

COMPETITION AUTHORITY

Competition Authority Decision of 28th June 2002 relating to a proceeding under Section 8(6) of the Competition Act, 1991.

The Revocation of Notification No. CA/153/92E - The Irish League of Credit Unions.

Decision No: 596

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INTRODUCTION

1. On 20th November 1995 the Competition Authority issued Decision No. 440 (the "Decision") concerning certain Rules of the Irish League of Credit Unions (the "ILCU"), which had been notified to the Authority on 28th September 1992. The Rules set out the requirements for membership of the ILCU. The ILCU sought a certificate under Section 4(4) or, in the event of a refusal by the Authority to issue a certificate, a licence under Section 4(2) of the Competition Act 1991 (the "Act"). The Competition Authority (the "Authority") published its notice of intention to grant the Certificate on 13th October 1995. No submissions were received thereafter.

2. In its Decision the Authority stated that the ILCU is an association of undertakings within the meaning of Section 3(1) of the Act and that the ILCU rules constituted an agreement between undertakings. The rules of the ILCU were deemed to constitute a decision by an association of undertakings.

3. In its Decision the Authority certified that the Rules of the ILCU, dated April 1992, as notified to the Authority on 28th September 1992 under Section 7 of the Act, did not offend against Section 4(1) of the Act.

4. Following the receipt of complaints concerning the current application of the Rules and the resultant effect on competition, the Authority decided on 23rd March 2002 that there were sufficient grounds to initiate a procedure under Section 8(6) of the Act, in order to establish whether the Authority should revoke the Certificate.

REVOCATION PROCEDURE

5. The power to revoke a certificate is contained in Section 8(6) of the Act and provides that the Authority may revoke a certificate under Section 4(4) where it is of the opinion that:

(a) there has been a material change in any of the circumstances on which the certificate was based, or

(b) the certificate was based on materially incorrect or misleading information.

6. Section 7(5) of the Act provides that for the purpose of the exercise of its functions in relation to licences and certificates the Authority may accept such observations or submissions from persons claiming to be interested as it may think proper. The Authority published a notification in the *Irish Times* dated 26th April 2002, inviting submissions in relation to this matter to be received no later than 10th May 2002. The Authority also wrote, separately, to interested third parties asking if they wished to make submissions.

7. The Authority decided that there were sufficient grounds to issue a Statement of Objections indicating the Authority's intention to revoke the certificate issued in Decision 440. The Statement of Objections was issued on the 24th May 2002 to the ILCU and interested third parties. Oral hearings were held on the 11th and 12th June 2002.

AUTHORITY DECISION 440

Information On Which the Decision Was Based

8. Decision 440 was based on the following facts.

(a) The Subject of the Notification

9. The notification concerned the rules of the ILCU as they stood at the date of the notification. Individual credit unions belonging to the ILCU had to abide by these rules. ILCU membership was and is open to every credit union which accepts the rules.

(b) The Parties

10. The parties involved were the ILCU and its members, which are individual credit unions. A credit union is an autonomous savings and credit co-operative established by individual persons possessing a common bond, the most typical of which is that they live or work within a particular community. The main objectives of credit unions are:

- promoting of thrift;
- helping members accumulate savings;
- providing loans at reasonable rates of interest; and,
- controlling of members' finances for their own benefit.

11. At the time the Certificate was granted all credit unions within the State were legally required to be registered with the Registrar of Friendly Societies, under the terms of the Credit Unions Act 1966. As at 30th September 1994 there were 427 registered credit unions operating within the State, with a combined membership of 1.22m persons. Total shares and deposits were £1,087m with loans outstanding to members of £576m. The ILCU, established in 1960, was then and still is a voluntary, unincorporated association, which represents and provides certain support services to its member credit unions. At the time of granting of the Certificate, the ILCU had 516 affiliated credit union members throughout the entire island of Ireland. The ECCU Assurance Company Ltd. ("ECCU") was and is a wholly owned subsidiary of the ILCU and an authorised insurance company that provided and still provides various insurance services to ILCU members.

