# 8 Competition and the Veterinary Surgeons' Profession in Ireland

## Introduction

8.1 The structure of this section is as follows. We begin by presenting an overview of the definition of the market and the services provided by veterinary surgeons. We also identify the core values and requirements of veterinary surgeons, many of which impinge upon the arguments put forward in relation to the regulation of the profession in Ireland.

8.2 Following the overview of market definition, an empirical analysis is then presented in relation to the size and structure of the market in which veterinary surgeons operate, and the patterns of demand in the market for veterinary services in Ireland. Following this, we describe the veterinary surgeon's client base and the nature of competition, if any, on the market. Our empirical analysis utilises information and data obtained from the Veterinary Council, in addition to new survey data obtained and compiled by Indecon/London Economics. The Veterinary Council is the principal body charged with responsibility of regulating the veterinary surgeons' profession in Ireland. Regulation is carried out by way of statute and delegated legislation, including the Veterinary Surgeons Acts (1931-1960) and the Veterinary Council's Guide to Professional Behaviour (1998).

8.3 After summarising the results of the empirical analysis of the market, we then examine in detail how the profession is regulated in Ireland. In addition to describing the role of the Veterinary Council, we identify and describe the restrictions/requirements that are in place in the profession, and their statutory and other bases, in relation to entry, conduct, demarcation and organisational form.

8.4 Our assessment of the restrictions/requirements most likely to affect competition in the market for veterinary services is undertaken by reference to their justification by the Veterinary Council and the other professional bodies, and our judgements as to whether these restrictions/requirements are proportional to the benefits claimed for them. Finally, we summarise our conclusions on the principal restrictions/requirements that operate in the veterinary surgeons' profession in Ireland.

# Market Definition and Services Provided by Veterinary Surgeons

### Market Definition

8.5 To set the context for our examination of competition among members of the veterinary surgeons' profession in Ireland, it is useful to first consider the relevant market in which veterinary surgeons operate. In competition/antitrust analysis, relevant market definition includes definition of the relevant product market and of the relevant geographic market. The former refers to those products that compete with each other to a sufficient extent to exercise a competitive constraint and the latter refers to the geographic area in which competition between the relevant products takes place. Thus, the relevant product or service market includes all those products or services viewed as sufficiently interchangeable by consumers (demand substitutability) or suppliers (supply substitutability).

8.6 In considering the issue of delineating the boundary of the relevant market, in general, it is useful to review the objective characteristics of the product or service, the nature of demand and supply and the attitudes of different types of user. Such evidence is used when considering specific individual competition cases to inform the so-called 'hypothetical monopolist test' or SSNIP (small but significant non-transitory increase in price) test, which seeks to frame the relevant antitrust market in order to identify the smallest relevant group of producers or providers capable of exercising a competitive constraint on the market. While this test may be less relevant in a sectoral policy study than in a specific antitrust case (such as a merger investigation) it is useful to consider aspects of relevant market definition in terms of the veterinary services provided and also in terms of the geographic area in which these services are provided.

8.7 According to the Veterinary Council, the veterinary profession is that health profession charged by the public interest with the responsibility for the health needs of animals and the impact of animals on the health and well-being of the human population.

8.8 Veterinary surgeons in Ireland are divided into two areas, namely practitioners and non-practitioners. The practitioner operates or is a member of a private veterinary practice, providing a variety of veterinary services. Practitioners may also undertake public sector work on behalf of the Department of Agriculture, Food and Rural Development, via the Government fee paid Disease Eradication Scheme for Bovine Tuberculosis and Brucellosis, veterinary inspections and other activities under the heading of Temporary Veterinary Inspector (TVI) work.

8.9 Non-practitioners are veterinary surgeons who do not operate within a private practice. This includes retired veterinary surgeons who remain registered with the Veterinary Council, and veterinary surgeons employed in education and research at the Faculty of Veterinary Medicine.

8.10 Veterinary surgeons may also work for the local authorities in areas of research, administration of veterinary projects, animal and meat testing and inspection, disposal of fallen animals or other duties under the headings of animal health and welfare and public health.

8.11 It is estimated by Veterinary Ireland that practitioners in private practice account for around 79% of the entire practising veterinary profession in Ireland. These practitioners are primarily self-employed and undertake private work or are involved in State sponsored treatment of animals. The remainder of the practising profession is accounted for by (veterinary surgeons) working for the Department of Agriculture and Rural Development (estimated at 16%) and those lecturing at University in veterinary faculties, engaged in research or in animal health companies (estimated to be 5%).

*Services and work carried out by Veterinary Surgeons*

8.12 The most common areas of work carried out by veterinary surgeons include:

- TB and brucellosis testing;
- Meat factory inspections;
- Diagnosis and treatment of large or food animals, including beef/milk producing cattle, sheep, pigs, poultry, some horses, etc;
- Diagnosis and treatment of companion animals, including dogs, cats, hamsters, etc;
- Diagnosis and treatment of equine animals – sports/leisure horses;
- Education, research and industry (faculties and companies).

8.13 It is estimated, based on research undertaken by Veterinary Ireland, that TB/brucellosis testing accounts for around 42.3% of the practice income generated by large animal practices, with factory inspections (10.8%), other large animal treatment (27.4%), companion animal treatment (11.8%) and the sale of animal health products (7.7%) accounting for the remainder of large animal practice income.

8.14 Among those engaged in companion animal practices, the Veterinary Ireland research indicates that treatment of companion animals accounts for an estimated 86.1% of income on average, while factory inspections account for 7.8%, large animal treatment 2.9%, TB/brucellosis testing 2.6% and sale of veterinary products making up 0.6% of total income on average.

8.15 On average over 90% of the income generated by equine practices relates to treatment of large animals including horses, while factory inspections make up an estimated 3.9% of income, followed by testing (3.7%), and treatment of companion animals (1.8).

8.16 Recent research has indicated that the nature of veterinary practice has changed in the past few years. In particular, the Veterinary Council has noted that the contraction in the farming community and the impact of acute diseases (e.g. BSE and Foot and Mouth disease) have resulted in lower volumes of work in the food animal area. However, this has been offset to some extent by increased activity in the regulatory area (e.g. food safety, animal welfare, environmental impacts) and in the companion animal practices.

8.17 Clients of veterinary surgeons are broadly defined as farmers, bloodstock owners and companion animal owners. However, according to the Veterinary Council, there is considerable overlap between the services provided to the various species.

8.18 In relation to the geographic definition of the market for veterinary services, it is notable that the vast majority of companion animal veterinary surgeons tend to operate in the cities and urban areas. In the more rural areas, the emphasis would be on large animal and food animal (cows, sheep, etc) practices. Kildare and Tipperary would have a larger number of equine practices in operation. In other parts of the country where urban conurbations border on rural areas, the division between food/large animal, companion animal and equine would be more even. In general, we believe that the geographic market for veterinary services is local rather than national. However, for some specialised services a national market may be relevant.

**Fundamental requirements of the Veterinary Surgeon**

8.19 An important issue relating to the provision of services by veterinary surgeons concerns the core requirements and values of the profession. The veterinary surgeons' profession has the unique feature that it serves two clients, namely the animal owner and the animal.

8.20 The guidelines relating to ethical conduct and behaviour of veterinary surgeons are set out under the Veterinary Council's Guide to Professional Conduct and Behaviour. According to the Guide, "a veterinary surgeon shall use his/her scientific knowledge for the benefit of society through the protection of animal health, the relief of animal suffering, the promotion of public health, the advancement of veterinary medical knowledge, the protection of the environment and the conservation of livestock resources".

8.21 According to the Guide, three principles should govern the position of the veterinary surgeon in society, namely that:

- The primary concern of the profession for the welfare of animals;
- All work performed by veterinary surgeons is to a standard of competence acceptable to their peers;
- Veterinary surgeons, individually, act to promote cohesion within the profession and the trust of the profession by the general public.

# Market Size, Structure and Patterns of Demand

8.22 Our economic analysis of competition in the veterinary surgeons' profession presented in this part entails the examination of a range of issues concerning market size, structure and the pattern of demand for the services provided by veterinary surgeons. Our quantitative analysis is supported by the following information sources:

- Data obtained from the Veterinary Council and Veterinary Ireland;
- New information obtained through the Indecon Survey of Veterinary Surgeons (of which there were 252 responses);
- New information derived from the Indecon Survey of the Public (with a sample size of 1,008 adults aged 15+).

8.23 The results yielded by our analysis are relevant in quantifying the economic characteristics of the profession and are used to help inform our subsequent assessment of the various restrictions/requirements that operate in the profession.

**Number and Recent Growth in Veterinary Surgeons**

8.24 One indicator of the size of the market for veterinary services, which is also straightforward to measure, is the population of veterinary surgeons and the recent trend in the population. To practise as a veterinary surgeon in Ireland and to use the appellation or title of 'veterinary surgeon' it is necessary to be fully registered on the Veterinary Council's Veterinary Register. In Table 8.1, we indicate the total number of veterinary surgeons registered in Ireland over the period 1992-2002.

**Table 8.1: The Veterinary Register - Total Number of Veterinary Surgeons Registered - 1992-2001***

| Year | Total Registrants | % change |
|---|---|---|
| 1992 | 1,813 | - |
| 1993 | 1,823 | 0.6 |
| 1994 | 1,873 | 2.7 |
| 1995 | 1,905 | 1.7 |
| 1996 | 1,944 | 2.0 |
| 1997 | 1,991 | 2.4 |
| 1998 | 2,024 | 1.7 |
| 1999 | 2,078 | 2.7 |
| 2000 | 2,140 | 3.0 |
| 2001 | 2,205 | 3.0 |
| 2002 | 2,228 | 1.0 |

* As at January 1st each year
Source: The Veterinary Council

8.25 According to the figures, there were 2,228 veterinary surgeons registered with the Veterinary Council as at 1st January 2002. This compares with 2,024 persons registered in 1998 and 1,813 in 1992. Annual growth in the Register has been slow and has varied between 0.6-3% over this period.

8.26 It is notable that the numbers in the profession have expanded less rapidly than the Irish economy, with GDP increasing at an annual average rate of 6.95% between 1992 and 2001.[1] While there has been a decrease in the size of the national livestock herd (if one takes into account cattle, sheep and pigs) since the mid-1990s, much of this fall occurred at the time of the Foot and Mouth crisis. However, the Veterinary Council has noted that while there has been some contraction in the demand for services provided by large animal practices, this has been offset to a great extent by an increase in regulatory work. In addition, the sharp increase in economic activity over this period has also contributed to an increase in the demand for companion animal veterinary services.

8.27 Table 8.2 provides a further breakdown of the Veterinary Council's Register by identifying the annual number of new registrants over the period 1995-2001. The figures indicate that the number of new entries to the register has fluctuated on an annual basis, though there were 139 new entries in 2000 compared with 85 in 1995.

**Table 8.2: The Veterinary Register - Breakdown of New Entries to the Register - 1995-2001**

| Year | New Entries |
|---|---|
| 1995 | 85 |
| 1996 | 102 |
| 1997 | 109 |
| 1998 | 114 |
| 1999 | 115 |
| 2000 | 139 |
| 2001 | 114 |

Source: The Veterinary Council

**Practice Status of Veterinary Surgeons**

8.28 The number of registered veterinary surgeons may not, however, provide an accurate measure of the total number of persons who actually engage in practice or are employed as veterinary surgeons. An indication of the total number of practising veterinary surgeons can be seen from the findings of a survey carried out in March 2002 by Veterinary Ireland, presented in Table 8.3.

[1] Source: ESRI data

**Table 8.3: Veterinary Ireland Survey of the Veterinary Profession – Estimated Population in Private Practice and in Non-practice Posts**

| Veterinary surgeons employed in: | March 2002 | % of total |
|---|---|---|
| Food animal/large animal practices | 947 | 74.2 |
| Companion animal practices | 229 | 17.9 |
| Equine practices | 101 | 7.9 |
| **Total Practising Vets** | **1,277** | **100** |
| State employees | 350 | 72.0 |
| Local authority vets | 40 | 8.2 |
| Education | 56 | 11.5 |
| Industry | 40 | 8.2 |
| **Total Non-practising Vets** | **486** | **100** |
| **Total** | **1,763** | |

Source: Veterinary Ireland, Survey of the Veterinary Profession, April 2002.
Based on survey sample grossed up to national totals for veterinary surgeons who graduated in 1959 or later and who are currently in employment. Retired vets are excluded from the sample.

8.29 Based on their survey, Veterinary Ireland estimates that of those who have graduated since 1959, there are currently 1,277 vets engaged in private practice and 486 non-practising veterinary surgeons in Ireland. Of those engaged in private practice, it is estimated that there are 947 veterinary surgeons (or 74.2%) employed in food animal/large animal practices, 229 (17.9%) employed in companion animal practices and 101 (7.9%) employed in equine practices. Of those veterinary surgeons employed outside of private practice, it is estimated that 350 (72%) are employed directly by the State, 40 (8.2%) employed as local authority vets, 56 (11.5%) employed in education and 40 (8.2%) in industry.

### Changes in Fee Income

8.30 An important aspect of the recent trends in economic activity in the veterinary surgeons' profession concerns the growth in fee income generated by practitioners. In our survey of veterinary surgeons we asked practitioners to state the approximate average annual change in total fee income generated by their practice over the period 1999-2001. The survey findings for practitioners recording an increase in fee income and those indicating a decrease in fee income are analysed below in Table 8.4.

**Table 8.4: Indecon Survey of Veterinary Surgeons - Approximate Average Annual Change in Total Fee Income of Veterinary Practices - 1999-2001**

| Extent of change in fees | % reporting Increase | % reporting Decrease |
|---|---|---|
| Firms stating increase/decrease in fee income | 87.4 | 12.6 |
| *Of which:* | | |
| Over 200% | 1.2 | 0.0 |
| 150-199% | 0.6 | 0.0 |
| 100-149% | 1.2 | 0.0 |
| 50-99% | 2.4 | 20.8 |
| 25-49% | 4.2 | 12.5 |
| 10-24% | 34.9 | 33.3 |
| 5-9% | 34.9 | 25.0 |
| 0-4% | 20.5 | 8.3 |

Source: Indecon Survey of Veterinary Surgeons.

8.31 According to the survey findings, a majority (87.4%) of practices responding to our survey stated that they experienced a rise in fee income between 1999 and 2001. Of these, close to 35% of practices reported an annual increase between 10-24% and a similar percentage stated a rise in the 5-9% range. A number of practices reported a doubling or more of fee income during the period. It is also notable that the reported strong growth in fee income coincided with an increase in the number of registered veterinary surgeons over this period. The survey evidence also reveals that only 12.6% of responding practices reported a decrease in fee income during the period, with the most frequent rate of decrease experienced being in the 10-24% range.

**Size Distribution of Veterinary Practices**

8.32 Table 8.5 provides information on the size structure of veterinary practices in Ireland. The relative sizes of the mean and median values for each of the three years of the period 1999-2001 indicates that the size distribution of veterinary surgeons' practices is mildly positively skewed (i.e. mean is slightly higher than the median), in which case the median is the more likely indicator of average practice size. Thus, in each year, the 'typical' veterinary practice in Ireland has comprised two practitioners. However, the survey findings also point to a large variation in the size of veterinary practices, with some practices reporting a maximum of 25 members.

**Table 8.5: Indecon Survey of Veterinary Surgeons - Survey Statistics on Practice Size**

| | Number of Veterinary Surgeons per practice | | |
|---|---|---|---|
| **Statistics** | **1999** | **2000** | **2001** |
| Mean number of Veterinary Surgeons per practice | 2.4 | 2.3 | 2.4 |
| Median | 2.0 | 2.0 | 2.0 |
| Standard deviation | 2.2 | 2.2 | 2.2 |
| Max | 25 | 25 | 25 |

Source: Indecon Survey of Veterinary Surgeons

8.33 A further breakdown of the size distribution of veterinary practices is provided by the findings from Veterinary Ireland's survey of the veterinary profession (2002), shown in Table 8.6 below. The Veterinary Ireland evidence, which is based on a sample of 109 practices, suggests that on average there are typically 3 qualified veterinary surgeons employed in each practice. This varies somewhat depending on the type of practice, with a higher average number employed in companion animal practices than in large animal practices, while equine practices typically average less than 3 employees.

**Table 8.6: Structure of Veterinary Practices – Mean Number of Partners, Assistants and Locums in Practice**

| Persons Employed | Number by Type of Practice | | | |
|---|---|---|---|---|
| | Large Animal | Companion Animal | Equine | All Practices |
| Partners/sole principal | 1.7 | 1.8 | 1.3 | 1.7 |
| Full-time assistants | 1.2 | 0.9 | 1.1 | 1.2 |
| Part-time assistants (>20 hrs/week) | 0.0 | 0.2 | 0.2 | 0.1 |
| Part-time assistants (<20 hrs/week) | 0.1 | 0.2 | 0.2 | 0.1 |
| Locums | 0.0 | 0.1 | 0.0 | 0.0 |
| Total qualified vets in practice | 3.1 | 3.3 | 2.8 | 3.1 |

Source: Veterinary Ireland, Survey of the Veterinary Profession, 2002

8.34 It is also notable in relation to the practice status of veterinary surgeons that, across all practices, the mean number of partners is close to 2, while the number of full-time assistants is close to 1. Again, there is some variation in this pattern depending on the type of practice in operation.

8.35 An indication of the ownership structure of veterinary practices is also available from the Veterinary Ireland survey. According to the survey findings, a somewhat greater proportion of practices (59%) are owned by sole principals, whereas 41% are owned by partnerships. Sole principal practices are most common in relation to equine practices, while partnerships tend to occur most frequently in the case of companion animal practices (see Table 8.7).

| Table 8.7: Ownership Structure of Veterinary Practices | | | | |
|---|---|---|---|---|
| **Persons Employed** | **% by Type of Practice** | | | |
| | **Large Animal** | **Companion Animal** | **Equine** | **All Practices** |
| Sole principal | 59 | 48 | 78 | 59 |
| Partnership | 41 | 52 | 22 | 41 |
| All Practices | 100 | 100 | 100 | 100 |
| Source: Veterinary Ireland, Survey of the Veterinary Profession, 2002. | | | | |

# Customers of Veterinary Surgeons and their Characteristics

8.36 We described earlier in this section the breakdown of services provided by veterinary surgeons and the distribution of private veterinary practices by type. We showed that the vast majority of veterinary surgeons working in private practice (74.2%) in the State were specialising in large/food animal practices, while 17.9% were working in companion animal practices. By comparison, practices specialising in equine animals account for a relatively small proportion (7.9%) of the total. In addition we showed that of the services provided by veterinary surgeons, TB/brucellosis testing and meat factory inspections account for the largest proportion of incomes generated by large animal practices, whereas direct treatment accounts for an estimated 86.1% of the income on average generated by companion animal practices. It is important, however, to further investigate the nature of the market served by veterinary practices, and in this section we look at a number of characteristics of veterinary surgeon's clients, including the frequency of usage of veterinary services and the ability of customers to assess the quality of services provided by veterinary surgeons. This analysis will inform our judgement in relation to the extent, if any, of information asymmetries in the market, which, as noted in Section 2, is an important issue in considering the justification for specific regulations and restrictions that may affect competition.

**Frequency of Usage of Veterinary Surgeons' Services**

8.37 An analysis on the level of demand for the services of veterinary surgeons in Ireland over the last five years is available from our survey of the general population. The results show that a majority (55%) of the public have not engaged the services of veterinary surgeons over the last five years. However, of the remaining 45%, it is interesting to note that 20% reported a usage rate of between 1 and 5 times per year in the past five years and 11% could be described as 'intensive users' of veterinary surgeons, employing their services more than 5 times per year in the past five years.

8.38 The survey results are interesting not only in relation to what they indicate about the level of demand for services, but also the information they yield about information asymmetry among members of the general public. A significant percentage of the general public could be described as regular users of vets and are therefore likely to be relatively well informed about the nature and quality of services provided.

**Quality of Information Among Veterinary Surgeons' Clients**

8.39 An important issue in assessing the potential for greater competition in the veterinary medical profession concerns the availability of information to consumers of veterinary services.

8.40 As an input to assessing the extent of information asymmetries in the Irish market for veterinary services, in Table 8.8 we present the views of consumers in relation to their ability to assess the quality of services provided by veterinary surgeons in Ireland. The figures show that the majority of members of the general public believe they are able to assess the quality of services provided by vets in Ireland. In particular, 26% indicated they were 'able to assess' the quality of services while 27% were 'well able' and 14% were 'very well able to assess' the quality of veterinary services provided.

**Table 8.8: Indecon Survey of the Public's Views on Ability to Assess the Quality of Services Provided by Veterinary Surgeons in Ireland**

| Not Able to Assess Quality | Able to Assess Quality to Some Extent | Well Able to Assess Quality | Very Well Able to Assess Quality | Don't Know |
|---|---|---|---|---|
| 13% | 26% | 27% | 14% | 20% |

Source: Indecon Commissioned Survey of Representative National Sample of 1,008 Adults.

8.41 These results would suggest a belief among consumers that they are able to assess the quality of services provided by veterinary surgeons in Ireland. The findings may also reflect the pattern of usage of veterinary surgeons' services, as more frequent usage is likely to be correlated with greater information available to clients concerning service quality.

8.42 Later in this section we address the issue of information asymmetry in relation to price and, in particular, the extent to which customers know in advance what they are required to pay in exchange for veterinary services.

## Nature of Competition, if any, on the Market

8.43 Having examined the relevant market and its structure, we turn next to evaluating the extent and nature of competition in the market for veterinary services. Of importance in examining this issue are the roles that price and non-price factors play in the market. In this sub-section we examine the role of price competition in the market for veterinary services. Our analysis, which is based on new evidence assembled for this study, describes the level of fees charged by veterinary surgeons for standard veterinary services and assesses the views of both veterinary surgeons and the general public on the extent and role of price competition in the market. We then examine the provision of information on fees by veterinary surgeons to their clients and investigate the nature and extent of non-price competition in the form of advertising and innovation. Finally, we look at another indicator of competition by reference to the recruitment of veterinary surgeons.

**Veterinary Surgeons' Fees**

8.44 In the Indecon's Survey of Veterinary Surgeons we asked practitioners to state the level of professional fees they would typically charge in relation to two standard services, namely undertaking a TB test of a livestock animal and a standard check-up of a companion or domestic animal.

8.45 Our survey findings indicate an average charge for such a TB test of €26 and a median charge of €25. The relative sizes of the mean and median indicate a fairly symmetric distribution of fee rates for this service. However, the standard deviation is high, indicating significant variation around this average level (see Table 8.9).

**Table 8.9: Approximate Professional Fees (incl. vat)**

| Statistics | Client Visit for a Domestic Animal | Charges for Testing for TB |
|---|---|---|
| | € | € |
| Mean fee | 35 | 26 |
| Median | 32 | 25 |
| Standard deviation | 29 | 31 |
| Standard deviation as % of mean | 81% | 119% |

Source: Indecon Survey of Veterinary Surgeons.

8.46 A similar picture emerges in relation to the distribution of fees charged by veterinary surgeons for completing a standard check-up of a companion animal. In this case, the average fee charged is €35 while the median is €32, although it is notable that the level of dispersion in fees is somewhat less pronounced than in the case of TB testing.

**Extent of Price Competition**

8.47 To what extent does price competition exist within the veterinary surgeons' profession? In assessing the extent of price competition it is instructive to consider the views, based on our survey evidence, of both practitioners and members of the public/consumers. Table 8.10 compares the findings from the Indecon Survey of Veterinary Surgeons and the Indecon Survey of the General Public in relation to practitioners' and consumers' views on the extent to which price competition exists among veterinary surgeons in Ireland.

**Table 8.10: Views of the General Public and Veterinary Surgeons re Extent of Price Competition among Veterinary Surgeons in Ireland**

| Views of: | Virtually No Price Competition | Very Little Price Competition | Moderate Competition | Significant Price Competition | Don't Know |
|---|---|---|---|---|---|
| The general public/ consumers | 18% | 16% | 23% | 6% | 36% |
| Veterinary surgeons | 4.0% | 11.0% | 38.3% | 41.0% | 5.7% |

Source: Indecon Commissioned Survey of Representative National Sample of 1,008 Adults and Indecon Survey of Veterinary Surgeons

8.48 It is notable that 46.7% of veterinary surgeons responding to our survey believe that price competition among members of the profession is either 'significant' or 'extensive'. However, 38.3% are of the view that price competition is 'limited' in extent. It is also notable that 15% believe there is 'very little' or 'virtually no' price competition among veterinary surgeons in Ireland. On the other hand, according to the findings from our survey of the general population 34% of members of the general public believe there is 'virtually no' or 'very little' price competition among the profession in Ireland.

8.49 Our research indicates a noticeable difference in perceptions among practitioners and the general public in relation to the extent of price competition prevailing in the market for veterinary services. This may partly reflect a belief among consumers that veterinary surgeons' fees/charges are typically high in Ireland and may also result from poor access to information by consumers.

*Role of Price Competition*

8.50 The view of veterinary surgeons on the role of price and non-price factors influencing a client's choice of veterinary surgeon in Ireland is indicated by the results from our survey of practitioners presented in Table 8.11. The evidence indicates that while they believe that price is the least important of those factors signalled as 'extremely important', it is nevertheless a significant consideration in a client's choice of veterinary surgeon in Ireland. Specifically, 71.5% of practitioners believe that price/fee competition is 'important or 'very important'. Only 12% indicated that price was 'not important'.

**Table 8.11: Indecon Survey of Veterinary Surgeons - Views on Importance of Factors Influencing a Client's Choice of Veterinary Surgeon in Ireland**

| | % of Responses | | | |
|---|---|---|---|---|
| **Factors** | **Extremely Important** | **Very Important** | **Important** | **Not Important** |
| Quality of services | 62.5 | 27.2 | 9.8 | 0.4 |
| Reputation | 42.9 | 33.5 | 21.4 | 2.2 |
| Degree of specialisation | 10.5 | 16.8 | 55.9 | 16.8 |
| Customer trust | 55.6 | 32.4 | 10.2 | 1.8 |
| Location of practice | 16.4 | 24.4 | 47.1 | 12.0 |
| Fees/price competitiveness | 7.1 | 11.1 | 58.7 | 23.1 |

Source: Indecon Survey of Veterinary Surgeons.

**Provision of Price/Fee Information to Customers**

8.51 An important issue in relation to consumers' ability to choose between different veterinary surgeons concerns the extent to which clients know in advance what they will be charged for veterinary services. As an input to our examination of this issue, we have assembled a range of new evidence from our Survey of Veterinary Surgeons and our Survey of the General Public. The information gathered provides an indication of the extent to which clients are provided with sufficient information to allow them to fully assess the quality and costs of veterinary services provided.

8.52 Our survey of veterinary services considers the views of veterinary surgeons in relation to whether information is provided to their clients in advance and following the provision of services, concerning the total fees and expenses charged for veterinary services. A majority (54.1%) of vets responding to our survey indicated that they provide information in advance to their clients on fees and charges, while 24.1% stated that they do not provide this information. However, it is notable that 21.8% of veterinary surgeons were of the view that it is not feasible to know the level of fees/charges in advance of the provision of a service.

8.53 Only a slim majority (52.6%) of veterinary surgeons indicated that they always provide a breakdown of fees/expenses following provision of services, while 29.3% stated that they usually provide a breakdown. Only 1.9% of practitioners stated that they never provide an *ex-post* breakdown of their expenses.

8.54 It is important also to obtain the views of members of the general public on the issue of provision of information to veterinary surgeons' clients in relation to the nature and costs of services provided. In Table 8.12 we indicate the public's views in relation to whether they know in advance what they will be charged for services offered by veterinary surgeons in Ireland. In addition, we present the views of the public in relation to whether they consider that more information on veterinary surgeons fees is needed in Ireland.

**Table 8.12: Indecon Survey of the Public re Provision of Price/Fee Information to Clients by Veterinary Surgeons**

| | |
|---|---|
| Percentage who believe they know in advance what they are required to pay | 32% |
| Percentage of respondents who believe that more information on veterinary surgeons' fees and charges is needed in Ireland | 53% |

Source: Indecon Commissioned Survey of Representative National Sample of 1,008 Adults.

8.55 According to the survey findings, a noteworthy feature of the market is that only around one-third of consumers believe that they know in advance what they will be charged for veterinary services. Given the poor access to information by the public in relation to veterinary surgeons' charges, it is not surprising that a majority (53%) of consumers believe that more information ought to be provided on veterinary surgeons' fees in the Irish market.

**Extent of Advertising by Veterinary Surgeons**

8.56 The evidence presented above in relation to public perceptions regarding the low level of provision of information by veterinary surgeons points to the role of enhancing the provision of consumer information. An important issue requiring assessment within the context of the level of competition within the profession concerns the nature and extent of advertising undertaken by veterinary surgeons. Our analysis of the pattern of advertising in the veterinary profession takes place against the background of restrictions on the extent and nature of advertising applied by the Veterinary Council (which we discuss further later in this section). However, as advertising is permitted in limited form, it is instructive to consider the level of expenditure of veterinary practices on advertising and marketing and the extent of advertising in the current Golden Pages directories, which is presented below and in Annex 6 of this study.

8.57 As part of our survey of Veterinary Surgeons we present details of the approximate annual level of expenditure incurred by practitioners on advertising and marketing of their services. What the results indicate is that the degree of advertising among members of the profession is generally low (indicating a mean level of expenditure of €418) and in some cases non-existent, although there is a high variation on expenditure incurred on this area. This may be related to the presence of regulatory restrictions or other barriers to competition in the profession.

8.58 One of the most common media used by veterinary surgeons for advertising their services is the Golden Pages directory. This is particularly likely to be the case in respect of companion animal practices, with large animal and equine practices largely operating on the basis of recommendation and word of mouth. Survey details from the current Golden Pages directories in relation to the number of adverts placed by veterinary practices by area in Ireland.

8.59 In total there were 863 adverts placed by veterinary surgeons across the six Golden Pages area directories in 2002. To place this figure in context, there was an estimated total of 1,277 veterinary surgeons in practice in that year. In the Greater Dublin area there were 95 adverts placed, the majority of which are related to companion animal practices.

8.60 In Annex 6 to this report, we present a detailed breakdown of the Golden Pages adverts, under the following headings:

- Listings advertisements;
- Informational advertisements;
- In-column display advertisements;
- Display advertisements.

8.61 According to our analysis, the adverts placed in the 2002 Golden Pages directories were mainly restricted to simple *listings* advertisements, which accounted for 762 adverts compared to only 4 display advertisements. In order words, where adverts are placed by veterinary surgeons in the Golden Pages, these tend to be low profile in nature with little additional information provided other than the identity, address and telephone details of the practitioner concerned.

8.62 Our overall assessment is that while veterinary practices do engage in advertising, the extent of advertising tends to be limited both in terms of frequency and profile, and is principally aimed at providing basic factual information rather than used by practitioners as a tool of competition. This feature is likely to reflect the operation of regulations concerning advertising, which we examine in the next sub-section.

**Recruitment of Veterinary Surgeons**

8.63 One of the characteristics of a competitive market is that the supply of factors of production is highly elastic, meaning that the supply of entrants to the profession responds rapidly to changing market conditions.

8.64 An indicator of the supply and demand for veterinary surgeons in Ireland is the extent to which veterinary practices have had difficulty in recruiting veterinary surgeons in recent years. The results of our survey of practitioners show that the vast majority (86.7%) of veterinary surgeons who responded to our question on recruitment experienced difficulty in hiring practitioners during the last three years. In particular, 47.4% of respondents found recruitment 'difficult', 18% found it 'very difficult' and 21.3% 'extremely difficult'. Only a small proportion (13.3%) of respondents to our survey indicated that they experienced 'no difficulty' in recruitment.

8.65 Our survey findings highlight the difficulties by the veterinary surgeons' profession in recent years in relation to recruitment of qualified professionals required to meet the demand for veterinary services. The ability of the profession to secure an adequate supply of qualified personnel is an important issue for the ongoing development of a competitive market for the provision of veterinary services in Ireland. The difficulties prevailing in relation to recruitment may reflect restrictions on the supply of veterinary surgeons, an issue that we examine later by reference to the supply of places available at the Faculty of Veterinary Medicine.

## Summary of Empirical Analysis of the Market

8.66 We now draw together the salient points arising from the last four sub-sections.

8.67 Veterinary surgeons' services comprise several distinct areas (e.g. livestock services, treatment of companion animals), differentiated on the basis of objective characteristics and price, for which the geographical scope is likely to be local. However, it is appropriate in a sectoral policy study to adopt a more general definition of the relevant market, incorporating the range of services provided by veterinary surgeons the geographic scope of which is the State. In this market environment, the predominant type of supplier is the private veterinary firm, which undertakes work for individuals (primarily farmers and companion animal owners) and on behalf of the State. The remainder of the profession (in State employment or university faculty) provides little, if any, competitive constraint on the market.

8.68 At the beginning of 2002, there were 2,228 veterinary surgeons registered with the Veterinary Council. Growth in the profession has been slow since 1992, varying between 0.6 and 3% per year. This rate of growth has been less than that for the economy on an average annual basis (7%). Concentrating on the population of vets engaged in private practice, which account for about 80% of all vets, our analysis suggests that the number of practitioners may not have kept pace with latent demand, not least for companion animal services, which have grown relatively rapidly in recent years.

8.69 That growth in the number of vets may not have kept pace with demand is reflected in fee income growth. According to our new survey evidence, the vast majority of veterinary practices experienced an increase in fee income during 1999-2001. Accepting this was a period of exceptional growth in the economy, the average annual growth in practices' fee income exceeded in almost half of all cases any measure of national product. In particular, among the 87.4% of firms that stated an increase in fee income, 44.5% stated an increase of 10% or more on an average annual basis. Further, almost 35% of practices that stated an increase in fee income reported an increase of 5-9% on an average annual basis during the period. As regards practice structures, most employ on average 3 vets and are either sole principals (59%) or partnerships (41%).

8.70 In terms of who generates vets' fee income, large animal treatment accounts for most (close to 90%) of the customer base of practitioners, indicating the importance of farm animals to the profession in Ireland. Compared to general members of the population, farmers are intensive users of veterinary services (particularly routine services such as TB and brucellosis testing) and, through their repeated use, are therefore likely to be relatively well-informed customers.

8.71 Regarding the nature of competition on the market, our analysis of professional fees for treatment of a domestic animal and for TB testing for a livestock animal indicate appreciable price dispersion in each case (especially for the latter service). Furthermore, our consumer survey evidence suggested that access to price information might be poor among members of the general public. It is therefore not surprising to find that most (53%) members of the public believe that more information ought to be provided on vets' fees in Ireland.

8.72 Another vehicle of competition available to vets is advertising. However, our analysis of Golden Pages entries and of practitioners' responses to our survey indicates that the vets' profession is one in which advertising is limited as a potential means of competing in the relevant market. Reflecting the advertising restrictions imposed by the Veterinary Council, adverts are aimed principally as a means of providing minimal information rather than as a tool of competition.

8.73 Finally, in terms of market dynamics, it is relevant to note that practitioners (whether in new or established offices) have reported difficultly in recruiting vets over the past three years. Significantly, almost 40% of respondents to our survey of vets indicated that they found it either 'very' or 'extremely' difficult to recruit vets during the period. This is not consistent with effective competition in the profession.

# Examination of Restrictions in the Veterinary Profession

### Introduction

8.74 We now turn to the examination of the restrictions and requirements in the veterinary profession that may impact on the presence and nature of competition in the market for veterinary services. Our analysis begins by identifying the restrictions and requirements governing entry to the profession, the conduct of practitioners, demarcation and organisational form. We then concentrate on those restrictions/requirements that we believe are most likely to adversely affect the level of competition in the market. In focusing on these key regulations we examine their justification as set out by the regulatory and other bodies and then evaluate whether or not they are proportional to the achievement of their intended benefits.

8.75 Before undertaking our evaluation of the restrictions/requirements operating within the profession it is first necessary to describe in detail the principal organisation responsible for the regulation of the veterinary surgeons' profession in Ireland, namely the Veterinary Council. We also examine the Council's procedures in relation to complaints, discipline and enforcement.

### Regulation of the Veterinary Profession

8.76 Regulation of the veterinary profession in Ireland is the responsibility of the Veterinary Council ('the Council'). The Council was established as a body corporate under section 3 of the Veterinary Surgeons Act, 1931. The Council is the regulatory and disciplinary body for the veterinary profession and it also fulfils an educational role.

8.77 The primary functions of the Council fall under the following headings:

- Registration of veterinary surgeons;
- Complaints and Discipline;
- Education;
- Promotion.

8.78 Regulation of the profession is by way of statute and delegated legislation. The legal basis for the establishment of the Council, as stated above, is the Veterinary Surgeons Act, 1931. Other specific aspects and subsequent amendments to the Act concerning the role and duties of the Council were as follows:

- Composition of the Veterinary Council – Veterinary Surgeons Order, 1998 (S.I. No. 66 of 1988);
- Duties of Officers of the Council – Regulations of the Veterinary Council, October 1988;
- Regulations of the Veterinary Council – section 22, Veterinary Surgeons Act, 1931;
- Veterinary Surgeons Act, 1952;
- Veterinary Surgeons Act, 1960.

8.79 The key regulatory requirement to practise as a veterinary surgeon in Ireland is that all practitioners must be registered with the Council. This is required to enable practitioners to use the title 'veterinary surgeon' and to remain in practice. Registration must be renewed on an annual basis. The Council is funded through the registration fee payable by all veterinary surgeons registering for the first time and by the annual retention fee paid by all veterinary surgeons wishing to retain their names on the Register of Veterinary Surgeons for Ireland.

8.80 The Council was reconstituted under the Veterinary Surgeons Order 1988 and is now comprised of seventeen members. The composition of the Council is described in Table 8.13.

**Table 8.13: Composition of the Veterinary Council**

| Member | Nature of Appointment/Background |
|---|---|
| 3 members | Appointed by Minister for Agriculture, Food and Rural development |
| 2 members | Appointed by the National University of Ireland |
| 12 members | Elected from the list of registered veterinary surgeons |

Source: Veterinary Council, Veterinary Register of Ireland 2002

8.81 A notable feature of the Council membership is the dominance of membership elected from the veterinary profession. In addition, the Council does not include any consumer representation. The over-representation of the veterinary profession and the apparent absence of any consumer representation would give rise to concerns in relation to the existence of an even balance of professional versus consumer interests on the statutorily-based Council, and whether policy is likely to be reflective of consumer interests rather than the interests of the profession.

**Discipline, Complaints and Enforcement**

8.82 The Veterinary Council plays an important role in relation to discipline, complaints and enforcement of rules and regulations governing the veterinary surgeons' profession. In particular, on foot of a complaint against the conduct of a registered veterinary surgeon, section 36 of the Veterinary Surgeons Act, 1931 (as amended by Part II of the Veterinary Surgeons Act, 1960), provides that the Council may hold an Inquiry, or appoint a committee to do so, into the conduct of any such person. In ensuring proper professional conduct of registered members of the profession, the Council can seek to erase from the Register the name of any person convicted of a crime or found guilty of professional misconduct.

8.83 According to the Council, a complaint of professional misconduct against a registered practitioner is considered in the first instance by the Council's Preliminary Investigation Committee, which assesses the allegation, the evidence to support it and any response the practitioner may have. If it finds that a *prima facie* case of misconduct has been shown by the complainant, the Committee recommends that the Council convene an Inquiry. The Council may itself hold or may appoint a Committee of not less than three of its members to hold such an Inquiry. At such an Inquiry the complainant and respondent may be legally represented. Following the judgement by the Inquiry, delivered by the Council, the respondent may appeal an adverse decision to the High Court. If the High Court affirms the Council's decision the practitioner's name may be erased from the Register or his/her registration may be suspended for a specified period.

8.84 We believe the disciplinary, complaints and enforcement procedures are designed to maintain standards and protect consumer interests. We do not believe they prevent or damage competition.

**Restrictions on Entry**

8.85 There are a number of restrictions or requirements in relation to entry to the profession placed upon individuals wishing to practise as a veterinary surgeon in Ireland. They concern registration, educational and training requirements, and restrictions related to these requirements, which we identify and examine below.

*Registration, Educational and Training Requirements*

8.86 In Table 8.14 we summarise the key registration, educational and training requirements for membership of the veterinary profession in Ireland, and their basis whether legal or other.

**Table 8.14: Entry Restrictions in the Veterinary Surgeons' Profession – Summary of Key Registration, Educational and Training Requirements**

| Nature of educational/training requirements | Legal or other basis |
|---|---|
| Veterinary Surgeons must be registered with the Veterinary Council to practise and to be able to use title of 'Veterinary Surgeon' and to remain a practising member of the profession. Registration must be renewed on an annual basis. | Veterinary Surgeons Act, 1931 |
| Only persons holding 'registrable' qualifications may apply for registration on the Veterinary Register. Only registrable Irish qualification is Bachelor of Veterinary Medicine at NUI, Dublin. | Veterinary Surgeons Act, 1931 |
| No provision for registration of veterinary surgeons originating outside the EU.. | Veterinary Council |
| Limitation on number of student places at school of veterinary medicine | No legal basis. Determined, according to the Veterinary Council by space available at the faculty and the Exchequer. |

Source: Indecon analysis of Veterinary Surgeons Act, 1931-1960 and submissions to the Competition Authority by the Veterinary Council and Veterinary Ireland.

*Registration Requirements*

8.87 As stated earlier, the key regulatory requirement within the veterinary profession in Ireland is that persons must be registered on the Veterinary Register of Ireland to practise as a veterinary surgeon and to use the title or appellation 'veterinary surgeon'. The legal basis for this requirement is the Veterinary Surgeons Act, 1931, (sections 44 and 46), which state:

> **"46.**—(1) It shall not be lawful for any person to practise or to represent or hold himself out, whether directly or by implication, as practising or being prepared to practise veterinary surgery or veterinary medicine unless he is for the time being a registered veterinary surgeon."
>
> and,
>
> **"44.**—(1) Every person who is registered in the register shall be entitled to take and use the description of veterinary surgeon and such description shall, for the purposes of this Act, be deemed to imply that the person using the same is so registered."

8.88 To register on the Veterinary Register of Ireland is it necessary for the applicant to demonstrate that he/she possesses the necessary 'registrable' qualifications. Under the provisions of the Veterinary Surgeons Acts, 1931-1960, the registrable qualifications are as follows:

- The degree of Bachelor of Veterinary Medicine (MVB) at the National University of Ireland, Dublin (University College Dublin);
- The degree of Bachelor of Veterinary Medicine (MVB), Trinity College Dublin;
- Under the provisions of Articles 2 and 3 of Directive 78/1026/EEC, the diplomas, certificates and other evidence of formal qualifications which qualify nationals of other EU Member States for registration (see below); and,
- Under the European Economic Area Agreement 1993, graduates from Iceland, Norway and Liechtenstein may also be registered.

8.89 In relation to Irish-based registrable qualifications, it should be noted that currently the only third-level institution providing registrable veterinary courses is NUI, Dublin (University College Dublin). The number of places available for study in the UCD faculty is likely to constitute a significant constraint on the numbers of persons entering the veterinary profession in Ireland. We would also have concern in relation to the fact that there is only one provider of veterinary education in Ireland. As we believe that these issues constitute key restrictions, we examine both the issue of the limitation on places and the sole provision of veterinary education later in this section.

8.90 In addition to the required registrable qualifications, an initial registration fee is charged, while to maintain subsequent membership an annual retention fee is charged. The names of persons who fail to pay the required fee within the time provided are removed from the register at the Statutory Meeting of the Council. A name can be restored following payment of a penalty fee and the full retention fee.

8.91 In assessing the educational requirements in place for the veterinary surgeons' profession, it is useful at this point to consider the views of members of the profession. The findings from the Indecon Survey of Veterinary Surgeons indicate that the majority of veterinary surgeons (66.7%) support the requirements in relation to education, while 58.4% have stated that they support the restrictions placed on the number of places for study at the Faculty of Veterinary Medicine. However, it is notable that a significant proportion of veterinary surgeons surveyed (27.5%) do not support the requirements in relation to education, while 28.8% stated that they do not support the restrictions on the number of study places available at the Faculty of Veterinary Medicine.

*Transfer Requirements*

8.92 In relation to persons holding scheduled qualifications from institutions offering veterinary medicine courses in other EU Member States or the EEA area, legislation provides that upon application to the Veterinary Council of Ireland by such persons, the Council shall determine the application as soon as possible and in any event within a period of three months following receipt of all necessary documentation by the Council. Veterinary practitioners with scheduled qualifications obtained from those EU countries are entitled to establish themselves in Ireland without further examination.

8.93 Beyond these countries, there are no formal transfer arrangements in place owing to the absence of formal recognition of non-EU/EEA trained veterinary surgeons or the presence of reciprocation agreements between Ireland and other countries.

8.94 An analysis of the breakdown of new registrants to the Veterinary Council of Ireland by country of origin (shown in Table 8.15) indicates that the vast majority of new registrants from beyond Ireland come from EU Member States. In relation to countries outside the EU, new entrants originate from three countries namely, Australia, New Zealand and Norway. This includes veterinary surgeons recognised under previous reciprocation agreements that used to be in place between Ireland and Australia and New Zealand. We understand, however, that these agreements are no longer in place.

Table 8.15: The Veterinary Register - Breakdown of New Registrations by Country of Origin - 1995-2001

| Country | 1995 | 1996 | 1997 | 1998 | 1999 | 2000 | 2001 |
|---|---|---|---|---|---|---|---|
| Austria | 1 | | 1 | | 2 | 3 | |
| Belgium | 3 | 1 | | 2 | 1 | | 2 |
| Denmark | | | 1 | | | | |
| Finland | | | | | | 1 | 1 |
| France | 1 | 1 | 1 | 1 | 1 | | 2 |
| Germany | 10 | 6 | 7 | 15 | 10 | 10 | 11 |
| Greece | | | | | | | 1 |
| Italy | 4 | | 5 | 2 | 1 | 3 | 2 |
| Ireland | 54 | 80 | 66 | 68 | 69 | 74 | 69 |
| Luxembourg | | | | | | | |
| Netherlands | 1 | 3 | 2 | 3 | 5 | 7 | 3 |
| Portugal | | | | | | 1 | |
| Spain | 5 | 6 | 8 | 3 | 8 | 3 | 6 |
| Sweden | | | | | | 1 | 2 |
| United Kingdom | 5 | 4 | 12 | 14 | 10 | 23 | 8 |
| Total EU | 84 | 101 | 103 | 108 | 107 | 126 | 107 |
| *% Ireland* | *63.5* | *78.4* | *60.6* | *59.6* | *60.0* | *53.2* | *60.5* |
| *% EU ex Ireland* | *35.3* | *20.6* | *33.9* | *35.1* | *33.0* | *37.4* | *33.3* |
| Other Countries* | 1 | 1 | 6 | 6 | 8 | 13 | 7 |
| *%* | *1.2* | *1.0* | *5.5* | *5.3* | *7.0* | *9.4* | *6.1* |
| Total New Registrations | 85 | 102 | 109 | 114 | 115 | 139 | 114 |

Source: The Veterinary Council * Australia, New Zealand and Norway

8.95 Given the implications for entry to the Irish veterinary profession and potential competition in the market for veterinary services we examine this issue further in our Key Restrictions section.

*Continuing Requirements*

8.96 The principle requirement for veterinary surgeons to continue to practise is that registration is maintained on the Veterinary Register. Apart from this, there are no other mandatory requirements for continued membership of the profession. However, the Veterinary Council's Guide to Professional Behaviour strongly advises that veterinary surgeons participate in formal programmes of CPD throughout their careers and that, in the event of a major change in professional activity or after a career break, undertake a period of further training and updating of skills.[2]

8.97 Professional Indemnity Insurance is not mandatory within the veterinary profession. However, the Veterinary Council advises veterinary surgeons to take out such insurance. While the cost of insurance has risen in recent years, we do not believe, however, that this aspect of normal business activity constitutes a significant barrier to competition in terms of acting as a disincentive to new entrants to the profession. Moreover, the advantage of taking over such insurance may increase under a scenario when limited liability veterinary practices were introduced, an issue we examine further below

**Restrictions on Conduct**

8.98 Restrictions and requirements within the veterinary profession in relation to the conduct of veterinary surgeons fall under the following two headings, which are discussed in further detail below:

- Professional fees and fee competition;
- Advertising and publicity of services; and,
- Other restrictions on conduct.

*Professional fees and fee competition*

8.99 We understand that the Veterinary Council does not claim any involvement in the level or structures of fees or charges levied by veterinary surgeons in Ireland. According to the Council, it has "no mandate to involve itself in fee structures, scales, or price recommendations and surveys". However, Veterinary Ireland, as a representative body, does act on behalf of its members in relation to remuneration for State work.

[2] Veterinary Council, *Guide to Professional Behaviour*, adopted by resolution of the Veterinary Council on 9th September 1998.

8.100 In its Guide to Professional Behaviour, the Council states that 'touting' by veterinary surgeons, which involves direct approach made by or on behalf of a veterinary surgeon to a person who is not an existing client, with the intention of soliciting business from that person, is considered by the Council as unethical.

*Advertising and Publicity of Services*

8.101 The restrictions placed on advertising by veterinary surgeons are set out in the Veterinary Council's Guide to Professional Behaviour. According to the Council, the veterinary surgeon is not obliged to advertise, though they have the right to inform the public of services offered. The Council states that "the general principles governing professional conduct in advertising are that the advertising must be:

- In compliance with the law (including Competition Law);
- Decent and not offensive;
- Truthful and accurate and capable of substantiation;
- Must not claim or imply professional superiority or disparagement with regard to another veterinary surgeon".

8.102 There are a number of requirements set out by the Council in relation to practise publicity, which include requirements regarding the setting up of a veterinary practice or change of ownership of a practice, practice plates and signs, name of practice and notepaper, advertising on veterinary ambulances/practice vehicles, etc, directories, publications and the media, and the advertising of fees.

8.103 In relation to the advertising of fees, according to the Guide to Professional Behaviour, "it is permissible to state in an advertisement that a preliminary estimate of the cost of the service to be provided can be obtained prior to the making of any contract for the provision of such service". The over-riding requirement set out by the Council is that "fees should not be advertised which may result in the public making choices on the basis of cost alone without due regard for the range and quality of services appropriate to the particular case".

*Views on Advertising Restrictions*

8.104 Before evaluating the impact on competition of the restrictions and guidelines set in relation to advertising and publicity (which we do later in this section), it is instructive to consider the views of the veterinary profession. The views of practitioners on this issue based on the Indecon Survey of Veterinary Surgeons suggest that the majority (73.4%) of practitioners support the restrictions that are in place concerning advertising, while 22.1% do not support these restrictions.

*Other Restrictions on Conduct*

8.105 The Veterinary Council's Guide to Professional Behaviour (1998) contains various other restrictions and requirements in relation to conduct of veterinary practitioners under the following headings:

- Animal welfare;
- Provision of direct services to the public;
- Ethical principles;
- Relationships between veterinary surgeons;
- Clients' interests;
- Certification.

8.106 Our assessment of these behavioural principles is that, in general, they are designed to maintain standards and to adhere to the principles of ethical conduct described earlier in this section. Indeed, the Council's Guide to Professional Behaviour contains a range of principles and requirements that exceed the minimum legal requirements. We believe that these principles and requirements serve the interests of the public in ensuring that the welfare of the animal population is protected. Insofar as they constitute standards that must be adhered to by all members of the veterinary profession, we do not believe that they are likely to have a material adverse impact on the competitive environment in the market for veterinary services.

**Restrictions on Demarcation and Organisation**

8.107 Demarcation relates to how work areas within the profession may be divided into different branches or segments, and where the provision of certain services may be reserved to one or more allied or ancillary professions or to groups of members within the profession. A related issue concerns whether certain procedures may be undertaken by 'para-professionals' that may not directly be members of the profession. There may also be restrictions placed on the organisational form or structure that professional practices may take. We identify below the restrictions imposed by the Veterinary Council in relation to demarcation and organisational form.

8.108 In Table 8.16 we summarise the key restrictions and requirements within the veterinary profession in relation to demarcation and organisational issues. These relate to additional training required to undertake meat inspections, the prohibition on practice by corporate bodies, and the position regarding 'para-professionals', each of which is discussed further below.

**Table 8.16: Demarcation and Organisation Restrictions and Requirements in the Veterinary Surgeons' Profession – Summary of Key Restrictions/Requirements**

| Nature of restrictions/requirements | Legal or other basis |
|---|---|
| Additional training required by veterinary surgeons to undertake certain work, including meat inspections. | Department of Agriculture, Food and Rural Development and Meat Hygiene Regulations |
| Para-professionals – Veterinary Council considers it inappropriate that veterinary services be carried out other than by members of the profession or sub-group within the profession. | Veterinary Council |
| Prohibition on practice of veterinary medicine by corporate bodies | Section 47 of the Veterinary Surgeons Act, 1931 |

Source: Indecon analysis of Veterinary Surgeons Act, 1931-1960 and submissions to the Competition Authority by the Veterinary Council and Veterinary Ireland.

*Demarcation*

8.109 While the Veterinary Council has suggested there are no demarcation restrictions or requirements in force within the profession that reserve the provision of certain services to particular areas of the profession, our analysis suggests that certain forms of work are restricted to specific areas of the profession. One important area concerns veterinary work carried out for the Department of Agriculture and Food. In particular, additional training is required before veterinary surgeons are permitted to carry out meat inspections, for example. This regulation is, however, is required under various meat hygiene regulations and in the interest of ensuring that public health requirements are met we do believe that there are any competition concerns arising out of this restriction.

8.110 Another aspect of demarcation concerns the employment of 'para-professionals' or the provision of specific services currently reserved to veterinary surgeons by individuals or groups not directly belonging to the profession. In its submission to the study, the Veterinary Council has stated: "it would not be appropriate that services involving acts of veterinary surgery/medicine would be carried out other than by members of the profession or sub-group within the profession".

8.111 However, the Council notes that in relation to sub-groups within the profession, it has made representations to the Minister for Agriculture requesting that new veterinary legislation make provisions allowing for certain scheduled acts/procedures to be performed by qualified veterinary nurses.

8.112 According to Veterinary Ireland's survey of the veterinary profession in 2002, there was an average of 1.3 veterinary nurses of all types, part-time and full-time, qualified and student nurses, employed in veterinary practices in Ireland in 2002. Based on Veterinary Ireland's estimates of the population of practicing veterinary surgeons, we estimate that there were 412 veterinary practices in operation in Ireland in March 2002. Applying the average of 1.3 veterinary nurses per practice, this suggests that there were around 535 veterinary nurses in practice in March 2002. This compares with an estimated 1,277 veterinary surgeons in private practice.

8.113 In our survey of veterinary surgeons, we asked practitioners to state whether they support the restrictions that are in place in relation to demarcation. The survey findings indicate that not surprisingly 69.7% of veterinary surgeons responding support the restrictions in place on certain procedures being carried out by veterinary surgeons rather than by qualified veterinary nurses. However, a significant proportion (21.6%) of the profession do not support this restriction.

8.114 In addition, as part of our survey of the general population, we asked consumers to provide their views on the use of veterinary nurses to undertake certain veterinary procedures traditionally reserved for fully qualified veterinary surgeons, in addition to the public's views re allowing greater overall flexibility to permit suitably trained individuals to perform certain routine tasks traditionally done by qualified veterinary surgeons.

8.115 The survey findings, shown in Table 8.17, indicate that the vast majority (79%) are either 'in favour' or are 'very much in favour' of permitting the use of veterinary nurses to undertake certain veterinary procedures, with only 14% stating that they would be against this approach. In addition, when asked whether suitably trained individuals in general could be permitted to perform certain routine tasks traditionally done only by qualified veterinary surgeons, consumers stated a similar response, with 78% supporting such a move.

Table 8.17: Indecon Survey of the Views of Public on Use of Veterinary Nurses to Undertake Certain Veterinary Procedures and on Allowing Greater Overall Flexibility to Permit Trained Individuals to Perform Certain Routine Tasks Traditionally done by Qualified Veterinary Surgeons

| Views | Views re Usage of Veterinary Nurses to undertake Certain Veterinary Procedures – % of responses | Views re allowing greater flexibility re permitting trained individuals to perform routine tasks traditionally done by qualified veterinary surgeons – % of responses |
|---|---|---|
| Very Much in Favour | 17 | 17 |
| In Favour of | 62 | 61 |
| Against | 14 | 16 |
| Very Much Against | 2 | 3 |
| Don't Know | 5 | 4 |

Source: Indecon Commissioned Survey of Representative National Sample of 1,008 Adults.

*Restrictions in relation to Organisational Form of Veterinary Practices*

8.116 An important restriction in relation to the organisational structure of veterinary practices concerns the prohibition on the practice of veterinary medicine by corporate bodies. The legal basis for this restriction is section 47 of the Veterinary Surgeons Act, 1931, which states:

> **"47.**—(1) It shall not be lawful for any body corporate to practise or to represent or hold itself out, whether directly or by implication, as practising or being prepared to practise veterinary surgery or veterinary medicine."

8.117 According to the Veterinary Council, apart from the restriction concerning corporate bodies, members are free to operate as sole practitioners, form partnerships, employ assistants and make arrangements with other practitioners for the provision of services.

8.118 We believe that the restriction in relation to the prohibition on the practice of veterinary medicine by corporate bodies is likely to constrain the growth of veterinary practice and the entry of new and possibly more efficient practices into the market. As such we evaluate this restriction in more detail later in this section.

# Key Restrictions on Competition

**Overview**

8.119 Having identified the restrictions and requirements on entry, conduct, demarcation and organisational form that operate within the veterinary surgeons' profession in Ireland, our analysis suggests that the following six areas/restrictions merit closer examination in relation to their potential adverse impacts on competition:

- **The restriction on the number of study places available for veterinary education at the Faculty of Veterinary Medicine**
- **The absence of recognition of non-EU/EEA trained veterinary surgeons wishing to practise in Ireland;**
- **The position of one institution as the sole provider of veterinary education in Ireland;**
- **In relation to conduct, selected restrictions placed on advertising by veterinary surgeons;**
- **The absence of legal status for veterinary nurses and the demarcation restrictions on the scope of practice of Veterinary Nurses;**
- **In relation to organisational form, the prohibition on the practice of veterinary medicine by corporate bodies.**

8.120 In what follows, we assess each of the above six areas/restrictions by reference to the justifications presented by the Veterinary Council and our evaluation of these justifications *vis-à-vis* whether the restrictions/requirements are proportionate to the benefits claimed for them.

**Restriction on Number of Study Places Available for Veterinary Education**

8.121 The first area requiring closer examination from the perspective of the implications for competition in the veterinary surgeons' professions concerns the restriction on the number of study places available at the Faculty of Veterinary Medicine.

*Justification*

8.122 The principal justification submitted by the Veterinary Council in relation to the restriction on the number of study places is that the high cost of veterinary education and the requirement to ensure ongoing high standards act as a direct constraint on the number of places that can be provided on an annual basis at the Faculty of Veterinary Medicine (it was noted by the Council that veterinary education cost approximately IR£15,000 per student in 1995).

8.123 Furthermore, the Council also submits that it has no involvement in the determination of study places, with the annual number of places available decided upon by the Faculty, the Higher Education Authority and the Department of Education and Science. The level of CAO points required for entry is then determined by the level of demand for places versus the number of places available.

8.124 The main objective of the requirements in relation to veterinary education is, in the view of the Veterinary Council, to protect the public interest (public health, animal health and welfare and trade regulations) by ensuring that:

- Veterinary graduates attain the necessary standard at qualification to be eligible for registration as a veterinary surgeon;
- Any person practicing veterinary medicine is a registered veterinary surgeon in Ireland;
- Ensuring that those on the register are of good standing and to ensure that the register is up to date.

*Evaluation*

8.125 The impact of the constraint in relation to the restriction on the number of study places available at the Faculty of Veterinary Medicine can be gauged by reference to an analysis of the number of applicants and the number of entrants to the veterinary medicine course.

8.126 According to CAO data, there were a total of 728 applications for the veterinary medicine course in 2001, of which 497 were first preference applicants. This compares with a total of 87 offers issued by the CAO and 73 final acceptances.[3] This indicates that in 2001 the number of final acceptances for the veterinary medicine degree course was equivalent to 10% of the total number of applications and 14.7% of the total number of first preference applications.

[3] CAO, Board of Directors Report 2001. See www.cao.ie/dir_report/caoreport2001.pdf. Note that these figures refer to new entrants to degree courses and not to repeating students nor to students transferring from other courses in the Irish third-level system.

8.127 Based on the 2002 entry stream, the CAO points requirement for veterinary medicine indicated a median points level of 565, while there was a total of 83 places available.[4] The maximum level of CAO points attainable is 600.

8.128 The substantial gap between the number of final acceptances and the number of overall and first preference applications for the veterinary medicine degree course, coupled with the very high CAO points requirement, points to a significant constraint on entry to the profession. This is likely to act as a significant barrier to potential competition in the veterinary surgeons' profession in Ireland. Moreover, evidence of a shortage of qualified veterinary surgeons can be seen from the findings of our survey of practitioners, which showed that practitioners have experienced considerable difficulties in recent years in relation to recruitment of qualified professionals required to meet the demand for veterinary services. The growth in the demand for veterinary services, and therefore trained professionals, has also been noted at the outset of this section, particularly in relation to the new regulatory and testing demand on large animal practices and the substantial growth in companion animal practices.

