• Ireland: The Competition Authority wins Beef Industry Case

On 26 January 2011, the Competition Authority has won court proceedings in which it challenged the compatibility with EU and Irish competition provisions of an agreement between competitors to reduce capacity in the Irish beef processing industry.

The structure of the proposed scheme (which was never implemented) involved the establishment by the principal participants in the beef processing sector of a corporate vehicle, the Beef Industry Development Society Limited (BIDS). Under the scheme, the major players in the industry agreed to pay those players who would voluntarily leave the industry. In return for that payment, the players leaving agreed to decommission their plants, refrain from using the associated lands for processing beef for a period of five years and sign a two-year non-compete clause with regard to processing anywhere in Ireland.

The Authority took the view that the scheme was incompatible with both section 4(1) of the Competition Act, 2002 and Article 101(1) TFEU and initiated proceedings against the scheme before the Irish High Court in 2003. The case has been a long-running saga involving one High Court trial, one Supreme Court judgment and a judgment from the European Court of Justice (ECJ).

In July 2006, the Irish High Court ruled that the agreement did not have the object of restricting competition. The Authority appealed this decision to the Irish Supreme Court. In March 2007, the Supreme Court sought a preliminary ruling from the ECJ on the question as to whether such an agreement, providing for a restructuring of an entire industry by agreement between the competitors in that industry, has the object of restricting competition. In November 2008, the ECJ held that such an agreement did, indeed, have such an object.

Following the ruling by the ECJ that an agreement with features such as the BIDS agreement has as its object the prevention, restriction or distortion of competition within the meaning of Article 81(1) EC (now Art. 101 TFEU), the Supreme Court held that the BIDS agreement had infringed Article 101(1) TFEU and remitted the case to the High Court to allow BIDS the opportunity to argue that the agreement should be exempt from the prohibition in Article 101(1) on the grounds that it satisfied the conditions for exemption set out in Article 101(3). During the High Court proceedings in 2010, the Commission intervened as amicus curiae in this case and submitted written observations pursuant to Council Regulation 1/2003 on the assessment of industrial restructuring agreement under Article 101(3) TFEU.

In January 2011, BIDS decided not to implement the agreement and withdrew its claim for exemption under Article 101(3) TFEU with the effect that the High Court did not have the opportunity to reach any decision on the application of Article 101(3) TFEU to the BIDS agreement.

See further:
- Majority decision stating for the case to be remitted to the High Court: http://www.supremecourt.ie/Judgments.nsf/1b0757edc371032e802572ea0061450e/31f1360097ab4f6f080257663003a6af0?OpenDocument
- Additional judgment specifying some of the issues that the High Court must consider in its 101(3) analysis: http://www.supremecourt.ie/Judgments.nsf/1b0757edc371032e802572ea0061450e/7bdbace17723aeb80257663003acbb84?OpenDocument


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