(c) The Product and the Market

12. The notified arrangements that were the subject of the Decision involved the rules of the ILCU and in particular the requirement that ILCU members must obtain certain insurance services from ECCU. Those services relate to life assurance cover in respect of the credit unions' individual members' loans and savings (hereinafter "LP/LS cover"). Thus the relevant product market was the market for LP/LS cover. Although the insurance cover provided by ECCU was and is specifically linked to savings and deposits with credit unions, the Authority did not believe when granting the Certificate that this could be deemed to be a separate product

market from that for life assurance generally. In that regard, the Authority noted that according to the Insurance Annual Report for 1993¹ there were 34 undertakings, including ECCU, authorised to carry on life assurance business in Ireland. Twenty of these had their head offices in Ireland with the remainder having head offices elsewhere. Total life assurance premium income amounted, at that time, to £1,644m. ECCU's total premium income was then £9.6m.

(d) The Arrangements

13. The arrangements involved the ILCU rules as amended at June 1992 and as they stood at the time of the Decision. Section 2 of the rules set out the requirements for ILCU membership of which the relevant provisions states:

"1. Membership shall be limited to and consist of such credit unions registered in Ireland as have been elected members of the League in accordance with the provisions of these rules and comply with such other rules as relate to membership."

Paragraph 2(2) provided that each application for membership must be sponsored by the chapter in which the applicant credit union is situated. Paragraph 4 provided that each member shall have as its registered rules the model rules as approved by the ILCU or amended to such an extent as shall be approved by the board of directors of the ILCU. Paragraph 5 set out the requirements for admission of members.

14. Paragraph 3(1) of the ILCU's rules stated that:

"Each member shall carry such insurances in respect of itself and for and on behalf of its own members with such insurers as may be laid down from time to time by the members in general meeting."

Pursuant to this rule, ILCU members were and still are required to take out LP/LS insurance in respect of the savings and loans of their individual members with ECCU. The Authority stated, at the time the Certificate was issued, its understanding that virtually all member credit unions do so. In its submission the ILCU indicated that any member failing to thus comply would be open to disaffiliation proceedings. Previously another insurance company provided such insurance cover, but the ILCU decided that it would be cheaper to establish its own insurance company in order to provide this insurance and as a result ECCU established in 1980. The ILCU acts as agent to ECCU under the terms of a separate agreement, which is not covered by the Decision.

15. Section 11 of the ILCU's rules, as considered by the Authority at the time the Certificate was granted, deals with expulsion and withdrawal from membership. Paragraph 1 provided that a member may be expelled by a vote of the majority of the board of directors for any grave and sufficient reason including wilful and/or persistent breach of or refusal to comply with any of the rules. The procedures to be followed are also set out therein.

¹ Department of Enterprise and Employment, *Insurance Annual Report 1993*. Dublin: Stationery Office.

(e) Submissions of the Parties

16. The ILCU advanced a number of arguments, referred to by the Authority in its Decision, justifying the requirement that member credit unions secure LP/LS cover from ECCU. The ILCU argued that the specific nature of the relevant insurance meant that there was no commercial market and the arrangements could not therefore be said to be anti-competitive. It also argued that it would be more expensive to obtain such cover from another insurer. The ILCU submitted that the purpose of the rule was not to prevent other insurers providing such insurance but to provide it more cheaply and on attractive terms. It also stated that no credit union was obliged to be a member of the ILCU, but those that wished to be members had to comply with the rules. The ILCU also submitted a number of arguments in support of its alternative request for a licence but the Authority indicated in its Decision that these were not considered in relation to the granting of the Certificate.

Assessment on Which Certificate was Based

(a) Section 4(1)

17. The Authority made its assessment having regard to Section 4(1) of the Act which states that, "all agreements between undertakings, decisions by associations of undertakings and concerted practices which have as their object or effect the prevention, restriction or distortion of competition in trade in any goods or services in the State or in any part of the State are prohibited and void."

(b) The Undertakings and the Agreement

18. The Authority in its Decision identified the parties to the arrangement as the ILCU and its members and stated that it considered said parties to be an association of undertakings and undertakings respectively, having regard to the definition in Section 3(1) of the Act. The Authority concluded that the ILCU rules constituted an agreement between undertakings, since they were agreed by the members at the ILCU's AGM and were a decision of an association of undertakings.