8.129 The main argument submitted by the Veterinary Council in relation to the constraint on the number of study places available at the Faculty of Veterinary Medicine concerns the high cost of veterinary education. This suggests that an important constraint on study places is the amount of funding available to the Faculty of Veterinary Medicine. The funding of the veterinary degree course is, however, outside the direct control of the Council. While this does not preclude the possibility that the Council may indirectly influence the number of places available through raising required educational standards and thus the cost of education, we do not believe that the current training requirements are excessive. Thus, the number of study places available at the Faculty is decided on by the Faculty, the Higher Education Authority and the Department of Education and Science and is therefore constrained by exchequer and university funding considerations.

[4] See http://193.1.214.21/institutions/DEG.HTM#dnd

8.130 However, notwithstanding the conflicting interests of exchequer costs and competition objectives in this area, our analysis of the number of applications for and entrants to the veterinary medicine course points to the presence of a significant constraint on entry to the profession, which is likely to be harmful to potential competition in the profession in Ireland. While this may point to the need to re-examine the funding of veterinary education in Ireland, it also underscores the importance of facilitating entry to the Irish veterinary profession from external sources, including the registration of individuals from outside Ireland, an issue that we examine further below.

**Absence of Recognition of non-EU/EEA trained Veterinary Surgeons wishing to Practise in Ireland**

8.131 The second area where we would have concern in relation to entry restrictions concerns the absence of recognition of non-EU/EEA trained veterinary surgeons wishing to practise in Ireland.

*Justification*

8.132 According to the Veterinary Council, there are currently no formal arrangements in place in relation to the recognition and transfer requirements for registration of veterinary surgeons trained in non-EU/EEA countries. Only EU/EEA trained veterinary surgeons possessing scheduled qualifications may apply for registration. While EFTA countries, with the exception of Switzerland, who opted out from an earlier agreement are due to take up mutual recognition in 2002, previous reciprocation agreements formerly in place between Ireland and Australia and New Zealand have since terminated so that individuals trained in these countries are not recognised. The Council has, however, noted the need for changes to be implemented in the legislation to provide "a basis and standards, that meet public interest requirements, for unilateral recognition and registration by Ireland or third country graduates".

*Evaluation*

8.133 The absence of recognition of veterinary surgeons trained in non-EU/EEA countries effectively amounts to a restriction on external entry to the Irish veterinary profession. This restriction is more critical given the limitation on the number of study places available in the Irish Faculty of Veterinary Medicine, described above.

8.134 According to the Council, there are currently around 33 third country nationals providing veterinary services in Ireland. In 2001, out of a total of 114 new registrations on the Register of Veterinary Surgeons, only 7 were from non-EU/EEA countries, and these related to the agreements that were previously in place between Ireland and Australia and New Zealand.

8.135 In the interests of promoting competition in the veterinary profession, the level of entry to the profession should reflect the demand for veterinary services while ensuring the provision of these services by individuals that meet the required minimum standards of education and training. Our findings in relation to the increasing demand for veterinary services, coupled with the difficulties experienced by existing veterinary practices in relation to recruitment in recent years, point to a clear need to boost the level of entry of trained veterinary surgeons into the profession in Ireland. We have highlighted above the need to examine the number of places available for study at the Faculty of Veterinary Medicine. However, the funding constraints on the provision of additional study places underscores the requirement to open up the level of access to the Irish profession from overseas and, in particular, to facilitate the recognition of veterinary surgeons trained in non-EU/EEA countries.

8.136 We would further argue that by facilitating increased entry of third-country nationals, the Irish veterinary profession would also benefit through the diversity of training and experience acquired by these individuals in their home countries. To meet the high and increasing demand for veterinary services in Ireland, and given the evident shortage in the supply of veterinary surgeons in the State, on competition grounds, an appropriate solution would be for the Irish authorities to recognise the training of vets who have qualified in third countries.

8.137 Overall, a key requirement in facilitating competition in the market for veterinary services is that entry requirements are designed to ensure that the supply-side of the market is responsive as much as possible to changes in the demand-side of the market. This points to the clear need to facilitate open access for qualified foreign trained veterinary surgeons, so long as they possess the education and training standards expected of the profession in Ireland.

**Position of One Institution as Sole Provider of Veterinary Education**

8.138 Another area where we would have concern in relation to the impact on competition in the veterinary surgeons' professions concerns the provision of veterinary education by a sole institution in Ireland. Currently the only centre for veterinary education in Ireland is NUI, Dublin.

*Justification*

8.139 Neither the Veterinary Council nor Veterinary Ireland has submitted detailed justifications in relation to the current position concerning the role of one institution as sole provider of veterinary education in Ireland. However, both institutions have noted that the recent substantial investment in the new Faculty of Veterinary Medicine located at the Belfield campus of NUI, Dublin has greatly improved the quality of educational facilities available.

*Evaluation*

8.140 The present position of one institution being the sole provider constitutes a monopoly on the provision of veterinary education in Ireland. In our view this feature has the potential to act as a barrier to entry to the veterinary profession, which would be harmful to competition and damaging to the interests of consumers. This does not reflect the current standards of education provided by the Faculty of Veterinary Medicine, which has recently received substantial investment in new facilities.

8.141 The Veterinary Council, as noted above in relation to the number of places available for study at the Faculty, has noted the high cost of education of veterinary surgeons (estimated at approximately IR£15,000 per student in 1995). This may point of the existence of economies of scale in the provision of veterinary education. We accept that there may be economies of scale in the provision of veterinary education, given the relatively small number of graduates entering the Irish profession compared with other countries. However, the extent and significance of such economies is not clear and much would also depend on the level of demand for places at the Faculty. Given the current high demand for study places, the scale economies argument has less strength. Education facilities could potentially be developed elsewhere, but no other body is currently permitted to provide veterinary education.

8.142 We believe that it should be feasible to develop a system where one or more new providers of veterinary education could be established on a decentralised or regional basis, while preserving the current standards of veterinary education as regulated by the Veterinary Council. Such a system would in our view have three significant advantages over the present system. First, it could facilitate competition in the provision of veterinary education and allow for the education of a greater number of veterinary surgeons, which in turn would increase entry to the profession. Secondly, the possibility of qualifying as a veterinary surgeon at a decentralised veterinary school as well as at the current Faculty of Veterinary Medicine would, in our view, reduce the cost of qualification (including living expenses incurred in the process) facing students. Third, it would facilitate a more regionally based system of education. While Indecon do not doubt the quality of education presently being provided by the Faculty, the establishment of one or more other veterinary schools would allow for greater flexibility and would reduce the barriers to entry to the profession. We believe this could contribute to easing the recruitment difficulties experienced by veterinary practices and would enhance competition on the market. Because of the quality of the Faculty current education, we believe that most students may continue to choose the Faculty unless other providers offer advantages in terms of the number of places, the location of training, etc. We accept, however, the need to balance the objectives of competition with the subsequent financial costs of developing other providers. This is particularly the case given the current pressures on exchequer costs. Our conclusions on access to veterinary surgeons trained in other countries and the merits of the introduction of paraprofessionals take account of this factor.

**Restrictions Placed on Advertising by Veterinary Surgeons**

8.143 Another important aspect of the regulation of the veterinary surgeons' profession where potential competition concerns arise concerns the restrictions in place on advertising by veterinary surgeons. As described earlier, the restrictions concerning advertising are set out in the Veterinary Council's Guide to Professional Behaviour.

*Justification*

8.144 The Veterinary Council has submitted that it would not agree with the introduction of comparative competition between veterinary practices via advertising, on the basis that such advertising would be likely to result in adverse selection of practitioners by consumers, based on advertised fees, for example, rather than the quality of the service provided. In general, according to the Council's Guide to Professional Behaviour, "In advertising, veterinary surgeons must act fairly, responsibly, and in such a way as not to risk the interests of the animal or the owner or jeopardise the reputation of the profession".

8.145 In relation to 'touting' for business, the Council also states:

> "In the protection of the public interest, touting expressly is, in the experience of the Veterinary Council, most likely to distort the market in that choices on the basis of cost alone have no regard for the range and quality of services appropriate to a particular case. Such behaviour would be detrimental to Public Health and Animal Welfare."

8.146 According to Veterinary Ireland, "the practical objectives of its guidelines in relation to advertising are to ensure that members of the public receive appropriate information as to veterinary services in order to inform their choice of services. The Guide to Professional Behaviour recognises that veterinary surgeons occupy a particular position in society because of unique knowledge and training and endeavours to ensure that this position is maintained by all veterinary surgeons acting in a manner consistent with the principles set down in the Guidelines".

8.147 In drawing up its guidelines on advertising and promotion of veterinary practices, the Council stated that it had been "concerned, for some time, that members of the public require more information as the veterinary services in order to inform their choice of such services". The Council also stated that it "would, in the public interest, wish that any advertising should be in compliance with the law and operate in the public interest and in the interests of animal welfare".

*Evaluation*

8.148 In assessing the implications for competition within the veterinary surgeons' profession of the guidelines and restrictions concerning advertising, it is important to distinguish between advertising that is informative and that which is persuasive. The extent to which consumers can make informed choices reflects the knowledge they possess concerning the attributes of veterinary services. In general across any product or service, information is a prerequisite for effective competition and ensures that resources are used efficiently to produce the goods and services that consumers demand.

8.149 While we note the arguments given by the Veterinary Council and Veterinary Ireland in relation to the potential adverse implications for consumers stemming from inappropriate persuasive advertising by practitioners, we would not accept that advertising is likely to be damaging. In particular, given the very high standards of education and training that veterinary surgeons must attain before being permitted to register as practitioners in Ireland, and the importance of reputation effects within a profession such as that of the veterinary surgeon, it is difficult to argue that advertising of fees or comparative advertising is likely to mislead consumers. If a veterinary surgeon is fully registered, and therefore meets the educational, training and other attributes necessary to practise – as the Veterinary Council would argue as being the objective of registration – then we do not see why comparative informative advertising, pertaining to fees or the range and quality of services offered, should be restricted.

8.150 We would agree that advertising which is misleading, deceptive, abuses consumers' lack of information on the nature of veterinary services, or is in bad taste is likely to be injurious to animal and/or public welfare. However, our research on advertising within professional services generally has shown that there is little incentive for an individual practitioner to engage in such pernicious forms of advertising, since the longer term adverse reputation effects are likely to outweigh any short-term commercial benefits.

8.151 We would also be concerned that the restrictions on advertising in the profession are likely to act as a barrier to entry and innovation. The existing restrictions on comparative and fee advertising are likely to make it very difficult for a newly trained veterinary surgeon or a practitioner from outside Ireland to establish his/her practice in Ireland as the current mode of operation of the profession in Ireland depends overly in reputation effects. The Veterinary Council's Guidelines in relation to setting up practice and change of ownership of a practice, where it states that a new entrant or existing practitioner "should, as a professional courtesy, inform all existing practitioners in the district" of the opening up of a practice or a change of ownership would also seem to oppose normal competitive behaviour.

8.152 Moreover, the current restrictions are likely to constrain innovation within the veterinary surgeons' profession by preventing new entrants who possess specialist competencies in a particular area (e.g. exotic animals) from informing consumers of their services and fees.

8.153 Our analysis of the pattern of advertising undertaken by veterinary practices has also shown that where advertising does occur it is limited. It is also likely that the extent of advertising is greater among companion animal practices than among large animal or equine practices, where recommendation and word of mouth are likely to be more important. However, it is notable from our survey of the general public who utilise the services of veterinary surgeons that only 32% stated that they typically know in advance what they are required to pay for veterinary services, while 53% were of the view that more information is required on veterinary surgeons' fees in Ireland.

8.154 It is also noteworthy that a large proportion of consumers perceive that there is little price competition among veterinary surgeons in Ireland. Both this finding, and that concerning information on fees, suggest that consumers lack sufficient information to enable them to make informed choices as to their preferred veterinary surgeon. The restrictions on advertising that operate within the profession are likely to play an important part in explaining these features.

8.155 In summary, the evidence shows that restricting advertising is likely to have negative effects on competition in professional service markets. Subject to the proviso that advertisements are not in bad taste, do not bring the veterinary surgeons' profession into disrepute or do not exploit the limited information that some consumers may have, we do not believe that there should be any restriction on the type or nature of adverts that veterinary surgeons may place. Consumers in Ireland would stand to benefit from the provision of more information on the costs, range and quality of services offered by existing veterinary surgeons and new entrants to the profession, if the existing restrictions on advertising were relaxed.

**Absence of Legal Status for Veterinary Nurses and the Demarcation Restrictions on the Scope of Practice of Veterinary Nurses**

8.156 The fifth key restriction operating in the veterinary surgeons' profession that we believe is likely to be harmful to competition concerns the absence of legal status for veterinary nurses and the demarcation restrictions on the scope of practice of such professionals.

*Justification*

8.157 Currently, according to the Veterinary Council, while veterinary nurses do exist, they do not have legal status as a separate branch of the profession and are only permitted to operate under the supervision of registered veterinary surgeons.

8.158 In general, the Council states in relation to demarcation that:

> "The Veterinary Council is of the view that it would not be appropriate that services involving acts of veterinary surgery/medicine would be carried out other than by members of the profession of a sub-group of the profession."

8.159 In our consultations, the Council has also stated that it would not favour giving authority to nurses in cases where veterinary surgeons should correctly be taking full responsibility.

8.160 The Council has submitted that it has, however, made representations to the Minister for Agriculture requesting that new veterinary legislation provide for the creation of a new title of veterinary nurse and make provisions allowing for certain scheduled acts/procedures to be performed by qualified veterinary nurses. To-date, legislation has not, however, been introduced to give effect to the creation of a new legal title for veterinary nurses.

8.161 While it does not have any involvement in the regulation of the profession, Veterinary Ireland has submitted, in relation to demarcation, that it would not consider that any services currently reserved to veterinary surgeons could be provided individuals or groups not belonging to the profession. In general, Veterinary Ireland is of the view that the protection of animal health and welfare and the protection of public health require the provision of veterinary services by appropriately qualified professionals.

*Evaluation*

8.162 The current position of veterinary nurses within the veterinary profession effectively constitutes a demarcation restriction and thus an indirect form of entry restriction. This restriction is linked to the statutory protection of the title of veterinary surgeon and reservation of function, so that only registered veterinary surgeons may provide veterinary services to the public. In particular, veterinary nurses do not currently have separate legal status, must work under the supervision of a registered veterinary surgeon and are only permitted to undertake specific tasks/procedures.

8.163 However, while they do not possess legal status, veterinary nurses do exist on a de facto basis within the profession, and we have estimated from Veterinary Ireland's survey of the profession in March 2002 that there are around 535 nurses in practice, compared with an estimated 1,277 veterinary surgeons in private practice. The demand for veterinary nurses is also evidenced by the fact that the Faculty of Veterinary Medicine has recently commenced providing a three-year Diploma in Veterinary Nursing.

8.164 The principal argument against the current demarcation restrictions operating in relation to veterinary nurses is that, by limiting the scope of practice of nurses, these demarcation restrictions remove the ability of veterinary nurses to provide certain services independently of veterinary surgeons, act as an indirect entry restriction and thus limit potential competition in the overall market for veterinary services.

8.165 As veterinary nurses do not possess the qualifications and training to carry out the entire range of veterinary procedures undertaken by registered veterinary surgeons, we accept, in the interests if animal and public welfare, that their scope of practice should be limited to those functions for which they are qualified. It should, however, be possible for veterinary nurses who are suitably qualified to undertake more limited procedures on an independent basis and to offer these services directly to the general public. This would enable veterinary nurses to form independent practices offering certain veterinary services – possibly including limited testing, validation and certification or ancillary care for companion animals - for which they are trained. This would, however, require that veterinary nurses be given separate legal status and be registered on a separate basis.

8.166 In this light, we would support the proposal of the Council in relation to the amendment of the existing legislation to provide for creation of a new title of veterinary nurse and to set out what schedules acts/procedures that may be undertaken by such nurses. However, in drawing up new legislation on this area, we would also recommend that veterinary nurses be permitted to practise independently of veterinary surgeons in the case of certain services.

8.167 In amending legislation in this area, we would caution against following the approach previously followed in other professions where the regulatory authority concerned is given discretion as to whether auxiliary professional titles are to be created and to the scope of practice of such professionals. Previous experience in this area (for example, in relation to the position of dental mechanics in the dentists' profession) has shown that regulatory authorities have failed to introduce auxiliary professionals, despite proposals to do so.

8.168 It is also important to ensure that the educational and other requirements for registration of veterinary nurses (and other auxiliary veterinary professionals, if created) should not exceed international best practice in ensuring minimum standards, or be set in such a way as to act as an effective restriction on entry to this part of the veterinary profession.

8.169 It is also important that reforms that entail the removal of demarcation restrictions, such as that pertaining to veterinary nurses, are not implemented in isolation from those required in other areas. In particular, introducing separate registration status and permitting veterinary nurses to independently provide specified veterinary services directly to the general public may not result in significant new entry to the overall market for the provision of veterinary services if the current restrictions on advertising and promotion remain in place. If registered veterinary nurses are permitted to establish practices independently from veterinary surgeons they must also be permitted to engage in normal competitive behaviour and thus be allowed to advertise and promote these practices.

8.170 In is instructive to consider the findings from our survey of the general public or consumers of veterinary services in relation to the issue of demarcation restrictions on the scope of practice of veterinary nurses and other veterinary professionals. These findings indicated that the vast majority (79%) of the general public are either 'in favour' or are 'very much in favour' of permitting veterinary nurses to undertake certain veterinary procedures independently of veterinary surgeons, with only 14% stating that they would be against this approach.

8.171 In addition, when asked whether suitably trained individuals in general could be permitted to perform certain routine tasks traditionally done only by qualified veterinary surgeons, 78% of respondents among the general public supported this approach.

**Prohibition on Practice of Veterinary Medicine by Corporate Bodies**

8.172 An important restriction operating within the veterinary profession concerns the organisational structures permitted in relation to the operation of veterinary practices and, in particular, the prohibition on the practice of veterinary medicine by corporate bodies or limited liability companies. This restriction has its basis in the Veterinary Surgeons Act, 1932.

*Justification*

8.173 The main justification submitted by the Veterinary Council in relation to the prohibition on the practice of veterinary medicine by bodies corporate is that limited liability practices would compromise the independence of practitioners and would result in a conflict of interest between the commercial interests and legal position of a limited liability practice and the professional and ethical requirements set out by the Council. The veterinary surgeon must take final responsibility for the care of the animals under his/her supervision and it is argued by the Council that the operation of practices under limited liability structures would contravene this requirement and would mean that the interests of the client are ultimately not sufficiently protected.

*Evaluation*

8.174 The argument submitted by the Veterinary Council in relation to the prohibition on the formation of limited liability practices by health professionals is that this would result in a conflict of interest vis-à-vis the professional and ethical requirements generally imposed by the profession's regulatory body. In order words, as the veterinary surgeon, in this case, must take final responsibility for the care of their client's animal, the operation of limited liability would contravene this requirement and would mean that the interests of the animal and the owner may not be fully protected.

8.175 Notwithstanding the above argument, we believe that the restriction on the formation of corporate bodies by veterinary surgeons is likely to constrain the growth of veterinary practices and the entry of new and possibly more efficient practices into the market. In relation to the important requirement of ensuring the protection of animal welfare, we believe that this can be accomplished through the requirement for practitioners to have adequate professional indemnity insurance or adequate practice capitalisation. The removal of the restriction on the practice of veterinary medicine by corporate bodies could facilitate the development of the profession, and by extension the welfare of the animal population and animal owners, by allowing improved access to capital that may be needed to invest in improved equipment, infrastructure and services. It may also facilitate innovative veterinary surgeons to expand their practices. However, in tandem with the OECD's recommendation on this issue, we believe that while practitioners should have the option to incorporate their practices, they should not be obliged to do so.

# Summary of Main Conclusions

8.176 We summarise in Table 8.18 our conclusions in relation to the key restrictions operating in the veterinary surgeons' profession in Ireland. Our research indicates significant entry restrictions, demarcation restrictions and conduct and organisational restrictions on competition. In our judgement, any potential benefits of these restrictions are not justified when account is taken of the adverse implications for competition in the profession.

Table 8.18: Summary of Main Conclusions re Key Restrictions in the Veterinary Surgeons' Profession

Entry Restrictions

1. THE POSITION OF ONE INSTITUTION AS THE SOLE PROVIDER OF VETERINARY EDUCATION IN IRELAND AMOUNTS TO A MONOPOLY SITUATION, WHICH HAS THE POTENTIAL TO ACT AS A BARRIER TO ENTRY TO THE VETERINARY PROFESSION AND ADVERSELY AFFECT POTENTIAL COMPETITION IN THE MARKETPLACE.
2. THE RESTRICTION IN PLACE IN RELATION TO THE NUMBER OF STUDY PLACES AVAILABLE EACH YEAR AT THE FACULTY OF VETERINARY MEDICINE POINTS TO A SIGNIFICANT CONSTRAINT ON ENTRY TO THE PROFESSION, WHICH WE BELIEVE IS LIKELY TO ACT AS A BARRIER TO POTENTIAL COMPETITION.
3. THE ABSENCE OF RECOGNITION OF NON-EU/EEA TRAINED VETERINARY SURGEONS WISHING TO PRACTISE IN IRELAND RESULTS IN A BARRIER TO ENTRY TO FOREIGN PRACTITIONERS AND MAY CONSTRAIN POTENTIAL COMPETITION IN THE PROFESSION.

Restrictions on Conduct

4. THE RESTRICTIONS PLACED ON ADVERTISING BY VETERINARY SURGEONS ARE LIKELY TO BE HARMFUL TO NORMAL COMPETITIVE BEHAVIOUR AND CONSTRAIN THE ENTRY OF NEW AND MORE INNOVATIVE VETERINARY PRACTICES INTO THE MARKET.

Restrictions on Demarcation

5. THE LIMITATION ON THE SCOPE OF PRACTICE OF VETERINARY NURSES CONSTRAINS ENTRY INTO THE MARKET OF A NEW INDEPENDENT BRANCH OF THE PROFESSION AND THEREFORE LIMITS POTENTIAL COMPETITION IN THE PROFESSION.

Restrictions on Organisational Form

6. THE PROHIBITION ON THE FORMATION OF LIMITED LIABILITY PRACTICES BY VETERINARY SURGEONS IS LIKELY TO CONSTRAIN THE GROWTH OF VETERINARY PRACTICES AND THE ENTRY OF NEW AND POSSIBLY MORE EFFICIENT PRACTICES INTO THE MARKET.

# 9 Competition and the Medical Practitioners' Profession in Ireland

## Introduction

9.1 The structure of this section is as follows. We begin by presenting an overview of the definition of the market and the services provided by medical practitioners and highlight the core values/principles underlying the medical profession. The nature of provision of medical services and the core values underlie many of the arguments used for regulating the profession, which are revisited later in the section.

9.2 Following the overview of market definition, an empirical analysis is then presented in relation to the size and structure of the market in which medical practitioners operate and the patterns of demand in the market for medical services in Ireland. We then describe the medical practitioner's client base and the nature of competition, if any, in the market. Our empirical analysis utilises information and data obtained from the Medical Council, Comhairle na nOspidéal, the Irish Hospital Consultants Association and the Irish Medical Organisation. In addition, our analysis is supported by new survey data obtained and compiled by Indecon/London Economics. The Medical Council and Comhairle na nOspidéal are the principal bodies charged with responsibility of regulating the profession in Ireland. Regulation is carried out by way of statute and delegated legislation.

9.3 After summarising the results of the empirical analysis of the market, we then examine in detail how the profession is regulated. In addition to describing the role of the above regulatory bodies, we identify and describe the restrictions/requirements that are in place in the profession, and their statutory and other bases, in relation to entry, conduct, demarcation and organisational form.

9.4 Our assessment of the restrictions/requirements most likely to impinge upon competition in the market for medical services is undertaken by reference to their justification by the regulatory bodies and the other professional bodies, and our judgements as to whether these restrictions/requirements are proportional to the benefits claimed for them. Finally, we summarise our conclusions on the principal restrictions/requirements that operate in the medical practitioners' profession. Competition in the medical profession is a key issue given recent increases in healthcare inflation and the need to facilitate the sector to meet growing and diverse demand. While the health sector is unique in many respects, the importance of the sector reinforces the need to ensure that we secure the benefits that can be achieved by introducing competition, where appropriate.

# Market Definition and Services Provided by Medical Practitioners

## Market Definition

9.5 In order to examine the degree of competition occurring among members of the medical practitioners' profession in Ireland, it is useful to consider the relevant market in which practitioners operate. In competition/antitrust analysis, relevant market definition includes definition of the relevant product/services market and of the relevant geographic market. The former refers to those products/services that compete with each other to a sufficient extent to exercise a competitive constraint and the latter refers to the geographic area in which competition between the relevant products/services takes place. Thus, the relevant product or service market includes all those products or services viewed as sufficiently interchangeable by consumers (demand substitutability) or suppliers (supply substitutability).

9.6 In considering the issue of delineating the boundary of the relevant market, in general, it is useful to review the objective characteristics of the product or service, the nature of demand and supply and the attitudes of different types of user. Such evidence is used when considering specific individual competition cases to inform the so-called 'hypothetical monopolist test' or SSNIP (small but significant non-transitory increase in price) test, which seeks to frame the relevant antitrust market in order to identify the smallest relevant group of producers or providers capable of exercising a competitive constraint on the market. While this test may be less relevant in a sectoral policy study than in a specific anti-trust case (such as a merger investigation) it is useful to consider aspects of relevant market definition in terms of the services provided by medical practitioners and also in terms of the geographic area in which these services are provided.

9.7 Medical practitioners diagnose physical and mental illnesses, disorders and injuries, and prescribe medications and treatment to promote or restore general health. While the profession is divided into different segments (described below), the first point of contact for the majority of patients (other than those admitted through Accident and Emergency) is the registered general medical practitioner, who may diagnose and treat, within the limit of his/her training and capability, any aspect of the human medical condition.

9.8 There are three distinct segments within the medical profession, as follows:

i. General practitioners (GPs) or family doctors;

ii. Non-consultant hospital doctors (NCHDs); and

iii. Hospital consultants.

9.9 The general practitioner or family doctor is normally the first point of contact between the general public and the medical profession. Indeed, according to the Medical Council's Guide to Ethical Conduct and Behaviour,[1] "the Council accepts the principle that the overall management of a patient's health should be under the supervision and guidance of a general practitioner". It is often stated that the GP acts as 'gate-keeper' within the medical profession.

9.10 GPs provide services to medical card holders free of charge. Doctors must treat medical card patients in the same way as they treat private patients. Those GPs operating within the General Medical Services (GMS) scheme enter into contracts with health boards to provide such services. Patients may choose their GP from a panel of doctors who are part of the scheme, provided the doctor is willing to have them as patients. In general, services must be provided by a patient's own doctor but arrangements can be made for emergencies and when a patient is moving out of their GP's contract area.

9.11 Some GPs provide services only to private patients, though the vast majority in independent practice would be expected to hold state contracts of some kind. These include doctors that enter into contracts with the health boards to provide services to people who become entitled to medical cards once they reach the age of 70 or people with Hepatitis C who have Health Amendment Act Cards and who express a wish to remain as patients of the doctor who has been treating them to-date. Most doctors who cater only for private patients also provide services to their patients on behalf of the health board, such as maternity and infant welfare services and vaccinations.

9.12 Non-consultant hospital doctors or junior doctors are medical practitioners that have not reached the level of training and experience required to function as a consultant in a designated speciality. Generally, however, NCHDs aspire to attain consultancy posts after serving a number of years as a junior doctor. Junior doctors work under the supervision of hospital consultants. NCHDs may operate within a public or private sector setting.

[1] Medical Council, Guide to Ethical Conduct and Behaviour, 5th Edition, 1998.

9.13 Hospital consultants are the senior members of the medical profession and this position is acquired through experience and distinction in a specialist area. The consultant is a specialist who provides expert advice to patients, after referral by the general practitioner. According to the consultant's public contract, a consultant is:

> (Para. 5.1) "a registered medical practitioner in hospital practice who, by reason of his training, skills and experience in a designated speciality, is consulted by other registered medical practitioners and undertakes full clinical responsibility for patients in his care, or that aspect of care on which he has been consulted, without supervision in professional matters by any other person. He will be a person of considerable personal capacity and personal integrity".

9.14 The referral system operates on the basis that a patient is referred to a suitable hospital consultant by his/her GP. Upon completion by the consultant of his/her management of the patient, the patient is then referred back to the GP. Thus the patient does not normally have direct access to the hospital consultant, except in circumstances where he/she is admitted as an emergency patient to an accident & emergency unit.

9.15 According to Department of Health and Children statistics, 72% of admissions to public hospitals are emergencies. These arrive at an acute hospital by way of emergency referral by a GP, ambulance services (in the case of road traffic accidents, for example) or self-referrals and GP referrals to A&E units. The remaining 28% of patients are classified as elective (non-emergency) admissions, namely patients that are referred to a particular consultant for a consultation. Depending on resource and bed availability, these patients may subsequently be admitted for emergency or non-emergency treatment (for example, surgery). While detailed statistics are not available for private hospitals, as these hospitals do not have A & E units, it is likely that the vast majority of patients are admitted on an elective basis. Competition in the medical sector and the removal of restrictions that may hinder investment could play an important role in improving Irish healthcare.

*Services and Work Carried out by Medical Practitioners*

9.16 A general medical practitioner may perform a wide variety of tasks, including:

- Examine the patient to determine the nature of the disorder or illness, and record the patient's medical information;
- Order, perform and analyse laboratory tests, X-rays and other diagnostic images and procedures;
- Provide overall care for patients and prescribe and administer treatments, medications and other remedial measures;
- Aid in the prevention of diseases and disorders by advising patients on diet, exercise, hygiene and general health;
- Prescribe and administer medication and inoculate patients to prevent infectious or contagious diseases;
- Provide pre- and post-natal care;
- Report births, deaths and notifiable diseases to government authorities;
- Arrange for patients to be admitted to hospital;
- Refer patients to other medical specialists/consultants and exchange relevant medical details.

9.17 Medical practitioners are also involved in a wide range of other activities including consultations, attending emergencies, performing operations and arranging medical investigations. In caring for patients, medical practitioners work with many other health professionals. Medical practitioners must be prepared to work at weekends and at night. Many medical practitioners are on call 24 hours a day.

9.18 Among the specific services that the GP must provide for medical card holders are:

- Consultation services at a GP's surgery or at a patient's home, as appropriate;
- Day-to-day necessary medical treatment of a kind normally provided by a GP, including immunisation and vaccination for children;
- Provision of medical certificates, for example, in relation to applications for social welfare payments and for absence from work;
- Provision of prescriptions for drugs, medicines, etc. In some cases, GPs may also dispense drugs and medicines. GMS patients are entitled to this service if the GP has only one practice centre and it is three miles or more from the nearest retail pharmacist.

9.19 There are certain services that GPs are not obliged to provide free of charge to GMS patients, including, for example, eye tests for a driving licence or for life assurance.

9.20 In addition to normal medical services, GPs may also provide a range of specialist services to their patients. It is instructive in this regard to consider the findings from the most recent survey undertaken by the Irish College of General Practitioners, presented in Table 9.1 below. The survey evidence indicates that most GP practices typically provide a range of specialist services, with the most predominant being immunisation, insurance medicals, family planning, travel vaccines, pre-employment medicals, well woman screening and minor surgery. Additional specialist services that may be provided by some GPs include child development advice, well man screening, chronic disease, and stop smoking groups.

Table 9.1: Irish College of General Practitioners - Survey Data on Extent of Specialist Services Offered by GP Practices

| Service | % of GPs Providing Service | % Who Would Like to Offer Service |
|---|---|---|
| Immunisation | 94 | 2 |
| Insurance medicals | 91 | 4 |
| Family planning | 88 | 3 |
| Travel vaccination | 82 | 5 |
| Pre-employment medicals | 82 | 8 |
| Well woman screening | 70 | 11 |
| Minor surgery | 64 | 14 |
| Child development | 47 | 20 |
| Well man screening | 44 | 22 |
| Chronic disease | 42 | 18 |
| Stop smoking groups | 10 | 29 |
| Other | 7 | 2 |
| None of the above | 1 | 1 |

Source: Irish College of General Practitioners, National Survey of General Practice, Final Report - 2000, based on data collected in September 1996.

9.21 It is also useful to note the nature of the GP practice in terms of the number of hours normally devoted to different tasks. The ICGP survey findings presented in Table 9.2 below show that the main activities of GPs within an average working week are appointments, open surgery and on-call responsibilities. Other important activities are home visits, administration and telephone management. On average, according to the survey findings, GPs work 79 hours per week.

| Table 9.2: Irish College of General Practitioners - Survey Data on Hours Spent at Various Activities in GP Practices | |
|---|---|
| Activity | Mean Hours Spent per Week* |
| Appointment | 14 |
| Open surgery | 21 |
| Home visit | 6 |
| Administration | 4 |
| Telephone | 3 |
| On-call | 46 |
| Total Hours | 79 |

Source: Irish College of General Practitioners, National Survey of General Practice, Final Report – 2000, based on data collected in September 1996.
* Note that the average total hours spent on practice activities does not equate with the sum of average hours spent on each area of activity since there may be some overlap between different activities.

*Services Provided by Consultants*

9.22 The nature of the services provided by the hospital consultant is determined by the specialist skills possessed by the consultant, the location of the employing health authority and the Department of Health and Children. It is generally agreed that there are nine major specialist areas, namely accident/emergency medicine, general medicine, anaesthetics, obstetrics/gynaecology, paediatrics, pathology, psychiatry, radiology and surgery. In addition, there are numerous sub-specialisations within the traditional specialist areas.

9.23 An important issue in relation to the definition of services provided by hospital consultants concerns the nature of the contract held by individual consultants. In particular, Category 1 contracts provide *inter alia* that the consultant shall "devote substantially the whole of his professional time, including time spent on private practice, to the public hospital(s)".

9.24 Consultants may also be appointed under Category 2 contracts. Such contracts employ consultants in the public hospital(s) but also permit he/she to engage in private practice on-site and off-site.

9.25 The third principal contract type is the Geographical Wholetime contract. This type of contract *inter alia* requires the consultant to devote his/her entire professional time to the public hospital(s).

9.26 About 60% of consultants hold Category 1 or Geographical Wholetime contracts. A small number of consultants work on a part-time or job-sharing basis in the public hospitals. In addition to public sector consultants, it is estimated by Comhairle na nOspidéal that approximately 173 consultants work exclusively in the private sector, who derive their income from professional fees charged to private patients, or the patient's health insurer.

*Geographic market definition*

9.27 In relation to the geographic market definition, GPs will tend to operate on a local or regional basis. This geographic scope is largely determined by the need for proximity to patients, but also because the majority of GPs will hold agreements with the regional health boards for the provision of services to General Medical Scheme (GMS) patients. In general, the current regulations require that when applying for a medical card, a GMS patient must chose a GP whose surgery is within 7 miles of their home, unless there is no doctor within that area. The operation of the GMS scheme is such that an individual GP is generally permitted to have a maximum of 2,000 GMS patients.

9.28 We understand that the nature of GMS contracts is likely to have an important bearing on the geographic location of GP practices, as the vast majority of practices provide some level of GMS service and the possession of a GMS list is regarded by practitioners as important in assisting the long-term successful development of a practice, particularly in rural and less developed areas. One of the criteria taken into account in the decision by the health boards on the filling of GMS vacancies or the creation of new GMS posts is that due regard is given to the viability of practices in the area in question. In other words, the geographical location of GMS contracts held by GPs will be influenced by a range of factors, including existing numbers and age of GMS doctors in an area and the size of their GMS lists, the practice profile of the area in question (including the ratio of public to private patients) and the population size in the area and surrounding areas. The decision in relation to the filling of GMS posts must be taken, in the final analysis, by the Chief Executive Officer of the relevant health board. However, a full consultation process must be undertaken involving the health board and the Irish Medical organisation (IMO).

9.29 The nature of filling of GMS posts is an important issue in relation to competition in the provision of health services in Ireland, and we examine this issue further later in this section.

9.30 In relation to the location of GP practices, it is instructive to note the findings from the most recent National Survey of General Practice undertaken by the Irish College of General Practitioners.[2] According to the survey, 34% of responding GPs stated that their practice was located in town with more than 20,000 inhabitants, 28% in areas with a population of between 5,000-20,000 and 38% in areas with less than 5,000 inhabitants. Almost half (48%) of practices were located within five miles of an acute general hospital, 34% were located between 5-20 miles away and 18% more than 20 miles from an acute hospital.

9.31 It is also noteworthy that 10% of respondents stated that there were between zero and 1 GP practising within a seven-mile radius of their practice, 18% stated that there were between 2-5 other GPs in a seven-mile radius, while 22% indicated that there were between 6-10 other GPs located within such a radius. Those who reported that there were more than 20 GPs located within a seven-mile radius of their practice amounted to 31% of respondents.

9.32 The ICGP survey also found that respondents with larger practices are more likely to be located in the larger towns and cities and those with GMS lists are more likely to be from smaller towns or rural areas and be closer to an acute general hospital. GPs with GMS lists reported fewer other GPs operating within a seven-mile radius.

9.33 A breakdown of the estimated number of individual GPs working in each of the health board regions based on evidence from the Medical Council's Survey of Registered Medical Practitioners (2001) is shown below in Table 9.3. The survey estimates indicate that the largest proportion (31.8%) of GPs are employed in the Eastern Regional Health Authority, followed by the Southern Health Authority (17%), the South Eastern Health Authority (11.3%) and the Western Health Authority (11%). It should be noted that, according to the General Medical Services (GMS) Scheme Payments Board, in December 2001 there were 1,863 agreements between the regional health boards and GPs for the provision of services to GMS patients.[3]

[2] Irish College of General Practitioners, National Survey of General Practice, Final Report – 2000, *op. cit.*
[3] GMS Payments Board, Annual Report 2001, http://www.gmspb.ie/report.htm

**Table 9.3: General Practitioners Working in Individual Health Board Regions**

| Health Board Region | Number | %* |
|---|---|---|
| Eastern | 374 | 31.8 |
| Southern | 200 | 17.0 |
| South Eastern | 133 | 11.3 |
| Western | 129 | 11.0 |
| North Eastern | 96 | 8.2 |
| Mid Western | 94 | 8.0 |
| North Western | 82 | 7.0 |
| Midland | 44 | 3.7 |

Source: Medical Council, Survey of Registered Medical Practitioners, 2001.
* Note responses are not available in relation to 2% of registered doctors surveyed.

9.34 In relation to consultants, the geographic market served is determined by the nature of the individual consultant's contract and in particular the employing health authority. However, as patients may travel to attend a particular hospital, the geographic market definition is therefore essentially national, though in terms of consumer choice and practical issues such as the availability of specific consultant expertise in different regions, effective geographical market definition may, in some instances, be restricted by cost considerations.

9.35 According to the Irish Hospital Consultants Association, in relation to the public sector, "the geographic spread of hospital consultants is decided in effect by government through the number of public hospitals it funds and also through its policy on regional and national units". This means that specific services (for example, neurosurgery in Beaumont Hospital, Dublin) tend to be located in a particular hospital. In relation to the private sector, the geographic location of particular services is decided upon by the owners of the institution concerned. For example, the Mater Private Hospital and the Blackrock Clinic are the only two private institutions that provide cardiac surgery.

**Fundamental Requirements of the Medical Practitioner**

9.36 An important issue relating to the provision of services by medical practitioners concerns the core requirements and values of the profession. The core requirements of the medical practitioner are usefully summarised by reference to the Medical Council's Guide to Ethical Conduct and Behaviour, which states as follows:

> "The welfare of our patients is paramount. That concern may be expressed in the management of physical illness or in dealing with other issues that affect health. The doctor who provides a reasonable explanation of his or her understanding of the problems and care needed, who seeks the permission of the patient for the interventions proposed and who respects the patient's confidentiality, is unlikely to cause injury to his or her patient…Our responsibility to follow these principles extends from the care of physical illness and psychosocial problems to health promotional activities and the management of services to patients. Doctors have a further duty to examine continuously the options available to them in the management of their patients and to analyse critically what is in the best interest of those patients."

# Market Size, Structure and Patterns of Demand

9.37 Our economic analysis of competition in the medical practitioners' profession set out below entails an empirical examination of a range issues in relation to market size, structure and the patterns of demand for medical services. Our analysis draws from a number of information sources, as follows:

- Data obtained from the Medical Council, Comhairle na nOspidéal, the Irish Hospital Consultants Association, the Irish Medical Organisation, and the Irish College of General Practitioners;
- New information obtained from the Indecon Survey of Medical Practitioners (of which there were 473 responses);
- New information obtained from the Indecon Survey of Health Insurance Companies; and,
- New information obtained by the Indecon Survey of the Public (sample size of 1,008 adults aged 15+).

**Number and Growth in Medical Practitioners**

9.38 A useful indicator of the size of the market for supply of medical services, and one that can be straightforwardly measured, is the population and recent growth in the number of medical practitioners. In this section we look at a number of indicators of the supply of medical practitioners based on data sourced from the Medical Council, the Indecon Survey of Medical Practitioners and the Irish College of General Practitioners.

9.39 In Table 9.4 below we present details from the General Register of Medical Practitioners, which is maintained by the Medical Council. A key regulatory requirement for medical professionals in Ireland is that one must be registered on the General Register to practise as a registered medical practitioner.

**Table 9.4: General Register of Medical Practitioners - Number of Fully and Temporary Registered Doctors - 1991-2002**

| Year | Fully | *% change* | Temp | Total* | *% change* |
|---|---|---|---|---|---|
| 1991 | 9,329 | - | 818 | 10,147 | - |
| 1992 | 9,375 | *0.5* | 880 | 10,255 | *1.1* |
| 1993 | 9,642 | *2.8* | 854 | 10,496 | *2.4* |
| 1994 | 9,824 | *1.9* | 818 | 10,642 | *1.4* |
| 1995 | 10,452 | *6.4* | 898 | 11,350 | *6.7* |
| 1996 | 10,580 | *1.2* | 849 | 11,429 | *0.7* |
| 1997 | 10,807 | *2.1* | 1,037 | 11,844 | *3.6* |
| 1998 | 11,240 | *4.0* | 1,294 | 12,534 | *5.8* |
| 1999 | 11,600 | *3.2* | 1,311 | 12,911 | *3.0* |
| 2000 | 11,907 | *2.6* | 1,065 | 12,972 | *0.5* |
| 2001 | 13,004 | *9.2* | 1,271 | 14,275 | *10.0* |
| 2002 | 13,761 | *5.8* | 1,273 | 15,034 | *5.3* |
| *% average annual change* | | | | | |
| *1991-1996* | *2.5* | | *0.7* | *2.4* | |
| *1997-2002* | *5.0* | | *4.2* | *4.9* | |

* Excludes Interns, of which there are typically 400-450 registered each year.
Source: The Medical Council.

9.40 According to the figures, there were 15,034 persons on the General Register of Medical Practitioners as at September 2002, of which 13,671 were fully registered and 1,273 were temporarily registered (i.e. those who may apply for registration and are awaiting full registration). It is also instructive to note the recent growth in the numbers on the Register, which has fluctuated significantly on a year-to-year basis since the early 1990s. However, it is noticeable that the average annual rate of increase in the numbers of doctors on the Register has increased from 2.5% per annum between 1991-1996 to 5% per annum between 1997 and 2002 in respect of fully registered doctors. The total number of doctors on the Register (i.e. including those temporarily registered) has increased on average by 4.9% per annum since 1997, compared with an average annual increase of 2.4% between 1991 and 1996.

9.41 To place these figures in context, the population of Ireland increased by 11% between 1991 and 2002, compared with an increase of 47.5% in the total number of fully registered medical practitioners over this period. However, the demand for medical services is also likely to be influenced by the overall level of income and wealth of the population and it is notable in this regard that the numbers in the profession have grown less rapidly than the Irish economy, which expanded at an average annual rate in real terms of 6.95% between 1992 and 2001.[4]

9.42 A comparison of the number of inhabitants per doctor/physician across 14 European countries in 2000 is presented in Table 9.5. It is notable that Ireland ranks 13th out of 14 European countries in relation to the number of inhabitants per doctor, which stood at 425 in 2000.

[4] Source: ESRI data

**Table 9.5: Comparison of Number of Inhabitants per Doctor/Physician – 2000**

| Country | No. of Inhabitants per Doctor/Physician |
|---|---|
| Italy | 173 |
| Austria | 178 |
| Greece | 221 |
| Spain | 223 |
| Norway | 252 |
| Belgium | 259 |
| Germany | 267 |
| France | 280 |
| Sweden | 311 |
| Portugal | 316 |
| Finland | 320 |
| Denmark | 341 |
| Ireland | 425 |
| United Kingdom | 508 |

Source: IMD, World Competitiveness Yearbook, 2002

9.43 Another perspective on the General Register of Medical Practitioners can be obtained by considering the annual number of new registrants. In Table 9.6 below we describe the annual number of new registrants according to those that are fully registered and temporarily registered, over the period 1995-2002. The Medical Council figures indicate that the annual number of new full registrants has increased continuously from 609 in 1995 to 966 in 2002. The number of temporarily registered doctors has fluctuated considerably and this has partly reflected the impact of the Council's Temporary Registration Assessment Scheme (TRAS). The purpose of the TRAS is to offer postgraduate training opportunities in Ireland to doctors who have qualified in medical schools outside the EU. Temporary registration can be a route to full registration, and is available for a total of up to seven years.

**Table 9.6: General Register of Medical Practitioners - Breakdown of Annual New Registrants - 1995-2002**

| Year | Full-time | Temp* |
|---|---|---|
| 1995 | 609 | 323 |
| 1996 | 626 | 457 |
| 1997 | 686 | 609 |
| 1998 | 687 | 97** |
| 1999 | 718 | 44** |
| 2000 | 758 | 155 |
| 2001 | 960 | 410 |
| 2002 | 966 | 455 |

*All new registrants for temporary registration would have qualified outside the EU.
**In December 1997 the Medical Council introduced the TRAS (Temporary Registration Assessment Scheme). As a result, the number of doctors granted initial temporary registration fell dramatically. Doctors have now become used to the TRAS and the figures have stabilised.
Source: The Medical Council.

9.44 The Medical Council has, since 1 January 1997, also maintained a Register of Medical Specialists, for doctors who have completed specialist training in a speciality recognised by the Council. It is useful to examine the numbers on this Register, shown in Table 9.7 below. The Register of Medical Specialists has grown steadily since its inception in 1997 and there are currently 1,697 specialists on the Register. It should be noted that practitioners registered on the Register of Medical Specialists must also have their names entered in the General Register of Medical Practitioners.

Table 9.7: General Register of Medical Practitioners - Number of Doctors on Register of Medical Specialists - 1997-2002

| Year | Register of Medical Specialists | % change |
|---|---|---|
| 1997 | 352 | |
| 1998 | 539 | 53.1 |
| 1999 | 730 | 35.4 |
| 2000 | 965 | 32.2 |
| 2001 | 1,493 | 54.7 |
| 2002 | 1,697 | 13.7 |

Source: The Medical Council

9.45 The General Register of Medical Practitioners indicates those individuals entitled to practise medicine as registered practitioners in Ireland. However, for a variety of reasons, including those doctors registered in Ireland but living abroad, education, ill-health, retirements, etc, the practice status of individuals is likely to differ from the total number on the Register. In Table 9.8 the estimated number of doctors practising in Ireland by area of practice is indicated based on estimates supplied by the Medical Council and data from Comhairle na nOspidéal. Overall, it is estimated that there are close to 9,000 doctors practising in Ireland, of which 2,691 or 30.1% are General Practitioners, 2,067 (23.1%) are consultants, and 3,542 (39.6%) are Non-Consultant Hospital Doctors (NCHDs), while the remainder (652 or 7.3%) are doctors employed mainly in public health medicine, academic posts and the defence forces.

Table 9.8: Estimated No. of Doctors Practising in Ireland by Practice Status

| Practitioners by Area | Estimated No. | % |
|---|---|---|
| General Practitioners | 2,691 | 30.1 |
| Consultants[1] | 2,067 | 23.1 |
| Non-Consultant Hospital Doctors[2] | 3,542 | 39.6 |
| Other[3] | 652 | 7.3 |
| Estimated total practitioners | 8,952 | 100 |

Source: The Medical Council, Survey of Registered Medical Practitioners, 2001. Extrapolated totals based on survey response of 3,169 doctors working in Ireland.
[1] Includes 1,632 permanent public consultant posts, 262 non-permanent posts, and an estimated 173 specialists in private practice – Comhairle na nOispideal, Consultant Staffing, January 2002.
[2] Includes temporarily registered doctors and interns.
[3] Includes doctors in public health medicine, academic posts and the defence forces.

9.46 In Table 9.9 we indicate the number of public sector permanent medical consultant posts over the period 1990-2002, based on figures provided by Comhairle na nOspidéal. As of January 2002, there were 1,632 public consultant posts in Ireland. This compared with 1,440 posts in 2000, 1,216 posts in 1995 and 1,122 posts in 1990. The annual net increase in the number of public consultant posts has risen noticeably since the late-1990s, and in 2001 an additional 120 permanent posts were created.

| Table 9.9: Number of Public Sector Permanent Consultant Posts - 1990-2002 | | | |
|---|---|---|---|
| Year | Total Permanent Consultant Posts | Net Annual Increase | Population per Consultant |
| 1991 | 1,139 | 17 | 3,095 |
| 1992 | 1,158 | 19 | - |
| 1993 | 1,170 | 12 | - |
| 1994 | 1,186 | 16 | - |
| 1995 | 1,216 | 30 | - |
| 1996 | 1,270 | 54 | 2,855 |
| 1997 | 1,292 | 22 | 2,833 |
| 1998 | 1,327 | 35 | 2,792 |
| 1999 | 1,388 | 61 | 2,698 |
| 2000 | 1,440 | 52 | 2,630 |
| 2001 | 1,560 | 120 | 2,461 |
| 2002 | 1,632 | 72 | 2,388 |
| Source: Comhairle na nOspidéal, Consultant Staffing, January 2002 and Indecon calculations. | | | |

9.47 One indicator of the supply of the number of medical consultants is the ratio of the total population to the number of consultant posts. According to our calculations, there were 2,855 persons per public consultant in 1996 and this ratio has been falling on an annual basis since 1996, to a level of 2,388 persons per public consultant in 2002.

9.48 In addition to public consultants, as stated earlier there are also consultants working exclusively within a private capacity. While accurate figures are not available on the number of private consultants, Comhairle na nOspidéal has estimated that in 2001 there were 173 doctors engaged as specialists in private practice in private hospitals or clinics who are not employed as consultants or NCHDs in public hospitals. The majority of these consultants operate in the Eastern Regional Health Authority area. However, it should be noted that around 600 consultants employed in public hospitals hold Category 2 contracts and are therefore entitled to also work in a private capacity. In addition, the figure quoted above does not include consultants who have retired from public work and who continue to work in private hospitals.

### Changes in Fee Income of Medical Practitioners

9.49 Another important aspect of the market for the provision of medical services in Ireland concerns the growth in fee income generated by medical practitioners. In the Indecon Survey of Medical Practitioners, we asked GPs to state the approximate average annual change in total fee income generated by their practice over the three-year period 1999-2001. The survey findings are shown in Table 9.10.

9.50 According to the survey findings, the vast majority (97.5%) of GP practices responding to our survey indicated an increase in their fee income on an average annual basis over the period 1999-2001. It is also notable that of those stating an increase in fee income, the largest proportion of GPs surveyed (46.4%) indicated that their fee income increased by between 10 and 24% on an average annual basis over the period 1999-2001, while 27.9% stated that fee income rose by 5-9% on average. A total of 11.5% of GPs responding to our survey indicated that their fee income increased on average by up to 4% over this period. By contrast, only 2.5% of GPs responding to our survey saw a decrease in their fee income on an average annual basis over the last three years. Of those practices that experienced a fall in fee income, 45.5% stated that their income fell by up to 4%, while 27.3% stated that their fee income decreased by between 5-9%, and a further 27.3% noting that their income fell by between 10-24%.

**Table 9.10: Indecon Survey of Medical Practitioners - Approximate Average Annual Change in Total Fee Income of GP Practices - 1999-2001**

| Extent of change in fees | % reporting Increase | % reporting Decrease |
|---|---|---|
| GP practices stating increase/decrease in fee income | 97.5 | 2.5 |
| *Of which:* | | |
| Over 200% | 0.2 | 0 |
| 150-199% | 0.7 | 0 |
| 100-149% | 1.2 | 0 |
| 50-99% | 3.9 | 0 |
| 25-49% | 8.1 | 0 |
| 10-24% | 46.4 | 27.3 |
| 5-9% | 27.9 | 27.3 |
| 0-4% | 11.5 | 45.5 |

Source: Indecon Survey of Medical Practitioners.

**Practice Status of Members of the Medical Profession**

9.51 Another feature of the profession which has implications for the nature of supply of medical services, concerns the practice status of members of the medical profession, including the structure of GP practices and the extent to which doctors work full-time and part-time or on a permanent or temporary basis. In Table 9.11 and Table 9.12 below we present some evidence concerning the practice status of medical professionals based on a survey carried out by the Irish College of General Practitioners (ICGPs).

9.52 An indication of the typical structure of GPs practices can be seen from the ICGP survey findings in Table 9.11. According to the figures, the majority (51%) of GPs responding to the survey stated that they operated within a sole practitioner capacity, while 35% stated that they worked as a partner within a practice. It was also stated that GPs worked as assistants (7%), sessional GPs (4%), trainees (1%) or locums (2%).

**Table 9.11: Irish College of General Practitioners - Survey Data on Position of GPs within Practice**

| **Position** | % |
|---|---|
| Single GP | 51 |
| Partner | 35 |
| Assistant | 7 |
| Sessional | 4 |
| Trainee | 1 |
| Locum | 2 |
| Total | 100 |

Source: Irish College of General Practitioners, National Survey of General Practice, Final Report – 2000, based on data collected in September 1996.

9.53 The vast majority of GPs (87%) operate on a full-time basis, with only 13% working on a part-time basis, according to the ICGP survey findings (see Table 9.12). In addition, 89% of those responding to the survey worked on a permanent basis.

**Table 9.12: Irish College of General Practitioners - Survey Data on Tenure of GPs in Practice**

| Tenure | % |
|---|---|
| Full-time | 87 |
| Part-time | 13 |
| Permanent | 89 |
| Temporary | 11 |

Source: Irish College of General Practitioners, National Survey of General Practice, Final Report - 2000, based on data collected in September 1996.

### Size Distribution of GP Practices

9.54 An indication of the current size distribution of GP practices can be seen from the findings from our Survey of Doctors, shown in Table 9.13 below. According to the figures, the average number of doctors per GP practice in Ireland has remained constant over the last three years, while the median indicates that GPs tend largely to be sole practitioners. However, it is noteworthy that there is a large standard deviation around the average of 1.7 doctors per practice, indicating variation in the size of GP practices.

**Table 9.13: Indecon Survey of Doctors - Statistics on Practice Size**

| | Number of doctors per practice | | |
|---|---|---|---|
| Statistics | 1999 | 2000 | 2001 |
| Average number of doctors per practice | 1.7 | 1.7 | 1.7 |
| Median number of doctors per practice | 1.0 | 1.0 | 1.0 |
| Standard deviation | 1.1 | 1.1 | 1.2 |
| Standard deviation - % of mean | 66.3 | 67.6 | 70.4 |

Source: Indecon Survey of Doctors.

9.55 Further evidence concerning the typical size of GP practices can be seen by examining the findings of the Irish College of General Practitioners survey of general practice. While the survey is based on 1996 figures, it is notable that 42% of operations were single GP practices, while 28% of practices were comprised of 2 GPs. A further 15% of GPs stated that they worked within a practice of three GPs, while 14% worked within practices of 4 or more practitioners (see Table 9.14). The predominance of single-doctor or small practices may have implications for the scale and variety of services that can be provided to patients and may also limit the ability of smaller practices to compete and invest in equipment and facilities.

**Table 9.14: Irish College of General Practitioners - Survey Data on Practice Size**

| **Practice size - No. of GPs** | % |
|---|---|
| 1 | 42 |
| 2 | 28 |
| 3 | 15 |
| 4+ | 14 |

Source: Irish College of General Practitioners, National Survey of General Practice, Final Report - 2000, based on data collected in September 1996.

# Medical Practitioners' Patients and their Characteristics

9.56 We described earlier in this section the breakdown of services provided by medical practitioners and the division within the profession between the main categories of GP, non-consultant hospital doctor (NCHD) and consultant. We indicated that 30.1% of the estimated total number of registered practising doctors in Ireland are GPs, while 39.6% are NCHDs and 23.1% hold consultant posts. The remainder are practitioners employed in public health medicine, academic posts and the defence forces. It is important, however, to further investigate the nature of the market for medical practitioners' services, and in this section we look at two important characteristics of practitioners' client base, namely the frequency of usage by the general public of medical practitioners' services and the ability of patients to assess the quality of services provided by practitioners. This analysis will inform our judgement in relation to the extent, if any, of information asymmetries in the market, which, as noted in Section 2 of this report, is an important issue in considering the justification for specific regulations and restrictions that may affect competition in the medical practitioners' profession.

**Frequency of Usage and Demand for Medical Practitioners' Services**

9.57 An indicator of demand for medical services is the frequency of usage of general practitioners by the general public. In our survey of the general population, we asked consumers to state how often they used the services of a doctor over the last five years. The findings presented in Table 9.15 indicate that the largest proportion of consumers surveyed stated that they attended a doctor between 1-5 times per year over the last five years, while 14% indicated that they used the services of a doctor between 6-10 times per year.

Table 9.15: Indecon Survey of the Public - Nature of the Market for Medical Services – Views of Public on Extent of Usage of the Services of a Doctor over the Last Five Years?

| Not in past 5 years | Less than 5 times in last 5 years | 1 – 5 times per year | 6 – 10 times per year | 11 – 20 times per year | More than 20 times per year | Don't know |
|---|---|---|---|---|---|---|
| 5% | 20% | 46% | 14% | 9% | 5% | - |

Source: Indecon Commissioned Survey of Representative National Sample of 1,008 Adults.

**Quality of Information among Patients**

9.58 An important issue in assessing the potential for greater competition in the medical profession concerns the availability of information to consumers of medical services. It is important, in particular, to assess the extent to which information asymmetries may exist in the market for medical services in Ireland. In Table 9.16 below, we present the views of the public, based on our survey of a representative sample of the Irish population, on their ability to assess the quality of services provided by doctors. According to the survey figures, the majority of consumers – 84% in total - were of the opinion that they were 'able to', 'well able to' or 'very well able to' assess the quality of services provided by doctors in Ireland.

Table 9.16: Indecon Survey of the Public – the Public's Views on their Ability to Assess the Quality of Services Provided by Doctors in Ireland

| Not Able to Assess Quality | Able to Assess Quality to Some Extent | Well Able to Assess Quality | Very Well Able to Assess Quality | Don't Know |
|---|---|---|---|---|
| 13% | 33% | 33% | 18% | 3% |

Source: Indecon Commissioned Survey of Representative National Sample of 1,008 Adults.

9.59 Our analysis of the frequency of usage of medical practitioners and the ability of patients to assess the quality of medical services provided would suggest that the extent of information asymmetries in relation to quality is unlikely to be significant among the patients of GP practices. However, later in this section we address the issue of information asymmetries in relation to price, and examine whether patients know in advance what they are required to pay for medical services.

## Nature of Competition, if any, on the Market

9.60 Having defined the nature and structure of the market for the provision of medical services in Ireland, it is now necessary to evaluate the nature of competition, if any, in the market. Central to this issue are the roles that price and non-price instruments play in the marketplace. Our analysis in this sub-section, which is based on new evidence assembled for this study, describes the level of fees charged by medical practitioners for standard medical services and assesses the views of both practitioners, the health insurance companies and the general public on the extent and role of price competition in the market. We then examine the provision of information on fees by medical practitioners to their clients and investigate the extent of non-price competition in the form of advertising and innovation. Finally, we look at another indicator of competition by reference to the recruitment of practitioners.

### Medical Practitioners' Fees

9.61 What is the current level and variation in fee levels for typical GP services in Ireland? In our Survey of Doctors we asked practitioners to state the approximate fee charged for a typical consultation at the GP's premises and the standard fee charged for a home visit. The findings are presented in Table 9.17 below.

9.62 According to the survey responses, the average consultation fee charged by a GP for a standard surgery visit is €33. Moreover, the median fee is also €33, indicating a symmetrical distribution of fee rates. The variance around the mean fee level charged, at €5, though significant, is not substantial and largely reflects regional variation across the State.

9.63 By contrast, the average fee charged for a home visit is €42, while the median is €40. It is notable, however, that the average call out charge varies to a greater extent across GP practices than is the case for the average charge for surgery attendance.

**Table 9.17: Indecon Survey of Doctors - Approximate Professional Fees Charged to Patients for Standard Medical Services**

| Statistics | Charge for Standard Attendance at Doctors Clinic € | Charge for a Home Visit € |
|---|---|---|
| Mean fee charged | 33 | 42 |
| Median | 33 | 40 |
| Standard deviation | 5 | 8 |
| Std deviation as % of mean | 15.9% | 19.6% |

Source: Indecon Survey of Doctors.

9.64 An additional indicator of the recent trends in medical practitioners' fees can be seen from the average expenditure of households on doctors' fees. In Table 9.18 we present an analysis of average weekly and annual household expenditure on doctors' fees based on the data available from the Central Statistics Office's Household Budget Surveys of 1994/1995 and 1999/2000. We also compare the average expenditure across urban and rural households.

