



Ireland is located in Western Europe; occupying five-sixths of the island of Ireland in the North Atlantic Ocean, West of Great Britain.

In 1948, Ireland withdrew from the British Commonwealth; it joined the European Community in 1973. Irish Governments have sought the peaceful unification of Ireland and have co-operated with Britain against terrorist groups. A peace settlement for Northern Ireland, known as the Good Friday Agreement, approved in 1998, is being implemented with some difficulties.

### Economy

Ireland is a small, open, trade-dependent economy and is one of the fastest growing economies in the developed world. In the last few years, economic development has been characterised by high growth rates and a strong decline in unemployment. Agriculture, which was one of the most important sectors, has now been dwarfed by industry and services. Exports are the main engine for the growth of Ireland, though consumer spending, construction and business investment have also benefited the economy.

### Competition Evolution and Environment

Ireland's traditional economic policy approach did not emphasise market competition. The Irish Republic tried to be economically self-sufficient for most of the 20<sup>th</sup> century, following a model of state-directed centralisation.

The traditional approach to market regulation in Ireland tended to rely on control rather than competition. *The Prices Act*, which dates from 1958, provides for fixing prices by a ministerial order. Price orders were in effect through the 1970s, into the 1980s. The practice of imposing price control was mostly discontinued in the 1990s, but the Government still occasionally tries to control prices directly, and not just in infrastructure utility sectors.

Ireland's first competition legislation, *The Restrictive Practices Act of 1953*, protected fair trade. This statute supplemented the common law principles governing

PROFILE	
Population:	4 million***
GDP (Current US\$):	153.7 billion***
Per Capita Income: (Current US\$)	27,010 (Atlas method)*** 36,360 (at PPP)**
Surface Area:	70,270 sq. km
Life Expectancy:	76.9 years**
Literacy (%):	98 (of ages 15 and above)**
HDI Rank:	10***
<i>Sources:</i> - World Development Indicators Database, World Bank, 2004 - Human Development Report Statistics, UNDP, 2004 (**) For the year 2002 (***) For the year 2003	

business behaviour. It was designed to control abuses, not to prohibit particular types of conduct. The statute was applied through orders prescribing fair practices for an industry, and through decisions about applications for exemption. These actions were taken by a Minister, based on recommendations from the Restrictive Practices Commission. The three Commissioners were not full-time appointees until the 1970s, when the body was renamed as the FTC, and they had no professional staff support.

As Ireland's economic policy direction shifted in the late 1980s, a different competition culture began to appear. One stimulus for change has been the EU directives calling for liberalisation in industries that were traditionally cartels and state-run monopolies. Changes in policy direction in Ireland coincided with similar changes elsewhere, as many EU and OECD member countries moved toward more market based regulatory systems.

There have been calls for reform in competition policy since the 1970s. The FTC issued a report in 1989 recommending fundamental changes. In 1991, a new Competition Act, which prohibited restrictive agreements

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and abuse of dominance, replaced the old Restrictive Practices Act, and a new Competition Authority succeeded the FTC. All of the 'restrictive practices' orders were eliminated, except the one covering the grocery industry.

The means provided for enforcing these new prohibitions were ineffective. The Minister for Industry and Commerce could file a suit, in Court, seeking an order to stop the prohibited behaviour. During the five years, that the Minister had the sole authority to take enforcement action, it took none. The independent authority had only an advisory role.

Concern about the lack of enforcement led to calls for further reform in the mid-1990s. One obvious step was to give the independent Authority the same power the Minister had, that is, to seek Court orders to stop the prohibited conduct. Debates concerning reform featured increasingly vigorous calls about the need for stronger enforcement.

As a result, and somewhat unexpectedly, the *Competition (Amendment) Act of 1996* not only provided for independent enforcement power and a Director of Competition Enforcement, but it also made all violations of competition law potentially criminal offences, and set fines and even imprisonment as available sanctions. Ireland thus provides, in principle, for some of the toughest sanctions in OECD countries for similar violations.

