The ECN+ Directive, Successor Liability and Mergers: An Unintended Source of Leniency applications?

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Competition and Consumer Protection Commission; Competition law; Enforcement; EU law; Ireland; Leniency programmes; Merger control; National competition authorities; Successor companies

Introduction

In a bid to ensure that national competition authorities ("NCAs") become more effective enforcers of competition law (and thereby ensure a more consistent application of competition law across the Union) the European Commission proposed the introduction of a new directive granting NCAs with new powers. On 11 December 2018, Directive (EU) of the European Parliament and of the Council to empower the competition agencies of the Member States to be more effective enforcers and to ensure the proper functioning of the internal market ("ECN+ Directive"), was signed into law.

The ECN+ Directive aimed to achieve its objectives in a number of ways, including by ensuring that NCAs across the European Union would have *"an effective investigative and decision-making toolbox"*[1] and the ability to "*impose effective, proportionate, and dissuasive fines."*[2] The recitals also provided useful detail on a variety of critical issues that have developed in the case law, and their impact on national enforcement, including the "notion of 'undertaking'"[3] and the "single economic unit"[4] doctrine.

This paper considers the potential implications of the ECN+ Directive and successor liability on merger due diligence, and the additional risks that it may pose for future competition law enforcement (and damages) for under prepared acquirers. To do so, this paper will first provide an overview of the ECN+ Directive, and the reasons for its adoption. The paper will then discuss the single economic unit doctrine and successor liability then will place this analysis in the context of mergers and acquisitions and the increased risk of enforcement that it may expose acquiring parties too.

ECN+ Directive

The decentralisation of competition law enforcement following the introduction of Regulation 1/2003[5] changed the face of competition law in Europe. It led to the NCAs becoming, "*at least in quantitative terms—the main public enforcers: around 90% of all decisions based on the EU antitrust rules are today adopted at the national level."*[6] However, the diverse nature of the NCAs, their skills, resources, strategic priorities, and their legislative powers, meant that these statistics were not giving the full picture. One area of particular concern arose from the fact that in some Member States, agencies were prevented by their own national laws, from imposing administrative fine for infringements of competition law.

In Ireland, for example, the Competition and Consumer Protection Commission (the "CCPC") lacked any meaningful administrative enforcement powers and was forced to rely on the Director of Public Prosecutions ('DPP') to bring a criminal case if it were to achieve any meaningful sanction. This has led to the chronic under-enforcement of competition law in Ireland. Since the adoption of the Competition Act 2002 (now amended) (the "2002 Act"), in Ireland there have only been a very limited number of criminal prosecutions for cartel conduct, imposing a combined total of less than €500,000 in fines. With Ireland confirmed as the most expensive country in the EU for household expenditure on goods and services,[7] with prices that were *"43.8% above the [EU] average in 2021"*[8], the effects of this under-enforcement are arguably being felt by Irish consumers.

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[1] *https://competition-policy.ec.europa.eu/antitrust-and-cartels/european-competition-network/ecn-directive_en*.

[2] *https://competition-policy.ec.europa.eu/antitrust-and-cartels/european-competition-network/ecn-directive_en*.

[3] ECN+ Directive, Recital 46.

[4] ECN+ Directive, Recital 46.

[5] Council Regulation (EC) No. 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in arts 81 and 82 of the Treaty.

[6] Ben Ban Rompuy, 'Implementation of the ECN+ Directive in 23 Member States: An Introductory Overview' (2021) 5(3) *European Competition and Regulatory Law Review* 210.

[7] Ellen O'Regan, "Ireland most expensive in EU for consumer goods, Eurostat finds" Wednesday 21 June 2023, The Irish Times. Available at: *https://www.irishtimes.com /business/2023/06/21/ireland-most-expensive-in-eu-for-consumer-goods-eurostat-finds/*.

