhat smaller, less complex range of services than most other private hospitals in the State.

34. Using the information provided by the parties the CCPC concluded that the relevant product market was the provision of private hospital services. Further analysis of the market share data revealed that in a potential geographic market encompassing the Mid-West Region the merger would result in a highly concentrated market, the CCPC therefore undertook an extended Phase 1 investigation, which included:

- issuing information requests to existing customers of the parties, including the Big 3 Health Insurers, the Health Services Executive (National Treatment Purchase Fund) and Medical Consultants;
- information requests were also issued to competitors of the parties providing private health services to patients originating from in the Mid-West Region, such as the University Hospital Limerick, Galway Clinic and Mater Private Cork;
- a formal Requirement for Information was issued to both Bon Secours and Barringtons Hospital;
- Two third party submissions were made to the CCPC raising concerns over the proposed transaction;
- The CCPC engaged the services of an independent external health economist, Mr. Brian Turner, from University College Cork, to assist in analysis of the proposed acquisition and more specifically to provide expert advice on the potential economic impacts of the proposed transaction.

35. This investigation found that post-merger the Bon Secours was likely at some point in the future to introduce national or group prices at Barringtons Hospital instead of the individually negotiated prices currently applicable to Barringtons Hospital. Analysis confirmed that the Bon Secours' current national or group prices are higher than those individually negotiated prices at Barringtons Hospital for similar procedures and would affect all health insurers except for the VHI. The CCPC concluded that up to 43% of the patients attending Barringtons Hospital could be adversely affected by a potential increase in price.

36. Following a meeting with the parties in which the CCPC outlined the competition concerns arising the parties submitted a formal set of proposals under section 20(3) of the Act aimed at alleviating the identified concerns. The proposals ensured that current and for a limited time (until new infrastructure and services were provided at Barringtons) future hospital charges for Barringtons would be negotiated with health insurers on a bilateral basis. These proposals were accepted by the CCPC and became binding on Bons Secours when the CCPC issued its Determination on 21 December, 2016.

M/16/044 – INM/CNML

37. On 5 September, 2016, the CCPC received a notification of a proposed transaction whereby Independent News & Media Holdings (Ireland) Limited (INM Holdings), a wholly owned subsidiary of INM plc (INM), would acquire the entire issued share capital of CMNL Limited (CMNL). Given that both INM Holdings and CMNL carry on a "media business" within the State (as defined in section 28A(1) of the Act), the proposed transaction was treated as a "media merger" for the purposes of Part 3A of the Act.

38. INM publishes national daily, evening and Sunday newspapers (e.g., Irish Independent, Sunday Independent, Sunday World, The Herald, Irish Daily Star, Star on Sunday), two weekly magazines (Fit Magazine and Ireland's own) and 12 paid-for weekly regional newspapers in counties Cork, Kerry, Dublin, Louth, Wexford and Sligo. INM also operates a number of websites which support its national and regional newspapers as well as a news portal. INM also owns Newspread Limited ("Newspread"), which distributes and wholesales INM and third party newspapers in the State (excluding Donegal) and publishes two newspapers in Northern Ireland - the Belfast Telegraph and Sunday Life.

39. CMNL, the target, was incorporated in the State on 12 July, 2016 for the purpose of this transaction, and is owned by a group of private shareholders. This same group of private shareholders also owns Celtic Media Limited which owns the entire issued share capital of both Celtic Media Print Limited (which in turn owns a print plant in Navan and currently prints CMNL newspapers) and Celtic Media Property Limited.

40. CMNL's principle activity is the publication of seven regional/local newspapers in the State, e.g., Anglo Celt, Meath Chronicle, The Forum, Westmeath Examiner, Westmeath Independent, Connaught Telegraph, Offaly Independent. CMNL is also involved in the supply of prepress services to third party newspapers. Its prepress customers include the Tuam Herald, the Nenagh Guardian, Cork Independent, Galway Independent and the Dublin People Group.

