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**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
COMPETITION COMMITTEE**

ANNUAL REPORT ON COMPETITION POLICY DEVELOPMENTS IN IRELAND

-- January 2005 - March 2006 --

This report is submitted by the Irish Delegation to the Competition Committee FOR INFORMATION at its forthcoming meeting to be held on 8-9 June 2006.

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1. This report addresses the activities of the Competition Authority and competition law and policy developments in Ireland from 1 January 2005 to 31 December 2005. Developments and activities relating to 2006 such as an amendment to the Competition Act, 2002, and convictions for breaches of competition law in cases that have continued since 2005 have been included.

2. In November 2005 the Minister for Enterprise, Trade and Employment announced his intention to remove the Groceries Order a piece of legislation that prohibited the sale of certain groceries below cost, the Competition (Amendment) Act was introduced in March 2006. This Act abolished the Groceries Order and inserted new provisions into the Competition Act, 2002, which related to unilateral conduct in the groceries sector.

3. Over the last number of years the Competition Authority has increased its activity and achievements in the enforcement of competition law. An ongoing case against a number of distributors and retailers of home heating oil in the west of Ireland represents the first jury trial in Europe for a criminal competition offence. There have been 15 convictions to date, with 5 defendants still before the courts. One defendant was sentenced to six months imprisonment (suspended). Total fines to date have reached €72000, with individual fines ranging from €1000 to €15000.

4. The Competition Authority also continues to bring a significant number of civil cases to the High Court, for example:

- between November 2005 and January 2006 the Competition Authority's case against the **Beef Industry Development Society** was heard in the High Court over 10 days;
- in April 2005, **the Irish Dental Association** agreed settlement terms with the Competition Authority in advance of a full hearing concerning allegations of a collective boycott of a private dental insurance scheme being introduced in Ireland by Vhi DeCare;
- the **Irish Hospital Consultants Association (IHCA)** agreed settlement terms with the Competition Authority in relation to the collective negotiation of consultants' fees with private medical insurance providers;
- the Competition Authority also agreed settlement terms in its High Court actions against the Vintners Federation of Ireland, Connacht Mineral Water Company Limited, Deasy & Company Limited, United Beverages Limited, C&C (Wholesale) Limited and M&J Gleeson & Company;
- the Competition Authority is continuing to pursue High Court proceedings against **Superquinn and Nash Beverages Limited**.

5. The Competition Authority published three enforcement decision notes dealing with allegations of predatory pricing in local newspaper advertising, excessive pricing in the household waste sector and abuse of dominance by TicketMaster Ireland.

6. Mergers and acquisitions in the Irish economy remained at a consistently high level during 2005. As a consequence, the number of mergers notified to the Competition Authority continues to grow. The 84 mergers received in 2005 more than matched the 81 submitted in 2004. The 2004 figure was in turn more than a 70% increase on those notified in 2003.

7. In 2005 the Competition Authority completed two full investigations (Phase 2)
- the proposed acquisition of **MS Irish Cable Holdings B.V.** (trading as **NTL Ireland**) by **UPC Ireland B.V.** was cleared in November 2005 subject to 19 conditions;
 - the proposed acquisition of **Heiton Group plc** by **Grafton Group plc** was cleared in January 2005 subject to two conditions
8. Five of the transactions cleared by the Competition Authority following a preliminary investigation (Phase 1) included specific measures designed to address competition concerns.
9. During 2005 the Competition Authority continued to raise awareness and call for the removal of anti-competitive laws and regulations. Issues highlighted by the Competition Authority included:
- the restrictions on competition between pharmacies;
 - the impact of the Groceries Order on price competition in the grocery trade; and,
 - the current pub licensing regulations
10. During 2005 and early 2006, the Competition Authority published six reports on competition in particular sectors of the economy. For the last number of years the Competition Authority has been conducting three major studies in areas of Banking, Insurance and Professional Services. The six reports published were:
- final Report on “Competition Issues in the non-life Insurance Market”;
 - final Report on “Competition in the (non-investment) banking sector in Ireland”;
 - final report on competition issues in the architecture profession;
 - preliminary Report on competition issues in the legal profession;
 - preliminary Report on competition issues associated with the dental profession; and,
 - preliminary Report on competition issues associated with the **optometry profession**.

1. Changes to competition law and policies, proposed or adopted

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

1.1.1 Competition (Amendment) Bill 2006

11. In November 2005 the Minister for Enterprise, Trade and Employment announced his intention to amend the Competition Act, 2002 (the 2002 Act). The Competition (Amendment) Act, 2006 (the Amendment Act) came into force on Monday 20 March 2006. The primary purpose of the amendment was to repeal, by primary legislation, the Restrictive Practices (Groceries) Order 1987 (the Groceries Order) in its entirety.

12. The Groceries Order, introduced in 1987, prevented retailers from selling certain grocery products below their net invoice price.¹ All food items subject to processing other than freezing as well as alcoholic and non alcoholic beverages consumed at home and certain 'household necessities' were covered by the Groceries Order. The ban applied to a product's net invoice price and therefore did not allow for the inclusion of end of year loyalty discounts offered by suppliers to wholesalers or retailers when assessing the relevant cost benchmark (i.e., the invoice price). In practice this meant that retailers could not pass on substantial end of year 'off invoice discounts to consumers in the form of lower prices. The Office of the Director of Consumers Affairs were responsible for enforcing the Groceries Order.

13. With the coming into force of the Amendment Act, retailers in the groceries sector are no longer subject to regulatory constraints in determining the price at which they wish to sell groceries. Effectively this means that retailers are, subject to the abuse of dominance provisions in Section 5 of the Act, free to sell groceries below cost.

14. The secondary aim of the Amendment Act is to prohibit, subject to a competition test,² a number practices in the groceries sector. The Amendment Act inserts a new Part 2A entitled "Competition in the Grocery Goods Trade" immediately after Part 2 of the 2002 Act.³ Part 2A contains three sections; 15A, 15B and 15C:

- Section 15A defines what is meant by 'grocery goods', a 'grocery goods undertaking' (GGU) to which Part 2A applies and a 'retailer';⁴
- Section 15B (1), (2) and (3) prohibit certain unilateral conduct of a GGU in respect of Grocery Goods;
- Section 15B (4) prohibits specific unilateral conduct by a retailer as defined in Section 15A; and,
- Section 15C provides the Competition Authority and private parties with a right of action for breach of Section 15B. Breaches of the prohibitions in 15B are civil in nature.⁵

15. Section 15A of the Amendment Act contains three important definitions:

- a definition of 'grocery goods' that relates only to food and drink sold for human consumption that is intended to be sold as groceries. This definition does not include so called 'household necessities' as defined by the 1987 Order;

¹ The Competition Authority made an extensive submission on the Groceries Order to the October 2005 Competition Committee Roundtable on Resale Below Cost Laws and Regulations.

