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**Directorate for Financial and Enterprise Affairs
COMPETITION COMMITTEE**

Annual Report on Competition Policy Developments in Ireland

-- 2017 --

6-8 June 2018

This report is submitted by Ireland to the Competition Committee FOR INFORMATION at its forthcoming meeting to be held on 6-8 June 2018.

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1. Executive Summary

1. 2017 was an important year for the CCPC and Ireland's competition law regime the CCPC secured Ireland's first bid-rigging conviction, which related to the commercial flooring sector. An individual and an undertaking were convicted for engaging in bid-rigging in the procurement of flooring contracts for major international companies. Although the leniency of the sentence is currently under appeal, the timing of this conviction was particularly important. As Ireland faces the challenges of Brexit, it sent out a timely reminder to all businesses and procuring bodies that they must be vigilant in the procurement process. Bid-rigging, particularly in public procurement, is an ongoing priority and the CCPC has been liaising with the Office of Government Procurement with a view to raising awareness of bid-rigging and the development of a screening process to assist in identifying potential occurrences.

2. Last year the CCPC's activities spanned a number of different sectors where business behaviours or structural issues were distorting particular markets. In the financial services sector, the CCPC undertook considerable advocacy work to identify issues, inform proposed legislation and identify options as to how Ireland's mortgage market could become more competitive and sustainable in the future. In a Mortgages Options Paper the CCPC set out a number of short, medium and long-term options to address some of the many structural and competition issues in the mortgages market. The CCPC also strongly advocated against proposed legislation to introduce of a price cap on standard variable rate mortgages, as the CCPC was concerned that the introduction of a rate cap would increase pricing and undermine natural competition. The risks being that caps may become targets and low caps restrict credit availability to all but those representing the very lowest risks to the lender. Such uncertainty would result in less competition, higher costs and increased market exclusion for those on lower incomes and with less favourable credit scores overall. Ultimately, the legislation was not progressed.

3. The CCPC has had considerable concerns in relation to the motor insurance sector, particularly concerning issues around transparency and disclosure. In addition to advocating for reform in the sector and making contributions to various Government working groups on the matter, the CCPC's investigation into potential price signalling by insurers continued. The CCPC also assisted the European Commission in a separate investigation in the motor insurance sector.

4. In recent years, the cumulative impact of past policy decisions on the waste sector in Ireland has become increasingly apparent. A Government decision in relation to charging structures in the waste sector further highlighted the significant consumer and competition issues in the sector. Following a ministerial request, an in-depth study of the waste collection market was opened in late 2017, which includes; an analysis of the evolution of the household waste collection market in Ireland, an examination of the operation of waste markets elsewhere and an economic assessment of the market.

5. Last year the CCPC also commenced an investigation into suspected breaches of competition law in relation to the provision of tickets and the operation of ticketing services for live events. The investigation is primarily focused on potentially anti-competitive conduct by operators including those involved in providing tickets and ticketing services, promoters and venues.

6. Other positive outcomes for the CCPC include the conclusion of an investigation into anti-competitive behaviour by the Irish Property Owners' Association (IPOA) which resulted in the CCPC obtaining commitments ensuring that the IPOA will not coordinate

the commercial decisions of its members. The CCPC also obtained commitments from a number of Irish universities to change their procurement practices in relation to the supply of graduation gowns which will potentially reduce the costs for students hiring graduation gowns. In October, an examination commenced of potential anti-competitive behaviour by a trade association, Nursing Homes Ireland, and this examination was concluded in early 2018 with commitments obtained from the association. Both associations were also required to introduce a competition law compliance training programme and report on same to the CCPC.

7. In 2017, there was a further increase of 7.5% in the number of transactions notified to the CCPC for examination. The transactions notified involved an estimated aggregate turnover of €56 billion within the State. Motor fuel (retail/wholesale) and ICT were the most prominent sectors. While the CCPC did not prohibit any proposed transactions, formal commitments were required for the clearance of four transactions. Without these commitments, competition would have been adversely affected in a number of markets. The CCPC also commenced an investigation into a suspected “gun jumping” implementation of a merger.

8. 2017 was an extremely active year for the CCPC and 2018 has continued at the same pace. The CCPC’s priority is to continue to build a track record for enforcement and create operational models that realise the advantages of examining markets with a 360 degree perspective.