At the same time that enforcement powers were dramatically expanded, and before there was any experience gained in applying them, the Minister appointed an outside advisory panel, the Competition and Mergers Review Group (CMRG), to examine competition policy and enforcement processes. The CMRG issued its final report in early 2000, making 40 detailed recommendations about applying competition law and about the relationship between competition policy and other regulatory institutions and policies.

The publication of the final Report of CMRG (in May 2000) led to a government decision (in October) to introduce new legislation to improve competition law.

### Competition Law and Policy

A major development that occurred in 2001 was the publication, in December, of a new Competition Bill, the major provisions of which were the proposals to transfer responsibility for deciding on M&As from the Minister for Enterprise, Trade and Employment to the Competition Authority; improvements in the Authority's enforcement powers; and making the Authority more financially autonomous and accountable.

For the Competition Authority, 2002, is most likely to be remembered as the year in which there were significant

changes made in relation to existing competition law. *The Competition Act 2002* was enacted. The Act consolidated the competition law in Ireland and repealed the *Mergers, Take-overs and Monopolies (Control), Act, 1978*, the *Competition Act, 1991* and the *Competition (Amendment) Act, 1996*. It enhanced the Authority's powers in several different respects.

#### Box 79.1: Price Fixing Agreement Among the Actors and Advertising Agency Revoked

In March 2003, the Competition Authority initiated its own investigation into possible price fixing among self-employed actors and advertising agencies. An agreement between the Irish Actors' Equity (SIPTU), on behalf of the actors, and the Institute of Advertising Practitioners in Ireland, on behalf of advertising agencies, entitled '2002 Agreement on Minimum Fees Effective from October 01, 2002' ('Agreement'), provided both specific fees for services rendered and various other terms and conditions.

Following the Authority's investigation, both Equity and the Institute have undertaken not to enter into or implement any agreement that directly or indirectly fixes the fees that the Institute or its members pay self-employed actors in return for services rendered.

Source: Annual Report 2002, The Competition Authority

The Competition Act, 2002 was a remarkable step forward in Irish competition policy. It was the product of a four-year review by the Competition and Mergers Review Group, and of a further two years of debate and discussion within and beyond the *Oireachtas* (Parliament of Ireland). In all of the areas of the Authority's work: enforcement, mergers and advocacy, it made radical, far-reaching and sometimes (as with media mergers) internationally innovative changes.

The Act provides for major changes in the administration of competition law in Ireland. The Competition Authority became a public body as opposed to an agency of the Department of Enterprise, Trade and Employment. Changes are provided with respect to the manner in which the Authority can investigate and enforce competition legislation. The penalties for those convicted of breaches of Irish competition law have been altered as well.

The system of voluntary notification by businesses of agreement between undertakings has been abolished. The Competition Authority took over responsibility from the Minister of Enterprise, Trade and Employment for the control of M&As.

### **Box 79.2: Resale Price Maintenance Agreements between The Irish Times and its Retailers Struck Down**

In the autumn of 2002, the Competition Authority initiated an investigation into resale price maintenance in the newspapers and periodicals industry, based on information it received from a Government department. The Competition Authority was concerned that the Irish Times Limited (ITL) was enforcing resale price maintenance at various levels of its distribution chain.

In 1992, the ITL notified the Competition Authority of its standard distribution agreement with newspaper retailers, and requested a certificate under Section 4(4) of the Competition Act, 1991, or, in the event of a refusal, a licence under Section 4(2) of the Competition Act, 1991.

In 1996, the Competition Authority issued a Statement of Objections to the ITL, contending that one of the clauses of the notified agreement constituted resale price maintenance in the retail of its newspapers. In 1997, ITL offered to amend that clause. The Competition Authority was satisfied that the amended agreement was compatible with the Competition Act, 1991 and issued a certificate to ITL for the notified agreement as amended.