² Section 15B (5) states that conduct described in 15B shall not be prohibited unless that conduct has as its object or effect the prevention, restriction or distortion of competition in trade in any grocery goods in the State or in any part of the State.

³ Part 2A operates without prejudice to Part 2 of the Parent Act, i.e., the Competition Act, 2002. It is therefore possible for a Grocery Goods Undertaking to infringe Section 4 or 5 and Section 15B for the same offence

⁴ Part 2A operates without prejudice to Part 2 of the 2002 Act. It is possible therefore that a GGU could infringe Sections 4 or 5 and also Section 15B.

⁵ All other breaches of the Act are potentially criminal in nature.

- a definition of a ‘*Grocery Goods Undertaking*’ (“GGU”) for which the provisions in Section 15B relate to;⁶ and,
- a definition of ‘retailer’ which is a GGU that sells or resells ‘grocery goods’ directly to consumers.

16. Section 15B of the Amendment Act contains provisions relating specifically to GGUs. Subject to a ‘Competition Test’,⁷ the following conduct in the grocery trade is prohibited:

- attempting to *compel or coerce* another GGU to resell or advertise for resale any grocery goods at a fixed price or above a minimum fixed price;⁸
- the application of dissimilar conditions to equivalent transactions with any GGU;⁹
- compelling or coercing another GGU to make any payment or grant any allowance for the advertising or display of grocery goods;¹⁰ and,
- the compulsion or coercion by a ‘retailer’ of another GGU 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.¹¹

1.1.2 Repeal of retention orders – Investment Funds, Companies and Miscellaneous Provisions Act 2005

17. Under Section 45 (3) of the 2002 Act the Competition Authority could seize, under warrant, original books, documents and records. Subsection (6) stated that “*Any books, documents or records which are seized under subsection (3) may be retained for a period of 6 months or such longer period as may be permitted by a Judge of the District Court ...*”

18. This meant that where the Competition Authority sought to retain any book/document/record seized pursuant to warrant beyond a 6 month period that retention had to be approved by the District Court.

19. This requirement was repealed under Section 76 of the “Investment Funds, Companies and Miscellaneous Provisions Act 2005”. This means the requirement that the Competition Authority must apply to the District Court for permission to retain or extend the retention period on documents seized is now repealed. However the old section 45(6) continues to apply to documents seized pursuant to warrants

⁶ A GGU is defined as an undertaking that is engaged for gain in the production, supply or distribution of ‘grocery goods’. However, an undertaking will not be considered to be a GGU if it produces, supplies or distributes ‘grocery goods’ such as additives, ingredients or processing aids for a use other than resale by a ‘retailer’.

⁷ Conduct in Section 15B shall not be prohibited unless it has as its object or effect the prevention, restriction or distortion of competition in trade in any groceries goods in the State or in any part of the State.

⁸ Section 15B (1)

⁹ Section 15B (2)

¹⁰ Section 15B (3)

¹¹ Section 15B (4)

issued prior to the coming into force of the Investment Funds, Companies and Miscellaneous Provisions Act, 2005.

1.2 Other relevant measures, including new guidelines

1.2.1 Declaration on cylinder LPG

20. Under Section 4(3) of the Act, the Competition Authority may declare in writing that in its opinion, a specified category of agreements, decisions or concerted practices complies with the following conditions as laid out in Section 4(5), i.e., that the category of agreements; contributes to improving the production or distribution of goods or the provision of services or to promoting technical or economic progress, while allowing consumers a fair share of the resulting benefit and does not/

- Impose on the undertakings concerned, terms which are not indispensable to the attainment of those objectives; and,
- Afford undertakings the possibility of eliminating competition in respect of a substantial part of the products or services in question.

21. On 21 March 2005 the Competition Authority issued a Declaration under Section 4(3) of the 2002 Act in respect of exclusive purchasing agreements for cylinder liquefied petroleum gas (cylinder LPG). A declaration issued under Section 4(3) provides a safe harbour from prosecution to undertakings who comply fully with its provisions. The Competition Authority's declaration in respect of cylinder LPG limits exclusive agreements to no longer than two years.

1.2.2 Consultation on bulk LPG

22. In May 2005 the Competition Authority initiated a public consultation in relation to bulk liquefied petroleum gas (bulk LPG) to determine whether to issue a Declaration in the bulk LPG market.

23. This consultation process concluded in September 2005. No decisions have yet been taken on any issue set out in this paper. The Competition Authority is undertaking further research into how competition works in this market and it is envisaged that a decision will be taken in 2006 on whether or not a Declaration will be made.

1.2.3 Guidelines on refusal to supply complaints

24. In December 2005 the Competition Authority issued a guidance note relating to refusal to supply complaints. This information booklet gives guidance to Irish consumers and businesses so that they may better understand and evaluate when a refusal to supply is likely to raise concerns under the Competition Act.

25. The guidance note is intended to assist firms, who may experience difficulties in obtaining supplies of products or services, to decide whether or not they may have legitimate grounds to make a complaint to the Competition Authority. It provides the relevant information that the Competition Authority requires in order to assess such a complaint. It is also designed to give firms guidance on their obligations under the Competition Act.

1.2.4 Consultation documents on aspects of merger procedures

26. In August 2005 the Competition Authority published two public consultations seeking comments from interested parties on specific aspects of its merger procedures. The final revised documents were published on 8th February 2006, effective from 1st March 2006. These documents were;

- **procedures for access to the file in merger cases** – the purpose of this document is to give guidance to businesses and their advisors on the processes and types of documents to which access will be granted following the issue of an Assessment in a merger review; and,
- **procedures for the review of mergers and acquisitions** – this document outlines the procedures for dealing with mergers and acquisitions notified to the Competition Authority. It replaces the previous procedures document in light of the Competition Authority's experience of reviewing mergers and acquisitions over the last three years.