(c) Applicability of Section 4(1)

19. In its Decision the Authority referred to Section 1 of the Rules, which dealt with the criteria for membership, in order to determine whether Section 4(1) of the Act was applicable. The Rules did not appear to have been used to prevent or restrict credit unions from joining the ILCU and so the Authority concluded that those provisions did not offend against Section 4(1) of the Act. Similarly the procedures for expulsion provide parties with a right to be heard and with a right of appeal to an independent arbitrator and again were deemed to not offend Section 4(1).

20. The Authority also noted that Section 1 paragraph 3 of the Rules requires each member credit union to carry such insurances in respect of itself and for and on behalf of its own members with such insurers as may be laid down from time to time by the members in general meeting. Under this rule each credit union is obliged to have LP/LS cover in respect of each of its individual members, taken out with ECCU. The rules prevent individual ILCU member credit unions from obtaining such insurance through an insurance company of their choice. The Authority stated in its Decision that this arrangement was more akin to a joint

buying arrangement than an exclusive purchase arrangement, since the member credit unions have agreed to purchase insurance jointly and indeed have decided to set up their own company to provide such insurance services.

21. The Authority also noted that any credit union that did not want to participate in such arrangements as described in paragraph 20 above could disaffiliate itself from the ILCU and continue to operate independently. The arrangement as certified prevents or restricts other insurance companies from competing for this particular business but, this applied to 0.6% of total life assurance premiums. At the time of the Decision, the Authority did not believe, given the tiny proportion of the market involved, and the fact that ILCU member credit unions could opt out of these arrangements, that this provision could be said to prevent, restrict or distort competition.

22. The Authority decided in its Decision that with regard to LP/LS cover, the ILCU operates, in effect, a voluntary joint buying arrangement for members and not an exclusive purchase arrangement. Individual credit unions can, in reality, opt out of the arrangement. Thus there are no significant potential entrants into the market being excluded by the arrangement.

STATEMENT OF OBJECTIONS

The Statement

23. The Authority issued a Statement of Objections to the ILCU and to interested third parties on 24th May 2002 indicating its intention to revoke the Certificate granted to the ILCU in Decision 440.

Complaints, Submissions and Evidence Received Subsequent to the Issuance of the Certificate

24. The Authority has received a number of complaints from credit unions that are members of the ILCU together with supporting evidence that less expensive LP/LS cover is available than that provided by ECCU.² The ILCU has moved to disaffiliate members of the ILCU that have availed themselves of the cheaper LP/LS cover. When a credit union is disaffiliated from the ILCU, it is unable to recover its share of the ILCU's Savings Protection Plan (the "SPS") fund or to be able to continue to avail of its benefits. The ILCU changed its standard rules for credit unions following the passage of the Credit Union Act 1997 making SPS insurance compulsory.

(a) Lower Priced LP/LS Insurance

25. The Authority has been informed by Lucan and District Credit Union Ltd. ("Lucan Credit Union"), 3 The Mall, Lucan, Co Dublin, that it switched from ECCU to Hibernian Life and Pensions Limited ("Hibernian Insurance") on March 1st 2001 for its LP/LS cover. The membership of Lucan Credit Union is approximately 11,000 with assets of €27m. Lucan Credit Union stated that the cost of cover with Hibernian Insurance was 38 per cent lower

² In all cases that are cited below we are comparing like with like in terms of LP/LS cover offered by ECCU and other undertakings.

than that quoted by ECCU. Furthermore, Hibernian Insurance allows a 2.5 per cent discount on the full annual premium where it is paid up front.

26. The Authority has also been informed that Bishopstown Credit Union Limited (“Bishopstown Credit Union”), Wilton Road, Cork, switched its LP/LS cover from ECCU to Hibernian between 1998 and 2000. Bishopstown Credit Union’s membership is approximately 19,000 with assets of €63m. It established to its satisfaction the comparative costs between ECCU and Hibernian Insurance between 1998 and 2000. (These are presented below). On this basis Bishopstown Credit Union used Hibernian Insurance for its LP/LS cover between 1998 and 2000.