[8] Sarah Collins, "Ireland is EU's most expensive place to shop and second biggest polluter—CSO", Tuesday 8 August 2023, Irish Independent. Available at: *https://www .independent.ie/business/irish/ireland-is-eus-most-expensive-place-to-shop-and-second-biggest-polluter-cso/a473043840.html#:~:text=Ireland%20was%20the%20most %20expensive,the%20next%20most%20expensive%20countries*.

The ability to "*impose deterrent civil/administrative fines on undertakings"* is identified as a crucial element of effective enforcement.[9] Indeed, the "chain of deterrence"[10] can only work when all of the links are present and functioning. The ECN+ Directive, and the associated changes that it brought about to domestic legislation in Ireland, by virtue of the Competition (Amendment) Act 2022 (the "2022 Act"), have sought to address this rather large gap in Ireland's antitrust toolkit.

The ECN+ Directive also aimed to address other, more nuanced challenges that were identified as preventing effective enforcement:

> *"The basic concept of "undertaking" used for the calculation of the fine is not always convergent with the EU law concept of undertaking as interpreted by the EU Courts, which may have consequences for establishing parental liability and economic succession."*[11]

The challenges alluded to in the above quote are illustrated very clearly by the German sausage cartel case and the resulting 'sausage gap' (or 'Wurstlücke').[12]

The German Sausage Cartel

In July 2014 the German Bundeskartellampt imposed fines of approximately €338 million on 21 sausage manufacturers and 33 individuals for illegal price-fixing agreements.[13] The manufacturers had been found to have exchanged information on price increases and expressly agreed to implement price range increases in respect of sausage products sold to the retail trade from 2003. Price ranges for product groups (raw, boiled and cooked sausage and ham) were agreed because the products in question were not sufficiently homogenous to allow for specific price increase agreements.[14]

In 2016 however, the Bundeskartellampt were forced to close its fining proceedings against two of the companies after internal restructuring meant that, under German law, the fines could not be asserted against the new entities.[15] This, the 'sausage gap', which occurred because of the *"lack of the single economic entity doctrine in German law"*,[16] enabled these two companies to evade €128 million in fines, and led to amendments to the German cartel law.

Single economic unit doctrine

The single economic unit doctrine is one that is inextricably linked to the concept of an 'undertaking', which in turn is central to the scope of competition law. Despite this, the term is not defined in any Treaty, and it was left to the case law to extrapolate its meaning.[17] Ultimately, a very broad "*functional approach*"[18] was adopted, that includes within its scope any entity, whether individual, legal person, or even in some instances public bodies, engaged in economic activity.[19] Further to this broad approach, the Court in *Estaciones de Servicios* confirmed that an undertaking is, "*any economic entity, even if, from a legal perspective, that unit is made up of a number of natural or legal persons."*[20] The European jurisprudence has therefore, "*introduce*[d] *an innovative approach"*[21] which can consider complex multinational corporate structures, as single economic entities even when the application of national corporate law would consider them as separate legal and economic companies.[22]

The General Court decision in *Viho*,[23] which was later upheld by the Court of Justice of the European Union (the "CJEU"), addressed whether intra-group agreements could amount to a breach of Article 101 TFEU. The finding that the parent and subsidiary constituted a single economic unit, has had important consequences. First, Article 101 TFEU requires that at least two undertakings be party to an agreement or concerted practice in order for there to be an infringement. Therefore, where two legally separate companies are considered to be a single economic unit, agreements as between them will usually not be considered a breach of competition law no matter how anti-competitive they appear to be.[24] In *Centrafarm*, the CJEU stated that no infringement of art.101 TFEU can be said to have occurred:

> *"if the undertakings form an economic unit within which the subsidiary has no real freedom to determine its course of action on the market, and if*

