

# Cartel Enforcement and the Irish Courts

Dr. Paul K Gorecki

Depart. Economics Trinity College

Reforming Competition Institutions, Law and  
Enforcement

Policy Institute, TCD, 7 November 2014

# Cartels Top Enforcement Priority

“Cartels are the most serious form of anti-competitive behaviour. So stopping cartels remains the Authority’s top enforcement priority.”

Competition Authority, *Strategy Statement 2012-2014*, Dec 2011, p. 5.

# Cartel Division Resources

**Yr Cartel Division (% Comp Auth)**

2003 8 persons 20%

2004 8 persons 17%

2005 12 persons 22%

2006 13 persons 22%

2007 13 persons 24%

**Yr Cartel Division (% Comp Auth)**

2008 12 persons 22%

2009 11 persons 24%

2010 9.5 persons 24%

2011 10 persons 26%

2012 10 persons 24%

2013 11 persons 24%

# Cartel Investigative Activity

## Year Search Warrants

- 2001 2 searches
- 2002 18 searches
- 2003 21 searches
- 2004 24 searches
- 2005 42 searches
- 2006 9 searches
- 2007 10 searches

## Year Search Warrants

- 2008 7 searches
- 2009 3 searches
- 2010 0 searches
- 2011 1 searches
- 2012 10 searches
- 2013 7 searches

# Cartel Prosecutions/Convictions

## Year, Case (Convictions)

- 2002 -
- 2003 Drogheda Grain (3)
- 2004 Heating Oil (18)
- 2005 -
- 2006 Ford (1)
- 2007 Citroen (14)

## Year, Case (Convictions)

- 2008 Mayo Waste (0)
- 2008 Irish Rail (0)
- 2009 -
- 2010 -
- 2011 -
- 2012 -
- 2013 -
- 2014 -

# Reasons/Options

## Reasons

- Resources?
- Powers?
- DPP?
- No cartels?
- Internal organization?

## Options

- Commission Specialist Expert/Investigator from Leading Antitrust Agency to Review Operations/Decision Making /Priority Setting of the Competition Authority/Commission with respect to cartel enforcement

# Role of the Courts: the Rhetoric

- ‘These businessmen went into this with their eyes wide open and knew what they were doing was illegal. It was about greed ...’
- Cartels, ‘of course, stifle competition, they damage economic and commercial liberty and, in fact, if they were to continue unabated they could seriously impact upon the economic and social welfare of, not only customers and consumers, but of an entire nation.’

# Role of Courts: Practice/Citroen Cars

- **Firm**            **Irish Court Fine**
- Durrigan – €12,000
- Doran – €20,000
- Duffy – €50,000
- Peppard – €80,000
- Finglas – €35,000
- Gowan – €30,000



# Role of Courts: Practice/Citroen Cars

Firm	Irish Court Fine	US Sentencing Guidelines	
		(min – max)	Irish/(min-max) (%)
• Durrigan –	€12,000	• €4-8mill	(0.3-0.1)
• Doran –	€20,000	• €3-6mill	(0.7-0.3)
• Duffy –	€50,000	• €4-9mill	(1.1-0.5)
• Peppard –	€80,000	• €6-12mill	(1.3-0.6)
• Finglas –	€35,000	• €2-3mill	(2.1-1.0)
• Gowan –	€30,000	• €4-8mill	(0.7-0.4)
		• ‘periodic licensing of illegality’	

# Sentencing Cartels: Suggestions

- All Sentencing Judgment Should be Released
  - Only two available currently
  - Duffy Motors in Citroen & Hegarty in heating oil
- Adoption of Sentencing Guidelines
  - Volume of commerce
  - Cost of harm mark-up
- DPP Recommend Sentencing
  - Prosecutor's Guidelines Current Prohibits
  - Base on sentencing guidelines

# Further Reading

- Paul, K Gorecki, 'Competition Policy in Ireland's Recession,' *Economic & Social Review*, 43(4), 2012, pp. 597-629.
- Paul K Gorecki & Sarah Maxwell, 'Alternative Approaches to Sentencing in Cartel Cases: the EU, Ireland & the US.' *European Competition Journal*, 9(2), 2013, pp. 341-382.
- Terry Calvani & Kaethe M Carl, 'The Competition Act 2002, Ten Years Later: Lessons from the Irish Experience of Prosecuting Cartels as Criminal Offences.' *Journal of Antitrust Enforcement*, 2013, pp. 1-29