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

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

9. The Competition (Amendment) Act 2017 was enacted and provides an exemption for certain categories of self-employed persons from Section 4 of the Irish Competition Acts 2002 to 2017, which is closely modelled on Article 101 TFEU. The legislation provides that categories of workers who are deemed false self-employed or fully dependent self-employed can avail of the collective bargaining rights available to employees. The Act provides that this categorization is subject to the class of self-employed worker having no or minimal economic effect on the market in which they operate and that they comply with all other areas of competition law.

2.2. Other relevant measures, including new guidelines

10. There were no relevant measures.

2.3. Government proposals for new legislation

11. There were no other Government proposals for new legislation.

3. Enforcement of competition Laws and Policies

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

3.1.1. Summary of Activities

12. 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:

13. 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. The CCPC, in conjunction with the Director of Public Prosecutions (DPP), operates a Cartel Immunity Programme, which helps uncover cartels and provides witnesses for the criminal prosecution of cartel members. The programme means that a member of a cartel may avoid prosecution, including fines and jail time, if they are the first member to come forward and reveal their involvement in illegal cartel activity before the CCPC has completed any investigation and referred the matter to the DPP. On conviction before the courts, individuals can face prison sentences and both individuals and companies can be fined.

14. 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 does not have decision making powers or fining powers. The CCPC can only seek a declaration in Court that the behaviour is unlawful, and secure an injunction directing the undertaking to cease the behaviour.

15. In summary, in 2017 the CCPC;

- Issued 8 witness summons and 6 formal requirements for information in the course of investigating potential breaches of competition law. In some cases multiple summons hearings were held under a single summons issued.
- Secured a conviction against an individual and undertaking for bid-rigging in the commercial flooring sector.
- Opened 11 new files and closed 17 relating to potential criminal breaches of competition law.
- Reviewed 35 complaints relating to potential civil breaches of competition law.
- Opened seven competition related investigations and closed five. Two investigations were closed with commitments from the parties involved – the Irish Property Owners Association and a number of Irish universities to change their procurement practices in the supply of graduation gowns.
- Opened an investigation into a suspected “gun jumping” implementation of a merger.
- The CCPC had active investigations that continued into 2017, including into a suspected cartel in the publically funded transport sector and potential price

signalling in the motor insurance sector. The CCPC also assisted the European Commission in a separate investigation in the motor insurance sector.

3.1.2. Criminal Investigations

16. On 31 May 2017, the CCPC secured the first conviction in Ireland for a bid-rigging cartel offence, following an investigation into a cartel in the flooring sector. An individual was convicted of impeding a criminal prosecution and given a three-month suspended sentence. The individual was also fined €7,500 and disqualified from acting as a company director for a period of 5 years. An undertaking was fined €10,000. The leniency of the sentence in this case is currently under appeal by the Director of Public Prosecutions; however, the prosecution has further increased awareness of bid-rigging amongst Irish businesses and those involved in procurement.

17. We continued an investigation into potential bid-rigging in the procurement of publicly-funded transport services in certain parts of Munster and Leinster. This investigation was opened in 2016 following a detailed examination of a complaint received in relation to the matter.

3.1.3. Non-cartel investigations

18. 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.

Ticketing sector investigation

19. The CCPC commenced a formal investigation into suspected breaches of competition law in relation to the provision of tickets and the operation of ticketing services for live events. The investigation is primarily on potentially anti-competitive conduct by operators including; those involved in providing tickets and ticketing services, promoters and venues. In 2017, as part of the investigation, the CCPC gathered 235,000 electronic documents and held 10 summons hearings.

Motor insurance investigation

20. An ongoing investigation into potential price signalling in the motor insurance sector saw 37 witness summons hearings and over 1.25 million emails and documents being obtained from parties under investigation. The CCPC also assisted the European Commission in a separate investigation in the motor insurance sector.

Activities of a trade association

21. In October 2017, the CCPC commenced an examination of potential anti-competitive behaviour by a trade association, Nursing Homes Ireland (NHI). The CCPC became aware of a meeting organised by NHI at which collective action against the Fair Deal Scheme was allegedly discussed. The CCPC immediately commenced an examination to determine whether NHI and its members had implemented any of the suggestions made at the meeting, which included collective action to potentially increase the contributions required from nursing home residents, potentially refuse new admissions from acute hospitals and limit the number of new beds made available under the Fair Deal Scheme. Following this examination, in 2018, NHI confirmed that it had not implemented any of the measures discussed and it entered into binding commitments with

the CCPC, which provided that it will not engage in discussions with its members in relation to anti-competitive collective actions and it will not seek to influence the pricing or supply decisions of its members.

