



# Ireland ❖

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 and is a member of the eurozone.

## Economy

Ireland is a small, open, trade-dependent economy and was one of the fastest growing economies in the developed world. Prior to 2007, economic development was characterised by high growth rates and a strong decline in unemployment. IT, pharmaceuticals and the food industries are the main engines of growth of the economy. Following the collapse of the over-heated property market and need to rescue two domestic banks, the indebtedness of the economy was such that the Irish government could no longer raise funds on the international money markets and had to enter into a bailout programme with a troika of the European Commission, European Central Bank and IMF in 2010. Its performance on that programme is regarded as exemplary.

## 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.

This traditional approach tended to rely on control rather than competition. *The Prices Act*, 1958, provided 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 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

PROFILE	
Population:	4.7 million***
GDP (Current US\$):	217.275 billion**
Per Capita Income: (Current US\$)	38,580 (Atlas method)** 33,230 (at PPP)**
Surface Area:	70,270 sq. km
Life Expectancy:	80.31 years***
Literacy (%):	99 (of ages 15 and above)*
HDI Rank:	7**
Sources: - World Development Indicators Database, World Bank - Human Development Report Statistics, UNDP (**) For the year 2003 (**) For the year 2011 (***) For the year 2012	

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 was EU directives liberalising in industries that were traditionally cartels and state-run monopolies as well as the EU 1992 programme aimed at completing the European internal market. 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 and abuse of dominance, replaced the old Restrictive Practices Act, and a new Competition Authority succeeded the FTC. All the 'restrictive practices' orders were eliminated, except the one covering the grocery industry which was repealed later in 2005.

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The means provided for enforcing these new prohibitions were ineffective. The Minister for Industry and Commerce could file a suit in the 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 on 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. However, the Authority cannot impose civil fines, due to constitutional constraints.

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 on applying competition law and on 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 a new legislation to improve competition law.

### **Competition Law and Policy**

A new Competition Bill was published in December 2001, 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, save for an exception in relation to media mergers; 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,*

### **Box 1: Bid-rigging Road Show**

The Competition Authority of Ireland has come up with a rather innovative and exemplary method for raising awareness about the anti-competitive practice of bid-rigging. The authority has designed a bid-rigging road show to promote competition in public procurement. Their presentations aim to raise awareness of the harm caused by bid-rigging and the role of the authority in investigating suspected cases of bid rigging. The roadshow is aimed at procurement officials from public bodies and is designed to raise awareness of potential cartel activity between tenderers for public contracts. In 2011, the authority made eight presentations in the pursuit to Government departments and centrally through the Civil Service Training and Development Centre.

*Source: Annual Report 2011, The Competition Authority*

*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.

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 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 provided 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 were 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 were altered as well.

Consistent with reforms in EU competition law, 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.

Two most significant amendments have taken place in the competition law of the country in the form of the Amendment Acts of 2006 and 2012.

### Box 2: The Mayo Controversy

In January 2006, the Competition Authority received complaints alleging that competitors had agreed to divide up markets between them in the waste disposal industry across Mayo County, in breach of section 4 of the Competition Act.

Following a Competition Authority investigation, the DPP, in December 2008, initiated proceedings against Mr. Stanley Bourke, Bourke Waste Removal Limited, Mr. Patrick McGrath, Mr. Declan McGrath, McGrath Industrial Waste Limited, Mr. Paul Gleeson, Wheeley Environmental Refuse Services Limited T/A Wers Waste, and Mr. Pdraig Hughes.

All the defendants, except for Mr. Pdraig Hughes, were charged with entering into an agreement between August 24, 2005 and September 02, 2005, which had as its object the prevention, restriction or distortion of competition in the provision of domestic waste collection services in County Mayo [contrary to section 4(1) and 6 of the Competition Act 2002]. Mr. Pdraig Hughes was charged with aiding and abetting the three waste businesses in the commission of the offence.

The eight defendants were tried before a jury at the Central Criminal Court sitting in Galway between June 23, 2009 and July 02, 2009. The trial judge, Mr. Justice McKechnie, sent the case to the jury for deliberation. All defendants were unanimously acquitted on all counts.

*Source: Annual Report 2011, The Competition Authority*

### The Competition (Amendment) Act 2006

The Competition (Amendment) Act 2006, which inserted a new Part 2A into the Competition Act 2002, was enacted to prevent certain unfair trading practices in the grocery trade. Its provisions prohibit the following practices in the grocery trade:

- attempts to impose resale price maintenance;
- discrimination by applying dissimilar conditions to equivalent transactions in the sector;
- compelling or coercing payment or allowances for advertising or display of goods; and
- “hello money” in relation to new or extended retail outlets or outlets under new ownership

This conduct is only prohibited where its object or effect is the prevention, restriction or distortion of competition.

### The Competition (Amendment) Act 2012

On July 03, 2012, the Minister for Jobs, Enterprise and Innovation commenced the Competition (Amendment) Act 2012. The Act intended to strengthen the enforcement of competition law and help battle white-collar crime in

Ireland, ultimately helping to reduce costs across the economy and create jobs. The main provisions of the Act include:

- an increase from 5 to 10 years of the maximum prison sentence for conviction of an offence relating to anti-competitive agreements, decisions and concerted practices;
- increases in fines that can be imposed for competition offences from •4 to •5 mn;
- a body convicted of competition offences may have to pay the costs of investigation and court proceedings for the first time;
- the courts can now disqualify a person from being a director of a company in summary criminal and in civil proceedings;
- a person convicted of certain competition offences will not be eligible for probation;
- commitments given to the Competition Authority can be made rules of court; and
- it will be easier for private individuals affected by anti-competitive practices to prove an action for damages against a cartel, once public enforcement proceedings have successfully been taken.