Year	ECCU (IR£)	Hibernian Insurance (IR£)	Difference (%)
1998	109,893	89,900	- 18
1999	93,633	98,800	+ 5
2000	147,906	99,324	- 33

Notes:

1. The ECCU estimates are net of rebates.
2. Difference = (ECCU-Hibernian Insurance)/ECCU.

27. The Authority also received information in response to its call for submissions referred to in paragraph 6 above from the Credit Union Development Association (“CUDA”), c/o Newbridge Credit Union Ltd, Moorefield Road, Newbridge, Co Kildare, an unincorporated association of 21 credit unions.³ In aggregate these credit unions represent approximately 350,000 members throughout the island of Ireland and have assets of €1 billion. CUDA state their members would in aggregate expect to pay for 2002 for LP/LS cover approximately €5m through ECCU, but received written confirmation from more than one other alternative insurer that they will extend the same level of cover for approximately €3.5m. In other words, a direct and immediate saving of €1.5m or 30 per cent.

28. The Tyrrell Coakley Insurance Group, 9 Eastgate Avenue, Eastgate Business Park, Cork, has informed the Authority that a number of credit unions have considered taking out LP/LS cover with insurers other than ECCU. In addition to Hibernian Insurance, Irish Life also offers LP/LS cover that is competitive with ECCU.

(b) Disaffiliation by ILCU

29. Lucan Credit Union claim that on 19th July 2001, the then General Secretary of the ILCU notified it of the ILCU’s intention to consider a resolution on November 10th 2001 to expel Lucan Credit Union from the ILCU because of its failure to carry LP/LS cover with ECCU. Subsequent to being thus notified Lucan Credit Union decided to leave the ILCU in anticipation of being disaffiliated. However, this decision by Lucan Credit Union has, as yet, to be implemented.

30. Between 1998 and 2000, Bishopstown Credit Union took out LP/LS cover with Hibernian Insurance rather than ECCU. By letter dated 17th September 1999, the ILCU

³ Two of these 21 credit unions are Lucan Credit Union and Bishopstown Credit Union. All 21 credit unions are currently still members of the ILCU.

advised Bishopstown Credit Union that the ILCU would consider disaffiliating it unless it resumed using ECCU. At Bishopstown Credit Union's AGM held on 23rd November 1999 senior members of the ILCU persuaded the membership to resume using ECCU for LP/LS cover. However, Bishopstown Credit Union did not make the decision to use ECCU until its 3rd February 2000 Board meeting.

31. Eircom Credit Union Ltd ("Eircom Credit Union"), 55 Dawson Street, Dublin 2, was expelled by the ILCU effective from and including 23rd December 1998. Eircom Credit Union has a membership of 15,000 and assets of €120m. The ILCU expelled the Eircom Credit Union because it had taken out LP/LS cover with another undertaking other than ECCU.

(c) Consequences of Disaffiliation

32. The ILCU operates a Savings Protection Scheme that provides insurance cover for credit unions in the event that they go into insolvency. Under the SPS the level of protection is £10,000 per member, with the ILCU's SPS fund at the 31st December 2000 valued at £46m.⁴ ILCU members contribute to the SPS fund and thus over a period of time they can build up, depending on their size, a substantial share of the fund.

33. Section 46 of the Credit Union Act 1997 has made it a legal requirement for credit unions that have been set up since that Act come into operation to have SPS insurance. The ILCU revised its *Standard Rules for Credit Unions* after the passage of the aforementioned Act. Rule 55 (1) states that, "The credit union *shall* participate in the Irish League of Credit Unions savings protection scheme." (emphasis supplied).

34. CUDA has stated to the Authority that disaffiliation from the ILCU results in the consequential withholding, withdrawal or denial of the protection afforded to their member credit unions through the SPS fund. CUDA argues that its members have contributed in aggregate approximately €17m to the SPS fund, which accounts for approximately 25 per cent of the overall fund. The withdrawal of access to the SPS that occurs when credit unions are disaffiliated from the ILCU constitutes a substantial penalty. This impedes credit unions from seeking the best available LP/LS cover.

Applicability of Section 8(6)(a): Material Change in Circumstances

(a) Changes Which Are Not Material

35. The Authority has noted various facts related to the granting of the Certificate that have changed since the Decision was made, but has decided that those changes in fact do not amount to material changes in circumstances. They are:

- the establishment of the Credit Union Development Association;
- the increased size of the Irish League of Credit Unions;
- the increased level of direct competition between credit unions and other financial services providers; and,

⁴ The data in this sentence is taken from ILCU. 2001. *Annual Report and Accounts for the year ended 31 December 2000*. Dublin: the ILCU. Pp. 27-28, p. 73.