1.2.5 Government proposals for new legislation

27. While the Competition Authority continues to deal with a full caseload of competition issues arising from the existing stock of regulation, there is, of course, also a regular flow of proposals for new legislation. Pursuant to its statutory mandate in Section 30 of the Competition Act, 2002, the Competition Authority regularly advises Government Departments and Agencies on the effect on competition, if any, of new policy proposals under consideration. In doing so, the Competition Authority seeks to highlight competition concerns and pre-empt any negative consequences for consumers that newly framed policies might (inadvertently or otherwise) bring. For further details see paragraphs 0 to 0 below.

2 Enforcement of competition laws and policies

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

Table 1 - Investigation and enforcement powers of the Competition Authority

Investigation & Enforcement Powers	Description
Types of Investigations carried out	<ul style="list-style-type: none"> ▪ Criminal investigations ▪ Civil investigations ▪ Assessment of Mergers ▪ Formal (Market) Studies
Powers of Search and seizure	Authorised officers of the Competition Authority can enter or search any premises or dwelling with a warrant issued by the District Court
Power to Seize Documents and Records	Authorised officers of the Competition Authority can seize documents/records on foot of a warrant issued by the District Court
Power to Summon Witnesses	The Competition Authority can summon a witness to attend before it and to be examined on oath. Witnesses have the same immunities and privileges as a witness before the High Court.
Power to require production of records and information	The Competition Authority has the power to require production of records and information. Non-compliance is a criminal offence.
Power to require information from third parties	The Competition Authority can obtain information from third parties, including professional advisors and financial institutions

Table 1 - Investigation and enforcement powers of the Competition Authority (cont'd)

Investigation & Enforcement Powers	Description
Potential routes to resolution	<ul style="list-style-type: none"> ▪ Criminal prosecution (on indictment) – Brought by the Director of Public Prosecutions in Central Criminal Court (or the Circuit Criminal Court under the 1991 Act) following an investigation by the Competition Authority ▪ Criminal prosecution (summary) – Brought in the District Court by the Competition Authority ▪ Civil Action - Brought in the High Court by the Competition Authority in order to halt suspected anti-competitive behaviour ▪ Settlement without court action – Where the parties involved recognise and remedy potential breaches of competition law. Very often the Competition Authority addresses its concerns through undertakings from the parties without initiating legal proceedings.
Remedies	<ul style="list-style-type: none"> ▪ Criminal (on indictment in the Central Criminal Court) – Fines up to €4 million or 10% of turnover, whichever is the greater and/or a term of imprisonment of up to 5 years. ▪ Criminal (summary in the District Court) – Fines up to €3,000 and/or a term of imprisonment of up to six months ▪ Civil Action (by the Competition Authority) – Injunctive and declaratory relief ▪ Civil Action (by injured parties) – Damages
Appeal on use summons and search and seizure powers	The use of these powers by the Competition Authority can be challenged by way of judicial review in the High Court

2.1.1 Criminal cases brought by the Director of Public Prosecutions

- *The Director of Public Prosecutions v Michael Flanagan, Con Muldoon, Muldoon Oil, James Kearney, All Star Oil, Kevin Hester, Corrib Oil, Mor Oil, Alan Kearney, Sweeney Oil, Gort Oil, Pat Hegarty, Cloonan Oil, Ruby Oil, Matt Geraghty Oil, Declan Geraghty, Fenmac Oil & Transport, Michael McMahon, Tom Connolly, Eugene Dalton Snr., JP Lambe, Sean Hester, Hi-Way Oil, Kevin Cunniffe*

28. This particular case represents Europe's first jury trial for a criminal competition offence. A number of significant milestones have been achieved so far and more are expected by the end of the year:

- there have been 15 convictions to date;
- five Defendants are still before the courts;
- one defendant (JP Lambe) received a custodial sentence of six months imprisonment (suspended);
- total fines of €72,500 to date ranging from €1000 to €150000;
- two more firms are due to be sentenced on 18 May; and,
- trials for the remaining 5 defendants are expected by the end of the year.

29. In April, May and June of 2004 the Director of Public Prosecutions (DPP) initiated proceedings against 24 defendants in eleven District Courts across the west of Ireland. The charges relate to allegations of fixing the price of gas oil and kerosene and follow an investigation by the Competition Authority who

referred a file on the matter to the DPP in 2003. Books of evidence were served on the defendants and all were returned to Galway Circuit Court for trial on indictment. Proceedings were brought under the Competition (Amendment) Act 1996 which had a different maximum level of fines and penalties to the 2002 Act.

30. In October 2004, the DPP indicated that he wished to proceed with an initial group of four defendants. In December 2004 counsel for three of the defendants, **Corrib Oil Company Limited, Eugene Dalton Snr & Tom Connolly**, made an application to Galway Circuit Court to move the trial to the Dublin Circuit Criminal Court on the grounds that they were unlikely to get a fair trial in Galway as potential jurors were likely to have been customers of one or more of the defendants and/or witnesses for the prosecution. The application was granted and the trial of the fourth defendant, **JP Lambe**, was also moved to Dublin Circuit Criminal Court. A trial date for all four defendants was set for 14 November 2005.

31. **J.P. Lambe** pleaded guilty in Dublin Circuit Criminal Court on the 27 October 2005 to both counts of aiding & abetting **Corrib Oil Company Limited** in price-fixing. On 6 March 2006 he was given a custodial sentence of six months in prison, suspended for 12 months, and a fine of €15000.

32. On 14 November 2005 the trial of **Corrib Oil Company Limited, Eugene Dalton Senior & Tom Connolly** was adjourned by Judge Michael White because no courtroom was available for the trial. A trial date for the three defendants has been set for 3 October 2006 at the Dublin Circuit Criminal Court.

33. In December 2005 the DPP indicated to Galway Circuit Criminal Court that he wished to proceed to trial with a further group of three defendants, (**Michael Flanagan trading as Flanagan Oil, Con Muldoon and Muldoon Oil Limited**). An application to move the trial to the Dublin Circuit Court on the grounds that they were unlikely to get a fair trial in Galway was refused by Galway Circuit Criminal Court on the 10 January 2006.

34. **Con Muldoon and Muldoon Oil** pleaded guilty in the Galway Circuit Criminal Court on 28 February 2006. They received a €1000 and €3500 fine respectively. **Michael Flanagan** was found guilty by a jury in Galway Criminal Court on 2 March 2006. He was sentenced to a €3500 fine on the same date.

