

DÁIL ÉIREANN

AN COMHCHOISTE UM GHNÓ, FIONTAIR AGUS NUÁLAÍOCHT

JOINT COMMITTEE ON BUSINESS, ENTERPRISE AND INNOVATION

Dé Máirt, 13 Feabhra 2018

Tuesday, 13 February 2018

Tháinig an Comhchoiste le chéile ag 4 p.m.

The Joint Committee met at 4 p.m.

Comhaltaí a bhí i láthair/Members present:

Teachtaí Dála/Deputies	Seanadóirí/Senators
Tom Neville.	Aidan Davitt,
	Paul Gavan,
	Kevin Humphreys,
	James Reilly.

Teachta/Deputy Mary Butler sa Chathaoir/in the Chair.

Sectoral Employment Order: Minister of State at the Department of Business, Enterprise and Innovation

Chairman: As we have a quorum, we are now in public session. Apologies have been received from Deputies Quinlivan, Niall Collins and Stephen Donnelly. The committee will now undertake consideration of the Sectoral Employment Order (Mechanical Engineering Building Services Contracting Sector) 2018. In accordance with Dáil Standing Order 84A(4)(k) and Seanad Standing Order 71(3)(k), the Sectoral Employment Order (Mechanical Engineering Building Services Contracting Sector) 2018 in draft was referred to this committee by orders of the Dáil and the Seanad on 6 February 2018. The committee has been asked to send a message to both Houses not later than 20 February 2018 stating that it has completed its consideration of the order.

I would like to welcome the Minister of State, Deputy Breen, and his officials to the meeting and thank them for the briefing material provided, which has been circulated to members. I now invite the Minister of State, Deputy Breen, to make his opening statement.

Deputy Pat Breen: I thank the Chairman and all the members who are present. I am pleased to present to the committee for its consideration the draft Sectoral Employment Order (Mechanical Engineering Building Services Contracting Sector) 2018. The draft ministerial order is being made under section 17 of the Industrial Relations (Amendment) Act 2015. The intention is that the order will confirm the rates of pay, pension and sick pay entitlements for plumbers, pipe fitters and welders working in the mechanical engineering building services contracting sector.

In January 2017, the TEEU and Unite trade union asked the Labour Court to examine the terms and conditions of plumbers, pipe fitters and welders, including supervisory grades and apprentices, engaged in the mechanical engineering building services contract sector. The Labour Court advertised its intention to undertake the examination of the request and invited submissions from interested parties. Four submissions were received from the Mechanical Engineering and Building Services Contractors' Association, TEEU, Unite and the trustees of the construction workers pension scheme. All submissions were forwarded to be attached to the application before the Labour Court. Subsequently, the Labour Court convened a hearing on the matter on 9 October 2017 and the parties made written submissions and were invited to make formal oral submissions.

The Labour Court adjourned the hearing to facilitate the receipt of further submissions from the parties on matters that arose during the course of the hearing. The Labour Court received a further joint submission from TEEU and from Unite and a further submission from the Mechanical Engineering and Building Services Contractors' Association. The hearing was reconvened on 13 November 2017.

Following this, and being satisfied that making a recommendation would promote harmonious relations between workers and assist in the avoidance of industrial unrest in the mechanical engineering and building services contracting sector, the Labour Court submitted a recommendation to me on 20 December 2017. I considered the recommendation in line with the terms of the 2015 Act and notified the Labour Court on 25 January that I was accepting the recommendation. In making this recommendation the Labour Court must consider the factors set out in section 16(2) of the Act. This includes the potential impact of the making of an order on levels of employment and unemployment in the identified economic sector, the potential impact

on competitiveness in the economic sector concerned and that the sectoral employment order would be binding on all workers and employers in the economic sector concerned.

The 2015 Act requires the Minister within six weeks of receipt of the Labour Court recommendation to accept or reject the recommendation or to make an order to give legal effect to the terms of the recommendation. The Act further provides that a draft of any order proposed must obtain the approval of both Houses of the Oireachtas before it can be made. A draft of the order was laid before the Houses on 25 January 2018 as required by section 17(4) of the 2015 Act. I hope that the committee will recognise the importance of ensuring stability in the employment terms and conditions in this sector and will refer the matter back to both Houses for approval so that the order can be given legal effect. When the order comes into effect, its terms will be binding across all of the sector and enforceable by the Workplace Relations Commission, WRC.

