

**Compecon Submission to Competition Authority  
Consultation on Leniency Programme.**

**3<sup>rd</sup> September 2010**

## **1: Introduction.**

This submission is made by Compecon in response to the Competition Authority Consultation Paper of 15<sup>th</sup> July 2010 regarding proposed changes to the Cartel Immunity Programme or leniency programme. The paper proposes some limited technical changes, e.g., the inclusion in the programme of the definition of an undertaking as contained in Section 3(1) of the Competition Act, 2002. The one arguably significant change is the proposal that undertakings which have acted as ringleaders would no longer be excluded from the programme.

## **2: A Fundamental Review is Required.**

In the case of a programme such as this one needs to ask a simple fundamental question: Is it working? In order to answer this question, one requires detailed information on the operation of the programme. Specifically, one needs to know:

- (i) How many inquiries have been made under the programme;
- (ii) How many formal requests for immunity have been made;
- (iii) How many requests have been granted;
- (iv) How many files have been submitted to the DPP on foot of grants of leniency;
- (v) How many prosecutions have been brought on foot of grants of leniency; and
- (vi) How many convictions have been secured on foot of grants of leniency?

All of this information should be provided on an annual basis. The Authority has repeatedly refused to provide such information thus preventing any proper evaluation of the relative success of the programme and/or whether it needs to be overhauled. Providing such information would not in any way compromise either individual cases or the overall programme.

The programme has been in place since 2001. While no detailed information is available the indications are that the programme has, at best, had extremely limited success. A call from a journalist a few years back elicited the response that the dedicated phone number for immunity applicants “doesn’t ring that often”. Since its inception only a handful of cartels have been detected. Even if all of these were the

result of the programme it would constitute a relatively poor return. In the absence of detailed information that would indicate otherwise one is forced to conclude that the programme is not working. In those circumstances there is an urgent need for a full-scale review of all aspects of the programme.

The low-key approach of the Authority in promoting the programme also needs to be re-examined. The Authority's approach is in stark contrast, for example, to that of the insurance industry which has consistently run high profile advertising campaigns urging people to report cases of suspected insurance fraud. More recently the Environmental Protection Agency and local authorities have launched a campaign asking people to report suspected breaches of environmental legislation.

### **3: The Ringleader Provision.**

The consultation paper proposes to drop the provision excluding those firms that have acted as ringleaders in cartels from the leniency programme. The paper does not really offer any compelling argument for this proposal. It states that having such a perpetual disqualification “would potentially preclude a number of participants in the cartel from ever applying for immunity” but fails to elaborate on this point. It also suggests that this change would bring the Irish programme more into line with the ECN Model Leniency Programme.

One practical consideration is how a jury might view evidence against other cartel participants if the party giving such evidence was actually shown to have played a leading role in encouraging others to join the cartel in the first place. That is not something that competition agencies in other EU Member States have to consider.

In reality it seems unlikely that the proposed change will make any great difference one way or the other. It seems unlikely that the removal of the exclusion on ringleaders will prompt a sudden flood of leniency applications.

### **4: Conclusions.**

International experience shows that an effective leniency programme constitutes a particularly important weapon in the fight against cartels. All the available indications suggest that Ireland's leniency programme has not been particularly effective at unearthing cartels. This suggests that a more fundamental review of the programme is required. The failure to provide detailed information on the operation of the leniency programme makes it extremely difficult to provide constructive suggestions as to how the scheme might be improved.