35. James Kearney, Alan Kearney, Kevin Hester and Declan Geraghty were not prosecuted.

- *The Director of Public Prosecutions v Dennis Manning*

36. On 19 April 2006 Dennis Manning was charged at the Cork District Court with aiding and abetting the Irish Ford Dealers Association and its members in implementing an agreement aimed at preventing, restricting or distorting competition in the motor trade so as to directly or indirectly fix the selling price of cars.

37. He was the first person charged as a result of an investigation into alleged price fixing in the motor trade.

38. He is due to appear in court again on 21 June 2006 to allow for service of the book of evidence.

- *Director of Public Prosecution v. Pat Morgan*

39. During 2004, the Competition Authority made a complaint to An Garda Síochána in relation to the failure by Pat Morgan, managing director of Tru Gas Limited, to appear before the Competition Authority. The witness summons was issued under Section 31 of the 2002 Act. The Competition Authority was seeking information during a consultation process leading up to making a Declaration in relation to

exclusive purchasing agreements in the cylinder LPG market under section 4 (3) of the Act (see paragraphs 0 and 0 above).

40. The Director of Public Prosecution charged Pat Morgan with an offence contrary to Section 31(4) of the Competition Act, 2002. Following a trial before the Dublin Metropolitan District Court, the District Judge, sitting without a jury, convicted him. At the suggestion of the CA, sentence was postponed in order to allow Morgan to comply with the summons order. After complying with the order, the Court imposed a probationary sentence.

2.1.2 Cases brought by the Competition Authority

- *The Competition Authority v Beef Industry Development Society*

41. In June 2003 the Competition Authority initiated proceedings in the High Court against the Beef Industry Development Society (BIDS) challenging a proposed rationalisation of the beef processing industry under Section 4 of the Competition Act, 2002 and article 81 of the Treaty on the grounds that the scheme would result in anti-competitive effects including increased beef prices to consumers.

42. 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.

43. The trial took place for a total of 5 days in November 2005 and 5 days in January 2006. Judgment was reserved and is expected to be delivered on or before 30 May. (High Court Record 2003 No. 7764P).

- *The Competition Authority v Superquinn*

44. Proceedings continued, without trial, in the High Court against **Superquinn**, a supermarket over allegations concerning the fixing of the retail price of milk. In similar proceedings, settlements were reached with another supermarket, Tesco in December 2002, and with three milk producers **Glanbia** and **Sligo Dairies** in July 2003 and **Dairygold** in March 2004. (High Court Record 1999 No. 6916P).

- *The Competition Authority v the Vintners Federation of Ireland*

45. The Competition Authority agreed settlement terms on 11 May 2005 with the **Vintners Federation of Ireland**, a body representing owners of licensed premises, in the High Court action taken by the Competition Authority. In 1998 the Competition Authority decided to initiate legal proceedings against the Vintners Federation of Ireland under Section 4 of the Competition (Amendment) Act 1996 in relation to allegations of price-fixing in the sale of alcoholic drinks.

- *The Competition Authority v Softdrinks beer bottlers association*

46. Legal proceedings were filed in 1999 against a total of six defendants involved in the wholesale of packaged beer and softdrinks in relation to allegations of price fixing in the sale of packaged beer and softdrinks. Five defendants; **Connacht Mineral Water Company Limited, Deasy & Company Limited, United Beverages Limited, &C (Wholesale) Limited** and **M&J Gleeson and Company** agreed settlement terms with the Competition Authority in 2005.¹² Legal proceedings continue in the High Court

¹² The settlements with **Connacht Mineral Water Company Limited, Deasy & Company Limited** and **United Beverages Limited** were handed into the High Court on 28 July 2005. The settlement terms reached with **C&C (Wholesale) Limited** and **M&J Gleeson and Company** were lodged in the High Court on 20 December 2005.

against the sole remaining defendant in this case, **Nash Beverages Limited**. (*High Court Record 1998 No 12162P*). The settlements are outlined in the press release dated 20 December 2005 (see the press section on the Competition Authority's website www.tca.ie).

- *The Competition Authority v Irish Dental Association*

47. The Competition Authority accepted settlement terms on 28 April 2005 offered by the **Irish Dental Association**, a representative body for dentists in the State, in the High Court action taken by the Competition Authority. Legal proceedings were initiated by the Competition Authority following allegations that the Irish Dentist Association, an association of undertakings, had made a decision to coordinate its members to boycott a private dental insurance scheme being introduced in Ireland by Vhi DeCare. The terms of the final settlement were read out in court by counsel on behalf of the Competition Authority. The settlements are outlined in the press release dated 28 April 2005 (see the press section on the Competition Authority's website www.tca.ie).

2.1.3 *Significant investigations solved without the need for court proceedings*

- *Irish Hospital Consultants Association*

48. In May 2005 the Competition Authority decided to initiate legal proceedings in the High Court against the Irish Hospital Consultants Association (IHCA) alleging that the IHCA had breached Section 4 of the Competition Act, 2002. The Competition Authority alleged that the object and/or effect of the IHCA's collective negotiations with private health insurance companies on behalf of its members was to directly, or indirectly, fix the fees paid to consultants by health insurers. Before court papers were filed, the Competition Authority reached a settlement with the IHCA. The settlements are outlined in the press release dated 28 September 2005 (see the press section on the Competition Authority's website www.tca.ie).

49. Following the conclusion of its investigation the Competition Authority decided to carry out a consultation process with a view to providing further guidance in respect of collective negotiations relating to the setting of medical fees. A guidance document is expected towards the end of 2006.

- *Galileo Ireland*

50. The Competition Authority received a complaint from a travel technology developer, in March 2003, alleging that Timas Ireland, trading as Galileo Ireland, had unjustifiably refused access to its computerised reservation system. Galileo Ireland operates the computerised reservation system used by most travel agents in Ireland. It was alleged that the refusal to allow the complainant access to Galileo Ireland's computerised reservation system was preventing the development of new technology for the travel industry that would enable travel agents to search more effectively and efficiently for information, such as airfares, on behalf of their customers.

51. The Competition Authority investigated this complaint primarily as a possible abuse of a dominant position, in breach of Section 5 of the Competition Act, 2002 and Article 82 of the Treaty establishing the European Union. The Competition Authority agreed to conclude its investigation without recourse to legal proceedings having received legally binding commitments from Galileo Ireland to deal with future requests for access to its computerised reservation system in an open, transparent, proportionate and non-discriminatory manner. Galileo Ireland asserted that its behaviour was not in breach of the Competition Act and denied that the facts alleged in the complaint were true. Nevertheless, in the interest of resolving the investigation, Galileo Ireland offered to give undertakings to the Competition Authority.