**Table 9.18: Average Annual Household Expenditure on Medical Expenses - Doctors' Fees - 1994/1995 and 1999-2000**

| Doctors' Fees | 1994/95 - €/week | 1999/00 - €/week | 1994/95 - € Annual* | 1999/00 - € Annual* | *% change* |
|---|---|---|---|---|---|
| Doctors fees – Urban Households | 2.30 | 2.67 | 119.60 | 138.63 | *15.9* |
| Doctors fees - Rural Households | 1.73 | 1.79 | 89.96 | 93.08 | *3.5* |
| Doctors fees - State | 2.08 | 2.35 | 108.16 | 122.20 | *13.0* |

Source: Household Budget Survey – based on survey of 7,877 households between May 1994 and July 1995 and of 7,644 households between June 1999 and July 2000.
* Indecon estimates based on weekly average expenditure*52

9.65 Based on the Household Budget Survey figures, we have estimated that the average annual expenditure of Irish households on doctors' fees reached €122.20 in 1999/2000. This compares with an average annual expenditure in 1994/1995 of €108.16, indicating an increase over the period of 13%. It is notable, however, that average expenditure on doctors' fees increased at a faster rate (15.9%) among urban households compared with rural households (3.5%).

9.66 The large increase in average nominal expenditure by households on (private) doctors' fees between 1994/1995 and 1999/2000 may partly reflect increased demand for GP services from the private sector. However, the higher level of nominal expenditure may also be due to inflation in the cost of medical services. It is notable in this respect that between 1990 and 2001 consumer price inflation in respect of doctors fees averaged 7.1% per annum, compared with an annual average inflation rate of 2.7% across the CPI as a whole.[5] The higher relative rate of medical cost inflation is an important issue within the Irish health system that has recently been highlighted by the Competition Authority.[6]

[5] Source: Central Statistics Office

[6] See, for example, Competition in Medical Markets – Prospects for Ireland – Opening Address by John Fingleton, Chairman of the Competition Authority, November 11th, 2002.

**Extent of Price Competition**

9.67 In assessing the current extent of price competition in the supply of medical services in Ireland, it is useful to consider the views of practitioners, the general public, and those of the health insurance companies on this issue. In Table 9.19, we compare the findings from the Indecon Survey of the General Public, the Indecon Survey of Doctors and the Indecon Survey of Health Insurance Companies in relation to their views on the extent to which price competition exists among medical practitioners in Ireland. The figures from our survey of public perceptions on this issue indicate that a total of 59% of adults surveyed were of the view that 'virtually no' or 'very little price competition' exists between doctors in Ireland. This compares with 23% who perceived that 'moderate price competition' exists, while only 10% believed that 'significant price competition' was evident among doctors practising in Ireland.

Table 9.19: Views of the General Public, Medical Practitioners and Major Health Insurance Companies on Extent of Price Competition among Medical Practitioners in Ireland

| Views of: | Virtually No Price Competition | Very Little Price Competition | Limited Competition | Significant Price Competition | Don't Know |
|---|---|---|---|---|---|
| The general public/ consumers | 33% | 26% | 23% | 10% | 8% |
| Medical Practitioners | 12.4% | 23.5% | 45% | 17.5% | 1.7% |
| Major health insurance companies | 50% | 0% | 50% | 0% | 0% |

Source: Indecon Commissioned Survey of Representative National Sample of 1,008 Adults; Indecon Survey of Medical Practitioners and Indecon Survey of Health Insurance Companies.

9.68 Of those doctors that responded to our survey of medical practitioners, it is notable that a total of 35.9% were of the view that there currently exists 'virtually no' or 'very little price competition' among doctors practising in Ireland. In addition, 45% believe that 'limited price competition' exists, while 17.5% were of the view that 'significant price competition' is evident. The lack of price competition takes place against a background of the increase in medical inflation as referred to previously.

9.69 We also asked the main health insurance providers to provide their views on the extent of price competition within the medical profession. The survey results indicate that the health insurance companies believe that there is 'virtually no' or 'limited price competition' within the medical profession in Ireland. These companies are likely to implicitly take account of the extent of price competition with the hospital sector.

*Role of Price Competition and Factors Influencing a Patient's Choice of GP*

9.70 Prices, of course, represent only one aspect of the factors influencing a patient's choice of GP, and it is important to consider the relative importance of price as a deciding factor amongst consumers. In Table 9.20 we examine the views of doctors in relation to the importance of a range of factors influencing a patient's choice of GP. According to the figures, trust and quality of service were deemed to be 'extremely important' or 'very important' by 91.7% and 94.3% of GPs respectively, while reputation and location of practice were considered 'extremely' or 'very important' by 82.2% and 45.6% of GPs respectively. The degree of specialisation of practices was not considered to be of very high importance by the majority of GPs. Only 10.6% of GPs were of the view that fees/price competitiveness was likely to be an extremely or very important factor influencing a patient's choice of doctor.

**Table 9.20: Indecon Survey of Doctors - Views on Importance of Factors Influencing a Patient's Choice of GP in Ireland**

| | % of Responses | | | |
|---|---|---|---|---|
| **Factors** | **Extremely important** | **Very important** | **Important** | **Not important** |
| Quality of service | 66.2 | 25.5 | 7.9 | 0.4 |
| Reputation | 50.1 | 32.1 | 15.9 | 1.9 |
| Degree of specialisation | 8.8 | 14.3 | 49.9 | 27.0 |
| Customer trust | 69.6 | 24.7 | 5.7 | 0.0 |
| Location of practice | 17.6 | 28.0 | 48.6 | 5.7 |
| Fees/price competitiveness | 2.3 | 8.3 | 52.7 | 36.7 |

Source: Indecon Survey of Doctors.

9.71 One reason why price may not rank relatively highly in relation to the factors influencing a patient's choice of doctor is that a significant proportion (about 30%) of the population are entitled to free GP services under the GMS. Furthermore, this segment of the population is also likely to represent the most intensive users of GP services. For these patients, proximity to their GP, reputation, quality of service and customer trust are likely to be more important factors influencing their choice of GP.

9.72 It should be noted in relation to patient choice, however, that the extent of choice available to patients is influenced by a range of factors, including whether a patient resides in an urban or rural area and the number of GPs with GMS contracts operating within a given area. It is notable in this respect that in rural areas, the majority of GPs possessing GMS lists are located seven miles or more from each other.

**Provision of Price/Fee Information to Patients**

9.73 We noted earlier in this report how asymmetries in the availability of information between the suppliers of medical services, such as GPs and consultants, and their clients may frustrate potential competition by limiting the extent to which clients can make choices on the basis of comparing quality of service and price. One important aspect of this issue concerns the extent to which patients know in advance of a consultation what they will be charged for services offered by doctors. As an input to our examination of this issue, we asked in our survey of the general population the views of consumers on the extent of provision of information by doctors to their clients in advance of services being provided. The survey findings indicate that 52% of those surveyed state that they would typically know in advance what they would be charged for medical services provided by their GP.

9.74 Consumers were also asked whether they felt that more information should be provided on doctors' fees and other charges. Interestingly, our survey found that 45% of respondents were of the view that more information on the scale of doctors' fee and charges is needed.

9.75 It is notable, however, from our analysis of price information that a substantially large proportion of patients consider that an information deficit or lack of transparency exists among the public in relation to the level of fees charged by medical practitioners in Ireland. This feature of the market may partly reflect the existence of regulations concerning advertising and publicity within the medical profession, an issue that we examine further later in this sub-section.

**Extent of Innovation among Medical Practitioners**

9.76 Apart from competition based on price and advertising, an important additional feature of competition concerns the extent of innovation within the medical profession, as this will impact on the quality of services offered by GPs and consultants. The extent of innovation among doctors will be influenced by the range of services provided and the level of access to the latest medical technology and equipment. In this part of the analysis we examine the extent to which GP practices have access to up-to-date medical equipment, and the range of expertise and specialist services they provide to their patients.

9.77 In its survey of GP practices, the Irish College of General Practitioners (ICGP) asked GPs to state the extent to which they had acquired new medical equipment in their practices since 1993. The survey findings, presented in Table 9.21 below, suggest that the majority of GPs (88%) had updated their equipment during the period between 1993 and 1996 (when the survey was undertaken).

**Table 9.21: Irish College of General Practitioners - Survey Data on Whether GPs have Acquired New Medical Equipment in their Practices**

| Acquired since 1993 - % | Not Acquired since 1993 - % |
|---|---|
| 88 | 12 |

Source: Irish College of General Practitioners, National Survey of General Practice, Final Report - 2000, based on data collected in September 1996.

9.78 The ICGP also asked GPs to state the extent to which they employ other specialist health professionals within their practices. According to the survey results shown in Table 9.22 below, the vast majority of GPs are sole practitioners and do not employ other health professionals. Of those practices that do employ other health professionals, the main categories are the public health nurse (employed by 9% of GPs) and counsellor (8%).

**Table 9.22: Irish College of General Practitioners - Survey Data on Extent to which GP Practices Employ Other Health Professionals**

| Professionals Employed | % of GPs |
|---|---|
| Dietician | 6 |
| Physiotherapist | 5 |
| Chiropodist | 7 |
| Counsellor | 8 |
| Public Health Nurse | 9 |
| Other | 4 |
| None | 75 |

Source: Irish College of General Practitioners, National Survey of General Practice, Final Report - 2000, based on data collected in September 1996.

* Note that practices may employ more than one of the above staff types

9.79 Another aspect of the medical services market concerns the extent to which medical practitioners engage in continuous professional development. While the Medical Practitioners Act, 1978 does not contain any provision for the maintenance of competence within the medical profession, the Medical Council's Guide to Ethical Conduct and Behaviour (1998) states that the profession should maintain a lifelong learning experience through continuous medical education. An indication of the extent of continuous medical education among GPs is shown by the findings from the ICGP survey presented in Table 9.23 below. According to the figures, the nature of continuous education has varied, with the majority of GPs preferring to maintain their knowledge through journal reading, ICGP groups sessions and study days, contact with clinical societies and the pharmaceutical industry and through availing of other ICGP facilities. However, it is notable that the proportion taking study courses or distance education has been relatively low, no doubt reflecting the long hours and other pressures on doctors' time.

**Table 9.23: Irish College of General Practitioners - Survey Data on Involvement of GPs in Continuous Medical Education**

| CME Activity | % | Rank |
|---|---|---|
| Journal reading | 81 | 1 |
| ICGP small group | 70 | 2 |
| Clinical Society meetings | 69 | 3 |
| Pharmaceutical industry | 58 | 4 |
| ICGP faculty | 54 | 5 |
| ICGP study days | 52 | 6 |
| Clinical Society study days | 48 | 7 |
| GP Unit or HP meetings | 27 | 8 |
| ICGP courses (other) | 23 | 9 |
| Other course | 19 | 10 |
| Clinical Society – none | 16 | 11 |
| ICGP – none | 12 | 12 |
| Distance Education | 9 | 13 |
| Other – none | 4 | 14 |

Source: Irish College of General Practitioners, National Survey of General Practice, Final Report - 2000, based on data collected in September 1996.

**Extent of Advertising among Medical Practitioners**

9.80 An important issue in assessing the competitive environment within the medical profession is the extent to which practitioners can compete on the basis of advertising. While there are restrictions on the extent and nature of advertising applied by the Medical Council (which we discuss further later in this section) it is important to examine the current picture in terms of how doctors advertise their services in Ireland. As an input to our assessment of the extent and nature of advertising we have completed a detailed analysis of advertising by doctors in the Golden Pages directories and our analysis is presented below.

9.81 According to our analysis of the 2001/02 Golden Pages directories, there were 2,676 advertisements for medical practitioners in the Golden Pages in that year, of which the vast majority (2,170) were advertisements placed by GP practices, while consultants placed a total of 506 (19%) advertisements. The largest proportion of advertisements is (not surprisingly) in the 01 area.

9.82 It is notable that the number of advertisements taken out by GP practices compares with an estimated 2,814 practices in operation, according to the Medical Council, in 2001. However, the lower extent of advertising among consultants can be seen by reference to the 2,644 consultants in practice in 2001, according to Medical Council estimates.

9.83 From our analysis of the types of advert placed in the Golden Pages, it is also the case that the vast majority of medical practitioners – including consultants and GPs - advertise using the basic listings format. This format provides only minimal information such as name, address and telephone contact details.

9.84 The other form of advertising used by medical practitioners in the Golden Pages is the informational format, which is a more prominent format. The details indicate that a total of 90 such advertisements were taken out by medical practitioners in the 2002 Golden Pages directories, of which 67 were by GPs and 23 by consultants.

9.85 It should be noted that there were no in-column display, display or enhanced advertisements taken out by medical practitioners in the Golden Pages, which may reflect the restrictions placed on doctors on the format of advertising by the Medical Council (see next section) or may be related to other factors.

9.86 Overall, our analysis of the extent and format of advertising within the medical profession indicates that while extensive advertising takes place among GP practices, the vast majority of advertisements taken out in the Golden Pages directories utilise the lowest profile listing format, providing only minimal name, address and telephone contact information. The extent of advertising among consultants is even more limited. The absence of advertisements highlighting fees/charges is a notable feature of the medical profession, reflecting the presence of regulations in this area.

**Recruitment of Medical Practitioners**

9.87 One of the characteristics of a competitive market is that the supply of factors of production is highly elastic, meaning that the supply of entrants to the profession responds rapidly to changing market conditions.

9.88 In our survey of doctors, we asked GPs to state whether and to what extent they faced difficulty in recruiting doctors in Ireland over the last 3 years. The survey findings, presented in Table 9.24 below, indicate that the majority of GP practices (72.4% in total) found it either 'extremely difficult' or 'very difficult' to recruit, while 23.5% found it 'difficult' to hire doctors over the last 3 years. Only 4.1% of GPs responding to the survey stated that they had no difficulty in recruiting doctors to work in their practices over the last three years.

**Table 9.24: Indecon Survey of Doctors – Views on Extent of Difficulty in Recruiting Doctors for GP Practices in Ireland over the Last 3 years**

| Level of difficulty | % of responses |
|---|---|
| Extremely difficult | 39.1 |
| Very difficult | 33.3 |
| Difficult | 23.5 |
| No difficulty | 4.1 |

Source: Indecon Survey of Doctors.

9.89 Our survey findings highlight the difficulties faced by the medical practitioners' profession in recent years in relation to recruitment of medical staff to meet the increased demand for health care. The ability of the profession to secure an adequate supply of qualified personnel is an important issue for the ongoing development of a competitive market for the provision of health care in Ireland. The difficulties prevailing in relation to recruitment may reflect restrictions on the supply of doctors, an issue that we examine later by reference to the supply of places and graduates at the medical schools.

# Summary of Empirical Analysis of the Market

9.90 We now draw together the salient points arising from our empirical analysis in the preceding sub-sections.

9.91 The medical profession is comprised of three distinct segments, namely the general practitioner (GP), the non-consultant hospital doctor (NCHD) or junior doctor and the hospital consultant. With the exception of emergency admissions to acute hospitals, the GP is normally the first point of contact between the general public and the medical profession. Under the referral system, patients may be referred to a specialist consultant by his/her GP. Junior doctors normally assist consultants within a hospital setting.

9.92 Medical practitioners' services comprise a range of distinct areas (e.g. GP consultations and prescribing of medicines, and specialist consultations), differentiated on the basis of objective characteristics and price, for which the geographical scope is likely to be local. However, it is appropriate in a sectoral policy study to adopt a more general definition of the relevant market, incorporating the range of services provided by practitioners, the geographic scope of which is the State. In this market environment, the predominant type of supplier is the GP practice, and it is estimated that there are around 2,700 GPs currently practising in Ireland. In addition to GPs, there are estimated to be 2,067 consultants and 3,542 NCHDs practising in Ireland. The majority (51%) of GP practices are single practitioner businesses, while 35% of GPs are partners in a GP practice.

9.93 As at September 2002, there were 15,034 persons on the General Register of Medical Practitioners. However, the number of doctors per inhabitant in Ireland is the second lowest (after the UK) out of fourteen European countries. The average annual rate of increase in the General Register of Medical Practitioners increased from 2.5% per annum between 1991-1996 to 5% per annum between 1997 and 2002. However, that the number of doctors may not have kept pace with the demand for medical services is indicated by the faster growth in the economy over this period (7% on average between 1992 and 2001).

9.94 That the number of doctors may not have kept pace with demand is also reflected in fee income growth. According to our survey of the profession, the vast majority of GPs experienced a significant increase in fee income during the period 1999-2001. Accepting that this was a period of exceptional growth in the Irish economy, the average annual growth in fee income in the case of nearly all respondents to our survey exceeded any measure of the growth in national product. In particular, among the 97.5% of responding practices that indicated an increase in fee income on an annual average basis between 1999 and 2001, 27.9% indicated an increase of between 5-9% per annum and 46.4% stated an increase of between 10-24% per annum.

9.95 Our analysis of the frequency of usage of medical practitioners and the ability of patients to assess the quality of medical services provided would suggest that the extent of information asymmetries in relation to quality is unlikely to be significant among the patients of GP practices in Ireland. In relation to price, while a majority of patients would appear to know in advance what they would be charged for medical services provided by their GP, 45% of respondents stated that more information should be provided on the scale of doctors' fees.

9.96 Regarding the nature of competition on the market, our analysis of professional fees charged by doctors for typical services such as a standard attendance at a doctor's clinic and a home visit point to the presence of some price dispersion in each case. Our analysis of CSO data on doctors' fees has also indicated that the rate of inflation in medical fees has been substantially higher in urban areas than in rural areas over the period 1995-2000.

9.97 In relation to consumers' views on the extent of price competition in the medical profession, it is notable that the vast majority of respondents to our survey were of the view that virtually no or very little price competition exists among medical practitioners in Ireland. This perception may reflect a lack of transparency regarding the level of fees charged to patients in addition to the increase in medical cost inflation in recent years.

9.98 Another vehicle of competition available to medical practitioners is advertising. However, our analysis of Golden Pages entries and of practitioners' responses to our survey of practitioners indicates that the medical profession is one in which advertising is limited as a potential means of competing in the relevant market. Reflecting the advertising restrictions imposed by the Medical Council, adverts are aimed principally as a means of providing minimal information rather than as a tool of competition.

9.99 Finally, in terms of market dynamics, it is relevant to note that medical practitioners have reported difficulties in recruiting doctors over the past three years. Significantly, 72.4% of GP practices found it either 'extremely difficult' or 'very difficult' to recruit doctors during this period. The difficulties prevailing in relation to recruitment may reflect restrictions on the supply of doctors in Ireland, including in relation to the number of medical graduates from the schools of medicine.

# Examination of Restrictions in the Medical Profession

## Introduction

9.100 There are a number of aspects of the operation of the medical practitioners' profession that may impact on the presence and nature of competition in the market for medical services in Ireland. These include entry to the profession, demarcation within the profession, conduct by members of the profession and other organisational issues that operate at market level.

9.101 We begin by identifying the restrictions and requirements governing entry to the medical profession, the conduct of practitioners, demarcation and organisational form. We then concentrate on those restrictions/requirements that we believe are most likely to adversely affect the level of competition in the market. In focusing on these key regulations we examine their justification as set out by the regulatory and other bodies and then evaluate whether or not they are proportional to the achievement of their intended benefits. Many of the restrictions/requirements that we examine have previously been highlighted as important aspects of the difficulties faced within the health system in Ireland.[7]

9.102 Before undertaking our evaluation of the restrictions/requirements operating within the profession it is first necessary to describe in more detail the principal organisations responsible for the regulation of the medical practitioners' profession in Ireland, namely the Medical Council and Comhairle na nOspidéal. We also examine the Medical Council's procedures in relation to complaints, discipline and enforcement.

## Regulation of the Medical Profession

*The Medical Council*

9.103 The Medical Council is the statutory regulatory body for the medical profession in Ireland. The Medical Council was established in April 1979 under the Medical Practitioners Act, 1978 and is a body corporate with perpetual succession.[8]

[7] See, for example, Competition in Medical Markets – Prospects for Ireland – Presentation by Dermot Nolan, Competition Authority on "Competition and Medical Professions", November 11th, 2002.

[8] Amending legislation to the Medical Practitioners Act, 1978, was contained within the Medical Practitioners (Amendment) Act, 1993, and the Medical Practitioners (Amendment) Act, 2002. The election of members of the medical profession to the Council falls under the Medical Council (Election of Members) Regulations, 1978.

9.104 The Medical Council's functions revolve around protection of the public and support of the medical profession, and fall under the following headings:

- Maintaining the General Register of Medical Practitioners and the Register of Medical Specialists;
- Assessing the suitability of medical education and training;
- Ensuring the standards of theoretical and practical knowledge for primary medical qualifications;
- Satisfying itself as to the clinical training and experience required for the granting of a certificate of experience;
- Inquiring into the conduct of registered medical practitioners; and
- Issuing guidance on professional standards within medicine.

9.105 The Medical Council consists of 25 members whose term of office is five years. A summary description of the composition of membership of the Council is shown in Table 9.25.

Table 9.25: Composition of the Medical Council of Ireland

| Member | Nature of Appointment/Background |
|---|---|
| 1 member | National University of Ireland, Cork |
| 1 member | National University of Ireland, Dublin |
| 1 member | National University of Ireland, Galway |
| 1 member | University of Dublin, Trinity College |
| 1 member | Royal College of Surgeons in Ireland |
| 1 member | Registrar of the Medical Council |
| 2 members | Appointed by Royal College of Surgeons in Ireland |
| 2 members | Appointed by the Royal College of Physicians |
| 5 members | Appointed by Minister for Health and Children |
| 6 members | Appointed from registered medical practitioners, of which three are consultants, one from community medicine, one from hospital (non-consultant practice) and two GPs. |
| 4 members | Appointed by Minister for Health and Children of which three are not registered medical practitioners and represent the interests of the general public. |

Source: Medical Council

9.106 It can be seen that membership of the Medical Council is largely dominated by registered practitioners or representatives from the medical schools. Of the ministerial appointees, three are not registered medical practitioners and are responsible for representing the interests of the general public and patients.

9.107 The Council has also established a number of committees under section 13 of the Medical Practitioners Act, 1978. These committees deal with a range of specialist issues, including registration, education & training, fitness to practise, and ethics.

9.108 The Medical Council is funded through the fees charged for the registration and retention of the names of doctors on the General Register of Medical Practitioners and the Register of Medical Specialists. According to the Council, it does not receive any funding from Government or other State source.

9.109 The key regulatory requirement in the medical profession is that all persons wishing to practise medicine in Ireland must be fully registered on the General Register of Medical Practitioners, which is maintained by the Council and published on an annual basis.

*Comhairle na nOspidéal*

9.110 Comhairle na nOspidéal is a statutory body set up under the Health Act, 1970. Its statutory functions are as follows:

1. To regulate the number and type of appointments of consultant medical staff and such other officers or staffs as may be prescribed in hospitals engaged in the provision of services under this Act.
2. To specify qualifications for appointments referred to in sub-paragraph (i) subject to any general requirements determined by the Minister.
3. To advise the Minister or any body established under this Act on matters relating to the organisation and operation of hospital services.
4. To prepare and publish reports relating to hospital services.
5. To perform any functions which may be prescribed, after consultation with the Council (Comhairle na nOspidéal) and with such other bodies engaged in medical education as appears to the Minister to be appropriate, in relation to the selection of persons for appointments referred to in sub-paragraph 1.
6. To perform such other cognate functions in relation to hospital services as may be prescribed.

9.111 A summary description of the membership of Comhairle na nOspidéal is shown in Table 9.26 below. It can be seen that Comhairle is comprised of 27 members. The membership is appointed for a five-year term (the current term ends in 2005). It is notable that Comhairle is largely comprised of medical consultants. This may give rise to concerns in relation to the representativeness of Comhairle and, in particular, the lack of patient/consumer representation.

**Table 9.26: Composition of Comhairle na nOspidéal**

| Member | Nature of Appointment/Background |
|---|---|
| Member 1-18 | Medical consultants (various) |
| Members 19-21 | Department of Health & Children |
| Members 22-24 | Eastern, Midlands and Western Health Boards |
| 1 member | General Practitioner |
| 1 member | Theatre nurse |
| 1 member | Trade union |
| 1 member | Hospital management |

Source: Medical Council

9.112 There are a number of steps, agencies and individuals involved in the processing of creation of a permanent consultant post – from initial awareness of the service needs to the consultant taking up duty. There are four broad phases in the process as follows:

1. Proposal for the post, which involves the initial suggestion for the post and discussions between the health board/hospital and the Department of Health and Children.
2. The approval of the post, which involves the employing authority (health board or voluntary hospital), Comhairle na nOspidéal and the Department.
3. The selection process, which involves the local appointments commission (LAC), the health board and the Department in respect of health board posts; the voluntary hospital in respect of voluntary hospital appointments; and the voluntary hospital and health board in respect of certain joint appointments.
4. The negotiating and uptake of the post, which involves mainly the employing authority and the candidate.

9.113 Given the importance of the above process in relation to the supply of public consultants, we examine the nature of consultant appointments in more detail below under the heading Key Restrictions on Competition.

**Complaints, Discipline and Enforcement**

9.114 Part V of the Medical Practitioners Act, 1978 provides for inquiries to be held into the conduct of registered medical practitioners. The Medical Council is the designated body in this regard.

9.115 Any member of the public may make a complaint against a medical practitioner to the Medical Council. The complaint may concern the doctor's standard of medical care or indeed any other aspect of his/her personal behaviour. A complainant does not have to be a patient of the practitioner concerned.

9.116 The Fitness to [Practise] Committee of the Medical Council adjudicates on complaints. The Committee examines the initial evidence provided, to decide on the need for an inquiry. The practitioner concerned is given the opportunity to furnish his/her observations and comments on a complaint prior to the Committee reaching its determination. The complainant may be requested to respond in turn to the doctor's observations and comments. The Medical Council receives 200-300 complaints annually from patients against their doctors. Of these, 20-30 (i.e. 10%) lead to full inquiries by the Committee. Of the remainder, some are withdrawn, some are deemed not to be the business of the Medical Council and in the remaining cases a decision is made that the doctor has no case to answer.

9.117 Regardless of the outcome an inquiry into fitness to practise, each complaint is examined by the Committee, which comprises both medical and lay members of the Medical Council.

9.118 When a decision is made to hold an inquiry, a team is appointed from the Committee to hear the case. The Medical Council (the Registrar) begins a separate process of collecting evidence for presentation to the inquiry. Both the Registrar and the doctor are usually legally represented.

9.119 Stringent standards of procedure and evidence apply to the holding of an inquiry. The procedure closely resembles that of a court case: sworn evidence is given by witnesses and is subject to cross-examination. In many instances, the standard of proof required to uphold a charge against a doctor is the highest available, namely 'beyond all reasonable doubt'. The inquiry team typically consists of five members of the Fitness to [Practise] Committee.

9.120 The inquiry team is accompanied by a senior barrister who acts as legal assessor. The legal assessor is not a member of the inquiry team but is present to ensure that natural justice and fair procedures are upheld and to provide expert legal advice to the team.

9.121 In general terms, the inquiry team is asked to decide if the doctor involved is guilty of professional misconduct and/or is unfit to practise medicine because of illness. Under the Medical Practitioners Act, 1978 the decision of the inquiry team is final. That decision is reported to the Medical Council, which must then decide what, if any, penalty should follow. If the doctor is found guilty of professional misconduct or found unfit to practise, the doctor may appeal the decision to the High Court, which will conduct a full re-hearing of the inquiry. If the doctor does not appeal the decision, the Medical Council must take the matter to the High Court for confirmation. Only after the High Court has confirmed the finding and associated penalty may the Council take action against the doctor. Thus, the process could result in the erasure of the doctor from the General Register of Medical Practitioners or suspension for a fixed period of time.

9.122 We have examined the complaints, discipline and enforcement procedures in detail and have found no evidence that they are in any way used to institute any anti-competitive practices within the medical practitioners' profession or damage consumer interests. It appears to us that the procedures in place are logically structured, fair and open. We also believe that they are appropriately designed to protect consumer interests and to maintain high standards in the profession.

**Restrictions on Entry**

9.123 There are a number of restrictions or requirements in relation to entry placed upon individuals wishing to practise as a medical practitioner in Ireland. They concern registration, educational and training requirements, and restrictions related to these requirements, which we identify and examine below.

9.124 In Table 9.27 overleaf we summarise the key registration, educational and training requirements for entry to and continued membership of the medical profession in Ireland, and their basis whether legal or other.

Table 9.27: Entry Requirements in the Medical Profession – Summary of Key Registration, Educational and Training Requirements

| Nature of educational/training requirements | Legal or other basis |
|---|---|
| Registration on the Register of Medical Practitioners is required for all doctors who wish to practise as a registered practitioner in Ireland. Registration must be renewed on an annual basis. | Medical Practitioners Act, 1978. |
| Only persons with 'registrable' qualifications can apply for Registration on the General Register. | Medical Practitioners Act, 1978. |
| Only persons with recognised specialist training may apply for registration on the Register of Medical Specialists. | Medical Practitioners Act, 1978. |
| Limitation on study places available at schools of Medicine | No apparent legal basis. Determined, according to IMO, by Higher Education Authority and Department of Education and Science in consultation with Department of Health and Children. |
| The process of creation and filling of GMS posts | No apparent legal basis. Determined by the regional health boards in consultation with the IMO |
| Process of appointment of hospital consultants | Health Act, 1970. Comhairle na nOspideal regulates number and type of posts. |

Source: Indecon analysis of Medical Practitioners Act, 1978, the submission to the tea by the Medical Council and the Council's *Guide to Ethical Conduct and Behaviour* (1998).

*Registration Requirements*

9.125 As stated at the outset of this section, the key regulatory requirement is that one must be registered on the General Register of Medical Practitioners to practise as a registered medical practitioner in Ireland. Registration must be renewed on an annual basis. This requirement has a legal basis in the Medical Practitioners Act, 1978 and the legislation provides that only holders of recognised qualifications may apply for registration (which are discussed below). In addition, suitably qualified and experienced doctors may also be registered on the Register of Medical Specialists.

9.126 According to the Medical Council, "the registration of a doctor's name in the General Register of Medical Practitioners entitles the doctor to engage in the practice of medicine in this country as a registered medical practitioner. This has specific relevance to certain prescribing, certification and other roles within medicine. The principal benefit is to the public, who have prompt access to a defendable source of information on the status of individual doctors. Entry in the Specialist Register indicates that a doctor is capable of independent, unsupervised practice in that speciality, without further training".

*Education and Training Requirements*

9.127 Selection for entry to medical school, which is among the most competitive of all university degree courses, determines selection into the medical practitioners' profession. After completion of medical school, which takes a minimum of 6 years in Ireland, the transition from undergraduate student to fully registered doctor is accomplished during the intern period (12 months). Internships must include medicine and surgery (minimum 3 months each) and in 2002 the Medical Council approved the specialities of obstetrics and gynaecology, emergency medicine, paediatrics and psychiatry for internship training for the first time; each of these new specialities may be held for a minimum of two months and a maximum of three months.

9.128 The legislation underpinning the Medical Council provides that, upon completion of an internship of 12 months duration and on receipt of a Certificate of Experience from the Dean of his/her Faculty of Medicine, an Irish-based practitioner possessing the qualifications listed below may apply for full registration on the General Register of Medical Practitioners:

- Bachelor of Medicine and Bachelor of Surgery of the National University of Ireland (UCD, UCC and NUIG, formerly UCG);
- Bachelor of Medicine and Bachelor of Surgery of the University of Dublin (TCD);
- Licentiate of the Royal College of Physicians of Ireland and Licentiate of the Royal College of Surgeons in Ireland (RCSI).

9.129 It should be noted that, under the Medical Practitioners (Amendment) Act, 2002, a Certificate of Experience may now be issued where a graduate has undertaken an internship in a hospital, health institution, clinic, general medical practice or in a prescribed health service setting.

*Specialist Registration*

9.130 The Register of Medical Specialists was established in January 1997 and is open to the following:

- Every registered medical practitioner who, prior to the establishment of the Register, has, in the opinion of the Medical Council, completed specialist training in a specialist recognised by the Council;
- Every registered medical practitioner who, prior to the establishment of the Register, is granted evidence of satisfactory completion of specialist training by a body recognised by the Council;
- Every national of a Member State of the EU who possesses a diploma, certificate or other evidence of formal qualification in specialised medicine recognised by the Council and awarded by a competent authority designated for that purpose by a Member State, pursuant to any Directive adopted by the Council of the European Communities;
- Any practitioner who satisfies the Council that he/she has completed a programme of training in specialised medicine of a standard considered by the Council to be adequate.

9.131 It should be noted that practitioners' names that may be registered in the Register of Medical Specialists must also have their names entered as fully registered medical practitioners in the General Register.

9.132 The Medical Council has submitted that it plans to introduce a new system of compulsory specialist registration in 2003, after which all independent practitioners will have to be entered on the Register of Medical Specialists.

*Transfer Requirements*

9.133 In relation to medical practitioners transferring to Ireland from abroad, the Medical Council publishes a list of the primary medical qualifications of Member States of the EU recognised for the purpose of granting (by the Medical Council) of full registration in Ireland. Similarly, the qualifications of certain other countries, with which Ireland has reciprocity agreements, are recognised by the Medical Council in granting full licence to practise in Ireland. The countries in question are Australia, New Zealand and South Africa.

9.134 In all cases, the principal task of the Medical Council is to authenticate that the applicant has successfully completed the approved medical qualification. Once that is done, the applicant is eligible to go on the General Register and to practise in Ireland.

9.135 EU nationals who have gained their medical qualifications in third countries (outside of the EU) and are now fully registered in the EU are also eligible to apply for full registration in Ireland without any examination. The Medical Council has informed us that a common route for these types of applicant to gain full registration in the EU is to pass the transfer examination of the General Medical Council in London, which entitles them to practise in the UK and thus in the rest of the EU. The Medical Council treats these applicants in essentially the same way as those described in the previous paragraph.

9.136 Non-EU nationals must sit an examination in order to gain full registration status in Ireland. The examination consists of a clinical section (multiple choice component and objective clinical structured examination) and a language section (in order to demonstrate proficiency in the English language). There is no limit on the numbers passing this examination. In addition, the Medical Council authenticates the applicant's medical qualification on an individual basis (given that the qualification does not fall under its list of recognised international degrees in medicine). The process in all can take 5-6 months.

*Views of Practitioners on Educational and Training Requirements for Entry*

9.137 Before evaluating the regulatory requirements in place in relation to education and training, it is instructive to consider the views of the profession itself on the merits or otherwise of the educational and training requirements. In our survey of doctors we asked GPs to state whether they support the existing level of educational requirements for entry into the medical profession. The survey findings indicate, perhaps unsurprisingly, that the vast majority of practitioners (76.6%) support the existing educational requirements for entry into the profession.

*Continuing Requirements*

9.138 In its Guide to Ethical Conduct and Behaviour (5th edition, 1998), the Medical Council suggests that "doctors must maintain competence in practice and develop a high level of awareness of advances in their own area of medicine by partaking in Continuing Medical Education (CME). The Council regards continuous quality improvement to be a professional responsibility for every doctor".

9.139 The Council recently introduced a Competence Assurance Scheme for the profession. From 1st January 2003 onwards, doctors will be notified of their requirement to enrol in Continuous Professional Development (CPD) programmes. As part of this Scheme, doctors will be required to register on the Register of Medical Specialists. The purpose of the Scheme, according to the Council, is to "ensure that doctors working in independent practice continue to be capable of safe, competent performance at the standards expected of their peers".

*Other Requirements*

9.140 The vast majority of doctors, including those who subsequently practise as GPs and consultants, commence their medical careers as NCHDs. It is a condition of their respective contracts of employment that they are of 'good character'. Equally, the Medical Council requires that doctors be of 'good character' on seeking registration and thereafter throughout their career.

*Limitation on Number of Study Places available at Irish Schools of Medicine*

9.141 Entry to the undergraduate medicine degree courses at the Irish schools of medicine is limited on an annual basis by the minimum entry requirements and the number of study places available. There is no apparent legal basis for the determination of the number of study places available. The Medical Council submits that it does not play a role in the admission of persons to the medical schools and that the CAO is the authority in this respect. According to the IMO, the annual number of places across the five medical schools is determined by the Higher Education Authority and the Department of Education and Science, in consultation with the Department of Health and Children. Given the importance of this constraint as a potential barrier to entry to the profession at graduate level, we evaluate this issue further later in this section.

*Process of Creation and Filling of GMS Posts*

9.142 An area where we believe particular competition issues may arise concerns the process of creation and filling of General Medical Services Scheme (GMS) posts and the extent of access by GPs to GMS contracts. Under section 58 of the Health Act, 1970 a health board shall make available without charge a general practitioner medical and surgical service for persons with full eligibility. Such services are provided under the Choice of Doctor Scheme and in December 2001 there were 1,863 agreements in operation between the health boards and GPs for the provision of GMS services to a total of 1,199,454 medical cardholders.[9] The majority of doctors are paid an annual capitation fee for each eligible person, which takes account of a demographic factor designed to reflect the difference in the demands of various demographic groups, and a geographic factor designed to reflect the expenses incurred in visiting patients in the various age and distance categories in their homes.

9.143 Individual doctors may acquire a GMS contract through three channels, as follows:

- By national competition for an advertised GMS list in a defined area for a vacancy arising or a post created;
- By national competition to post of assistant with a view to partnership with an established GMS contract holder principal;
- Under special regulations in 1999 that permit the right of application to a health board for either limited contract or full contract, conditional on the doctor having been engaged in full-time general practice for a specified period of time.

9.144 Following a review of the GMS scheme in relation to GPs in 1994, an agreement was reached between the management of the health boards and the IMO in relation to the following aspects of the creation of GMS posts and the filling of GMS vacancies[10]:

- The criteria for filling vacancies/creating new GMS posts;
- The consultation process in relation to new posts created and vacancies suppressed;
- Recruitment of Partners and Assistants in GMS practices;
- Interviewing of applicants.

[9] GMS Payments Board, Annual Report, 2001, Op. Cit.
[10] See http://www.gpit.ie/egms/1996/circular0396.html

9.145 A number of aspects of the criteria used for filling GMS vacancies or creating new posts and the consultation process involved merit closer examination from the perspective of their implications for competition in the market for the provision of health services. In the case of the assessment criteria, considerations that are taken into account include the provision of a proper level of access to GP services for patients, that patients have a reasonable degree of choice in selecting their GP and that due regard is given to the viability of practices in the area in question. In relation to the consultation process, we understand that this must involve detailed discussion between with health boards and the IMO (which represents doctors) before a decision is made, though the health board retains the final decision on a post. We examine these aspects further under our section dealing with key restrictions.

*Appointment of Hospital Consultants*

9.146 To understand the process of entry to the top segment of the medical profession – that of hospital consultant – it is first necessary to identify the career structure relating to non-consultant hospital doctors (NCHDs), from whom consultants emerge. There are four grades of NCHD as follows:

- Intern (1 year);
- Senior house officer (usually 3-4 years);
- Registrar (usually 3-4 years); and
- Senior/specialist registrar (usually 3-4 years).

9.147 Assuming a person obtains his/her medical degree at the age of 24 (6 years after completing secondary school), he/she would in principle be in a position to consider a career in consultancy at the age of about 36, assuming he or she has progressed through the ranks just identified. The vast majority of consultants are drawn from senior/specialist registrars, even though there is no formal requirement for this position to be a prerequisite for obtaining the position of consultant. Comhairle na nOspidéal, the statutory body empowered to regulate the number and type of consultants in Ireland, has informed us that the average age of new consultants is 38-40 and most will have spent a period working in hospitals abroad (mainly UK, US and Europe).

9.148 The first step in the process normally involves a proposal being developed by a health board or voluntary agency for a service, which may include consultant posts and other staff. The proposal is made to the Department of Health and Children as founder of the services and, if agreed, funds are allocated by the Department in a letter of (financial) determination for the following year. A service plan is then drawn up by the health board/agency detailing how the funds are to be spent. After the service plan is agreed with the Department, an application for financial clearance for the consultant post is made to the Department.

9.149 When financial clearance/employment control sanction has been given by the Department, application is then made by the health board/agency to Comhairle na nOspidéal for the approval and regulation of the post. After Comhairle approval is granted, the post is advertised. Different recruitment arrangements apply to health boards and voluntary hospitals.

9.150 Under the Health Act, 1970 Comhairle na nOspidéal is empowered to set specific qualifications for consultants in health boards and voluntary hospitals. The key requirements are that the person must be a medical practitioner who is registered otherwise than provisionally or temporarily, in the Register of Medical Practitioners in Ireland. Each person must also possess the professional qualifications specified by Comhairle na nOspidéal in relation to the particular appointment and must be of 'good character'.

9.151 We understand that it takes considerable time to fill permanent consultant posts in the health boards and in some voluntary hospitals the process is very lengthy. Given the importance of this process in relation to the supply of consultants and impact on competition in the market for the provision of medical services, we evaluate this issue further later in this section in relation to the key restrictions operating in the profession.

**Restrictions on Conduct**

9.152 In Table 9.28 we identify the key conduct restrictions/requirements facing medical practitioners. These concern restrictions on direct access by patients to consultants and restrictions on advertising, in addition to the role, if any, played by the Medical Council and the IMO in relation to professional fees.

**Table 9.28: Conduct Restrictions and Requirements in the Medical Profession – Summary of Key Restrictions**

| Nature of restrictions/requirements | Legal or other basis |
|---|---|
| Professional fees | Medical Council states it has no role. IMO negotiates terms and conditions of GMS contracts. |
| Consultant referral - restrictions on direct patient access to medical consultants | Referral system. Medical Council, Guide to Ethical Conduct and Behaviour, basis of which is Medical Practitioners Act, 1978. |
| Restrictions on advertising by doctors, including in relation to practice commencement. | Medical Council, Guide to Ethical Conduct and Behaviour, basis of which is Medical Practitioners Act, 1978. |

Source: Indecon analysis of Medical Practitioners Act, 1978, the submission to the tea by the Medical Council and the Council's *Guide to Ethical Conduct and Behaviour* (1998).

*Professional Fees*

9.153 In relation to the professional fees charges by medical practitioners, the Medical Council has submitted that it has no role to play in relation to fees. The IMO, however, as a registered trade union, negotiates the terms and conditions of GMS contracts applying to doctors treating public patients in the hospital and primary care/GP practice settings.

9.154 Hospital consultants who treat private patients, whether in public hospitals or in private institutions, charge the patient a fee for the service in question. In reality, the majority of day case patients and inpatients have private health insurance and the hospital consultant bills the health insurer directly on behalf of the patient (the Finance Act, 1987 governs the method of payment).

9.155 The main health insurers have a two-tier system. In cases where the individual consultant has signed a Full Cover Scheme Agreement with the health insurer, an agreed fee is paid by the health insurer directly to the consultant on behalf of the patient. In instances where the consultant does not have any arrangement with the health insurance provider, that provider will subvent the patient's/subscriber's professional fee to about 75% of the full cover scheme rate and it is a matter between the consultant and the patient as to whether or not a balance fee be payable by the patient to the consultant.

*Consultant Referral*

9.156 In relation to consultant referral, the Medical Council's Guide to Ethical Conduct and Behaviour (1998) notes that the Council "accepts the principle that the overall management of a patient's health should be under the supervision and guidance of a general practitioner. However, patients have a right to seek another opinion and requests for these should be accepted sympathetically and facilitated, even if the general practitioner is not convinced that such a referral is necessary".

9.157 The Guidelines go on to state that "a consultant should not normally accept a patient without referral from a general practitioner even if he/she has seen that patient in the past".

9.158 The Guidelines also contain a number of rules governing the consultant's responsibility to his/her patient(s), including in relation to inappropriate referral, cross referral, hospital consultation and fee splitting.

9.159 Given the implications of the referral system for consumer choice and competition in the medical profession, we examine the issue of consultant referral in more detail in our section dealing with the Key Restrictions in the profession.

*Restrictions on Advertising*

9.160 In relation to advertising, the Medical Council's Guide to Ethical Conduct and Behaviour (section 15) contains detailed guidelines on the advertisement and publicity of services by medical practitioners. These relate to new practice announcements and their format (no more than two discreet announcements in the national and/or local press, giving certain factual information about the doctor(s)) and practice marketing. The size and profile of advertisements in the national and local directories is limited. Practitioners are also prohibited, in providing information to the public, from making any comments about their personal qualities or expertise.

9.161 Given the implications of the restrictions on advertising for the operation of normal competitive behaviour among medical practitioners, we examine further the regulations in this area and their justification in the Key Restrictions on Competition.

**Restrictions on Demarcation**

9.162 Demarcation within the medical profession arises from training, qualifications, competence and expertise. The GMS contract for instance, stipulates that participating GPs shall provide for eligible persons, on behalf of the relevant health board, all proper and necessary treatment of a kind usually undertaken by a general practitioners and not requiring special skill or experience of a degree or kind that GPs cannot be reasonably be expected to possess. The general practitioner is normally the first point of contact between the patient and the health service and it is estimated that there are approximately 16 million consultations per annum. It is also estimated that GPs fully manage over 90% of all their patients – the remainder are referred to consultants/NCHDs for specialist opinion and, if necessary, treatment.

9.163 In general terms, the role of the NCHD is to diagnose and treat patients under the direction of their consultant medical staff and to document patients on admission and write appropriate follow-up notes in the case notes. Their responsibilities include ordering and interpreting diagnostic tests, initiating and monitoring treatment, instigating discussions with patients and relatives, furthering their own knowledge of diagnosis and participating in programmes of postgraduate medical education and training.

9.164 For consultants, the common contract (1991, 1997) provides that being a consultant involves continuing responsibility for investigation and for the treatment of patients without supervision in professional matters by any other person. The consultant may discharge the responsibility directly with the patient or, in the exercise of his or her clinical judgement, may delegate aspects of the patient's care to other appropriate staff or may exercise responsibility concurrently with another doctor or doctors.

9.165 The demarcation within the medical profession is based essentially on qualification and expertise, and arises from the fact that any one medical practitioner cannot be a master of all areas. Within pathology, for example, the challenges posed by HIV/AIDs, nCJD, super bugs and the appearance of tropical diseases in Ireland cannot be mastered by a general pathologist. Thus, haematologists, immunologists and microbiologists, all of whom fall under the umbrella of pathology, are more likely to have the requisite expertise to diagnose these rare and new conditions. These days, a patient is more, rather than less, likely to require the services of more than one type of consultant during a hospital stay, especially in the case of the very young and the old who may have a multiplicity of ailments.

9.166 According to the Medical Council, the various levels within the profession are intended to ensure that patients are seen by appropriately qualified practitioners, while reflecting the acknowledged 'gatekeeper' role of the GP/family doctor.

9.167 We believe that the consultant referral system has important implications for consumer welfare and competition in the medical profession and we therefore examine this issue in more detail under Key Restrictions on Competition.

*Provision of Midwifery Services*

9.168 We have considered a claim, submitted independently by the European Institute of Midwifery in Ireland, that consultant obstetricians and the health boards have abused a dominant position on the market for births in Ireland by controlling the activities of State-employed midwives and by making it unviable to pursue a career as an independent midwife. The Institute submits evidence on market definition and structure, and highlights restrictions on entry, conduct, demarcation and organisational form relevant to the provision of midwifery services. The Institute is particularly concerned about the decline in the number of home births in Ireland. Under the Health Act, 1970, every woman has a legal right to a home birth. According to the Institute, the number of home births has fallen markedly as a result of the actions of consultant obstetricians and the health boards.

9.169 Our judgement is that the decline of midwifery services, which has occurred over many years, as pointed out in the Institute's submission, is the result of centralised health policy in Ireland and is unlikely to be the result of concerted actions of consultant obstetricians, as claimed by the Institute. The structure of the provision of midwifery services in Ireland reflects not just the forces of supply and demand, but also the need to guarantee the health and safety of mother and child in the process. Successive health strategies have, in our view, been designed, first and foremost, with the objective of ensuring the health and safety of mother and child. We do not believe that competition in the provision of birth services has been adversely affected by this objective, although we appreciate the relevance to both competition and health policy of considering alternative means of providing midwifery services.

**Restrictions on Organisational Form**

9.170 As we have already seen in our analysis of the size distribution of medical practices in Ireland, the vast majority of GP practices are either single-practitioner practices or (small) partnerships. Similarly, consultants in Ireland operate as independent sole practitioners.

9.171 Our analysis of the existing legislation and the Medical Council's Guide to Ethical Conduct and Behaviour has indicated that there are no legal or other explicit restrictions in relation to organisational form pertaining to the practice of medicine by corporate bodies. However, this would seem to run counter to the submission by the Irish Medical Organisation, which stated that "the Medical Council has decreed that general practitioners cannot form limited companies". It would seem, however, that tradition rather than legal or explicit rules has dictated that among GPs the most common form of practice structure is the sole trader with unlimited liability.

9.172 Notwithstanding the above observations, we have examined the views of practitioners in relation to the existing custom within the profession where practitioners do not practice under limited liability ownership structures. The findings from our survey are presented in Table 9.29 below.

**Table 9.29: Indecon Survey of Doctors - Views on Organisational Restrictions on the Medical Profession in Ireland**

| | % Of Responses | | |
|---|---|---|---|
| **Organisational Restrictions** | **Support requirements** | **Do not support requirements** | **Don't know** |
| Custom/Restriction against formation of limited companies | 19.2 | 35.6 | 45.1 |

Source: Indecon Survey of Doctors.

9.173 It is notable that only 19.2% of doctors support the existing custom/restriction on formation of limited companies.

# Key Restrictions on Competition

### Overview

9.174 Having identified the restrictions and requirements on entry, conduct, demarcation and organisational form that operate within the medical practitioners' profession in Ireland, our analysis suggests that the following six areas/restrictions merit closer examination in relation to their potential adverse impact on competition:

- **The limitation on the number of study places available at the Irish schools of medicine;**
- **The process of registration of doctors wishing to transfer from other countries to practise in Ireland;**
- **The process of determination of the number of consultant posts and the filling of such posts;**
- **The process of creation of GMS posts and filling of vacancies;**
- **The restrictions placed on advertising by doctors;**
- **The tradition within the medical profession precluding the practice by GPs of medicine within limited liability structures;**
- **The practice of referral of patients to specialist consultants.**

9.175 In the following paragraphs we assess each of the above restrictions by reference to their justification submitted by the regulatory and other professional bodies and our evaluation of these justifications in relation to the benefits claimed for them.

### Limitation on the Number of Study Places Available at the Irish Schools of Medicine

9.176 An important constraint operating within the medical profession in relation to entry requirements concerns the limitation on the number of study places available on an annual basis across the five schools of medicine in the State.

*Justification*

9.177 No specific justifications have been submitted by the Medical Council or the medical profession's representative bodies in relation to the process of determination of the number of study places available at the Irish schools of medicine.

9.178 The Medical Council submits that it does not play a role in the admission of persons to the medical schools and that the CAO is the authority in this respect. According to the IMO, the annual number of places across the five medical schools is determined by the Higher Education Authority and the Department of Education and Science, in consultation with the Department of Health and Children.

*Evaluation*

9.179 In assessing the extent of the constraint on undergraduate entry to the medical profession in Ireland resulting from the limitation on the number of study places available for the undergraduate degree courses it is instructive to consider the figures published by the CAO on the number of applications versus places offered and accepted for the medicine undergraduate degree courses across the five medical schools. According to the CAO's Board of Directors Report of 2001,[11] there was a total of 5,048 applications for undergraduate medicine degree courses across the five schools in 2001, of which 1,486 were first preference applications. There were 496 offers issued (or 33% of 1st preference applications) and 341 offers accepted. In the 2002 entry stream, the CAO points requirement for entry into medicine degree courses varied between 555 and 565 points, depending on the institution concerned. The maximum level of CAO points attainable is 600.

9.180 The substantial gap between the number of applications and places offered through the CAO system for the undergraduate medicine degree courses points to a significant constraint on entry to the medical profession at undergraduate and graduate levels, which could potentially act as a barrier to competition in the profession in Ireland. Moreover, evidence of a shortage of qualified doctors can be seen from the findings of our survey of medical practitioners, which indicated that the majority of GP practices (72.4% in total) found it either 'extremely difficult' or 'very difficult' to recruit, while 23.5% found it 'difficult' to hire doctors over the last 3 years.

[11] CAO, Board of Directors Report 2001. See www.cao.ie/dir_report/caoreport2001.pdf. Note that these figures refer to new entrants to degree courses and not to repeating students nor to students transferring from other courses in the Irish third-level system.

9.181 We acknowledge the Medical Council's and the IMO's submissions that they do not play any role in the determination of the number of undergraduate places available at the Irish schools of medicine. The Council's role assigned to it by the legislation is to ensure that the quality of medical education meets appropriate standards. This requirement, combined with a resourcing constraint facing the universities, may place an effective cap on the number of places. However, our analysis of the number of applications for and entrants to the medicine degree courses points to the presence of a potential constraint on entry to the profession, which, in the face of increasing demand for health care services, is likely to have contributed to an escalating shortage of qualified practitioners.

9.182 We understand, however, the very significant exchequer costs involved in providing third level medical places and we understand the need to balance the public expenditure impacts against any competition implications.

**Process of Registration of Doctors wishing to Transfer from Other Countries to Practise in Ireland**

9.183 Earlier in this section we described the transfer requirements and the process of registration that operates in relation to doctors from other EU countries and non-EU countries wishing to register to practise in Ireland. The process of registration is relatively straightforward in the case of EU Nationals who have been awarded a qualification in medicine by a competent body or authority designated for that purpose by a Member State under the Directives adopted by the Council of European Communities. However, non-EU nationals or persons not possessing recognised qualifications from EU institutions must sit an examination to gain registration status in Ireland and the Medical Council authenticates the individual's existing qualifications where these are not already recognised. We believe that this process may take up to 6 months to complete.

*Justification*

9.184 No explicit justification has been submitted by the Medical Council in relation to the process of registration of doctors from non-EU countries wishing to practise in Ireland. The Council has stated, however, that it is not possible to list the qualifications necessary in relation to persons from non-EU countries because this information will only come available when an application is received. The IMO has stated in general terms that the requirements in relation to entry to the profession "are in place to ensure that the general public can be assured that they are offered the provision of professional medical care by skilled, competent and ethically committed medical practitioners".

*Evaluation*

9.185 While we understand the general arguments made in relation to the need to carefully control the process of registration of doctors so that only persons that are suitably trained and experienced may practice medicine in Ireland, we believe that the existing regulations concerning transfer requirements for non-nationals and particularly non-EU nationals are likely to constrain potential entry to the medical profession in Ireland.

9.186 By acting as a barrier to entry of professionals wishing to practise medicine, the current regulations are likely to adversely impact on potential competition in the market for medical services. The issue is how to balance these different objectives. We believe that the objective of ensuring high quality educational/training standards could still be achieved through the implementation of appropriate arrangements between the Medical Council and the regulatory and educational institutions in other countries that would facilitate a more streamlined and speedier system of registration for such applicants. This could build on the Medical Council's existing Temporary Registration Assessment Scheme (TRAS) by *inter alia* speeding up the process of full registration of those participating in the TRAS.

**Process of Determination of the Number of Consultant Posts and the Filling of Such Posts**

9.187 We believe that another feature of the medical profession that is likely to adversely impact upon the supply of consultants and the competitive environment in the market for health care concerns the process of determination of the number of public consultant posts and the approach to filling these posts. As stated earlier, Comhairle na nOspidéal is the State agency responsible for regulating the number and type of public sector consultant posts.

*Justification*

9.188 In 1999, Comhairle initiated a process of gathering information on the various steps and agencies involved in the process of determination and filling of public consultant posts, the average time taken for each step, the rationale for such, and the legal and statutory requirements, if any. This process culminated in the establishment of a small working group comprising members of the Department, the health boards and Comhairle na nOspidéal, which reported in June 2000[12].

9.189 The joint report of the working group recognized that there is a need for a coherent strategy regarding the management of the process of planning, funding, regulation, recruitment, and filling of consultant posts. The working group concluded that there are too many steps in the process, significant time lags occur between the steps and a number of agencies are involved more than once in the process.

9.190 It should also be noted that there are additional steps in the process of appointing consultants in the case of the health boards. After Comhairle approves a consultant post, the health board must submit and agree certain documentation with the Department prior to the post being advertised and interviewed by the Local Appointments Commission (LAC). However, a voluntary hospital is free to advertise and fill a post without recourse to the Department, the LAC or any other body.

9.191 The working group's report noted that the difference in time taken to advertise posts in voluntary hospitals, which are free to advertise and fill a post without recourse to the Department or any other body, and the time taken to advertise health board posts by the LAC is significant. In voluntary hospitals, 20% of consultant posts are advertised within 2 weeks, 50% within one month, and 80% within three months. In the health board/LAC system, 5% are advertised within one month, 60% within 5 months and 80% within 8 months. The average time to fill a consultant post in a voluntary hospital or a joint appointment between a voluntary hospital and a health board hospital, after approval by Comhairle, is almost one year, whereas for health board posts through the LAC the average time is approximately 6 months longer.

[12] Report of the Joint Working Group on Consultant Appointment Procedures, Comhairle na nOspideal, June 2000.

*Evaluation*

9.192 The key issues from a competition perspective in relation to the process of determination and filling of public sector consultant posts in the Irish health service concern the length of time required to create and fill posts, and the structure of Comhairle.

9.193 In relation to the creation and filling of posts, we understand that it takes considerable time to fill permanent public consultant posts in the health boards and in some voluntary hospitals the process is very lengthy. In particular, the average time taken to fill a health board post through the LAC, at up to one a half years, appears inordinate compared with most other public sector appointments and particularly compared with the norms prevailing in the private sector. The average time taken to advertise health board consultant posts also appears excessive.

9.194 The extent and speed at which the supply of consultant posts reacts to the demand for specialist medical services is an important aspect of the public healthcare system, which has implications for competition in the provision of health services. In our view, the current process of filling of consultant posts, in terms of the length of time required, constitutes an effective restriction on entry to the consultant practitioner part of the medical profession. Given the increased demand for specialist medical care, both at national and regional level in Ireland, it is evident that the current system prevents the supply of consultants from adjusting to demand. This, in turn, is likely to adversely affect potential competition and consumer interests.

9.195 The recommendations in the Comhairle report aim to reduce the time taken to process and fill a consultant post by 50% (i.e. from 12-18 months down to 6-9 months) on average by removing the requirement that the health board must submit and agree certain documentation with the Department prior to the post being advertised and interviewed by the LAC (for posts in health board hospitals). We understand that the Department has recently approved the recommendations of the working group, which, it is envisaged, will have the effect of making the supply of consultant posts generally more responsive to demands arising in the primary health care system. From a competition perspective we would support the streamlining of the current system and speeding up of the filling of these posts.

9.196 We would also have some concern with the structure of Comhairle na nOspidéal, which is mainly comprised of medical consultants (accounting for 18 out of its 27 members). In particular, as Comhairle regulates the number and type of public consultant posts, we would be concerned that the composition of the board could potentially result in a bias towards maintaining the existing size and composition of the consultant community rather than reflect the demand for specialist practitioners. Combined with the absence of any explicit consumer/patient representation on Comhairle, this would adversely affect the public and patients' interests and also limit potential competition in the medical profession

**Process of Creation of GMS Posts and Filling of Vacancies**

9.197 It has been drawn to our attention through separate submissions by individual practitioners that there may be worries concerning the operation of the GMS scheme in relation to the creation of GMS posts and the filling of GMS vacancies, which are likely to frustrate the formation of new GP practices. GMS contracts permit individual doctors or doctors in partnership with GMS contract principals to provide services free of charge to medical cardholders under the Health Act 1970.

*Evaluation*

9.198 As noted earlier in this section, the process of creation and filling of GMS posts entails a number of phases. In the case of the assessment criteria, considerations that are taken into account include the provision of a proper level of access to GP services for patients, that patients have a reasonable degree of choice in selecting their GP and that due regard is given to the viability of practices in the area in question. An important feature of the assessment process is that the decision on the awarding of GMS contracts, the filling or suppression of vacancies is undertaken in the final analysis by the health boards, but the process must involve consultation with the IMO.

9.199 In relation to the recruitment of partners and assistants with a view to a partnership within a GP practice, the participating doctor who wishes to recruit a partner/assistant applies through open competition to the relevant health board. However, before a position is advertised, the Chief Executive Officer of the health board must first consider whether an optimal general medical service for eligible persons and/or the orderly conduct of general practitioner services in a particular area is already adequately met by existing arrangements. If the CEO considers that the existing level of service is likely to be adequate, he/she must consult formally with and obtain the views of the IMO. Following this consultation process the Chief Executive Officer may determine that an applicant doctor shall not be entitled to recruit a partner or assistant in the GMS.[13]

9.200 We would have concern, from the perspective of entry of new GMS lists and competition in the market, that this process could potentially be used to restrict the creation of assistant/partner positions. Furthermore, in the case of doctors who hold GMS lists as assistants within existing GP practices, the requirement is that the assistant must remain with the existing principal for the first five years in order for the contract to remain valid. This five-year requirement is also necessary if an assistant subsequently decides to apply for a contract to enable he/she to practise independently. However, we understand that GMS practice principals could dissolve contracts before the five-year period, to prevent assistants setting up practice independently.

9.201 Another feature of the appointment of GMS doctors that gives rise to potential competition concerns, is the requirement that due regard be given to the viability of the applicant GP practice in the area concerned. In other words, the geographical location of GMS contracts held by GPs will be influenced by a range of factors, including existing numbers and age of GMS doctors in an area and the size of their GMS lists, the practice profile of the area in question (including the ratio of public to private patients) and the population size in the area and surrounding areas. Again, under the current process of determination of GMS posts, a full consultation process must be undertaken between the health board concerned and the IMO.