I thank the Chairman for giving me the opportunity to make this opening statement to the committee.

Chairman: I thank the Minister of State. The TEEU and Unite made an application to the Labour Court for a review of pay and other terms and conditions that would operate in the mechanical engineering building services contracting sector. The intention is to provide for rates of pay, pension and sick pay entitlements for plumbers, pipe fitters and welders. The Minister of State has stated he has accepted the recommendation of the Labour Court.

Deputy Pat Breen: I have accepted it. I must have strong grounds to reject it and I do not. I respect the work of the Labour Court and its independent identity. This is a voluntary agreement reached by both parties. What we are doing is making legal all of the various increases that have happened in the past 12 months.

Chairman: Will the Minister of State specify how they will benefit from the application?

Deputy Pat Breen: The rates provided for in the draft order amount to 2.5% on the rates that have been paid in line with the voluntary agreement about which I have spoken. It has been in place in the sector since July 2016. The last increase provided for in the voluntary agreement took effect on 1 October 2017. There have been three increases - an increase of 2.4% in July 2016; an increase of 2.5% in the craft rate on 1 January 2017 and an increase of 2.4% on 1 October 2017. A further increase of 2.5% will come into play on 1 March. We must remember at all times that these rates were agreed between both parties. It is important to ensure certainty for both workers and their employers. Certainty on wage rates is important when people are applying for loans. This is an important part of the Industrial Relations Act.

Chairman: It is very welcome from my point of view as Chairman of the Joint Committee on Business, Enterprise and Innovation. It is welcome that rates of pay, pension and sick pay entitlements are being recognised. In many cases, plumbers, pipe fitters and welders may be self-employed or part of a one or two-person show. Rates of pay, including sick pay, are important when one is self-employed.

Senator Paul Gavan: I welcome the order. As the Minister of State rightly said, both employers and unions wanted this agreement which I welcome because it brings stability and improves rates of pay at a time when we need them, not just for the workers but also to attract people to return home because we know that is a sector that is moving forward.

I recognise the good work done under the Industrial Relations (Amendment) Act 2015 which, to be fair, is good legislation. It is good to see it being brought more into use. The only

concern I have - it is not to be negative in any way - is that we need to highlight the fact that whenever we talk about this sector, the issue of bogus self-employment does arise. I know that the Government is looking at this issue, but I urge it to take strong action. However, that is not to take away from the fact that this order represents real progress. This is a good day for workers and unions, as well as employers, because the order gives stability and provides for a level playing field which is particularly important in the context of seeking tenders.

Deputy Pat Breen: I thank the Senator for his comments. I know that he has a strong background in this area. As he pointed out, the agreement is between employers and employees, which means that there is a good relationship between both parties and that more productive work can be done when they consent. I will bear his point about bogus self-employment in mind. I thank him for his comments.

Senator James Reilly: I welcome the Minister and his team and congratulate them on good legislation. It is important that persons who are genuinely self-employed have some protections. We are taking a range of steps to address the issue. A self-employed individual may also be a small employer, but he or she has no protection once the business goes to the wall, having paid tax and made PRSI contributions for his or her employees. I know that is a slightly different point to make, but nonetheless it is very important. I welcome the Minister of State's work. He is absolutely right that if one has happy employees, one has productive employees.

Deputy Tom Neville: I want to be associated with those words of appreciation for what the Minister of State has done.

Chairman: That completes the committee's consideration of the Sectoral Employment Order (Mechanical Engineering Building Services Contracting Sector) 2018. I thank the Minister of State and his officials for attending. I congratulate the Minister of State on the real progress that has been made in the sector and the very positive way in which he addressed it.

Deputy Pat Breen: I thank the Chairman. As usual, she is very positive.

