Kluwer Competition Law Blog

Ireland's Competition and Consumer Protection Commission's First 15 Months – Less is not More

Paul K. Gorecki (The Economic and Social Research Institute, Trinity College Dublin) · Thursday, October 20th, 2016

Paul K Gorecki[1]

The Economic and Social Research Institute & Trinity College Dublin

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Introduction

The Competition and Consumer Protection Commission (CCPC), formed as a result of the merger between Ireland's competition and consumer protection agencies, has issued its inaugural *Annual Report.*[2] It covers 31 October 2014, when the CCPC was established, to 31 December 2015. The *Annual Report* offers a first glimpse of how the CCPC views itself as meeting its mission of "of making markets work better for consumers and businesses."

CCPC Mandate

The Chairman's 'Introduction' argues – without providing supporting argumentation – that the "CCPC was structured to effectively realize our mission" and has a "broader insight into market issues than either of the legacy" agencies. The 'Overview of the CCPC' sets out the CCPC structure. Three of the four executive CCPC board members are responsible for three divisions (e.g. legal services, mergers and competition enforcement are assigned to one member), while the executive office and advocacy and market intelligence are attached to the Chairman's office. On 31 December 2015 the CCPC had 86 staff members.

Report on Performance: Strategic Goals

The overwhelming focus of the *Annual Report* is on the CCPC's 'Report on Performance.' This is presented under the CCPC's four strategic goals:[3]

"1. We will use our enforcement and regulatory powers to make markets work better and get the best results for consumers.

2. We will promote the benefits of competition and consumer protection through our advocacy and public awareness activities.

3. We will empower and equip consumers to make informed choices and assert their rights."

4. We will continue to develop as a results-driven organization that aspires to the highest standards in everything we do."

These sensible goals employ the full array of the instruments at the CCPC's disposal – enforcement, advocacy and empowering and informing consumers – to achieve its mission, supported by a suitably equipped organization.

Report on Performance: Key Performance Indicators (KPIs)

For each of the four goals there are between five and eight 'Key Performance Indicators.' In the case of the Goal 1, which we concentrate on in this blog with respect to competition enforcement, there are five such indicators:

"A. Enforcement actions taken/outcomes achieved.

B. Investigations opened and concluded

C. External activities – searches, inspections

D. Applying international best practice in merger assessment

E. Regulatory applications/returns processed."

The *Annual Report* details the CCPC's activities under each of these KPIs for Goal 1 (and the other three goals).

Although it would have been straightforward for the CCPC to present in tabular form activity for each of these five KPIs, except perhaps D which is more qualitative,[4] it chose not to do so.[5] Instead, the CCPC provided a description of its activities that does not always permit the reader to determine the relevant volume of activity. This CCPC practice contrasts sharply with that of the legacy competition agency[6] and of a number of other competition agencies such as the New Zealand Commerce Commission (CC).[7]

No targets are presented by the CCPC with respect to its chosen KPIs. The CCPC does not attempt to set out what it sees as appropriate benchmarks, given its budget and resources, on the one hand, and its mission/goals on the other. It is important that agencies such as the CCPC set targets since this allows for feedback between performance and targets leading to improved performance.

A number of competition agencies have set targets. The UK Competition and Markets Authority (CMA), for example, uses 'Commitments,'[8] Canada's Competition Bureau (CB)[9] uses both 'Commitments' and estimated savings for consumers, while New Zealand's Commerce Commission (CC)[10] has impact measures.

The very essence of the definition of a KPI involves measuring performance against targets.[11] This is not admittedly an easy task. However, drawing on the experience of competition agencies cited above, the International Competition Network (ICN),[12] commentators,[13] plus consulting with local institutions and others in Ireland, should provide the grounding to develop targets for the KPIs.

In the case of cartels, for example, which the CCPC acknowledges are "the most serious form of anti-competitive conduct," there has been only one criminal prosecution since 2008, the floor sanding case referred to in the *Annual Report* where criminal charges are to be preferred. One cartel prosecution in seven to eight years might seem too low,[14] but what does the CCPC consider is the appropriate KPI for cartel enforcement?

In this respect the CCPC, in the press release accompanying its *Annual Report*, highlights bid rigging as one of the most common forms of cartels. The CCPC is "exploring the introduction of a screening programme for procurement processes which systematically searches for indication that big rigging may have occurred." It will concentrate on public procurement, which is likely to increase in volume as the economy recovers. But how will the CCPC gauge the success or failure of this significant CCPC initiative?

Less is Not More

The CCPC *Annual Report* is much shorter than the combined length of the two legacy agency's final annual reports. However, less is not more. The CCPC *Annual Report* is primarily concerned with a catalogue of its activities, albeit organized by goal/KPI. However, the CCPC needs to report these activities in greater detail in an easily accessible form, with comparisons over time. Targets need to be specified for its KPIs. This permits analysis by the CCPC and facilitates the CCPC identifying where things are working well and where improvement is needed. Elected representatives are in a better position to question and hold CCPC to account for taxpayer's funds. Ultimately, as a result, the CCPC will be a more effective and accountable agency promoting the interests of consumers.

[1] The author was a member of the Competition Authority between 2000 and 2008. This agency was one of the two agencies forming the CCPC.

[2] CCPC, *Annual Report. 31 October 2014-31 December 2015,* 2016.

[3] These are drawn from CCPC, *Strategy Statement 2015-2018*, 2015.

[4] However, it is not clear how the CCPC is applying international best practice in merger assessment

[5] However, the CCPC has helpfully provided such information to the author on request.

[6] For many years the Competition Authority presented such information. However, the practice stopped with the 2012 *Annual Report*.

[7] CC, *Performance Update. 1 July 2015-29 February 2016*, 2016.

[8] CMA, *Annual Report and Accounts 2015-16,* July 2016.

[9] CB, *Annual Report of the Commissioner of Competition for the Year Ending 31 March 2015*, 2016.

[10] CC, *Statement of Intent. Our Plan for 2014-2018*, 2014.

[11] For example, a Google search of 'Key Performance Indicators' results in, "A **Key Performance Indicator** (**KPI**) is a measurable value that demonstrates how effectively a company is achieving **key** business objectives. Organizations use KPIs to evaluate their success at reaching targets." Similar approaches are used in the public sector. The Irish Health Information and Quality Authority define KPIs as, "measures of performance that are used by organizations to measure how well they are performing against targets or expectations. KPIs measure performance by showing trends to demonstrate that improvements are being made over time." Accessed 21 September 2016.

[12] ICN, *Competition Agency Evaluation*, ICN Agency Practice Manual, 2016.

[13] For example, William Kovacic, Hugh Hollman and Patricia Grant, "How Does Your Competition Agency Measure Up?" *European Competition Journal*, 2011.

[14] For example the legacy competition agency thought that, "One full cartel investigation leading to criminal enforcement proceedings" was a reasonable target for a full year. For details see the Competition Authority 2003 report to the OECD Competition Committee (https://www.oecd.org/ireland/34720597.pdf).

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