[13] See http://www.gpit.ie/egms/1996/circular0396.html

9.202 It has also been submitted that the health boards judge the necessity to create new GMS contracts based on their internal discussions and following consultations with the IMO, which negotiates with the health boards in relation to the terms and conditions of the GMS contracts applying to doctors. We understand that various national agreements between the IMO and the Department of Health and Children govern this process. However, we understand that the IMO, in deciding whether to agree to the creation of new GMS posts, confers with its existing members in a given locality where the post may be considered, including those doctors already possessing GMS lists. This has led historically to a situation where very few new GMS posts have been sanctioned. Moreover, an increase in the population of many towns, for example, has not coincided with an increase in the number of GMS contracts awarded. Contracts that are sanctioned tend to be awarded to existing practices, where doctors join practices and are made partners.

9.203 It is our view that the existing process of determination of GMS contracts may act as a barrier to entry to the medical profession, particularly in relation to the creation of new GP practices. This is particularly likely to be the case in rural or more deprived areas where the possession of a GMS list is much more important in ensuring the successful expansion and development of a new GP practice. Through confidential individual submissions to this study, we understand that the existing process may be used to restrict entry of new GP practices into the market. Where new GMS lists are created, the majority are likely to be based on assistant positions within existing practices, rather than independent contracts permitting individual GPs to form new practices.[14] This feature of the current system has also meant that an increase in the population of many towns, for example, has not resulted in a corresponding increase in the number of new GMS contracts.

9.204 Where GMS contracts are restricted, we also believe that this is likely to result in restricted choice available to patients, as the importance of GMS lists in developing new practices, particularly in small towns and rural areas, means that in the absence of such a contract, GPs can only cater for a much smaller proportion of the overall market (around 30% of the population are eligible to hold medical cards).

[14] It is notable in this regard that, according to the Irish College of General Practitioners survey (2000), only 51% of practising GPs are sole practitioners, while 42% are partners or assistants in existing practices.

9.205 Given the importance for practice development of possession of a GMS list, it is our view that, subject to the operation of reasonable conditions regarding the educational and other standards required by doctors, it should be possible for any suitably qualified GP to apply for a GMS contract. In the interests of promoting competition and patient choice, we believe that no limit should be placed on the number of contracts awarded within a given area. This would facilitate the entry of new GP practices and allow the number of practices to respond to market demand. We do not believe that opening up supply of GMS contracts would lead to excessive fragmentation of general practice, as individual doctors would not have an incentive to seek a GMS list if he/she judged that the existing market in a given area was oversupplied.

**Restrictions on Advertising by Medical Practitioners**

9.206 The fourth area where we would have particular concern in relation to the impact on competition in the medical practitioners' profession concerns the restrictions in place in relation to advertising. As described earlier in this section, the Medical Council's Guide to Ethical Conduct and Behaviour (section D) contains detailed guidelines on the advertisement and publicity of services by medical practitioners.

*Justification*

9.207 The Medical Council submits that the purpose of its guidelines on advertising is "to eliminate false or exaggerated claims of special expertise and to provide a climate in which practitioners do not take unfair advantage over their colleagues". According to the same body, "the benefits to the public of such an approach are enormous in that information provided by the medical profession is not perceived as being driven by motives of personal advancement or simple competition". The Medical Council concludes by stating that "advertising by individual doctors would be inappropriate, misleading and incompatible with [State-decided] healthcare structures".

9.208 The Irish Hospital Consultants Association (IHCA) states in its submission that "advertising by medical practitioners of their skills, expertise or fees would be detrimental to the welfare (health) of the population. Again, while accepting that advertising is a means of generating competition and that competition between providers is in the best interests of the consumer (patient), the IHCA still believes that advertising and exploitation go hand in hand all too frequently and therefore advertising of services and expertise by the medical profession is not in the public interest".

9.209 According to the Irish Medical Organisation's submission to this Study, "the restrictions on advertising are intended to avoid the undermining of professional standards which would arise where the lack of appropriate expert knowledge amongst potential patients could play a decisive role in their choosing the medical practitioner whose 'sales pitch' best satisfies the needs of the patient rather than the more suitably qualified doctor appropriate to their needs deciding on the appropriate clinical response and treatment for the patient".

*Evaluation*

9.210 In assessing the implications for competition within the medical profession of the guidelines and restrictions concerning advertising, it is important to distinguish between advertising that is informative and that which is persuasive. The extent to which patients can make informed choices reflects the knowledge they possess concerning the attributes of GP and specialist consultant services. In general across any product or service, information is a prerequisite for effective competition and ensures that resources are used efficiently to produce products or services that consumers demand.

9.211 While we note the arguments given by the Medical Council, the IMO and the IHCA in relation to the potential adverse implications for patients stemming from inappropriate misleading advertising by medical practitioners, we would not accept that such advertising is likely to be significant in its extent throughout the medical profession. In particular, given the very high standards of education and training that doctors must attain before being permitted to register as practitioners in Ireland, and the importance of reputation effects within a profession such as that of the medical practitioner, it is difficult to argue that advertising is likely to mislead consumers.

9.212 If a medical practitioner is fully registered, and therefore meets the educational, training and other attributes necessary to practise – as the Medical Council would argue as being the objective of registration – then we do not see why comparative informative advertising, pertaining to fees or the range and quality of health services offered, should be restricted in the medical profession.

9.213 We would be concerned that the restrictions on advertising in the profession are likely to act as a barrier to entry and innovation. The existing restrictions in relation to practice announcements, in particular, are likely to frustrate the entry of new practices. It is instructive to note the restrictions set out in the Medical Council's Guide to Ethical Conduct and Behaviour (5th Edition), which state in relation to setting up practice:

> Registered medical practitioners who are setting up practice may make announcements in the following manner:
>
> Two discreet announcements concerning the commencement of practise may be placed in the national and/or local press, giving the registered name of the doctor, the address of the practice, the surgery hours and the telephone number(s). If the doctor wishes to include a speciality, it must be one that is recognised by the Medical Council and the doctor must be eligible to have his or her name entered for that speciality in the Register of Medical Specialists. The announcement should only appear in the Social and Personal section and should not be inserted as a display notice.

9.214 It is also the case that, in providing information to the public, such information must be limited to that specified in the Medical Council's Guide and should not contain comments about the doctor's personal qualities or expertise. In other words, comparative advertising, which permits a doctor to promote his/her practice over that of a competitor, is not permitted. Advertising of fees is also not permitted. These restrictions are likely to particularly affect the ability of new practices to enter the market and develop successfully, and would appear to run contrary to normal competitive behaviour expected in other sectors of the economy. Moreover, the current restrictions are likely to constrain innovation within the medical profession by preventing new entrants who possess specialist competencies in a particular area from informing patients of their services and fees.

9.215 It is also notable from our survey findings that a deficit or lack of transparency exists among the public in relation to the level of fees charged by medical practitioners in Ireland. This feature of the market is likely to partly reflect the existence of regulations concerning advertising and publicity within the medical profession

9.216 It is also noteworthy that a large proportion of the general public believe that there is virtually no or very little price competition among doctors in Ireland. Both this finding, and that concerning information on fees highlighted above, suggest that consumers lack sufficient information to enable them to make informed choices as to their preferred medical practitioner. The restrictions on advertising that operate within the profession are likely to play an important part in explaining these features.

9.217 In summary, the evidence shows that restricting advertising is likely to have negative effects on competition in professional service markets. Subject to the proviso that advertisements are not in bad taste and do not bring the medical profession into disrepute, we do not believe that there should be any restriction on the type or nature of adverts that doctors may place. Patients would stand to benefit from the provision of more information on the costs, range and quality of services offered by existing practitioners and new entrants to the profession, if the existing restrictions on advertising were relaxed.

9.218 We believe that if advertising restrictions were relaxed or removed in the medical profession, the pro-competitive effects just mentioned would follow as practitioners would have no incentive to engage in unscrupulous campaigning. We would have confidence that the ethics, professionalism and commitment of the medical profession would not result in exploitation simply if doctors were permitted to engage in normal advertising behaviour.

**Tradition within the Medical Profession Precluding the Practice of Medicine by GPs within Limited Liability Structures**

9.219 The fifth area restriction that we consider is likely to be potentially harmful to competition within the medical practitioners' profession concerns the tradition within the profession that precludes the practice of medicine by GPs within limited liability structures.

*Justification*

9.220 Our analysis of the existing legislation and the Medical Council's Guide to Ethical Conduct and Behaviour has indicated that there are no legal or other explicit restrictions in relation to organisational form pertaining to the practice of medicine by corporate bodies. However, we believe that custom/tradition precludes such structures from operating within general practice. No justifications for this have, however, been submitted by the Medical Council or the other professional bodies.

*Evaluation*

9.221 The standard argument put forward in relation to the prohibition on the formation of limited liability practices by health professionals is that this would result in a conflict of interest vis-à-vis the professional and ethical requirements generally imposed by the profession's regulatory body. Given the ethics of the medical profession, we do not believe that this would be the case and other forms of patient protection could be introduced, if required.

9.222 We believe that the tradition precluding the operation by general practitioners of limited liability practices is likely to constrain the growth of GP practices and the entry of new and possibly more efficient practices into the market. In relation to the important requirement of ensuring the protection of the patient, we believe that this can be accomplished through the requirement for practitioners to have adequate professional indemnity insurance or adequate practice capitalisation.

9.223 The removal of the current tradition/restriction on organisational form of GP practices could facilitate the profession, and by extension the patient, by allowing improved access to capital that may be required to invest in improved equipment, infrastructure and services. It may also facilitate innovative GPs to expand their practices and could facilitate much needed capital involvement in the sector. This could facilitate the type of investment in primary GP healthcare in Ireland that is evident in 'medical centres' present in some other countries. We see no reason why, with appropriate incentives, GP clinics could not provide a much wider range of services, including X Rays and specialist services, and take some of the pressure from A & E departments. We believe that this could play a role, in conjunction with other initiatives, in transforming the GP sector and improving competition. However, in tandem with the OECD's recommendation on this issue, we believe that while practitioners should have the option to incorporate their practices, they should not be obliged to do so.

**Practice of Referral of Patients to Specialist Consultants**

9.224 Another requirement or restriction operating within the medical profession that we believe is likely to be negative from the perspective of promoting competition and patient choice is the consultant referral system. The referral system requires that patients first attend their GP, who then refers the patient to a suitable consultant. In other words, patients do not have direct access to the consultant community within the Irish health service.

*Justification*

9.225 According to the Medical Council's Guide to Ethical Conduct and Behaviour, the consultant referral system is based on the principle that the GP is the primary carer and acts as a 'gate keeper' within the medical profession. It is also argued by the Irish Hospital Consultants Association that this demarcation within the profession stems from the fact that any one practitioner is typically not sufficiently trained and experienced to master all aspects of health care required by the patient. In this environment, the role of the GP is to provide initial diagnosis of an ailment and then to refer the patient to a suitable qualified specialist, who brings to his/her patient the accumulated value of his/her specialist experience in a given area of medicine.

*Evaluation*

9.226 We note the argument that the medical profession benefits from the referral system through a division of labour that allows the GP to provide general first point of contact medical care to his/her patient, while the consultant community focuses on the provision of specialist care. This approach may also facilitate patients by requiring the GP rather than the patient to accumulate experience and provide information in relation to the most appropriate specialists available to meet their needs, reducing patients' search costs. In other words, the GP acts as a 'gatekeeper' within the medical profession.

9.227 There are two reasons, however, why we consider that the current referral system is likely to adversely affect consumer interests. Firstly, the referral system does not facilitate vertical integration within the provision of health services, whereby GP's and specialist practitioners could work under one practice structure, offering a range of general and specialist services to patients. By opening up the direct supply of specialist services to patients, competition between providers would also be greater, which would benefit consumers through greater choice and lower costs.

9.228 Secondly, the referral requirement could potentially reduce the choice of consultants available to patients and the ability for patients to chose their preferred specialist. This is particularly likely to be the case in respect of patients who are well acquainted with their health condition and with the range of specialist services available. In other words, the argument that patients lack the knowledge required to chose the most suitable specialist for their needs breaks down in the case of patients who are intensive users of the health services and who are well informed as to their health condition and service needs.

9.229 In relation to the argument that the patient does not have access to sufficient information on the most appropriate specialist medical care, we believe that this issue could in part be addressed by reference to the regulations in place concerning advertising and publicity, which we discussed above. We would, however, envisage that even if there is a relaxation of this requirement, most patients would continue to be referred to consultants by their GPs.

# Summary of Main Conclusions

9.230 We summarise in Table 9.30 our main conclusions in relation to the key restrictions operating in the medical practitioners' profession in Ireland. Many of the regulations in the medical profession are appropriately designed to protect patient interests and are justified. There are, however, extensive restrictions that we believe are not proportionate to the achievement of any such benefits and prevent the medical profession from engaging in legitimate competitive practices. Some of the restrictions present may also act to restrict the development of healthcare investment.

**Table 9.30: Summary of Main Conclusions re Key Restrictions in the Medical Practitioners' Profession in Ireland**

**Entry Restrictions**

1. THE LIMITATION ON THE NUMBER OF STUDY PLACES AVAILABLE AT THE IRISH SCHOOLS OF MEDICINE ACTS AS A CONSTRAINT ON GRADUATE ENTRY TO THE MEDICAL PROFESSION IN IRELAND AND IS THEREFORE LIKELY TO LIMIT POTENTIAL COMPETITION IN THE MARKETPLACE.

2. THE PROCESS OF REGISTRATION OF DOCTORS WISHING TO TRANSFER FROM OTHER COUNTRIES TO PRACTISE IN IRELAND CONSTITUTES A POTENTIAL BARRIER TO ENTRY WITHIN THE MEDICAL PROFESSION.

3. THE PROCESS OF DETERMINATION OF THE NUMBER OF CONSULTANT POSTS AND THE FILLING OF SUCH POSTS IS SUCH THAT THE SUPPLY OF CONSULTANTS IS NOT SUFFICIENTLY RESPONSIVE TO THE DEMAND FOR SPECIALISED HEALTHCARE AND ACTS AS BARRIER TO COMPETITION WITHIN THE PROFESSION.

4. THE PROCESS OF CREATION OF GMS POSTS AND FILLING OF VACANCIES MAY ACT AS A BARRIER TO ENTRY TO THE MEDICAL PROFESSION BY RESTRICTING THE CREATION AND DEVELOPMENT OF NEW AND POTENTIALLY MORE INNOVATIVE GP PRACTICES, LIMITING THE CHOICE OF GPS AVAILABLE TO PATIENTS AND CONSTRAINING COMPETITION.

**Restrictions on Conduct**

5. THE PRACTICE OF REFERRAL OF PATIENTS TO SPECIALIST CONSULTANTS IN MOST CASES IS LIKELY TO BE HARMFUL TO CONSUMER INTERESTS THROUGH INCREASING THE COST OF ACCESS TO PATIENTS OF SPECIALISED HEALTHCARE SERVICES.

6. THE RESTRICTIONS PLACED ON ADVERTISING BY DOCTORS RESTRICT THE AVAILABILITY OF INFORMATION TO PATIENTS AND COULD RESTRICT COMPETITION BETWEEN PRACTITIONERS.

**Restrictions on Organisational Form**

7. THE TRADITION WITHIN THE MEDICAL PROFESSION PRECLUDING THE PRACTICE BY GPS OF MEDICINE WITHIN LIMITED LIABILITY STRUCTURES IS LIKELY TO CONSTRAIN THE GROWTH OF GP PRACTICES AND THE ENTRY OF NEW AND POSSIBLY MORE EFFICIENT PRACTICES INTO THE MARKET.

# 10 Competition and the Dentists' Profession in Ireland

## Introduction

10.1 The structure of this section is as follows. We begin by presenting an overview of the definition of the market and the services provided by dentists in Ireland. We also identify the core values and requirements of the dentist, many of which impinge upon the arguments put forward in relation to the regulation of the profession.

10.2 Following the overview of market definition, an empirical analysis is then presented in relation to the size and structure of the market in which dentists operate, and the patterns of demand in the market for dental services in Ireland. Following this, we describe the dentist's client base and the nature of competition, if any, in the market. Our empirical analysis utilises information and data obtained from the Dental Council, in addition to new survey data obtained and compiled by Indecon/London Economics. The Dental Council is the principal body charged with the responsibility of regulating the dentists' profession in Ireland. Regulation is carried out by way of statute and delegated legislation, including the Dentists Act, 1985 and the Council's Guide to Professional Behaviour and Dental Ethics.

10.3 After summarising the results of the empirical analysis of the market, we then examine in detail how the profession is regulated. In addition to describing the role of the Dental Council, we identify and describe the restrictions/requirements that are in place in the profession, and their statutory and other bases, in relation to entry, conduct, demarcation and organisational form.

10.4 Our assessment of the restrictions/requirements most likely to impinge upon competition in the market for dental services is undertaken by reference to their justification by the Council and the other professional bodies, and our judgements as to whether these restrictions/requirements are proportional the benefits that are claimed for them. Finally, we summarise our conclusions on the principal restrictions/requirements that operate in the dentists' profession in Ireland.

# Market Definition and Services provided by Dentists

## Market Definition

10.5 To set the context for our examination of competition in the dentists' profession, it is useful to first consider the relevant market in which dentists practice in Ireland. In competition/antitrust analysis, relevant market definition includes definition of the relevant product market and of the relevant geographic market. The former refers to those products that compete with each other to a sufficient extent to exercise a competitive constraint and the latter refers to the geographic area in which competition between the relevant products takes place. Thus, the relevant product or service market includes all those products or services viewed as sufficiently interchangeable by consumers (demand substitutability) or suppliers (supply substitutability).

10.6 In considering the issue of delineating the boundary of the relevant market, in general, it is useful to review the objective characteristics of the product or service, the nature of demand and supply and the attitudes of different types of user. Such evidence is used when considering specific individual competition cases to inform the so-called 'hypothetical monopolist test' or SSNIP (small but significant non-transitory increase in price) test, which seeks to frame the relevant antitrust market in order to identify the smallest relevant group of producers or providers capable of exercising a competitive constraint on the market. While this test may be less relevant in a sectoral policy study than in a specific anti-trust case (such as a merger investigation) it is useful to consider aspects of relevant market definition in terms of dental services provided and also in terms of the geographic area in which the dental services are provided.

10.7 According to the Dental Council, the dental profession in Ireland is divided into three segments, namely the dentist, dental hygienist and the dental nurse. These segments and the typical tasks each may undertake are as follows:

- Dentists are involved in the prevention, diagnosis and treatment of anomalies of the teeth, jaws, mouth and associated tissues. Dentists may also offer specialists services, such as orthodontics, oral surgery, prosthodontics, periodontics and endondontics.

- Dental hygienists, operating under the supervision of a dentist, carry out prescribed dental work in the scaling, polishing and cleaning of teeth, the application to the teeth and gums of prophylactic materials and in the giving of advice in relation to oral health.
- Dental nurses, operating under the supervision of a dentist, are involved in the preparation of surgeries for operative procedures, the sterilisation and dis-infection of instruments/equipment, the reception and care of patients, the provision of chair-side assistant to the dentist/dental hygienists, dental radiography and appropriate clerical and administrative duties.

10.8 Apart from the above functional segments, the dentists' profession is also segmented on the basis of public and private work. In particular, health board dental surgeons are involved in the treatment of children aged up to 16 years, including the handicapped and institutionalised, and medical cardholders and their dependents. General practitioners engaged in private practice treat adult medical cardholders, employees paying PRSI, the spouses of workers paying PRSI, and private patients. In addition, consultants are employed in the public service by the regional health boards as well as by the two university dental hospitals treating public patients. These consultants also have entitlements to limited private practice. While some specialists operate in the public sector, the majority are engaged in private practice. A small number of dentists may also limit their practice to a specific expertise and operate a referral practice where patients are seen on the basis of referral from a general practitioner.

10.9 In addition to the above registered practitioners, it should also be noted that the wider market also includes dental technicians and denturists, which specialise in the manufacture of dentures and other dental prosthetics. These providers, sometimes collectively referred to as 'dental mechanics', do not have registration status in Ireland and cannot offer their services directly to the public. Currently, it is the dentist that directly supplies and fits the general public with dentures and dental prosthetics.

10.10 In relation to the geographic scope of the market, the need for proximity to patients means that the vast majority of dentists will operate within their local community or on a regional basis if employed by the health boards, though there are no formal restrictions on the location of private practitioners. There are also a number of regional consultants employed in the orthodontics and oral surgery areas, or dental hospital based consultants across a range of disciplines.

10.11 It is also instructive to note the observations of the Dental Council in relation to the evolving nature of demand for dental services. According to the Council, there has been in Ireland a long-term decline in the demand for dentures and a decrease in the demand for extractions. However, demand for routine conservative/restoratory work has increased and is likely to continue to do so. The Council also notes that there has been a substantial increase in demand for cosmetic treatment in recent years.

**Fundamental Requirements of the Dentist**

10.12 According to the Dental Council's Guide to Professional Behaviour and Dental Ethics, "the dentist should be motivated by the three-fold aim of safeguarding the health of patients, promoting the welfare of the community and maintaining the honour and integrity of the dental profession".

# Market Size, Structure and Patterns of Demand

10.13 Our economic analysis of competition in the dentists' profession presented in this section entails the examination of a range of issues concerning market size, structure and the pattern of demand for the services provided by dentists. Our quantitative analysis is supported by the following information sources:

- Data obtained from the Dental Council and the Irish Dental Association;
- New information obtained through the Indecon Survey of Dentists (of which there were 317 responses);
- New information derived from the Indecon Commissioned Survey of the Public (with a sample size of 1,008 adults aged 15+).

10.14 The results yielded by our analysis are relevant in quantifying the economic characteristics of the dentists' profession and are used to help inform our subsequent assessment of the various restrictions/requirements that operate in the profession.

**Number and Growth in Dental Practitioners**

10.15 In this section we look at a number of indicators of the supply of dentists based on data sourced from the Dental Council and the Indecon Survey of Dentists.

10.16 To practise as a dentist in Ireland it is necessary to be registered on the Register of Dentists, which is maintained by the Dental Council. The Register provides a good indication of the total available supply of dentists in a given period, although the actual number of practising dentists may differ from the number on the Register. In Table 10.1 below we indicate the total number of registrants on the Register of Dentists over the period 1990-2002.

**Table 10.1: The Register of Dentists - Total Number of Dentists Registered - 1990-2002**

| Year | Total Registrants | % change |
|---|---|---|
| 1990 | 1,313 | - |
| 1991 | 1,348 | 2.7 |
| 1992 | 1,400 | 3.9 |
| 1993 | 1,433 | 2.4 |
| 1994 | 1,494 | 4.3 |
| 1995 | 1,568 | 5.0 |
| 1996 | 1,609 | 2.6 |
| 1997 | 1,671 | 3.9 |
| 1998 | 1,713 | 2.5 |
| 1999 | 1,794 | 4.7 |
| 2000 | 1,899 | 5.9 |
| 2001 | 2,006 | 5.6 |
| 2002* | 2,072 | 3.3 |
| *Average annual % change* | | |
| 1990-1996 | | 3.4 |
| 1997-2002 | | 4.4 |

Source: The Dental Council
* As at 24th September 2002

10.17 According to the figures, there were 2,072 dentists on the Register of Dentists as at September 2002. The Register has increased in size at a faster rate in recent years, with the average annual rate of increase rising from 3.4% per annum between 1990 and 1996 to 4.4% per annum between 1997 and 2002.

10.18 To what extent has the increase in the number of dentists in the Register of Dentists kept pace with the demand for dentists in Ireland? One approach to assessing the adequacy of supply of dentists is to relate the number of dentists to the population of the State. Our calculations in Table 10.2 indicate that there were 1,891 persons per dentist in Ireland in 2002. This compares with 2,254 persons per dentist in 1996 and 2,616 persons per dentist in 1991. However, it is notable that the rate of increase in the number of dentists on the Register has not kept pace with the growth in income as indicated by the average annual rate of growth in the economy, which reached 6.91% per annum between 1992 and 2001.[1]

**Table 10.2: The Register of Dentists - Total Number of Dentists Registered Relative to Population of the State - 1991-2002**

| Year | Total Registrants | Total Population - Persons | Population per Dentist |
|---|---|---|---|
| 1991 | 1,348 | 3,525,719 | 2,616 |
| 1996 | 1,609 | 3,626,087 | 2,254 |
| 1997 | 1,671 | 3,660,600 | 2,191 |
| 1998 | 1,713 | 3,704,900 | 2,163 |
| 1999 | 1,794 | 3,744,700 | 2,087 |
| 2000 | 1,899 | 3,786,900 | 1,994 |
| 2001 | 2,006 | 3,838,900 | 1,914 |
| 2002 | 2,072 | 3,917,336 | 1,891 |

Source: Indecon calculations based on figures from the Dental Council and the Central Statistics Office, Census of Population and Population and Migration Estimates

10.19 The Dental Council has also, since 2000, maintained a Register of Dental Specialists. Dentists who have acquired specialist training in recognised areas and who have attained the qualifications required by the Dental Council under these areas can apply for registration on the Register of Dental Specialists. In September 2002 there were 82 dentists registered on the Register of Dental Specialists, up from 75 in 2001 and 34 in 2000, as the figures in the next table show.

[1] ESRI data

| Table 10.3: The Register of Dental Specialists - Number of Registrants - 2000-2002 | |
|---|---|
| **Year** | **Total Registrants** |
| 2000* | 34 |
| 2001 | 75 |
| 2002** | 82 |
| Source: The Dental Council; * As at 31st December; ** As at 24th September | |

10.20 Table 10.4 below presents details of the Register of Dental Hygienists over the period 1991-2002. The figures show that there were 223 registered dental hygienists as at September 2002. There has been a steady growth in the number of dental hygienists throughout the 1990s. It is also noteworthy that the ratio of dentists to dental hygienists has fallen continuously over this period.

| Table 10.4: The Register of Dental Hygienists - Number of Registrants - 1991-2002 | | | |
|---|---|---|---|
| **Year** | **Total Registrants** | *% change* | **Ratio of Dentists to Dental Hygienists** |
| 1991 | 43 | | 31.3 |
| 1992 | 53 | *23.3* | 26.4 |
| 1993 | 63 | *18.9* | 22.7 |
| 1994 | 73 | *15.9* | 20.5 |
| 1995 | 91 | *24.7* | 17.2 |
| 1996 | 109 | *19.8* | 14.8 |
| 1997 | 122 | *11.9* | 13.7 |
| 1998 | 136 | *11.5* | 12.6 |
| 1999 | 156 | *14.7* | 11.5 |
| 2000 | 174 | *11.5* | 10.9 |
| 2001 | 204 | *17.2* | 9.8 |
| 2002* | 223 | *9.3* | 9.3 |
| Source: The Dental Council<br>* As at 24th September 2002 | | | |

10.21 An auxiliary class of dental nurse was instituted under the Dentists Act in 2001 and a Register of Dental Nurses was inaugurated on 1 April 2002. As at September 2002 there were 167 dental nurses registered with the Dental Council (see Table 10.5 below).

| Table 10.5: The Register of Dental Nurses - Number of Registrants – 2002 | |
|---|---|
| **Year** | **Total Registrants** |
| 2002 | 167 |
| Source: The Dental Council<br>* As at 24th September 2002 | |

### Changes in Fee Income of Dentists

10.22 The movement in fee income provides a good indicator of supply and demand conditions, and the level of competition in the market for dental services. In Table 10.6 we provide an indication of the recent changes in the fee income generated by dental practices over the period 1999-2001, based on the Indecon Survey of Dentists. The responses to the survey indicate that 95.4% of dentists stated that their fee income increased on an average annual basis over the last three years. Of this total, the largest proportion (41.5%) stated that their fee income increased by between 5-9% per annum on average between 1999 and 2001, while 33.3% recorded an increase of between 10-24% per annum on average. A total of 15.9% of dentists stating an increase in their fees indicated an increase of 0-4% pr annum on average. By contrast, only 4.6% of dentists responding to our survey stated that they experienced a decrease in their fee income on an average annual basis between 1999 and 2001. Of this total, the majority (60%) stated that their fee income decreased by between 5% and 9% per annum.

| Table 10.6: Indecon Survey of Dentists - Approximate Average Annual Change in Total Fee Income of Dental Practices - 1999-2001 - Practices Stating Increase in Fee Income | |
|---|---|
| **Extent of increase** | **% of responses** |
| Firms stating increase in fee income | 95.4 |
| *Of which:* | |
| Over 200% | 0.0 |
| 150-199% | 0.0 |
| 100-149% | 1.0 |
| 50-99% | 2.4 |
| 25-49% | 5.8 |
| 10-24% | 33.3 |
| 5-9% | 41.5 |
| 0-4% | 15.9 |
| Source: Indecon Survey of Dentists. | |

**Practice Status of Dental Surgeons**

10.23 While accurate figures on the number of dentists who are currently practising - as distinct from those that are registered - are not currently available, the Dental Council has provided estimates of the number of practitioners, which are presented in Table 10.7.

**Table 10.7: Estimated Number of Dentists and Dental Hygienists Practising in Ireland – 2002**

| Practitioner | Est. Number Practising |
|---|---|
| Dentist | 1,800 |
| Dental hygienist | 200 |
| *Of which:* | |
| Dentists working in health boards/public dental service | 350 |
| Dentists employed in dental schools/hospitals | 40 |
| Defence Forces | 12 |
| Dentists in private practice | 1,398 |

Source: Dental Council estimates

10.24 The Council estimates that there are currently around 1,800 dentists and about 200 dental hygienists practising in Ireland. Of the estimated number of dentists practising, it is estimated that there are 350 dentists employed in the public dental service, about 40 employed in the dental schools/hospitals and 12 dentists employed in the defence forces. The remainder – about 1,400 dentists – are in private practice.

10.25 According to the Dental Council, there are about 130 non-Irish dentists currently registered in Ireland, of which 95 are from the UK.

### Size Distribution and Concentration of Dental Practices

10.26 An indication of the current size distribution of dental practices can be seen from the figures presented in Table 10.8, based on our survey of dentists. The figures show that the average number of dentists employed per practice in Ireland has risen to 2 in 2001 from 1 previously, though the median suggests that the majority of dentists remain as sole practitioners. However, it is notable that there is a high variation around the average figures presented, and large practices may employ considerably more dentists. The size of practices may have implications for the breath of services that can be provided to clients and therefore the ability of such practices to compete for clients.

**Table 10.8: Indecon Survey of Dentists - Survey Statistics on Practice Size**

| | Number of dentists per practice | | |
|---|---|---|---|
| **Statistics** | **1999** | **2000** | **2001** |
| Average number of dentists per practice | 1 | 1 | 2 |
| Median | 1 | 1 | 1 |
| Standard deviation | 2 | 2 | 2 |
| Standard deviation - % of mean | 128.8 | 133.9 | 130.9 |
| Max | 25 | 28 | 28 |

Source: Indecon Survey of Dentists.

# Customers of Dentists and their Characteristics

10.27 We described earlier in this section the breakdown of services provided by dentists and the distribution of dental practices by type. We showed that the vast majority (78%) of the estimated 1,800 practising dentists work in private practice, while the remainder work in the health boards/public dental service, the dental schools/hospitals and the defence forces. It is important, however, to further investigate the nature of the market served by dentists, and in this section we look at two important characteristics of dentists' client base, namely the frequency of usage of dentists by the general public and the ability of clients to assess the quality of services provided by dentists. This analysis will inform our judgement in relation to the extent, if any, of information asymmetries in the market, which, as noted previously, is an important issue in considering the justification for specific regulations and restrictions that may affect competition.

### Frequency of Usage of Dentists' Services

10.28 The extent to which members of the public employ the services of a dentist, as well as being an indicator of demand, will have an important bearing on the familiarity of patients with the quality and cost of dental services provided.

10.29 In Table 10.9 we provide an indication of the demand for dental services based on our survey of a representative sample of the general adult population. The figures show that the largest proportion (44%) of the adult population surveyed have used the services of a dentist between 1-5 times per year over the last five years, while 28% attended a dentist less than 5 times in the last five years.

| Table 10.9: Indecon Survey of the Public – Extent to which Consumers on Extent of Usage of Services of Dentists over the Past Five Years | | | | | | |
|---|---|---|---|---|---|---|
| **Not in past 5 years** | **Less than 5 times in last 5 years** | **1 – 5 times per year** | **6 – 10 times per year** | **11 – 20 times per year** | **More than 20 times per year** | **Don't know** |
| 20% | 28% | 44% | 5% | 2% | - | - |
| Source: Indecon Commissioned Survey of Representative National Sample of 1,008 Adults. | | | | | | |

**Ability of Clients to Assess Quality of Dental Services**

10.30 As an input to assessing the extent of information asymmetries between dentists and their clients in Ireland, it is useful to present the findings from our survey of consumers, presented in Table 10.10 below. Of the representative sample of the adult population surveyed, 33% stated that they were able to assess the quality of dental services, while a total of 48% were either well able or very well able to assess the quality of services provided by dentists in Ireland.

10.31 Our analysis of the frequency of usage of dentists and the ability of clients to assess the quality of dental services would suggest that the extent of information asymmetries between practitioners and their clients is unlikely to be significant. However, later in this section we also address the extent, if any, or information asymmetries in relation to price, namely whether patients know in advance what they are required to pay for dental services.

| Table 10.10: Indecon Survey of the Public – the Public's Views on their Ability to Assess the Quality of Services Provided by Dentists in Ireland | | | | |
|---|---|---|---|---|
| **Not Able to Assess Quality** | **Able to Assess Quality to Some Extent** | **Well Able to Assess Quality** | **Very Well Able to Assess Quality** | **Don't Know** |
| 14% | 33% | 31% | 17% | 5% |
| Source: Indecon Commissioned Survey of Representative National Sample of 1,008 Adults. | | | | |

# Nature of Competition, if any, on the Market

10.32 Having defined the nature and structure of the market for the provision of dental services in Ireland, it is now necessary to evaluate the nature of competition, if any, in the market. Central to this issue are the roles that price and non-price instruments play in the marketplace. Our analysis in this sub-section, which is based on new evidence assembled for this study, describes the level of fees charged by dentists for standard dental services and assesses the views of both practitioners and the general public on the extent of price competition in the market. We then examine the provision of information on fees by dentists to their patients and investigate the extent of non-price competition in the form of advertising. Finally, we look at another indicator of competition by reference to the recruitment of dentists.

**Dentists' Fees**

10.33 In examining the extent of price competition in the dentists' profession it is instructive to first consider the level and variation in fees charged for standard dental services. In Table 10.11 below we present a statistical analysis of the approximate professional fees charged by a dentist for a standard attendance/check-up at a dentist's surgery. According to the figures from our survey of dentists in Ireland, the average fee charged for a standard check-up visit is €33, while the median fee is €30. However, there is some variation around the mean, with a standard deviation of €13 around the average.

**Table 10.11: Indecon Survey of Dentists - Approximate Professional Fees Charged to Patients for Standard Attendance at a Dentist and for a Typical Tooth Filling - €**

| Statistics | Standard Attendance - € | Typical Tooth Filling - € |
|---|---|---|
| Mean fee charged | 33 | 57 |
| Median | 30 | 55 |
| Standard deviation | 13 | 14 |
| Std deviation as % of mean | 38 | 24 |

Source: Indecon Survey of Dentists.

10.34 We also asked dentists to state the approximate dental fee they charge for a typical tooth filling. The survey figures shown in the third column of Table 10.11 indicate that the average fee charged for a typical tooth filling is €57, while the median level is €55. There is, however, variation in the level of fees charged for a filling, with a standard deviation of €14 around the average level.

10.35 An additional indicator of the recent trends in fees is the average expenditure of households on dentists' fees. In Table 10.12 we present an analysis of average weekly and annual household expenditure on dentists' fees based on the data available from the Household Budget Surveys of 1994/1995 and 1999/2000. We also compare the average expenditure across urban and rural households. It should be noted that the HBS figures presented refer only to private fees paid by households and do not include State funded dental services.

**Table 10.12: Average Annual Household Expenditure on Medical Expenses - Dentists' Fees - 1994/1995 and 1999-2000**

| Dentists' Fees | 1994/95 - €/week | 1999/00 - €/week | 1994/95 - € Annual* | 1999/00 - € Annual* | % change |
|---|---|---|---|---|---|
| Dentists' fees - Urban Households | 1.10 | 1.52 | 57.44 | 79.04 | 37.6 |
| Dentists' fees - Rural Households | 1.24 | 1.24 | 64.69 | 64.69 | 0.0 |
| Dentists' fees - State | 1.16 | 1.42 | 60.06 | 73.94 | 23.1 |

Source: Household Budget Survey – based on survey of 7,877 households between May 1994 and July 1995 and of 7,644 households between June 1999 and July 2000.
* Indecon estimates based on average weekly expenditure*52

10.36 According to our calculations from the Household Budget Survey, average annual expenditure of households across the State on dentists' fees reached €73.94 in 1999/2000. This compares with an average annual expenditure in 1994/1995 of €60.06, indicating an increase of 23.1% in the average household expenditure on dentists' fees over this period. It is notable, however, that the growth in average household expenditure on dentists' fees was considerably higher among urban households (37.6%) over this period. The increase in the nominal level of expenditure on dentists' fees may partly reflect an increase in demand for dental services and partly an increase in dental fees/charges over this period.

**Extent of Price Competition**

10.37 To what extent does price competition exist among dentists practising in Ireland? As part of our survey we asked both the general public/consumers and dental practitioners to provide their views on the extent of price competition and the survey findings are presented in Table 10.13. These show that 15.1% of dentists believe that there is 'very little price competition' while 38.5% are of the view that there is 'limited price competition' among dentists. 3.8% believe that there is 'virtually no price competition' among dentists.

10.38 By contrast, among those responding to our survey of the general public/consumers, 27% are of the view that there is 'virtually no price competition' among dentists, while 26% are of the view that there is 'very little price competition'. In addition, 22% of consumers surveyed stated that they believe there is 'moderate competition', while only 11% believe there is 'significant competition'. These apparent contradictions between the views of practitioners and the general public may partly reflect differences in perception, particularly where the public may feel that apparently high dental charges seem inconsistent with the pattern that could be expected under a competitive market.

Table 10.13: Views of the General Public and Dental Practitioners on Extent of Price Competition among Dentists in Ireland

| Views of: | Virtually No Price Competition | Very Little Price Competition | Limited Competition | Significant Price Competition | Don't Know |
|---|---|---|---|---|---|
| The general public/ consumers | 27% | 26% | 22% | 11% | 14% |
| Dentists | 3.8% | 15.1% | 38.5% | 36.4% | 6.3% |

Source: Indecon Commissioned Survey of Representative National Sample of 1,008 Adults and Indecon Survey of Dentists.

10.39 Given that price is not the only factor influencing the patient's choice of dentist, it is instructive to consider the views of dentists in relation to the relative importance of other factors. The results from the Indecon Survey of Dentists are displayed in Table 10.14.

Table 10.14: Indecon Survey of Dentists - Factors Influencing Choice of Dentist

| Factors | % of Responses | | | |
|---|---|---|---|---|
| | Extremely important | Very important | Important | Not important |
| Quality of services | 71.1 | 18.8 | 8.4 | 1.7 |
| Reputation | 61.4 | 30.5 | 7.6 | 0.4 |
| Degree of specialisation | 11.5 | 18.3 | 43.0 | 27.2 |
| Customer trust | 69.7 | 24.8 | 5.5 | 0.0 |
| Location of practice | 10.9 | 21.8 | 51.3 | 16.0 |
| Fees/price competitiveness | 5.9 | 16.5 | 61.4 | 16.1 |

Source: Indecon Survey of Dentists.

10.40 The survey findings reveal that in terms of degree of importance, 71.1% and 69.7% of dentists respectively perceive that quality of service and customer trust are 'extremely important', while reputation is considered by 61.4% of dentists to be an 'extremely important' factor influencing a client's choice of dentist. It is notable, however, that while fees/price competitiveness are considered to be not important by 16.1% of practitioners, 61.4% and 16.5% of dentists respectively considering price to be either an 'important' or 'very important' factor, while 5.9% of practitioners consider price to be extremely important.

**Provision of Fee Information to Patients**

10.41 An important issue in assessing the potential for greater competition in the dentists' profession concerns the extent of provision by dentists of information concerning fees in advance to clients. In our survey of the general public we asked people to state their views on whether they typically know in advance what they will be charged for services offered by dentists in Ireland, and whether they feel that more information is needed on dentists' fees and charges. According to the survey findings, it is notable that only 40% of consumers surveyed across the general adult population believed that they know in advance what they are required to pay for dental services.

10.42 It is also instructive to note that when asked whether more information on dentists' fees and charges is needed in Ireland, 57% of respondents stated that more information is needed on this area.

10.43 Overall, the survey findings point to a noticeable deficit in information available to the general public in relation to the fees charged by dentists for their services. This perception among the public that more information on fees is required is all the more notable given the Dental Council's Guidelines to Professional Behaviour and Dental Ethics, which states that "an estimate of the cost of treatment should be given and agreement reached before treatment commences. If, in the course of treatment, the estimate has to be revised a full explanation should be given at the first opportunity. In the event of complex and/or costly procedures a written treatment plan and estimate of cost is recommended".

10.44 The finding that a majority of people feel that greater transparency and more information is need in this area may also reflect the impact of regulations in the profession concerning the advertising of fees, an important issue that we examine further below.

**Extent of Advertising among Dentists**

10.45 While there are restrictions on the extent and nature of advertising applied by the Dental Council (which we discuss further later in this section), limited advertising may and does occur and it is important to examine the current picture in terms of how dentists engage in advertising their services in Ireland. As an input to our assessment of the extent and nature of advertising we have completed a detailed analysis of advertising by dentists in the current Golden Pages directories and our analysis is presented below and in Annex 7.

10.46 Our analysis of the overall extent of advertising by dentists in the Golden Pages indicates that, across the State as a whole in 2002, advertisements were placed in the Golden Pages by 1,100 dentists, of which the largest number (426) was in the Greater Dublin area. The remainder of the advertisements were more or less evenly spread out over the remaining Golden Pages regions.

10.47 There are a variety of forms of advertisements placed by dentists in the Golden Pages. These include:

- Basic listing format adverts;
- Informational adverts;
- In-column display adverts;
- Display adverts;
- Enhancements to above formats.

10.48 An analysis of the intensity of advertising undertaken by dentists in the Golden Pages directories, based on the extent of usage of each of the above formats, is presented in Annex 7. The analysis indicates that a total of 1,024 'listings' adverts, 75 'informational' adverts, 1 'in-column display' advert, and 18 'display' adverts were placed by dentists in the 2002 edition of the Golden Pages.

10.49 To place the extent of advertising in context, the overall number of advertisements (at 1,100 in 2002) compares with an estimated 1,398 dentists in private practice according to the Dental Council. However, it is notable that the vast majority of advertisements placed in the Golden Pages utilise the most basic *listing* format, which provides only basic information on the name, address and telephone contact for each dentist. Thus while dentists do engage in advertising, where this occurs, it is almost exclusively low profile in nature, which most likely reflects the regulations that operate within the profession in this area.

**Recruitment of Dentists**

10.50 One of the characteristics of a competitive market is that the supply of factors of production is highly elastic, meaning in this case that the supply of entrants to the dentists' profession should respond rapidly to changing market conditions.

10.51 One indicator of the adequacy of the supply of dentists is the extent to which there are difficulties in recruiting dentists. In Table 10.15 we indicate the views of dentists in relation to the extent of difficulty experienced in recruiting dentists to their practices over the last three years.

**Table 10.15: Indecon Survey of Dentists - Views on Extent of Difficulty in Recruiting Dentists in Ireland over the Last 3 Years**

| Level of difficulty | % of responses |
|---|---|
| Extremely difficult | 9.5 |
| Very difficult | 17.6 |
| Difficult | 31.5 |
| No difficulty | 41.4 |

Source: Indecon Survey of Dentists.

10.52 According to the survey figures, the majority of dentists have stated that they had some difficulty in recruiting dentists with 9.5% stating that they had 'extreme difficulty', while 17.6% and 31.5% stated that it has been 'very difficult' or 'difficult' respectively to recruit dentists in Ireland over the last three years.

10.53 Our survey findings highlight the difficulties faced by the dentists' profession in recent years in relation to recruitment of dental staff to meet the increased demand for dental care.[2] The ability of the profession to secure an adequate supply of qualified personnel is an important issue for the ongoing development of a competitive market for the provision of dental care in Ireland. One important issue in relation to recruitment concerns the supply of dental graduates from the Irish schools of dentistry, an issue that we will examine further later in this section.

[2] Accepting that the rapid growth of the economy during the period may have seen skills shortages generally. What is significant about the present results is that most dentists reported difficulty in recruiting and a significant amount reported 'very' or 'extreme' difficulty in the hiring process.

## Summary of Empirical Analysis of the Market

10.54 We now draw together the salient points arising from the last four sub-sections.

10.55 Dentists are involved in the prevention, diagnosis and treatment of problems of the teeth, jaws, mouth and associated tissues, and may also offer more specialised services, such as orthodontics and oral surgery. On the basis of price and objective characteristics, these services constitute distinct areas of practice for which the geographical scope is likely to be local. However, it is appropriate in a sectoral policy study to adopt a more general definition of the relevant market, incorporating the range of services provided by dentists the geographic scope of which is the State. In this environment, health board dental surgeons treat children up to 16 years, while for the adult population the predominant form of supply is through dentists working in private practice. Demand for extractions and dentures have been in decline in Ireland, while cosmetic treatment of dentures has grown in recent years. Another feature of the market has been the growth of dentists specialising in certain areas. Since 2000, the Dental Council has maintained a register of dental specialists, which has grown from 34 in 2000 to over 80 today.

10.56 In 2002, there were over 2,000 dentists registered with the Dental Council. Of these, the Dental Council estimates that 1,800 were entitled to practise, of which 1,400 or 78% were engaged in private practice. Annual growth in the profession has averaged 4% in the past decade and has been less than that for the economy (7%). Further, the population-to-dentist (registered) ratio has fallen from 2,616 in 1991 to 2,254 in 1996 to 1,891 in 2002. The facts indicate the number of practitioners may not have kept pace with latent demand in recent years. On the other hand, there has been steady growth in the number of dental hygienists, from 43 in 1991 to 204 at the end of 2001, showing an average annual growth rate well over 10%. Noteworthy also is the fact that the ratio of dentists to dental hygienists has fallen continuously during the period. Dental nurses were instituted under the Dentists Act in 2001 and in 2002 there were 167 such nurses. Both dental nurses and dental hygienists are required by law to operate under the supervision of a dentist.

10.57 In addition, the wider market also includes dental technicians and denturists, who specialise in the manufacture of dentures and other dental prosthetics. These providers do not currently have registration status and are prevented from offering their services directly to the public. It is the dentist that directly supplies and fits the general public with dentures and dental prosthetics.

10.58 That growth in the number of dentists may not have kept pace with demand is reflected in fee income growth. According to our new survey evidence, the vast majority of dentists experienced an increase in fee income during 1999-2001. Accepting this was a period of exceptional growth in the economy, the average annual growth in fee income among dental practices exceeded in the vast majority of cases any measure of the growth in national product. Among the 95.4% of firms that stated an increase in fee income, 42.6% stated an increase of 10% or more on an average annual basis. Further, almost 41.5% of practices that stated an increase in fee income stated an increase of 5-9% on an average annual basis during the period. Regarding practice structures, most dentists operate as sole practitioners, although some larger practices employ more than 20 dentists.

10.59 Members of the general public are responsible for generating dentists' fee income and it is likely, on the basis of our survey information, that many people visit dentists as least once per year. Given the relatively high frequency of usage of this profession, it is not surprising to find that most members of the public believe they are able to assess the quality of dental services.

10.60 Regarding the nature of competition on the market, our analysis of professional fees for a standard visit and for a typical tooth filling reveal some variation around the average values of €30 and €55 respectively. According to the public, little or no price competition prevails among the profession and it is notable that a majority (57.4%) of dentists themselves believe that price competition is limited or non-existent in the market. Furthermore, our consumer survey evidence suggests a noticeable deficit in fee information by dentists for their services. It is therefore not surprising to find that most (57%) members of the public believe that more information ought to be provided on dentists' fees.

10.61 Another vehicle of competition available to dentists is advertising. However, our analysis of Golden Pages entries indicates that the profession is one in which advertising is little used as an instrument of competition. Reflecting the advertising restrictions imposed by the Dental Council, adverts are aimed principally as a means of conveying basic factual information rather than as a tool of competition.

10.62 Finally, in terms of market dynamics, it is relevant to note that practitioners (whether in new or established practices) have reported difficultly in recruiting dentists over the past three years. Significantly, most (58.6%) respondents to our survey of dentists indicated that they experienced difficulty in recruiting dentists during the period. This is not consistent with effective competition in the market and may reflect the restrictions or constraints on the level of entry to the profession.

# Examination of Restrictions in the Dentists' Profession

### Introduction

10.63 We now turn to the examination of the restrictions and regulatory requirements in the dentists' profession that may impact on the presence and nature of competition in the market for dental services. Our analysis begins by identifying the restrictions and requirements governing entry to the profession, the conduct of practitioners, demarcation and organisational form. We then concentrate on those restrictions/requirements that we believe are most likely to adversely affect the level of competition in the market. In focusing on these key regulations we examine their justification as set out by the profession's regulatory and other bodies and then evaluate whether or not they are proportional to the achievement of their intended benefits.

10.64 Before undertaking our evaluation of the restrictions/requirements operating within the dentists' profession it is first necessary to describe in detail the principal organisation responsible for the regulation of the profession in Ireland, namely the Dental Council. We also examine the Council's procedures in relation to complaints, discipline and enforcement.

### Regulation of the Dentists' Profession

10.65 Regulation of the dentists' profession in Ireland is the responsibility of the Dental Council ('the Council'). The Council was established under the Dentists Act, 1985, as a body corporate. The Council took up office in November 1985, after taking over from the former Dental Board that had been in existence since 1928.

10.66 The Dental Council has a membership of 19 persons. We present a summary description of the composition of the Council in Table 10.16. It is notable that the Council has a diverse membership, though a large portion is comprised of members of the dentists' profession or representatives of the dental schools. It is also notable that only two of the nineteen members are required to represent consumer interests. Given the statutory basis of the Council, the absence of a more even balance between professional and consumer interests may give rise to concerns in relation to the direction of policy of the Council *vis-à-vis* ensuring the protection of consumer interests.

**Table 10.16: Composition of the Dental Council of Ireland**

| Member | Nature of Appointment/Background |
|---|---|
| 2 members | One member appointed by University College Cork and one member appointed by University College Dublin |
| 1 member | Appointed by the Royal College of Surgeons in Ireland |
| 7 members | Dentists appointed by election from Register of Dentists |
| 2 members | Appointed by the Medical Council of Ireland |
| 1 member | Appointed by the Minister for Education and Science |
| 4 members | Appointed by Minister for Health and Children, of which at least two must not be registered dentists and shall represent the interests of consumers and the general public. |

Source: Dental Council

10.67 The role of the Council was set out under the Dentists Act, 1985, which states that the general concern of the Council shall be to promote high standards of professional education and professional conduct among dentists and which shall, in particular, fulfil the functions assigned to it by the Act.

10.68 The functions of the Dental Council are as follows:

- To establish and maintain Registers of Dentists, Dental Hygienists and Dental Specialists;
- To satisfy itself as to the adequacy and suitability of dental education and training;
- To inquire into the fitness of registered dentists to practise dentistry on the grounds of alleged professional misconduct or unfitness to practise;
- To make, with the consent of the Minister, schemes for the establishment of classes of auxiliary dental workers should such be deemed necessary;
- To discharge the duties assigned to the Council pursuant to the provisions of the EC Dental Directives;
- To advise the dental profession and the public on all matters relating to dental ethics and professional behaviour; and,
- To advise the Minister on all matters relating to the functions of the Council under the Act.

10.69 The Council is self-funding through receipt of income generated from fees charged to dentists for registration and the retention of dentists on the Registers. In 2002, the fees charged by the Council were as follows:

| | | |
|---|---|---|
| Dentists | Registration | €63 |
| | Annual retention | €95 |
| Dental hygienists | Registration | €25 |
| | Annual retention | €25 |
| Dental nurses | Registration | €12.50 |
| | Annual retention | €12.50 |
| Dental specialists | Registration | €127 |
| | Annual retention | €95 |

10.70 The key regulatory requirement enforced by the Dental Council concerns the registration of dentists. To practise as a dentist, dental hygienist or dental nurse in Ireland, persons must have their names entered in the appropriate register. This is a legal requirement set out in the Dentists Act 1985. Membership of the appropriate register must be renewed on an annual basis. We examine the registration requirements in more detail later in this section.

**Discipline, Complaints and Enforcement**

10.71 Part V of the Dentists Act, 1985 deals with the fitness to practise of registered dentists. The Council or any person may apply to the Fitness to [Practise] Committee for an Inquiry into the fitness of a registered dentist to practise dentistry on the grounds of:

- His/her alleged professional misconduct;
- His/her alleged unfitness to engage in such practice by reason of physical or mental disability.

10.72 If the Committee after consideration of an application for an Inquiry is of the opinion that there is a *prima facie* case for holding an Inquiry then it will do so. If it decides that there is not a case for holding an Inquiry, it will inform the Council, which has the reserved right to direct the Committee to hold an Inquiry.

10.73 The Fitness to [Practise] Committee holds an average of one Inquiry every two years, according to the Council's submission. It states: "The grounds for holding Inquiries has invariably been an allegation

of failure on a dentist's part to provide treatment of a quality and in a manner that the public has a right to receive. These allegations would not be simple negligence or inadvertence but a serious falling short in the standards of care that one would expect from a member of the profession".

10.74 The penalties available to the Council following an inquiry are as follows:

(a) Advice;
(b) Admonishment;
(c) Censure;
(d) Attaching conditions to registration;
(e) Suspension from the Register;
(f) Erasure of name from the Register.

10.75 It should be noted that sanctions (d), (e) and (f) cannot be implemented without prior approval from the High Court.

10.76 According to the Council, it has never deemed it necessary to suspend a dentist's registration or to erase a dentist's name from the Register. It has generally favoured the attaching of conditions to registration thereby prohibiting the dentist concerned from carrying out a particular aspect of dentistry until he/she taken an approved training course and demonstrated his/her competence in that aspect.

10.77 Apart from formal Inquiries into a dentist's fitness to practise, the Council has informed us that it receives a considerable number of complaints from members of the public each year. These relate to a dentist's attitude or manner, alleged unsatisfactory treatment, failure to attend or provide emergency treatment, concern over cross infection control and fees. Complainants usually ring the Council's offices in the first instance where they will be given advice, informed of the role of the Council and, if necessary, invited to put the complaint in writing. Written complaints are acknowledged by the Council and with the complainant's permission a copy of the letter is forwarded to the dentist concerned for observations and comments. When a reply is received, the case is referred to a committee of Council for consideration and a determination. The committee's decision is subsequently conveyed to the complainant and the dentist and is reported to the Council. If there is a breach of the Council's rules or codes, such a breach is brought to the attention of the dentist and an explanation requested. According to the Council, this process invariably ends an apology from the dentist and an undertaking to comply in future.

10.78 The procedures in operation in relation to discipline, complaints and enforcement are similar to those operated by the regulatory authorities in the other medical professions. However, in all these professions the extreme option of erasure of a practitioner from the relevant register cannot be undertaken in the absence of High Court approval. In the case of complaints lodged by the general public, we would, however, have some concern that the procedures in place (described above) may not give adequate protection to the consumer. This aspect of the regulation of the profession may also be influenced by the composition of the Dental Council, discussed earlier, and, in particular, the absence of a more even balance between professional and consumer interests

**Restrictions/Requirements re Entry to the Dentists Profession**

10.79 There are a number of restrictions or requirements in relation to entry to the dentists' profession placed upon individuals wishing to practise as a dentist or a dental hygienist in Ireland. They concern registration, educational and training requirements, and restrictions related to these requirements, which we examine in further detail below. In Table 10.17 we summarise the key registration, educational and training requirements for entry and continued membership of the dentists' profession in Ireland, and their basis whether legal or other.

Table 10.17: Entry Restrictions in the Dentists' Profession – Summary of Key Registration, Educational and Training Requirements

| Nature of educational/training requirements | Legal or other basis |
|---|---|
| Registration with the Dental Council is required for dentists and dental hygienists to practise and assume title of dentist, dental hygienist or dental nurse in Ireland. Registration must be renewed on an annual basis. | Dentists Act, 1985 |
| Registrable qualifications for dentists in Ireland are Bachelor of Dental Surgery from NUI, Cork and Bachelor in Dental Science of the University of Dublin. EU Nationals must possess a scheduled dental qualification, while non-EU Nationals must pass a special Council examination. | Dentists Act, 1985 and Dental Council |
| The absence of registration status for dental technicians and denturists | Dentists Act 1985 provides for scheme but has yet to be implemented by Dental Council |
| The limitation on number of places available for study at Irish schools of dentistry. | No legal basis, determined, according to the Council, by the universities in consultation with the Higher Education Authority and Dept of Health and Children. |

Source: Indecon analysis of Dentists Act, 1985 and the submission to the study by the Dental Council.

*Registration Requirements*

10.80 The key regulatory requirement concerning entry into the dentists' profession in Ireland is that a person must be fully registered with the Dental Council to practise dentistry and assume the title of dentist, dental surgeon or dental practitioner. This is a legal requirement under the Dentists Act, 1985. The Dental Council maintains four Registers in this regard, as follows:

- Register of Dentists;
- Register of Dental Hygienists;
- Register of Dental Specialists; and
- Register of Dental Nurses.

10.81 The primary form of registration for dentists is the Register of Dentists. To apply for registration, dentists must demonstrate that they possess the necessary educational qualifications (described below) and are of 'good standing'. An initial registration fee must be paid to the Dental Council. Following initial registration, continued ability to practise dentistry is subject to annual renewal of registration, for which a retention fee is payable.

10.82 The Register of Dental Hygienists comprises dental hygienists who have met the required educational standards. An initial registration fee for dental hygienists is levied, while a retention fee is also levied on an annual basis.

10.83 Entry to the Register of Dental Specialists is available to dentists who have followed an approved specialist training programme and have obtained a specialist qualification. An initial registration fee is levied, followed by an annual retention fee.

10.84 Following approval by the Minister for Health and Children, the Council introduced a new title of dental nurse, commencing on 1 April 2002. As in the case of dentists, dental hygienists, and dental specialists, there is an initial registration fee for the Register of Dental Nurses and an annual retention fee. Registration of dental nurses is voluntary.

*Absence of Registration Status for Denturists/Dental technicians*

10.85 An important restriction in relation to registration concerns the absence of registration status for denturists and dental technicians, which are the categories of related dental professional that specialise in the manufacture and provision of dentures. The existing legislation prevents denturists and dental technicians from selling their products /services directly to the public and traditionally these professionals supplied their products to the market via dentists, with the latter often placing a significant mark-up on prices. While the Dentists Act, 1985, includes a provision stating that the Dental Council may introduce new classes of auxiliary dental worker and registration procedures for these categories, no provision for dental technicians/denturists has yet been made by the Council. Given the demand for these products and the competition implications stemming from the current legal status of such professionals, we evaluate this issue further under our section dealing with key restrictions.

*Educational and Training Requirements*

10.86 There are a number of important educational/training requirements for registration of dentists in Ireland. These divide into the following categories of individual:

- Persons holding Irish-based qualifications;
- Nationals of other EU Member States;
- National of non-EU countries or those not possessing qualifications from EU institutions.

10.87 In relation to Irish-based applicants for registration, there are two courses of study for dentistry available in Ireland, namely the degree of Bachelor of Dental Science from the University of Dublin (Trinity College) and the degree of Bachelor of Dental Surgery from the National University of Ireland, Cork.

10.88 In the case of applications for registration by individuals from EU Member States outside of Ireland, the legal position is that the Council must comply with the provisions of the EU Dental Directive, which recognises scheduled qualifications from institutions in other Member States. These qualifications are specified in the EU Dental Directive 78/686/EEC. In the case of such individuals, the Council is charged as the competent authority in Ireland to process such applications.

10.89 In the case of EU nationals who have received their dental qualifications outside of the EU, the Dental Council, as the competent authority in Ireland, is obliged to assess these applications for registration on an individual case basis.

10.90 In the case of applications for registration by persons from outside the EU, or those who do not possess qualifications from recognised EU institutions, the process requires submission to the Dental Council of details regarding the applicant's qualifications attained. A special Council examination must then be undertaken. According to the Council, the standard of this examination is set to be similar to that required at final dental examinations in Ireland. The Council states that the number presenting for this examination has not so far exceeded six per annum and that no limit is set on pass rates. In addition to the required examination, the Council must also satisfy itself as to the good standing of applicants and a vetting procedure is undertaken which includes a requirement that applicants to demonstrate that they are in good standing with the relevant dental authority in the country in which they previously practised.

10.91 At the present time, there are no reciprocal arrangements between the Dental Council and the regulatory authorities of non-EU countries.

10.92 As we believe that the registration process from dentists coming from outside the EU is a complex procedure that has implications for the entry of dentists to the profession in Ireland, we examine these procedures further later in this section.

*Limitation on the Number of Places available for Study at Schools of Dentistry*

10.93 An important entry restriction operating within the dentists' profession concerns the limitation on the number of places available for study at the Irish schools of dentistry. There does not appear to be a legal basis for the determination of the number of places available in each academic year. According to the Dental Council, the number of places is determined by the universities in consultation with the Higher Education Authority and the Department of Health and Children. The Council has stated that each school takes in 38/40 dental students per annum. We believe this limitation on entry merits closer examination and we evaluate this important feature further later in this section.