Irish Property Owners Association Enforcement action

22. A key priority for 2017 was to take enforcement action against firms engaged in information sharing and anti-competitive agreements, and in this regard, we successfully closed an investigation into anti-competitive behaviour by the Irish Property Owners' Association (IPOA). In response to the CCPC's competition concerns, the IPOA agreed to enter into an Agreement and Undertakings with the CCPC, under which the IPOA has given binding commitments:

- To retract a press statement and to make no further reference to the contents of the press statement, whether publicly or to members of the IPOA
- To inform, in writing, members of the IPOA that the IPOA has retracted the press release and to remind, in writing, members of the IPOA that the setting of rents and charges in the private rental sector are matters for individual landlords and their tenants
- To introduce a competition law compliance training programme to members of the IPOA Committee by the end of June and report same to the CCPC
- Not to issue recommendations or suggestions to, or otherwise seek to influence decisions of, members of the IPOA or other landlords in the private rental sector with respect to the setting of rents and charges and/or withdrawal from State-sponsored rental schemes and/or any recommendations that have similar effect.

Procurement Practices

23. In late 2017, the CCPC also secured commitments from a number of Irish universities to change their procurement practices in the supply of graduation gowns. Following a complaint, the CCPC sought commitments to ensure that tender processes would take place regularly to encourage greater competition among suppliers and potentially lower the cost for students.

Ongoing investigation in the bagged cement sector

24. The CCPC's investigation into potential anti-competitive practices in the supply of bagged cement in Ireland continued in 2017. As part of this investigation, the CCPC carried out an unannounced search at the premises of Irish Cement Limited (a subsidiary of CRH plc) in May 2015. During the search, the CCPC seized a number of electronic documents including the mailboxes of a number of current and former key employees and senior executives of Irish Cement. In November 2015, CRH brought a High Court action against the CCPC arguing that certain emails in the mailbox of one such senior executive were unrelated to the business of Irish Cement Limited and therefore could not be reviewed by the CCPC. The High Court ruled in favour of CRH in April 2016. In May 2017, the Supreme Court dismissed an appeal brought by the CCPC against the High Court's judgment. Arising from the Supreme Court's judgment, the CCPC is currently seeking to agree a procedure with CRH which would allow the CCPC to review the material in the disputed mailbox in a manner which complies with the privacy rights set out in Article 8 of the European Convention on Human Rights. More generally, arising

from the Supreme Court's judgment, the CCPC has also undertaken a review of its search procedures in order to ensure the privacy rights of businesses and individuals before, during and after future search operations.

3.2. Mergers and acquisitions

3.2.1. Statistical Overview

- 72 merger and acquisitions were notified which represents an increase of approximately 7.5% of the number notified in 2016.
- The most prominent sectors were motor fuel (retail/wholesale) and information and communications. Mergers in financial and insurance services were also prominent.
- Of the 72 notifications received, nine (12.5% of cases) required an extended Phase 1 investigation. The nine extended Phase 1 investigations were:
 - M/17/005 – VHI Investments/VHI Swiftcare Clinics
 - M/17/012 – Kantar Media/Newsaccess
 - M/17/021 – Applegreen/50% of Joint Fuels Terminal
 - M/17/027 – Dalata/Clarion Liffey Valley/Clayton Cardiff Lane
 - M/17/035 – Dawn Meats/Dunbia
 - M/17/036 – Sean Loughnane/Crinkle Fine Foods
 - M/17/040 – Independent Newspapers/Caltray
 - *M/17/056 – Bay Broadcasting/ Classic Rock Broadcasting (determination made in 2018)
 - *M/17/064 – Tetrarch/Citywest (determination was made in 2018)
- Four media mergers were notified - The Color Company TM/Certain assets of Irish TV Landmark Digital/BenchWarmers, Bay Broadcasting/ Classic Rock Broadcasting t/a Radio Nova, Irish Times/Irish Examiner. Unconditional Determinations were issued in respect of two media mergers and the remaining two, namely – Bay Broadcasting/Classic Rock Broadcasting and - Irish Times/Irish Examiner, were still under investigation at the end of 2017.
- 68 determinations were issued, 61 of which were issued in respect of proposed transactions notified during 2017 and the remaining seven were in respect of proposed transactions notified towards the end of 2016.
- One proposed transaction, Siris Capital Group (US) LLC / Synchronoss Technologies INC (US), was subsequently withdrawn after the parties reported that they did not meet the financial thresholds for mandatory notification.
- While the CCPC did not prohibit any mergers during 2017, formal commitments to alleviate competition concerns were required and obtained from parties in respect of the following cases:
 - M/17/012 – Kantar Media/Newsaccess
 - M/17/021 – Applegreen/50% of Joint Fuels Terminal