In May 2003, the Authority outlined its concerns with respect to possible resale price maintenance by ITL in its agreements with retailers. In addition to amending its standard distribution agreement with newspaper retailers, ITL has agreed to amend its price increase notices circulated to newspaper retailers. This amendment ensures that ITL does not appear to encourage newspaper retailers in any way to raise the resale price of newspapers when it increases the cover prices of its newspapers.

ITL has also undertaken to indicate, on the front page of its newspapers, that the prices quoted are recommended retail prices only. As a result of the assurances, the Competition Authority decided to discontinue its investigation of ITL for so long as it complies with the terms of those assurances.

*Source: Annual Report 2003, The Competition Authority*

### **Sectoral Regulation**

Regulatory reform in Ireland gathered speed over the 1990s and is moving ahead on a broad front. From one perspective, Ireland's regulatory reforms are the familiar

### **Box 79.3: Abuse of Dominance**

On October 22, 2004, Justice Nicholas Kearns held that the Irish League of Credit Unions had abused its dominant position by refusing non-affiliated credit unions access to its savings protection scheme. This is only the second time that the High Court has found an abuse of dominance.

John Fingleton, chair of the Irish Competition Authority stated: "The decision supports many of the (recent innovations) in Irish competition law, such as the appointment of judges with competition expertise, case management, and the appointment, by the Court, of an independent economics assessor".

The Irish League of Credit Unions (ILCU) was said to have broken competition law by requiring credit unions to be members before they could avail themselves of a particular protection scheme.

By requiring members to take out loan protection and life savings cover with a company it controls, the League was alleged to be abusing its position in the market for credit union representation. The League represents 516 affiliated credit union members throughout Ireland.

The case is one of the first cases brought against a voluntary organisation and may set a key precedent.

*Source: Global Competition Review Briefing, November 2004*

story of an OECD country moving away from statistic policies, focused on producer support, towards market-oriented policies focused on consumer welfare and dynamic economic growth.

Regulatory reform is helping Ireland manage the consequences of fast growth, and build new capacities to sustain growth into the future. For example, regulatory reform is seen as a way to open up important infrastructure and policy bottlenecks to further growth and to attain efficiency improvements that can help manage inflationary pressures. The Irish Government is also using reform to establish a more competitive and flexible economy that can innovate, adapt and prosper, even as the sources of its current prosperity change.

Currently, competition principles are integrated, to some extent, into the general regulatory reform programme, but market reforms of utilities and infrastructure services still do not consistently apply competition principles.

### **Energy Sector**

The Commission for Energy Regulation (CER) is the independent body responsible for overseeing the liberalisation of Ireland's energy sector. The CER was initially established and granted regulatory powers over the electricity market under the *Electricity Regulation Act, 1999*. The enactment of the *Gas (Interim Regulation) Act, 2002* expanded the CER's jurisdiction to include regulation of the natural gas market. The CER is working to ensure that consumers benefit from regulation and the introduction of competition in the energy sector.

The *Energy (Northern Ireland) Order 2003* provides for the establishment and functions of the Northern Ireland Authority for Energy Regulation and the Energy Group of the General Consumer Council for Northern Ireland. The role of the Council, in relation to energy, is to promote and safeguard the interests of consumers of gas and electricity by providing advice and information to consumers, public authorities and other persons; investigating consumer complaints; and by obtaining and keeping, under review, information about consumer matters and the views of consumers about such matters.

### **Communications Sector**

The Commission for Communications Regulation (ComReg) was established on December 01, 2002 under the *Communications Regulation Act 2002*. ComReg is the statutory body responsible for the regulation of the electronic communications sector (telecommunications, radio communications and broadcasting transmission) and the postal sector. It is the national regulatory authority for these sectors in accordance with EU law, which has been transposed into Irish legislation.

ComReg enables competition in the communications sector by facilitating market entry through general authorisation to provide networks and services, and by regulating access to networks, so as to develop effective choices for consumers, both business and residential.