[9] Communication from the Commission to the European Parliament and the Council, "Ten Years of Antitrust Enforcement under Regulation 1/2003: Achievements and Future Perspectives" COM(2014) 453, para.35. Available at: *https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52014DC0453*.
[10] Beverley Williamson, 'Analysing the place of the criminal cartel offence within the regulatory landscape of anti-cartel enforcement in the UK: more change needed?' (2019) Newcastle university PhD Thesis. Available at: *https://theses.ncl.ac.uk/jspui/handle/10443/4761*.
[11] Beverley Williamson, 'Analysing the place of the criminal cartel offence within the regulatory landscape of anti-cartel enforcement in the UK: more change needed?' (2019) Newcastle university PhD Thesis, para.37.
[12] Anja Naumann, "Fines and files – news of the German sausage cartel" April (2018) Lexxion Competition Blogs available at: *http://www.lexxion.eu/en/coreblogpost/fines-and-files-news-of-the-german-sausage-cartel/*.
[13] *https://www.bundeskartellamt.de/SharedDocs/Meldung/EN/Pressemitteilungen/2014/15_07_2014*.
[14] *https://www.bundeskartellamt.de/SharedDocs/Meldung/EN/Pressemitteilungen/2014/15_07_2014*.
[15] *https://www.bundeskartellamt.de/SharedDocs/Meldung/EN/Pressemitteilungen/2016/19_10_2016_Wurst.html*.
[16] Marco Botta, 'The Economic Succession Doctrine in Private Enforcement of EU Competition Law' (2019) 111(2) *Market and Competition Law Review* 171.
[17] Alison Jones, 'The boundaries of an undertaking in EU Competition Law' [2012] 8(2) *European Competition Journal* 301.
[18] Alison Jones, 'The boundaries of an undertaking in EU Competition Law' [2012] 8(2) *European Competition Journal* 301.
[19] Judgment of 23 April 1991, *Klaus Hofner and Fritz Elser v Macrotron GmbH* C-41/90, ECLI:EU:C:1991:161, para.21.
[20] Judgment of 14 December 2006, *Confederacion Espanola de Empresarios de Estaciones de Servicio v Compania Espanola de Petroleos SA* C-217/05, ECLI, EU:C:2006:784, para.40
[21] Marco Botta, 'The Economic Succession Doctrine in Private Enforcement of EU Competition Law' (2019) 111(2) *Market and Competition Law Review* 171.
[22] Marco Botta, 'The Economic Succession Doctrine in Private Enforcement of EU Competition Law' (2019) 111(2) *Market and Competition Law Review* 171.
[23] *Viho Europe BV v Commission of the European Communities* (T-102/92) EU:T:1995:3 [1997] C.M.L.R. 469 [1995] I.C.R 1050.
[24] Jonathan Faull and Ali Nikpay, "The EU Law of Competition" (2014) 3rd edn. OUP, para.3.49.

> *the agreements or practices are concerned merely with the internal allocation of tasks as between the undertakings."*[25]

Thus, the degree of influence or control that a parent has over its subsidiaries, as a matter of fact, will be an important indicator as to whether a single economic unit exists.[26] Where it does, a parent company may be affixed with liability for the conduct of their subsidiaries.[27] The critical point is whether the parent exercises decisive influence over the subsidiaries. Where the parent is a 100% shareholder, a rebuttable presumption arises that such influence is so exercised.[28] Where a parent is able to influence commercially strategic decisions, cash flow, and marketing of the subsidiary company, it will usually be concluded that these companies are acting with "*unity in their conduct on the market*",[29] and are therefore a single economic unit.

The determination as to whether a group of companies are in fact a single economic unit, has important consequences therefore, and not only in the context of enforcement. The European Union Merger Regulation[30] also addresses the concept of a group of companies, and in so doing, provides a list of powers that if exercised over another company, will lead to separate legal entities being considered an "undertaking concerned" with a transaction for the purpose of calculating turnover.[31] A finding of control will occur when a company owns more than half of the capital or business assets of another company, has more than half of its voting rights, it has the power to appoint more than half of the board of directors, or the right to manage the other company's affairs. A distinction is drawn therefore, between 'control' and 'decisive influence'.[32]

Economic succession doctrine

The concept of successor liability is an established concept in tort, where it is commonplace for there to be "*a substantial delay between a tort-feasor's activity and the occurrence or discovery of harm."*[33] This is a fact often observed in competition law enforcement as well, where some research indicates that cartels are often only detected years after they have already collapsed.[34] Therefore, in *"an era of fluid corporate transactions, where companies are bought and sold"*[35] with great frequency, it is often the case that the company responsible for the harm, no longer exists, or at least in the same legal form.