Messages to Dáil and Seanad

Chairman: In accordance with Standing Order 90, the following message will be sent to the Dáil:

The Joint Committee on Business, Enterprise and Innovation has completed its consideration of the following motion:

That Dáil Éireann approves the following Order in draft:

Sectoral Employment Order (Mechanical Engineering Building Services Contracting Sector) 2018,

copies of which were laid before Dáil Éireann on 25th January 2018.

In accordance with Standing Order 75, the following message will be sent to the Seanad:

The Joint Committee on Business, Enterprise and Innovation has completed its consideration of the following motion:

That Seanad Éireann approves the following Order in draft:

Sectoral Employment Order (Mechanical Engineering Building Services Contracting Sector) 2018,

copies of which were laid before Seanad Éireann on 25th January 2018.

The joint committee went into private session at 4.25 p.m. and resumed in public session at 5.10 p.m.

Scrutiny of EU Legislative Proposals

Chairman: I remind members, witnesses and people in the Visitors Gallery to ensure their mobile phones are switched off or in flight mode for the duration of this meeting as they interfere with the broadcasting equipment, even when on silent mode. Before we commence I wish to draw the attention of the witnesses that by virtue of section 17(2)(l) of the Defamation Act 2009, they are protected by absolute privilege in respect of their evidence to this committee. However, if they are directed by the committee to cease giving evidence on a particular matter and they continue to so do, they are entitled thereafter only to a qualified privilege in respect of their evidence. They are directed that only evidence connected with the subject matter of these proceedings is to be given and they are asked to respect the parliamentary practice to the effect that, where possible, they should not criticise or make charges against any person, persons or entity by name or in such a way as to make him, her or it identifiable.

Members are reminded of the long-standing parliamentary practice to the effect that they should not comment on, criticise or make charges against a person outside the House or an official either by name or in such a way as to make him or her identifiable.

Before proceeding to the next item on the agenda I wish to record the decision taken by the committee on EU legislative proposals. The committee agreed COM (2017) 795 warrants further scrutiny. It is also proposed to request a further note from the Department outlining in greater detail the possible subsidiarity concerns surrounding the European Product Compliance Network, if it is envisaged that the proposal will have a financial implication for Ireland, the extent to which statutory instruments may be required, what option referred to in Article 14(2) of the proposal is in use in Ireland, and if it will have any impact on the effectiveness of the proposal in Ireland. The committee agreed that COM (2017) 796 does not warrant further scrutiny.

We will now deal with further scrutiny of COM (2017) 142, a proposal for a directive of the European Parliament and of the Council to empower the competition authorities of the member states to be more effective enforcers and to ensure the proper functioning of the Internal Market. I welcome Mr. Kieran Grace, principal officer, Ms Colette Reilly, assistant principal and Mr. Sean Smith, higher executive officer, from the competition and consumer policy section of the Department of Business, Enterprise and Innovation and Ms Isolde Goggin, chairperson, of the Competition and Consumer Protection Commission, Mr. Patrick Kenny, member of the commission and Ms Úna Butler, director of legal services. I thank the witnesses for the briefing material they provided to the committee and I now invite Mr. Grace to make his opening statement.

Mr. Kieran Grace: I thank the committee for the invitation to brief it on the proposal for a directive of the European Parliament and of the Council to empower the competition authorities of the member states to be more effective enforcers and to ensure the proper functioning

of the Internal Market. The stated aims of the proposed directive are to ensure that national competition authorities have effective investigation, decision-making and enforcement tools, are able to impose effective deterrent fines, have a well-designed leniency programme in place which facilitates applying for leniency in multiple jurisdictions, and have sufficient resources to and can enforce the EU competition rules independently. Empowering national competition authorities to be more effective enforcers will benefit all consumers and companies by boosting effective competition enforcement which is an essential building block for the creation of an open, competitive and innovative Internal Market.