- M/17/027 – Dalata/ Clarion Liffey Valley/Clayton Cardiff Lane
- M/17/036 – Sean Loughnane/Crinkle Fine Foods
- The CCPC is required to monitor EU merger activity and when it considers there is a significant interest to Ireland can attend and participate in EU merger advisory committees. In 2017, we closely followed the European Commission’s investigations into a number of proposed mergers including the following: Bayer/Monsanto, 21st Century Fox/Sky, Orange/Jazztel, Greenergy/Inver, Facebook/WhatsApp, Qualcomm/NXP Semiconductors.

3.2.2. Summary of significant cases

Extended Phase 1 Merger Investigations

M/17/005 – Vhi Investments/Vhi Swiftcare Clinics

25. The proposed transaction whereby Vhi Investments DAC, an indirectly wholly-owned subsidiary of the Voluntary Health Insurance Board (Vhi), would acquire sole control of Aras Slainte Limited was notified to the CCPC on 1 February 2017. Both Vhi Investments DAC and Aras Slainte Limited, a subsidiary of Centric Health and ultimately owned by Jellia Holdings Limited, are active in the provision of primary care services in the State through a 50% interest each in three Vhi SwiftCare clinics located at the following addresses in the State:

- Rockfield Medical Campus, Balally, Dundrum, Dublin 14;
- Columba House, Airside Retail Park, Swords, Co. Dublin; and,
- City Gate, Mahon, Co. Cork.

26. Following completion of the proposed transaction, Vhi, through Vhi Investment DAC, would acquire sole control of all three Vhi SwiftCare clinics.

27. During an extended investigation, the CCPC’s analysis of the proposed transaction involved an in-depth economic assessment of the affected relevant markets. These were; the potential downstream market for the provision of private health insurance in the State and the potential upstream market for the provision of primary care services (including primary care provided by hospitals, clinics and individual medical professionals) in each of the following three geographic areas:

- The geographic area within a radius of 10 miles (16kms) from the Vhi SwiftCare clinic in Balally, Dundrum, Dublin 14 (limited to south of the River Liffey);
- The geographic area within a radius of 10 miles (16kms) from the Vhi SwiftCare clinic in Airside Retail Park, Swords, Co. Dublin (limited to the north of the River Liffey); and,
- The geographic area within a radius of 15 miles (25kms) from the Vhi SwiftCare clinic in City Gate, Mahon, Co. Cork.

28. Vhi is engaged downstream in the provision of private health insurance in the State while Aras Slainte Limited, through its 50% interest in the Vhi SwiftCare clinics, is involved upstream in the provision of primary care services. Therefore, the proposed transaction was not a simple joint-to-sole control acquisition. It was also a vertical merger and the CCPC conducted an extensive assessment to establish whether the proposed

transaction raised any substantial lessening of competition concerns. Upon completion of its review, on 10 May 2017, the CCPC issued an unconditional clearance Determination to the parties.

M/17/012 – Kantar Media/Newsaccess

29. On 2 February 2017, through market surveillance, the CCPC became aware of the proposed transaction whereby Mediawatch Limited, trading as Kantar Media (Kantar Media), a wholly owned subsidiary of WPP plc, would acquire sole control over Newsaccess Limited (Newsaccess).

30. Both Kantar Media and Newsaccess provide media monitoring services (multichannel media monitoring and media analysis services) in the State. The parties informed the CCPC that the proposed transaction fell below the financial thresholds for mandatory notification. Following a preliminary assessment of information in its possession, the CCPC was concerned that the proposed merger would result in Kantar Media removing its closest and most substantial competitor from the market. The CCPC therefore informed the parties that they should make a voluntary notification of the proposed merger.