The economic succession doctrine, or the principle of economic continuity,[36] has the primary objective of preventing companies from evading liability by corporate restructuring. Not unlike the principle that allows a parent company to be considered liable for the anti-competitive acts of its subsidiary, the principal of successor liability aims to ensure that where possible, someone is held accountable for infringements of the Treaty competition rules. The CJEU have held that:

> *"A change in the legal form and name of an undertaking does not create a new undertaking free of liability for the anti-competitive behaviour of its predecessor, when, from an economic point of view, the two are identical."*"[37]

In 2019, following the referral for a preliminary ruling by the Finnish Supreme Court during *Vantaan v Skanska Industrial Solutions*,[38] the CJEU delivered its landmark decision in which, for the first time, it recognised the economic succession doctrine in damages claims arising from a competition law infringement.

In that case, the Finnish competition authority imposed fines on seven companies for their participation in a cartel operating on the market for asphalt in Finland between 1994 – 2002. During that time, some of the companies entered "voluntary liquidation procedures." Their sole shareholders then acquired the companies' assets and continued the corresponding economic activity.[39] In a follow-on action, the municipality of Vantaa claimed compensation from the new entities—the alleged successors, who refused to pay damages. These new entities maintained that the doctrine of economic succession did not apply to private actions for damages for infringements of the competition rules.

[25] Case *Centrafarm v Sterling Drug* 15/74, [1974] ECR 1147.
[26] Alvaro López Usatorre, 'Should children be punished for the acts of their parents? At odds with the single economic entity doctrine' (2021 14(2) *Global Competition Law Review* 71.
[27] Case *AkzoNobel NV v Commission of the European Communities* C-97/08, [2009] ECR I-8237.
[28] Case *AkzoNobel NV v Commission of the European Communities* C-97/08, [2009] ECR I-8237, paras 60–61.
[29] Raimundas Moisejevas and Danielius Urbonas, 'Problems Related to Determining of a Single Economic Entity under Competition Law' (2017) 10(16) *Yearbook of Antitrust and Regulatory Studies* 107.
[30] Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings.
[31] EUMR art.5(4)(b).
[32] Raimundas Moisejevas and Danielius Urbonas, 'Problems Related to Determining of a Single Economic Entity under Competition Law' (2017) 10(16) *Yearbook of Antitrust and Regulatory Studies* 107.
[33] Albert H. Choi, 'Optimal Successor Liability' (2005) Law and Economics Programme, Faculty of Law, University of Toronto.
[34] See for example, Jun Zhou and Dennis L. Gartner, 'Delays in Leniency Applications: Is there Really a Race to the Enforcer's Door?' (2012) *TILEC Discussion Paper*, DP 2012-044.
[35] Albert H. Choi, 'Optimal Successor Liability' (2005) Law and Economics Programme, Faculty of Law, University of Toronto.
[36] Sari Rasinkangas, 'Finland: preliminary ruling on application of the principle of economic continuity in the Finnish asphalt cartel damages case' (2019) 12(2) *Global Competition Litigation Review* 19.
[37] Joined *Compagnie Royale Asturienne des Mines SA and Rheinzink GmhH v Commission* Cases 29/83 & 30/83, [1984] ECR 1679, para.9.
[38] Judgment of 14 March 2019, *Vantaan kaupunki v Skanska Industrial Solutions Oy and others* C-724/17, ECLI:EU:C:2019:204.
[39] Lena Hornkohl, 'The Economic Continuity Test in Private Enforcement of Competition Law—the ECJ's Judgment in Skanska Industrial Solutions C-724/17' [2019] *European Competition Law Review* 339.

