

LAW SOCIETY SUBMISSION



Competition and Consumer Protection Commission (CCPC) Strategy Statement 2015 – 2017

DEPARTMENT OF JOBS, ENTERPRISE & INNOVATION

MARCH 2015

ABOUT THE LAW SOCIETY OF IRELAND

The Law Society of Ireland is the educational, representative and regulatory body of the solicitors' profession in Ireland.

The Law Society exercises statutory functions under the Solicitors Acts 1954 to 2011 in relation to the education, admission, enrolment, discipline and regulation of the solicitors' profession. It is the professional body for its solicitor members, to whom it also provides services and support.

The headquarters of the organisation are in Blackhall Place, Dublin 7.

CONTEXT

The Law Society of Ireland ('the Law Society') welcomes the opportunity to comment on the Competition and Consumer Protection Commission ('CCPC') Strategy Statement 2015 – 2017 and, thereby, to shape the direction of the new organisation.

The Law Society understands the aim of the strategy statement is to set out what the CCPC plans to achieve over the first three years of its existence and how it intends to achieve these objectives. A central theme of the consultation is to ask stakeholders how the CCPC should prioritise its work to make the biggest impact.

1. Work Prioritisation

- 1.1. As the CCPC Consultation on Strategy states, the CCPC has a “broad statutory remit, assuming the statutory responsibilities previously held by the Competition Authority and National Consumer Agency, in addition to its new regulatory functions designed to ensure balance and transparency in the commercial relationship between suppliers and retailers in the groceries sector.”
- 1.2. Adoption of enforcement priorities clearly will be critical to ensuring strategic objectives are met. One basis for CCPC work prioritisation could be to look to penalties imposed by the Oireachtas in legislation that the CCPC is charged with enforcing.
- 1.3. **Hard-core cartel offences** are liable, on prosecution on indictment, to fines of up to €5 million or 10% of company turnover and/or up to ten (10) years imprisonment for company executives implicated.

Consumer protection violations are, other than in respect of specific offences such as pyramid schemes, liable on prosecution on indictment to fines of a maximum of €100,000 and/or up to 24 months for company executives implicated.

Pyramid scheme offences are liable on prosecution on indictment to a fine not exceeding €150,000 and/or imprisonment for a term not exceeding 5 years.

On the above basis, it is reasonable to conclude that the Oireachtas considers cartel violations to be more serious than consumer protection violations. It would follow that the CCPC should, consistent with the intention of the Oireachtas, prioritise enforcement of cartel violations.

- 1.4. Notwithstanding the above, serious breaches of consumer protection legislation (including, for instance, car clocking, pyramid schemes, and overly aggressive and unfair commercial practices) also merit committed enforcement action. The Law Society understands that the National Consumer Agency often prosecuted such practices via Compliance Notices, under a system provided for in the Consumer Protection Act 2007. This enforcement mechanism, whereby the CCPC may elect to prosecute cases either via enforcement notice or via criminal prosecution, seems to provide a useful and relatively rapid means to ensure appropriate enforcement of consumer protection rules.

2. Guidance

- 2.1. Greater emphasis on providing robust and reliable guidance for business and practitioners on compliance with applicable competition and consumer protection rules would be welcome. A good example is the recently issued CCPC guidance for businesses regarding competition law and consortium bidding.¹ The CCPC/DPP’s criminal prosecution of a

¹ Available at <http://www.ccpc.ie/news/2014-12-15-competition-and-consumer-protection-commission-publishes-guidance-businesses>.

consortium bid for the Mayo County Council municipal waste business, in addition to non-compete arrangements (typical in any joint bidding arrangement) could usefully have been addressed by way of a guidance note, The willingness of the CCPC to provide guidance on this particular point would be most welcome.

3. Transparency & Statistics

- 3.1. The Law Society understands that established practice of the Competition Authority was to provide a reasonably high level of transparency on its operations via its annual report. This annual report would typically list the number of enforcement cases opened by the Competition Authority and, for cases in the public domain, it would provide helpful updates on the investigation (including, for instance, whether a file had been sent to the DPP that year and/or what direction the DPP may have given on particular files). The Competition Authority would also provide an explanation of the use of its enforcement powers in its annual reports, including the number of surprise searches on businesses conducted in the year and the number of witness summons issued.
- 3.2. To the extent that the use of enforcement powers can be viewed as a proxy for enforcement activity, provision of such figures in the Competition Authority annual report provided practitioners and business with a useful indication of the agency's work levels. The Law Society further understands that the annual report of the Competition Authority would breakdown on staffing of all divisions. The Law Society trusts that the CCPC will maintain and enhance these levels of transparency.

The Law Society hopes that the CCPC will find the above comments constructive and helpful and would be happy to engage further with the CCPC if required.

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