2.1.4 Guidance on the application of competition law

Competition Law Enforcement Decision Series

52. As part of its programme to provide guidance on the application of the Competition Act, 2002, the Competition Authority publishes on its website an Enforcement Decision Series which contains information about the disposition of certain investigations where no legal proceedings were initiated.

53. The Competition Authority publishes enforcement decision notes only on selected investigations that:

- create a precedent;
 - are of public interest (e.g. the investigation is in the public domain, the issue has been subject to considerable debate and discussion); and,
 - raise issues of interest or complexity.
- *Decision Number E/05/001 - Drogheda Independent Company Limited*

54. On 15 February the Competition Authority published details of its investigation into alleged predatory pricing by the Drogheda Independent Company Limited (Drogheda Independent) in the market for local newspaper advertising in the greater Drogheda area.

55. The Competition Authority's investigation was prompted by complaints from the publisher of the Drogheda Leader, a weekly free-sheet newspaper in the Drogheda area, alleging that the Drogheda Independent a weekly paid-for newspaper was abusing a dominant position by;

- launching its own weekly free-sheet newspaper, the Drogheda Independent Weekend Extra, in 1997;
- selling advertising below cost from 1997 to 2003; and,
- offering selective price cuts to certain categories of customers in its freesheet during January and February 2003.

56. The Competition Authority took the view that the alleged conduct by the Drogheda Independent did not breach the Competition Act, 2002. This view was taken on the basis that the Drogheda Independent is not dominant nor could its alleged conduct constitute an abuse. The alleged conduct is arguably pro-consumer and more indicative of intense competition in the market than predatory conduct by a dominant undertaking.

57. With respect to allegations of predatory conduct the note sets out a structured "rule of reason" approach followed by the Competition Authority in assessing allegations of predatory pricing. This methodology comprises four key elements that are required to establish a breach of the Competition Act:

- the plausibility of the alleged behaviour being an abuse of dominant position in a particular market;
- lack of any business justification;

- the ability to recover any short term losses (i.e., the feasibility of recoupment); and,
- pricing below cost.
- *Decision Number E/05/002 – Greenstar Recycling Holdings Limited*

58. The Competition Authority published, on 11 October 2005, the results of its investigation into allegations of breaches of competition law in household waste collection services. While the investigation did not find any breach of competition law, the Competition Authority took the view that the market for household waste collection is not working well for consumers.

59. The Competition Authority received a significant number of complaints from 2001 alleging:

- a lack of competition/choice in household waste collection services in northeast Wicklow (a county south of Dublin on Ireland’s east coast); and
- excessive pricing by Greenstar Recycling Holdings Limited (Greenstar) in household waste collection services in northeast Wicklow.

60. Greenstar possesses a dominant position in the market for household waste collection services in northeast Wicklow since it is the only operator active in the market concerned, there has been no new entry since 2000 and there is a lack of competition from firms operating in adjacent areas. A combination of economies of scale and density, as well as regulatory delays in establishing waste sorting/recycling facilities, constitute significant barriers to new entry and expansion by operators in this market.

61. The evidence does not substantiate the allegation that Greenstar’s prices are unrelated to the social value of the service provided or to the cost involved in providing the service in question. Nor is it the case that Greenstar’s prices are significantly higher than the prices charged by other private operators; they are in some case, cheaper than those charged by other private operators in the State.

62. In the Decision Note the Competition Authority recommended that the Department for the Environment, Heritage and Local Government consider reforming the regulatory environment governing the household waste collection sector. The Competition Authority considered the waste collection industry in other jurisdictions and recommended that competitive tendering (competition for the market), would be the best method of ensuring that household waste collection providers deliver good service at competitive prices.

- *Decision Number E/06/001 – TicketMaster Ireland*

63. In March 2006 the Competition Authority published its findings that TicketMaster Ireland (“TicketMaster”) did not abuse a dominant position contrary to Section 5 of the 2002 Act, and that agreements between TicketMaster and the two largest event promoters in the State did not prevent, restrict or distort competition.

64. The investigation was prompted by complaints from thousands of customers, including a single complaint petition signed by 8000 individuals, concerning;

- the price or face value of tickets sold by TicketMaster;

- the level of TicketMaster's booking fees payable by the end consumers when purchasing a ticket. For example in 2004 TicketMaster's booking fee varied from zero to a maximum of €5.95 per ticket; and
- the alleged exclusive agreements between TicketMaster and the two largest event promoters in the State, MCD Productions Limited ("MCD") and Aiken Promotions ("Aiken").

65. The Competition Authority has concluded that the promoter, in conjunction with the artist, sets the price or face value of the ticket sold by TicketMaster Ireland. High-profile artists perform only a limited number of concerts worldwide each year. Promoters in the island of Ireland compete aggressively with promoters in other countries to convince high-profile artists to perform in Ireland by offering them sufficiently attractive terms. Thus, high-profile artists have strong bargaining power in their negotiations with promoters and can command substantial appearance fees, which, in turn, reflects the ticket price that end consumers pay.

66. Despite TicketMaster's high market share of 100% in the market for outsourced ticketing services for events of national or international appeal, TicketMaster faces sufficient competitive constraints to prevent it from exploiting this position. MCD and Aiken have both the incentive and the ability to minimise booking fees charged by TicketMaster Ireland to the end consumer. Therefore, TicketMaster Ireland does not appear to be able to exercise market power by behaving independently of its customers (i.e., the promoters) by charging higher booking fees to the end consumer.

67. Evidence examined by the Competition Authority did not suggest that the multi-year exclusive agreements between TicketMaster and MCD foreclosed the market for outsourced ticketing services of national and international importance in such a way that limits competition to the detriment of consumers

68. It also appears that competition in the market for outsourced ticketing services takes place *for* the contracts awarded by MCD Promotions, Aiken Promotions (and others), rather than *on* an event by event basis.

69. It is more efficient for a promoter to deal with one ticketing service provider for all their ticketing requirements as the latter will be familiar with the industry and the specific requirements of the promoter's operations. A single provider of ticketing services thus reduces transaction costs of the promoter leaving the promoter in a better position to compete for artists.

70. The Competition Authority has concluded that the market for outsourced ticketing services results in certain benefits to end consumers: lower prices for ticketing services, greater choice and variety of events; and easier and faster access to tickets than would otherwise be the case.