The Department supports the overall aims of the proposal. In the invitation to brief the committee, three specific issues were raised and I propose to deal with each of these in turn as they appeared in that invitation. On the issue of the legislative changes that will be needed to give effect to the proposal, this will either be achieved by way of a statutory instrument under the European Communities Act 1972, as amended, or through primary legislation. In this context, the nature of the final agreed text will be an important consideration as to which legislative avenue to pursue and the Department will be guided in this regard by the legal advice of the Office of the Attorney General and the Office of the Parliamentary Counsel. Some of the elements in the proposal are already catered for in current Irish legislation. Therefore, it is likely that any legislative changes will focus on those elements not currently covered in Irish law. These elements include allowing the imposition of fines on undertakings and associations of undertakings which have breached competition law, and providing for the establishment of a leniency programme and associated provisions allowing for immunity from fines for whistleblowers or a reduction in fines for those not qualifying for immunity. The proposal also seeks to provide for co-operation between national administrative competition authorities. This will give a legal standing on what already exists informally through the operation of the European Competition Network, and this will also be an element that needs to be expressly transposed into Irish law.

It should be noted that in giving effect to Regulation 1 of 2003 on the implementation of the rules on competition laid down in Articles 81 - now 101 - and 82 - now 102 - of the treaty, Ireland has designated the Courts Service, the Competition and Consumer Protection Commission, the Commission for Communications Regulation and the Director of Public Prosecutions as national competition authorities. The negotiations on the directive have added to the original definitions for national competition authority and competition authority to include definitions for national administrative competition authority and national judicial competition authority to clarify which authority is being referred to in a given article. Following clarifications of the proposal at discussions at EU Council working group and Presidency amendments to the proposal, no constitutional issues appear to arise. The situation surrounding administrative fines, Article 12, and requests for the enforcement of decisions imposing fines and period penalty payments, Article 25, have been clarified. This will be kept under review as the discussions develop, especially as new amendments to the proposal may emerge.

On the developments in the proposal to date, the proposal has been discussed at EU Council working group level over ten days up to the end of January 2018. Ireland has been represented by officials from the Department of Business, Enterprise and Innovation, particularly Ms Reilly and Mr. Smith and, when available, officials from the Competition and Consumer Protection Commission have also attended. These discussions focused on further clarifications of the proposal, as well as explorations by the Presidency of possible amendments to the text in order to address member states' positions. A revised Presidency compromise document was discussed at the Council working group meeting on 5 and 6 February. Member states have proposed amendments to most articles and these are still being debated at the Council working group.

There are also consequent amendments to related recitals, which for the most part are seeking to clarify the intent of the text in the body of the directive.

As I indicated earlier, the proposal has now evolved to distinguish between national administrative and national judicial competition authorities. Attempts are being made to align the proposal, where appropriate, with the damages actions directive and with the soft law measures set out in the European competition network, ECN, model leniency programme. There are also amendments that give national administrative competition authorities the power to summons for interview, along with more prescribed details on the co-operation activities of national administrative competition authorities. There is a proposal to insert a new article to cover the general principles governing requests for notification and for the enforcement of decisions imposing fines or penalty payments. We are happy to go through these in more detail if the committee wishes.

No final compromise text has emerged to date on any of the articles and all member states are maintaining a general scrutiny reservation on the proposal. The incumbent Bulgarian Presidency is not currently scheduling any discussion on this issue at ministerial competitiveness Council in the first half of 2018. It is understood that the Committee on Economic and Monetary Affairs, ECON, of the European Parliament will vote on adoption of its draft report on 27 February 2018. A draft opinion was adopted unanimously at a meeting of the European Parliament's Committee on Internal Market and Consumer Protection, IMCO, on 21 November 2017.

We would be happy to answer any questions the committee may have.

Chairman: I thank Mr. Grace and invite Ms Goggin to make her presentation.

Ms Isolde Goggin: I thank the committee for the opportunity to speak about the proposal for a directive to empower competition authorities to be more effective enforcers. I am joined by Patrick Kenny, who is a member of the CCPC, and Úna Butler, our director of legal services. The CCPC's vision is for open and competitive markets in which consumers are protected and businesses actively compete. To that end, we are currently active across a large number of sectors. We have investigations ongoing in the motor insurance and ticketing sectors. We are also carrying out studies in the waste and car finance sectors and a public consultation into contracts for long-term residential care for older people.