*Continuing Requirements*

10.94 The principal requirement for continuing to practise as a dentist in Ireland is that dentists must renew their registration with the Dental Council on an annual basis, for which a retention fee is payable. Apart from this registration requirement, according to the Council, there is no mandatory re-certification or re-accreditation requirement. However, in its guide to Professional Behaviour and Dental Ethics, the Council states: "the dentist shall maintain his/her professional knowledge and skill by continuing education and by keeping himself/herself informed of up-to-date developments in methods of treatment". The Council has also stated that there are over 1,300 dentists registered with the Postgraduate Medical and Dental Board for their voluntary accreditation scheme.

10.95 Before evaluating the impact of the above requirements/restrictions in relation to entry to the dentists' profession it is instructive to consider the views of the profession itself on the educational requirements necessary for entry to the profession. The findings from the Indecon Survey of Dentists on this issue, perhaps not surprisingly, suggest that a significant proportion of practitioners (84.3%) support the requirements; only 7.6% stated that they did not support the requirements and the remainder (8.1%) did not know.

**Restrictions on Conduct**

10.96 There are a number of restrictions operating within the dentists' profession in Ireland that relate to the conduct of members of the profession. The key conduct restrictions within the profession relate to controls on public relations and advertising by dentists, which have their legal basis in the Dentists Act 1985 and the Dental Council's Guidelines on Public Relations and Communications (1990). In addition to examining the restrictions on advertising we also consider the Council and the Irish Dental Association in relation to the professional fees charged by dentists.

*Restrictions on Advertising by Dentists*

10.97 The Dental Council's Guidelines on Public Relations and Communications (1990) sets out the manner in which dentists may advertise their services. According to the Guidelines, a dentist is permitted to:

- Clearly indicate the location of his/her practice;
- To provide appropriate information on the services he/she offers provided the information is truthful, legal and decent, factual, does not mislead the public, does not impugn the professional reputation or integrity of colleagues and does not bring the profession into disrepute.
- In relation to press announcements, a dentist commencing practice may place a press notice up to six times in his/her first year, according to the Guidelines. Such notices may give the dentist's name, address, telephone number and days and hours of practice. The availability of an emergency service, outside of normal surgery hours, may also be indicated.
- In relation to newspaper articles, television and radio broadcasts, lectures to lay audiences, the Council recognises that dentists have the right and indeed duty as citizens to initiate and become involved in public debate. However, it is the view of the Council that a dentist should avoid personal publicity whether in press, radio, TV or other media where such publicity could result in his/her gaining professional advantage.

10.98 The Council's Guidelines also lay down specific requirements in relation to professional plates (size, content and number of plates), signs (size and content) and directories (Golden Pages).

10.99 The Guidelines are clear that "advertising and canvassing beyond the guidelines set out in this document and any other overt promotional activities are strictly prohibited".

10.100 While the regulations do not explicitly prohibit the advertising of fees and charges (other than the general prohibition as set out in paragraph 10.99 above), we understand that tradition within the profession precludes such advertising.

10.101 As we believe that the regulations in force in relation to advertising publicity by dentists are likely to constrain normal competitive behaviour among dental practices, we consider that these restrictions merit further examination later in this section.

10.102 It is instructive at this point to consider the views of dentists on the advertising restrictions in force within the profession. These, perhaps not surprisingly, show large-scale support among dentists for the restrictions, with 73.7% of respondents to the Indecon Survey of Dentists stating that they support the requirements as opposed to 19.5% who declared they did not support the requirements. The remainder (6.8%) stated that they did not know.

*Professional Fees and Charges*

10.103 The Dental Council has stated that it has no remit in relation to dental fees or charges. In addition, the Irish Dental Association has submitted that it has no role in relation to fees/charges for private patients, though it negotiates fees for the two major State funded dental schemes, one with the Department of Health and Children and the second with the Department of Social, Community and Family Affairs. In relation to public sector patients, it is notable that the general medical services scheme (GMS Scheme) has 1,200 agreements in place in December 2001 for the provision of dental services under these schemes.

**Restrictions on Demarcation and Organisational Form**

10.104 A summary of the key demarcation and organisational restrictions operating within the dentists' profession is contained in Table 10.18 below. The key restrictions in this area concern the position of dental hygienists, and the prohibition on formation by dentists of limited companies.

**Table 10.18: Demarcation and Organisational Restrictions in the Dentists' Profession – Summary of Key Restrictions**

| Nature of demarcation and organisation restriction | Legal or other basis |
|---|---|
| Registered Dental Hygienists cannot establish practices independently of registered Dentists and must operate under the supervision of a Dentist. | Dental Council |
| A Body Corporate cannot engage in the practice of dentistry. | Dentists Act, 1985. |

Source: Indecon analysis of Dentists Act, 1985 and the submission to the study by the Dental Council.

*Demarcation*

10.105 Demarcation is a form of indirect entry restriction that limits how far non-members of a given profession are permitted to compete with members in terms of supplying all or a range of services associated with the profession. It is linked to statutory protection of title and reservation of function in that only individuals who hold the professional title are allowed to provide certain specified services.

10.106 Under Part VI of the Dentists Act 1985, unregistered persons are prohibited from the practice of dentistry in Ireland and unregistered persons are prohibited from using the title of dentist.

10.107 Registered dental hygienists are entitled to clean, scale and polish teeth, to apply to the teeth and/or gums medicaments, including solution gels and sealants, and to give advice on oral health. The Council is empowered under the provisions of Part VII of the Dentists Act, 1985 to make schemes for the establishment of classes of auxiliary dental worker and to determine the dental work members of each class may undertake.

10.108 In relation to the ability of the Council to make schemes for the establishment of classes of auxiliary dental workers, we understand that an important issue concerns the absence of any registration status covering related dental professionals such as denturists and dental technicians. The absence of such registration status constitutes a demarcation restriction within the profession and therefore restricts the ability of professionals to compete with each other. We examine this issue in more detail under key restrictions later in this section.

10.109 The views of the general population in relation to the issue of whether dental nurses or dental technicians should be able to perform more routine dental procedures are given in Table 10.19. A significant majority (73%) indicated they would be in favour of para-professional activity being conducted within the profession.

**Table 10.19: Indecon Survey of the Public - Views on Whether Dental Nurses and Dental Technicians Should be Able to Perform More Routine Dental Procedures**

| Very Much in Favour | In Favour of | Against | Very Much Against | Don't Know |
|---|---|---|---|---|
| 17% | 56% | 19% | 6% | 2% |

Source: Indecon Commissioned Survey of Representative National Sample of 1,008 Adults.

10.110 Similar views are indicated by members of the general public in Table 10.20, where 78% of respondents stated that there should be greater overall flexibility to permit trained individuals to perform certain routine tasks traditionally carried out only by dentists.

**Table 10.20: Indecon Survey of the Public - Views on Whether there Should be Greater Overall Flexibility to Permit Trained Individuals to Perform Certain Routine Tasks Traditionally Done Only by Qualified Dentists**

| Very Much in Favour | In Favour of | Against | Very Much Against | Don't Know |
|---|---|---|---|---|
| 17% | 61% | 16% | 3% | 4% |

Source: Indecon Commissioned Survey of Representative National Sample of 1,008 Adults.

**Restrictions on Organisational Form**

10.111 Under section 52 of the Dentists Act, 1985, it is not lawful for any body corporate to engage in the practice of dentistry. This provision, however, does not prohibit the practice of dentistry by a health board, a hospital, a dental school or two or more registered dentists in partnership.

10.112 Pursuant to section 52(3) of the Act, "Every body corporate which engages in the practice of dentistry in contravention of subsection (1) of this section shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding [IR]£1,000". Further, under section 52(4), "Where a body corporate is convicted of an offence under this section, every director, manager and secretary thereof shall, unless he proves that the offence was committed without his knowledge, be guilty of an offence and shall be liable on summary conviction to a fine not exceeding [IR]£1,000".

10.113 The views of practitioners in relation to the (legal) restriction on limited companies are summarised in Table 10.21. On the issue of bodies corporate, the profession appears to be divided: 37.3% indicated they support the restriction, a similar proportion (32.6%) said they did not support the restriction and 30.1% were undecided.

**Table 10.21: Indecon Survey of Dentists - Views on Conduct Restrictions/Requirements within the Dentists' Profession in Ireland**

| | % of responses | | |
|---|---|---|---|
| **Entry/conduct requirements** | **Support requirements** | **Do Not Support requirements** | **Don't Know** |
| Restriction against formation of Partnerships/Limited Companies | 37.3 | 32.6 | 30.1 |

Source: Indecon Survey of Dentists.

10.114 We believe that the legal restrictions preventing the operation of dental practices within limited liability structures or corporate bodies may adversely effect potential competition on the market for dental services through constraining the growth of dental practices and they entry of new and possibly more efficient practices into the market. We therefore examine this important restriction further below.

# Key Restrictions on Competition

### Overview

10.115 Having identified the restrictions and requirements on entry, conduct, demarcation and organisational form that operate within the dentists' profession in Ireland, our analysis suggests that the following six regulations/restrictions merit closer examination in relation to their potential adverse impact on competition:

- **The absence of registration status for suitably qualified denturists and dental technicians;**
- **The limitation on the number of places available for study at the Irish schools of dentistry;**
- **The transfer arrangements in relation to dentists from non-EU countries wishing to practise in Ireland;**
- **The restrictions placed on advertising by dentists;**
- **The restriction that dental hygienists must work under the supervision of dentists; and,**
- **The prohibition on the practice of dentistry by corporate bodies.**

10.116 In the following paragraphs we assess each of the above restrictions by reference to their justification submitted by the regulatory and professional bodies and our evaluation of these justifications in relation to the benefits claimed for them.

### Absence of Registration Status for Suitably Qualified Denturists and Dental Technicians

10.117 A key restriction within the dentists' profession that we believe merits closer examination concerns the registration status of dental technicians and denturists. Currently in Ireland, no legal title of denturist or dental technician exists. This is an important issue, which has been debated extensively over a long period of years.[3] The present absence of legal status for technicians and denturists prevents these related dental professionals from selling their products directly to the public.

[3] The Competition Authority's predecessor, the Restrictive Practices Commission, produced a report in 1982 entitled Report of Enquiry into the Statutory Restrictions on the Provision of Dental Prostheses.

*Justification*

10.118 The principal justification put forward by both the Dental Council and the Irish Dental Association (which is the main representative body for the profession in Ireland) is that only suitably trained and qualified persons should be permitted to practise dentistry and that these persons must be fully registered with the Dental Council. They cite the need at all times to ensure that the patient is protected in the delivery of dental services.

10.119 According to the Council:

> "A dentist on graduation is entitled to engage in independent dental practice. However, he is morally and ethically obliged to only undertake procedures that he is competent to perform and in which he has a reasonable expectation of achieving a satisfactory result. In practice most procedures are carried out at general practitioner level although some complex or difficult procedures will be referred to a specialist for attention. The major exception to the general rule is in the case of orthodontics. This treatment is rarely practised at general practitioner level and has become almost exclusively a treatment carried out by specialists."

10.120 The Council has recently introduced a new class of auxiliary dental worker called the dental nurse and has also commenced a Register of Dental Specialists. According to the Council, it currently has a proposal with the Minister for Health and Children for the introduction of a grade of Orthodontic Therapist, members of which class would be permitted to undertake certain procedures in the delivery of orthodontic treatment. The Council has also lodged a proposal with the Minister in relation to the creation of a Clinical Dental Technician grade, members of which class would be permitted to supply and fit dentures to members of the public.

10.121 In relation to the issue of 'para-professionals' such as denturists and dental technicians, who are not registered, the Irish Dental Association has submitted that:

> "While highly trained for their own remit, these 'para-professionals' are not qualified to undertake additional healthcare. The priority at all times must be the protection of the public in the delivery of health services."

10.122 While the Association has not sought legislation to restrict 'related professionals', it has resisted the legalisation of denturists and dental technicians who seek to be permitted to deliver a health service directly to the public where they are not trained or qualified to do so.

*Evaluation*

10.123 The principal competition concern that arises in relation to the exclusion of denturists and dental technicians from registration is that this practice amounts to reservation of title and practice of dentistry. Reservation of specific activities to dentists may prevent the development of alternative avenues of provision of standard dental services, such as those offered by denturists and dental technicians. Our view is that reservation of practice of dentistry through the exclusion of certain classes of related professionals is likely to have negative implications for consumer welfare and potential competition in the provision of dental services.

10.124 While we note the arguments put forward by the Dental Council and the Irish Dental Association in relation to the requirement for ensuring that patients are treated by suitably trained and qualified professionals, we believe that these concerns can be overcome by the creation of appropriate new classes of auxiliary dental worker. For example, the proposal to create new Orthodontic Therapist and Clinical Dental Technician grades would require new registers to be established for these grades. To gain registration, each category of individual would have to show evidence of appropriate education /training and the initiative is designed to improve quality of service in the supply and fitting of dentures.

10.125 Orthodontic work is the fastest growing area of dentistry in Ireland and the introduction of orthodontic therapists (suitably trained) would help satisfy demand and ensure appropriate quality standards. In relation to denturists, it is clear that the present system which restricts the direct sale of dentures to the public by denturists results in substantial cost increases facing consumers, as dentists may place substantial mark-ups on the cost of dentures.

10.126 Subject to the proviso that professionals must have appropriate educational/training requirements, we are of the view that the interests of consumers and of competition generally would be furthered through the granting of registration status for denturists and dental technicians to allow the latter to sell these products directly to the public as well as via dentists.

### Limitation on the Number of Places available for Study at Schools of Dentistry

10.127 An important constraint on entry to the dentists' profession in Ireland concerns the limitation on the number of places available for study at the Irish schools of dentistry. This limitation acts as a direct barrier to entry to the profession.

*Justification*

10.128 According to the Dental Council, the number of places available for study at the Dublin and Cork schools of dentistry are determined by the universities in consultation with the Higher Education Authority and/or the Department of Health and Children. The Council does not have a role in relation to the number of places available and is only concerned with the quality of education provided.

*Evaluation*

10.129 An analysis of the CAO data in relation to the demand for dentistry degree courses at the Dublin and Cork schools of dentistry indicates that there were 845 applications in total for dentistry degree courses in 2001, of which 204 were first preferences applications[4]. This compares with a total of 101 places offered. Moreover, the high level of CAO points required to enter dentistry (between 530-540 in the 2002 CAO stream) indicates the high relative demand for degree courses.

10.130 The CAO data point to a substantial gap between the demand for places on the degree courses and the available number of places, a pattern that has persisted over the last decade and has been evidenced by the continued very high CAO points requirements for each course.

10.131 This points to a significant constraint on entry, which we believe is likely to act as a potential barrier to competition in the dentists' profession in Ireland. Moreover, evidence of a shortage of qualified dentists can be seen from the findings of our survey of practitioners, which showed that the majority of dentists have experienced considerable difficulties in recent years in relation to recruitment of qualified professionals required to meet the increased demand for dental services in Ireland.

[4] CAO, Board of Directors Report 2001. See www.cao.ie/dir_report/caoreport2001.pdf. Note that these figures refer to new entrants to degree courses and not to repeating students nor to students transferring from other courses in the Irish third-level system.

10.132 We understand the role of the Dental Council in relation to ensuring the quality rather than the quantity of dental graduates. We are also aware that resourcing constraints restrict the supply of study places at the dental schools. However, our analysis of the CAO applications and the number of offers issued points to a high level of demand for each course. The limitation on the number of places available for study therefore acts as a direct constraint on undergraduate entry to the profession in Ireland, which we believe is likely to constrain potential competition in the dentists' profession. We are, however, aware of the need to balance public expenditure and competition interests in this area. Though private providers may enter the marketplace, there are inevitable limits to available public expenditure to pay for the training of dentists within publicly funded colleges.

**Transfer Arrangements in Relation to Dentists from non-EU Countries Wishing to Practise in Ireland**

10.133 A second aspect of entry to the dentists profession in Ireland that raises potential competition issues concerns the transfer arrangements in relation to dentists from non-EU countries, or individuals who do not possess qualifications from recognised EU Institutions wishing to practise in Ireland. We described earlier in this section the current arrangements whereby an individual must submit to the Dental Council details of his/her qualifications attained, while a special Council examination must then be undertaken, and the applicant must also undergo a vetting procedure to ensure good standing as a professional.

*Justification*

10.134 The Dental Council has not submitted any specific justifications in relation to the transfer requirements and evaluation process currently in place in relation to entry of non-EU dentists, other than to state more generally that the objective of educational and training requirements is to ensure that the optimum range and quality of dental services are available to the public. According to the Irish Dental Association, the overall objectives of the entry/education requirements are to ensure the protection of the public, with the requirements leading to high quality graduates with the professional competence required to provide safe and efficient healthcare services.

10.135 According to the Dental Council the number of persons presenting for the special examination required for entry by dentists from outside the EU has never exceeded six per annum and there is no limit on pass rates. It also states that it sets a standard for this examination similar to that required at final dental examinations in the State.

*Evaluation*

10.136 We are in agreement with the views of the Dental Council that the educational requirements must be set so as to ensure that dentists attain a minimum standard of education and training required to safely and efficiently engage in practice. However, our examination has shown that the requirements facing applicants from outside the EU who wish to register to practise in Ireland are onerous in nature, requiring applicants to submit their qualifications, sit a Council examination and also undergo a vetting procedure, including an interview. Moreover, the complexity of transfer arrangements required by the Dental Council appear to exceed those required by the regulatory authorities in the other medical professions, particularly in relation to the vetting procedure that non-EU dentists must undergo.

10.137 We believe that the current transfer arrangements in respect of non-EU dentists are likely to represent a barrier to entry to the profession in Ireland and, as such, could be potentially harmful to competition in dentists' profession. Our view is that the appropriate educational / training requirements for dental practices in Ireland could still be achieved through the operation of reciprocal arrangements between the Dental Council and the regulatory / educational bodies in other non-EU countries.

**Restrictions on Advertising by Dentists**

10.138 The second area where we would have particular concern in relation to the implications for competition in the dentists' profession concerns the regulations operating in relation to advertising and publicity. We described earlier the Dental Council's Guidelines on Public Relations and Communications (1990), which sets out the manner in which dentists may advertise their services.

*Justification*

10.139 In defence of the various advertising restrictions, the Dental Council submits that the tradition in dentistry, as in allied professions, has been to avoid advertising and to rely on word-of-mouth and quality of service to build practices.

10.140 According to the Council, "the delivery of dental services calls for a high degree of detachment and integrity on the part of the dentist in exercising personal judgment on behalf of and in the best interests of the patient. It is difficult to see how the essential trust in the dentist/patient relationship could be maintained if the dentist through overt advertising was perceived to be more interested in personal gain and practice/business promotion than in patient welfare".

10.141 The Council also states that "if one dentist overtly or excessively advertised it is almost certain, as has happened in other professions, that other dentists would follow in order to maintain a level playing pitch. Advertising costs money and the cost must be borne by the practice. Inevitably the quality of service will suffer or the cost of the service to the patient will increase".

10.142 According to the Council, the general effect of the advertising restrictions is that they maintain the dignity and integrity of the dental profession as a caring profession committed to achieving optimum oral health for the public. The essential trust in the dentist/patient relationship is preserved.

10.143 In its submission, the Irish Dental Association states that the benefit of the advertising regulations is that "they ensure that patients are directed to the best qualified and most appropriate *clinician* for their requirements, rather than to the best *marketing* dentist, whose dental skills may not be appropriate to the needs of the patient".

*Evaluation*

10.144 In assessing the implications for competition within the dentists' profession of the guidelines and restrictions concerning advertising, it is important to distinguish between advertising that is informative and that which is persuasive. The extent to which patients can make informed choices reflects the knowledge they possess concerning the attributes of dental services. In general across any product or service, information is a prerequisite for effective competition and ensures that resources are used efficiently to produce products or services that consumers demand.

10.145 While we note the arguments given by the Dental Council and the Irish Dental Association in relation to the potential adverse implications for patients stemming from inappropriate misleading advertising by dentists, we would not accept that such advertising is likely to be significant in its extent throughout the profession. In particular, given the very high standards of education and training that dentists must attain before being permitted to register as practitioners in Ireland, and the importance of reputation effects within a profession such as that of the dentist, it is difficult to argue that advertising which misleads consumers is likely to be pervasive in the profession.

10.146 If a dentist is fully registered, and therefore meets the educational, training and other attributes necessary to practise, then we do not see why comparative informative advertising, pertaining to fees or the range and quality of health services offered, should be restricted in the dentists' profession.

10.147 We would also be concerned that the restrictions on advertising in the dentists' profession are likely to act as a barrier to entry and innovation. In particular, the Council's guidelines on press announcements in relation to dentists setting up practice (which prohibit a dentist setting up practice from advertising more than six times in his/her first year) are likely to severely constrain the ability of dentists entering the market to promote new practices and therefore limit competition in the marketplace. This may also constrain the entry of more innovative dental practices, offering a wider range of specialist services to patients.

10.148 The Council's Guidelines also prohibit the advertising of dental fees. However, the research on the impacts of advertising within similar professions in other countries (including optometry and medicine (see Section 2)) has shown that where advertising of fees take place it typically has a downward effect on fees, while the extent of dispersion of fees between practitioners is also reduced. It is notable that according to the findings from our survey of consumers, the majority of consumers consider that there is virtually no or very little price competition among dentists in Ireland.

10.149 It is also notable from our survey findings that a deficit or lack of transparency exists among the public in relation to the level of fees charged by dentists. The above findings suggest that Irish consumers lack sufficient information to enable them to make informed choices as to their preferred dentist. The restrictions on advertising that operate within the profession are likely to play an important part in explaining these features.

10.150 In summary, while we note the submissions of the Dental Council and the Irish Dental Association, the evidence shows that restricting advertising is likely to have negative effects on competition in professional service markets. Subject to the proviso that advertisements are not in bad taste, do not bring the dentists' profession into disrepute or do not exploit the limited information that some consumers may have, we do not believe that there should be any restriction on the type or nature of advertising or promotion that dentists may undertake. Patients would stand to benefit from the provision of more information on the price, range and quality of services offered by existing practitioners and new entrants to the profession, if the existing restrictions on advertising were relaxed.

**Restriction that Dental Hygienists Must Work under the Supervision of Dentists**

10.151 A third area where we are concerned that current regulations are likely to be anti-competitive concerns the restriction that dental hygienists must work under the supervision of dentists.

*Justification*

10.152 The Dental Council, in its submission, states that the provisions in relation to demarcation of activities ensure that only properly trained and qualified practitioners can provide services to the public. Given the provisions, "the consumer is protected from the charlatan, the unqualified and the incompetent".

10.153 According to the Council, the overall effect of the various restrictions on demarcation, including the requirement that dental hygienists and dental nurses must work under the supervision of a registered dentist, is that the quality of service is maintained at a consistently high level to the benefit of the patient and society in general.

*Evaluation*

10.154 At the present time, dental hygienists, who are entitled to clean, scale and polish teeth and to provide certain treatments for the gums, are required to work under the supervision of a dentist. The argument advanced is that both are part of a 'dental team' and it is more efficient to keep the team within the boundary of one practice. Otherwise, it is argued, there would be referral between dentist and dental hygienist and this could be costly for the patient.

10.155 However, we believe that dental hygienists with sufficient training and/or experience should be allowed to form practices of their own independently of dentists where they may undertake specific dental procedures. Dental health in western economies has improved dramatically over the years and Ireland is no exception. Much of the demand today is for basic oral hygiene and minor treatment of the gums. Permitting dental hygienists to work on their own would in our view be a significant development in meeting demand and improving competition in the marketplace.

**Prohibition on the Practice of Dentistry by Corporate Bodies**

10.156 The fifth key restriction that we believe is likely to be harmful to competition in the dentists' profession concerns the organisational restriction that prohibits the practice of dentistry by corporate bodies. This restriction has its legal basis under the Dentists Act, 1985.

*Justification*

10.157 Other than the arguments advanced in support of the demarcation restrictions identified previously, the Council does not give any specific justification for restricting the organisation of dental practices in Ireland to unlimited liability sole proprietorships and partnerships. However, it notes that in the UK the legislation differentiates between the practice and business of dentistry, thereby permitting limited liability businesses to operate which employ dentists.

*Evaluation*

10.158 The standard argument put forward in relation to the prohibition on the formation of limited liability practices by health professionals is that this would result in a conflict of interest vis-à-vis the professional and ethical requirements generally imposed by the profession's regulatory body. In order words, as the dentist, in this case, must take final responsibility for the care of his/her patient(s), the operation of limited liability would contravene this requirement and would mean that the interests of the patient may not be fully protected.

10.159 Notwithstanding the above argument, we believe that the restriction on the formation of corporate bodies by dentists is likely to constrain the growth of practices and the entry of new and possibly more efficient dental practices into the market. In relation to the important requirement of ensuring the protection of the patient, we believe that this can be accomplished through the requirement for practitioners to have adequate professional indemnity insurance or adequate practice capitalisation.

10.160 The removal of the restriction on organisational form of dental practices could facilitate the profession, and by extension the patient, by allowing improved access to capital that may be needed to invest in improved equipment, infrastructure and services. It may also facilitate innovative dentists to expand their practices. However, in tandem with the OECD's recommendation on this issue, we believe that while practitioners should have the option to incorporate their practices, they should not be obliged to do so.

# Summary of Main Conclusions

10.161 We summarise in Table 10.22 our main conclusions in relation to the key restrictions operating in the dentists' profession in Ireland. Our analysis suggests there are significant restrictions on competition in the profession that have an appreciable adverse effect on consumer interests. We do not believe that these are justified by any potential benefits.

Table 10.22: Summary of Main Conclusions re Key Restrictions in the Dentists' Profession

Entry Restrictions

1. THE ABSENCE OF REGISTRATION STATUS FOR SUITABLY QUALIFIED DENTURISTS AND DENTAL TECHNICIANS IS LIKELY TO RESULT IN A BARRIER TO ENTRY TO THE PROFESSION AND THEREFORE ADVERSELY AFFECT POTENTIAL COMPETITION IN THE MARKET.

2. THE TRANSFER ARRANGEMENTS IN RELATION TO DENTISTS FROM NON-EU COUNTRIES WISHING TO PRACTISE IN IRELAND ARE ALSO LIKELY TO ACT AS A BARRIER TO ENTRY TO THE PROFESSION AND CONSTRAIN POTENTIAL COMPETITION IN THE MARKET.

3. THE LIMITATION ON THE NUMBER OF PLACES AVAILABLE FOR STUDY AT IRISH SCHOOLS OF DENTISTRY ACTS AS A BARRIER TO ENTRY TO THE PROFESSION AND IS THEREFORE LIKELY TO CONSTRAIN COMPETITION IN THE MARKET FOR DENTAL SERVICES.

Restrictions on Conduct

4. THE RESTRICTIONS PLACED ON ADVERTISING BY DENTISTS, BY CONSTRAINING NORMAL COMPETITIVE BEHAVIOUR, ARE LIKELY TO ADVERSELY AFFECT COMPETITION IN THE DENTISTS' PROFESSION.

Restrictions on Demarcation

5. THE RESTRICTION THAT DENTAL HYGIENISTS MUST WORK UNDER THE SUPERVISION OF DENTISTS IS LIKELY TO CONSTRAIN THE ENTRY OF NEW PRACTICES OPERATED BY HYGIENISTS, REDUCE THE OVERALL SUPPLY OF DENTAL SERVICES AND ADVERSELY AFFECT COMPETITION AND CONSUMER INTERESTS.

Restrictions on Organisational Form

6. THE PROHIBITION ON THE PRACTICE OF DENTISTRY BY CORPORATE BODIES IS LIKELY TO CONSTRAIN THE GROWTH OF PRACTICES AND THE ENTRY OF NEW AND POSSIBLY MORE EFFICIENT DENTAL PRACTICES INTO THE MARKET.

# 11 Competition and the Optometrists' Profession in Ireland

## Introduction

11.1 The structure of this section is as follows. We begin by presenting an overview of the definition of the market and the services provided by optometrists in Ireland. We also identify the core skills and requirements of the optometrist, many of which impinge upon the arguments put forward in relation to the regulation of the profession.

11.2 Following the overview of market definition, an empirical analysis is then presented in relation to the size and structure of the market in which optometrists operate, and the patterns of demand in the market for optometric services in Ireland. We then describe the optometrist's client base and the nature of competition, if any, on the market. Our empirical analysis utilises information and data obtained from the Opticians Board and the Association of Optometrists, in addition to new survey data obtained and compiled by Indecon/London Economics. The Opticians Board is the principal body charged with the responsibility of regulating the optometrists' profession in Ireland. Regulation is carried out by way of statute and delegated legislation, including the Opticians Act, 1956 and the Opticians Board's Rules (1977) and Amendment Rules (1993).

11.3 After summarising the results of the empirical analysis of the market, we then examine in detail how the profession is regulated. In addition to describing the role of the Opticians Board, we identify and describe the restrictions/requirements that are in place in the profession, and their statutory and other bases, in relation to entry, conduct, demarcation and organisational form.

11.4 Our assessment of the restrictions/requirements most likely to impinge upon competition in the market for optometry services is undertaken by reference to their justification by the Opticians Board and the other professional bodies, including the Association of Optometrists, and our judgements as to whether these restrictions/requirements are proportional to the benefits that are claimed for them. Finally, we summarise our conclusions on the principal restrictions/requirements that operate in the optometrists' profession in Ireland.

# Market Definition and Services provided by Optometrists

### Market Definition

11.5 To set the context for our examination of competition in the optometrists' profession, it is useful to first consider the relevant market in which optometrists practise in Ireland. In competition/antitrust analysis, relevant market definition includes definition of the relevant product market and of the relevant geographic market. The former refers to those products or services that compete with each other to a sufficient extent to exercise a competitive constraint and the latter refers to the geographic area in which competition between the relevant products/services takes place. Thus, the relevant product or service market includes all those products or services viewed as sufficiently interchangeable by consumers (demand substitutability) or suppliers (supply substitutability).

11.6 In considering the issue of delineating the boundary of the relevant market, in general, it is useful to review the objective characteristics of the product or service, the nature of demand and supply and the attitudes of different types of user. Such evidence is used when considering specific individual competition cases to inform the so-called 'hypothetical monopolist test' or SSNIP (small but significant non-transitory increase in price) test, which seeks to frame the relevant antitrust market in order to identify the smallest relevant group of producers or providers capable of exercising a competitive constraint on the market. While this test may be less relevant in a sectoral policy study than in a specific antitrust case (such as a merger investigation) it is useful to consider aspects of relevant market definition in terms of the services provided and also in terms of the geographic area in which the services are provided.

11.7 According to the Opticians Board, there are two distinct branches of the opticians' profession in Ireland, namely the ophthalmic optician ('optometrist') and the dispensing optician. According to the Optician's Board, the scope of practice of, and services provided by, ophthalmic opticians or optometrists are as follows:

- Measurement and analysis of the visual function with the aid of instruments (objective and subjective refraction);
- Correction and compensation of visual defects by prescribing optical appliances;
- Detection of abnormal ocular conditions and referral for medical attention, where appropriate;
- Performing screening tests;
- Patient evaluation, fitting and after-care in relation to contact lenses;
- Dispensing of optical appliances and specialised low vision optical aids;
- Repair, cleaning and adjustment of visual appliances.

11.8 It is important to note that ophthalmic opticians (optometrists) are specifically prohibited from diagnosis or treatment of pathology as distinct from detection and referral to a specialised registered medical practitioner, such as an ophthalmologist or ophthalmic surgeon.

11.9 According to the Optician's Board, the scope of practice of, and services provided by a dispensing optician are as follows:

- The interpretation of prescriptions for corrective visual appliances issued by an ophthalmic optician (optometrist) or medical practitioner;
- The fitting and supply of corrective spectacles, contact lenses or other appliances in accordance with the prescription issued by an ophthalmic optician (optometrist) or medical practitioner;
- Advice on size, style and frame of spectacles;
- After care in relation to contact lenses under the direction of the prescribing optician (optometrist).

11.10 It should be noted that the above aspects of the scope of practice of a dispensing optician may also, of course, be carried out by an ophthalmic optician or optometrist.

11.11 According to the Association of Optometrists Ireland, one of the principal representative bodies for the profession, significant demand for opticians' services comes through the Treatment Benefits Scheme administered by the Department of Social, Community and Family Affairs and, more recently, from adult Medical Card holders. The remainder of demand for opticians' services comes from private patients.

11.12 In addition, according to the Association of Optometrists Ireland, the majority of optometrists would fit contact lenses, though not all would do so.

11.13 In relation to the geographic market served by optometrists, though consumers may travel to attend a practitioner, making the market theoretically a national one, in practice the requirement for proximity to patients would mean that private practitioners tend to focus on their local market. In the case of public patients covered by the Treatment Benefits Scheme, the geographical determinants of practice would relate to the health board regions.

**Key Skills and Requirements of the Optometrist**

11.14 Generally speaking, the optometrist or ophthalmic optician is required to have some mathematical/quantitative ability in relation to optical mechanics and physics, and have sufficient knowledge of the biology of the eye to be able to detect abnormal ocular conditions and to refer patients to medical practitioners where appropriate. The optometrist is also required to know about the range of optical instruments, devices and lenses and keep pace with new technological developments in the area. These fundamental requirements underpin many of the restrictions discussed later in this section, particular the requirements relating to professional education and training.

# Market Size, Structure and Patterns of Demand

11.15 Our economic analysis of competition in the optometrists' profession set out below entails an empirical examination of a range of issues in relation to market size, structure and the patterns of demand for optometry services. Our analysis draws from a number of information sources, as follows:

- Data obtained from the Opticians Board and the Association of Optometrists Ireland;
- New information obtained from the Indecon Survey of Optometrists (of which there were 80 responses);
- New information obtained by the Indecon Survey of the Public (sample size 1,008 adults aged 15+).

11.16 The results yielded by our analysis are relevant in quantifying the economic characteristics of the profession and are used to help inform the assessment of the various restrictions and requirements identified later in the section.

**Number and Growth of Optometrists**

11.17 In this part of the analysis, we look at a number of indicators of the supply of opticians and optometrists based on data sourced from the Opticians Board and the Indecon Survey of Optometrists.

11.18 In Table 11.1 (overleaf) we present details of the numbers of ophthalmic and dispensing opticians registered with the Opticians Board, based on figures for the period 1990-2002. According to the figures, at the beginning of January 2002, there were 497 ophthalmic opticians on the Register of Ophthalmic Opticians and 121 dispensing opticians on the Register of Dispensing Opticians. The number of registered ophthalmic opticians has increased from 355 in 1995 and 315 in 1990. However, the number of registered dispensing opticians has fallen from 142 in 1995 and 149 in 1990, primarily due to an increase in the number of dispensing opticians undertaking further study and registering as ophthalmic opticians. The total number of opticians registered with the Board reached 618 in January 2002, up from 497 in 1995 and 464 in 1990.

**Table 11.1: Opticians Board - Number of Registered Ophthalmic and Dispensing Opticians in Ireland - 1990-2002***

| Year | Ophthalmic Opticians | % change | Dispensing Opticians | % change | Total | % change |
|---|---|---|---|---|---|---|
| 1990 | 315 | - | 149 | - | 464 | - |
| 1991 | 324 | 2.9 | 149 | 0.0 | 473 | 1.9 |
| 1992 | 327 | 0.9 | 147 | -1.3 | 474 | 0.2 |
| 1993 | 330 | 0.9 | 145 | -1.4 | 475 | 0.2 |
| 1994 | 344 | 4.2 | 139 | -4.1 | 483 | 1.7 |
| 1995 | 355 | 3.2 | 142 | 2.2 | 497 | 2.9 |
| 1996 | 369 | 3.9 | 146 | 2.8 | 515 | 3.6 |
| 1997 | 387 | 4.9 | 141 | -3.4 | 528 | 2.5 |
| 1998 | 408 | 5.4 | 134 | -5.0 | 542 | 2.7 |
| 1999 | 434 | 6.4 | 125 | -6.7 | 559 | 3.1 |
| 2000 | 451 | 3.9 | 116 | -7.2 | 567 | 1.4 |
| 2001 | 487 | 8.0 | 124 | 6.9 | 611 | 7.8 |
| 2002 | 497 | 2.1 | 121 | -2.4 | 618 | 1.1 |

Source: Opticians Board.
* Based on figures for 1st January each year, except in the case of 2000 (8th May).

11.19 It is important to consider the number of registered opticians within the context of the demand for practitioners. One indication of the relative supply of opticians can be obtained by comparing the number of registered opticians to the overall population of the State. Table 11.2 compares the numbers of registered ophthalmic and dispensing opticians to the total population over the period 1991-2002.

11.20 Our calculations indicate that the ratio of population to the total number of registered ophthalmic and dispensing opticians has decreased over the period 1991-2002, though the overall ratio remains high in absolute terms, at 6,339 persons per registered optician. It is also notable that the ratio of population to the number of dispensing opticians has increased while the ratio of population to the number of ophthalmic opticians has decreased between 1991 and 2002. This largely reflects the recent trend towards individuals moving increasingly into the ophthalmic branch of the profession.

**Table 11.2: Opticians Board - Number of Registered Ophthalmic and Dispensing Opticians in Ireland Relative to Total Population - 1990-2002**

| Year | Total Population | Pop/Ophthalmic Optician | Pop/Dispensing Optician | Pop/Total Opticians |
|---|---|---|---|---|
| 1991 | 3,525,719 | 10,882 | 23,663 | 7,454 |
| 1996 | 3,626,087 | 9,827 | 24,836 | 7,041 |
| 1997 | 3,660,600 | 9,459 | 25,962 | 6,933 |
| 1998 | 3,704,900 | 9,081 | 27,649 | 6,836 |
| 1999 | 3,744,700 | 8,628 | 29,958 | 6,699 |
| 2000 | 3,786,900 | 8,397 | 32,646 | 6,679 |
| 2001 | 3,838,900 | 7,883 | 30,959 | 6,283 |
| 2002 | 3,917,336 | 7,882 | 32,375 | 6,339 |

Source: Indecon calculations based on data from the Opticians Board and the Central Statistics Office.

11.21 Another important indicator of demand, particularly in relation to the more specialist optometric services, is the growth in income across the economy as a whole. It is notable that the numbers in the profession have expanded less rapidly than the Irish economy, with GDP increasing at an annual average rate of 6.95% between 1992 and 2001.[1] By comparison, the number of registered optometrists increased by 4.17% per annum on average between 1992 and 2001, while the number of registered dispensing opticians fee by 1.7 on average during the same period.

**Changes in Fee Income of Optometrists**

11.22 Another important aspect of the recent trends in economic activity within the optometrists' profession concerns the pattern of change in fee income generated by practitioners. In addition, the recent changes in fee income provide an indicator of supply and demand conditions, and the level of competition, in the market for optometrists' services.

11.23 In Table 11.3 we indicate the findings of our survey of optometrists in relation to the approximate annual increase in total fee income recorded by optometrists' practices over the period 1999-2001.

[1] Source: ESRI data

**Table 11.3: Indecon Survey of Optometrists - Approximate Average Annual Change in Total Fee Income of Optometrists' Practices - 1999-2001 – Practices Stating Increase in Fee Income**

| Extent of increase | % of responses |
|---|---|
| Practices stating increase in fee income | 98.6 |
| *Of which:* | |
| Over 200% | 1.4 |
| 150-199% | 0.0 |
| 100-149% | 0.0 |
| 50-99% | 1.4 |
| 25-49% | 4.3 |
| 10-24% | 33.3 |
| 5-9% | 42.0 |
| 0-4% | 17.4 |

Source: Indecon Survey of Optometrists.

11.24 Almost the entire sample of optometrists (98.6%) responding to our survey indicated that their fee income increased on an average annual basis between 1999 and 2001. Of this total, the largest proportion (42%) of practices recorded an increase in their fee income of between 5-9% on average per annum, while one-third indicated an average annual increase in income of between 10-24%. A total of 7.1% of those responding indicated that their total fee income increased by 25% or more on an average annual basis between 1999 and 2001. By contrast, only 1.4% of practices indicated a decrease in their total fee income, all of which recorded a decrease of between 5-9% on average per annum.

**Practice Status of Optometrists**

11.25 The Opticians Board has stated that it does not have information available as to the practice status of members of the optometrists' profession. However, other evidence available to the study team, including from the Association of Optometrists Ireland, would indicate that the majority of practitioners are engaged in private practice as sole traders. However, a significant number of optometrists may also be engaged in partnerships, while others are employed by practice owners. It is also the case that some practitioners may have more than one practice location, though these may not be open on a full-time basis. According to the Association, there are no optometrists employed in the public service.

11.26 One of the notable features of the Irish market in recent years has been the entrance of foreign owned companies, who employ optometrists and/or dispensing opticians. These companies tend to operate chains of outlets and undertake nationwide advertising campaigns, which is likely to have stimulated competition. While the consultancy team does not have access to detailed information concerning the share of the market accounted for by these large multiples, it is likely that they account for a significant proportion of annual advertising expenditure within the profession.

**Size Distribution of Optometrists' Practices**

11.27 An indication of the current size distribution of optometrists' and dispensing opticians' practices can be seen from the figures presented in Table 11.4, which are based on our survey of opticians/optometrists.

**Table 11.4: Indecon Survey of Optometrists - Survey Statistics on Practice Size**

| | Number of ophthalmic or dispensing opticians per practice | | |
|---|---|---|---|
| **Statistics** | **1999** | **2000** | **2001** |
| Average no. employed per practice | 1 | 2 | 2 |
| Median | 1 | 1 | 1 |
| Standard deviation | 0.8 | 0.9 | 1 |
| Standard deviation - % of mean | 53.2 | 61.1 | 65.4 |

Source: Indecon survey of Optometrists.

11.28 The figures show that the average number of optometrists and dispensing opticians employed per practice in Ireland increased to 2 in 2000 from 1 previously, though the statistically more reliable measure of central tendency in this case – the median - indicates that the majority of opticians continue to operate as sole practitioners. The size of practices may have implications for the breath of services that can be provided to clients and their ability to compete.

# Customers of Optometrists and their Characteristics

11.29 We described earlier in this section the breakdown of services provided by optometrists. It is important, however, to further investigate the nature of the market served by optometrists, and in this section we look at two important characteristics of optometrists' client base, namely the frequency of usage of optometrists by the general public and the ability of clients to assess the quality of services provided. This analysis will inform our judgements in relation to the extent of information asymmetries in the market, which, as noted in Section 2, is an important issue in considering the justification for specific regulations and restrictions that may affect competition.

**Frequency of Usage of Optometrists**

11.30 As an input to our economic analysis of the profession, we asked consumers, as part of our survey of a representative sample of the general adult population, to state the extent to which they have used the services of opticians over the past five years. The survey findings, presented in Table 11.5, suggest that a large proportion of the adult population have not used the services of an optician over the past five years, while 41% indicated that they attended an optician less than five times within the last five years. It is notable, however, that a significant proportion of those surveyed stated that they attended an optician between one and five times per year.

**Table 11.5: Indecon Survey of the Public – the Public's Views on Extent of their Usage of the Services of Opticians over the Past Five Years**

| Not in past 5 years | Less than 5 times in last 5 years | 1 – 5 times per year | 6 – 10 times per year | 11 – 20 times per year | More than 20 times per year | Don't know |
|---|---|---|---|---|---|---|
| 39% | 41% | 18% | 1% | - | - | - |

Source: Indecon Commissioned Survey of Representative National Sample of 1,008 Adults.

**Quality of Information among Clients**

11.31 In assessing the potential for greater competition in the optometrists' profession, an important issue concerns the extent to which clients can access sufficient information on optometrists' services to enable them to assess the quality and cost of services on offer.

11.32 On the issue of the ability of consumers to assess the quality of services provided by opticians in Ireland, the views of consumers as part of our survey of the general adult population are shown in

11.33 Table 11.6. According to the results presented, the majority (72%) of members of the public believe they are able to assess the quality of optometrists' services to some extent. In particular, 29% believe they are 'able' to assess quality, 30% are 'well able' to assess quality and 13% feel they are 'very well able' to assess quality in the market.

**Table 11.6: Indecon Survey of the Public – the Public's Views on their Ability to Assess the Quality of Services Provided by Opticians in Ireland**

| Not Able to Assess Quality | Able to Assess Quality to Some Extent | Well Able to Assess Quality | Very Well Able to Assess Quality | Don't Know |
|---|---|---|---|---|
| 17% | 29% | 30% | 13% | 12% |

Source: Indecon Commissioned Survey of Representative National Sample of 1,008 Adults.

# Nature of Competition, if any, on the Market

11.34 Having defined the nature and structure of the market for the provision of optometrists' services in Ireland, it is now necessary to evaluate the nature of competition, if any, on the market. Central to this issue are the roles that price and non-price instruments play in the marketplace. Our analysis in this sub-section, which is based on new evidence assembled for this study, describes the level of fees charged by optometrists for standard optical services and assesses the views of both practitioners and the general public on the extent and role of price competition in the market. We then examine the provision of information on fees by optometrists to their clients and investigate the extent of non-price competition in the form of advertising and innovation. Finally, we look at another indicator of competition by reference to the recruitment of optometrists.

**Optometrists' Fees**

11.35 In examining the extent of price competition in the optometrists' profession, it is instructive to first consider the level and variation in fees charged for standard optometric services. In Table 11.7 we present an analysis of the approximate fees charged for an eye test/prescription for spectacles and for dispensing of spectacles, based on our survey of optometrists/opticians.

11.36 The survey data indicate that the current average charge for undertaking an eye test and providing a prescription for spectacles is just over €24, while the median charged quoted in our sample is €23. The closeness of the mean and median values, together with the low figures pertaining to the standard deviation, show that the distribution of fees for eye testing is almost perfectly symmetric. This implies that the vast majority of fees for this services are likely to lie in the range €20-30. Such symmetry in fees might be indicative of lack of price competition on the market, owing to the small number of optometrists noted earlier and the likely localised nature of the relevant market in which they operate.

**Table 11.7: Indecon Survey of Optometrists - Approximate Professional Fees Charged for an Eye Test/Prescribing Spectacles and for Dispensing Spectacles**

| Statistics | Eye Test/Prescribing Spectacles - € | Dispensing Spectacles - € |
|---|---|---|
| Mean | 24.1 | 27.7 |
| Median | 23.0 | 25.0 |
| Standard deviation | 5.1 | 26.8 |
| Std. deviation as % of mean | 21.3 | 96.7 |

Source: Indecon Survey of Optometrists.

11.37 It is also useful to separate out the cost of dispensing spectacles, and according to the survey findings currently the average fee charged for dispensing spectacles is €27.70, while the median level within our sample is €25. However, it is notable that there is a substantial variation, around the average charge. What is significant about these results is the contrast with the earlier figures for eye testing, where there is significantly less variation in fee levels. It is relevant to note in this regard that while both dispensing and ophthalmic opticians operate in the dispensing segment of the relevant market, only the latter can carry out eye examinations.

11.38 An additional indication of the costs of optometry services can be found by examining the average expenditure of households on opticians' fees. In Table 11.8 we present an analysis of average weekly and annual household expenditure on opticians' fees based on the data available from the Household Budget Surveys of 1994/1995 and 1999/2000, which differentiates between urban and rural households.

**Table 11.8: Average Annual Household Expenditure on Medical Expenses - Opticians' Fees - 1994/1995 and 1999-2000**

| Opticians' Fees | 1994/95 - €/week | 1999/00 - €/week | 1994/95 - € Annual* | 1999/00 - € Annual* | % change |
|---|---|---|---|---|---|
| Opticians' fees - Urban Households | 0.10 | 0.13 | 5.28 | 6.60 | 25.0 |
| Opticians' fees - Rural Households | 0.06 | 0.23 | 3.28 | 11.88 | 262.7 |
| Opticians' fees - State | 0.09 | 0.17 | 4.58 | 8.61 | 88.1 |

Source: Household Budget Survey – based on survey of 7,877 households between May 1994 and July 1995 and of 7,644 households between June 1999 and July 2000.
* Indecon estimates based on average weekly expenditure figures*52.

11.39 Our calculations from the HBS indicate that across the State average annual household expenditure on opticians' fees reached €8.61 in 1999/2000. This compares with an average expenditure of €4.58 in the 1994/1995 HBS, indicating a sharp increase of 88.1% over this period. It is also notable that average expenditure on opticians' fees by rural households increased very substantially (262.7%) over the period. By comparison, the consumer price index, which measures the prices of goods and services across the economy, rose by 13.4% between 1995 and 2000.[2] The increase in nominal expenditure by households on optometrists' services in recent years may partly reflect increased demand and may also reflect an increase in optometrists' fees/charges over this period.

[2] See http://www.eirestat.cso.ie/diska/CPBA091.html

**Extent of Price Competition**

11.40 Having examined the current pattern of fees charged for optometric services, it is important to also consider the perceptions among both practitioners and consumers in general in relation to the extent to which price competition exists between practitioners in Ireland. In Table 11.9 below we indicate the views of the profession and of the general public/consumers in relation this issue. It is noteworthy that a significant proportion (25%) of optometrists surveyed are of the view that 'very little' or 'limited' price competition exists between optometrists in Ireland. However, 60% believe that 'significant' price competition exists, while 15% of practitioners are of the view that 'extensive' price competition exists between optometrists.

**Table 11.9: Views of Optometrists and the General Public on Extent to Which Price Competition Exists between Optometrists in Ireland**

| Extent of price competition | Views of Optometrists - % of Responses | Views of the General Public - % of Responses |
|---|---|---|
| Virtually no price competition | 0 | 11 |
| Very little price competition | 2.5 | 17 |
| Limited price competition | 22 | 34 |
| Significant price competition | 60 | 11 |
| Extensive price competition | 15 | 27 |
| Total | 100 | 100 |

Source: Indecon Survey of Optometrists and Indecon Commissioned Survey of Representative National Sample of 1,008 Adults.

11.41 By contrast, it can be seen that a greater proportion of consumers (28%) are of the view that 'very little' or 'virtually no' price competition exists among opticians in Ireland. While 34% of consumers believe that 'limited' price competition exists, only 11% believe that there is 'significant' price competition in the Irish market for optometric services.

11.42 Given that the definition of the market for optometrists' services is more likely to be local rather than national, the survey findings presented above may partly reflect local market conditions. In particular, in more rural areas, where the choice of practitioner available to consumers is more limited, perceptions among consumers regarding the extent of price competition and competition generally may be influenced by the more limited presence of optometrists in a given locality.

11.43 How does price rank in terms of relative importance among the factors influencing a client's choice of optometrist/optician in Ireland? Our survey of the profession asked practitioners to state the relative importance they believe clients attach to a range of factors influencing the latter's choice of optometrist/optician (see Table 11.10).

11.44 The results reveal that optometrists believe that quality of services provided, reputation and customer trust are among the most important factors considered by opticians to influence clients' choice of practitioner. Other important factors are degree of specialisation (considered important by 40% of respondents) and location of practice (considered important by 46.3% of practitioners). However, it is notable also that the level of fees and price competitiveness are identified as being 'important' by 58.8% of respondents, and 'very important' and 'extremely important' by 20% and 17.5% of practitioners respectively.

**Table 11.10: Indecon Survey of Optometrists – Views on Importance of Factors Influencing a Client's Choice of Optometrist/Optician in Ireland**

| | % of Responses | | | |
|---|---|---|---|---|
| **Factors** | **Extremely important** | **Very important** | **Important** | **Not important** |
| Quality of services | 67.5 | 27.5 | 5.0 | 0.0 |
| Reputation | 65.0 | 25.0 | 10.0 | 0.0 |
| Degree of specialisation | 17.5 | 30.0 | 40.0 | 12.5 |
| Customer trust | 57.0 | 27.8 | 13.9 | 1.3 |
| Location of practice | 17.5 | 32.5 | 46.3 | 3.8 |
| Fees/price competitiveness | 17.5 | 20.0 | 58.8 | 3.8 |

Source: Indecon Survey of Optometrists.

**Provision of Price/Fee Information to Clients**

11.45 A related issue concerns whether clients know in advance what they will be charged for services offered by opticians. The findings on this issue from our survey of the general population indicate that significantly less than half of the adult population surveyed believe that they know in advance what they will be charged for the services provided by opticians.

11.46 It is also instructive to note that, when asked whether more information concerning opticians' fees and charges is needed in Ireland, a large proportion (49%) of consumers were of the view that more information is required in this area.

11.47 We also asked practitioners to state the extent to which they provide information in advance to their clients concerning the total fees and expenses charged for services. The survey results suggest that the vast majority (82.7%) of opticians indicated that they provide information on fees and expenses in advance, while 14.8% stated that is would not be feasible to know the extent of costs in advance of a consultation with clients.

**Extent of Advertising**

11.48 Another important aspect of the conduct and operation of the optometrists' profession concerns the extent to which the profession engages in advertising and marketing of services. In this part of the analysis, we examine the level of advertising through evidence gained from our survey of the profession, in addition to our analysis of current advertising in the Golden Pages.

11.49 In our survey of the profession, we asked opticians to state the approximate annual expenditure their practice spends on advertising/marketing of services. The findings indicate an average annual spend on advertising/marketing by opticians' practices responding to our survey of €3,140. However, the median expenditure of €1,500 is considerably below the mean level of expenditure, indicating that spending is concentrated towards the lower half of the distribution. This aspect is evidenced by the fact that a very small number of observations indicated very high levels of expenditure on advertising/marketing. It is likely that this reflects the growth in the presence of the larger multiple providers, particularly in urban areas, in recent years.

11.50 A useful indication of the current extent and profile of advertising by the optometrists'/opticians' profession can be seen from our analysis of advertising in the Golden Pages directories. It is notable that a total of 391 advertisements were placed by opticians across the State in the 2002 edition of the Golden Pages, of which 69 were placed by dispensing opticians and 322 by ophthalmic opticians. The largest proportion of advertisements (135 in total) were placed in the '01' or Greater Dublin Area directory, followed by the '04' directory (66 adverts), the '05' directory (58 adverts) an the '07/09' directory (53 adverts).

11.51 There are a variety of forms of advertisements that may be placed in the Golden Pages. These include:

- Basic listings format adverts;
- Informational adverts;
- In-column display adverts;
- Display adverts;
- Enhancements to above formats.

11.52 An analysis of the intensity of advertising undertaken by opticians/optometrists, based on the extent of usage of each of the above formats, is presented in Annex 8. The analysis indicates that a total of 264 'listings' adverts, 100 'informational' adverts, 25 'in-column display' adverts, and 52 'display' adverts were placed by ophthalmic and dispensing opticians in the 2002 edition of the Golden Pages. The greater usage of larger and higher profile advertisements is a notable feature of the optometrists' profession when compared to the other 'medical' professions under review, namely the medical practitioners', veterinary surgeons' and dentists' professions.

11.53 It should be noted that in the case where practitioners are members of the Association of Optometrists Ireland, advertising in the Golden Pages directories may be undertaken on the basis that members advertise together under the banner of the Association. This entails the placing of a display-type advertisement by the Association which includes the identify and contact details of members in the directory area and also states the following:

> "The Objects of this Association include the maintenance of standards of training and practice. Members are bound by its strict Code of Ethics and Practice and disputes procedure, which are your assurance and professional care."

11.54 Overall, our analysis of advertising points to a high average level of advertising across practices. The relatively high profile of advertising in the Golden Pages (compared with other medical professions) may point to a more relaxed regime in relation to regulations governing advertising, an issue we will assess below in our examination of the restrictions in operation in the profession.

**Recruitment of Optometrists**

11.55 One of the characteristics of a competitive market is that the supply of factors of production is highly elastic, meaning that the supply of entrants to the profession responds rapidly to changing market conditions.

11.56 An indicator of the extent of competition in the optometrists' profession is the extent of recruitment difficulties, if any, experienced by optometrists (Table 11.11). As part of our survey of the profession, we asked practitioners to state whether, and to what extent, they experienced difficulties in recruiting optometrists over the last 3 years. It is notable that while 22.9% of optometrists responding to the survey indicated no difficulties in relation to recruitment, the majority (77.2%) stated that they experienced difficulties in recruiting optometrists. In particular, 28.6% of optometrists indicated that they found it either 'very difficult' or 'extremely difficult' to recruit professionals over the last three years.

**Table 11.11: Indecon Survey of Optometrists - Views on Extent of Difficulty in Recruiting Optometrists in Ireland over the Last 3 Years**

| Level of difficulty | % of responses |
|---|---|
| Extremely difficult | 14.3 |
| Very difficult | 14.3 |
| Difficult | 48.6 |
| No difficulty | 22.9 |
| Total | 100 |

Source: Indecon Survey of Optometrists.

11.57 Our survey findings point to the existence of significant difficulties faced by optometrists' practices in recent years in relation to recruitment of qualified staff to meet the demand for optical care. The ability of the profession to secure an adequate supply of qualified personnel is an important issue for the ongoing development of a competitive market for the provision of optical care in Ireland. The difficulties prevailing in relation to recruitment may reflect restrictions on the supply of optometrists, an issue that we examine further in the next sub-section.

## Summary of Empirical Analysis of the Market

11.58 We now draw together the salient points arising from our empirical analysis in the preceding sub-sections.

11.59 The opticians' profession is divided into two segments, namely the ophthalmic optician (optometrist) and the dispensing optician. Optometrists' services comprise several distinct areas (e.g. detection of abnormal features of the functioning of the eye and prescription of spectacles and contact lenses), differentiated on the basis of objective characteristics and price, for which the geographical scope is likely to be local. However, it is appropriate in a sectoral policy study to adopt a more general definition of the relevant market, incorporating the range of services provided by optometrists, the geographic scope of which is the State. In this market environment, the predominant type of supplier is the private optometrist's practice.

11.60 At the beginning of 2002, according to the Opticians Board, there were 497 optometrists on the Register of Ophthalmic Opticians and 121 dispensing opticians on the Register of Dispensing Opticians. While the number of dispensing opticians has fallen in recent years, this has been offset by an increase in the number of optometrists (whose scope of practice is wider than that of the dispensing optician). Overall, the annual increase in the number of registered optometrists has varied between 0.9% and 8% over the period 1991-2002, with growth being at the higher of this range since the late-1990s. However, while the ratio of population to optometrists has continued to fall since the early 1990s, the annual growth in the number of optometrists has failed to keep pace with latent demand in the economy, given that the Irish economy expanded at a rate of almost 7% per annum on average between 1992 and 2001. The growth in the economy has, in particular, led to a substantial increase in demand for higher quality and higher priced optical services and products.

11.61 That growth in the number of optometrists may not have kept pace with demand is reflected in fee income growth. According to our new survey evidence, the vast majority of optometrists experienced a significant increase in their fee income in the period 1999-2001. Accepting this was a period of exceptional growth in the economy, the average annual growth in practitioners' fee income exceeded in almost half of all cases any measure of national product. In particular, among the 98.6% of practices that stated an increase in fee income, 42% stated an increase of between 5-9% and one-third stated an increase of between 10-24% on an average annual basis between 1999 and 2001. As regards practice structures, the majority of optometrists are sole traders, while partnership practices employ on average two optometrists

11.62 Regarding the nature of competition on the market, our analysis of professional fees charged by optometrists for the provision of standard services such as an eye test/prescribing of spectacles, and dispensing of spectacles, indicates some dispersion in prices charged, particularly in relation to dispensing fees. Our analysis of CSO data has indicated that the rate of price inflation in respect of opticians' fees has substantially exceeded economy-wide consumer price inflation over the period 1995-2000.

11.63 Furthermore, our consumer survey evidence suggested that access to price information is poor among members of the general public using optometrists' services. It is therefore not surprising to find that a large proportion (49%) of members of the public believe that more information ought to be provided on opticians' fees/charges in Ireland.

11.64 Consumer views differed on the extent to which price competition is perceived to be evident among optometrists/opticians in Ireland. In particular, while 62% of the general public were of the view that there is virtually no, very little or limited price competition between optometrists/opticians, a significant proportion (38%) felt that there is either significant or extensive price competition. Given the localised nature of the market, however, these aggregate perceptions may differ across localities and between urban and rural areas. In urban areas, in particular, the greater prevalence of competing multiples may result in greater perceived competition.

11.65 In relation to advertising, our analysis of Golden Pages entries and of practitioners' responses to our survey indicates a high average level and profile of advertising within the optometrists' profession. However, it is notable from our survey that a relatively small number of practices indicated annual expenditure at the upper end of the distribution.

11.66 Finally, in terms of market dynamics, it is relevant to note that a majority of practitioners (whether in new or established practices) have reported difficultly in recruiting optometrists over the past three years. Significantly, 48.6% of respondents to our survey indicated that they experienced difficulty in recruiting professionals in the last three years, while 28.6% stated that recruitment was either very difficult or extremely difficult. The difficulties prevailing in relation to recruitment may reflect restrictions on the supply of optometrists.

# Examination of Restrictions in the Optometrists' Profession

## Introduction

11.67 We now turn to the examination of the restrictions and requirements in the optometrists' profession that may impact on the presence and nature of competition in the market for optometry services in Ireland. We begin by identifying the restrictions and requirements governing entry to the optometrists' profession, the conduct of practitioners, demarcation and organisational form. We then concentrate on those restrictions/requirements that we believe are most likely to adversely affect the level of competition on the market. In focusing on these key regulations we examine their justification as set out by the regulatory and other bodies and then evaluate whether or not they are proportional to the achievement of their intended benefits.

11.68 Before undertaking our evaluation of the restrictions/requirements operating within the profession it is first necessary to describe in more detail the principal organisation responsible for the regulation of the optometrists' profession in Ireland, namely the Opticians Board. We also examine the Board's procedures in relation to complaints, discipline and enforcement.