31. On 9 March 2017, the proposed acquisition by Kantar Media of Newsaccess was notified. Following an extended preliminary (Phase 1) investigation, which included Requirements for Information from the parties and consultation with a number of organisations, including competitors, industry bodies and customers, the CCPC, on 11 July 2017, cleared the proposed transaction with binding commitments.

32. During the investigation, the CCPC identified competition concerns arising from the proposed merger. To address these concerns and facilitate replacement of the competition that would have been lost as a result of the proposed transaction, the CCPC required Kantar Media to submit proposals. Kantar Media was required to divest the fixed assets and commit to releasing a number of contracted customers from the remaining term of their fixed term contracts before the CCPC cleared the proposed merger. The CCPC formed the view that the proposals obtained from Kantar Media were appropriate and effective in addressing the competition concerns.

M/17/021 – Applegreen/50% of Joint Fuels Terminal

33. On 30 June 2017, the CCPC cleared the proposed acquisition by Applegreen Public Limited Company (Applegreen) of 50% interest in the Joint Fuels Terminal (JFT) in Dublin subject to binding commitments received from Applegreen. The 50% interest in the JFT being acquired by Applegreen was previously held by Esso Ireland Limited (Esso Ireland) and divested by Topaz Investments Limited (Topaz) pursuant to the CCPC's Determination in M/15/020. The remaining 50% of the JFT remains under the control of Valero Energy (Ireland) Limited (Valero).

34. The JFT in Alexandra Road, Dublin is an unincorporated joint venture (historically jointly controlled by Esso Ireland and Valero) which operates as a sea-fed fuel terminal in Dublin Port. A Joint Operating Agreement between the parties to the joint venture governs the relationship between them. Valero is currently the operator of the JFT.

35. The analysis of the proposed transaction identified a number of potential competition concerns. Subsequent to discussions with the parties, the CCPC required the parties to submit proposals which became binding commitments. These commitments

were aimed at ensuring that Applegreen fully replaced Esso Ireland in the JFT and restored the competition that would have been lost as a result of the acquisition of Esso by Topaz. As a result of the commitments, Applegreen will import and supply refined fuel products, including aviation fuel (Jet A1), through the JFT.

36. Taking the commitments by Applegreen into account the CCPC formed the view that the proposed transaction would not substantially lessen competition in any market for goods or services in the State.

M/17/027 – Dalata/Clarion Liffey Valley/Clayton Cardiff Lane

37. On 17 May 2017, the proposed transaction whereby Dalata Hotel Group p.l.c. (Dalata) would acquire the business and certain parts of the Clarion Hotel, Liffey Valley, Dublin 22 and certain parts of the Clayton Hotel, Cardiff Lane, Dublin 2, was notified to the CCPC under section 18(1)(a) of the Act.

38. The CCPC, on 29 August 2017, cleared the proposed transaction subject to binding commitments. The clearance decision was reached following an extended preliminary (Phase 1) investigation. During its investigation, the CCPC identified a potential competition concern arising from Dalata's management of hotels on behalf of third parties in the State, namely the potential that such management arrangements may provide Dalata (and the hotels that it currently owns, controls and leases) with access to competitively sensitive information (e.g., room rates) relating to the hotels that Dalata manages. The CCPC also identified a competition concern regarding the potential that such management agreements enable Dalata to exercise control, within the meaning of section 16 of the Act, over the hotels that it manages in the State.

39. To address these concerns, the CCPC required Dalata to submit proposals, which included confidentiality and merger notification commitments. The confidentiality commitment is intended to prevent the exchange of competitively sensitive information between any hotel which Dalata is appointed to manage in the future and any hotel owned, controlled, leased or operated by Dalata in the State which competes with such hotel. The merger notification commitment requires Dalata to inform the CCPC of any proposal by Dalata to begin operating a hotel in the State on behalf of a third party, where this would not otherwise be notifiable compulsorily to the CCPC. Furthermore, the CCPC may require the voluntary notification of any such proposal, even if such proposal would not otherwise be notifiable to the CCPC or to the European Commission.

40. The CCPC was of the view that the proposals obtained from Dalata were appropriate and effective in addressing its competition concerns.

