



The Competition Authority

An tÚdarás Iomaíochta

Private vs Public Interest: The Strategic Use of Competition Law in Ireland by Private Interests

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The Competition Authority

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in Antitrust, Merger Control & Regulation

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Structure of Presentation

1. **Strategic Firm Behaviour and the Competition Authority**
2. **Competition Authority Dilemma: How to encourage the 'right' set of complaints from firms?**
3. **Analyse Pro and Anti Competitive Strategic Firm Behaviour**
4. **Encourage Pro-Competitive Strategic Firm Behaviour**



What is Strategic Behaviour by Firms?

- 1. Definition:** "Strategic behaviour is the general term for actions taken by firms which are intended to influence the market environment in which they compete. Strategic behaviour includes actions ... to raise the firm's profits at the expense of rivals." (OECD)
- 2. Business problems = breaches of Competition Act (?)**
- 3. Question for firm:** How can the Competition Authority assist the firm in resolving the its business problems?



Outside Looking In: Perception of the Authority

1. More than doubled in size (N=55 persons in 2006)

2. Investigations

- Searches (N=24 per year, 2003-06))
- Summons (N=53 per year)
- Complaints examined (N=331 per year)

3. Prosecutions

- Civil (N= 8 total, 2003-06)
- Criminal (N=4 total)



Incentives for Strategic Firm Behaviour

1. Authority investigation can impose costs on rivals

- Senior management time
- Disruption of ongoing operations
- Damage rival's reputation
- Legal and economic expenses

2. Expected outcome: rival competes less aggressively and/or changes conduct



Competition Authority Dilemma

- 1. Business an important source of information about breaches of competition law yet not all complaints are breaches**
- 2. How to encourage the 'right' (ie pro-competitive) set of complainants.**
 - Analyse pro competitive vs anti-competitive complaints. Is there a difference? What are the implications?
 - Influence behaviour of firms so only submit pro-competitive complaints



Importance of Business

Business the Major Source of Full Investigations

(2003-06, total)

	Number	(%)
• Business	20	(64%)
• Own initiative	10	(32%)
• Other	1	(3%)
• Total	31	(100%)



Anti-Competitive Strategic Firm Behaviour

1. Slowing down change – vertical relationships

- Margin reduction
- New technology

2. Preventing incumbents from competing vigorously – horizontal relationships

- Below cost selling/predatory pricing



Pro-Competitive Strategic Firm Behaviour

1. Refusal to supply in order to:

- Maintain a restrictive horizontal agreement (eg geographic market allocation, common terms and conditions for tenders)
- Discourage the entry of a rival
- Prevent new product launch

2. Discriminatory pricing/lack of transparency

- support schemes for new air routes



Pro vs Anti Competitive Strategic Firm Behaviour: Spot the Difference

1. Anti-competitive strategic firm behaviour

- Pricing issues

2. Pro-competitive strategic firm behaviour

- Refusal to supply as a method of either enforcing a restrictive arrangement or as discouraging the entry of a rival or introduction of a new product



Encouraging Pro-Competitive Strategic Firm Behaviour

Encouraging the Right Stuff

- Object of competition law is to make markets work well for consumers **NOT** competitors
- Use effects based approach to evaluating allegations
- Publish reasoned decisions in individual cases
- Guidance notes on practices/conduct