- the announced intention of Government to reorganise the regulation of Credit Unions within the structure of the proposed Irish Financial Services Regulatory Authority.

The Authority has also decided that the fact that the ILCU has moved to disaffiliate member credit unions does not constitute a material change, since it was clearly stated that this could happen in the original Decision.

(b) Changes That Are Material

36. The Authority has decided that the fact that a number of complaints have been made to it by credit union members of the ILCU expressing concern about the joint buying arrangement for the purchase of LP/LS cover through ECCU is a material change of circumstance. At the time the Authority made its Decision it had received no submissions from credit union members of the ILCU indicating any dissatisfaction with the proposed arrangements.

37. One of the reasons that credit unions have complained to the Authority is that LP/LS cover is being offered by undertakings such as Hibernian Insurance at lower rates than ECCU and the ILCU has attempted to prevent them accessing such insurance. The evidence examined by the Authority shows that there is a willingness on the part of private, commercial insurance undertakings to provide quotes to individual credit unions through brokers at rates that are competitive with those offered by ECCU. The action of the ILCU is inconsistent with the claim noted in the Authority Decision in paragraph 9 that, “The ILCU submitted that the purpose of the rule was not to prevent other insurers providing such insurance, but to provide it more cheaply and on attractive terms.”

38. When the Authority made its Decision it was not compulsory for a credit union member to take out SPS cover. The Authority regards this change that took place subsequent to the Decision as a material change in circumstances. Had the Authority known enrolment in the SPS was compulsory then it is reasonable to assume that it would have examined the degree to which individual credit unions could withdraw any contributions that they had made to the SPS fund and/or that they could continue to avail of the protection afforded by the fund if they left the ILCU, either voluntarily or involuntarily.

39. Implicit in the Authority’s Decision was that the switching costs of individual credit unions away from the LP/LS cover provided by ECCU are low or zero.⁵ In other words, a credit union would incur little or no penalty or extra cost if it left the ILCU. However, this does not appear to be the case. There is a substantial barrier to exit because a credit union that leaves the ILCU has no claim on its share of the SPS fund or its benefits.⁶

40. In sum, on the basis of the developments outlined above and the evidence available to the Authority, the Authority concluded there have been several material changes of

⁵ See paragraph 14 of the Decision, which is largely reproduced in paragraph 21 above.

⁶ Of course it could be argued that the credit union(s) that wish to avail of the lower priced LP/LS cover could press for the rules of the ILCU to be changed so that they can claim their share of the SPS fund. However, in the case at hand this is unlikely to succeed because under the ILCU’s rules each credit union, irrespective of size, carries the same weight in any vote. Given that there are in excess of 500 credit unions that belong to the ILCU the 21 members of CUDA although of substantial size, are not large enough in terms of votes to effect a change in the rules.

circumstance. These changes have limited the development of a competitive market in LP/LS insurance for credit unions. The rules of the ILCU are operating in such a manner as to discourage that market developing so preventing, restricting or distorting competition to the detriment of consumers.

Applicability of Section 8(6)(b): Materially Incorrect or Misleading Information

41. Without prejudice to the Authority's right to consider the revocation of the Certificate while having regard all of the provisions of Section 8(6) of the Act, on the basis of evidence thus gathered to date, the Authority is not at present of the opinion that the Certificate was based on materially incorrect or misleading information.

RESPONSE TO THE STATEMENT OF OBJECTIONS

Written Submissions

42. The Authority received five written submissions in response to the Statement of Objections that were issued on the 24th May 2002. Three of these contained no comments on the Statement of Objections, although one was interested in making an oral presentation to the Authority.⁷ The submissions of CUDA and the ILCU did, however, comment on the Statement of Objections.

(a) CUDA

43. CUDA presented two recent ILCU documents arguing that the ILCU was aware of the availability of cheaper LP/LS cover from providers other than ECCU. CUDA argues that the ILCU wishes the Certificate to remain not only because it restricts competition but also because of the mandatory commission loadings on LP/LS cover, which are used to fund the activities of the ILCU. CUDA also supplied a letter dated 22nd May 2002 from the ILCU to CUDA which confirms that CUDA member credit unions placing their LP/LS cover with another (i.e. not ECCU) insurer would render themselves open to disaffiliation and consequent cessation of, participation in and entitlement to be considered for assistance under the SPS scheme. CUDA contends that this imposes a substantial penalty on any ILCU member that ceases to be a member, either voluntarily or through disaffiliation.

