

Group Briefing

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Highlights of the CCPC Annual Report for 2017

KEY CONTACTS



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The Competition and Consumer Protection Commission has published its Annual Report for 2017, its third such report since it was established in October 2014.

The 2017 Annual Report continues the focus on enforcement activity, with the CCPC highlighting the first conviction for bid rigging and the first custodial sentence for selling a clocked car in Ireland. The CCPC welcomes the publication of the ECN+ Directive as significant progress towards its long-standing goal of introducing financial penalties of a civil or administrative

nature in Ireland. In addition to highlighting the growth in its staff numbers during 2017 and its high priority sectors including mortgages, vehicle crime, PCP car finance, event ticketing, domestic waste, motor insurance and residential care, the CCPC also identifies Brexit as an ongoing challenge. Below are the highlights of the Report in the competition arena.

KEY STATISTICS

Investigations

323

Number of competition complaints received in 2017

Complaints into alleged breaches of competition law constitute a major source of intelligence for the CCPC. In 2017, the CCPC received 42,112 contacts in total (through email, phone, social media and post) which represents an increase of almost 6% from 2016.

11

Number of new criminal enforcement files opened in 2017

By contrast, 17 files relating to potential criminal breaches of competition law were closed during the year.

8

Number of witness summons issued under civil enforcement powers

The CCPC also issued six formal Requirements for Information in the course of opening two new civil investigations in 2017.

This document contains a general summary of developments and is not a complete or definitive statement of the law. Specific legal advice should be obtained where appropriate.

MERGERS

72

Number of merger notifications received in 2017, up from 67 in 2016

This number represents an increase of 7.5%, reflecting the general increase in M&A activity in Ireland.

4

Number of media mergers notified, down from 5 in 2016

One media merger (Irish Times/Sappho (Irish Examiner)) was subject to a Phase 2 investigation in 2018 before being cleared by the CCPC without commitments.

90%

Percentage of mergers cleared with standard Phase 1 review period

Of the 68 merger determinations issued by the CCPC in 2017, seven were subject to an extended Phase 1 review, up from four in 2016. There were no mergers subject to a Phase 2 review during 2017, whereas there was one such merger in 2016. As in 2016, no cases were prohibited by the CCPC.

24

Average number of working days for Phase 1 clearance

Down slightly from the average of 26 days recorded in 2016, the CCPC continues to clear Phase 1 transactions well ahead of the 30 working days allowed for under the Competition Act 2002, as amended.

commitments included a reduction in the length of supply contracts; the decoupling of photography and gown supply contracts; and a statement on the universities' websites that students have other options for sourcing their gowns.

CRH plc & Others v CCPC

In May 2017, the Supreme Court handed down its decision in an appeal by the CCPC of a High Court decision in favour of CRH plc and others concerning a challenge to the scope of documents seized by the CCPC during an unannounced inspection at the premises of Irish Cement Limited (a subsidiary of CRH) in May 2015. The Supreme Court unanimously rejected the CCPC's appeal, holding that the CCPC would be in breach of the plaintiffs' right to privacy under Article 8 of the European Convention of Human Rights were it to review, access or make use of the out of scope documents. This is considered a landmark decision and confirms that the CCPC must act proportionately in the exercise of its search and seizure powers in a manner that respects the right to privacy. Arthur Cox acted for CRH plc and the other plaintiffs in that case.

WHAT WERE THE KEY DEVELOPMENTS IN INVESTIGATIONS IN 2017?

Criminal enforcement

Following the CCPC's investigation into a cartel in the commercial flooring sector, 2017 saw the first criminal conviction in Ireland for a bid-rigging cartel offence in the *Aston Carpets* case. This conviction resulted in fines, director disqualification and a suspended prison sentence imposed by the Central Criminal Court. The level of the fine on an individual was appealed and in 2018, the Court of Appeal increased the fine from €7,500 to €45,000.

Civil enforcement

The CCPC opened two civil investigations during the course of 2017 into suspected breaches of competition law in the provision of tickets and the operation of ticketing services for live events in Ireland and alleged anti-competitive behaviour by Nursing Homes Ireland. The

CCPC's investigation into alleged price signalling in the Irish motor sector is ongoing and during the course of 2017, the CCPC held multiple witness summons hearings and obtained over 1.25 million emails and documents from the parties under investigation.

The CCPC closed two further investigations during the course of 2017 by accepting binding commitments from the parties involved:

- i. in the *Irish Property Owners Association* ("IPOA") case, the IPOA entered into undertakings with the CCPC to retract a statement of intention to co-ordinate on a range of measures, including the introduction of new charges to tenants; and
- ii. in the *University Gowns* case, a number of Irish universities provided commitments in relation to their procurement practices in tendering for graduation gown services in order to facilitate more competition and ensure increased transparency in the tendering of gowns. The

WHAT WERE THE KEY MERGER CASES IN 2017?

Kantar Media/Newsaccess Limited

The proposed acquisition of Newsaccess Limited by Mediawatch Limited trading as Kantar Media was notified to the CCPC on a voluntary basis. The CCPC became aware of the transaction and despite the financial thresholds not being met, the CCPC was concerned that the proposed transaction would result in Kantar removing its closest and most substantial competitor from the market for media monitoring services (print and broadcast) within the State. Following an extended Phase 1 investigation, the proposed transaction was cleared by the CCPC with binding commitments including the divestment of Newsaccess's fixed assets and release of a number of contracted customers of Newsaccess from the remaining term of

their fixed-term contracts.

Dalata/Clarion Liffey Valley/ Clayton Cardiff Lane

Following an extended Phase 1 investigation, the proposed acquisition of the business and certain parts of the Clarion Hotel Liffey Valley and certain parts of the Clayton Hotel, Cardiff Lane by Dalata Hotel Group plc was cleared by the CCPC. The clearance was subject to binding commitments designed to address the CCPC's concern that Dalata's management of hotels on

behalf of third parties in Ireland may result in the exchange of competitively sensitive information between hotels. As part of the commitments, Dalata has undertaken not to allow the exchange of competitively sensitive information between any hotel which it is appointed to manage and any hotel which it owns, controls, leases or operates. Dalata has also agreed to inform the CCPC of any proposal by it to begin operating a hotel in Ireland on behalf of a third party, where it would otherwise not be mandatorily notifiable to the CCPC,

following which the CCPC can require notification of any such proposal.

WHAT ARE THE CCPC'S PRIORITIES?

In the report, the CCPC identifies its ongoing investigations in the motor insurance, bagged cement and ticketing sectors and ongoing studies in the domestic waste collection market as areas of priority for 2018, as well as compliance with the Grocery Goods legislation which is concerned with dealings between suppliers of food/drink and grocery businesses: spaces to watch.

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