

Summary of the hearing with the Irish Competition Authority 2 November 2006

Introduction

1. The Irish Competition Authority (ICA) informed us that its enabling legislation was the Competition Act of 2002. The ICA board comprised five Members of which one person had been appointed the Chairman. These were all appointments made by the Minister for Enterprise Trade and Employment who was the Minister responsible for the Competition Act.
2. Decisions of the Competition Authority were made by the five Members. There were broadly three types of decisions. The ICA told us that there were statutory provisions for criminal enforcement of the Competition Act. The ICA investigated breaches of the Act, while the Court made decisions and imposed penalties and remedies. Serious criminal prosecutions were undertaken by the Director of Public Prosecutions.
3. The ICA also took decisions under section 4 of the Competition Act, which was the domestic equivalent of Article 81, and section 5 of the Competition Act, which was the domestic equivalent of Article 82. The ICA told us that it decided whether it wished to enforce Article 81 or 82 or the domestic equivalents, Section 4 and 5, in the civil courts.
4. The ICA told us that it had powers, for summary criminal matters, to commence proceedings in their own name.
5. The ICA told us that one of the roles they had was advocacy and that they published a lot of studies; that was the study done in the name of the authority. It was done as you would expect in a particular way but it was published in the name of the authority.
6. The ICA told us, that with respect to mergers, it was the determinative body. The ICA told us that it must decide whether a transaction would lead to a substantial lessening of competition. That decision was then appealable by any aggrieved party to the High Court. There was a kind of 'fast track' provision built into the Act which was intended to achieve an outcome of this process within two months of appeal.
7. The ICA told us that its divisions were divided up into the two enforcement divisions which were the Monopolies Division and the Cartels Division. There was a Mergers Division, an Advocacy Division, and a Policy Division. There was also a Corporate Services Division. Each one of them was headed by one of the members with the Chairman heading two divisions.

Structure of the Irish grocery market

8. Based on figures presented in the October 2005 Report, *The Restrictive Practices (Groceries) Order 1987: A Review & Report of Public Consultation Process* published by the Department of Enterprise Trade and Employment, the ICA told us that Tesco Ireland held a market share of about 25 per cent. The next largest players were Dunnes at 22 per cent; SuperValu/Centra (Musgraves) at 21.7 per cent; Superquinn at 8.6 per cent; BWG(Spar/Mace) accounted for 7.5 per cent; Marks & Spencer 1.9 per cent; others at 13.3 per cent.
9. Between 1990 and 2005 the retail sector had experienced an increase in concentration growth from the multiples and the emergence of the convenience sector

and the symbol groups. In terms of the number of stores, there has been a decline in trend for the independent sector.

10. The ICA told us that it was aware of a reduction of 2,351 stores since 1987, representing a decline of more than 22 per cent. The ICA said that the decline in the independent sector was offset partially by the growth in the garage forecourts. Many of the garage forecourts were affiliated with symbol groups.

Groceries Order

11. The ICA told us that a form of Groceries Order had been in place since 1956 in Ireland and had gone through a number of manifestations. The most recent manifestation was the 1987 Grocery Order, which banned advertising below cost and selling below cost—cost being defined as net invoice price.
12. The ICA told us that it had strongly argued for the removal of the Groceries Order and had provided a submission to the Minister for Enterprise, Trade and Employment on the Groceries Order in 2005. In essence the TCA told us that the Groceries Order was an anti-competitive restriction that was very costly for consumers and the Irish economy. The ICA told us that in early 2006, the Minister for Enterprise, Trade and Employment signed the Order to commence the Competition (Amendment) Act 2006, which took the immediate effect of revoking the Groceries Order.
13. The ICA told us that it had reviewed material on the movement of prices since the revocation of the Groceries Order. The ICA emphasized that it was very difficult to come to any conclusions on the basis of this limited information over a very short time period. The ICA told us that the data indicated that there had been a decrease of around 0.5 per cent for items that were included in the Groceries Order and an increase of 1.8 per cent for those items that were not included in the Groceries Order. The ICA told us that the change in the consumer price index in Ireland over this period of time was 2.1 per cent.
14. The ICA told us that Tesco had claimed 10,000 items were covered by the Groceries Order. 5,000 items had experienced price cuts since the abolition, with remaining to be done by early 2007.
15. There have been four further provisions that accompanied the removal of the Groceries Order. These provisions were designed to prohibit grocery undertakings from: compelling or coercing another grocery undertaking to resell or advertise for resale any grocery goods at a fixed price or above a minimum fixed price; applying dissimilar conditions to equivalent transactions with any grocery undertaking; compelling or coercing another grocery undertaking to make any payment or grant any allowance for the advertising or display of grocery goods; and compelling or coercing another grocery undertaking to make a payment or grant an allowance to the retailer for providing space for grocery goods within the first 60 days of the opening of a new retail outlet, the opening of a newly expanded or extended retail outlet or the opening of a store to the public under new ownership.
16. The ICA told us that at the same time of the abolition of the groceries order, and the commencement of the amendments, it was asked to monitor the grocery sector. It was a commitment made by the Minister and under their Act the Minister may request the ICA to undertake studies. He had a statutory right to ask and the ICA had a statutory duty to respond.
17. The ICA told us that it would be engaging in a review of the removal of the Groceries Order. The ICA said that it would await a full year of data since the removal of the

order. The ICA told us that it was aiming to publish the report of its review by around June or July of 2007.

Merger activity

18. The ICA told us that when Tesco entered into the Irish market in 1998 with an acquisition of Quinnsworth, it did not have the independent merger powers that it now has. The ICA told us that it conducted reviews of this transaction, but that at that point in time it was the Minister who made the final decision.
19. With respect to future merger activity, the ICA was now the determinative body for mergers in Ireland. The threshold for mergers to fall under purview of the ICA was €40 million. The ICA told us that, given the size of this threshold, it was unlikely that merger activity within the Irish grocery market would be reviewed by it, unless it was a very large transaction or it was of an international dimension.

Investigations

20. The ICA told us that there was an ongoing case involving price fixing of retail milk, but that no further information could be given at this point in time other than that which was contained within the current ICA annual report. The ICA told us that it had reached some settlements and that there was one settlement that was pending.
21. The ICA initiated High Court proceedings against the Beef Industry Development Society in June 2003. The ICA had challenged a proposed rationalization of the beef processing industry—led by a group of beef processors—which the ICA believed would result in anti-competitive effects including increased beef prices to consumers.
22. The ICA told us that an injunction was not sought in this case because the parties gave undertakings to the Competition Authority to withhold implementation of the proposed scheme pending the case being heard.
23. The ICA told us that the hearing of this case began in late 2005 before the High Court and concluded in January 2006. It was expected that the High Court would deliver a public version of its judgment shortly. The ICA told us that it intended to appeal the High Court judgment.
24. The ICA told us that there had been no complaints received since the abolition of the Grocery Order notwithstanding various meetings that had taken place with a number of trade associations that had inquired about its enforcement policy with respect to the new provisions brought in by the Competition Amendment Act 2006.