41. On 23 September, the CCPC issued, to the parties involved, a formal requirement for further information (RFI). Following a review of additional information provided on foot of the RFI, the Commission issued further questionnaires to the parties. The CCPC also issued questionnaires to the parties' potential competitors and to their existing advertising customers. The Commission's questionnaire to third parties focused on the proposed transaction's potential effect regarding regional/local newspaper publishing and adverting.

42. The CCPC also received six third party submissions in this case. The main concerns expressed were that the proposed transaction would reinforce INM's dominant position in media generally.

43. The CCPC identified four potential product markets in which the competitive effects of the proposed transaction were assessed. The summary below only discusses the newspaper publishing market.

44. Although the CCPC did not need to reach a definite view on the relevant product market regarding newspaper publishing (both readership and advertising) in this case, it followed precedent and concluded that:

- For newspaper readership - local/regional newspapers can be treated as distinct market from national daily/evening newspapers.

- For newspaper advertising - local/regional newspapers advertising can be treated as distinct market from national/daily/evening newspapers.
- Newspaper advertising constitutes a separate market from radio advertising.
- The geographic scope of the local/ regional titles is the distribution area of the relevant region.

45. While both INM and CMNL are involved in publishing local/regional newspapers within the State, the Commission is of the view that relevant geographic market of local/regional titles is the distribution area of the relevant region. Since local/regional newspapers typically focus on a local reading audience and local advertisers, local/regional newspapers that are sold in different areas are not considered direct or close competitors to each other. For example, INM's Wicklow People is not competing with CMNL's Connaught Telegraph for audience and/or advertisers in Mayo. Thus, INM's Wicklow People and CMNL's Connaught Telegraph are not in the same market. None of the local/regional newspapers published by either CMNL or INM are sold in the same local/regional areas, i.e., CMNL and INM's local/regional titles are circulated within the same market.

46. The CCPC recognised that although INM's footprint of local/regional titles increased significantly as result of the proposed transaction it did not increase the merged entity's footprint in each relevant local/regional areas. Therefore, the CCPC concluded that it was unlikely that the proposed transaction would lead to SLC in the market for local/regional newspapers for any particular local/regional areas and the proposed transaction was cleared by the CCPC on 10 November, 2016 subject to subsequent clearance by the Minister for Communications, Climate Action and the Environment.

Phase 2 Merger Investigations

M/16/008 – PandaGreen/Greenstar

47. On 10 February 2016, the CCPC received a notification of a proposed transaction whereby PandaGreen Limited (PandaGreen), a wholly-owned subsidiary of Sretaw, would acquire the entire issued share capital of Starrus Eco Holdings Limited, trading as Greenstar (from Starrus Holdings Limited. The CCPC found that both of the parties are involved in:

- the domestic waste collection business.
- commercial and industrial ("C&I") collection services (from individual and multisite customers).
- the processing of waste and recyclables.

48. As part of its investigation, the CCPC conducted market enquiries, which involved contacting a number of competitors of the merging parties within the State. The Commission also consulted with local authorities in the GDA, the Environmental Protection Agency ("EPA") and the National Waste Collection Permits Officer ("NWPCO"). During the course of the review, the CCPC received 25 submissions highlighting competition issues concerning the competitive effects of the proposed transaction.

49. The Commission required further information from the parties to assist with its investigation into the likely effects of the proposed transaction. On 21 March 2016, the Commission therefore served Requirements to provide Further Information ("RFI") pursuant to section 20(2) of the Act on both Sretaw and Greenstar. The also CCPC issued

formal requirements for further information to both of the parties to assist with the investigation. We also engaged the services of Dr Kevin Halligan of KHSK Economic Consultants to review the information provided by the parties and provide advice on the competitive effects of the proposed transaction and Dr Paul Gorecki to provide specific expert input on the definition of the relevant product and geographic markets.

50. The CCPC's investigation found that competitors to the merged entity did not, in general, anticipate competition concerns arising from the completion of the proposed transaction. However, some respondents highlighted the overlap in the domestic collection activities of the parties in the Fingal County Council and Dun Laoghaire-Rathdown local authority areas.