### **Financial Services**

The Irish Financial Services Regulatory Authority (Financial Services Regulator) was established on May 01, 2003. The Financial Services Regulator is responsible for the regulation of all financial services firms in Ireland. It also has an important role in the protection of the consumers of those firms. As Financial Services Regulator, its main tasks are to:

- help consumers make informed decisions on their financial affairs in a safe and fair market; and
- foster sound, growing and solvent financial institutions which give consumers confidence that their deposits and investments are secure.

### **Consumer Protection**

In Ireland, the rights of consumers of goods and services are protected by law. The Office of the Director of

Consumer Affairs (ODCA), is an independent office, established by law, with responsibility for providing advice and information to consumers. In addition, the Director for Consumer Affairs is responsible for the enforcement of a wide range of consumer protection laws. Primary laws enforced for the protection of Consumers are:

- *Consumer Information Act, 1978*;
- *Liability for Defective Products Act, 1991*;
- *Consumer Credit Act, 1995*;
- *Package Holidays and Travel Trade Act, 1995*;
- *European Communities (Misleading Advertising) Regulations, 1988*; and
- *European Communities (Unfair Terms in Consumer Contracts) Regulations, 1995*.

Some of these consumer protection laws include:

- laws on deceptive trading practices;
- restrictive practices;
- consumer credit;
- package travel;
- unfair contract terms;
- timeshare;
- consumer safety (mandatory standards),
- food labelling;
- textile labelling;

#### **Box 79.4: Wheat Cartel in the Dock**

On August 31, 2002, there was a blockade by six farmers at Drogheda Port, which prevented a ship from offloading grain for several days. Following various protests, the Competition Authority decided to initiate proceedings.

Although acquitted of the more serious charge of effectively distorting competition in the wheat trade, Judge Flann Brennan found them guilty of intending to distort competition in the wheat market.

Judge Brennan also convicted five of the six on a second count, related to a private meeting at the Boyne Valley Hotel in September of the same year. The prosecution was brought forward under Section 8 (2) of the Act, which carries the maximum penalty of a €3,000 fine. Taking both offences into account, Judge Brennan imposed fines totalling €14,000.

Four of the six farmers are prominent members of Ireland's powerful Irish Farmers' Association (IFA), including Vice-president Ruaidhrí Deasy, grain committee secretary Fintan Conway, Committee Chairman Paddy Harrington, and former Chairman of the IFA in Louth, Raymond O'Malley. The other two found guilty are farmers Colm McDonnell and George O'Brien.

*Source: Global Competition Review, April 2004*

### Box 79.5: Retail Price Collusion of Motor Fuels ‘Fixed’

In 2002, the Competition Authority initiated an investigation into possible resale price maintenance in Letterkenny by Statoil Ireland Limited (SIL) and its three motor fuels retailers in the town.

During the course of investigation, it came to the Competition Authority’s attention that SIL was operating a scheme, the Price Support Agreement, with independent retailers of motor fuels. These agreements provided financial support to SIL retailers in order to match the price of selected motor fuels retailers that are most likely to compete with the SIL stations.

However, as part of the agreement, the Statoil branded station owner was not allowed to charge more than the recommended retail price, and would not receive price support from Statoil for any price cut below the marker stations.

The Price Support Agreement combined a ceiling on price – the recommended retail price and a floor – that charged by strategically located rival motor fuels

retailers. Rival stations knew that if they lowered their price, then the Statoil branded stations would match their price reductions. Therefore, it would appear that the Price Support Agreement may have acted as a restraint on competition and, thus, harmed consumers.

A careful examination of the facts of the situation in Letterkenny, in terms of market shares of SIL and other stations, the views of the motor fuels retailers and several price surveys, combined with the development of a very simple model, led the Competition Authority to the view that the Price Support Agreement operated in such a way that it breached the Competition Act 2002.