44. Finally, CUDA claims that two of its members – Bishopstown Credit Union and St Joseph's Aviation – receive a special LP/LS premium discount to ensure that they replaced their LP/LS cover with ECCU having previously placed it with an alternative insurer. CUDA claims that these two credit unions continue to enjoy these significant discounts over other comparable sized CUDA member credit unions. Such behaviour CUDA argues is the antithesis of an equitable joint buying arrangement and abuse of a dominant position by the ILCU and an abuse of the Certificate granted under the Decision.

(b) ILCU

45. In its submission the ILCU argued that, "there has been no change in any of the circumstances considered material by the Authority in reaching its decision in 1995." Two

⁷ The three submissions were from the Central Bank of Ireland, Company Law Administration Section, Department of Enterprise Trade and Employment, and the Registrar of Friendly Societies.

material circumstances are selected by the ILCU as motivating the Decision to grant the Certificate:

- i. the small portion of the relevant market accounted for by LP/LS cover. Indeed, ECCU's share of total life assurance premiums has fallen from 0.6 per cent at the time of the Decision to 0.37 per cent in 2000; and,
- ii. ILCU credit unions can opt out of purchasing LP/LS cover from ECCU, a situation that has not changed since the Decision. There was and is no requirement for a credit union to belong to the ILCU.

The ILCU claims that SPS is not a barrier to exit because it is not a guarantee scheme and thus there is no right for a credit union to receive any benefit from SPS. Under the rules of the ILCU when a credit union leaves whether voluntarily or by disaffiliation they do not receive any funds from the ILCU. Although ILCU credit unions were not obliged to join the SPS until the rule change in 1997, nevertheless all ILCU members were and are members of SPS.

46. The ILCU argues that consistent with both the Decision and the Statement of Objections the relevant market is the provision of life assurance generally. The ILCU claims that there were and are alternatives to ECCU. Thus while the ILCU agreed with the Authority's conclusion in the Statement of Objections that '[t]he evidence examined ... shows that there is a willingness on the part of private, commercial insurance undertakings to provide quotes to individual credit unions through brokers at rates that are competitive to those offered by ECCU,' it does not agree that this can be a material change in any of the circumstances on which the Decision was based.

47. Consistent with the line of argument as outlined in paragraph 46 above, the ILCU state that there is no separate market for the provision LP/LS cover to credit unions.

48. The ILCU argues that the purpose of Rule 3(1) is to ensure that LP/LS cover is provided more cheaply and on attractive terms to credit unions.⁸ The ILCU takes the view that the range of benefits offered through ECCU and membership of the ILCU are "highly competitive." Both ECCU and the ILCU are non-profit making. Rule 3(1) prevents, it is asserted, cherry picking by insurers, whereby the remaining credit unions would be vulnerable to significantly higher premiums. This would violate one of the fundamental tenets of the credit union movement – equality of treatment of all members.

49. The ILCU argues that the Authority in its Decision understood that the ILCU Rules and Rule 3(1) in particular foreclosed competition. The ILCU further contends that the Authority was aware that the intended purpose of the Rule 3(1) and the outcome of the Decision was that non-abiding members would be disaffiliated from the ILCU. Thus if ILCU members availed themselves of non-ECCU LP/LS cover and were disaffiliated as a result, this cannot be regarded as a material change in circumstances.

50. The ILCU considers each of the claims made in the Statement of Objections that cheaper LP/LS cover is available from non-ECCU providers.⁹ In each case the ILCU argues

⁸ See paragraph 14 above for details of Rule 3(1).

⁹ These claims are outlined in paragraphs 25 to 27 above.

that the data in support of those claims is inaccurate, highly misleading and unsubstantiated. For example, the ILCU argue that the 38 per cent claim by Lucan Credit Union appears to be based wholly on an oral assertion made by Lucan Credit Union and that independent and/or impartial scrutiny is required. The ILCU states that the Authority should compare the policies offered by non-ECCU providers in order to ensure that like for like comparisons are made.

51. The ILCU claims that the true purpose of the credit unions that have complained is to involve the Authority – “cynically and inappropriately” – so as to gain a share of the SPS fund upon disaffiliation or voluntarily leaving. The ILCU considers any claims on the SPS fund to be a matter for commercial not competition law.