51. Post-transaction the CCPC concluded that merged entity would have a near monopoly in both the Fingal County Council and Dun Laoghaire-Rathdown local authority areas for the collection of Domestic waste.

52. The parties responded to this finding by submitting to the CCPC formal proposals under section 20(3) of the 2002 Act designed to resolve the competition issues arising. The proposals in effect involved the divestment of the Greenstar domestic waste collection businesses located in the Fingal County Council and Dun Laoghaire-Rathdown local authority areas to a third party, namely Greyhound Waste. The CCPC accepted these proposals, which became binding commitments on Panda as part of the CCPC's determination to clear the merger on 16 August, 2016.

Other In-depth Investigations

Proposed Acquisition of the Divested Business in M/15/020 – Topaz Investments Limited/Esso Ireland Limited

53. On 14 April, 2015, the CCPC received a notification of a proposed acquisition whereby Topaz Investments Limited (Topaz) would gain control of Esso Ireland Limited (Esso Ireland). The notification was pursuant to a referral decision by the European Commission under Article 4(4) of the EU Merger Regulation on 27 March 2015. During the two-phase investigation, the CCPC identified competition concerns arising from the proposed transaction concerning: (1) fuel terminalling at Dublin Port – where the transaction would reduce the number of terminal operators from four to three; and (2) a number of identified petrol forecourts where the transaction would substantially lessen competition in local areas. In October 2015, the CCPC cleared the proposed transaction based on binding divestiture proposals submitted by Topaz to divest certain businesses to be acquired from Esso Ireland, namely:

- Its share and interest in a sea-fed terminal located in Dublin – the joint fuels terminal (JFT).
- Three of its company owned and operated fuel retail service stations in the Dublin area.

54. In January 2016, the CCPC received a reasoned proposal from Topaz recommending Valero Energy (Ireland) Limited (Valero) as a suitable prospective purchaser of the 50% share of Esso Ireland in the JFT (i.e. the divested business). Valero is currently the owner of the other 50% of the JFT and this acquisition would have seen them take sole control and ownership of the facility.

55. The CCPC carried out an in-depth investigation of this proposed acquisition to determine whether it might lead to competition concerns since the terms of the binding

commitments on Topaz included that *"a prospective purchaser must not be likely to create, in the light of the information available to the CCPC, prima facie competition concerns*." The investigation by the CCPC included a review of internal documentation provided by Valero and a detailed analysis of an economics report prepared by Frontier Economic Consultants on behalf of Valero. The CCPC issued requests for information to competitors of, customers of and suppliers to Valero, engaged economic (Dr Paul Gorecki) and econometric (Dr Patrick Paul Walsh) experts to provide advice and market tested a number of variations of the proposed purchase of the divested business.

56. Valero and their economic consultants Frontier Economics argued the conditions for Betrand competition exist in the market for fuel terminalling out of Dublin Port and that this will ensure that market conditions in fuel terminalling services in Dublin Port remain competitive, notwithstanding the reduction in the number of competitors. However, the investigation undertaken by the CCPC found that one of the important conditions for the Bertrand pricing model to work (namely that suppliers have spare capacity that can be used to compete for new sales and/or suppliers that do not have sufficient spare capacity can expand this relatively quickly) was not satisfied. Therefore the acquisition of the divested business by Valero was likely to lead to an anticompetitive outcome. This was further compounded by the presence of high barriers to entry in fuel terminalling services in Dublin Port.

57. Ultimately the CCPC concluded that the proposed acquisition by Valero of the divested business would see an increase in concentration in Dublin Port that is likely to raise serious competition concerns under the CCPC's Merger Guidelines, whether all terminalling services are considered as a whole or at the level of individual refined oil products. Consequently the CCPC did not approve Valero as a suitable purchaser of the divested business and asked Topaz to seek an alternative purchaser. This process is ongoing.