## Regulation of the Optometrists' Profession

*The Opticians Board (Bord na Radharcmhastóirí)*

11.69 The Opticians Board ('the Board') is the regulatory body for the opticians' profession in Ireland. The Board was established through the enactment of the Opticians Act, 1956, and operates and enforces the provisions of the Act in regulating the training and registration of opticians, and controlling the practice of opticians in accordance with the Act and in the interests of the general public. The Board was established as a body corporate.

11.70 The role and functions of the Board fall under the following remits:

- Registration of those deemed qualified to practise as ophthalmic opticians (optometrists) and dispensing opticians;
- Education and training of new entrants to the profession and continuing education of existing practitioners;
- Control of professional standards;
- Investigation of complaints; and
- Research.

11.71 The Opticians Board is comprised of eleven members, each of whom holds office for a term of five years. A summary description of the composition of membership of the Board is shown in Table 11.12. It is notable that the majority of members of the Board (6 members) are elected from within the profession. The remaining five members are appointed by the Minister for Health and Children, of which one is the President of the Board and the remaining four members are registered medical practitioners. The Board does not have any legislative based consumer representation. The composition of the Board and the representation of members of the opticians' and medical practitioners' professions might give cause for concern in relation to the setting of regulations that are in the interests of the general public rather than the profession itself. We therefore examine this issue further later in the section dealing with Key Restrictions.

**Table 11.12: Composition of the Opticians Board**

| Member | Nature of Appointment/Background |
|---|---|
| Members 1-6 | Elected by registered opticians, made up of 5 optometrists and 1 dispensing optician |
| Members 7-11 | Appointed by Minister for Health and Children, four of whom must be registered medical practitioners |

Source: Opticians Board.

11.72 The Opticians Board may also from time to time establish committees to deal with specific issues as it may decide. Currently there is a Standing Committee and an Education Committee. The duties of the former are to supervise receipts and payment to the Board, to investigate complaints and to discharge such other powers, functions and duties as may from time to time be delegated to it by the Board. The duties of the Education Committee are to provide for and supervise the training and examination of candidates for registration; to report and advise the Board and generally to discharge such other powers, functions and duties as may from time to time be delegated to it by the Board.

11.73 The Opticians Board is funded through receipt of income from the registration fee it charges to new registrants and to the retention fee it levies on registered opticians on an annual basis. Registration and retention of fees must be approved by the Minister for Health and Children.

11.74 The key regulatory requirement imposed by the Opticians Board is that full registration with the Board is required for all persons (other than medical practitioners) who wish to practise as an optometrist or a dispensing optician in Ireland. It is unlawful for any persons other than a registered optometrist/optician or a registered medical practitioner to practise or to assume the title of 'optician' or 'optometrist'. Thus, the terms 'optician' and 'optometrist' are statutorily protected in Ireland.

**Discipline, Complaints and Enforcement**

11.75 The Opticians Act, 1956 gives the Opticians Board powers in relation to discipline, dealing with complaints and enforcement of rules in this area. However, while the Act gave powers to the Board to remove the name of a person from the Register on the grounds of conduct, a subsequent legal opinion advised that the provisions as laid down in the Act were unconstitutional. As a result, no rules were introduced by the Board to give effect to the provisions of the 1956 Act. The disciplinary powers of the Board are therefore restricted and if the Board wishes to discipline a registered optician it must rely on taking a court action in the High Court.

11.76 Complaints relating to breaches of the advertising rules are accepted verbally or in writing and, if found to be justified, the optician concerned is requested to amend his/her advertising accordingly so as to confirm to the Board's advertising rules as outlined above.

**Restrictions/Requirements on Entry**

11.77 To practise as an optician in Ireland, there are a number of requirements that must be satisfied. They concern registration, educational and training requirements, and restrictions related to these requirements, which we examine in further detail below.

*Educational and Training Requirements*

11.78 In Table 11.13 below we identify the key entry requirements and restrictions relating to registration and education and training operating in the opticians/optometrists' profession in Ireland. We then discuss each of these requirements/restrictions in further detail below.

**Table 11.13: Entry Restrictions in the Optometrists' Profession – Summary of Key Registration, Educational and Training Requirements**

| Nature of educational/training requirements | Legal or other basis |
|---|---|
| To practise or assume the title of an optician it is required by law to be registered with the Opticians Board or be a registered medical practitioner. Registration must be renewed on an annual basis. | Opticians Act, 1956 |
| Separate registration for ophthalmic and dispensing opticians is required. | Opticians Act, 1956 |
| Only persons with recognised qualifications may apply for registration on Register of Ophthalmic Opticians or the Register of Dispensing Opticians. Separate rules apply for Irish, non-Irish EU Nationals and non-EU Nationals. | Opticians Act, 1956 |
| Requirement that ophthalmology graduates also independently pass clinical examination of Association of Optometrists of Ireland. | Opticians Board rules based on Opticians Act, 1956. |

Source: The Opticians Act, 1956; submission by the Opticians Board to the study; and Rules of the Opticians Board (1977 and Amended Rules 1993)

*Registration Requirements*

11.79 The principal requirement facing persons wishing to practise as an optician is Ireland is that the person must be fully registered with the Opticians Board. Separate registration is required for each branch of the profession, i.e. for ophthalmic opticians (optometrists) on the Register of Ophthalmic Opticians and for dispensing opticians on the Register of Dispensing Opticians. This requirement for registration is a legal one, which is set out in the Opticians Act, 1956.

11.80 To obtain initial registration on the Register of Ophthalmic Opticians, a fee is charged, while to maintain subsequent membership an annual retention fee is charged. This requirement also applies to dispensing opticians.

11.81 It should be noted that a 'grandfather' clause exists within the Opticians Act, 1956, which permits persons who, on 13th July 1955, were included in the panel of Opticians maintained by the Minister for Social Welfare. This relates primarily to pharmacists who have been established since this time.

11.82 According to the Opticians Board, discussions have been underway with the Department of Health and Children in relation to establishing a two-tired system of registration for dispensing opticians, namely those who may dispense spectacles and those who may also fit contact lenses. This change is mainly required to allow Irish dispensing opticians who complete their training in the UK to more easily register with the Board.

*Recognised Qualifications*

11.83 Under the provisions of the Opticians Act, 1956, as set out under the Opticians Board's Rules, only persons possessing recognised qualifications may apply for registration either on the Register of Ophthalmic Opticians or the Register of Dispensing Opticians. For Irish based persons, to register as an ophthalmic optician (optometrist) it is necessary to:

- Successfully complete a full-time four-year degree course in optometry approved by the Board and taught and awarded by the Dublin Institute of Technology (DIT) at Kevin Street, Dublin.
- Graduates of the above degree course must also independently pass the clinical examinations of the Association of Optometrists of Ireland (AOI).

11.84 The minimum entry requirements for the optometry course are set by the DIT, while the actual points requirements are determined within the CAO points system. According to the Board, on an annual basis, there are normally 25 places available for study on the DIT Optometry degree course, which is determined by facilities and lecturers available. The Board states that there is an average pass rate on the course of approximately 80%.

11.85 According to the Board, it has no involvement in the examination process for entry into the DIT Optometry degree course. Furthermore, the Board has stated that it has no influence on the pass rate achieved for the course. The Board's role is to approve the optometry degree course as an entry requirement for registration as an ophthalmic optician (optometrist).

11.86 Discussions between the Board and the Department of Health and Children have been undertaken in relation to further changes to the optometry degree course at DIT. The objective, according to the Board, would be to increase the extent and quality of clinical experience provided to students by increasing their time in the DIT Optometry Clinic.

11.87 It should be noted that entrance to the accredited AOI clinical course is restricted to persons who have an approved degree in optometry. Equivalent professional examinations will, however, also be considered by the Board, though the only accredited examination is that of the AOI. According to the AOI, the accreditation requirement stems from the need to ensure that optometrists attain the "standards required by reference to current optometric practice and through a practical and oral assessment of the clinical knowledge and ability of the candidates, approves them for State registration and independent practice of their profession".

11.88 We believe that the highly limited number of places on the optometry degree course may act as a barrier to entry to the profession. For this reason, it is treated in more detail in our key restrictions part below.

11.89 In the case of dispensing opticians, the Opticians Act, 1956, as set out under the Board's Rules, specifies that in order to register on the Register of Dispensing Opticians, the following educational requirements must be met:

- A whole-time course of training of two years duration together with a period of three months practical training with a registered optician approved by the Board, which shall be taken after the two year course of training and before the final examination. The syllabus of this course shall be set from time to time by the DIT with approval by the Board,

Or

- A three-year in-service course of training under the supervision of a qualified registered optician, together with attendance at a course of training on a two-day per week or equivalent release basis. The syllabus of the course shall be settled from time to time by the DIT with the approval of the Board.

11.90 It should be noted that, at present, neither of the above courses are being provided by the DIT, which currently only operates the course in optometry. Irish students wishing to qualify as dispensing opticians are required by the Board to successfully take the 3-year distance-learning course in dispensing (which includes modules on the fitting of contact lenses) provided by the Association of British Dispensing Opticians (ABDO). The Board approves this course for registration. In addition to the modules covering the fitting of contact lenses, there is also two weeks practical training and examination organised by the ABDO in association with the Irish Association of Dispensing Opticians, held at DIT, Kevin Street, Dublin.

11.91 According to the Board, the number of dispensing opticians seeking registration annually is typically of the order of 5-6 persons.

*Transfer Arrangements for EU and non-EU Optometrists/Opticians*

11.92 In relation to persons who have trained as opticians in another EU Member State, applications for registration as optometrists or dispensing opticians with the Board are dealt with in accordance with EU Council Directive 89/48/EEC (21st December 1988) and Directive 92/51/EEC (18th June 1992). These Directives provide that persons holding specified recognised qualifications from institutions in other Member States may apply for registration under the Board's Rules.

11.93 It should be noted that under Part IV of the Opticians Act, 1956, an order was made to the High Court in 1996 restraining an EU National from another Member State from practising in Ireland as an optician while not registered with the Board.

11.94 In the case of individuals applying for registration with the Board who are not nationals of a Member State of the EU, the Board's Rules specify that it may register such a person if it is satisfied that the person has undergone such courses of training and passed such examinations as are in the opinion of the Board equivalent to those specified in its Rules on Training and Examinations, provided that such person is in 'good standing' with the relevant professional body in the country where the person has been practising.

11.95 The Board has recently set up an assessment system for applicants from outside the EU to facilitate their eligibility for registration. Previously all such applicants had first to register with the General Optical Council (the GOC) in the UK before they were considered for registration by the Opticians Board in Ireland. However, under the new procedures, such applications now come before a meeting of the Standing Committee of the Opticians Board, which first considers the standard of his/her qualifications relative to the Irish qualification. The applicant is then required to take an oral assessment examination set up by the Board and for which an appropriate fee is charged. The assessment is then followed by a final interview with the President and members of the Standing Committee.

11.96 In all cases, applicants for registration other than graduates of the DIT are required to provide certification of 'good standing' from the registration authority of the country from which they received their training and qualification.

*Continuing Requirements*

11.97 In relation to requirements for opticians to continue in practice once initial qualification and registration with the Board is achieved, the key requirement is that continued renewal of registration on an annual basis with the Board is required. Apart from the registration requirement, the Board does not currently have legal powers to make continuing education requirements compulsory for continued registration. However, attendance at postgraduate seminars and conferences is strongly recommended by the Board for all registered opticians.

11.98 According to the Board, professional indemnity insurance (PII) is not a legal requirement for practice. However, it is recommended that opticians take out adequate cover and, in the case of practitioners holding contracts with the Health Boards and the Department of Social, Community and Family Affairs, opticians are required to have adequate PII cover to provide optical services.

*Views of Practitioners on Entry and Continuing Requirements*

11.99 In assessing the implications for competition within the optometrists' profession of the entry requirements/restrictions identified above, it is useful to consider the views of practitioners themselves in relation to the key requirements/restrictions. The views of optometrists from our survey of the profession indicate that the vast majority (83.3%) of practitioners support the current entry requirements for optometrists in relation to education and training. Furthermore, 76.9% of practitioners support the Opticians Board's requirements for dispensing opticians.

**Restrictions on Conduct**

11.100 Restrictions and requirements in relation to conduct fall under the following headings:

- Professional fees and fee competition; and
- Advertising and publicity of services.

11.101 We summarise the key restrictions/requirements in relation to conduct in Table 11.14.

**Table 11.14: Conduct Restrictions and Requirements in the Optometrists' /Opticians' Profession – Summary of Key Restrictions**

| Nature of restrictions/requirements | Legal or other basis |
|---|---|
| Rules for the control of advertising | Opticians Act, 1956 and Board's Rules. |

Source: The Opticians Act, 1956; submission by the Opticians Board to the study; and Rules of the Opticians Board (1977 and Amended Rules 1993)

*Professional Fees and Fee Competition*

11.102 According to the Opticians Board, "the Board does not have any authority or function to involve itself in the level or structure of charges made by opticians for their services".

11.103 According to the Association of Optometrists of Ireland, the representative body for the profession, "the Association does not involve itself with the level of fees charged to private patients". However, the Association does state in its Code of Ethics and Practice that:

> "The practitioner should indicate any charges that may be due for the consultation and the costs associated with the dispensing function. It is advisable to inform the patient of the total costs before they leave the practice."

11.104 The Association also states that:

> "Charges should be fair to the patient and the practitioner should reflect the true value of the service and the product and should be sufficient to maintain a high standard of practice as indicated in "13" in this Code."

11.105 While the Association states that it does not involve itself in the level of fees charged to private patients, it does, however, "agree a range of fees to be paid to the profession under the terms of contracts with the Department of Social, Community and Family Affairs, and the Department of Health and Children in the case of medical card holders". According to the General Medical Services (GMS) Scheme Payments Board, there were 420 agreements between the regional health boards and individual optometrists for the provision of State-funded optical care in December 2001.[3]

11.106 Neither the Opticians Board nor the Association of Optometrists has stated that fee recommendations or recommended fee scales exist within the profession.

*Advertising Restrictions*

11.107 The restrictions operating within the profession governing advertising are based on the Opticians Act, 1956 and have been set out in the Opticians Board's Rules. These rules apply to registered ophthalmic and dispensing opticians, and to every person (including a corporate body) whether a registered optician or not in relation to the sale of spectacles conducted by a registered optician. These rules concern both canvassing and methods of advertising.

11.108 The Board states that "canvassing, which is defined as touting or soliciting for business by way of direct personalised approach, continue to be banned under the revised Rule 31 on advertising".

11.109 According to section 31 (3) of its Rules, the Opticians Board states that:

(i) "Registered opticians and corporate bodies or other bodies employing the services of registered opticians may, according to the Board's Rules, may publicise their businesses or practices in relation to the prescribing, display or sale of spectacles, subject to the overriding principle that the main purpose of such publicity shall be to inform the public of the availability of optical services and the nature of the services provided".

(ii) Prices may be advertised or displayed, and if so it shall be clearly indicated what precisely is included in the price quoted.

(iii) Spectacles, spectacle frames, contact lens accessories, spectacle cases and illustrated cards displaying spectacles and spectacle frames may only be displayed at practice premises.

[3] GMS Payments Board Annual Report 2001.

(iv) Any publicity engaged in shall not:

(i) Be false of misleading in any respect;

(ii) Be of a character that could reasonably be regarded as being in bad taste or likely to bring the professions of ophthalmic optician or dispensing optician into disrepute;

(iii) Seek to make comparisons with other optical practices or claim superiority over or reflect unfavourably on other optical practices or business.

11.110 We believe the restrictions on comparative advertising and unsolicited approaches to existing and potential customers may be restrictive of competition on the market and so requires further examination below.

*Association of Optometrists Ireland Notification to Competition Authority*

11.111 It should be noted that a number of changes were made to the Code of Ethics and Practice of the Association of Optometrists Ireland in relation to advertising following the Competition Authority's Decision following from the Notification by the Association in 1993.[4] The original restrictions on advertising were considered to be a serious restriction on competition on the basis that individuals should be free to advertise their qualifications and services in whatever manner they think fit.

*Views of Practitioners Regarding Restrictions on Advertising*

11.112 It is also useful to consider the views of the profession in relation to the restrictions that operate concerning advertising in the optometrists' profession. The results from the Indecon Survey of Optometrists indicate that a majority (69.2%) of respondents support the current advertising restrictions as provided for in the Board's Rules, but that 15.4% stated that they did not support the advertising requirements.

[4] Competition Authority Decision of 29/4/93 in respect of Notification No. CA/9/92E.

**Restrictions on Demarcation and Organisational Form**

11.113 Demarcation relates to how work areas within the profession may be divided into different branches or segments, and where the provision of certain services may be reserved to one or more allied or ancillary professions or to groups of members within the profession. A related issue concerns whether certain procedures may be undertaken by 'para-professionals' that may not directly be members of the profession. There may also be restrictions placed on the organisational form or structure that professional practices may take. We examine these issues below within the context of the optometrists' profession.

*Restrictions on Demarcation*

11.114 In relation to demarcation, there are a number of restrictions in operation within the profession governing the scope of practice of ophthalmic and dispensing opticians, as well as in relation to the prescription and sale of optical devices, which are summarised in Table 11.15.

**Table 11.15: Demarcation Restrictions in the Optometrists' /Opticians' Profession – Summary of Key Restrictions**

| Nature of restrictions/requirements | Legal or other basis |
|---|---|
| Restrictions on scope of practice of dispensing opticians versus optometrists. | Opticians Act, 1956. |
| Regulations concerning the control of prescription and sale of spectacles, contact lenses and other corrective optical devices. | Opticians Act, 1956 and Board's Rules, 1993. |

Source: The Opticians Act, 1956; submission by the Opticians Board to the study; and Rules of the Opticians Board (1977 and Amended Rules 1993)

11.115 In relation to scope of practice, there are specific restrictions governing the scope of practice and services that may be provided by dispensing, as opposed to ophthalmic, opticians, which are legal restrictions set out under the Opticians Act, 1956. These restrictions are as follows:

- A registered dispensing optician may not treat any disease of the eye or prescribe or administer any drug of other medical preparation for that purpose.
- A registered dispensing optician may not prescribe or administer any drug for the purpose of paralysing the accommodation of the eye.
- A registered dispensing optician may not suggest or make a medical diagnosis of a disease of the eye.

11.116 The demarcation of the profession into two branches, namely that of the dispensing optician and the optometrist, is partly a historical feature, but is also related to the degree of specialisation of practitioners. According to the Opticians Board:

> "There are two separate professions. i.e. ophthalmic optician (optometrist) and dispensing optician, thereby permitting the ophthalmic optician to concentrate more on the clinical aspect of the profession while allowing the dispensing optician, whose training is quite different, to concentrate more on the commercial side, particularly when members of both professions work in the same practice."

11.117 In relation to prescribing and dispensing of spectacles, the Opticians Act, 1956 (section 47) states the following:

> (1) A person shall not, on or after the appointed day, prescribe spectacles unless he is a registered medical practitioner or a registered ophthalmic optician.
>
> (2) A person shall not, on or after the appointed day, dispense prescriptions of registered medical practitioners or registered ophthalmic opticians for spectacles unless he is a registered medical practitioner or a registered optician.

11.118 In relation to the sale of spectacles, the following restrictions are stated in the Opticians Act, 1956, (section 49):

> (1) A person shall not, on or after the appointed day, sell spectacles unless—
>
> (a) in case the person is not a body corporate, the person is a registered medical practitioner or a registered optician or, if the sale is conducted on behalf of the person by another person, that person is a registered medical practitioner or a registered optician, or
>
> (b) in case the person is a body corporate, the sale is conducted by a registered medical practitioner or a registered optician.

11.119 Regarding the Rules governing the prescription and sale of spectacles, it should be noted that under Part VI of the Opticians Act, 1956, the High Court in 1990 granted an order restraining four named retailers from selling readymade reading spectacles as they were not registered opticians or registered medical practitioners. However, it should also be noted that the Minister for Health and Children has put forward proposals for an amendment of the Opticians Act to permit the sale of readymade spectacles by any person other than a registered optician.

11.120 We do not believe that any specific competition issues arise in relation to the demarcation of the opticians' profession *per se*. So long as entry into either branch of the profession is not restricted, practitioners should be free to choose their preferred mode of specialisation. The historical issue in relation to the separation of each branch relates partly to the existence of a grandfather clause within the Opticians Act 1956, which permitted pharmacists to sell readymade spectacles.

11.121 The important issue from a competition perspective in relation to demarcation, in our view, concerns the ability of consumers to choose an alternative supplier of spectacles and other visual aids rather than have to purchase the latter from the same optometrist who provided the prescription. In other words, consumer should be free to freely choose their dispensing optician and any practice that restricts the consumer to purchasing spectacles and other visual aids to a given optometrist could be regarded an being anti-competitive.

11.122 The issue is treated in more detail in the key restrictions sub-section below.

*Restrictions on Organisational Form*

11.123 There are no legal restrictions in operation within the opticians' profession concerning organisational form. In particular, there are no restrictions evident from the legislation or the Rules of the Opticians Board that prohibit the practice of optometry by corporate bodies. However, corporate bodies are not excluded from the Rules governing prescription and sale of spectacles, as described above.

*Views of Practitioners on Demarcation Restrictions*

11.124 Before assessing the implications for competition of the restrictions in relation to demarcation within the optometrists' profession it is instructive to consider the views of both practitioners and consumers on this issue. The views of practitioners in relation to whether they would support the rules governing separation of the profession into ophthalmic and dispensing opticians indicate that a majority (78.5%) of practising optometrists support the restrictions in place in relation to the scope of practice of ophthalmic and dispensing opticians.

11.125 In Table 11.16 we indicate the views of members of the general public in relation to whether greater flexibility should be allowed in permitting trained individuals (such as para-professionals) to perform certain tasks undertaken by fully qualified opticians. According to the survey findings, a very large proportion (78%) of consumers 'favour' or 'very much favour' introducing such flexibility.

**Table 11.16: Views of Public on Allowing Greater Overall Flexibility to Permit Trained Individuals to Perform Certain Routine Tasks Traditionally Done by Qualified Opticians**

| Very Much in Favour | In Favour of | Against | Very Much Against | Don't Know |
|---|---|---|---|---|
| 17% | 61% | 16% | 3% | 4% |

Source: Indecon Commissioned Survey of Representative National Sample of 1,008 Adults.

# Key Restrictions on Competition

### Overview

11.126 Having identified the restrictions and requirements on entry, conduct, demarcation and organisational form that operate within the optometrists' profession in Ireland, our analysis suggests that the following four areas/restrictions merit closer scrutiny in relation to their potential adverse on competition:

- **The limitation on number of study places available for Optometry Degree course;**
- **The controls on advertising by optometrists;**
- **The composition of membership of the Opticians Board;**
- **Prohibition on sale of spectacles or other visual aids by persons other than opticians or registered medical practitioners;**

11.127 In what follows, we assess each of the above areas/restrictions by reference to the justifications presented by the Opticians Board and our evaluation of these justifications *vis-à-vis* whether the restrictions/requirements are proportionate to the benefits claimed for them.

### Limitation on Number of Places on Optometry Degree Course

11.128 An important restriction that we believe is likely to constrain potential competition in the optometrists' profession concerns the limitation on the number of study places available on the Optometry Degree course at the DIT.

*Justification*

11.129 According to the Opticians Board, the number of places on the DIT Optometry Degree course is determined by the DIT and depends on both the demand for places and the availability of teaching resources. It has also stated that "the number of registered opticians has increased considerably over the last 20 years or so principally because of the increased number of students trained as ophthalmic opticians at DIT and the number of UK trained opticians seeking registration. This has increased the extent of choice available to the general public when deciding on their opticians".

11.130 The Board has stated that it has not involved itself with the number of graduates, but rather the quality of graduates. In this respect, it notes that a lack of facilities and staff at the DIT over the last few years had reached a point where it judges that the quality of training is at risk. Indeed, the Board at one stage threatened withdrawal of recognition of the DIT course. According to the Association of Optometrists Ireland, "the number of places [on the Optometry Degree course] is determined by DIT having regard to facilities and staff".

*Evaluation*

11.131 While precise figures in relation to the number of applicants for the DIT Optometry course are not available to the consultancy team, according to the DIT, in relation to the application arrangement for the 2001 academic year, "the number of students to be admitted in 2001 is expected to be 25. A large number of applications is received each year". The level of demand for the degree course is also evidenced by the high points requirements, which, according to the CAO reached 510 in 2002.[5]

11.132 Evidence of the shortage in the supply of graduates can also be seen from the findings from the Indecon Survey of Optometrists. The survey findings point to the existence of significant difficulties faced by optometrists' practices in recent years in relation to recruitment of qualified staff to meet demand for optical care. The ability of the profession to secure an adequate supply of qualified personnel is an important issue for the ongoing development of a competitive market for the provision of optical care in Ireland.

11.133 While we understand the argument made by the Opticians Board in relation to the importance of ensuring quality rather than quantity of graduates, our research on the number of places available on the Optometry Degree course at DIT and the very high CAO points requirements points to the presence of a significant constraint on entry to the profession at graduate level in Ireland. While this feature may reflect both resource constraints as much as the educational/training requirements set by the Opticians Board, we believe that the constraint on places acts as a barrier to entry and is likely to be harmful to potential competition in the optometrists' profession in Ireland. As in the other professions, we accept, however, the need to balance the conflicting objective of public expenditure and competition in this area.

[5] Interviews are held by DIT for mature (23+ years old) candidates and applicants already in possessing of a degree.

**Controls on Advertising by Optometrists**

11.134 The second area that merits closer examination concerns the controls in place in relation to advertising by optometrists and dispensing opticians. We described earlier in this section the Opticians Board's Rules in relation to advertising and publicity, which have their basis in the Opticians Act, 1956. These controls restrict false or misleading advertising, advertising that is in bad taste, canvassing for business, touting, and other forms of comparative advertising by practices.

*Justification*

11.135 According to the Opticians Board, the controls on advertising enable the public to be more clearly informed of the availability of optical services and the nature of the services provided by opticians, and to ensure that advertising by opticians is in the general interest of public health.

11.136 The Association of Optometrists has submitted more generally that the objectives of the controls on conduct by practitioners are designed to establish and maintain a profession that was regulated and controlled by statute to offer competent services to the public and allowing for charges that are equitable both to the patient and the practitioner.

*Evaluation*

11.137 Notwithstanding the reforms that were carried out in relation to the controls on advertising stemming from the 1993 Decision of the Competition Authority, we are of the view that the current restrictions on advertising by optometrists/opticians are likely to be harmful to competition in the profession. In particular, the restrictions on comparative advertising are likely to be harmful to normal competitive behaviour within the marketplace. The evidence shows that restricting advertising is likely to have negative effects on competition in professional service markets. Subject to the proviso that advertisements are not in bad taste, do not bring the optometrists' profession into disrepute or do not exploit the limited information that some consumers may have, we do not believe that there should be any restriction on the type or nature of adverts that optometrists/opticians may place. In particular, we do not believe that comparative advertising should be prohibited nor should any advertising be prohibited that highlights that a practitioner has any specialist expertise knowledge. Neither should unsolicited approaches to potential and existing customers be prohibited.

**Composition of Membership of the Opticians Board**

11.138 A third aspect of the regulation of the optometrists' profession where concerns arise as to the potential adverse implicatiosn for competition and consumer interests concerns the composition of membership of the Opticians Board. We noted earlier in this section that the majority of members of the Board (6 members) are elected from within the profession. The remaining five members are appointed by the Minister for Health and Children, of which one is the President of the Board and the remaining four members are registered medical practitioners.

*Justification and Evaluation*

11.139 The size and composition of membership of the Opticians Board is set out in statute under the Opticians Act, 1956. The Act states that the Board shall be comprised of eleven members in total, of which six members are elected by registered opticians, five of which are registered optometrists and one is a dispensing optician. In addition, each year the Minister for Health and Children appoints five members, four of whom are registered medical practitioners and one member who is not a registered medical practitioner. The members of the Board hold office for a term of five years.

11.140 While the structure of the Opticians Board is set out in statute, the presence of existing practitioners on the board, where six out of the eleven members are optometrists/dispensing opticians, gives rise to a concern of potential regulatory capture. An important requirement in relation to the operation of a regulatory body such as the Opticians Board is that the body, in achieving its the objectives in relation to regulation of the profession, is not overly influenced or constrained by the vested interests of existing practitioners within the profession.

11.141 Our view is that the composition of the Board, in relation to the extent of presence of members from the profession and the absence of any legislative based consumer/patient representation, is not appropriate to ensuring competition within the profession. While representation of the profession on the Board is necessary to ensure that policy is informed by the knowledge and experience of practitioners, sufficient explicit consumer representation should be guaranteed through having appropriate consumer representation on the Board.

**Prohibition on Sale of Spectacles/Other Visual Aids by Persons Other than Opticians or Registered medical practitioners**

11.142 An area where we believe that significant concerns arise in relation to the potential adverse impact on competition in the optometrists profession concerns the restrictions governing the sale of spectacles or other visual aids by persons other than registered medical practitioners or opticians. This restriction has meant that reading glasses or ready-made spectacles sold in a range of standard magnifications could not be sold other than by registered opticians.

*Justification*

11.143 The regulations and controls pertaining to the prescribing and dispensing of spectacles and other visual aids restrict the prescribing of spectacles and other visual aids to registered ophthalmic opticians or registered medical practitioners, and the sale or dispensing of visual aids to registered opticians (i.e. ophthalmic or dispensing opticians) or medical practitioners.

11.144 While the Opticians Board does not present specific justifications in relation to the restrictions on the sale of spectacles or other visual aids, more generally it states the following:

> "Legal restrictions on the conduct of opticians are imposed for the benefit of the public, so that the profession is controlled in the ways it may offer its services in the public interest. It does not have an effect on the range, quality and prices of services offered."

11.145 The Association of Optometrists has stated in general terms in relation to restrictions on conduct that:

> "Conduct restrictions are of the greatest benefit to the public, since they attempt to create a satisfactory degree of control with which the profession may offer its services and the general public may seek those services. In our view, the restrictions have no impact on the range and quality of the services offered. They have not had an impact on the fees and other charge levied by the profession."

*Evaluation*

11.146 The principal argument in favour of restricting the provision of a service of product to suitably qualified professionals is that this approach maximises the likelihood that consumers will be provided with the highest quality of service or product in question. In the case of optical services, however, a distinction needs to be made between the services provided by an ophthalmic optician or optometrist and those provided by a dispensing optician. From the perspective of ensuring that patient welfare is safeguarded, it is reasonable to expect that the scope of practice of an optometrist is limited to those areas where he/she is suitably qualified.

11.147 However, we believe that the prohibition on the sale of spectacles (including readymade spectacles) and other visual aids by persons other than registered opticians or medical practitioners may be unduly restrictive from a competition perspective. It should be noted in this regard that proposals have been developed by the Minister for Health and Children that would allow for the sale of readymade reading spectacles by persons other than registered opticians. We would regard such a development as leading to an improvement in competition and consumer welfare.

## Summary of Main Conclusions

11.148 We present, in Table 11.17, a summary of our conclusions in relation to the restrictions on competition in the optometrists' profession in Ireland. Our research indicates a number of restrictions on entry, conduct and demarcation that have a potential negative impact on competition.

**Table 11.17: Summary of Conclusions for the Optometrists' Profession**

Entry Restrictions

1. THE LIMITATION ON NUMBER OF STUDY PLACES AVAILABLE FOR THE OPTOMETRY DEGREE COURSE ACTS AS A BARRIER TO ENTRY TO THE PROFESSION AND IS LIKELY TO CONSTRAIN POTENTIAL COMPETITION IN THE MARKETPLACE IN IRELAND.

Conduct Restrictions

2. THE CONTROLS ON ADVERTISING BY OPTOMETRISTS ARE LIKELY TO BE HARMFUL TO NORMAL COMPETITIVE BEHAVIOUR WITHIN THE PROFESSION.

Restrictions on Demarcation

3. THE RESTRICTIONS CONCERNING THE PROHIBITION ON THE SALE OF READYMADE SPECTACLES OR OTHER VISUAL AIDS BY PERSONS OTHER THAN REGISTERED MEDICAL PRACTITIONERS OR OPTICIANS IS UNDULY RESTRICTIVE FROM A COMPETITION PERSPECTIVE.

Other Regulatory Issues

4. THE COMPOSITION OF MEMBERSHIP OF THE OPTICIANS BOARD SHOULD INCLUDE SPECIFIC CONSUMER REPRESENTATIVES.

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# Annex 1 Tabular Summary of Competition Investigations in Other Countries

| Competition Policy Investigations/Reviews/Interventions in the Professional Services – Legal Profession | | | |
|---|---|---|---|
| **Profession** | **Country** | **Issue (title)** | **Outcome** |
| Solicitors | UK | The Office of Fair Trading (OFT) report on competition in the professions (March 2001) found that the following restrictions imposed by the Law Society of England and Wales are likely to be restrictive of competition: restrictions on employed solicitors acting for third parties; prohibition on multidisciplinary practices (MDPs); prohibition on comparative fee advertising and 'cold-calling' or unsolicited approaches to clients or others; prohibition on receiving payment for referring a client to another solicitor; fee guidance on work such as conveyancing and probate. | Following the publication of the OFT report, the Lord Chancellor's Department issued a consultation paper (July 2002) addressing the various issues raised in the 2001 report relating to both solicitors and barristers. The Law Society has agreed to allow solicitors employed by non-solicitors to provide services to consumers – subject to implementation of necessary consumer protection measures. It would therefore, for example, by open to banks or supermarkets to provide legal services such as conveyancing. The Law Society is also considering lifting the ban on MDPs and amending the restrictions on payment for client referrals. It has also indicated that it is willing to withdraw fee guidance on conveyancing and probate work. The prohibition on advertising comparative fees has been abolished as have the restrictions on 'cold-calling' (for business clients). However, restrictions on cold-calling non-business clients remain in place and the OFT has indicated that it accepts this. |
| Barristers | UK | The OFT report on competition in the professions (March 2001) found that the following restrictions imposed in the Bar rules are likely to be restrictive of competition: restrictions on advertising fee comparisons; prohibition on clients having direct access to a barrister (rather than via a solicitor); prohibition on advertising comparative success rates; prohibition on partnerships between barristers and between barristers and other professions; withholding from barristers the right to conduct litigation work currently carried out by solicitors. | Restrictions on comparative fee advertising have been removed by the Bar Council in England and Wales. The Bar Council has also agreed to amend the rule that prohibits clients from having direct access to a barrister. The Bar is currently drafting rules and guidance necessary to implement this amendment and the OFT will examine them in January 2003. The Bar argues that the ban on advertising success rates is justified because it is impossible to relate success and failure to winning or losing cases. The Bar takes the view that repeal of the rule would discourage barristers from taking difficult cases. The OFT has stated that it understands the Bar's argument and currently does not intend to pursue the matter further. However, the OFT remains concerned that the Bar does not intend to lift the blanket restrictions on the conduct of litigation by barristers in independent practice and on the formation of partnerships between barristers and between barristers and other professionals. The OFT intends to investigate these matters further. The Lord Chancellor's Department's consultation paper (July 2002) is central to the ongoing discussion of how to resolve the issues. |

| **Competition Policy Investigations/Reviews/Interventions in the Professional Services – Legal Profession** | | | |
|---|---|---|---|
| **Profession** | **Country** | **Issue (title)** | **Outcome** |
| Solicitors | UK | The OFT has been pressing for progress towards multidisciplinary practices (MDPs) since the so-called 'Entities Report' on the restrictions on the organisational form through which members of professions may offer their services was published by the Director General of Fair Trading (1986). | The Entities Report recommended that the way was clear for the formation of MDPs, and, in particular, suggested that statutory bars preventing solicitors from forming mixed partnerships with members of other professions should be removed. The Director General of Fair Trading (DGFT) considered that MDPs would increase competition and stimulate innovation. While the Courts and Legal Services Act, 1990 effectively removed the statutory bar on MDPs in relation to lawyers, neither the General Council of the Bar (the barristers' professional body) nor the Law Society has yet taken advantage of the changes. |
| Legal | UK | As cited in OECD (2000, p.174), the General Council of the Bar applied to govern entry to the Bar's Vocational Course in 1992. The proposal was found to artificially limit the number of candidates able to enter vocational training for the Bar. | The Director-General of Fair Trading (DGFT) took the view that education requirements for entry to the profession could have a detrimental impact on the effectiveness of competition. For example, qualification and training regulations could have a significant impact on the equality of opportunity and on ensuring a wider choice of persons providing legal services. As a result, the DGFT commented adversely on the proposals. |
| Legal | US | Minimum fee schedule adopted and enforced by the Virginia State Bar association. *'Goldfarb v Virginia State Bar'* (Supreme Court Case: 421 U.S. 773 (1975)). | The Supreme Court struck down the minimum fee schedule, finding that the conduct was essentially private anti-competitive activity not shielded by the state action doctrine. Prior to this case, some courts believed that the 'learned professions' should be treated differently than other professions, reasoning that because their goal is to provide services necessary to the community rather then to generate profits, their activities do not fall within the terms 'trade and commerce' in Section 1 of the Sherman Act. The Goldfarb case also established that professional activities have a sufficient effect on interstate commerce to support Sherman Act jurisdiction. |
| Legal | US | The American Bar Association (ABA), in its accreditation of law schools, restrained competition among professional personnel at ABA-approved law schools, by fixing their compensation levels and working conditions. The ABA also allowed its law school accreditation process to be captured by those with a direct interest in its outcome. Consequently, rather than setting minimum standards for law school quality and thus providing valuable information to consumers, which are legitimate purposes of accreditation, the ABA at times acted as a guild that protected the interests of professional law school | In June 1995, the Antitrust Division of the Department of Justice (DOJ) sued the ABA, as cited in OECD (2000, p.181). In 1996, the US District Court entered a modified consent decree, which prohibits the ABA from misusing its powers as the law school-accrediting agency to restrain competition among professional personnel at ABA-approved law schools, as cited in OECD (2000, p.181). The decree bars the ABA from fixing faculty salaries, refusing to accredit schools simply because they are for-profit, and refusing to allow ABA approved law schools to accept credits from schools that are state-accredited but not ABA-approved. |

| Competition Policy Investigations/Reviews/Interventions in the Professional Services – Legal Profession | | | |
|---|---|---|---|
| **Profession** | **Country** | **Issue (title)** | **Outcome** |
| | | personnel. The ABA approval was a valuable asset to law schools as over 40 states required graduation from an ABA-approved school to qualify to take the state bar exam, and the ABA is the only agency the US Department of Education recognises as a law school-accrediting agency. | |
| Legal | Australia | Trade Practices Commission (1994). | The report found that the Australian legal profession was heavily over-regulated and in urgent need of reform. The legal profession was considered to be highly regulated compared to other sectors of the economy and those regulations combined to impose substantial restrictions on the commercial conduct of lawyers and on the extent to which lawyers were free to compete with each other for business. It was considered that the regulatory regime had adverse effects on the cost and efficiency of legal services and their prices to business and final consumers. The report reached the overall conclusion that many of the regulations could not be justified on public interest grounds. The report called for radical changes including reducing or eliminating the lawyer monopoly in many areas, ending the division between barristers and solicitors, removing restrictive bar practices, ending anti-competitive restrictions on advertising and introducing new fee arrangements. Some changes have already taken place in the legal profession including a lifting of restrictions on advertising and removing the restriction that limited the performance of conveyancing to lawyers (with the exception of Queensland and Tasmania). |
| Lawyers | New Zealand | As cited in OECD (2000, p.169), there have been instances of price fixing involving groups of lawyers, which the competition authority has investigated. | New Zealand's competition authority, the Commerce Commission, has taken enforcement action against this. The enforcement action has ranged from formal warnings to settlements to fines. According to the OECD (2000, p.167), customer surveys have shown that lawyers now compete on price, particularly on conveyancing transactions. |
| Legal | New Zealand | As cited in OECD (2000, pp.165-6), the current system of regulation which involves the profession regulating itself through the New Zealand Law Society on the Government's behalf is under review. | The review is ongoing, but the following changes are proposed: the proposed new Act would create the a regulatory body independent of the professional society, make membership of any professional body voluntary, reduce compliance costs for lawyers by removing the requirement for a fidelity fund and remove restriction on business form. It would also allow paralegal to provide conveyancing services. |
| Legal | Canada | In 1998, two Ontario law associations agreed on the fees members would charge the public | The Supreme Court of Ontario prohibited the two law associations from doing this. The orders also specifically prohibited |

**Competition Policy Investigations/Reviews/Interventions in the Professional Services – Legal Profession**

| Profession | Country | Issue (title) | Outcome |
|---|---|---|---|
| | | for legal services related to residential real estate transactions, as cited in OECD (2000, p.28). | communications among members concerning the fees charged to clients, the promulgation of fee schedules and the formation of committees on fees. |
| Legal and Accountancy | Germany | As cited in OECD (2000, p.126), accountants and lawyers/notary publics in Germany are prohibited from joining hands for purposes of professional practice. | In the last few years, the conduct rules of the professions in Germany, which used to be relatively strict, have been increasingly liberalised. A ruling of the Federal Constitutional Court (1998), as cited in OECD (2000, p.126), contested the ban on accountants and lawyers/notary publics to join hands for the purposes of professional practice. The Court made it clear that with reference to the professional practice of lawyers, it is permissible for accountants and tax consultants to join hands for purposes of professional practice. |
| Notaries | Mexico | As cited in OECD (2000, pp.158-9), in October 1995, the Competition Commission of Mexico received a complaint by the Association of Public Brokers of the Federal District (Mexico City) against the College of Notaries of the Federal District, the Assistant Secretary of Legal Affairs of the Department of the Federal District and the Director General of the Register of Public Property and Commerce of the Federal District. In Mexico, mercantile acts related to real estate property have to be certified by an authorized entity and then introduced into the Register of Public Property. Traditionally, acts of certifying real estate transactions have been performed both by public brokers and by notaries. However, due to a problem of interpretation of the Public Brokerage Act, officials of the Register of Public Property of the Federal District were admitting only transactions certified by notaries to be Registered. | The investigation found that the notaries, the College and the Register of Public Property had worked together to hinder the process of competition and free access in this market: the notaries through absolute monopolistic practices; the College through relative monopolistic practices; and the Register by applying administrative restrictions. The Commission ruled that such actions constituted absolute practices prohibited by Article 8 of the Law. To correct this situation, apart from applying sanctions to the offenders (notaries), the Commission recommended the Public Register to allow for the registration of acts certified by public brokers, in accordance with the Ministry's interpretation of the Act. |
| | | | |

Source: National competition agencies and related bodies.

| Competition Policy Investigations/Reviews/Interventions in the Professional Services – Engineers' Profession | | | |
|---|---|---|---|
| **Profession** | **Country** | **Issue (title)** | **Outcome** |
| Civil Engineering Consultancy | UK | Monopolies and Mergers Commission, (1989c). | The MMC concluded that advertising rules should be liberalised, subject to the requirements that advertisements should not bring the profession into disrepute or abuses the trust of potential clients or exploit their lack of knowledge. |
| Engineers | US | As cited in OECD (2000, p.180), the Association of Engineering Firms Practicing in the Geosciences conspired with its members to restrict competitive bidding (Case: 116 F.T.C. 787 (1993)). | In 1993, the FTC issued a consent order settling charges that an association of engineers conspired with some of its members to restrain competitive bidding and to induce its members, through insurance and peer review programs, not to bid or give favourable prices or credit terms for civil engineering services. The consent order bars the association from using a peer review process to evaluate its members' fees, pricing, or bidding practices, disseminating materials concerning any engineering professional's intention not to bid, disclosing to an insurer any information about a member's fees, pricing, bidding, or advertising, and stating that competitive bidding, low prices, or liberal credit terms affect any engineer's ability to obtain or keep insurance. |
| Engineers | US | National Society of Engineers v United States (Supreme Court Case: 435 U.S. 679 (1978)). | The Society had agreed to an ethical rule that the members would not compete with each other on price before the client had selected one of them to carry out the project. The Court rejected the Society's argument that price competition was not in the public's interest because it would lead to cost cutting and to inferior and perhaps dangerous design work. |
| Engineers | US | As cited in OECD (2000, p.178), the National Society of Professional Engineers (NSPE) had restrictive rules on advertising. | In 1993, the FTC entered a consent order (Case: 116 F.T.C. 787 (1993)) with the NSPE settling charges that the NSPE, through its ethics code, restricted truthful or non-deceptive advertising by its members. |
| Engineers | US | As cited in OECD (2000, p. 179), the NSPE prohibited in its Canon of Ethics competitive bidding by its members. | In 1978 the Supreme Court (Case: 435 U.S. 679 (1978)) held that the trial court was justified in refusing to consider the defence that the canon was justified "because it was adopted by members of a learned profession for the purpose of minimizing the risk that competition would produce inferior engineering work endangering the public safety." The Court held that "no elaborate industry analysis is required to demonstrate the anticompetitive character of such an agreement," and that "the Rule of Reason does not support a defence based on the assumption that competition itself is unreasonable." |
| Engineers | Australia | The Trade Practices Tribunal (renamed the Australian Competition Tribunal in November | The Trade Practices Tribunal refused to authorise the Code of Ethics of the Association of Consulting Engineers of Australia. It |

| **Competition Policy Investigations/Reviews/Interventions in the Professional Services – Engineers' Profession** | | | |
|---|---|---|---|
| **Profession** | **Country** | **Issue (title)** | **Outcome** |
| | | 1995) investigated the Code of Ethics of the Association of Consulting Engineers of Australia as cited in OECD (2000, p.108). The code contained minimum fee scales, restrictions on advertising and a ban on price competition | decided that in all circumstances the public benefit did not outweigh the public detriment constituted by the reduction of competition resulting from the Code of Ethics. Various branches of the engineering profession then submitted acceptable drafts of their rules or codes of ethics. These new rules eliminated offending provisions controlling advertising, disciplinary procedures and prescribing minimum fees. |
| Professional Engineering | New Zealand | As cited in OECD (2000, p.166), the Engineers Regulation Act, which restricts to a limited degree the work professional engineers can undertake in New Zealand unless they are registered engineers, is currently under review. | The review is ongoing, but the following changes are proposed: it is likely that the existing Act will be replaced with a new Act that will encompass the New Zealand principal professional engineering body, the Institution of Professional Engineers of New Zealand. The new body will administer the register of professional engineers and will generally decide on its own rules that govern its activities. However, it will be possible for engineers to get on the register without being a member of the new body. |
| | | | |
| Source: National competition agencies and related bodies. | | | |

| Competition Policy Investigations/Reviews/Interventions in the Professional Services – Architects' Profession | | | |
|---|---|---|---|
| **Profession** | **Country** | **Issue (title)** | **Outcome** |
| Architects | UK | The Office of Fair Trading (OFT) report on competition in the professions (March 2001) found that the Royal Institute of British Architects' (RIBA) practice of issuing guidance to its members on recommended fee scales was damaging to competition on the market. Under the practice, the RIBA issues non-mandatory guidance to architects on the amount to be charged for projects. The fee guidance curves are based on historical data that can be updated by a tender price index and by shifts in the price curves to reflect market conditions. This guidance could, in the OFT's opinion, act to restrict or distort price competition. | Since the publication of the OFT report, the RIBA has agreed to revise the fee guidance but has not yet produced its amended version. The OFT will examine whether the revised guidance meets its competition concerns. |
| Architects | UK | Fee scales for architects have been referred to the Monopolies and Mergers Commission (MMC) under the complex monopoly provisions of the Fair Trading Act 1973, as cited in OECD (2000, p.172). | The MMC always concluded that mandatory fees operated against the public interest, and has generally also taken the same view of recommended fee scales. |
| Surveyors | UK | Fee scales for surveyors have been referred to the Monopolies and Mergers Commission (MMC) under the complex monopoly provisions of the Fair Trading Act 1973, as cited in OECD (2000, p.172). | The MMC always concluded that mandatory fees operated against the public interest, and has generally also taken the same view of recommended fee scales. |
| Architects | Australia | Trade Practices Commission (1992). | It was considered that the market for building design services in Australia was generally competitive. It was discovered that the share of the market traditionally serviced by architects had been eroded through competition from other service providers. |
| Architects | Japan | In the case of the Japan Institute of Architects, as cited in OECD (2000, p.146) the AMA was violated by predetermining the design administration fees for members, the remuneration in competitive bidding for design projects and restriction on participation in competitive bidding for design projects. | Legal remedies imposed. |
| Real Estate Surveyors | Japan | OECD (2000, p.146). The Japanese Federation of Land and House Surveyors' Association was suspected of encouraging each real estate surveyor to use standards for remuneration of real estate surveyors based on the Land and | Legal remedies imposed. |

| **Competition Policy Investigations/Reviews/Interventions in the Professional Services – Architects' Profession** | | | |
|---|---|---|---|
| **Profession** | **Country** | **Issue (title)** | **Outcome** |
| | | House Surveyors Law as fixed remuneration. | |
| | | | |
| Source: National competition agencies and related bodies. | | | |

| Competition Policy Investigations/Reviews/Interventions in the Professional Services – Veterinary Profession | | | |
|---|---|---|---|
| **Profession** | **Country** | **Issue (title)** | **Outcome** |
| Veterinarians | Japan | As cited in OECD (2000, p.146), in the cases involving veterinarians' associations, Anit-Monopoly Act (AMA) violation was suspected in terms of restraining the number of veterinarians allowed to administer rabies inoculations and fixing treatment fees for dogs, cats and other animals. | Legal remedies imposed. |
| Veterinary | Hungary | In 1999 the Competition Office launched proceedings against the Hungarian Veterinary Chamber (Case: VJ-1/1999/25) cited in OECD (2000, p.130) to find out whether certain points of its Ethical Code breached the prohibitions of the Competition Act. These points were the banning of advertising activity, the obligatory application of minimal prices as well as universal application of payment of date and obligatory denial of future service if the client was in delay with their payment. | The Competition Council considered that all these points were anti-competitive and violated the prohibition of restriction of competition. The Competition Council ordered to terminate the restrictive conditions of the Hungarian Veterinary Chamber within 30 days of receipt of the decision, and imposed a fine, amounting to HUF 1 million (about €4,000) on it. |
| Veterinary Surgeons | Denmark | The Danish Association of Veterinary Surgeons restricted the advertisement of fees and banned direct advertising to potential customers, as cited in OECD (2000, p.28). | The Competition Council ordered the Association to terminate its restrictions on advertising fees and its ban on direct advertising to potential customers. These restrictions largely precluded price competition and were held to constitute a barrier to the establishment of new veterinarians. |
| | | | |
| Source: National competition agencies and related bodies. | | | |

| Competition Policy Investigations/Reviews/Interventions in the Professional Services - Medical Profession | | | |
|---|---|---|---|
| **Profession** | **Country** | **Issue (title)** | **Outcome** |
| Medical Consultants | UK | Fee scales for medical consultants have been referred to the Monopolies and Mergers Commission (MMC) under the complex monopoly provisions of the Fair Trading Act 1973, as cited in OECD (2000, p.172). | The MMC always concluded that mandatory fees operated against the public interest, and has generally also taken the same view of recommended fee scales. |
| Medical Consultants | UK | In 1994 the MMC published a report relating to charges for the supply of private medical services (PMS). Monopolies and Mergers Commission, (1994). | The MMC considered that the guidelines issued by the British Medical Association, which recommended rates for consultants' fees, were against the public interest and were consequently prohibited. However, the benefit maxima set by a leading private medical insurer, the British United Provident Association Limited, were deemed to be acceptable as they acted as a constraint on consultants' charges. |
| Medical Practitioners | UK | Monopolies and Mergers Commission (1989a). | The MMC concluded that advertising rules should be liberalised, subject to the requirements that advertisements should not bring the profession into disrepute or abuse the trust of potential clients or exploit their lack of knowledge. |
| Medical | US | As cited in OECD (2000, p.178), the Federal Trade Commission (FTC) investigated the American Medical Association's (AMA) ethical guidelines that suppressed advertising. | The FTC found (Case: 94 F.T.C. 701 (1979)), among other things, that the AMA, through its ethical guidelines, had illegally suppressed virtually all forms of truthful, non-deceptive advertising and similar means of solicitation by doctors and health care delivery organisations. The FTC ordered the AMA to cease and desist from prohibiting such advertising. However, it allowed the AMA to continue its use of ethical guidelines to prevent false or deceptive advertisements or oppressive forms of solicitation. The FTC's decision was affirmed and modified by the Court of Appeals, 638 F.2d 443 (2d Cir. 1980), and affirmed in a 4-4 vote by the Supreme Court, 455 US 676 (1982). The FTC's orders in the AMA case contains a proviso allowing a professional association to act against advertising claims that it "reasonably believes would be false and deceptive within the meaning of section 5 of the Federal Trade Commission Act". The FTC also found that the AMA's 'contract practice' rules adversely affected competition by preventing the development of potentially more efficient forms of business format or practice. |
| Medical | US | As cited in OECD (2000, p.179), three companies and two doctors illegally fixed prices for professional services for lithotripsy procedures – a non-surgical treatment for kidney stones. | In 1998, the FTC settled charges that three companies and two doctors illegally fixed prices for professional services for lithotripsy procedures. The urologist-owners of the facilities in which the procedures were performed financially integrated by jointly investing in the purchase and operation of the |

| Competition Policy Investigations/Reviews/Interventions in the Professional Services - Medical Profession | | | |
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| **Profession** | **Country** | **Issue (title)** | **Outcome** |
| | | | machines used to perform the procedure. The complaint alleged, among other things, that the collective setting of fees for lithotripsy professional services was not reasonably necessary to achieve efficiencies from the legitimate joint ownership and operation of the lithotripsy machines nor were the urologists sufficiently integrated to justify the agreement to fix prices for lithotripsy services. There was a legitimate basis for establishing a set fee for use of the lithotripter but not for insisting that all doctors charge the same professional fee. The consent order prohibited the respondents from fixing prices and required them to terminate third-party payor contracts that include the challenged fees at contract-renewal time or upon request of the payor. |
| Medical | US | As cited in OECD (2000, p. 180), in 1997 the FTC charged the College of Physicians and Surgeons of Puerto Rico and related medical groups with taking collective action to attempt to raise their reimbursement level under a program developed by the Commonwealth government to provide health care coverage for the 30 percent of the Puerto Rican population that is uninsured. | The College called an eight-day strike, pursuant to which members closed their offices and, in some cases, cancelled elective surgery without notice. With the cooperation of the Commonwealth government, the FTC reached a settlement that resulted in an injunction and a $300 000 payment to a catastrophic fund to be administered by the Puerto Rico Department of Health. |
| Medical | US | In recent years, the Department of Justice (DOJ) has challenged three anticompetitive physician hospital organizations (PHOs), as cited in OECD (2000, p.180). | In all three cases, there was no financial or other substantial integration among the competing physicians; thus, their joint-pricing activities were challenged as *per se* violations. All three suits were settled with consent decrees. In one such case, the Antitrust Division alleged that the only women's hospital in Baton Rouge, Louisiana, had joined with 90 percent of the obstetrical/gynaecological practitioners in that area both to protect the hospital from the development of competing inpatient services and to maintain or increase prices for both physician and hospital services above competitive levels. The parties entered into a consent decree enjoining the hospital and a corporation formed by the physicians from negotiating on behalf of competing physicians and from engaging in various other anticompetitive activities. |
| Medical | US | Threatened boycotts by physicians to prevent local hospitals from pursuing an affiliation with Cleveland Clinic (Cases: 115 F.T.C. 891 (1992); 114 F.T.C. 555 (1991); and 114 F.T.C. 542 (1991)), as cited in OECD (2000, p.181). | The FTC issued a series of orders against alleged threatened boycotts by physicians to prevent local hospitals from pursuing an affiliation with the Cleveland Clinic, a nationally-known provider of comprehensive health care services. The Clinic, which operated as a multi-specialty group medical practice, offered a pre-determined 'global fee' or 'unit price' covering all aspects of many services, such as surgery. The FTC's |

| Competition Policy Investigations/Reviews/Interventions in the Professional Services - Medical Profession | | | |
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| **Profession** | **Country** | **Issue (title)** | **Outcome** |
| | | | complaints alleged that when the Clinic sought to establish a facility in Florida, local physicians sought to prevent its physicians from gaining hospital privileges by threatening to boycott the hospitals. The FTC's orders prevent such conduct from recurring. |
| Medical | US | The medical staff of Good Samaritan Regional Medical Center conspired to boycott the hospital in order to force it to end its dealings with a potentially cost-containing multi-specialty physician's clinic that would have competed with the staff. | In 1994, the FTC settled charges against the medical staff of Good Samaritan Regional Medical Center (Case: 119 F.T.C. 106 (1994)). The consent order prohibits the respondents from agreeing, or attempting to agree, to restrict services offered by the hospital, clinic, or any other health care provider by refusing to deal with others offering health care services or by withholding patient referrals. |
| Medical | US | The Iowa section of American Physical Therapy Association restricted its members from rendering services on a basis other than the traditional fee-for-service basis, as cited in OECD (2000, p.182). | The FTC issued a consent order (Case: 111 F.T.C. 199 (1988)) requiring the association to cease restricting its members from rendering services on a basis other than the traditional fee-for-service, such as becoming a salaried employee of a hospital or physician-owned physical therapy service, or practicing in other non-traditional ways, such as in a franchise arrangement or in commercial settings. |
| Physicians | US | Arizona v Maricopa Medical Society (Supreme Court Case: 457 U.S. 332 (1982)). The physicians had agreed a maximum fee schedule. | The Court ruled that agreeing to a maximum fee schedule for physicians' services was *per se* illegal. |
| Medical | Australia | The Australian Competition and Consumer Commission (ACCA) (2001) 'Report to the Australian Senate on anti-competitive and other practices by health funds and providers in relation to private health insurance'. | The document reports that the Commission has taken enforcement action against Medibank Private and MBF for misleading and deceptive advertising and promotion for their health insurance products. The Commission has also investigated a number of minor issues regarding funds' advertising that were resolved by the funds agreeing to change the particular promotion or advertisement. The Commission has also continued to monitor the contracting process between hospitals and health funds for potential breaches of the Act. The Commission obtained court enforceable undertakings from Medibank Private over unconscionable conduct regarding the inclusion of a unilateral contract variation clause in a proposed contract with an independent specialist psychiatric hospital. The Commission welcomed the launch of the 'Voluntary Code of Practice for Hospital Purchaser/Provider Agreement Negotiations between Private Hospitals and Private Health Insurers.' The Commission believes that at the very least patients should be informed of the likely costs by specialists at the time of consultation and is examining whether silence in relation to fee disclosure may constitute misleading or deceptive conduct in breach of the Act. The Commission is also of the view that 'informed financial consent' does not only |

| Competition Policy Investigations/Reviews/Interventions in the Professional Services - Medical Profession | | | |
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| **Profession** | **Country** | **Issue (title)** | **Outcome** |
| | | | involve doctors informing their patients about the likely costs of the treatment but also requires doctors to inform their patients of any financial interest the doctors have in recommending the particular treatments or services. The Commission believes that all practitioners should disclose their financial interests. |
| Anaesthetists | Australia | In December 1998 the ACCC settled injunction proceedings instituted in the Federal Court against the Australian Society of Anaesthetists (ASA) and 4 individual anaesthetists for boycott agreements concerning on-call services, as cited in OECD (2000, p.113). | The anaesthetists and the ASA gave undertakings to the Federal Court that they would not engage in fixing, controlling or maintaining prices offered or charged by them for the supply of on-call services, and that they would not enter into any agreement having the purpose, effect or likely effect of substantially preventing, hindering or lessening competition in the market for the supply of on-call services. The ASA also undertook to the Federal Court to develop and implement, at its own expense, a trade practices compliance program. The Court ordered that the respondents pay A$ 60,000 toward the ACCC's cost. |
| Doctors | Australia | Investigation by the ACCA into a boycott of Canberra hospitals by Canberra doctors (AMA (1974-75, pp.13-840), as cited in OECD (2000, p.117)). | Refusal to authorise the boycott. |
| Medical Colleges | Australia | The ACCC is investigating specialist medical colleges who limit training places and engage in trainee selection processes. The ACCC considers that if a college makes decisions about entry in order to protect the privileged positions of its members, then such colleges may be at risk of contravening competitive conduct provisions, as cited in OECD (2000, p.114). | Ongoing. |
| Medical | New Zealand | Lower Hutt doctors agreed that when a doctor was responsible for a woman's maternity care and the woman also used a midwife, the standard fees set collectively by the doctors would be paid to the midwife. | New Zealand's Commerce Commission warned the doctors that their attempted collective agreement to pay midwives specified rates was a form of price fixing. |
| Physicians, Surgeons and Dentists | Italy | Imposition of anti-competitive resolutions by the National Federation of Physicians, Surgeons and Dentists, and 37 Provincial Associations of Physicians, Surgeons and Dentists, and the Trento Provincial branches of the Italian Association of Dentists and the National Association of Italian Dentists. One resolution was the imposition of the so-called 'open | On 27 September 2000 the Competition Authority ruled that they had acted unlawfully in violation of part 2(2) of the Competition Fair Trading Act. The Authority ruled that the following were agreements that restricted competition on the basis of its findings: the resolutions issued by the National Federation of Physicians, Surgeons and Dentists of 1985 and 1997 which stipulated the conditions for concluding contractual agreements between physicians and entities for providing |