52. In conclusion the ILCU argues that the Decision allowed for ILCU member credit unions that took out non-ECCU LP/LS cover to be disaffiliated from the ILCU, and that any such action is in accordance with the conditions under which the Certificate was issued. Any retrospective change or revision of the Authority’s original Decision would be “intolerable”.

53. Oral hearings were held on the 11th June 2002 at which M Sisk and P Harrington from the Office of the Registrar of Friendly Societies were present and on 12th June 2002 at which J O’Dwyer and B Mulholland from the ILCU, together with their legal representative, P Heffernan, were present. J Fingleton, P Gorecki, T Calvani, P Neill, and M O’Donoghue represented the Authority.

(a) Registrar of Friendly Societies

54. The Registrar of Friendly Societies (the ‘Registrar’) perspective on the proposed revocation reflected that of the regulator of credit unions. However, the Registrar stated that he did not regulate the ILCU, as it is an unincorporated entity. If the ILCU became a co-operative then it would be subject to his remit. The Registrar stated that the aggregate premiums from ECCU’s LP/LS insurance policies accounted for 75 to 80 per cent of the funding of the ILCU. At an ILCU meeting held the weekend previous to the Authority’s meeting with the Registrar, it had been decided that the method of funding of the ILCU would be changed and be based on factors such as a credit union’s membership and assets. However, the ILCU had decided not to change the rule that compels its members to purchase LP/LS cover from ECCU.

55. The Registrar was concerned that if a small number of larger credit unions left the ILCU then the much greater number of smaller credit unions might suffer as a result of ‘cherry picking’ by alternative LP/LS cover providers. (The 21 members of CUDA, for example, account for about a quarter of the size of the ILCU). The larger credit unions would be able to get access to favourable LP/LS rates while, it is claimed, the smaller credit unions would have difficulty getting comparable rates or indeed any LP/LS cover. This reflects, in the view of the Registrar, the additional administrative costs of servicing smaller credit unions.

(b) ILCU

56. The ILCU in its presentation to the Authority on 12th June 2002 emphasised a number of the points made in its written submission (summarised above). These included:

- the small share of the life assurance market accounted for by ECCU;
- that misleading information had been provided to the Authority by the complainants;
- that there had been no material change of circumstances; and,
- that when making the Decision the Authority was aware that ILCU members that took out LP/LS cover with a non-ECCU undertaking could expect to be disaffiliated.

The ILCU also stated that Bishopstown Credit Union and St Joseph's Aviation credit unions did not received any special discounts on their LP/LS cover as had been alleged by CUDA.

57. The ILCU argued that the complainants to the Authority, as represented by CUDA, should have resolved their differences with the ILCU through the internal dispute resolution mechanisms that are part of the procedures of the ILCU. Mediation was a better solution to the issues raised by CUDA than resort to the Authority. The ILCU was critical of the fact that CUDA had not made a submission to the review commission (see below) that dealt with issues such as ECCU, LP/LS cover and the SPS. However, the ILCU did not take the view that credit union members of the ILCU should not be allowed to complain to the Authority.

58. During the weekend prior to the oral hearing before the Authority, the ILCU had considered at a Special General Meeting the recommendations of the ILCU-sponsored report of the review commission, *Time for Change*. P Flynn chaired the commission and the report is dated April 2002. One of the recommendations approved was a change in the way that the ILCU is funded. In future the ILCU will not be funded through premiums paid on LP/LS cover but instead based on the size of individual credit unions measured in terms of membership and assets. The ILCU did not regard this as a material change in circumstance.

59. The ILCU examined the LP/LS cover quote provided by an insurance undertaking to one of the complainants and compared it to the higher priced ECCU product. The ILCU claims that the insurance undertaking is providing, based on the average experience of ECCU, LP/LS cover that is below cost, constitutes reckless trading and is not sustainable in the long term. The ILCU suspects that the insurance undertaking is providing lower LP/LS cover rates for larger credit unions that would not be available to smaller credit unions - 'cherry picking.' However, it is not clear that, adjusting for the age profile of a credit union's membership and taking its claims record over a number of years, why larger compared to smaller credit unions should have markedly lower premiums.