M/17/035 – Dawn Meats/Dunbia

41. On 16 June 2017, the CCPC received a notification of a proposed transaction whereby Dawn Meats Ireland Unlimited Company would acquire sole control of each of Dunbia (Ireland) Limited and Dunbia (Slane) and the establishment by Dawn Holdings Limited and Mr. Jim Dobson of a joint venture company which will acquire the beef and lamb businesses in the United Kingdom of the Dunbia group of companies (Dunbia) and of the Dawn Meats group of companies (Dawn Meats).

42. In the course of an extended Phase 1 investigation, the CCPC consulted with a number of third parties, including competitors, customers, industry representative bodies and the Department of Agriculture, Food and the Marine. In addition, the CCPC carried out a detailed econometric analysis of the trend in the prices paid by slaughterhouses to

farmers for live cattle for slaughter in the State over the period January 2011-September 2017. The CCPC also served a Requirement for Further Information on both Dawn Meats and Dunbia. Following this detailed assessment, the CCPC formed the view that the proposed transaction would not substantially lessen competition in any market for goods or services in the State. The Determination was made on September 28 2017.

M/17/036 – Sean Loughnane/Crinkle Fine Foods

43. The proposed transaction whereby Sean Loughnane (Galway) Limited (Sean Loughnane) would acquire certain business assets of Crinkle Fine Foods Unlimited Company (Crinkle Foods) was notified to the CCPC on 29 June 2017.

44. The CCPC conducted an extended preliminary (Phase 1) investigation, which included a Requirement for Further Information served on both Sean Loughnane and Crinkle Foods. During the investigation, the CCPC identified a potential anti-competitive clause in the asset purchase agreement (“the Agreement”) between Sean Loughnane and Crinkle Foods which would prevent Sean Loughnane from engaging in business activities which compete with a third company for 24 months from the completion of the proposed transaction.

45. To address the potential competition concern identified, the CCPC required Sean Loughnane and Crinkle Foods to submit proposals. In this regard Crinkle Foods and Sean Loughnane submitted binding commitments which allowed them to vary the terms of the Agreement by deleting the relevant clause of the Agreement in its entirety, effective from 29 September 2017. In addition, both Sean Loughnane and Crinkle Foods committed not to put into effect any arrangements that would have the same or similar effect to the clause.

46. The CCPC subsequently cleared the proposed transaction, subject to binding commitments on 3 October 2017.

M/17/040 – Independent Newspapers/Caltray

47. The CCPC, on 11 October 2017, cleared the proposed transaction whereby Independent News & Media Plc (IN&M), through its wholly-owned subsidiary Independent Newspapers (Ireland) Limited (INI), and Caltray Limited (Caltray) would acquire joint control of Offscript Studios Limited (Offscript Studios). The proposed transaction was notified to the CCPC on 10 July 2017.

48. IN&M is a public limited company incorporated in the State and listed on the Irish and London Stock Exchanges and operates a newspaper and media group on the island of Ireland. Caltray is a holding company and one of its shareholders owns ShinAwil Limited, which is involved in the production of television shows such as The Apprentice, Dragon’s Den, MasterChef Ireland and the Voice of Ireland.

49. The parties submitted that following completion of the proposed transaction, Offscript Studios would be involved in the production, marketing, licensing and sale of online digital video content for branded advertising. The proposed transaction involved a vertical merger whereby IN&M subcontracted the production of two video advertising campaigns to ShinAwil and IN&M is involved in distribution/disclosure of such video contents on its online platform. Also, IN&M could use the JV Company to produce digital video content for IN&M’s advertising clients.

50. In its review of the proposed transaction, the CCPC assessed whether, post-transaction, IN&M would have the ability and incentive to foreclose its competitors by requiring brands and advertising agencies to only use the JV Company and IN&M online platform in the market for the production, sale/licensing and distribution/disclosure of digital video content for branded advertising in the State.

51. The investigation included a Requirement for Further Information served on INI, IN&M and Caltray. The CCPC found that there will remain sufficient and large competitors in the market post-transaction. The CCPC, therefore, formed the view that the proposed transaction will not substantially lessen competition in any market for goods or services in the State.