In the Opinion of Advocate General Wahl (the "AG"), published ahead of the CJEU decision, he reiterated that whilst the principle of direct responsibility remains the main rule in respect of the imposition of penalty payments, the need for full effectiveness of competition law requires that companies not be able to evade sanction. The *"principle of economic continuity is an expression of the broad definition of an undertaking in EU competition law"*[40] has therefore developed and is to be applied in certain circumstances where an entity, having been found to have breached the competition rules, ceases to exist.

> *"From the perspective of EU competition law, therefore, a legal or organisational change does not necessarily create a new undertaking free of liability for the conduct of its predecessor that committed the infringement, when, from an economic point of view, the two are identical. In that regard, the legal forms of the entity that committed the infringement and the entity that succeeded it are also, according to the Court, irrelevant. That is because, from an economic perspective, the entity remains the same."*[41]

Therefore, by extending the notion of undertaking as defined by the CJEU to the Member States, the concept of economic succession is so also extended.

Successor liability and the ECN+ Directive: increased risk for M&A in Ireland?

Article 11 of the ECN+ Directive specifically states:

> *"The notion of 'undertaking' ... should be applied in accordance with the case law of the Court of Justice. Accordingly, NCAs should be able to apply the notion of undertaking to find a parent company liable, and impose fines on it, for the conduct of one of its subsidiaries, where the parent company and its subsidiary for a single economic unit."*

The single economic entity doctrine is now, therefore, applicable in all Member States, which, some have argued, automatically extends the doctrine of economic succession to the Member States as well, consistent with the ruling in *Skanska*.[42]

Ireland has historically occupied a relatively unusual position within the competition law enforcement community, as one of the very few jurisdictions that did not have meaningful administrative sanctions available to it for competition law infringements. The national regulator, the CCPC, was in the very unenviable position of having to pursue infringements as criminal breaches, to the criminal standard, which also required that a file be passed to the DPP on the rare occasion that a prosecution was pursued. Ireland, in the years following the introduction of the 2002 Act and prior to the implementation of the ECN+ Directive has seen 4 criminal prosecutions for infringements of s.4 of the 2002 Act (TFEU art.101 breaches) and no prosecutions for abuse of dominance.[43]

The ECN+ Directive, and the resulting domestic legislation, the 2022 Act, finally addressed this pretty significant gap in enforcement, and thereby deterrence. The CCPC is now, by way of operationally independent Adjudication Officers, and subject to confirmation by the High Cout, able to impose sanctions of up to €10 million or 10% of worldwide turnover for breaches of competition law under its administrative enforcement regime. The ability to pursue cases under an administrative regime with its lower evidential burden should mean a material change to competition enforcement in Ireland, and a significantly increased risk to companies operating there. Whilst it will take time before this filters down to the imposition of fines, already there has been an increase in dawn raid activity, with two reported raids occurring in 2023.[44]

The ECN+ Directive, the 2022 Act, and mergers

Typical transaction due diligence in Ireland has had cause to focus on many things, but thanks to the under-enforcement of competition law, the risk of acquiring an anti-competitive company has not been one of them. It is hoped that the ECN+ Directive and the 2022 Act will truly mark a "new era"[45] of enforcement for the CCPC. In a jurisdiction where competition compliance has likely been low on the agenda, this increased risk of enforcement may well translate into an increased risk for transactions, particularly in those sectors that have seen high rates of enforcement in other jurisdictions.