The Minister also signed an order to commence section 10 of the Competition Act 2002 which provides measures to assist juries in considering complex financial and economic evidence during trials for breaches of competition law.

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

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.

In November 2007, the wholesale Single Electricity Market (SEM) went live across the island of Ireland. SEM is regulated by the SEM Committee, consisting of the CER in Dublin, the Utility Regulator in Belfast and an independent member.

The SEM is the wholesale electricity market operating in the Republic of Ireland and Northern Ireland. As a gross mandatory pool market operating with dual currencies and in multiple jurisdictions the SEM represents the first market of its kind in the world.

The SEM provides for a competitive, sustainable and reliable wholesale market in electricity aimed to deliver long-term economic and social benefits that are mutually advantageous to Northern Ireland and the Republic of Ireland.

The market encompasses approximately 2.5 million electricity consumers, 1.8 million in the Republic of Ireland and 0.7 million in Northern Ireland.

### **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 Central Bank of Ireland is responsible for the regulation of all financial services firms in Ireland. The Central Bank Reform Act 2010, which commenced on October 01, 2010, created a new single body called the Central Bank of Ireland which is responsible for both central banking and financial regulation. It replaced the previous related bodies – the Central Bank and the Financial Services Authority of Ireland (generally known

as the Central Bank) and the Irish Financial Services Regulatory Authority (Financial Regulator). The role played by the Central Bank of Ireland can be grouped under the following heads:

- contribution to Eurosystem effectiveness and price stability;
- contribution to financial stability;
- ensuring proper and effective regulation of financial institutions and markets;
- ensuring that the best interests of consumers of financial services are protected; and
- ensuring efficient financial services infrastructure to the economy: payment and currency.<sup>1</sup>

### **Consumer Protection**

In Ireland, the rights of consumers of goods and services are protected by law. Prior to May 01, 2007 the Office of the Director of Consumer Affairs (ODCA), was responsible for providing advice and information to consumers. In addition, the Director for Consumer Affairs was 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;
- unit pricing; and
- price displays.

### **Consumer Protection**

However, a very significant development took place on May 1, 2007, with the passing of the Consumer Protection Act, 2007 and the resultant establishment of the National Consumer Agency (NCA). With effect from the same date, ODCA has been incorporated into the NCA. The key priority of the National Consumer Agency is the enforcement of consumer legislation.<sup>2</sup> In a recent initiative, this body is to be merged with the Competition Authority, reflecting a trend seen elsewhere in the OECD. Legislation is awaited.

### Box 3: Price Fixing of Heating Oil

The heating oil case yielded the first ever jury conviction for a price-fixing cartel in Ireland and Europe. In June 2001, the Competition Authority received an anonymous complaint alleging that heating oil companies across the west of Ireland were engaging in price-fixing. It was alleged that most of the distributors of heating oil in the Galway city and Galway county area had agreed to increase the margin on the price of kerosene and gas oil.

In 2004 the Director of Public Prosecutions (DPP) initiated proceedings against 24 individuals and companies in the 'heating oil cases'. The charges related to allegations of fixing the retail price of heating oil. The prosecutions followed an investigation by the Competition Authority which referred a file to the DPP in 2003. All the accused were sent forward for trial on indictment to Galway Circuit Court.

The investigation and subsequent proceedings yielded 18 convictions involving ten undertakings and eight individuals. A *nolle prosequi* was entered in six cases.

In May 2007, a *nolle prosequi* was entered by the DPP against Sweeney Oil Limited leaving Pat Hegarty, an employee of Sweeney Oil, as the last remaining defendant in the heating oil prosecution.

In this case, the defendant challenged the legality of the proceedings against him. His legal challenge was based on the fact that no proceedings were issued against the company he was employed by and that his company was never convicted of the alleged competition law offence. The defendant argued that he could not be convicted of an alleged cartel offence unless his employer (who is alleged to have been part of the cartel) was first convicted of the offence.

The Circuit Court referred this question of law to the Supreme Court for adjudication (a process known as a 'consultative case stated'). In November 2010, the Supreme Court heard the parties' submissions.

In July 2011 Mr Justice William M McKechnie of the Supreme Court gave the judgment of the court. The Supreme Court ruled that Mr Hegarty can be tried even in circumstances where the company he was employed by has not been prosecuted, let alone convicted of a criminal offence, under the Act.

Following the ruling by the Supreme Court, the case was sent back to Galway Circuit Court and on May 03, 2012, Pat Hegarty became the last defendant in the heating oil case to be prosecuted. He was found guilty of price-fixing by a jury and sentenced to two years in prison (suspended) and fined €30,000.

Source: Annual Report 2011, The Competition Authority

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 the constitutional constraint on the Authority directly imposing fines on firms in breach of the competition rules

is a major limitation on the effective enforcement of the competition laws. 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.

Over the years, Ireland has achieved considerable success in enforcing competition law by virtue of successful criminal prosecutions against various individuals and companies. It has almost thirty convictions for competition law breaches including jury convictions for cartel-related activity.

#### Endnotes

- 1 <http://www.centralbank.ie/about-us/Pages/default.aspx>
- 2 Official website, National Consumer Agency, Ireland

#### 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/>)