Phase 2 Merger Investigations

N/A

Other In-depth Investigations

52. The Competition Act 2002 requires that proposed mergers or acquisitions between businesses operating in the State, which meet certain turnover thresholds, must be notified to the CCPC. Where a proposed merger or acquisition is required to be notified to the CCPC, a notification must be made before the proposed merger or acquisition is put into effect. In August 2017, the CCPC became aware that Armalou Holdings Limited, through Spirit Ford Limited, may have acquired Lillis O'Donnell Motor Company Limited without notifying the acquisition to the CCPC. After a preliminary assessment, in October 2017, the CCPC commenced an investigation into the suspected breach of the notification requirements under section 18(1) of the Act, which is an offence under sections 18(9) and 18(10) of the Act. This investigation was still ongoing at the end of 2017.

4. The Role of Competition Authorities in the formulation and implementation of other policies

53. 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, 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.

4.1. Submissions

Table 1. Submissions

Body	Topics
Various Parliamentary Committees	The funding of domestic water services Regulating the grocery sector Proposals for regulation of variable rate mortgages Civil or administrative fines for breaches of competition law
The Legal Services Regulatory Authority	On a variety of public consultations covering new business models for the legal sector to improve competition and consumer choice: Legal partnerships Multi-disciplinary practices Issues relating to Barristers
Commission for the Regulation of Communications	Response to public consultation on review of non-geographic numbers
Central Bank of Ireland	Response to public consultation on mortgage transparency and switching
Commission for Aviation Regulation	Response to public consultation on passenger representation in setting of airport charges

4.2. Addressing gaps in the Irish enforcement regime

54. 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. The absence of civil or administrative fines for competition law infringements is a gap in the Irish enforcement regime, which the CCPC has highlighted previously and continued to address in 2017 as follows:

- The requirement for administrative or civil fines was endorsed in a submission to the Parliamentary Joint Committee on Business, Enterprise and Innovation regarding the publication of the proposed Directive to empower the Competition Authorities of the Member States to be more effective enforcers and to ensure the proper functioning of the internal market COM (2017) 142 (“ECN+”).
- The Chairperson participated in an informal exchange of views on ECN+ in the European Parliament on 11th October 2017, led by Andreas Schwab, MEP, Rapporteur of the European Parliament on the Directive, at which she put forward the necessity for administrative or civil fines.
- The requirement for administrative or civil fines was considered and proposed in a response sent by the CCPC to the Law Reform Commission’s Issues Paper on Regulatory Enforcement and Corporate Offences.

4.3. Appearance before a Parliamentary Committee

55. *7 December 2017:* The Oireachtas Committee on Finance, Public Expenditure and Reform, and An Taoiseach re Tracker Mortgages Issues and consumer protection in financial services

56. *15 June 2017:* The Oireachtas Committee on Finance, Public Expenditure and Reform, and An Taoiseach re CCPC Mortgages Options Paper - proposing a number of actions in the short, medium and long term which are designed to address ongoing issues and difficulties in the Irish mortgage market.

4.4. Advice provided to Government Departments and Public Bodies

57. 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 regulators/public sector bodies and provided input on a range of topics including the following:

Table 2.

Body	Topic
Commission for the Regulation of Utilities	A variety of issues including matters relating to: The all-island energy market/iSEM Review of competition in the electricity/gas markets Smart metering
Department of Business, Enterprise and Innovation	EU Omnibus regulation - agriculture rules
Department of Transport, Tourism and Sport	New policy on airport charges
Department of Communications, Climate Action and Environment	New arrangements for household waste charges

58. In addition, the CCPC also participated in a number of stakeholder fora in relation to water, energy, waste, insurance, procurement and a variety of Brexit related initiatives.

5. Resources of the Competition and Consumer Protection Commission

5.1. Resources Overall

59. The CCPC is funded by way of an annual grant from the Department of Business, Enterprise and Innovation, and also an industry levy in respect of specific consumer information and education functions in the financial services sector. In 2017, the CCPC's total income was €12,138,000. The CCPC is a dual agency for competition and consumer protection and budgets are not allocated to individual functions. Many functions have a dual mandate including Criminal Enforcement, Advocacy, Legal Services, Corporate Services, Organisational Development and Communications etc. Budgets are not apportioned between competition and other functions/activities.