Imposing liability on a successor, arguably forces upon acquiring entities, a responsibility to identify all relevant information, which in turn should impact the acquisition price. This in theory, allows for a harmed third party to be compensated by the successor, who has in turn been compensated by way of a lower acquisition price.[46] This calculation of course, does not account for the imposition of significant administrative fines (or the cost of going through the investigative and fining processes). Transactional efficiency of this kind, however, presupposes that all of the relevant information is

[40] Opinion of Advocate General Wahl, delivered on 6 February 2019, *Vantaan kaupunki v Skanska Industrial Solutions Oy and others* C-724/17, ECLI:EU:C:2019:100, para.73.
[41] Opinion of Advocate General Wahl, delivered on 6 February 2019, *Vantaan kaupunki v Skanska Industrial Solutions Oy and others* C-724/17, ECLI:EU:C:2019:100, para.75.
[42] Marco Botta, 'The Economic Succession Doctrine in Private Enforcement of EU Competition Law' (2019) 111(2) *Market and Competition Law Review* 171.
[43] Since 2002 there have been four criminal cases brought in Ireland, resulting in a combined total of 18 criminal convictions against individuals and 17 criminal convictions against 17 companies, and bringing in a combined total of fines not exceeding €500,000, with the largest single fine amounting to €80,000.
[44] CCPC, 'CCPC conducts searches of business in Cork' 8 December 2023. Available at: *https://www.ccpc.ie/business/ccpc-conducts-searches-of-businesses-in-cork/* .
[45] CCPC, "New competition law enforcement powers to come into effect today" 27 September 2023. Available at: *https://www.ccpc.ie/business/new-competition-law-enforcement-powers-come-into-effect-today./*
[46] Albert H. Choi, 'Optimal Successor Liability' (2005) Law and Economics Programme, Faculty of Law, University of Toronto.

available, or even attainable. Information symmetry of this kind is hard to achieve in practice, particularly in the context of transaction due diligence involving a company that may have ceased all anti-competitive conduct long previous.

As the detection rate of cartels is estimated on average to be around 10% and 20%,[47]NCAs must be creative in the ways in which they aim to detect cartels. The relationship between merger activity and cartel collapse may, if the right people were paying attention, be a useful structural screen, which when combined with other potential indicators, could help an agency focus its limited resources in the right direction. In a jurisdiction such as Ireland, with mandatory merger notification requirements, the monitoring of merger activity could be a particularly fruitful exercise, worth the resource allocation. Some research has demonstrated that "*there is indeed evidence of more intensive post* [cartel] *breakdown merger activity.*"[48] That is to say that, that when cartels become internally unstable and collapse, then mergers become necessary if the structure that was conducive to collusion is to be maintained.[49] An unusual uptake in merger activity in a sector, could therefore, be one indicator that a cartel had previously been in operation.

Post-transaction leniency applications

To compliment the introduction of the administrative regime, the CCPC has introduced a new leniency programme, one that largely mirrors the European Competition Network Model Leniency Programme.[50] Whilst the efficacy of leniency applications as a source for investigations had been declining since the introduction of the Damages Directive,[51] as mentioned above, arguably Ireland find itself in an atypically positive position.

The EU Representative Actions Directive (EU) 2020/1828 (the "Class Action Directive"), which has been transposed into Irish law by the Representative Actions for the Protection of the Collective Interests of Consumers Act 2023 (the "2023 Act"), has introduced the concept of representative class actions into Irish law for the first time. However, the 2023 Act is limited to infringement of consumer rights under specified consumer legislation and does not, however, include breaches of competition law. Without the ability to bring class action damages cases, companies found to have infringed competition law in Ireland, are in a relatively strong position in Ireland, which, to date, has seen a very limited number of damages actions for competition law infringements.