2.2 Mergers and acquisitions

Table 2 - A statistical overview of notified mergers evaluated 2003-2005

	2005	2004	2003
Notified Mergers	84	81	47
required notifications (Section 18(1))	84	81	46
voluntary notifications (Section 18(3))	0	0	1
Non-notified Merger investigations (Sections 4 / 5)	0	0	1
Carried from previous year	11	13	0
carried as Phase 1	10	11	0
carried as Phase 2	1	2	0
Referred from the EU Commission (ECMR Art 9)	0	0	0
TOTAL (NOTIFIED) CASES	95	94	47
of which media mergers	23	14	11
of which entered Phase 2 in year of notification	1	3	3
of which entered Phase 2 in year previous to notification	1	2	0
Cases Withdrawn	1	1	0
Withdrawn at Phase 1	1	0	0
Withdrawn at Phase 2	0	1	0
Determinations Delivered	87	82	33
Phase 1 Determination	80	78	32
Phase 1 Determination with proposals	5	1	0
Phase 2 Determination without conditions	0	1	1
Phase 2 Determination with conditions	2	1	0
Phase 2 Prohibition	0	1	0
Carried to next year	7	11	13
Carried as Phase 1	7	10	11
Carried as Phase 2	0	1	2

2.2.1 Summary of significant cases

Acquisition of NTL by UPC Ireland

71. The Competition Authority announced on 4 November 2005 its determination that the proposed acquisition of MS Irish Cable Holdings B.V. (trading as NTL Ireland) by UPC Ireland B.V. could be put into effect subject to a series of conditions. UPC Ireland is ultimately owned by Liberty Global Inc. which also owns the Irish cable provider Chorus. The Competition Authority considered that the business activities of the undertakings concerned involved overlap in three product markets, namely/

- the procurement of content (channels) for multi-channel pay-TV services;
- the provision of multi-channel pay-TV services; and,

- the provision of telephony and related internet services.

72. Following a full (Phase 2) investigation the Competition Authority had significant concerns about the cross ownership interests held by a number of directors of Liberty Global including John Malone, the leading shareholder in Liberty Global. The Competition Authority was specifically concerned about cross ownership interests linked to NewsCorporation and BSkyB, a competitor for pay-TV as well as a main supplier of content. In order to address these concerns the Competition Authority imposed 19 conditions that were attached to the transaction.

73. The conditions focus on the cross shareholding between the merged cable company and BSkyB, the creation of a separate company to run the Irish businesses separate from the other relevant businesses and a monitoring scheme to ensure compliance. For a full list of the conditions see the Competition Authority's website www.tca.ie.

74. Section 23 of the 2002 Act requires that all media mergers be referred to the Minister for Enterprise, Trade & Employment for independent review. While the Competition Authority must make its determination based on competition issues the Minister may make independent findings based on separate, non-competition criteria within 30 days (Phase 2 merger). In this case the Minister did not make any order prohibiting the merger from being put into effect.

Acquisition of Heiton by Grafton

75. The Competition Authority announced on 6 January 2005 that having completed a full (Phase 2) investigation it had approved the proposed acquisition by Grafton Group plc of Heiton Group plc with two conditions. Both parties were involved in the provision of retail DIY and builders merchandising services. Following this investigation the Competition Authority determined that the result of the proposed transaction would not be to "substantially lessen competition" and accordingly the proposed transaction could be put into effect subject to two conditions.

76. The conditions relate to future acquisitions by the merged entity.

Kingspan/ Century Homes

77. The Competition Authority announced on 13 April 2005 its determination that the proposed acquisition of Woodroe Limited, (trading as Century Homes) by Kingspan Group Limited could be put into effect subject to a specific measure designed to address competition concerns. Kingspan and Century Homes manufacture products used in the construction of buildings. There was no horizontal overlap between the activities of Kingspan and Century Homes.

78. After a preliminary investigation (Phase 1 investigation) the Competition Authority determined that the proposed transaction could be put into effect subject to the revision of the definitions of certain terms used in the agreement to acquire. These terms related to a non-compete clause directly related and necessary to the implementation of the merger.

79. The parties made a proposal that the original definition of the terms "Restricted Business Area" and "Restricted Period" be revised. The Competition Authority accepted the parties' proposal to revise the definitions, but did not publish the revised definitions, due to confidentiality requirements.

SRH/ Highland Radio

80. The Competition Authority announced on 26 August 2005 its determination that the proposed acquisition of Donegal Highland Radio Limited, a local radio station with a license to broadcast in the

North East of Ireland (trading as Highland Radio) by Scottish Radio Holdings plc. could be put into effect subject to a number of specific measures designed to address competition concern.

81. As this was a media merger under the Competition Act 2002, the matter was referred to the Minister for Enterprise, Trade & Employment for independent review. Within 10 days the Minister may ask the Competition Authority to carry out a full investigation (Phase 2 investigation) of the transaction. In this case the Minister did not make any order asking the Competition Authority to carry out a Phase 2 investigation.

M & J Gleeson/ United Beverages Sales

82. The Competition Authority announced on 23 August 2005 its determination that the proposed acquisition of certain assets of United Beverages Sales Ltd. by M & J Gleeson and Co. could be put into effect subject to specific measures designed to address competition concerns.

83. M & J Gleeson is active in the manufacture, wholesale, and distribution of soft drinks, mineral water and alcoholic beverages. United Beverages Sales which is also active in the wholesale and distribution of soft drinks, mineral water and alcoholic beverages, is a wholly owned subsidiary of Diageo Ireland and is part of Diageo plc.

84. After an extended Phase 1 investigation the Competition Authority determined that the result of the proposed transaction would not be to “substantially lessen competition” and accordingly the proposed transaction could be put into effect subject to the following proposal:

- For five years from the date on which its proposed acquisition of certain assets of United Beverage Sales Limited is put into effect, M. & J. Gleeson and its affiliated companies will inform the Competition Authority in writing in advance of all proposed mergers or acquisitions of any wholesale distributor of alcoholic or non-alcoholic beverages based in one or more of the following regions, Cork City and County; Dublin City and County; and counties Kildare, Louth, Monaghan, Meath and Wicklow; in which it is the proposed acquirer and will notify such transactions to the Competition Authority under Section 18 (3) of the Competition Act, if and when requested to do so by the Competition Authority.

Eircom/ Meteor

85. The Competition Authority announced on 18 November 2005 its determination that the proposed acquisition of Meteor Mobile Communications Limited (trading as Meteor) by Eircom Group plc could be put into effect subject to eight specific measures designed to address competition concerns. Eircom is the largest player in retail and wholesale fixed line telephony services as well as the provision of broadband services and Meteor is active in mobile telephony services.