Table 3. Competition and Consumer Protection Commission Budget 2017

Budget	2017
Exchequer	€10,038,000
Levy	€2,100,000
Total	€12,138,000

Table 4. Number of employees by profession

(For competition role only)

Lawyers	7
Economists	16
Other professionals	8 ¹
Support staff	N/A ²
Total Staff	34

5.2. Human Resources

60. The main Divisions that are specifically responsible for competition enforcement are as follows:

- Competition Enforcement & Mergers – 15 staff
- Criminal Enforcement – nine staff³
- Legal Services - At any one time at least two of the four staff are dedicated to competition enforcement
- The CCPC also employs two forensic IT investigators whose role is primarily concerned with competition enforcement investigations
- Advocacy – six staff members⁴
- Three Members - one Member of the Commission is responsible for oversight of the Competition Enforcement and Mergers Division, one Member of the Commission has responsibility for the Criminal Enforcement Division and one Member of the Commission is responsible for Advocacy.

61. 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.

¹ 6 Criminal investigators and 2 forensic IT investigators

² Support staff are not assigned specifically to competition functions, but work across the organisation.

³ Staff have a dual competition and consumer protection role

⁴ Staff have a dual competition and consumer protection role

62. There are also a number of internal functions that span the competition and consumer remits, these include, including Communications & Market Insights (17 staff), research (1 staff member), Corporate Services (seven staff) and Organisation Development (four staff).

6. New Reports and Studies on Competition Policy Issues

6.1. Ireland's Mortgage Market

63. Also, 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 aim of the study was to set out the options for Government in terms of market structure, legislation and regulation to lower the cost of secured mortgage lending and improve the degree of competition and consumer protection.

64. For the purpose of this study, the CCPC focused on mortgages secured on a property, which included Principal Dwelling Homes (PDH) and Buy to Lets (BTL). The study set out;

- Consumers’ expectations of the mortgage market;
- A description of the unique characteristics of the Irish mortgage market, gaps where competition or consumer protection is inadequate and surveyed the views of stakeholders and potential new entrants on barriers to entry into the Irish mortgage market;
- How mortgage interest rates are determined in the Irish market, the role that competition between lenders plays in that process and comparisons with other jurisdictions;
- And set out a range of options to improve competition and consumer protection in the mortgage market which may lead to a reduction in the cost of secured mortgage lending.

65. The CCPC’s paper, which was published in June 2017, was the outcome of extensive consultation and research, including detailed interviews with stakeholders such as consumer representatives, industry representatives, individual banks and mortgage lenders both domestic and in other jurisdictions, independent financial advisers, new entrants and potential new entrants to the Irish market, academics, the ESRI and regulatory bodies, both domestic and foreign. The CCPC also commissioned consumer research to examine consumers’ perceptions and experiences of the market.

66. All of the information was used to develop an evidence-based analysis of the market which formed the basis of 14 actions which the CCPC believe should be considered by Government and policy makers including;

- Developing a defined long term national strategy and vision for both the housing and mortgage markets
- Increasing consumers choice by improving the ability for, and incidence of, switching
- Encouraging new entrants and building international reputation

- Promoting longer-term funding options, in particular, a shift towards longer-term fixed rates.

6.2. Personal Contract Plans

67. In July 2017, the CCPC commenced a study of the Personal Contract Plan (PCP) market. The study was prompted by the growing popularity of PCPs, the large sums of money involved and the complexity of the agreements. The report will compile evidence in relation to the size and characteristics of the PCP market; the experience of consumers in the market and their ability to understand PCP agreements. The current protections available to consumers under the Consumer Credit Act 1995 will also be reviewed. The report enables the CCPC to assess the consumer protections in place for those who sign up to PCP contracts and to evaluate if further protections are required in this market. The report is the first public analysis of the PCP market in Ireland. The report was published in March 2018 with recommendations to policymakers to help safeguard consumers in the future.

6.3. The Household Waste Collection Market

68. In November 2017, the CCPC commenced a study to assess the nature and scale of consumer and operator issues in the household waste collection market and will consider whether the introduction of an enhanced regulatory regime could efficiently address these issues, in the short and long term. As part of this study, the CCPC commenced an extensive process of engagement with operators, trade bodies, consumers and other relevant stakeholders to gain further information and insights about the sector. The study is due to be published in June 2018 and will include an analysis of the evolution of the household waste collection market in Ireland; an examination of the operation of waste markets elsewhere and an economic assessment of the market. Following this analysis, the CCPC will consider what, if any, changes are required to the current consumer protection and regulatory regimes.