| Competition Policy Investigations/Reviews/Interventions in the Professional Services - Medical Profession | | | |
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| **Profession** | **Country** | **Issue (title)** | **Outcome** |
| | | list' principle, which obliged the supplementary health service providers to conclude contracts with all the professionals whose names were supplied by the National Associations. | supplementary healthcare services; the resolutions issued by 35 Provincial Associations proposing the same conditions to be applied at the provincial level; and decisions taken by the Trent parts of the associations belonging to the Italian Association of Dentists and the National Association of Italian Dentists, laying down a uniform discount to be granted by the members of the Associations as the condition for concluding conventions with the local authority. Considering the locomotive role played by the National Federation of Physicians, Surgeons and Dentists on the conduct of the individual Provincial Associations, the Authority imposed a fine of 122.6million lire on the National Federation. |
| Physicians and Dentists | Japan | As cited in OECD (2000, p.146), in the cases of physicians' and dentists' associations in Japan, Anti-Monopoly Act (AMA) violation was substantiated or suspected in terms of unfairly restricting the number of businesses and the functions and activities of member businesses, specifically enforcing a system of prior approval concerning the opening or moving of medical institutions and additions or changes in the treatment carried out by members and non-members, and in deciding approval, restricting the number of businesses according to distances from incumbent medical institutions and to the opinions of incumbent businesses in the area. | Legal remedies imposed. |
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| Source: National competition agencies and related bodies. | | | |

| Competition Policy Investigations/Reviews/Interventions in the Professional Services – Dentists' Profession | | | |
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| **Profession** | **Country** | **Issue (title)** | **Outcome** |
| Dentistry | US | Delta Dental of Rhode Island ('Delta') and unnamed co-conspirators engaged in agreements that discouraged dentists from offering fees lower than those paid by Delta patients to patients covered by other insurance companies and to uninsured patients. Almost all of the Delta dentists agreed to comply with this 'most favoured nation' (MFN) clause and refused to contract at prices below Delta's with limited-panel dental insurance plans that were trying to enter the Rhode Island market. | The case brought by the DoJ (Case: 943 F. Supp. 172 (D.R.I. 1996)) was settled with a consent decree. The Court rejected Delta's argument that most MFN clauses are *per se* legal and agreed with the DoJ that, under certain conditions, MFNs may have substantial anticompetitive effects and are properly analysed under the rule of reason. |
| Dentists | US | In 1986, the Federal Trade Commission (FTC) brought a case against Indiana Federation of Dentists (Supreme Court Case: 476 U.S. 447, 463 (1986)), charging them with promulgating a policy that requires its members to withhold x-rays from dental insurers in connection with evaluating patients' claims for benefits. | The FTC issued a cease-and-desist order. However, the Court of Appeal vacated the FTC's order on the ground that it was not supported by substantial evidence, holding that the FTC's findings were erroneous; that the findings were inadequate because of the FTC's failure to define the market in which the respondent allegedly restrained competition and to establish that the respondent had the power to restrain competition in that market; and that the FTC erred in not determining whether the alleged restraint on competition among dentists had actually resulted in higher dental costs. The Supreme Court reversed this ruling unanimously. The Supreme Court ruled that the FTC's factual findings regarding the respondent's x-ray policy were supported by substantial evidence, that there was no dispute that the respondent's members conspired among themselves to withhold x-rays and that the FTC finding that competition among dentists with respect to cooperation with insurers' requests for x-rays was diminished where the respondent held sway did have adequate support. Therefore, the Supreme Court ruled that under the 'rule of reason', the FTC's factual findings were sufficient as a matter of law to establish an unfair method of competition in violation of the FTC Act, since it amounted to a conspiratorial restraint of trade in violation of the Sherman Act. The Supreme Court stated that the respondent's x-ray policy undertook the form of a horizontal agreement among its members to withhold from their customers a particular service that they desired. Absent of some countervailing pro-competitive virtue, the Supreme Court concluded that such an agreement could not be sustained under the rule of reason. Furthermore they stated that the alleged non-competitive 'quality of care' considerations did not justify the respondents |

| Competition Policy Investigations/Reviews/Interventions in the Professional Services – Dentists' Profession | | | |
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| **Profession** | **Country** | **Issue (title)** | **Outcome** |
| | | | x-ray policy and that anticompetitive collusion among private actors, even when consistent with State policy, acquires antitrust immunity only when it is actually supervised by the State, and that there was no suggestion of such supervision in this case. |
| Dentists | US | Restrictive rules on advertising by California Dental Association (CDA), as cited in OECD (2000, p.178). The CDA's restrictions covered advertising of prices, discounts, quality, superiority, guarantees, and availability of dental services. For example, CDA barred its members from representing that their prices were low, reasonable, and affordable, prohibited money-back guarantees as misleading, and prohibited dentists from reporting the results of free dental screenings of school children on forms bearing the dentists' names and addresses (a means of soliciting new patients). | In 1996, the FTC (Case: 121 F.T.C. 190 (1996)) found that the CDA applied ethical guidelines - purportedly adopted to prevent deceptive advertising - in a way that restricted its member dentists from engaging in a variety of truthful and non-deceptive advertising. The FTC condemned the horizontal restrictions on price advertising as *per se* illegal and also held these restrictions and other non-price advertising restraints illegal under an abbreviated rule of reason analysis. With the CDA, the FTC found that there were substantial anti-competitive effects because the advertising restraints likely reduced output and deprived consumers of valuable information and competition among dentists, that CDA had sufficient market power to enforce the restrictions, and that the restraints did not yield any countervailing consumer benefits to justify the restrictions. The CDA claimed that its 'ethical' requirements resulted in more information to consumers, that its ban on quality claims was necessary to avoid deception, and that its actions were lawful because California imposed similar restrictions on advertising. The FTC rejected the claim as without any factual basis, and found that CDA did not have the power to interpret and enforce the state law itself. The Ninth Circuit Court of Appeals sustained the FTC's holding that CDA's price and non-price restraints on advertising and solicitation were unlawful under an abbreviated rule of reason analysis. The FTC's CDA decision stated that the "complaint did not challenge the right ... to suppress advertising that was misleading or deceptive or otherwise caused unavoidable and unreasonable harm to consumers." The CDA order also permits the CDA to restrict solicitation of patients who may be particularly vulnerable to undue influence. |
| Dentists | US | Dentists in three communities of Puerto Rico fixed prices and engaged in an illegal boycott in order to obtain higher reimbursement rates for dental services under Puerto Rico's government managed care plan for the indigent. | The dentists agreed to settle the FTC charges in 1998. Under the settlement, the dentists were prohibited from jointly negotiating prices or other more favourable economic terms for dentists or jointly boycotting, threatening to boycott, or refusing to provide dental services to any payor or provider, or from collectively determining any terms or conditions for dealing with third party payers. Notwithstanding these provisions, the agreement permitted the dentists to engage in |

| Competition Policy Investigations/Reviews/Interventions in the Professional Services – Dentists' Profession | | | |
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| **Profession** | **Country** | **Issue (title)** | **Outcome** |
| | | | conduct that was reasonably necessary to operate any 'qualified risk-sharing joint arrangement' or upon prior notice to the FTC any 'qualified clinically integrated joint arrangement.' It should be noted that a consent agreement is for settlement purpose only and does not constitute an admission of law violation. |
| Dentists | US | Delta Plan of Arizona Inc. had a MFN clause that limited discounting of fees to other patients by Arizona dentists. | Delta Plan of Arizona Inc. settled with the DoJ in 1995. The settlement eliminated the MFN clause and prevented Delta Plan of Arizona Inc. from engaging in other actions that limited future discounting by Arizona dentists. |
| Dentists | US | Oregan Dental Services had a MFN clause that limited discounting of fees to other patients by dentists. | Oregan Dental Services settled with the DoJ in 1995. The settlement eliminated the MFN clause and prevented Oregan Dental Services from engaging in other actions that limited future discounting dentists. |
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| Source: National competition agencies and related bodies. | | | |

| **Competition Policy Investigations/Reviews/Interventions in the Professional Services – Optometrists' Profession** | | | |
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| **Profession** | **Country** | **Issue (title)** | **Outcome** |
| Optometry | US | Restrictive rules on advertising by the Massachusetts Board of Registry in Optometry (Case: 100 F.T.C. 549 (1988)). | The FTC in 1988 challenged and banned these restrictive rules adopted by the State board, as it was not shielded from antitrust liability by the state action doctrine. |
| Optometry | US | The American Academy of Optometry's required that its members practise in locations consistent with the majority of other health professions in the area (Case: 108 F.T.C. 25, 27 (1986)). | The FTC charged that the requirement restricted the choice of practice location to the traditional private office and prevented optometrists from practising in shopping centres and other locations customarily considered commercial in nature. As a result, the FTC alleged, consumers were deprived of the potential cost savings, convenience, and efficiency benefits of optometric practice locations in commercial settings in their purchases of optometric services and optical products. The case was settled with a consent order that prohibited the Academy from restricting the types of practice locations of its members or prospective members. |
| Eye Surgeons | New Zealand | There is a case before the New Zealand High Court that involves anti-competitive collusion by eye surgeons. A regional health authority had contracted an Australian eye surgeon to carry out 225 cataract operations to reduce the waiting lists for eye surgery in the region. One of the local eye surgeons is accused of using his dominant position in the market to prevent the Australian surgeon from operating. | Ongoing. |
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| Source: National competition agencies and related bodies. | | | |

| Competition Policy Investigations/Reviews/Interventions in the Professional Services – Other Professions (not within remit of Indecon Study) | | | |
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| **Profession** | **Country** | **Issue (title)** | **Outcome** |
| Accountants | UK | The Office of Fair Trading (OFT) report on competition in the professions (March 2001) found that the following restrictions are likely to be restrictive of competition: prohibition on advertising comparisons of fees; prohibition on 'cold-calling' involving approaches to clients directly to seek new business; and prohibition on making payment to a third party for referring work. | The OFT has stated that the Institute of Chartered Accountants in England and Wales, the Association of Chartered and Certified Accountants and the Association of Accounting Technicians have all addressed these three restrictions. In November 2002, the OFT noted that there is public concern about the increased concentration in the supply of audit and accountancy services, and its implications for competition and choice (resulting from the collapse of Anderson). The OFT stated that it recognises that concern. However, the OFT stated that it does not see the need to further investigate the profession at this stage. The OFT approach will be to keep the market under review. |
| Accountants | Australia | Trade Practices Commission (1992). | It was considered that the accountancy profession in Australia was not subject to the same degree of regulation as other professions. The report concluded that, on the whole, regulation of the accountancy profession did not overly impede competitive activity within the various markets in which accountants operate. Since the report, various restrictions on the ability of accountants to advertise their services have been lifted. In 1995 the Institute of Chartered Accountants abolished its residence requirement for membership, enabling Australian accountants to work overseas and foreign accountants to become members of the Australian Institute. |
| Accountants | Australia | Investigation by the ACCC in 1998 into a merger between the two primary accounting professional bodies (The Institute of Chartered Accountants and the Australian Society of Certified Practising Accountants, as cited in OECD (2000, pp.107-8)). | The Australian Competition and Consumer Commission (ACCC) raised no objections to the merger. In coming to its decision, the ACCC considered that there is no restriction on the use of the term 'accountant' in the selling of accountancy services and the fact that accountants face increasing competition from a range of other service providers including lawyers, book keepers, management consultants and from the sale of accounting software packages. The merger also resulted in the unification of accreditation procedures for membership, which was seen as having the effect of lowering any barriers to entry. |
| Accountants | Italy | The behaviour of the two main accounting professional associations (*Ordine dei Commercialisti e Ordine dei Ragionieri*) were subject to an investigation concluded in October 1998, as cited in OECD (2000, p.140). In | The Italian Antitrust Authority stated that the restrictive nature of the behaviour was rather self-evident given that the agreements were aimed to set prices of services to be uniformly applied by associates. The Authority concluded that |

| Competition Policy Investigations/Reviews/Interventions in the Professional Services – Other Professions (not within remit of Indecon Study) | | | |
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| **Profession** | **Country** | **Issue (title)** | **Outcome** |
| | | particular, the investigated behaviours consisted of: an agreement between the two associations to propose to the minister identical fee schedules; identification of structure and level of fees; and suggestion to the associates to apply the proposed fees although they were not yet approved by the minister. | the considered professional bodies had infringed competition law and that in the future they should refrain from making agreements to determine structure and level of fees. The Ordine dei Commercialisti has taken a formal decision and made public statements regarding the elimination of any form of self-regulation on the compulsory application of minimum professional fees. |
| Accountants | US | Restrictive rules on advertising by the American Institute of Certified Public Accountants, as cited in OECD (2000, p. 178). | In 1990, the FTC (Case: 113 F.T.C. 698 (1990)) charged the American Institute of Certified Public Accountants, the dominant professional association in the accounting field, with restricting truthful, non-deceptive advertising by prohibiting members from making truthful claims in self-laudatory or comparative advertisements, or using truthful testimonials. It also alleged that the association restricted members' efforts to solicit clients directly and by referrals. The consent order bars the association from prohibiting its members from engaging in these practices. |
| Auditors | Hungary | In 1998 the Competition Office launched proceedings against the Chamber of Hungarian Auditors (CHA) (Case: Vj-148/1998/18) cited in OECD (2000, p.129) to find out whether certain points of its Ethical Code breach the prohibitions of the Competition Act. These points were: i) under the provision relating to the indirect setting of fees the members could not apply lower prices than the minimal prices defined by the Code; and ii) advertising was prohibited. | The Competition Council considered the definition of minimal prices as restrictive since it deprives the small and unknown auditors from price competition. It also decided that the Ethical Code applied stricter conditions concerning comparative advertising than was permitted under the Competition Act. The Competition Council considered both restrictions as concerted practices prohibited by the Competition Act. The CHA requested an exemption from the prohibition, but the Competition Council could not find any justification for the conditions of an exemption. The Competition Council imposed a fine, amounting to HUF 5 million (about €20,000) on CHA and ordered it to terminate its restrictive conditions within 30 days of receipt of the decision. |
| Chiropractors | US | Restrictive rules on advertising by the Texas Board of Chiropractic Examiners (Case: 115 F.T.C. 470 (1992)). | The FTC in 1992 challenged and banned these restrictive rules adopted by the State board as it was not shielded from antitrust liability by the state action doctrine. |
| Chiropractors | Japan | The OECD report (2000, p.148) cites a sample case concerning the qualification for judo chiropractors in Japan, which is awarded to individuals who have completed a course in training facilities designated by the Ministry of Health and Welfare based on Article 12 of the Judo Chiropractors Act. However, in this | The Japan Fair Trade Commission (FTC) stated that this type of administration by the Ministry of Health and Welfare unfairly restricted new entry to training facilities and was problematic from the viewpoint of competition policy. The FTC therefore requested in July 1997 that the Ministry of Health and Welfare refrain |

| Competition Policy Investigations/Reviews/Interventions in the Professional Services – Other Professions (not within remit of Indecon Study) | | | |
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| **Profession** | **Country** | **Issue (title)** | **Outcome** |
| | | designation of training facilities by the Ministry of Health and Welfare, the new entrant required the written consent of the Judo Chiropractors Association and other related organisations. Furthermore, regulation of supply and demand balancing had been carried out with no legal basis. | from this type of administration in the future. |
| Conference Interpreters | US | The International Association of Conference Interpreters (AIIC) and its US affiliate members published lists of fees that its members were required to charge (Case: 123 F.T.C. 465 (1997)). | In 1997 the FTC's complaint also challenged certain work rules that facilitated price fixing and restrained price competition among AIIC members by requiring, among other things, that all interpreters on a team be paid the same rate, that fees be paid in day-long increments, that certain standards of lodging and transportation be provided, that payment be made for travel, rest and study days, and that services not be provided free of charge. The FTC's order requires AIIC to eliminate these rules and by laws regarding all the challenged practices. |
| Cosmetic Surgery | Australia | Inquiry into Cosmetic Surgery prompted by complaints from consumers and health professionals regarding the way cosmetic surgery procedures are promoted and their quality as cited in OECD (2000, p.113). | Ongoing. |
| Customs Agents | Mexico | In August 1995 the Competition Commission initiated an ex-officio investigation into alleged absolute monopolistic practices by the members of the Customs Agents Association of Cancun. The Commission had been informed previously that the Association's members had agreed on fixing the prices for the services they provide. This agreement also established penalties for non-compliance although those penalties were never made effective even where certain customs agents did not follow the rules. | The Commission resolved to i) impose a fine upon the Association for incurring in absolute monopolistic practices, ii) to order the Association to refrain from the practice, to revoke the agreement and to inform their members and iii) to give notice of its resolution to the Confederation of Customs Agents Association of Mexico. |
| Osteopaths | UK | Monopolies and Mergers Commission (1989b). | The MMC concluded that advertising rules should be liberalised, subject to the requirements that advertisements should not bring the profession into disrepute or abuses the trust of potential clients or exploit their lack of knowledge. |
| Pharmacists | UK | OFT Market Investigation: the Control of Entry Regulations and Retail Pharmacy Services in the UK (January 2003). | The OFT examined whether the regulations that currently control entry into the industry unduly impede the way that the market works – to the ultimate detriment to the public. The study concluded that the control of entry regulations should be lifted. They were |

| Competition Policy Investigations/Reviews/Interventions in the Professional Services – Other Professions (not within remit of Indecon Study) | | | |
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| **Profession** | **Country** | **Issue (title)** | **Outcome** |
| | | | found to inhibit price competition, stifle efficiency improvements and innovation and limit the availability of pharmacy services. The OFT also found that the regulations impose substantial regulatory burdens. It is now for the UK Government to decide what action, if any, to take in the light of the OFT'S findings. |
| Pharmacists | Japan | As cited in OECD (2000, p.146), in the cases involving pharmacists' associations, they were suspected of unfairly restraining business activities by prohibiting the display of drug prices in advertising and placing restrictions on distances between hospitals and pharmacies when issuing authorisations for standard pharmaceutical offices by prefectural pharmacists' associations. | Legal remedies imposed. |
| Pharmacy | New Zealand | The Pharmacy Guild of New Zealand (Inc) (the Guild) made an application to the Commerce Commission to seek authorization of two practices that would allow the Guild and its members to agree on the pricing it would seek from the Ministry of Health or District Health Boards (DHBs) for pharmacy services on Government subsidized medicines. The Guild would then seek agreement with the Ministry or DHBs over those prices. The prices agreed with the Ministry or DHBs then would be reflected in service agreements between individual retail pharmacies and DHBs as to the payment level the retail pharmacies would receive to provide pharmacy services. | On the basis of the information available, the Commission reached the preliminary view that it could not be satisfied that the public benefits of the proposed practices were likely to outweigh the competitive detriments. The Commission invited industry participants and other interested parties to make written submissions on the draft determination by 17 May 2002. A final determination of the application is expected by the end of June 2002. |
| Professional Services Trade Associations | Finland | In 1988, the Finnish Competition Authority (FCA) initiated a project whose aim was to intervene with the price recommendations then commonly provided by trade associations to their members, as cited in OECD (2000, p.119). The FCA negotiated about the dissolving of the price discrimination with the Finnish Medical Association, Finnish Dental Association, Finnish Bar Association, Finnish Association of Architects and Interior Architects, and the Finnish Association of Consultants. | All the associations cancelled their price recommendations. This seems to have led to increased price competition at least in certain fields. According to investigations conducted by the Finnish Association of Architects, the architects' fees have considerably decreased after the recommendation was abolished. |
| Various | UK | As cited in the OECD (2000, p.27), in the 1970s eleven references of particular restrictions were made to the Monopolies and Mergers Commission. Seven concerned advertising restrictions (barristers in England and advocates in Scotland; solicitors in England and Wales, and in Scotland; veterinary | In every case except the restrictions on advertising by barristers and advocates, the Commission found that the restrictions operated against the public interest. |

| Competition Policy Investigations/Reviews/Interventions in the Professional Services – Other Professions (not within remit of Indecon Study) | | | |
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| **Profession** | **Country** | **Issue (title)** | **Outcome** |
| | | surgeons; surveyors; accountants; and stockbrokers.) Two concerned fee scales (architects and surveyors) and two concerned the 'two counsel rule'. | |
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| Source: National competition agencies and related bodies. | | | |

# Annex 2 Solicitors' Profession: Supplementary Tables

| Number and Growth of Solicitors holding Practising Certificates 1960-2001 | | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| **Year** | **No.** | ***% change*** | **Year** | **No.** | ***% change*** | **Year** | **No.** | ***% change*** |
| 1960 | 1,335 | - | 1974 | 1,548 | *3.96* | 1988 | 3,410 | *1.49* |
| 1961 | 1,300 | *-2.62* | 1975 | 1,655 | *6.91* | 1989 | 3,422 | *0.35* |
| 1962 | 1,290 | *-0.77* | 1976 | 1,750 | *5.74* | 1990 | 3,529 | *3.13* |
| 1963 | 1,290 | *0.00* | 1977 | 1,780 | *1.71* | 1991 | 3,642 | *3.20* |
| 1964 | 1,319 | *2.25* | 1978 | 1,944 | *9.21* | 1992 | 3,808 | *4.56* |
| 1965 | 1,319 | *0.00* | 1979 | 2,075 | *6.74* | 1993 | 3,959 | *3.97* |
| 1966 | 1,298 | *-1.59* | 1980 | 2,150 | *3.61* | 1994 | 4,131 | *4.34* |
| 1967 | 1,298 | *0.00* | 1981 | 2,340 | *8.84* | 1995 | 4,355 | *5.42* |
| 1968 | 1,301 | *0.23* | 1982 | 2,674 | *14.27* | 1996 | 4,593 | *5.46* |
| 1969 | 1,337 | *2.77* | 1983 | 2,788 | *4.26* | 1997 | 4,776 | *3.98* |
| 1970 | 1,349 | *0.90* | 1984 | 3,010 | *7.96* | 1998 | 4,975 | *4.17* |
| 1971 | 1,393 | *3.26* | 1985 | 3,188 | *5.91* | 1999 | 5,257 | *5.67* |
| 1972 | 1,452 | *4.24* | 1986 | 3,292 | *3.26* | 2000 | 5,551 | *5.59* |
| 1973 | 1,489 | *2.55* | 1987 | 3,360 | *2.07* | 2001 | 5,912 | *6.50* |
| Cumulative rate of growth (1960-2001): 342.85%.<br>Average annual rate of growth: 3.74%. | | | | | | | | |
| Source: Indecon calculations using Law Society data (Hall, 2002). | | | | | | | | |

| Number and Growth of New Solicitors Admitted to the Roll Of Solicitors 1990-2001 | | |
|---|---|---|
| **Year** | **Number** | **% change** |
| 1990 | 162 | - |
| 1991 | 203 | 25.31 |
| 1992 | 298 | 46.80 |
| 1993 | 315 | 5.70 |
| 1994 | 308 | -2.22 |
| 1995 | 337 | 9.42 |
| 1996 | 394 | 16.91 |
| 1997 | 252 | -36.04 |
| 1998 | 318 | 26.19 |
| 1999 | 385 | 21.07 |
| 2000 | 350 | -9.09 |
| 2001 | 474 | 35.43 |

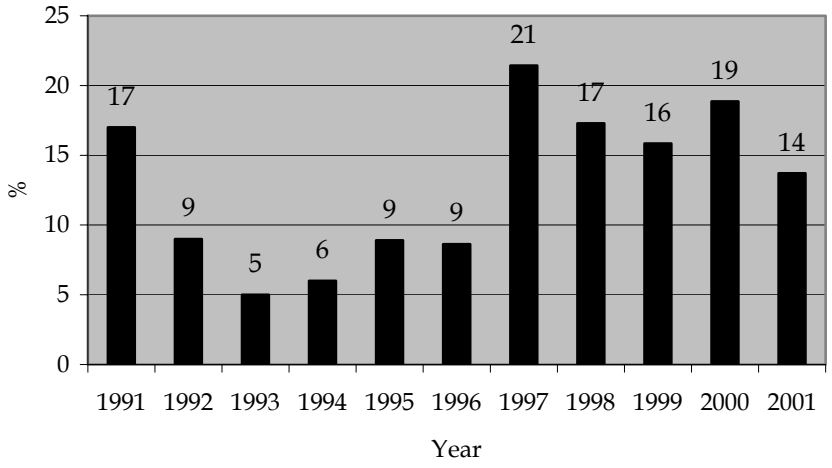
Source: Indecon calculations using Law Society data.

| Comparison of the Number of New Solicitors Entered on Roll of Solicitors with the Number of New Practising Certificates Taken out 1990-2001 | | | |
|---|---|---|---|
| **Year** | **Entered on Roll** | **New practising certificates** | **PCs/Roll (%)** |
| 1990 | 162 | 105 | 65 |
| 1991 | 203 | 113 | 56 |
| 1992 | 298 | 166 | 55 |
| 1993 | 315 | 151 | 48 |
| 1994 | 308 | 172 | 56 |
| 1995 | 337 | 264 | 78 |
| 1996 | 394 | 198 | 50 |
| 1997 | 252 | 183 | 73 |
| 1998 | 318 | 174 | 55 |
| 1999 | 385 | 307 | 80 |
| 2000 | 350 | 294 | 84 |
| 2001 | 474 | 361 | 76 |
| Source: Indecon calculations using Law Society data. | | | |

| Composition of New Solicitors Admitted to the Roll of Solicitors 1995-2001 | | | | |
|---|---|---|---|---|
| **Year** | **Irish** | **Foreign solicitors** | **Transferring barristers** | **Total** |
| 1995 | 306 | 30 | 1 | 337 |
| 1996 | 358 | 34 | 2 | 394 |
| 1997 | 196 | 54 | 2 | 252 |
| 1998 | 263 | 55 | 0 | 318 |
| 1999 | 322 | 61 | 2 | 385 |
| 2000 | 281 | 66 | 3 | 350 |
| 2001 | 406 | 65 | 3 | 474 |

Source: Indecon calculations using Law Society data.

**The Percentage of New Solicitors Admitted to the Roll of Solicitors Qualified as Foreign Lawyers 1991-2001**




Source: Indecon calculations using Law Society data.

**Source of Pre-Existing Foreign Qualifications in the Case of Solicitors Admitted to the Roll**

| Country | 1991 | 1992 | 1993 | 1994 | 1995 | 1996 | 1997 | 1998 | 1999 | 2000 | 2001 |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | | | | | | | | | |
| N Ireland | 16 | 10 | 6 | 10 | 7 | 7 | 15 | 19 | 21 | 18 | 18 |
| England | 26 | 19 | 12 | 11 | 23 | 24 | 39 | 35 | 39 | 42 | 41 |
| Germany | | 1 | | | | 1 | | 1 | | 1 | |
| Scotland | | | | | | 2 | | | | | |
| New York | | | | | | | | | 1 | 3 | 4 |
| Penn. | | | | | | | | | | 1 | |
| New Zea. | | | | | | | | | | 1 | 2 |
| | | | | | | | | | | | |
| Total | 42 | 30 | 18 | 21 | 30 | 34 | 54 | 55 | 61 | 66 | 65 |

Source: Indecon calculations using Law Society data.

**Indecon Survey of Solicitors - Approximate Average annual Change in Total Fee Income of Solicitors' Practices - 1999-2001 - Practices Stating Increase in Fee Income**

| County | % of Responses | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|
| | Over 200% Increase | 150-199% | 100-149% | 50-99% | 25-49% | 10-24% | 5-9% | 0-4% | Total |
| Carlow | - | - | - | - | - | - | - | - | - |
| Cavan | - | - | - | - | - | - | 100 | - | 100 |
| Clare | - | - | - | - | 16.7 | 66.7 | 16.7 | - | 100 |
| Cork | 3.1 | 3.1 | 3.1 | - | 31.3 | 46.9 | 9.4 | 3.1 | 100 |
| Donegal | - | - | - | - | - | 100.0 | - | - | 100 |
| Dublin | 4.5 | 0.9 | 6.3 | 15.3 | 18.0 | 36.9 | 11.7 | 6.3 | 100 |
| Galway | 12.5 | - | - | 18.8 | 12.5 | 43.8 | 12.5 | - | 100 |
| Kerry | 10.0 | 10.0 | - | 10.0 | 20.0 | 30.0 | 20.0 | - | 100 |
| Kildare | 50.0 | - | - | - | 50.0 | - | - | - | 100 |
| Kilkenny | 16.7 | 16.7 | - | - | 16.7 | 33.3 | 16.7 | - | 100 |
| Leitrim | - | - | - | - | 100.0 | - | - | - | 100 |
| Limerick | 11.1 | - | - | 11.1 | - | 55.6 | 22.2 | - | 100 |
| Loais | - | - | - | - | 100.0 | - | - | - | 100 |
| Longford | - | - | - | 25.0 | 25.0 | - | 50.0 | - | 100 |
| Louth | - | - | 25.0 | - | 25.0 | 50.0 | - | - | 100 |
| Mayo | - | - | - | 10.0 | 40.0 | 50.0 | - | - | 100 |
| Meath | 20.0 | 20.0 | 20.0 | - | - | 40.0 | - | - | 100 |
| Monaghan | - | - | - | 50.0 | - | - | - | 50.0 | 100 |
| Offaly | - | - | - | 25.0 | 25.0 | 25.0 | - | 25.0 | 100 |
| Roscommon | - | - | - | - | - | 100.0 | - | - | 100 |
| Sligo | - | - | - | - | - | 80.0 | - | 20.0 | 100 |
| Tipperary | - | 7.1 | - | 14.3 | 14.3 | 35.7 | 14.3 | 14.3 | 100 |
| Waterford | - | - | - | - | - | 50.0 | - | 50.0 | 100 |
| Westmeath | - | - | - | 20.0 | 20.0 | 40.0 | 20.0 | - | 100 |
| Wexford | - | - | - | 14.3 | 42.9 | 42.9 | - | - | 100 |
| Wicklow | - | - | 25.0 | 25.0 | 25.0 | 25.0 | - | - | 100 |
| Total | 4.8 | 2.2 | 4.4 | 11.4 | 19.9 | 40.6 | 11.4 | 5.2 | 100 |

Source: Indecon Survey of Solicitors.

**Indecon Survey of Solicitors - Approximate Average annual Change in Total Fee Income of Solicitors' Practices - 1999-2001 - Practices Stating Decrease in Fee income**

| | % of Responses | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|
| **County** | **Over 200% Decrease** | **150-199%** | **100-149%** | **50-99%** | **25-49%** | **10-24%** | **5-9%** | **0-4%** | **Total** |
| Carlow | - | - | - | - | - | - | - | - | - |
| Cavan | - | - | - | - | - | - | - | - | - |
| Clare | - | - | - | - | - | - | - | - | - |
| Cork | - | - | - | - | - | - | 100 | - | 100 |
| Donegal | - | - | - | - | - | - | - | - | - |
| Dublin | - | - | - | 27.3 | 18.2 | 9.1 | 18.2 | 27.3 | 100 |
| Galway | - | - | - | - | 100 | - | - | - | 100 |
| Kerry | - | - | - | - | - | - | - | - | - |
| Kildare | - | - | - | - | - | - | - | - | - |
| Kilkenny | - | - | - | - | - | - | - | - | - |
| Leitrim | - | - | - | - | - | - | - | - | - |
| Limerick | - | - | - | - | - | - | 100 | - | 100 |
| Loais | - | - | - | - | - | - | - | - | - |
| Longford | - | - | - | - | - | - | - | - | - |
| Louth | - | - | - | - | - | - | - | - | - |
| Mayo | - | - | - | - | - | - | - | - | - |
| Meath | - | - | - | - | - | - | - | - | - |
| Monaghan | - | - | - | - | - | - | - | - | - |
| Offaly | - | - | - | - | - | - | - | - | - |
| Roscommon | - | - | - | - | 50 | - | 50 | - | 100 |
| Sligo | - | - | - | - | - | - | - | - | - |
| Tipperary | - | - | - | - | - | - | - | 100 | 100 |
| Waterford | - | - | - | - | - | - | - | - | - |
| Westmeath | - | - | - | - | - | - | - | - | - |
| Wexford | - | - | - | - | - | - | - | - | - |
| Wicklow | - | - | - | - | 50 | 50 | - | - | 100 |
| Total | - | - | - | 15.8 | 26.3 | 10.5 | 26.3 | 21.1 | 100 |

Source: Indecon Survey of Solicitors.

**Market Shares and the Level of Concentration among Solicitor Firms in Ireland in 2001**

| County | Market share (%) | | HHI |
|---|---|---|---|
| | Minimum | Maximum | |
| Carlow | 2.22 | 13.33 | 765 |
| Cavan | 1.82 | 7.27 | 413 |
| Clare | 1.09 | 13.04 | 414 |
| Cork | 0.17 | 4.82 | 102 |
| Donegal | 0.96 | 13.46 | 399 |
| Dublin | 0.04 | 5.94 | 126 |
| Galway | 0.42 | 4.24 | 136 |
| Kerry | 0.82 | 6.56 | 257 |
| Kildare | 0.79 | 6.30 | 233 |
| Kilkenny | 1.72 | 13.79 | 589 |
| Laois | 2.63 | 15.79 | 817 |
| Leitrim | 3.45 | 20.69 | 1,058 |
| Limerick | 0.44 | 8.33 | 264 |
| Longford | 2.56 | 15.38 | 901 |
| Louth | 0.92 | 5.50 | 255 |
| Mayo | 0.90 | 5.41 | 265 |
| Meath | 1.00 | 8.00 | 334 |
| Monaghan | 2.63 | 7.89 | 609 |
| Offaly | 2.00 | 12.00 | 568 |
| Roscommon | 1.92 | 11.54 | 510 |
| Sligo | 1.82 | 12.73 | 539 |
| Tipperary | 0.65 | 4.55 | 215 |
| Waterford | 1.14 | 14.77 | 620 |
| Westmeath | 1.30 | 12.99 | 632 |
| Wexford | 1.27 | 11.39 | 437 |
| Wicklow | 1.06 | 9.57 | 301 |

Note: Size measured by number of solicitors employed in law firm.

Source: Indecon calculations using Law Directory (2002) data.

| Extent of Advertising by Solicitor Firms in Golden Pages | | | |
|---|---|---|---|
| **County** | **Total firms** | **No. firms advertising** | **%** |
| Carlow | 17 | 14 | 82 |
| Cavan | 32 | 24 | 75 |
| Clare | 43 | 34 | 79 |
| Cork | 219 | 199 | 91 |
| Donegal | 48 | 37 | 77 |
| Dublin | 840 | 604 | 72 |
| Galway | 98 | 80 | 82 |
| Kerry | 58 | 45 | 76 |
| Kildare | 64 | 38 | 59 |
| Kilkenny | 26 | 22 | 85 |
| Laois | 17 | 16 | 94 |
| Leitrim | 14 | 10 | 71 |
| Limerick | 82 | 76 | 93 |
| Longford | 15 | 12 | 80 |
| Louth | 52 | 42 | 81 |
| Mayo | 51 | 44 | 86 |
| Meath | 47 | 35 | 74 |
| Monaghan | 19 | 17 | 89 |
| Offaly | 24 | 17 | 71 |
| Roscommon | 27 | 20 | 74 |
| Sligo | 27 | 22 | 81 |
| Tipperary | 66 | 44 | 67 |
| Waterford | 31 | 26 | 84 |
| Westmeath | 27 | 13 | 48 |
| Wexford | 38 | 33 | 87 |
| Wicklow | 53 | 20 | 38 |
| | | | |
| State | 2,035 | 1,564 | 77 |

Source: Indecon calculations using data from Indecon Database of Solicitors (Golden Pages 2002).

**Intensity of Advertising by Solicitor Firms in Golden Pages: L*istings* Advertisements**

| County | Total firms | No. firms advertising | % |
|---|---|---|---|
| Carlow | 17 | 8 | 47 |
| Cavan | 32 | 21 | 66 |
| Clare | 43 | 21 | 49 |
| Cork | 219 | 116 | 53 |
| Donegal | 48 | 25 | 52 |
| Dublin | 840 | 437 | 52 |
| Galway | 98 | 58 | 59 |
| Kerry | 58 | 31 | 53 |
| Kildare | 64 | 28 | 43 |
| Kilkenny | 26 | 14 | 54 |
| Laois | 17 | 8 | 47 |
| Leitrim | 14 | 8 | 57 |
| Limerick | 82 | 52 | 63 |
| Longford | 15 | 8 | 53 |
| Louth | 52 | 28 | 54 |
| Mayo | 51 | 27 | 53 |
| Meath | 47 | 24 | 51 |
| Monaghan | 19 | 14 | 74 |
| Offaly | 24 | 8 | 33 |
| Roscommon | 27 | 16 | 59 |
| Sligo | 27 | 16 | 48 |
| Tipperary | 66 | 30 | 45 |
| Waterford | 31 | 16 | 52 |
| Westmeath | 27 | 11 | 41 |
| Wexford | 38 | 20 | 53 |
| Wicklow | 53 | 16 | 30 |
| | | | |
| State | 2,035 | 1,048 | 51 |

Notes:
1. Annual listings advertisements range in price from €92 to €243 in the 01 area and from €69 to €149 in the 02/04/05/06/07/09 areas.
2. An extra line on an annual listings advertisement costs €92 in the 01 area and €69 in the 02/04/05/06/07/09 areas.

Source: Indecon calculations using data from Indecon Database of Solicitors (Golden Pages 2002). Price information from Golden Pages Marketing Guide 2002.

**Intensity of Advertising by Solicitor Firms in Golden Pages: *Informational* Advertisements**

| County | Total firms | No. firms advertising | % |
|---|---|---|---|
| Carlow | 17 | 4 | 24 |
| Cavan | 32 | 1 | 3 |
| Clare | 43 | 9 | 21 |
| Cork | 219 | 47 | 21 |
| Donegal | 48 | 12 | 25 |
| Dublin | 840 | 86 | 10 |
| Galway | 98 | 22 | 22 |
| Kerry | 58 | 14 | 24 |
| Kildare | 64 | 8 | 13 |
| Kilkenny | 26 | 6 | 23 |
| Laois | 17 | 5 | 29 |
| Leitrim | 14 | 1 | 7 |
| Limerick | 82 | 23 | 28 |
| Longford | 15 | 2 | 13 |
| Louth | 52 | 11 | 21 |
| Mayo | 51 | 16 | 32 |
| Meath | 47 | 7 | 15 |
| Monaghan | 19 | 2 | 11 |
| Offaly | 24 | 2 | 8 |
| Roscommon | 27 | 4 | 15 |
| Sligo | 27 | 10 | 37 |
| Tipperary | 66 | 12 | 18 |
| Waterford | 31 | 10 | 32 |
| Westmeath | 27 | 2 | 7 |
| Wexford | 38 | 12 | 32 |
| Wicklow | 53 | 3 | 6 |
| | | | |
| State | 2,035 | 331 | 16 |

Note: Annual informational advertisements range in price from €310 to €1,539 in the 01 area and from €199 to €990 in the 02/04/05/06/07/09 areas.

Source: Indecon calculations using data from Indecon Database of Solicitors (Golden Pages 2002). Price information from Golden Pages Marketing Guide 2002.

**Intensity of Advertising by Solicitor Firms in Golden Pages: *In-Column Display* Advertisements**

| County | Total firms | No. firms advertising | % |
|---|---|---|---|
| Carlow | 17 | 2 | 12 |
| Cavan | 32 | 2 | 6 |
| Clare | 43 | 4 | 9 |
| Cork | 219 | 25 | 11 |
| Donegal | 48 | 0 | 0 |
| Dublin | 840 | 54 | 6 |
| Galway | 98 | 0 | 0 |
| Kerry | 58 | 1 | 2 |
| Kildare | 64 | 1 | 2 |
| Kilkenny | 26 | 2 | 8 |
| Laois | 17 | 3 | 18 |
| Leitrim | 14 | 0 | 0 |
| Limerick | 82 | 3 | 4 |
| Longford | 15 | 2 | 13 |
| Louth | 52 | 1 | 2 |
| Mayo | 51 | 1 | 2 |
| Meath | 47 | 4 | 9 |
| Monaghan | 19 | 1 | 5 |
| Offaly | 24 | 7 | 29 |
| Roscommon | 27 | 0 | 0 |
| Sligo | 27 | 0 | 0 |
| Tipperary | 66 | 2 | 3 |
| Waterford | 31 | 0 | 0 |
| Westmeath | 27 | 0 | 0 |
| Wexford | 38 | 1 | 3 |
| Wicklow | 53 | 1 | 2 |
| | | | |
| State | 2,035 | 117 | 6 |

Note: Annual in-column display advertisements range in price from €1,246 to €3,553 in the 01 area and from €799 to €2,415 in the 02/04/05/06/07/09 areas.

Source: Indecon calculations using data from Indecon Database of Solicitors (Golden Pages 2002). Price information from Golden Pages Marketing Guide 2002.

**Intensity of Advertising by Solicitor Firms in Golden Pages: *Display* Advertisements**

| County | Total firms | No. firms advertising | % |
|---|---|---|---|
| Carlow | 17 | 4 | 24 |
| Cavan | 32 | 0 | 0 |
| Clare | 43 | 9 | 21 |
| Cork | 219 | 10 | 5 |
| Donegal | 48 | 4 | 8 |
| Dublin | 840 | 60 | 7 |
| Galway | 98 | 16 | 16 |
| Kerry | 58 | 1 | 2 |
| Kildare | 64 | 6 | 9 |
| Kilkenny | 26 | 5 | 19 |
| Laois | 17 | 0 | 0 |
| Leitrim | 14 | 0 | 0 |
| Limerick | 82 | 21 | 26 |
| Longford | 15 | 0 | 0 |
| Louth | 52 | 1 | 2 |
| Mayo | 51 | 2 | 4 |
| Meath | 47 | 0 | 0 |
| Monaghan | 19 | 0 | 0 |
| Offaly | 24 | 1 | 4 |
| Roscommon | 27 | 0 | 0 |
| Sligo | 27 | 2 | 7 |
| Tipperary | 66 | 2 | 3 |
| Waterford | 31 | 5 | 17 |
| Westmeath | 27 | 1 | 4 |
| Wexford | 38 | 5 | 13 |
| Wicklow | 53 | 0 | 0 |
| | | | |
| State | 2,035 | 155 | 8 |

Note: Annual display advertisements range in price from €1,325 to €46,472 in the 01 area, from €855 to €25,685 in the 02 and from €855 to €24,657 in the 04/05/06/07/09 areas.

Source: Indecon calculations using data from Indecon Database of Solicitors (Golden Pages 2002). Price information from Golden Pages Marketing Guide 2002.

**Intensity of Advertising by Solicitor Firms in Golden Pages: Advertisements Using *Enhancements***

| County | Total firms | No. firms advertising | % |
|---|---|---|---|
| Carlow | 17 | 0 | 0 |
| Cavan | 32 | 0 | 0 |
| Clare | 43 | 0 | 0 |
| Cork | 219 | 0 | 0 |
| Donegal | 48 | 0 | 0 |
| Dublin | 840 | 1 | 0.12 |
| Galway | 98 | 0 | 0 |
| Kerry | 58 | 0 | 0 |
| Kildare | 64 | 0 | 0 |
| Kilkenny | 26 | 0 | 0 |
| Laois | 17 | 0 | 0 |
| Leitrim | 14 | 0 | 0 |
| Limerick | 82 | 1 | 1 |
| Longford | 15 | 0 | 0 |
| Louth | 52 | 1 | 2 |
| Mayo | 51 | 0 | 0 |
| Meath | 47 | 0 | 0 |
| Monaghan | 19 | 0 | 0 |
| Offaly | 24 | 0 | 0 |
| Roscommon | 27 | 0 | 0 |
| Sligo | 27 | 0 | 0 |
| Tipperary | 66 | 0 | 0 |
| Waterford | 31 | 0 | 0 |
| Westmeath | 27 | 0 | 0 |
| Wexford | 38 | 0 | 0 |
| Wicklow | 53 | 0 | 0 |
| | | | |
| State | 2,035 | 3 | 0.15 |

Note: Enhanced advertisements (e.g. card paper, multi-pages, perforated pages) range in price from €1,045 to €114,884 in the 01 area and from €669 to €57,442 in the 02/04/05/06/07/09 areas.

Source: Indecon calculations using data from Indecon Database of Solicitors (Golden Pages 2002). . Price information from Golden Pages Marketing Guide 2002.

**Intensity of Advertising by Solicitor Firms in Golden Pages: Advertising in More Than One Golden Pages Region**

| County | Total firms | No. firms advertising | % |
|---|---|---|---|
| Carlow | 17 | 0 | 0 |
| Cavan | 32 | 0 | 0 |
| Clare | 43 | 0 | 0 |
| Cork | 219 | 0 | 0 |
| Donegal | 48 | 0 | 0 |
| Dublin | 840 | 18 | 2 |
| Galway | 98 | 0 | 0 |
| Kerry | 58 | 1 | 2 |
| Kildare | 64 | 0 | 0 |
| Kilkenny | 26 | 0 | 0 |
| Laois | 17 | 0 | 0 |
| Leitrim | 14 | 0 | 0 |
| Limerick | 82 | 1 | 1 |
| Longford | 15 | 0 | 0 |
| Louth | 52 | 1 | 2 |
| Mayo | 51 | 0 | 0 |
| Meath | 47 | 2 | 4 |
| Monaghan | 19 | 0 | 0 |
| Offaly | 24 | 0 | 0 |
| Roscommon | 27 | 0 | 0 |
| Sligo | 27 | 0 | 0 |
| Tipperary | 66 | 0 | 0 |
| Waterford | 31 | 0 | 0 |
| Westmeath | 27 | 0 | 0 |
| Wexford | 38 | 0 | 0 |
| Wicklow | 53 | 0 | 0 |
| | | | |
| State | 2,035 | 23 | 1 |

Note: Solicitor firms taking out any type of Golden Pages advertisement in more than one Golden Pages region.

Source: Indecon calculations using data from Indecon Database of Solicitors (Golden Pages 2002).

**Nature of *Display* Advertisements Taken out by Solicitor Firms in Golden Pages: Advertisements Citing Conveyancing Services**

| County | No. firms with display ads | No. citing conveyancing services | % |
|---|---|---|---|
| Carlow | 4 | 2 | 50 |
| Cavan | 0 | 0 | 0 |
| Clare | 9 | 6 | 67 |
| Cork | 10 | 8 | 80 |
| Donegal | 4 | 4 | 100 |
| Dublin | 60 | 39 | 65 |
| Galway | 16 | 10 | 63 |
| Kerry | 1 | 1 | 100 |
| Kildare | 6 | 5 | 83 |
| Kilkenny | 5 | 3 | 60 |
| Laois | 0 | 0 | 0 |
| Leitrim | 0 | 0 | 0 |
| Limerick | 21 | 12 | 57 |
| Longford | 0 | 0 | 0 |
| Louth | 1 | 1 | 100 |
| Mayo | 2 | 2 | 100 |
| Meath | 0 | 0 | 0 |
| Monaghan | 0 | 0 | 0 |
| Offaly | 1 | 1 | 100 |
| Roscommon | 0 | 0 | 0 |
| Sligo | 2 | 2 | 100 |
| Tipperary | 2 | 1 | 50 |
| Waterford | 5 | 3 | 60 |
| Westmeath | 1 | 0 | 0 |
| Wexford | 5 | 3 | 60 |
| Wicklow | 0 | 0 | 0 |
| | | | |
| State | 155 | 103 | 66 |

Source: Indecon calculations using data from Indecon Database of Solicitors (Golden Pages 2002).

**Nature of *Display* Advertisements Taken out by Solicitor Firms in Golden Pages: Advertisements Citing Wills and Probate Services**

| County | No. firms with display ads | No. citing wills and probate services | % |
|---|---|---|---|
| Carlow | 4 | 1 | 25 |
| Cavan | 0 | 0 | 0 |
| Clare | 9 | 3 | 33 |
| Cork | 10 | 7 | 70 |
| Donegal | 4 | 2 | 50 |
| Dublin | 60 | 32 | 53 |
| Galway | 16 | 10 | 63 |
| Kerry | 1 | 1 | 100 |
| Kildare | 6 | 5 | 83 |
| Kilkenny | 5 | 1 | 20 |
| Laois | 0 | 0 | 0 |
| Leitrim | 0 | 0 | 0 |
| Limerick | 21 | 9 | 43 |
| Longford | 0 | 0 | 0 |
| Louth | 1 | 0 | 0 |
| Mayo | 2 | 2 | 100 |
| Meath | 0 | 0 | 0 |
| Monaghan | 0 | 0 | 0 |
| Offaly | 1 | 0 | 0 |
| Roscommon | 0 | 0 | 0 |
| Sligo | 2 | 2 | 100 |
| Tipperary | 2 | 0 | 0 |
| Waterford | 5 | 3 | 60 |
| Westmeath | 1 | 0 | 0 |
| Wexford | 5 | 3 | 60 |
| Wicklow | 0 | 0 | 0 |
| | | | |
| State | 155 | 81 | 52 |

Source: Indecon calculations using data from Indecon Database of Solicitors (Golden Pages 2002).

**Nature of *Display* Advertisements Taken out by Solicitor Firms in Golden Pages: Advertisements Citing Personal Injury Services**

| County | No. firms with display ads | No. citing personal injury services | % |
|---|---|---|---|
| Carlow | 4 | 2 | 50 |
| Cavan | 0 | 0 | 0 |
| Clare | 9 | 6 | 67 |
| Cork | 10 | 9 | 90 |
| Donegal | 4 | 4 | 100 |
| Dublin | 60 | 55 | 92 |
| Galway | 16 | 13 | 81 |
| Kerry | 1 | 1 | 100 |
| Kildare | 6 | 5 | 83 |
| Kilkenny | 5 | 3 | 60 |
| Laois | 0 | 0 | 0 |
| Leitrim | 0 | 0 | 0 |
| Limerick | 21 | 12 | 57 |
| Longford | 0 | 0 | 0 |
| Louth | 1 | 1 | 100 |
| Mayo | 2 | 2 | 100 |
| Meath | 0 | 0 | 0 |
| Monaghan | 0 | 0 | 0 |
| Offaly | 1 | 1 | 100 |
| Roscommon | 0 | 0 | 0 |
| Sligo | 2 | 2 | 100 |
| Tipperary | 2 | 2 | 100 |
| Waterford | 5 | 3 | 60 |
| Westmeath | 1 | 1 | 100 |
| Wexford | 5 | 2 | 40 |
| Wicklow | 0 | 0 | 0 |
| | | | |
| State | 155 | 124 | 80 |

Source: Indecon calculations using data from Indecon Database of Solicitors (Golden Pages 2002).

**Nature of *Display* Advertisements Taken out by Solicitor Firms in Golden Pages: Advertisements Citing Litigation Services**

| County | No. firms with display ads | No. citing litigation services | % |
|---|---|---|---|
| Carlow | 4 | 0 | 0 |
| Cavan | 0 | 0 | 0 |
| Clare | 9 | 0 | 0 |
| Cork | 10 | 4 | 40 |
| Donegal | 4 | 1 | 25 |
| Dublin | 60 | 9 | 15 |
| Galway | 16 | 3 | 19 |
| Kerry | 1 | 0 | 0 |
| Kildare | 6 | 2 | 33 |
| Kilkenny | 5 | 2 | 40 |
| Laois | 0 | 0 | 0 |
| Leitrim | 0 | 0 | 0 |
| Limerick | 21 | 5 | 24 |
| Longford | 0 | 0 | 0 |
| Louth | 1 | 0 | 0 |
| Mayo | 2 | 1 | 50 |
| Meath | 0 | 0 | 0 |
| Monaghan | 0 | 0 | 0 |
| Offaly | 1 | 0 | 0 |
| Roscommon | 0 | 0 | 0 |
| Sligo | 2 | 1 | 50 |
| Tipperary | 2 | 0 | 0 |
| Waterford | 5 | 1 | 20 |
| Westmeath | 1 | 0 | 0 |
| Wexford | 5 | 2 | 40 |
| Wicklow | 0 | 0 | 0 |
| | | | |
| State | 155 | 31 | 20 |

Source: Indecon calculations using data from Indecon Database of Solicitors (Golden Pages 2002).

**Nature of *Display* Advertisements Taken out by Solicitor Firms in Golden Pages: Advertisements Citing Services Other than Conveyancing, Wills and Probate, Personal Injuries and Litigation Services**

| County | No. firms with display ads | No. citing other services | % |
|---|---|---|---|
| Carlow | 4 | 2 | 50 |
| Cavan | 0 | 0 | 0 |
| Clare | 9 | 5 | 56 |
| Cork | 10 | 9 | 90 |
| Donegal | 4 | 2 | 50 |
| Dublin | 60 | 38 | 63 |
| Galway | 16 | 10 | 63 |
| Kerry | 1 | 1 | 100 |
| Kildare | 6 | 4 | 67 |
| Kilkenny | 5 | 4 | 80 |
| Laois | 0 | 0 | 0 |
| Leitrim | 0 | 0 | 0 |
| Limerick | 21 | 16 | 76 |
| Longford | 0 | 0 | 0 |
| Louth | 1 | 0 | 0 |
| Mayo | 2 | 2 | 100 |
| Meath | 0 | 0 | 0 |
| Monaghan | 0 | 0 | 0 |
| Offaly | 1 | 1 | 100 |
| Roscommon | 0 | 0 | 0 |
| Sligo | 2 | 2 | 100 |
| Tipperary | 2 | 1 | 50 |
| Waterford | 5 | 2 | 40 |
| Westmeath | 1 | 1 | 100 |
| Wexford | 5 | 3 | 60 |
| Wicklow | 0 | 0 | 0 |
| | | | |
| State | 155 | 103 | 66 |

Source: Indecon calculations using data from Indecon Database of Solicitors (Golden Pages 2002).

# Annex 3 Barristers' Profession: Supplementary Tables

| **Indecon Survey of Barristers - Approximate Average Annual Change in Total Fee Income - 1999-2001 – Respondents Indicating Decrease in Fee Income** | |
|---|---|
| **% Decrease** | **% of Responses** |
| Barristers stating decrease in fee income | 6.6 |
| *Of which:* | |
| Over 200% | 0.0 |
| 150-199% | 0.0 |
| 100-149% | 0.0 |
| 50-99% | 6.3 |
| 25-49% | 31.3 |
| 10-24% | 18.8 |
| 5-9% | 25.0 |
| 0-4% | 18.8 |
| Total | 100 |
| Source: Indecon Survey of Barristers. | |

| Indecon Survey of Barristers - Views on Importance of Factors Influencing a Solicitor's/Client's Choice of Barrister | | | | |
|---|---|---|---|---|
| **Factors** | **Extremely important** | **Very important** | **Important** | **Not important** |
| Quality of services | 61.7 | 26.9 | 8.6 | 2.8 |
| Reputation | 43.2 | 34.1 | 19.9 | 2.8 |
| Previous relationship with solicitor | 41.4 | 21.9 | 28.8 | 7.9 |
| Customer trust | 28.4 | 25.5 | 35.1 | 11.0 |
| Degree of specialisation | 22.0 | 25.2 | 44.8 | 8.0 |
| Location of practice | 7.7 | 13.0 | 39.3 | 40.0 |
| Fees/price competition | 2.5 | 5.7 | 40.6 | 51.2 |

Source: Indecon Survey of Barristers.

| Indecon Survey of Insurance Companies - Insurance Companies' Views on Importance of Factors Influencing Choice of External Barristers | | | | | |
|---|---|---|---|---|---|
| | **% of responses by level of importance attached** | | | | |
| **Factors** | Extremely important | Very important | Important | Not important | Total |
| Quality of services | 83.3 | 16.7 | 0 | 0 | 100 |
| Customer trust | 58.3 | 25 | 16.7 | 0 | 100 |
| Degree of specialisation | 50 | 50 | 0 | 0 | 100 |
| Reputation | 33.3 | 50 | 16.7 | 0 | 100 |
| Fee/price competition | 16.7 | 33.3 | 41.7 | 8.3 | 100 |
| Location of practice | 8.3 | 0 | 50 | 41.7 | 100 |

Source: Indecon Survey of Insurance Companies.

| Indecon Survey of Barristers - Views of Barristers on Appropriateness of Price Competition for Barristers' Services | |
|---|---|
| **Views on appropriateness** | **% of responses** |
| % believing price competition is appropriate | 66.5 |
| % believing price competition is not appropriate | 33.5 |
| Source: Indecon Survey of Barristers. | |

| Indecon Survey of Insurance Companies - Insurance Companies' Views on Desirability of Price Competition among Barristers | |
|---|---|
| **Yes** | **No** |
| 91.7% | 8.3% |
| Source: Indecon Survey of Insurance Companies. | |

# Annex 4 Engineers' Profession: Supplementary Tables

| Composition of IEI Members by Grade of Membership | | | | | | |
|---|---|---|---|---|---|---|
| **Membership** | **2001** | **2000** | **1999** | **1998** | **1997** | **1996** |
| Fellow | 1,277 | 1,259 | 1,246 | 1,299 | 1,196 | 1,201 |
| Chartered Engineer | 3,412 | 3,184 | 3,074 | 3,085 | 3,014 | 2,957 |
| Ordinary | 7,659 | 7,519 | 7,469 | 7,267 | 6,450 | 5,872 |
| Associate Engineer | 119 | 116 | - | - | - | - |
| Associate Member | 2,453 | 700 | 783 | 710 | 566 | 468 |
| Affiliate | - | 1,720 | 1,711 | 1,625 | 1,335 | 1,160 |
| Engineering Technician | 6 | 6 | 4 | 4 | 4 | 1 |
| Technician | 1,049 | 1,067 | 1,092 | 1,065 | 901 | 809 |
| Student | 3,438 | 1,201 | 881 | 721 | 735 | 759 |
| Honorary Fellow | 33 | 35 | 35 | 35 | 33 | 32 |
| Companion | 16 | 17 | 18 | 16 | 15 | 15 |
| | | | | | | |
| Total | 19,462 | 16,824 | 16,313 | 15,757 | 14,249 | 13,274 |

Notes:
1. Associates Engineer and Associate Member categories treated together 1999 backwards.
2. The grade of Affiliate was abolished in May 2001 and all Affiliates transferred to Associate Membership.

Source: Indecon adaptation of IEI Annual Reports 2000-01 and 2001-02.

| Composition of IEI Members by IEI Region | | | | | | |
|---|---|---|---|---|---|---|
| **Region** | **2001** | **2000** | **1999** | **1998** | **1997** | **1996** |
| An Ríocht | 430 | 317 | 293 | 286 | 253 | 219 |
| Cork | 2,545 | 2,078 | 1,980 | 1,888 | 1,748 | 1,703 |
| Dublin | 7,568 | 6,968 | 6,767 | 6,514 | 5,847 | 5,476 |
| London | 330 | 345 | 382 | 410 | 410 | 424 |
| Midlands | 604 | 531 | 519 | 492 | 433 | 375 |
| North-East | 1,254 | 1,081 | 1,010 | 927 | 809 | 654 |
| North-West | 583 | 491 | 492 | 475 | 433 | 428 |
| Northern Ireland | 765 | 736 | 732 | 770 | 779 | 830 |
| Overseas | 651 | 631 | 637 | 661 | 640 | 681 |
| South-East | 1,537 | 1,238 | 1,153 | 1,109 | 935 | 811 |
| Thomond | 1,436 | 1,140 | 1,132 | 1,048 | 907 | 818 |
| West | 1,757 | 1,268 | 1,216 | 1,177 | 1,055 | 918 |
| | | | | | | |
| Total | 19,462 | 16,824 | 16,313 | 15,757 | 14,249 | 13,274 |

Notes:
1. Associates Engineer and Associate Member categories treated together 1999 backwards.
2. The grade of Affiliate was abolished in May 2001 and all Affiliates transferred to Associate Membership.

Source: Indecon adaptation of IEI Annual Reports 2000-01 and 2001-02.

| Number and Growth of Fellows of the IEI 1991-2001 | | |
|---|---|---|
| **Year** | **Number** | **% change** |
| 1991 | 849 | - |
| 1992 | 973 | 14.61 |
| 1993 | 1,041 | 6.99 |
| 1994 | 1,105 | 6.15 |
| 1995 | 1,161 | 5.07 |
| 1996 | 1,201 | 3.45 |
| 1997 | 1,196 | -0.42 |
| 1998 | 1,299 | 8.61 |
| 1999 | 1,246 | -4.08 |
| 2000 | 1,259 | 1.04 |
| 2001 | 1,277 | 1.43 |

Note: Fellows of the IEI are also chartered engineers.