The proposed directive aims to ensure that national competition authorities have the appropriate tools to enforce EU competition law in a harmonised manner. The CCPC needs to have the right enforcement tools to perform its statutory duties. It is within this context that the CCPC strongly supports the proposed directive. We are supporting our parent Department, where appropriate, as the text of the directive is considered by the Council of the European Union and the European Parliament.

Consumers and businesses benefit from competition through greater choice, lower prices and better quality goods and services. Open and dynamic markets in which there are strong incentives to be more efficient and innovative help drive competitiveness and assist the country as a whole. When competition laws are broken, not only do consumers suffer but so do other businesses that have lost out due to illegal practices. Breaches of competition law can limit the ability of businesses to sell their products or services. Such breaches can also increase the cost of doing business or restrict businesses from entering a new market.

Our role is to investigate potential criminal and non-criminal breaches of competition law

across all sectors of the economy. To date, we have investigated and challenged criminal breaches of the law in several sectors including cartels in home heating oil and the motor sector. Last year, we secured Ireland's first bid-rigging conviction in contracts relating to commercial flooring. We have worked well with our parent Department over the years to ensure that our powers and resources in this area are sufficient. We also investigate other types of breaches of competition law such as information sharing including price signalling, restrictive agreements and abuse of dominance cases. It is in this area that we believe our current powers limit our ability to detect, deter and take effective enforcement action.

At present, Ireland is one of a very small number of European countries that will only allow for a company to be fined if a court finds that there has been a criminal breach of competition law. We use all of our powers and resources to investigate anti-competitive practices. However, in contrast to our European counterparts, we are currently prevented from securing significant enforcement outcomes for non-criminal breaches. If an investigation does not reach a criminal standard, at present the most the CCPC can achieve through the courts is to seek commitments from a business that it will cease the practice and obtain an injunction against it carrying out the same action again. Financial sanctions cannot be imposed. This, in our view, is not an effective deterrent to practices that harm consumers, businesses and taxpayers. The proposed directive requires member states to ensure that non-criminal fines can be imposed for breaches of EU competition law.

Ireland is also the only country in the EU that cannot introduce a leniency programme. This is a vital mechanism in the detection of competition law breaches, as it allows competition authorities to offer immunity or reductions in fines if a business comes forward with evidence of a breach of competition law. The proposed directive also requires leniency programmes in all member states. We very much welcome that.

From experience, we know that our enforcement powers need to provide a meaningful deterrent and that the threat of enforcement must be real and must go beyond reputational damage. This directive presents an opportunity not only to bring Ireland's enforcement regime in line with the rest of Europe, but also to bring the CCPC in line with other Irish regulators, many of which have fining powers including appropriate appeal mechanisms. Having the ability to impose financial penalties would enable us to deter, detect and investigate more white-collar breaches. The CCPC is very strongly supportive of the proposed directive as it would ultimately mean that we can more effectively deliver our core objective of protecting Irish consumers and businesses, thereby ensuring that Ireland is a more open, attractive and competitive place to do business.

I thank the committee for inviting us to attend. We are happy to take any questions and explain further our rationale for supporting the directive.

Chairman: I thank both witnesses for their presentations and for the time they put into preparing them. Ms Goggin stated quite clearly that she is very strongly supportive of the proposed directive. Is the Department as strongly supportive of the directive?

Mr. Kieran Grace: Yes. I indicated in my statement that we do support the overall aims. One of the issues at the outset, when this proposal came out, was that it was not clear how it would operate in practice. The amendments since then to define "national administrative competition authority" and "national judicial competition authority" has clarified many of the issues. The Commission itself admitted that it knew what it wanted to put down but that what appeared on paper might not have been a proper representation of that. We are happy enough

with how matters have moved on since then and we can support the clarifications. Most of the issues we have had to date have been matters of clarification and trying to work out how the provisions would operate in practice.

