

Play by rules or suffer the effects

Companies that disregard the Irish and EU laws on competition can expect a draconian response from the relevant authorities, writes **Caroline Allen**

As we move through the current cycle of economic recession, Irish providers of goods and services continue to compete for market share in national, European and international markets, in the face of constricting markets and stiff competition from competitors at home and abroad.

Their conduct in the marketplace is governed at all times by a body of laws of Irish and EU origin – the competition rules.

If companies ignore the competition rules, they do so to their detriment, according to Tom Carney, partner at Dillon Eustace Solicitors in Dublin. Reliance by companies on their legal rights against anti-competitive behaviour by competitors, suppliers, customers or government bodies can help companies compete more effectively, increasing their profits and their share of markets, he said.

If companies or their directors, however, engage in anti-competitive conduct, that conduct can result in investigation by the Irish Competition Authority or the European Commission – the bodies charged with responsibility for enforcing the competition rules at national and EU levels – or exposure to criminal conviction and/or the imposition of fines up to 10 per cent of the annual turnover.

The competition rules are primarily set out in the Competition Act 2002 and in Arti-

cles 81 and 82 of the EC Treaty, said Carney, a former lecturer in EU law at NUI Galway and Trinity College Dublin.

“The emphasis in the Competition Act 2002 is to protect competition at national level, while the EC Treaty, as one might expect, focuses on competition within the EU’s internal market,” said Carney.

“Both Section 4 of the 2002 Act and Article 81 of the EC Treaty prohibit anti-competitive agreements between companies which have as their object or effect the restriction of competition in goods or services. Section 5 of the 2002 Act and Article 82 of the EC Treaty, meanwhile, prohibit abusive conduct by a company which enjoys a dominant position in a relevant market at Irish or EU level.”

Carney cited the recent decision by the European Commission to impose a record fine on Intel as a telling reminder of the consequences and cost of non-compliance with EU competition rules.

“On May 13, 2009, after several years of investigation, the European Commission imposed a total fine of €1.06 billion on Intel for granting illegal rebates and discounts to customers in breach of its obligations under Article 82 of the EC Treaty,” he said.

At home, the decision by the Competition Authority to pursue a subsidiary of one of Ireland’s biggest car dealerships for running a price-fixing cartel involving Citroën car dealers in Leinster, led to the



John Doyle, partner specialising in Dispute Resolution. Right: Tom Carney, partner at Dillon Eustace specialising in EU & Competition

TONY O'SHEA

courts imposing fines of €30,000 on each of two former directors for their role in the cartel.

The two directors were also convicted of criminal offences and given six-month suspended prison sentences.

Carney considers that, with effective competition law advice, companies can avoid the risks of financial and reputational damage caused by unlawful conduct.

Companies need to be confident that they can engage in

commercial conduct with legal certainty, he said.

“It is important for companies that their agreements with suppliers, wholesalers, retailers or customers are enforceable before the courts or that their merger and acquisition activity complies with Irish or EU merger rules,” he said.

Dillon Eustace works with a wide range of businesses, from start-up companies to large national and international organisations, providing a full set of legal and regulatory law ser-

vices. It has provided legal advice and support for the launch of Ireland’s first mobile virtual network operator Tesco Mobile Ireland, a joint venture between O2 and Tesco.

Dillon Eustace possesses specialist knowledge of regulated sectors, including the financial services, telecommunications, health, energy and insurance sectors. Among its clients is Hibernian Aviva Health.

The European Commission’s decision last month to

bring the Irish government before the European Court of Justice for unfair regulation of the Irish private health insurance market was the direct result of legal complaints drafted by Dillon Eustace and lodged with the European Commission by Ireland’s third entrant to the private health insurance market, Carney said.

“The decision by the European Commission to pursue the Irish government for its regulation of the private health insurance market underlines that legal advisers provide valuable support to companies competing in regulated markets,” he said.

“It emphasises that companies may rely on European law and the competition rules not only against private sector competitors but also against the government and state bodies who act to undermine fair competition in the marketplace.”

According to John Doyle, a

Downturn will see more firms seek damages

partner with Dillon Eustace, the firm takes a holistic approach to assisting clients between its EU and competition and dispute resolution departments.

If circumstances are sufficiently urgent to bring a claim to stop an organisation from engaging in anti-competitive practices, access to the civil courts is available, Doyle said.

“There may be a threat to a company’s existence, for example, a monopoly player on the

market may refuse to supply goods, and the affected business may need to apply to the courts for an injunction to stop the anti-competitive behaviour.

“While there isn’t a large volume of litigation around this at the moment, the courts system through the commercial court provides affected entities with ready access to the courts,” Doyle said.

He said the economic downturn would see more businesses take recourse to the courts for damages or injunctive relief where there was an allegation of anti-competitive conduct.

“People are becoming more reliant on their legal rights and are taking action against competitors,” he said.

“It is also worth bearing in mind that there may be greater willingness on behalf of companies to take on the Irish state for unfair regulation or discrimination.”