86. The eight specific measures attached to this transaction were designed to address concerns about the transparency of cost allocation and internal transfers within Eircom. Specifically these measures will allow the Commission for Communications Regulation (ComReg) to monitor on the Competition Authority’s behalf:

- specific accountancy statements for Meteor;
- specific accountancy statements for any future mobile phone entity established within Eircom;

- details on the allocation of costs and internal transfers between Eircom's fixed-line business and Meteor;
- details on the allocation of costs and internal transfers between Eircom's fixed-line business and any future mobile phone entity established within Eircom; and,
- details on the allocation of costs and internal transfers between Meteor and future mobile phone entity established within Eircom.

3. The role of competition authorities in the formulation and implementation of other policies

3.1 Advising on proposed legislation and regulation

87. The Competition Authority regularly advises Government Departments and Agencies on the effect on competition, if any, of new legislation or policy proposals under consideration. Section 30 of the Competition Act, 2002, gives the Competition Authority the specific function of advising the Government, Ministers and Ministers of State about the implications for competition of proposed legislation.

88. In carrying out this function the Competition Authority seeks to highlight competition concerns and pre-empt any negative consequences for consumers that newly framed policies might (inadvertently or otherwise) bring.

89. The Competition Authority performs an advisory role for government and an advocacy role with respect to public bodies such as regulators. In 2005, the Competition Authority made 10 formal submissions and responded on 47 occasions to requests for advice from Government Departments and other public sector bodies. This advice was given in a variety of formats including meetings, written comments or a combination of both.

Table 3 - Formal submissions made by the Competition Authority in 2005¹³

Submission Number:	Submission to	Topic	Summary of Recommendations
<u>S/05/001</u>	National Qualifications Authority of Ireland ¹⁴	Draft Policies and Criteria for the Inclusion of Awards in the National Framework of Qualifications	The Competition Authority welcomes the NQAIs intention to extend the framework for the recognition of qualifications. The Competition Authority suggests identifying phases of implementation according to sector or field of competence, as an alternative to the “statutory recognition” approach proposed by the NQAI.
<u>S/05/002</u>	Commission for Taxi Regulation	National Review of Taxi, Hackney and Limousine Services and Vehicles Standards	This submission provides general guidance to the Commission for Taxi Regulation on the types of issues it should consider when undertaking the first comprehensive review of taxi, hackney and limousine services in Ireland and regulatory reform of the sector. The importance of accounting for the costs and benefits of different regulatory options, according to the principles of better regulation, is highlighted.
<u>S/05/003</u>	Irish Financial Services Regulatory Authority	Consumer Protection Code	The Competition Authority broadly supports the direction of this Code. Financial regulation to protect consumers should be conducted in a light-handed and proportionate manner. The Competition Authority also suggests that means of integrating its own Banking Study and Insurance Study recommendations into the Code be explored.
<u>S/05/004</u>	Department of the Environment, Heritage and Local Government	Draft ‘Waste Electrical and electronic Equipment’ (WEEE) and ‘Restrictions of Hazardous Substances’ (RoHS) Regulations	This submission identifies areas where the regulations may negatively impact on competition between providers of waste management services or between producers who have obligations under the Directive. The Competition Authority makes some suggestions to alleviate its concerns.
<u>S/05/005</u>	Department of Justice, Equality and Law Reform	General Scheme of the Intoxicating Liquor Bill, 2005	Unnecessary quantitative and qualitative restrictions on the issuing of liquor licences should be removed. In particular, the requirement that an existing licence must be extinguished before a new one may be issued should be abolished. The legislation should stipulate that any objection to the granting of a new licence be accompanied, where relevant, with a declaration of commercial interest (for example by an actual or potential competitor).

¹³ Each of the submissions are available for download on www.tca.ie

¹⁴ The National Qualifications Authority of Ireland is a statutory body established in February 2001.

Table 3 - Formal submissions made by the Competition Authority in 2005¹⁵ (cont'd)

Submission Number	Submission to	Topic	Summary of Recommendations
<u>S/05/006</u>	Minister for Enterprise, Trade and Employment	The Groceries Order	The Groceries Order should be abolished. The effect of the Groceries Order is to restrict competition and increase prices. The Groceries Order does not meet, or is unnecessary to achieve, the claimed benefits.
<u>S/05/007</u>	Department of Agriculture and Food	Preliminary Draft of the Animal Remedies Regulations, 2005	The animal prescription medicine regime should be as liberal as possible, consistent with the need to ensure both public and animal health. Prescribing rights for certain categories of animal medicines should not be restricted to veterinarians, where other animal health professionals can demonstrate their ability to do so in accordance with health and safety standards.
<u>S/05/008</u>	Commission for Taxi Regulation	National Review and Roadmap	The Competition Authority welcomes many of the proposals contained in the National Review and Roadmap, however, a number of proposals have the potential to negatively impact on competition in the provision of taxi services. The Competition Authority recommends the use of Regulatory Impact Analysis by the Commission for Taxi Regulation when considering regulatory reform in this sector.
<u>S/05/009</u>	Department of Health and Children	Strategic Review of Disability Services	Unbundling the delivery of investment and on-going services as well as introducing competition among service providers should be envisaged as a mechanism to deliver better services, for better value, and promote choice, for the benefit of people with disabilities.
<u>S/05/010</u>	Commission for Taxi Regulation	Taximeter Areas and Taxi Fares	This submission builds on previous submissions to the Commission for Taxi Regulation. Gathering detailed information on local market conditions is necessary to inform decisions about the reform of taxi fare regulation and, ultimately, ensure value for money, encourage taxi use, provide incentives for supply to meet demand and encourage productivity and efficiency among taxi drivers.

90. Staff of the Competition Authority also participated in the work of four external working groups:

- better Regulation Group (Department of An Taoiseach);
- better Regulation Sub-Group – Appeals and Penalties (Department of An Taoiseach);

¹⁵

Each of the submissions are available for download on www.tca.ie

- auctioneering and Estate Agency Review Group (Department of Justice Equality and law Reform); and,
- consumer Strategy Implementation Group (Department of Enterprise Trade and Employment).