60. The ILCU stated that under its rules if a credit union were to leave the League then it has no claim on the ILCU's assets or the SPS fund. Members were aware of this when they joined the ILCU. All ILCU members participated in the SPS prior to the introduction of Rule 55(1) that made such participation obligatory. Thus it is argued that Rule 55 involves no material change in circumstance.¹⁰ Furthermore, the ILCU insist Rule 55 needs to be considered as a whole, since the other sections of the rule provide for the inspection of the books of member credit unions and the taking of copies or extracts from documents. Nevertheless, the ILCU accepted that if a member credit union left the ILCU that it would incur a cost in that it no longer had access to SPS services and could not withdraw its share of the SPS fund.

¹⁰ See paragraph 33 above for details.

ASSESSMENT

61. The Authority has carefully considered the written and oral submissions made in response to the Statement of Objections.

62. The Authority does not consider the fact that the ILCU has moved to disaffiliate member credit unions as constituting a material change of circumstances, since it was clearly stated that this could happen in the original Decision. Furthermore the Authority is not of the opinion that the Certificate was based on materially incorrect or misleading information. Finally, the Authority does not consider the fact that undertakings other than ECCU provide LP/LS cover is a material change of circumstances. Undertakings were providing such insurance prior to the Decision. Some or all of the 33 undertakings authorised to carry on life assurance in Ireland¹¹ - in addition to ECCU - that existed when the Authority made its Decision would likely offer LP/LS cover if the opportunity arose.

63. The Authority does consider that there are, however, two material changes in circumstances on which the Decision was based for the purpose of section 8(6)(a) of the Act. The first material change is the emergence of a number of ILCU member credit unions that objected to the joint buying arrangements for LP/LS cover by the ILCU members. At the time the Authority made its decision it had received no submissions from credit union members of the ILCU indicating any dissatisfaction with the proposed arrangements. Any such submission(s) would have raised doubts about the degree to which the joint buying arrangement was an agreement amongst undertakings

64. The second material change in circumstance is the making of SPS cover compulsory by the introduction of Rule 55(1). The Authority in its original Decision was concerned with the Rules of the ILCU and not with practices or conventions that may have been in effect but were absent from the ILCU's Rules. The Authority notes that the ILCU argues that the change introduced by Rule 55(1) makes something de jure that was de facto. Nevertheless, it remains the case that the Authority in its Decision paid great attention to the rules not practices of the ILCU and the compulsory nature of LP/LS cover.

65. In respect of LP/LS cover, a credit union pays an annual premium to ECCU or some equivalent insurer, in respect of which no fund builds up. As a result any ILCU credit union can obtain such LP/LS cover from insurers other than ECCU without incurring any penalty, if it left the ILCU either voluntarily or through disaffiliation. Hence switching costs with respect to LP/LS cover are low or zero. However, this is not the case with respect to the SPS. Here the member credit union contributes to the SPS fund. Should it leave the ILCU, voluntary or otherwise, it has no claim on any of the accumulated fund. However, to be placed in a similar situation when it leaves the ILCU it would need to set aside 1 per cent of its savings.¹² In other words, if a credit union leaves the ILCU, in order to have the equivalent savings protection, it would have to set aside 1 per cent of its savings. This would impose a considerable financial penalty on any ILCU member credit union that wished to avail of lower priced LP/LS cover than that offered by ECCU, and hence may deter any such credit union from opting for such alternative LP/LS cover, in circumstances where it might otherwise do so.

¹¹ See paragraph 12 above for details.

¹² This is the level set in the ILCU. 1989. *Savings Protection Scheme, Effective 1st October 1989*, Dublin; the ILCU, p.5 and confirmed during the oral hearings with the ILCU.

THE DECISION

66. The Authority is of the opinion that two material changes in the circumstances on which the Certificate the subject of Decision 440 was based, hereinbefore described at paragraphs 63-65 incl., have occurred. The Authority, as a result, is no longer prepared to certify that in its opinion, on the basis of the facts in its possession, the agreement and decision notified under section 7 of the Act does not offend against Section 4(1) of the Act.

67. The Authority has therefore decided to revoke the said Certificate, in accordance with its powers under Section 8(6)(a) of the Competition Act 1991, said revocation to take immediate effect from the date of this Decision.

Dr Paul K Gorecki
Member,
Competition Authority
28th June 2002