3. The Role of Competition Authorities in the forMulation and implementation of other policies

58. The CCPC promotes competition in many different ways. We highlight areas of the economy where competition is restricted, we publish reports on how competition may be improved in certain sectors, we advise Government Departments and other State agencies on competition issues relevant to their work, including procurement and tendering for public contracts, and in particular, we comment on proposed legislation and we make responses to public consultations. We promote a culture of compliance to the wider community through the publication of guidelines, communicating on behalf of the organisation, and participation in conferences and seminars and interaction with business organisations. Within the CCPC, the Advocacy function deals with both competition and consumer protection matters and the following paragraphs set out a brief overview of this activity.

3.1. Submissions

Body	Topic
Commission for Energy Regulation	1. Smart metering 2. The all island energy market 3. Consultation on a revised customer handbook
The Central Bank of Ireland	4. The CCPC responded to a public consultation (CP98) on variable rate mortgages - consumer credit related issues
Department of Children and Youth Affairs	5. Funding of childcare schemes
Department of Communications, Climate Action & Environment	6. Mobile / Broadband taskforce
Department of Finance	7. Crowdfunding and cost of insurance working group
Department of Health	8. Nursing home funding scheme
Department of Housing, Planning, Community & Local Government	9. Pay-per-weight Regulations
Department of Jobs, Enterprise & Innovation	10. Grocery Regulations 11. Proposals regarding the regulation of accountants
Department of Justice and Equality	12. General Data Protection Regulations
Department of Transport, Tourism and Sport	13. Consumer issues relating to motor vehicles 14. Consultation re airport charges 15. Road traffic legislation
National Transport Authority	16. Transport and taxi issues

3.2. Addressing gaps in the Irish enforcement regime

59. The Irish legal system does not allow for the imposition of administrative or civil fines for breaches of competition law. In Ireland, the only financial penalty that can be imposed for a breach of competition law is a fine following a criminal conviction. Only a court can decide whether competition law has been infringed, decide whether a company or individual is guilty and impose fines or custodial sentences. In most other EU Member States, it is possible for courts or agencies themselves to impose administrative or civil fines typically based on the "balance of probabilities" standard of proof. However, in Ireland, the prosecution's case must be proved beyond reasonable doubt and, in the case of a prosecution on indictment (i.e. in more serious cases), the accused is entitled to a full jury trial.

60. The absence of civil fines for competition law infringements is a gap in the Irish enforcement regime, which the CCPC has sought to address.

61. In 2016, the CCPC submitted a response to a European Commission public consultation called "Empowering the national competition authorities to be more effective enforcers". In our response, we said that legislative action at EU level is necessary to empower national competition authorities to be more effective enforcers. This is because the non-legislative soft law measures implemented to date have not been effective in ensuring consistency of approach in relation to enforcement of competition law in Member States across the EU. The CCPC is also preparing a response to the Law Reform Commission's Issues Paper on Regulatory Enforcement and Corporate Offences, which was published in January 2016. The CCPC hopes to publish its response in 2017.

3.3. The Legal Services Regulatory Authority

62. The CCPC has long advocated for reform of the legal profession. Following enactment at the end of 2015 of the Legal Services Regulation Act, an independent regulator of the legal profession, the Legal Services Regulatory Authority (LSRA) was set up in 2016. The CCPC considers that the Act provides a basis for significant further reform of the legal profession and the LSRA can serve as a key driver of such reform in the coming years. The CCPC has a nominee on the board of the LSRA.

3.4. Appearance before a Parliamentary Committee

3.4.1. The Oireachtas Committee on Finance, Public Expenditure and Reform, and An Taoiseach.

63. In September 2016, Members of the CCPC Commission appeared before the Oireachtas Committee on Finance, Public Expenditure and Reform, and An Taoiseach to discuss the rising cost of motor insurance premiums in the State. During the appearance we explained the CCPC's role in the motor insurance, previous work such as the 2005 Competition Authority report, and what remedies could be taken to improve competition and consumer experience of the industry.