For example, on the leniency programme, as my colleague, Ms Goggin, said, we do not have one in Ireland. In many ways, we will be starting with a blank page. Some other member states have problems because they have variants of leniency programmes and will have to adapt them. We are in an enviable position in that light. However, we want clarification of how it will actually work. While it is easy, from a legalese point of view, to describe it and how it will work in the text of a directive, our colleagues in the CCPC would have to operate the leniency programme and their front-line experience would bring another perspective to what needs to be done.

Most of our interventions and interest so far have been on clarifications. We do support the overall aims and what is in the directive. We have to make sure we know what we are agreeing to.

Senator Kevin Humphreys: I thank the witnesses for the comprehensive note which was circulated on the topic of consumer protection.

Mr. Grace mentioned in his contributions that the power to summons will be provided. Is there a need for supporting legislation to provide that? The power to do that is not there at the moment.

Mr. Kieran Grace: There are powers within the Competition Act 2002 and the Competition and Consumer Protection Act 2014, which sets out the powers of the Competition and Consumer Protection Commission, CCPC. One of the issues that must be borne in mind is that, depending on how the final text is worded, we may have to revisit the wording within the current legislation to make sure that we are meeting the requirements. The CCPC has the power to do that already. Many of the issues in this proposal are already covered by Irish legislation.

For the information of the committee, one of the desiderata of the European Commission in bringing forward the proposal is to try to stabilise and provide certainty to many of the competition authorities in some member states where there may be less overt statutory certainty regarding independence. Some states which have recently acceded to the EU may have a different legal structure regarding their competition authorities compared to older member states. For example, the independence of the CCPC is enshrined in Irish legislation. In some member states independence is not enshrined, and the Commission is trying to ensure that those countries act to enshrine it. There is something for everybody in the audience, if I may use Gay Byrne's phrase. Every side will be able to take something from this proposal that is missing from their current armoury. We have legislation available in some areas, while in other areas we will have to legislate. The legislation we bring in, whether via statutory instruments or primary legislation, will fill those gaps. Alternatively we can revisit the wording we have in existing legislation to make sure it is totally and utterly consistent.

Senator Kevin Humphreys: The powers to investigate will be strengthened. Can the witness explain that to me? Obviously resources will be required in order to carry out a proper investigation and to track and enforce the competition rules. Can the witness remind me about the independence of the budgets? If the CCPC does not have the budget to carry out the investigations they cannot be carried out properly. Are there elements within COM (2017) 242 which provide for a certain independence of budget that might guarantee the possibility of planning?

Ms Isolde Goggin: There are high-level provisions in the COM concerning the independence of resourcing of competition authorities to enable them to carry out the job they are given. We already have the power to summons witnesses, to examine witnesses under oath and to require the production of documents or records to us. The system we enforce is modelled around the criminal enforcement system, so our investigative powers are pretty good by comparison with our colleagues in other European countries. The deterrents and the punishments apply when we get to the stage of having proved that a breach has occurred.

Senator Kevin Humphreys: The witness has mentioned investigations into the waste industry and car insurance companies. What resources does the CCPC have to deal with those issues? Is there anything within the COM that would guarantee the resources necessary to investigate to the level required?

Mr. Kieran Grace: There is no set formula in the document, based on population size or anything else. There is no directional or rated formula set out in the COM. It is high-level in that sufficient resources are to be provided to carry out the investigations.

The allocation of resources within member states boils down to national competencies, regarding taxation, for example, and the amount of resources a state has. A member state then has to decide on the priorities within the overall envelope it has in its budget. The allocation of resources then becomes part of the budgetary process. It is part of the Department's Vote in terms of the CCPC; the sub-headline is C8. That is allocated every year, between pay and non-pay.

Chairman: To reiterate what Senator Humphreys is saying, does the CCPC believe that this proposal would lead to competition law enforcement being fit for purpose? If it does the CCPC is going to need more resources, including financial aid and more staff. Mr. Grace has said that is not built into it, but if this proposal becomes law it would give the CCPC stronger powers of enforcement, and it will subsequently require more resources. Is that correct?