4. Resources of Competition Authority

4.1 Resources overall

Annual budget in Euro and US Dollars

Budget	2005	2004	% Change
Euro	5.07 million	4.3 million	18%
USD ¹⁶	6.46 million	5.48 million	

4.2 Human Resources

Number of employees applied to Competition Authority activities

Economists	19
Lawyers	11
Other professionals and support staff	16
All staff combined	46

Person years applied to Competition Authority activities

Allocation of human resources	Person years
Enforcement	N/A
Advocacy	N/A
Mergers	N/A

The figures quoted cover the period 1 January 2005 – 31 December 2005

¹⁶ The exchange rate is according to GCI financial (<http://www.gcitrading.com/converter.htm>) on Friday 5 May 2006.

5. new reports and studies on competition policy issues

91. During 2005, the Competition Authority published five reports on competition in particular sectors of the economy. For the last number of years the Competition Authority has been conducting three major studies in areas of Banking, Insurance and Professional Services.

92. The Competition Authority is using these Studies to examine regulations and practices that potentially restrict competition, and seeks to have anti-competitive restrictions abolished or replaced. The Competition Authority is also seeking to study how competition works in the sector concerned, and to identify behaviour which, although not necessarily breaching competition law, nevertheless inhibits competition. The following reports are all available on the Competition Authority's website www.tca.ie.

5.1 *Motor, Employer's and Public Liability Insurance: Final Report*

93. The Competition Authority published its final report on "Competition Issues in the non-life Insurance Market" on 8 March, 2005. The Competition Authority's Report examined competition in motor, employer's liability and public liability insurance and made 47 recommendations designed to make the insurance market in Ireland more open, transparent and competitive.

94. The focus of the Competition Authority's recommendations is to provide the necessary information to open up the Irish insurance sector. Providing this essential information will:

- enable new & existing insurance companies to get into or expand in the profitable Irish insurance market, and;
- empower motorists, businesses & voluntary groups to shop around for a better insurance deal.

5.2 *Non-Investment Banking Services: Final Report*

95. The Competition Authority published its report "Competition in the (non-investment) Banking Sector" in Ireland on 22 September 2005. The report points out that banks in Ireland do not compete aggressively for customers. The Competition Authority's report identified anti-competitive problems in the three sectors examined, which were:

- personal current accounts;
- lending to small business; and,
- the crucial role of the payments clearing system.

96. The Competition Authority made 25 recommendations intended to mitigate these problems and make the banking industry more competitive. The Competition Authority recommended that regulation of bank charges should not be removed until competition improves.

97. Since the commencement of the Competition Authority's Study, numerous changes have taken place within the Irish banking sector. Some of these changes anticipated the Competition Authority's recommendations. During 2005, the Irish Bankers' Federation (IBF), the Irish Payments Services Organisation (IPSO) and the Department of Finance all announced their intentions to remove some of the more troublesome restrictions on competition in banking:

- the Minister for Finance has endorsed the removal of the double-taxation stamp duties on customers who switch banks;
- entry barriers to the Payments Clearing System, which inhibit new banks getting into the Irish banking market, have been substantially reduced by the clearing organisations; and,
- the Irish Bankers' Federation has also introduced a switching code that will make switching banks easier for Irish consumers and increase bank rivalry.

5.3 *The Architecture Profession: Final Report (2006)*

98. The Competition Authority published its report on Competition in the architecture profession in Ireland on 7 March 2006. The Competition Authority found that on the whole, competition in the architecture profession was working well for consumers and the economy as a whole. However the Competition Authority expressed concern that proposed changes in how the profession is regulated in the State, as outlined in the Building Control Act 2005, will have negative consequences for consumers and some members of the profession.

99. A number competition concerns identified by the Competition Authority in its 2003 Preliminary Report have now been addressed. The Competition Authority's concerns relating to the Building Control Act, 2005 and additional recommendations relating to the few remaining areas where the Competition Authority has identified that competition in architectural services is unnecessarily restricted are outlined in the final report.

5.4 *Legal professions (Solicitors & Barristers): Preliminary Report*

100. The Competition Authority published its preliminary report on competition issues associated with legal services in Ireland on 24 February 2005. The Competition Authority's report found that the legal profession is permeated with unjustified and disproportionate restrictions on competition. These restrictions emanate primarily from the regulatory rules and practices of the Law Society, the Bar Council and King's Inns but also from relevant legislation.

101. The Competition Authority's report analyses each of these restrictions and examines whether they are necessary, consistent and proportionate with the public interest objectives claimed. The transparency and accountability of the regulatory system that applies to the legal profession was also examined. The Competition Authority made over 40 proposals to remove or amend unjustified anti-competitive restrictions in the legal profession.

102. One of the Competition Authority's proposals was the creation of an independent, transparent and accountable Legal Services Commission to remedy the conflict of interest faced by the representative bodies of the legal profession. The Law Society and the Bar Council represent their members, while at the same time they are responsible for the rules and practices which are expected to protect the public interest.

5.5 *The Dental Profession: Preliminary Report*

103. The Competition Authority published its preliminary report on competition issues associated with the dental profession on 15 December 2005. The Report made 13 recommendations designed to remedy problems identified in the dental profession by the Competition Authority. The Competition Authority's report was critical of the layers of unnecessary laws and regulations under which the dental profession must operate in Ireland.

104. The Competition Authority believes that the rules governing the dental profession in Ireland urgently need to be modernised. The report highlights that competition in dental services has been seriously restricted by unnecessary laws and regulations that do not apply to dentists in most other countries. In particular, the Dentists Act 1985, and the rules imposed by the Dental Council, prevent consumers from benefiting from active competition in the following ways/

- Healthcare professionals, such as dental hygienists and clinical dental technicians, are prevented from offering basic dental services directly to consumers;
- Dentists are discouraged from attracting customers through normal methods of competition including price discounting and advertising;
- Restrictions on informative advertising prevent consumers from getting access to basic information which would help them to make more informed decisions about their health;
- Consumers are unnecessarily limited in their choice of provider of dental services; and,
- there are unnecessary obstacles put in the way of dentists trying to offer new services to consumers, or to deliver their services in new ways.

5.6 *The Optometry Report: Preliminary Report*

105. The Competition Authority published its preliminary report on competition issues associated with the optometry profession (commonly known as opticians) on 15th December 2005.

106. In contrast to its report on the dental profession the Competition Authority finds that the optometry profession is one where competition appears to be working well. The Competition Authority has a number of minor concerns relating to rules and practices in the optometry profession which may inhibit competition. Accordingly, the Competition Authority's preliminary report makes five recommendations designed to enhance and protect competition in optometry services.