3.5. Advice provided to Government Departments and Public Bodies

64. The CCPC was consulted on a range of legislative proposals being prepared for Government consideration during the year. In addition, the CCPC engaged directly with various Government Departments and provided input on topics including the following:

Body		Topic
Department of Children and Youth Affairs	1	Funding of childcare schemes
Department of Communications, Climate Action & Environment	2	Mobile / Broadband taskforce
Department of Finance	3	Crowdfunding and cost of insurance working group
Department of Health	4	Nursing home funding scheme
Department of Housing, Planning, Community & Local Government	5	Pay-per-weight Regulations
Department of Jobs, Enterprise & Innovation	6	Grocery Regulations
	7	Proposals regarding the regulation of accountants
Department of Justice and Equality	8	General Data Protection Regulations
Department of Transport, Tourism and Sport	9	Consumer issues relating to motor vehicles
	10	Consultation re airport charges
	11	Road traffic legislation

4. Resources of the Competition and Consumer Protection Commission

4.1. Resources Overall

65. The CCPC is funded by way of an annual grant from the Department of Jobs, Enterprise and Innovation, and also an industry levy in respect of specific consumer information and education functions in the financial services sector. In 2016, the CCPC's total income was 12.1 million. This is not apportioned between competition and other functions/activities.

Table 2. Competition and Consumer Protection Commission Budget 2016

Budget	2016
Grant	€10,041,000
Levy	€2,100,000
Total	€12.1 million

Table 3. Number of employees by profession (for competition role only)

Lawyers	7[5]
Economists	16
Other professionals	10[6]
Support staff	N/A[7]
Total Staff	33

4.2. Human Resources

66. The CCPC currently has 91 members of staff. The main Divisions that are specifically responsible for competition enforcement are as follows:

- Mergers – five staff (but with seconded staff from other Divisions when required)
- Competition Enforcement – 11 staff at present, with recruitment ongoing for one further position.
- Criminal Enforcement – 13 staff. This Division is responsible for the enforcement of criminal breaches of both competition (mainly cartels).
- Legal Services - At any one time at least two of the four staff are dedicated to competition enforcement
- The CCPC also employs one forensic IT investigator whose role is primarily concerned with competition enforcement investigations
- Advocacy – four of the nine staff work on competition issues
- One Member of the Commission is responsible for oversight of the Competition Enforcement and Mergers Divisions and one Member of the Commission has responsibility for the Criminal Enforcement Division. These responsibilities are not exclusive. The Commission as a whole makes decisions as a collegiate body including decisions relating to enforcement.

67. In addition to the staff involved in competition enforcement (detailed above), all 91 staff members of the CCPC are Authorised Officers. Authorised Officers are utilised for conducting searches as they have the power to inspect, secure a premise, require the provision of records, search for, and remove records.

68. There are also a number of internal functions that span the competition and consumer remits, these include, Market Insights (one staff member) and research (one

[5] This includes three who work in specific related Divisions (e.g. mergers, competition enforcement) and four who work across both consumer and competition in our Legal Services Division.

[6] 10 investigators across the all Enforcement Divisions. The CCPC also employs one forensic IT investigator whose role is primarily concerned with competition enforcement investigations.

[7] Support staff are not assigned specifically to competition functions, but work across the organisation.

staff member). The support functions within the CCPC also contribute to the work of competition enforcement, including Communications & Market Insights (17 staff), Corporate Services (seven staff) and Organisation Development (two staff).

5. New Reports and Studies on Competition Policy Issues

5.1. The future of Ireland's mortgage market

69. As part of the "Programme for a Partnership Government" the CCPC was asked to conduct a study examining the market structure, legislation and regulation of the mortgage market in Ireland. The result will outline options on how Ireland can develop a better-functioning, more sustainable mortgage market. The CCPC will develop a series of options for Government to put in place to create a mortgage market, which is competitive, open to entry and serves the needs of consumers. At the time of writing the CCPC's Paper was due to be published in June 2017.