After the Competition Authority informed SIL that it intended to initiate legal proceedings, unless certain undertakings were given to the Competition Authority to amend its behaviour, SIL abolished the PSA scheme as of midnight on July 31, 2003. In addition, it agreed not to implement or introduce any new support scheme containing the features that the Authority considered breached the Competition Act 2002.

*Source: Annual Report 2003, The Competition Authority*

- unit pricing; and
- price displays.

Another agency that promotes consumer’s interests is the Consumers’ Association of Ireland (CAI). CAI is an independent, non-profit organisation working on behalf of Irish consumers. CAI was set up in 1966 to protect and educate consumers. It is the aim of CAI to represent consumers making sure that their needs as consumers of goods and services are given higher priority. The aims of the Association are:

- to maintain and improve the standard of goods and services rendered to the public; and
- to promote and advance public knowledge on all matters concerning users and consumers of materials, and goods and services of all kinds.

#### Concluding Observations and Future Scenario

The current Act has some potentially strong sanctions, but it may be several years before these are properly tested and explored, given the current output of the Authority. Second, and more importantly for the economy, there is a legacy of protected and highly concentrated markets arising from decades of lax competition policy and State intervention to restrict competition policy, that will not be undone quickly.

Changing mindsets and setting rules for the market economy that promote competition, efficiency and innovation will not be done overnight. Improvements to the Competition Act could be made and these could undoubtedly increase compliance and improve the Authority’s ability to tackle all the sources of lack of competition. However, the more important priority is to increase the amount of public enforcement so as to exploit the full potential of the current law.

#### Suggested Readings

1. OECD Reviews of Regulatory Reform, Regulatory Reform in Ireland, April 2001
2. OECD report on, ‘The Role of Competition Policy in Regulatory Reform’
3. Speeches and Presentation of ‘The Competition Authority of Ireland’ (<http://www.tca.ie/>)

### ✦ **Irish Authority Launches Phase II**

Ireland's Competition Authority is launching an in-depth investigation of Applied Materials/Brooks Software. The merger is also being notified with authorities in China, Germany, Korea, Taiwan and the US.

According to the Authority, a deeper investigation is needed to establish the effect on competition in the market for real-time software applications, used by manufacturers to increase efficiency.

Applied Materials – the world's largest maker of the equipment used to make semiconductors – launched the US\$125mn deal for Brooks Automation's software division in November. The company reported sales of US\$9.2bn in 2006.

The Authority has until March 30, 2007, to make a final decision on the deal.

*(Source: Global Competition Review, 02.01.07)*

### **Irish Enforcer Slams Lawyers**

Ireland's Competition Authority has called for a shake-up of the country's legal services market, which it says is 'permeated with unnecessary and disproportionate restrictions on competition'. The Authority made 29 recommendations in a final report on competition in the country's legal profession. They include a new legal services bill, which would establish an independent Legal Services Commission.

According to the Authority, this would remedy a perceived conflict of interest of the Law Society and the Bar Council, which 'has resulted in rules and practices that serve the interests of the legal profession rather than those of the consumers'. The establishment of a Legal Services Commission would bring the regulation of the legal profession into line with best international practice and with other professions in Ireland.

*(Source: Global Competition Review, 13.12.06)*

### **Ireland Clears Forestry Acquisition**

Ireland's Competition Authority has unconditionally cleared forestry company Coillte's acquisition of Weyerhaeuser Europe. On November 10, 2006, the authority decided that no horizontal overlap existed between the companies' activities. The authority launched an in-depth investigation of the deal in September, following complaints that Coillte's takeover of a medium-density fibreboard plant in southern Ireland would hurt competition in the country's forestry sector.

Coillte has run into the authority before. In 1998, the authority blocked its acquisition of Ireland's largest sawmill, Balcas. Ireland's merger control rules have changed since then the country's existing Competition Act came into force in 2002.

*(Source: Global Competition Review, 17.11.06)*