



Coimisiún um
Iomaíocht agus
Cosaint Tomhaltóirí

Competition and
Consumer Protection
Commission

Investigation Measures: Criminal Cartel Investigations

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Agenda

- The Competition and Consumer Protection Commission
- Legislative Framework and powers
- Investigative steps – search operations and interviews
- Forensic IT
- Role of witnesses

Criminal Enforcement Division

- CCPC came into being on 31 October 2014
- Criminal Enforcement Division: Divisional Director, 2 x Heads of Investigation, 8 investigators, 1 seconded member of the GBFI;
- Mandate: Cartels, vehicle crime, pyramid selling
- Administration and management of CIP



Legislative Framework: Competition Act 2002

- S4(1) Hard Core cartel infringement: price fixing, market sharing, bid-rigging, etc
- S6: Criminal offence on indictment or summary prosecution.
- Presumption that hard core cartel agreements have anti-competitive object. Once the agreement is established *Mens Rea* established.
- S8 gives penalties (upon conviction following prosecution on indictment by DPP)
 - 10 years in prison and/or
 - €5m or 10% of turnover
 - *Res judicata* – follow on actions for damages



Investigative Powers

- Witness and cautioned/suspect interviews
- Summons hearings
- Search operations
- Attend and take part in interviews with Gardaí of suspects in detention



CCPC Act 2014: Search Operations

- Cross Divisional Resources – Decision by the Commission
- S37 CCPC Act 2014 – District Court search warrant
 - Power of entry and search of premises/dwellings– can use force if necessary.
 - Power to seize documents and records
 - Questioning on site
 - Obstruction offence – staff & solicitors



CCPC Act 2014: Search Operations

- In-depth planning and preparation incl. reconnaissance, briefings, dry runs, powers on site
- Close liaison with Forensic IT
- Search Team composition
- Close co-ordination with members of Gardaí & GBFI
- Company representatives and solicitors



Search Operations (Forensic IT)

- Seizure of data: focussed approach
- Data outside jurisdiction
- Review of data: substantial investment in infrastructure and training of team members
- Keyword system
- LPP – cautious approach: hard copy & electronic data



CCPC Act 2014: Additional Powers

- S37(5) New powers
 - Attend at interview in Garda Station
 - Legal representation during interview
 - Interview training with Gardaí
 - Gardaí can apply to Court under Criminal Justice Act 2011 to compel witnesses to provide documents and to make statements
 - Admissibility of recordings of interviews as evidence



Acceptance by Constituency

- DPP's discretion to institute proceedings
 - Preference for “serious” crime with real victims
 - Bid-rigging a crime?
 - Acceptance of non-legal defences, e.g. not interested, too busy, risk of being removed from the tendering panel
 - *Mens Rea*?
- Legal Fraternity
 - Solicitor firms representing clients in mergers and criminal investigations
 - Culture of criminal enforcement



Acceptance by Constituency

- Office of Government Procurement
 - Key stakeholder – over see up to €9 billion worth of public contracts
 - Challenges in obtaining data from them
- Public
 - Whistle-blowers are frowned upon
- The Courts
 - Previous convictions obtained in District Courts
 - Since 2006: Central Criminal Court as a result of fines and increased custodial sentences
 - Irish Rail case – summary prosecution
 - Mayo Waste case – Too nuanced for the CCC?
 - Competition Judge – civil or criminal background



Role of Witnesses

DPP message:

- Without “bums on seats” no prosecution
- Granting of immunity only if company identifies senior individuals that can talk about involvement in cartel
- Documents helpful to corroborate or add to witness testimony
- Circumstantial case unlikely



Role of Witnesses (cont.)

**Public Procurement – role of procurement officials in administration of tender process
key to determine quality of witness**

Immunity witnesses

- **Officials able to bind the undertaking to cartel agreement or direct other officials to do so**
- **Incentives to co-operate?**
- **Legal representation of individual or company?**



Role of Witnesses (cont.)

Electrical Contracting Investigation

- Public procurement official made complaint to the TCA
- Provided detailed statement
- Proceeded with tender competition, satisfied with work product and stated that it “was value for money” after negotiating a discount
- Political pressure to complete works

Mayo Waste – Domestic Waste Collection

- Public officials as witnesses; tender specifications and communications to prospective tendering companies
- Main witness, accomplice type witness: role in cartel and reasons for bringing a complaint
- Defence attack “European Legislation” – impact on jury
- Nature of case – too nuanced?





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Thank You

Competition and Consumer Protection Commission

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