Without the exposure to the risk of class actions, leniency applications are an attractive option for companies operating in Ireland. Post-implementation of a transaction therefore, where integration could uncover any anti-competition conduct should it have occurred, it may mean that merger activity becomes a fruitful source of enforcement activity for the CCPC. Cynically, a leniency application in this context would have the further strategic advantage of allowing a post-transaction entity to not only escape any risk of liability for the actions of the acquired company, but also ensuring expensive litigation and potential sanctions for any of the cartel members that remain, that participated in the (probably historic). This also has the effect of directing the focus of its competitors c-suite towards regulatory investigation and weakening their competitive impact on the market, and allowing the firm to *"gain market advantage from self-reporting their cartel membership"*[52]:

> *"In certain circumstances reporting antitrust abuses changes the market equilibrium such that, for some time period, the squealers profits rise and the other firms profits fall."*[53]

Conclusion

Merger review and competition law enforcement are inextricably linked.[54] Research shows that *"greater cartel enforcement will cause more companies to consider a merger as an alternative to collusion resulting in more potentially anticompetitive mergers"*[55] and so conversely, weaker cartel enforcement may encourage a decline in merger activity, as the efficiencies sought can be achieved through anti-competitive agreement at low enforcement risk instead.

Perhaps the most interesting, but likely unintended consequences of strengthening enforcement in Ireland, is another incarnation of this link; the potential that it has to positively impact the number of leniency applications following mergers. As is the case with procurement cartels, this has the benefit of focusing limited enforcement resources on visible market activity, increasing the opportunities for ex officio cases. In

[47] Hannes Beth and Oliver Gannon, "Cartel Screening—can competition authorities and corporations afford not to use big data to detect cartels?" (2022) 7(2) Competition Law & Policy Debate; Peter L Ormosi, 'A tip of the iceberg? The probability of catching cartels' (2014) 29(4) *Journal of Applied Econometrics* 549; Jeroen, 'Internal cartel stability with time-dependent detection probabilities' (2006) 24(6) *International Journal of Industrial Organization* 1213; Emmanuel Combe, Constance Monnier and Renaud Legal, 'Cartels: The probability of getting caught in the European Union' (2008) *SSRN*.

[48] Stephen Davies, Peter L. Ormosi, and Martin Graffenberger, 'Mergers after cartels: How markets react to cartel breakdown' (2015) 58(3) *Journal of Law and Economics* 561.

[49] Stephen Davies, Peter L. Ormosi, and Martin Graffenberger, 'Mergers after cartels: How markets react to cartel breakdown' (2015) 58(3) *Journal of Law and Economics* 561.

[50] Autorité de la concurrence, *Revision of the Model Leniency Programme*, 22 November 2012. See: *https://www.autoritedelaconcurrence.fr/en/communiques-de-presse/22-november-2012-revision-model-leniency-programme*.

[51] Directive 2014/104/EU of the European Parliament and of the Council of 26 November 2014 on certain rules governing actions for damages under national law for infringements of the competition law provisions of the Member States and of the European Union .

[52] Christopher J. Ellis and Wesley W. Wilson, 'What Doesn't Kill us Makes us Stronger: An Analysis of Corporate Leniency Policy' (2001) University of Oregon.

[53] Christopher J. Ellis and Wesley W. Wilson, 'What Doesn't Kill us Makes us Stronger: An Analysis of Corporate Leniency Policy' (2001) University of Oregon.

[54] Competition and Markets Authority, 'The deterrence effect of competition authorities' work: Literature review', para. 3.24.

[55] Competition and Markets Authority, 'The deterrence effect of competition authorities' work: Literature review', at para.3.25, citing, Andreea Cosnita-Langlais and Jean-Philippe Tropeano, 'Fight Cartels or Control Mergers? On the Optimal Allocation of Enforcement Efforts within Competition Policy' (2014) 34C *International Review of Law and Economics* 34.

Ireland, which has a mandatory merger notification system, the CCPC has access to a wealth of market data which, if filtered and analysed effectively, could greatly enhance its understanding of market dynamics, and improve its ability to proactively identify anomalies.

In a jurisdiction that has historically faced significant challenges to ensuring the effective enforcement of competition law, the stars may now have aligned for Ireland's CCPC. Whether it has the resources to capitalise on this change in its fortunes, is another question.