Ms Isolde Goggin: We estimate that we would need a small increase in resources. It should be borne in mind that what we do at the moment is bring cases to the Central Criminal Court via the Director of Public Prosecutions, DPP. Bringing a criminal case is an enormous enterprise. The last case we brought to the Central Criminal Court resulted in a guilty plea and it did not take long. It was the flooring cartel case that I mentioned earlier. We had 41 witnesses lined up. We had taken over 200 investigative actions; the investigation took around two years. Taking a criminal case is already a very substantial enterprise. We are looking at an alternative civil route where the burden of proof is on the basis of the balance of probabilities rather than beyond reasonable doubt. We believe the investigations themselves would not necessarily become more onerous. If we were given responsibility for imposing fines a certain internal separation of powers would be required so that the same people carrying out the investigations were not acting as judge, jury and executioner. We estimate that any increase in the numbers would be in the low single figures.

Chairman: Does the witness believe that if this proposal was introduced it would help the CCPC to better carry out its functions?

Ms Isolde Goggin: We believe it would make us much more efficient. It would shorten the amount of time it takes to investigate cases. More cases would come forward because we would have much more visibility. Word gets around; if people see one business being fined it often puts the fear of God into others. People realise that this is a serious situation and that they need to have a compliance programme in place. Our ultimate aim is compliance and competi-

tion that works for consumers and legitimate businesses. Doing things in this way would be much more efficient. Many more investigations could be carried out more quickly. I do not want to jump the gun on the Department because budgeting will ultimately be for it to decide upon, but we have spoken to our counterparts in small member states, for example in the Netherlands and Lithuania, and they do not foresee that this requires a huge increase in resources. They are not talking about a doubling of resources but perhaps a small number of additional staff. Similarly, other enforcement agencies such as ComReg, the Central Bank and the Broadcasting Authority have the power to impose fines at the moment. They carry out investigations themselves and they observe due process, which of course we would have to do, and afford all appropriate rights to the defence. They are able to do it in a way that is not massively onerous in terms of resources. We foresee a small increase in resources, but also a much more efficient system that works better for us and for the State.

Mr. Patrick Kenny: It is important to focus on the issue of leniency. In the civil area, when we speak to the legal advisers of companies about the cartel immunity programme we run with the DPP they tell us that there is not sufficient legal certainty to bring anything to our attention at the moment. With the leniency programme we will be able to get much more work through the door. When we have companies assisting us in our investigations we will get through more investigations, and when there is a fine at the end of the process it will serve as a bigger deterrent. That is critical.

Chairman: What prevents Ireland from introducing a leniency programme?

Mr. Patrick Kenny: The courts make the decision at the moment, and they rule on this at the end of the process. We want people to bring things to our attention at the start of the investigation.

Mr. Kieran Grace: If an national administrative competition authority has the power to levy fines, the other side of the coin is the ability to have a leniency programme. Not having the ability to levy the fines would mean that we would have no leniency programme. An immunity programme is very different from a leniency programme.

Chairman: Can the witness explain what a leniency programme is?

Mr. Kieran Grace: What is the best way of putting it? An anti-competitive behaviour has been discovered, but someone is prepared to help out, a whistleblower, for example. One may be able to get a bigger hit down the road, by putting a lesser fine on the person who puts his or her head above the parapet. This may be a somewhat simplistic way-----

Mr. Patrick Kenny: A lot of competition breaches are hidden, so it is the cartel, the classic hardcore cartel - the smoky rooms, as they say. Information sharing and things like that - that are not known, that is, somebody bringing something to someone's attention that was not otherwise known. That is really the power of leniency, where somebody looks through a person's business, says it is doing something that is a problem and advises the person to bring it to the attention of the authorities.

Chairman: Is there anything further?

Ms Goggin was very passionate about this, so there is no doubt that will help us to make our decision. Given that the witnesses were all singing from the same hymn sheet, it certainly works. I would like to thank the witnesses for coming in today and for the documentation they provided beforehand, which has been very useful.

JBEI

We will now go into private session to discuss our next step regarding this proposal. Is that agreed? Agreed.

The joint committee went into private session at 5.41 p.m. and adjourned at 5.43 p.m. until 2.45 p.m. on Wednesday, 21 February 2018.