Source: Indecon calculations using IEI Annual Reports.

| Number and Growth of Chartered Engineers and Fellows of the IEI 1991-2001 | | |
|---|---|---|
| **Year** | **Number** | **% change** |
| 1991 | 3,239 | - |
| 1992 | 3,491 | 7.78 |
| 1993 | 3,608 | 3.35 |
| 1994 | 3,731 | 3.41 |
| 1995 | 4,015 | 7.61 |
| 1996 | 4,158 | 3.56 |
| 1997 | 4,210 | 1.25 |
| 1998 | 4,384 | 4.13 |
| 1999 | 4,320 | -1.46 |
| 2000 | 4,443 | 2.85 |
| 2001 | 4,689 | 5.54 |

Source: Indecon calculations using IEI Annual Reports.

| **Median Salary Levels and 95% Confidence Intervals for Each IEI Grade and Title (Ranked By Median Salary Level) in 2001** | | | |
|---|---|---|---|
| **IEI grade/title** | **Median salary (IR£)** | | |
| | | Lower limit (IR£) | Upper limit (IR£) |
| Fellow | 52,500 | 48,304 | 56,697 |
| Chartered Engineer | 42,500 | 40,724 | 44,276 |
| Ordinary Member | 37,500 | 36,604 | 38,396 |
| Associate | 32,500 | 29,927 | 35,074 |
| Associate Engineer | 32,500 | 30,948 | 34,052 |
| Affiliate | 27,500 | 25,696 | 29,304 |
| Technician | 27,500 | 24,971 | 30,029 |
| Engineer Technician | 27,500 | 25,371 | 29,629 |
| Source: Indecon adaptation of 2001 Salary Survey for IEI. | | | |

| Number and Growth of Employees of Member Firms of the ACEI 1978-2002 | | |
|---|---|---|
| **Year** | **Number of employees** | **% change** |
| 1978 | 968 | - |
| 1979 | 1,147 | 18.49 |
| 1980 | 1,350 | 17.70 |
| 1981 | 1,366 | 1.19 |
| 1982 | 1,412 | 3.37 |
| 1983 | 1,416 | 0.28 |
| 1984 | 1,214 | -14.27 |
| 1985 | 1,058 | -12.85 |
| 1986 | 914 | -13.61 |
| 1987 | 782 | -14.44 |
| 1988 | 454 | -41.94 |
| 1989 | 634 | 39.65 |
| 1990 | 684 | 7.89 |
| 1991 | 810 | 18.42 |
| 1992 | 1,023 | 26.30 |
| 1993 | 986 | -3.62 |
| 1994 | 1,283 | 30.12 |
| 1995 | 1,328 | 3.51 |
| 1996 | 1,347 | 1.43 |
| 1997 | 1,552 | 15.22 |
| 1998 | 1,740 | 12.11 |
| 1999 | 1,761 | 1.21 |
| 2000 | 2,170 | 23.23 |
| 2001 | 3,063 | 41.15 |
| 2002 | 3,177 | 3.72 |

Source: Indecon calculations using ACEI data.

| ACEI Member Firms by Year of Foundation | | |
|---|---|---|
| **Year founded** | **Number of firms** | % |
| Pre-1900 | 2 | 2 |
| 1900-1909 | 1 | 1 |
| 1910-1919 | 1 | 1 |
| 1920-1929 | 3 | 3 |
| 1930-1939 | 4 | 4 |
| 1940-1949 | 3 | 3 |
| 1950-1959 | 12 | 12 |
| 1960-1969 | 18 | 17 |
| 1970-1979 | 18 | 17 |
| 1980-1989 | 31 | 30 |
| 1990-2001 | 6 | 6 |
| Unknown | 4 | 4 |
| | | |
| Total | 103 | 100 |

Source: Indecon calculations using ACEI Annual Review and Directory of Members 2001.

| **Indecon Survey of Engineers - Approximate Average Annual Change in Total Fee Income of Engineering Practices - 1999-2001 - Firms Stating Decrease in Fee Income** | |
|---|---|
| **Extent of decrease** | **% of responses** |
| Firms stating decrease in fee income | 4.9 |
| *Of which:* | |
| Over 200% | 0 |
| 150-199% | 0 |
| 100-149% | 0 |
| 50-99% | 14.3 |
| 25-49% | 14.3 |
| 10-24% | 42.9 |
| 5-9% | 14.3 |
| 0-4% | 14.3 |
| Source: Indecon Survey of Engineers. | |

## Market Shares and the Level of Concentration Amongst ACEI Member Firms 2001

| Field | Total firms | Total staff | Market share (%) | | HHI |
|---|---|---|---|---|---|
| | | | Min | Max | |
| Mechanical | 22 | 1,076 | 0.09 | 30.11 | 1,575 |
| Electrical | 26 | 1,340 | 0.07 | 24.18 | 1,189 |
| HVAC | 16 | 297 | 0.34 | 19.19 | 1,137 |
| Marine | 27 | 1,445 | 0.07 | 22.42 | 1,035 |
| Traffic | 26 | 1,472 | 0.07 | 22.01 | 990 |
| Project management | 59 | 2,480 | 0.04 | 13.06 | 518 |
| Civil | 77 | 2,540 | 0.04 | 12.76 | 487 |
| Structural | 77 | 2,635 | 0.04 | 12.30 | 482 |
| All fields | 103 | 3,063 | 0.03 | 10.58 | 375 |

Note: HVAC denotes heating, ventilating and air-conditioning. Size variable: total employment per member firm.

Source: Indecon calculations using ACEI Annual Review and Directory of Members 2001.

## Market Shares and the Level of Concentration Amongst ACEI Member Firms 1986

| Field | Total firms | Total staff | Market share (%) | | HHI |
|---|---|---|---|---|---|
| | | | Min | Max | |
| HVAC | 20 | 566 | 0.70 | 23.27 | 1,296 |
| Electrical | 23 | 657 | 0.30 | 21.77 | 1,071 |
| Mechanical | 32 | 693 | 0.29 | 20.63 | 996 |
| Marine | 24 | 677 | 0.15 | 21.12 | 979 |
| Traffic | 17 | 494 | 0.20 | 16.60 | 955 |
| Project management | 32 | 911 | 0.01 | 15.70 | 719 |
| Structural | 56 | 1,014 | 0.10 | 14.10 | 496 |
| Civil | 59 | 1,025 | 0.09 | 13.95 | 485 |
| All fields | 77 | 1,388 | 0.07 | 10.30 | 364 |

Note: HVAC denotes heating, ventilating and air-conditioning. Size variable: total employment per member firm.

Source: Indecon calculations using ACEI Annual Review and Directory of Members 1986.

| Indecon Survey of Engineers - Views on Importance of Factors Influencing a Client's Choice of Engineer in Ireland | | | | |
|---|---|---|---|---|
| | % of Responses | | | |
| **Factors** | **Extremely important** | **Very important** | **Important** | **Not important** |
| Quality of services | 64.9 | 24.3 | 9.5 | 1.4 |
| Customer trust | 50.3 | 34.2 | 12.8 | 2.7 |
| Reputation | 39.2 | 43.9 | 14.9 | 2.0 |
| Degree of specialisation | 15.3 | 32.6 | 45.1 | 6.9 |
| Fees/price competitiveness | 13.7 | 23.3 | 56.2 | 6.8 |
| Location of practice | 2.0 | 10.9 | 59.2 | 27.9 |
| Source: Indecon Survey of Engineers. | | | | |

| Indecon Survey of Engineers – Views on Appropriateness of Price Competition in the Irish Market for Engineering Services | |
|---|---|
| | **% of responses** |
| Price competition appropriate | 78.6 |
| Price competition not appropriate | 21.4 |
| Source: Indecon Survey of Engineers. | |

**Extent of Advertising by Engineering Firms in Golden Pages**

| Area | No. construction engineering firms advertising | No. consulting engineering firms advertising | No. electronic engineering firms advertising | No. industrial engineering firms advertising | Total |
|---|---|---|---|---|---|
| 01 | 0 | 245 | 14 | 5 | 264 |
| 02 | 4 | 136 | 3 | 1 | 144 |
| 04 | 2 | 67 | 1 | 8 | 78 |
| 05 | 2 | 66 | 3 | 12 | 83 |
| 06 | 4 | 90 | 0 | 4 | 98 |
| 07/09 | 6 | 101 | 0 | 1 | 108 |
| State | 18 | 705 | 21 | 31 | 775 |

Notes:
1. 01 covers the Greater Dublin area; 02 Cork City and most of County Cork; 04 the North East and most of Counties Kildare and Wicklow; 05 the Midlands and South East; 06 the Mid-West; and 07/09 the West and North West.
2. 'Consulting engineering firms' not necessarily the same as the Association of Consulting Engineers of Ireland (ACEI).

Source: Indecon calculations using data from the Golden Pages 2002.

**Intensity of Advertising by Engineering Firms in Golden Pages: *Listings* Advertisements**

| Area | No. construction engineering firms advertising | No. consulting engineering firms advertising | No. electronic engineering firms advertising | No. industrial engineering firms advertising | Total |
|---|---|---|---|---|---|
| 01 | 0 | 191 | 14 | 5 | 210 |
| 02 | 4 | 88 | 3 | 1 | 96 |
| 04 | 2 | 44 | 1 | 7 | 54 |
| 05 | 2 | 43 | 3 | 8 | 56 |
| 06 | 2 | 59 | 0 | 3 | 64 |
| 07/09 | 6 | 73 | 0 | 1 | 80 |
| | | | | | |
| State | 16 | 498 | 21 | 25 | 560 |

Notes:

1. 01 covers the Greater Dublin area; 02 Cork City and most of County Cork; 04 the North East and most of Counties Kildare and Wicklow; 05 the Midlands and South East; 06 the Mid-West; and 07/09 the West and North West.
2. Annual listings advertisements range in price from €92 to €243 in the 01 area and from €69 to €149 in the 02/04/05/06/07/09 areas.
3. An extra line on an annual listings advertisement costs €92 in the 01 area and €69 in the 02/04/05/06/07/09 areas.
4. 'Consulting engineering firms' include members and non-members of the Association of Consulting Engineers of Ireland (ACEI).

Source: Indecon calculations using data from the Golden Pages 2002. Price information from Golden Pages Marketing Guide 2002.

**Intensity of Advertising by Engineering Firms in Golden Pages: *Informational* Advertisements**

| Area | No. construction engineering firms advertising | No. consulting engineering firms advertising | No. electronic engineering firms advertising | No. industrial engineering firms advertising | Total |
|---|---|---|---|---|---|
| 01 | 0 | 50 | 0 | 0 | 50 |
| 02 | 0 | 39 | 0 | 0 | 39 |
| 04 | 0 | 22 | 0 | 1 | 23 |
| 05 | 0 | 21 | 0 | 4 | 25 |
| 06 | 2 | 28 | 0 | 1 | 31 |
| 07/09 | 0 | 27 | 0 | 0 | 27 |
| | | | | | |
| State | 2 | 187 | 0 | 6 | 195 |

Notes:
1. 01 covers the Greater Dublin area; 02 Cork City and most of County Cork; 04 the North East and most of Counties Kildare and Wicklow; 05 the Midlands and South East; 06 the Mid-West; and 07/09 the West and North West.
2. Annual informational advertisements range in price from €310 to €1,539 in the 01 area and from €199 to €990 in the 02/04/05/06/07/09 areas.
3. 'Consulting engineering firms' include members and non-members of the Association of Consulting Engineers of Ireland (ACEI).

Source: Indecon calculations using data from the Golden Pages 2002. Price information from Golden Pages Marketing Guide 2002.

**Intensity of Advertising by Engineering Firms in Golden Pages: i*n-Column Display* Advertisements**

| Area | No. construction engineering firms advertising | No. consulting engineering firms advertising | No. electronic engineering firms advertising | No. industrial engineering firms advertising | Total |
|---|---|---|---|---|---|
| 01 | 0 | 4 | 0 | 0 | 4 |
| 02 | 0 | 9 | 0 | 0 | 9 |
| 04 | 0 | 1 | 0 | 0 | 1 |
| 05 | 0 | 2 | 0 | 0 | 2 |
| 06 | 0 | 3 | 0 | 0 | 3 |
| 07/09 | 0 | 1 | 0 | 0 | 1 |
| | | | | | |
| State | 0 | 20 | 0 | 0 | 20 |

Notes:

1. 01 covers the Greater Dublin area; 02 Cork City and most of County Cork; 04 the North East and most of Counties Kildare and Wicklow; 05 the Midlands and South East; 06 the Mid-West; and 07/09 the West and North West.
2. Annual in-column display advertisements range in price from €1,246 to €3,553 in the 01 area and from €799 to €2,415 in the 02/04/05/06/07/09 areas.
3. 'Consulting engineering firms' include members and non-members of the Association of Consulting Engineers of Ireland (ACEI).

Source: Indecon calculations using data from the Golden Pages 2002. Price information from Golden Pages Marketing Guide 2002.

# Annex 5 Architects' Profession: Supplementary Tables

| **Indecon Survey of Architects - Approximate Average Annual Change in Total Fee Income of Architectural Practices - 1999-2001 - Firms Stating Decrease in Fee Income** | |
|---|---|
| **Extent of decrease** | **% of responses** |
| Firms stating decrease in fee income | 9.2 |
| *Of which:* | |
| Over 200% | 5.3 |
| 150-199% | 0.0 |
| 100-149% | 0.0 |
| 50-99% | 5.3 |
| 25-49% | 5.3 |
| 10-24% | 47.4 |
| 5-9% | 21.1 |
| 0-4% | 15.8 |
| Source: Indecon Survey of Architects. | |

| Indecon Survey of Architects - Views on Importance of Factors Influencing a Client's Choice of Architect in Ireland | | | | |
|---|---|---|---|---|
| | % of Responses | | | |
| **Factors** | **Extremely important** | **Very important** | **Important** | **Not important** |
| Quality of services | 73.8 | 19.5 | 5.9 | 0.9 |
| Customer trust | 55.0 | 30.5 | 13.2 | 1.4 |
| Reputation | 44.3 | 32.4 | 21.9 | 1.4 |
| Degree of specialisation | 11.3 | 22.1 | 49.1 | 17.6 |
| Fees/price competitiveness | 9.3 | 23.7 | 51.6 | 15.3 |
| Location of practice | 6.4 | 9.6 | 42.0 | 42.0 |

Source: Indecon Survey of Architects.

| **Indecon Survey of Architects – Views on Appropriateness of Price Competition in the Irish Market for Architectural Services** | |
|---|---|
| | **% of responses** |
| Price competition appropriate | 52.0 |
| Price competition not appropriate | 48.0 |
| Source: Indecon Survey of Architects. | |

**Intensity of Advertising by Architect Firms in Golden Pages: *Listings* Advertisements**

| Area | No. architect firms advertising | No. architectural technician firms advertising | Total |
|---|---|---|---|
| 01 | 329 | 2 | 331 |
| 02 | 74 | 6 | 80 |
| 04 | 70 | 0 | 70 |
| 05 | 79 | 14 | 93 |
| 06 | 75 | 2 | 77 |
| 07/09 | 64 | 5 | 69 |
| | | | |
| State | 691 | 29 | 720 |

Note:
1. 01 covers the Greater Dublin area; 02 Cork City and most of County Cork; 04 the North East and most of Counties Kildare and Wicklow; 05 the Midlands and South East; 06 the Mid-West; and 07/09 the West and North West.
2. Annual listings advertisements range in price from €92 to €243 in the 01 area and from €69 to €149 in the 02/04/05/06/07/09 areas.
3. An extra line on an annual listings advertisement costs €92 in the 01 area and €69 in the 02/04/05/06/07/09 areas.

Source: Indecon calculations using data from the Golden Pages 2002. Price information from Golden Pages Marketing Guide 2002.

**Intensity of Advertising by Architect Firms in Golden Pages: *Informational* Advertisements**

| Area | No. architect firms advertising | No. architectural technician firms advertising | Total |
|---|---|---|---|
| 01 | 49 | 0 | 49 |
| 02 | 30 | 1 | 31 |
| 04 | 42 | 0 | 42 |
| 05 | 36 | 0 | 36 |
| 06 | 31 | 0 | 31 |
| 07/09 | 29 | 0 | 29 |
| | | | |
| State | 217 | 1 | 218 |

Note:
1. 01 covers the Greater Dublin area; 02 Cork City and most of County Cork; 04 the North East and most of Counties Kildare and Wicklow; 05 the Midlands and South East; 06 the Mid-West; and 07/09 the West and North West.
2. Annual informational advertisements range in price from €310 to €1,539 in the 01 area and from €199 to €990 in the 02/04/05/06/07/09 areas.

Source: Indecon calculations using data from the Golden Pages 2002. Price information from Golden Pages Marketing Guide 2002.

**Intensity of Advertising by Architect Firms in Golden Pages: *In-Column Display* Advertisements**

| Area | No. architect firms advertising | No. architectural technician firms advertising | Total |
|---|---|---|---|
| 01 | 3 | 0 | 3 |
| 02 | 2 | 0 | 2 |
| 04 | 0 | 0 | 0 |
| 05 | 2 | 0 | 2 |
| 06 | 0 | 0 | 0 |
| 07/09 | 1 | 0 | 1 |
| | | | |
| State | 8 | 0 | 8 |

Note:
1. 01 covers the Greater Dublin area; 02 Cork City and most of County Cork; 04 the North East and most of Counties Kildare and Wicklow; 05 the Midlands and South East; 06 the Mid-West; and 07/09 the West and North West.
2. Annual in-column display advertisements range in price from €1,246 to €3,553 in the 01 area and from €799 to €2,415 in the 02/04/05/06/07/09 areas.

Source: Indecon calculations using data from the Golden Pages 2002. Price information from Golden Pages Marketing Guide 2002.

**Intensity of Advertising by Architect Firms in Golden Pages: *Display* Advertisements**

| Area | No. architect firms advertising | No. architectural technician firms advertising | Total |
|---|---|---|---|
| 01 | 3 | 0 | 3 |
| 02 | 2 | 0 | 2 |
| 04 | 1 | 0 | 1 |
| 05 | 2 | 0 | 2 |
| 06 | 1 | 0 | 1 |
| 07/09 | 1 | 0 | 1 |
| | | | |
| State | 10 | 0 | 10 |

Notes:
1. 01 covers the Greater Dublin area; 02 Cork City and most of County Cork; 04 the North East and most of Counties Kildare and Wicklow; 05 the Midlands and South East; 06 the Mid-West; and 07/09 the West and North West.
2. Annual display advertisements range in price from €1,325 to €46,472 in the 01 area, from €855 to €25,685 in the 02 and from €855 to €24,657 in the 04/05/06/07/09 areas.

Source: Indecon calculations using data from the Golden Pages 2002. Price information from Golden Pages Marketing Guide 2002.

# Annex 6 Veterinary Surgeons: Supplementary Tables

| **Intensity of Advertising by Veterinary Surgeons in the Golden Pages: *Listings* Advertisements** | |
|---|---|
| **Area** | **Number of firms advertising** |
| 01 | 76 |
| 02 | 91 |
| 04 | 135 |
| 05 | 171 |
| 06 | 137 |
| 07/09 | 152 |
| | |
| State | 762 |

Notes:
1. 01 covers the Greater Dublin area; 02 Cork City and most of County Cork; 04 the North East and most of Counties Kildare and Wicklow; 05 the Midlands and South East; 06 the Mid-West; and 07/09 the West and North West.
2. Annual listings advertisements range in price from €92 to €243 in the 01 area and from €69 to €149 in the 02/04/05/06/07/09 areas.
3. An extra line on an annual listings advertisement costs €92 in the 01 area and €69 in the 02/04/05/06/07/09 areas.

Source: Indecon calculations using data from the Golden Pages 2002. Price information from Golden Pages Marketing Guide 2002.

**Intensity of Advertising by Veterinary Surgeons in the Golden Pages: *Informational* Advertisements**

| Area | Number of firms advertising |
|---|---|
| 01 | 19 |
| 02 | 21 |
| 04 | 16 |
| 05 | 15 |
| 06 | 18 |
| 07/09 | 9 |
| | |
| State | 98 |

Notes:
1. 01 covers the Greater Dublin area; 02 Cork City and most of County Cork; 04 the North East and most of Counties Kildare and Wicklow; 05 the Midlands and South East; 06 the Mid-West; and 07/09 the West and North West.
2. Annual informational advertisements range in price from €310 to €1,539 in the 01 area and from €199 to €990 in the 02/04/05/06/07/09 areas.

Source: Indecon calculations using data from the Golden Pages 2002. Price information from Golden Pages Marketing Guide 2002.

**Intensity of Advertising by Veterinary Surgeons in the Golden Pages: *In-column Display* Advertisements**

| Area | Number of firms advertising |
|---|---|
| 01 | 0 |
| 02 | 0 |
| 04 | 0 |
| 05 | 0 |
| 06 | 0 |
| 07/09 | 3 |
| | |
| State | 3 |

Notes:
1. 01 covers the Greater Dublin area; 02 Cork City and most of County Cork; 04 the North East and most of Counties Kildare and Wicklow; 05 the Midlands and South East; 06 the Mid-West; and 07/09 the West and North West.
2. Annual in-column display advertisements range in price from €1,246 to €3,553 in the 01 area and from €799 to €2,415 in the 02/04/05/06/07/09 areas.

Source: Indecon calculations using data from the Golden Pages 2002. Price information from Golden Pages Marketing Guide 2002.

**Intensity of Advertising by Veterinary Surgeons in the Golden Pages: *Display Advertisements***

| Area | Number of firms advertising |
|---|---|
| 01 | 3 |
| 02 | 0 |
| 04 | 0 |
| 05 | 0 |
| 06 | 1 |
| 07/09 | 0 |
| | |
| State | 4 |

Notes:
1. 01 covers the Greater Dublin area; 02 Cork City and most of County Cork; 04 the North East and most of Counties Kildare and Wicklow; 05 the Midlands and South East; 06 the Mid-West; and 07/09 the West and North West.
2. Annual display advertisements range in price from €1,325 to €46,472 in the 01 area, from €855 to €25,685 in the 02 and from €855 to €24,657 in the 04/05/06/07/09 areas.

Source: Indecon calculations using data from the Golden Pages 2002. Price information from Golden Pages Marketing Guide 2002.

# Annex 7 Dentists' Profession: Supplementary Tables

| Intensity of Advertising by Dentists in the Golden Pages: *Listings* Advertisements | |
|---|---|
| **Area** | **Number of firms advertising** |
| 01 | 381 |
| 02 | 158 |
| 04 | 113 |
| 05 | 129 |
| 06 | 111 |
| 07/09 | 132 |
| | |
| State | 1,024 |

Notes:
1. 01 covers the Greater Dublin area; 02 Cork City and most of County Cork; 04 the North East and most of Counties Kildare and Wicklow; 05 the Midlands and South East; 06 the Mid-West; and 07/09 the West and North West.
2. Annual listings advertisements range in price from €92 to €243 in the 01 area and from €69 to €149 in the 02/04/05/06/07/09 areas.
3. An extra line on an annual listings advertisement costs €92 in the 01 area and €69 in the 02/04/05/06/07/09 areas.

Source: Indecon calculations using data from the Golden Pages 2002. Price information from Golden Pages Marketing Guide 2002.

**Intensity of Advertising by Dentists in the Golden Pages: *Informational* Advertisements**

| Area | Number of firms advertising |
|---|---|
| 01 | 44 |
| 02 | 3 |
| 04 | 15 |
| 05 | 2 |
| 06 | 2 |
| 07/09 | 9 |
| | |
| State | 75 |

Notes:
1. 01 covers the Greater Dublin area; 02 Cork City and most of County Cork; 04 the North East and most of Counties Kildare and Wicklow; 05 the Midlands and South East; 06 the Mid-West; and 07/09 the West and North West.
2. Annual informational advertisements range in price from €310 to €1,539 in the 01 area and from €199 to €990 in the 02/04/05/06/07/09 areas.

Source: Indecon calculations using data from the Golden Pages 2002. Price information from Golden Pages Marketing Guide 2002.

**Intensity of Advertising by Dentists in the Golden Pages: *In-column Display* Advertisements**

| Area | Number of firms advertising |
|---|---|
| 01 | 1 |
| 02 | 0 |
| 04 | 0 |
| 05 | 0 |
| 06 | 0 |
| 07/09 | 0 |
| | |
| State | 1 |

Notes:
1. 01 covers the Greater Dublin area; 02 Cork City and most of County Cork; 04 the North East and most of Counties Kildare and Wicklow; 05 the Midlands and South East; 06 the Mid-West; and 07/09 the West and North West.
2. Annual in-column display advertisements range in price from €1,246 to €3,553 in the 01 area and from €799 to €2,415 in the 02/04/05/06/07/09 areas.

Source: Indecon calculations using data from the Golden Pages 2002. Price information from Golden Pages Marketing Guide 2002.

**Intensity of Advertising by Dentists in the Golden Pages: D*isplay Advertisements***

| Area | Number of firms advertising |
|---|---|
| 01 | 12 |
| 02 | 0 |
| 04 | 5 |
| 05 | 0 |
| 06 | 0 |
| 07/09 | 1 |
| | |
| State | 18 |

Notes:
1. 01 covers the Greater Dublin area; 02 Cork City and most of County Cork; 04 the North East and most of Counties Kildare and Wicklow; 05 the Midlands and South East; 06 the Mid-West; and 07/09 the West and North West.
2. Annual display advertisements range in price from €1,325 to €46,472 in the 01 area, from €855 to €25,685 in the 02 and from €855 to €24,657 in the 04/05/06/07/09 areas.

Source: Indecon calculations using data from the Golden Pages 2002. Price information from Golden Pages Marketing Guide 2002.

# Annex 8 Optometrists' Profession: Supplementary Tables

**Intensity of Advertising by Optometrist/Optician Practices in the Golden Pages: *Listings* Advertisements**

| Area | No. dispensing firms advertising | No. ophthalmic firms advertising | Total |
|---|---|---|---|
| 01 | 24 | 72 | 96 |
| 02 | 6 | 12 | 18 |
| 04 | 4 | 44 | 48 |
| 05 | 11 | 33 | 44 |
| 06 | 5 | 20 | 25 |
| 07/09 | 6 | 27 | 33 |
| State | 56 | 208 | 264 |

Notes:
1. 01 covers the Greater Dublin area; 02 Cork City and most of County Cork; 04 the North East and most of Counties Kildare and Wicklow; 05 the Midlands and South East; 06 the Mid-West; and 07/09 the West and North West.
2. Annual listings advertisements range in price from €92 to €243 in the 01 area and from €69 to €149 in the 02/04/05/06/07/09 areas.
3. An extra line on an annual listings advertisement costs €92 in the 01 area and €69 in the 02/04/05/06/07/09 areas.

Source: Indecon calculations using data from the Golden Pages 2002. Price information from Golden Pages Marketing Guide 2002.

**Intensity of Advertising by Optometrist/Optician Practices in the Golden Pages: *Informational* Advertisements**

| Area | No. dispensing firms advertising | No. ophthalmic firms advertising | Total |
|---|---|---|---|
| 01 | 1 | 24 | 25 |
| 02 | 2 | 14 | 16 |
| 04 | 3 | 10 | 13 |
| 05 | 3 | 9 | 12 |
| 06 | 2 | 12 | 14 |
| 07/09 | 2 | 18 | 20 |
| State | 13 | 87 | 100 |

Notes:
1. 01 covers the Greater Dublin area; 02 Cork City and most of County Cork; 04 the North East and most of Counties Kildare and Wicklow; 05 the Midlands and South East; 06 the Mid-West; and 07/09 the West and North West.
2. Annual informational advertisements range in price from €310 to €1,539 in the 01 area and from €199 to €990 in the 02/04/05/06/07/09 areas.

Source: Indecon calculations using data from the Golden Pages 2002. Price information from Golden Pages Marketing Guide 2002.

**Intensity of Advertising by Optometrist/Optician Practices in the Golden Pages: *In-column Display* Advertisements**

| Area | No. dispensing firms advertising | No. ophthalmic firms advertising | Total |
|---|---|---|---|
| 01 | 0 | 12 | 12 |
| 02 | 0 | 3 | 3 |
| 04 | 0 | 5 | 5 |
| 05 | 0 | 2 | 2 |
| 06 | 0 | 3 | 3 |
| 07/09 | 0 | 0 | 0 |
| State | 0 | 25 | 25 |

Notes:
1. 01 covers the Greater Dublin area; 02 Cork City and most of County Cork; 04 the North East and most of Counties Kildare and Wicklow; 05 the Midlands and South East; 06 the Mid-West; and 07/09 the West and North West.
2. Annual in-column display advertisements range in price from €1,246 to €3,553 in the 01 area and from €799 to €2,415 in the 02/04/05/06/07/09 areas.

Source: Indecon calculations using data from the Golden Pages 2002. Price information from Golden Pages Marketing Guide 2002.

**Intensity of Advertising by Optometrist/Optician Practices in the Golden Pages: *Display* Advertisements**

| Area | No. dispensing firms advertising | No. ophthalmic firms advertising | Total |
|---|---|---|---|
| 01 | 6 | 14 | 20 |
| 02 | 2 | 4 | 6 |
| 04 | 1 | 6 | 7 |
| 05 | 3 | 4 | 7 |
| 06 | 1 | 6 | 7 |
| 07/09 | 1 | 4 | 5 |
| State | 14 | 38 | 52 |

Notes:
1. 01 covers the Greater Dublin area; 02 Cork City and most of County Cork; 04 the North East and most of Counties Kildare and Wicklow; 05 the Midlands and South East; 06 the Mid-West; and 07/09 the West and North West.
2. Annual display advertisements range in price from €1,325 to €46,472 in the 01 area, from €855 to €25,685 in the 02 and from €855 to €24,657 in the 04/05/06/07/09 areas.

Source: Indecon calculations using data from the Golden Pages 2002. Price information from Golden Pages Marketing Guide 2002.

# Annex 9 Background Details re Surveys, including Samples and Response Rates

Attached are the survey questionnaires conducted by Indecon. They are organised as follows.

**Confidential Indecon Survey of Professionals**. We decided, instead of issuing the survey only to a small sample, to give all the professionals for whom we had contact details the opportunity to respond to our survey. We had targeted a 10% response rate. In all cases, this rate of response was significantly exceeded. Details of the sample sizes and response rates are provided below.

**Confidential Indecon Survey of Solicitors** (381 responses from 2,110 questionnaires, giving response rate of 18%)

**Confidential Indecon Survey of Barristers** (283 responses from 1,339 questionnaires, giving response rate of 21%)

**Confidential Indecon Survey of Engineers** (150 responses from 604 questionnaires, giving response rate of 25%)

**Confidential Indecon Survey of Architects** (225 responses from 1,053 questionnaires, giving response rate of 21%)

**Confidential Indecon Survey of Veterinary Surgeons** (252 responses from 1,033 questionnaires, giving response rate of 24%)

**Confidential Indecon Survey of Medical Practitioners** (473 responses from 1,776 questionnaires, giving response rate of 27%)

**Confidential Indecon Survey of Dentists** (317 responses from 862 questionnaires, giving response rate of 37%)

**Confidential Indecon Survey of (Ophthalmic) Optometrists** (78 responses from 302 questionnaires, giving response rate of 26%).

Plus

**Confidential Indecon Survey of Insurance Companies** (for solicitors and barristers) (15 responses from 30 questionnaires, giving response rate of 50%)

**Confidential Indecon Survey of two Health Insurance Companies** (for medical practitioners) (100% response rate).

**Omnibus Survey of General Population (for all professions)** (1,008 responses)

- The information contained was obtained as part of TNS MRBI's survey in Ireland.
- The survey was based on a representative sample of adults – males and females aged 15 or more. Respondents were selected for interview through random digit dialling (RDD). Telephone numbers were computer generated at random by Survey Sampling Inc. in the US and then screened for business numbers, faxes, modems and disconnected numbers. This method of respondent selection ensures that ex-directory households are as likely to be selected for interview as listed households.
- A representative national sample of 1,008 adults aged 15+ were interviewed.
- Interviewing was conducted at MRBI's CATI (Computer Aided Telephone Interviewing) unit from 23 July-1 August 2002.

The sample was weighed to represent the adult population in Ireland aged 15.

# Confidential Indecon Survey of Solicitors

1. Main location of your practice. Please specify town/city and county: _____

2. Please indicate the approximate number of full time practising Solicitors working in your practice over the past 3 years.

| Number of Solicitors | | |
|---|---|---|
| **1999** | **2000** | **2001** |
| | | |

3. Do you believe it is appropriate or not for there to be price competition in the Irish market for Solicitors' services? (Please ✓ as appropriate for this and subsequent questions)

Yes ❑ No ❑

4. Please indicate your view on the importance of the following factors influencing a client's choice of Solicitor in Ireland.

| Factors Influencing Choice of Solicitor | | | | |
|---|---|---|---|---|
| | **Extremely Important** | **Very Important** | **Important** | **Not Important** |
| Quality of Services | ❑ | ❑ | ❑ | ❑ |
| Reputation | ❑ | ❑ | ❑ | ❑ |
| Degree of Specialisation | ❑ | ❑ | ❑ | ❑ |
| Customer Trust | ❑ | ❑ | ❑ | ❑ |
| Location of Practice | ❑ | ❑ | ❑ | ❑ |
| Fees/Price Competitiveness | ❑ | ❑ | ❑ | ❑ |

5. Please indicate the extent to which you believe price competition exists among Solicitors and among Barristers operating in Ireland.

| Extent to Which Price Competition Exists in Legal Professions | | | | | |
|---|---|---|---|---|---|
| | **Virtually No Price Competition** | **Very Little Price Competition** | **Limited Price Competition** | **Significant Price Competition** | **Extensive Price Competition** |
| Among Solicitors | ❑ | ❑ | ❑ | ❑ | ❑ |
| Among Barristers | ❑ | ❑ | ❑ | ❑ | ❑ |

6. Please indicate the extent to which you believe there have been difficulties in recruiting Solicitors over the past 3 years.

| Difficulty in Recruiting Solicitors | | | |
|---|---|---|---|
| **Extremely Difficult** | **Very Difficult** | **Difficult** | **No Difficulty** |
| ❑ | ❑ | ❑ | ❑ |

7. Please indicate your view on the following entry or conduct requirements for the legal profession in Ireland.

| | **Support Requirements** | **Do Not Support** | **Don't Know** |
|---|---|---|---|
| Level of educational requirements for entry into training for Barristers' Profession | ❑ | ❑ | ❑ |
| Level of educational requirements for entry into Training for Solicitors' Profession | ❑ | ❑ | ❑ |
| Restriction on forming Limited Companies for Solicitors | ❑ | ❑ | ❑ |
| Restrictions against forming Partnerships/Limited Companies for Barristers | ❑ | ❑ | ❑ |
| Restrictions on Direct Access to Barristers by members of the Public | ❑ | ❑ | ❑ |
| Barristers' Restriction on Advertising | ❑ | ❑ | ❑ |
| Guidelines on Solicitors' Advertising (The Solicitors (Advertising) Regulations 1996) | ❑ | ❑ | ❑ |
| Restrictions on Solicitors forming multidisciplinary partnerships with other professionals | ❑ | ❑ | ❑ |
| Current policy on Solicitors' rights of audience in all of the Irish Courts | ❑ | ❑ | ❑ |

8. Please indicate the approximate average annual change in total fee income for your practice over the period 1999 - 2001.

| **Percentage Average Change in Fee Income €** | | |
|---|---|---|
| | **Increase** | **Decrease** |
| Over 200% | ❑ | ❑ |
| 150 – 199% | ❑ | ❑ |
| 100 – 149% | ❑ | ❑ |
| 50 – 99% | ❑ | ❑ |
| 25 – 49% | ❑ | ❑ |
| 10 – 24% | ❑ | ❑ |
| 5 – 9% | ❑ | ❑ |
| 0 – 4% | ❑ | ❑ |
| Other, please specify | ❑ | ❑ |

9. Please indicate the approximate average gross salary/earnings for Solicitors and the average salary/earnings for entry level Solicitors in your practice.

| **Annual Entry Level Salary** | **Average annual Salary/Earnings** |
|---|---|
| € ___,000 | € ___,000 |

10. Please indicate the approximate professional fees charged by your practice for the following two examples of services.

| | |
|---|---|
| Professional fees charged to vendors for handling the conveyancing on a typical sale of a house with a value of €300,000 (excluding VAT, Stamp duty/registration/search fees) | € _____ |
| Professional fees to handle a typical preparation of a Will for a private individual (excluding VAT and expenses) | € _____ |

11. Please indicate the approximate annual expenditure, if any, which your practice spends on advertising/marketing your services € _____.

12. Please indicate the appropriate percentage of your fee income which comes from business/corporate/institutional/ government clients and from members of the general public.
Fees: Business Clients _____% General Public _____%.

| | **Yes** | **No** | **Not Feasible to know fees in advance** |
|---|---|---|---|
| 13. Do you provide information in advance to your clients on what will be the total fees and expenses for your services? | ❑ | ❑ | ❑ |

| | **Always** | **Usually** | **Sometimes** | **Never** |
|---|---|---|---|---|
| 14. Are your clients provided afterwards with a detailed breakdown of the composition of the fees and expenses for your services? | ❑ | ❑ | ❑ | ❑ |

**Other Comments**

Please outline any other comments or views you may have on any aspect of competition in the legal profession in Ireland. Please use additional pages as required.

_____
_____
_____
_____
_____
_____

# Confidential Indecon Survey of Barristers

1. Main location of your practice. Please specify town/city and county: _____

2. Do you believe it is appropriate or not for there to be price competition for Barrister services. (Please ☑ as appropriate for this and subsequent questions. Yes ❑ No ❑

3. Please indicate your view on the importance of the following factors influencing a Solicitor's / client's choice of Barrister in Ireland.

| Factors Influencing Choice of Barristers | | | | |
|---|---|---|---|---|
| | **Extremely Important** | **Very Important** | **Important** | **Not Important** |
| Quality of Services | ❑ | ❑ | ❑ | ❑ |
| Reputation | ❑ | ❑ | ❑ | ❑ |
| Degree of Specialisation | ❑ | ❑ | ❑ | ❑ |
| Previous Relationship with Solicitor | | | | |
| Customer Trust | ❑ | ❑ | ❑ | ❑ |
| Location of Practice | ❑ | ❑ | ❑ | ❑ |
| Fees/Price Competitiveness | ❑ | ❑ | ❑ | ❑ |

4. Please indicate the extent to which you believe price competition exists among Barristers operating in Ireland.

| Extent to Which Price Competition Exists among Barristers | | | | |
|---|---|---|---|---|
| **Virtually No Price Competition** | **Very Little Price Competition** | **Limited Price Competition** | **Significant Price Competition** | **Extensive Price Competition** |
| ❑ | ❑ | ❑ | ❑ | ❑ |

5. Please indicate your view on the following entry or conduct requirements for Barristers and other members of the legal profession in Ireland.

| | **Support Requirements** | **Do Not Support** | **Don't Know** |
|---|---|---|---|
| Level of educational requirements for entry into Barristers' Profession | ❑ | ❑ | ❑ |
| Requirement that Barrister's Practice be his/her primary occupation | ❑ | ❑ | ❑ |
| Restrictions against Formation of Partnerships or other Professional Associations (sole trader requirement) | ❑ | ❑ | ❑ |
| Restriction of incorporation with limited liability | ❑ | ❑ | ❑ |
| Restrictions of Direct Access to Barristers by Members of Public | ❑ | ❑ | ❑ |
| Restrictions on Advertising | ❑ | ❑ | ❑ |
| Current policy on Solicitors rights of audience in all courts in Ireland | ❑ | ❑ | ❑ |

6. Please indicate the approximate average annual change in your total fee income for the period 1999 - 2001.

| Percentage Average Change in Fee Income € | | |
|---|---|---|
| | **Increase** | **Decrease** |
| Over 200% | ❑ | ❑ |
| 150 – 199% | ❑ | ❑ |
| 100 – 149% | ❑ | ❑ |
| 50 – 99% | ❑ | ❑ |
| 25 – 49% | ❑ | ❑ |
| 10 – 24% | ❑ | ❑ |
| 5 – 9% | ❑ | ❑ |
| 0 – 4% | ❑ | ❑ |
| Other, please specify | ❑ | ❑ |

7. Please indicate the approximate percentage of your fee income which comes from business/corporate clients (including government and other institutional clients) and from members of the general public.

| | |
|---|---|
| Fees Business Clients % | General Public % |

| | Yes | No | Not Feasible to know fees in advance |
|---|---|---|---|
| 8. Do you provide information in advance to your clients on what will be the total fees and expenses for your services? | ❑ | ❑ | ❑ |

| | Always | Usually | Sometimes | Never |
|---|---|---|---|---|
| 9. Are your clients provided afterwards with a detailed breakdown of the composition of the fees and expenses for your services? | ❑ | ❑ | ❑ | ❑ |

**Other Comments**

Please outline any other comments or views you may have on any aspect of competition in the legal profession in Ireland. Please use additional pages as required.

_____
_____
_____
_____
_____
_____

# Confidential Indecon Survey of Engineers

1. Please specify main location of your practice (town/city and county): _____

2. Please indicate the approximate number of full time practising Engineers working in your practice over the past 3 years.

| Number of Engineers | | |
|---|---|---|
| **1999** | **2000** | **2001** |
| | | |

3. Do you believe it is appropriate or not for there to be price competition in the Irish market for Engineering services? (Please ✓ as appropriate for this and subsequent questions)

Yes ❑ No ❑

4. Please indicate your view on the importance of the following factors influencing a client's choice of Engineer in Ireland.

| Factors Influencing Choice of Engineers | | | | |
|---|---|---|---|---|
| | **Extremely Important** | **Very Important** | **Important** | **Not Important** |
| Quality of Services | ❑ | ❑ | ❑ | ❑ |
| Reputation | ❑ | ❑ | ❑ | ❑ |
| Degree of Specialisation | ❑ | ❑ | ❑ | ❑ |
| Customer Trust | ❑ | ❑ | ❑ | ❑ |
| Location of Practice | ❑ | ❑ | ❑ | ❑ |
| Fees/Price Competitiveness | ❑ | ❑ | ❑ | ❑ |

5. Please indicate the extent to which you believe price competition exists among Engineers operating in Ireland.

| Extent to Which Price Competition Exists among Engineers | | | | |
|---|---|---|---|---|
| **Virtually No Price Competition** | **Very Little Price Competition** | **Limited Price Competition** | **Significant Price Competition** | **Extensive Price Competition** |
| ❑ | ❑ | ❑ | ❑ | ❑ |

6. Please indicate the extent to which you believe there have been difficulties in recruiting Engineers in Ireland over the past 3 years.

| Difficulty in Recruiting Engineers | | | |
|---|---|---|---|
| **Extremely Difficult** | **Very Difficult** | **Difficult** | **No Difficulty** |
| ❑ | ❑ | ❑ | ❑ |

7. Please indicate your view on the following entry or conduct requirements for the Engineering profession in Ireland.

| | **Support Requirements** | **Do Not Support** | **Don't Know** |
|---|---|---|---|
| Level of educational requirements for entry into training for Engineering Professions | ❑ | ❑ | ❑ |

8. Please indicate the approximate average annual change in total fee income for your practice over the period 1999 - 2001.

| **Percentage Average Change in Fee Income €** | | |
|---|---|---|
| | **Increase** | **Decrease** |
| Over 200% | ❑ | ❑ |
| 150 – 199% | ❑ | ❑ |
| 100 – 149% | ❑ | ❑ |
| 50 – 99% | ❑ | ❑ |
| 25 – 49% | ❑ | ❑ |
| 10 – 24% | ❑ | ❑ |
| 5 – 9% | ❑ | ❑ |
| 0 – 4% | ❑ | ❑ |
| Other, please specify | ❑ | ❑ |

9. Please indicate the approximate average gross salary/earnings for Engineers and the average salary/earnings for entry level Engineers in your practice.

| **Annual Entry Level Salary** | **Average annual Salary/Earnings** |
|---|---|
| € ___,000 | € ___,000 |

10. Please indicate the approximate daily fee rate (excluding VAT) charged by your practice for a Senior Consulting Engineer € (Please indicate a range if appropriate)._____.

11. Please indicate the approximate annual expenditure, if any, which your practice spends on advertising / marketing your services €_____.

12. Please indicate the approximate percentage of your fee income which arises from business/corporate/institutional/ government clients and from members of the general public. Fees : Business Clients _____%, Fees: General Public _____%.

| | **Yes** | **No** | **Not Feasible to know fees in advance** |
|---|---|---|---|
| 13. Do you provide information in advance to your clients on what will be the total fees and expenses for your services? | ❑ | ❑ | ❑ |

| | **Always** | **Usually** | **Sometimes** | **Never** |
|---|---|---|---|---|
| 14. Are your clients provided afterwards with a detailed breakdown of the composition of the fees and expenses for your services? | ❑ | ❑ | ❑ | ❑ |

**Other Comments**

Please outline any other comments or views you may have on any aspect of competition in the engineering profession in Ireland. Please use additional pages as required.

_____
_____
_____
_____
_____
_____

# Confidential Indecon Survey of Architects

1. Main location of your practice. Please specify town/city and county: _____

2. Please indicate the approximate number of full time practising Architects working in your practice over the past 3 years.

| Number of Architect | | |
|---|---|---|
| **1999** | **2000** | **2001** |
| | | |

3. Do you believe it is appropriate or not for there to be price competition in the Irish market for Architectural services? (Please ✓ as appropriate for this and subsequent questions)

Yes ❑ No ❑

4. Please indicate your view on the importance of the following factors influencing a client's choice of Architect in Ireland.

| Factors Influencing Choice of Architects | | | | |
|---|---|---|---|---|
| | **Extremely Important** | **Very Important** | **Important** | **Not Important** |
| Quality of Services | ❑ | ❑ | ❑ | ❑ |
| Reputation | ❑ | ❑ | ❑ | ❑ |
| Degree of Specialisation | ❑ | ❑ | ❑ | ❑ |
| Customer Trust | ❑ | ❑ | ❑ | ❑ |
| Location of Practice | ❑ | ❑ | ❑ | ❑ |
| Fees/Price Competitiveness | ❑ | ❑ | ❑ | ❑ |

5. Please indicate the extent to which you believe price competition exists among Architects operating in Ireland.

| Extent to Which Price Competition Exists among Architects | | | | |
|---|---|---|---|---|
| **Virtually No Price Competition** | **Very Little Price Competition** | **Limited Price Competition** | **Significant Price Competition** | **Extensive Price Competition** |
| ❑ | ❑ | ❑ | ❑ | ❑ |

6. Please indicate the extent to which you believe there have been difficulties in recruiting Architects in Ireland over the past 3 years.

| Difficulty in Recruiting Architects | | | |
|---|---|---|---|
| **Extremely Difficult** | **Very Difficult** | **Difficult** | **No Difficulty** |
| ❑ | ❑ | ❑ | ❑ |

7. Please indicate your view on the following entry or conduct requirements for the Architects' profession in Ireland.

| | **Support Requirements** | **Do Not Support** | **Don't Know** |
|---|---|---|---|
| Level of educational requirements for entry into training for architectural Professions | ❑ | ❑ | ❑ |

8. Please indicate the approximate average annual change in total fee income for your practice over the period 1999 - 2001.

| **Percentage Average Change in Fee Income €** | | |
|---|---|---|
| | **Increase** | **Decrease** |
| Over 200% | ❑ | ❑ |
| 150 – 199% | ❑ | ❑ |
| 100 – 149% | ❑ | ❑ |
| 50 – 99% | ❑ | ❑ |
| 25 – 49% | ❑ | ❑ |
| 10 – 24% | ❑ | ❑ |
| 5 – 9% | ❑ | ❑ |
| 0 – 4% | ❑ | ❑ |
| Other, please specify | ❑ | ❑ |

1. Please indicate the approximate average gross salary/earnings for Architects and the average salary/earnings for entry level in your practice.

| **Annual Entry Level Salary** | **Average annual Salary/Earnings** |
|---|---|
| € ___,000 | € ___,000 |

2. Please indicate the approximate professional fees (including VAT) charged by your practice for the following two examples of services:

| | |
|---|---|
| Professional fees charged to private individual for handling the design and supervision of a new house with a construction value of €300,000 | € ____ |
| Professional fees to handle a typical certificate of compliance for a new extension to a residential house | € ____ |

11. Please indicate the approximate annual expenditure if any which your practice spends on advertising / marketing your services € _____.

12. Please indicate the appropriate percentage of your fee income which comes from business/corporate/ government/institutional clients and from members of the general public.
Fees: Business clients: _____% Fees: General Public _____%.

| | **Yes** | **No** | **Not Feasible to know fees in advance** |
|---|---|---|---|
| 13. Do you provide information in advance to your clients on what will be the total fees and expenses for your services? | ❑ | ❑ | ❑ |

| | **Always** | **Usually** | **Sometimes** | **Never** |
|---|---|---|---|---|
| 14. Are your clients provided afterwards with a detailed breakdown of the composition of the fees and expenses for your services? | ❑ | ❑ | ❑ | ❑ |

**Other Comments**

Please outline any other comments or views you may have on any aspect of competition in the architectural profession in Ireland. Please use additional pages as required.

_____
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_____
_____
_____
_____

# Confidential Indecon Survey of Veterinary Surgeons

1. Main location of your practice. Please specify town/city and county: _____

2. Please indicate the approximate number of full time practising Veterinary Surgeon working in your practice over the past 3 years.

| Number of Veterinary Surgeons | | |
|---|---|---|
| **1999** | **2000** | **2001** |
| | | |

3. Do you believe it is appropriate or not for there to be price competition in the Irish market for Veterinary services? (Please ✓ as appropriate for this and subsequent questions)

Yes ❑ No ❑

4. Please indicate your view on the importance of the following factors influencing a client's choice of Veterinary Surgeon in Ireland.

| Factors Influencing Choice of Veterinary Surgeon | | | | |
|---|---|---|---|---|
| | **Extremely Important** | **Very Important** | **Important** | **Not Important** |
| Quality of Services | ❑ | ❑ | ❑ | ❑ |
| Reputation | ❑ | ❑ | ❑ | ❑ |
| Degree of Specialisation | ❑ | ❑ | ❑ | ❑ |
| Customer Trust | ❑ | ❑ | ❑ | ❑ |
| Location of Practice | ❑ | ❑ | ❑ | ❑ |
| Fees/Price Competitiveness | ❑ | ❑ | ❑ | ❑ |

5. Please indicate the extent to which you believe price competition exists among Veterinary Surgeons operating in Ireland.

| Extent to Which Price Competition Exists among Veterinary Surgeons | | | | |
|---|---|---|---|---|
| **Virtually No Price Competition** | **Very Little Price Competition** | **Limited Price Competition** | **Significant Price Competition** | **Extensive Price Competition** |
| ❑ | ❑ | ❑ | ❑ | ❑ |

6. Please indicate the extent to which you believe there have been difficulties in recruiting Veterinary Surgeons in Ireland over the past 3 years.

| Difficulty in Recruiting Veterinary Surgeons | | | |
|---|---|---|---|
| **Extremely Difficult** | **Very Difficult** | **Difficult** | **No Difficulty** |
| ❑ | ❑ | ❑ | ❑ |

7. Please indicate your view on the following entry or conduct requirements for the Veterinary Surgeons' profession in Ireland.

| | **Support Requirements** | **Do Not Support** | **Don't Know** |
|---|---|---|---|
| Level of educational requirements for entry into training for Veterinary surgeon profession | ❑ | ❑ | ❑ |
| Restrictions on certain scheduled acts/procedures being carried out by Veterinary surgeons rather than by qualified Veterinary nurses | ❑ | ❑ | ❑ |
| Advice in Guide to Professional behaviour that fees should not be Advertised | ❑ | ❑ | ❑ |
| Restrictions on the number of places in faculties of Veterinary Medicine | ❑ | ❑ | ❑ |

8. Please indicate the approximate average annual change in total fee income for your practice over the period 1999 - 2001.

| **Percentage Average Change in Fee Income €** | | |
|---|---|---|
| | **Increase** | **Decrease** |
| Over 200% | ❑ | ❑ |
| 150 – 199% | ❑ | ❑ |
| 100 – 149% | ❑ | ❑ |
| 50 – 99% | ❑ | ❑ |
| 25 – 49% | ❑ | ❑ |
| 10 – 24% | ❑ | ❑ |
| 5 – 9% | ❑ | ❑ |
| 0 – 4% | ❑ | ❑ |
| Other, please specify | ❑ | ❑ |

9. Please indicate the approximate average gross salary/earnings for Veterinary Surgeons and the average salary/earnings for entry-level Veterinary Surgeons in your practice.

| **Annual Entry Level Salary** | **Average annual Salary/Earnings** |
|---|---|
| € ___,000 | € ___,000 |

10. Please indicate the approximate professional fees (including VAT) charged by your practice for the following two examples of services.

| | |
|---|---|
| Professional fees charged for testing of a livestock for TB. | € _____ |
| Professional fees for a visit to your client for a domestic animal | € _____ |

11. Please indicate the approximate annual expenditure, if any, which your practice spends on advertising / marketing your services € _____.

| | **Yes** | **No** | **Not Feasible to know fees in advance** |
|---|---|---|---|
| 12. Do you provide information in advance to your clients on what will be the total fees and expenses for your services? | ❑ | ❑ | ❑ |

| | **Always** | **Usually** | **Sometimes** | **Never** |
|---|---|---|---|---|
| 13. Are your clients provided afterwards with a detailed breakdown of the composition of the fees and expenses for your services? | ❑ | ❑ | ❑ | ❑ |

**Other Comments**

Please outline any other comments or views you may have on any aspect of competition in the Veterinary profession in Ireland. Please use additional pages as required.

_____
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_____
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_____
_____

# Confidential Indecon Survey of Doctors

1. Main location of your practice. Please specify town/city and county: _____

2. Please indicate the approximate number of full time practising Doctors working in your practice over the past 3 years.

| Number of Doctors | | |
|---|---|---|
| **1999** | **2000** | **2001** |
| | | |

3. Do you believe it is appropriate or not for there to be price competition in the Irish market for medical services? (Please ✓ as appropriate for this and subsequent questions)

Yes ❑ No ❑

4. Please indicate your view on the importance of the following factors influencing a patients' choice of General Practitioner in Ireland.

| Factors Influencing Choice of Doctors | | | | |
|---|---|---|---|---|
| | **Extremely Important** | **Very Important** | **Important** | **Not Important** |
| Quality of Services | ❑ | ❑ | ❑ | ❑ |
| Reputation | ❑ | ❑ | ❑ | ❑ |
| Degree of Specialisation | ❑ | ❑ | ❑ | ❑ |
| Customer Trust | ❑ | ❑ | ❑ | ❑ |
| Location of Practice | ❑ | ❑ | ❑ | ❑ |
| Fees/Price Competitiveness | ❑ | ❑ | ❑ | ❑ |

5. Please indicate the extent to which you believe price competition exists among Doctors operating in Ireland.

| Extent to Which Price Competition Exists among Doctors | | | | |
|---|---|---|---|---|
| **Virtually No Price Competition** | **Very Little Price Competition** | **Limited Price Competition** | **Significant Price Competition** | **Extensive Price Competition** |
| ❑ | ❑ | ❑ | ❑ | ❑ |

6. Please indicate the extent to which you believe there have been difficulties in recruiting Doctors in Ireland over the past 3 years.

| Difficulty in Recruiting Doctors | | | |
|---|---|---|---|
| **Extremely Difficult** | **Very Difficult** | **Difficult** | **No Difficulty** |
| ❑ | ❑ | ❑ | ❑ |

7. Please indicate your view on the following entry or conduct requirements for the medical profession in Ireland.

| | **Support Requirements** | **Do Not Support** | **Don't Know** |
|---|---|---|---|
| Educational requirements for entry into training for Medical Professions | ❑ | ❑ | ❑ |
| Restrictions against forming Limited Companies | ❑ | ❑ | ❑ |
| Restrictions on Doctors forming multidisciplinary partnerships | ❑ | ❑ | ❑ |

8. Please indicate the approximate average annual change in total fee income for your practice over the period 1999 - 2001.

| **Percentage Average Change in Fee Income €** | | |
|---|---|---|
| | **Increase** | **Decrease** |
| Over 200% | ❑ | ❑ |
| 150 – 199% | ❑ | ❑ |
| 100 – 149% | ❑ | ❑ |
| 50 – 99% | ❑ | ❑ |
| 25 – 49% | ❑ | ❑ |
| 10 – 24% | ❑ | ❑ |
| 5 – 9% | ❑ | ❑ |
| 0 – 4% | ❑ | ❑ |
| Other, please specify | ❑ | ❑ |

9. Please indicate the approximate average gross salary/earnings for Doctors and the average salary/earnings for entry level Doctors in your practice.

| **Annual Entry Level Salary** | **Average annual Salary/Earnings** |
|---|---|
| € ___,000 | € ___,000 |

10. Please indicate the approximate professional fees (including VAT) charged by your practice for the following two examples of services.

| | |
|---|---|
| Professional fees charged to patients for standard attendance at your clinic | € _____ |
| Professional fees for a home visit | € _____ |

11. Please indicate the approximate annual expenditure if any which your practice spends on advertising / marketing of your services €_____.

**Other Comments**

Please outline any other comments or views you may have on any aspect of competition in the medical profession in Ireland. Please use additional pages as required.

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_____

# Confidential Indecon Survey of Dentists

1. Main location of your practice. Please specify town/city and county: _____

2. Please indicate the approximate number of full time practising Dentists working in your practice over the past 3 years.

| Number of Dentists | | |
|---|---|---|
| **1999** | **2000** | **2001** |
| | | |

3. Do you believe it is appropriate or not for there to be price competition in the Irish market for Dental services? (Please ✓ as appropriate for this and subsequent questions)

Yes ❑ No ❑

4. Please indicate your view on the importance of the following factors influencing a patient's choice of Dentist in Ireland.

| Factors Influencing Choice of Dentists | | | | |
|---|---|---|---|---|
| | **Extremely Important** | **Very Important** | **Important** | **Not Important** |
| Quality of Services | ❑ | ❑ | ❑ | ❑ |
| Reputation | ❑ | ❑ | ❑ | ❑ |
| Degree of Specialisation | ❑ | ❑ | ❑ | ❑ |
| Customer Trust | ❑ | ❑ | ❑ | ❑ |
| Location of Practice | ❑ | ❑ | ❑ | ❑ |
| Fees/Price Competitiveness | ❑ | ❑ | ❑ | ❑ |

5. Please indicate the extent to which you believe price competition exists among Dentists operating in Ireland.

| Extent to Which Price Competition Exists among Dentists | | | | |
|---|---|---|---|---|
| **Virtually No Price Competition** | **Very Little Price Competition** | **Limited Price Competition** | **Significant Price Competition** | **Extensive Price Competition** |
| ❑ | ❑ | ❑ | ❑ | ❑ |

6. Please indicate the extent to which you believe there have been difficulties in recruiting Dentists in Ireland over the past 3 years.

| Difficulty in Recruiting Dentists | | | |
|---|---|---|---|
| **Extremely Difficult** | **Very Difficult** | **Difficult** | **No Difficulty** |
| ❑ | ❑ | ❑ | ❑ |

7. Please indicate your view on the following entry or conduct requirements for the Dentists' profession in Ireland.

| | **Support Requirements** | **Do Not Support** | **Don't Know** |
|---|---|---|---|
| Level of Educational requirements for entry into training for dentistry | ❑ | ❑ | ❑ |
| Restrictions against forming Partnerships/Limited Companies | ❑ | ❑ | ❑ |
| Restriction on Advertising | ❑ | ❑ | ❑ |
| Restrictions on dentists forming multidisciplinary partnerships | ❑ | ❑ | ❑ |

8. Please indicate the approximate average annual change in total fee income for your practice over the period 1999 - 2001.

| Percentage Average Change in Fee Income € | | |
|---|---|---|
| | **Increase** | **Decrease** |
| Over 200% | ❑ | ❑ |
| 150 – 199% | ❑ | ❑ |
| 100 – 149% | ❑ | ❑ |
| 50 – 99% | ❑ | ❑ |
| 25 – 49% | ❑ | ❑ |
| 10 – 24% | ❑ | ❑ |
| 5 – 9% | ❑ | ❑ |
| 0 – 4% | ❑ | ❑ |
| Other, please specify | ❑ | ❑ |

9. Please indicate the approximate average gross salary/earnings for Dentists and the average salary/earnings for entry level Dentists in your practice.

| **Annual Entry Level Salary** | **Average annual Salary/Earnings** |
|---|---|
| € ___,000 | € ___,000 |

10. Please indicate the approximate professional fees (including VAT) charged by your practice for the following two examples of services.

| | |
|---|---|
| Professional fees charged to patients for standard check-up attendance at your clinic. | € _____ |
| Professional fees to handle a typical tooth filling | € _____ |

11. Please indicate the approximate annual expenditure of any which your practice spends on advertising / marketing your services € _____.

| | **Yes** | **No** | **Not Feasible to know fees in advance** |
|---|---|---|---|
| 12. Do you provide information in advance to your clients on what will be the total fees and expenses for your services? | ❑ | ❑ | ❑ |

| | **Always** | **Usually** | **Sometimes** | **Never** |
|---|---|---|---|---|
| 13. Are your clients provided afterwards with a detailed breakdown of the composition of the fees and expenses for your services? | ❑ | ❑ | ❑ | ❑ |

**Other Comments**

Please outline any other comments or views you may have on any aspect of competition in the dentists profession in Ireland. Please use additional pages as required.

_____
_____
_____
_____
_____
_____

# Confidential Indecon Survey of Optometrists

1. Main location of your practice. Please specify town/city and county: _____

2. Please indicate the approximate number of full time practising Ophthalmic Opticians/ Dispensing Opticians working in your practice over the past 3 years.

| Number of Opticians | | |
|---|---|---|
| **1999** | **2000** | **2001** |
| | | |

3. Do you believe it is appropriate or not for there to be price competition in the Irish market for Optometric services? (Please ✓ as appropriate for this and subsequent questions)

Yes ❑ No ❑

Please indicate your view on the importance of the following factors influencing a client's in the choice of Optician in Ireland.

| Factors Influencing Choice of Opticians | | | | |
|---|---|---|---|---|
| | **Extremely Important** | **Very Important** | **Important** | **Not Important** |
| Quality of Services | ❑ | ❑ | ❑ | ❑ |
| Reputation | ❑ | ❑ | ❑ | ❑ |
| Degree of Specialisation | ❑ | ❑ | ❑ | ❑ |
| Customer Trust | ❑ | ❑ | ❑ | ❑ |
| Location of Practice | ❑ | ❑ | ❑ | ❑ |
| Fees/Price Competitiveness | ❑ | ❑ | ❑ | ❑ |

5. Please indicate the extent to which you believe price competition exists among Opticians operating in Ireland.

| Extent to Which Price Competition Exists among Opticians | | | | |
|---|---|---|---|---|
| **Virtually No Price Competition** | **Very Little Price Competition** | **Limited Price Competition** | **Significant Price Competition** | **Extensive Price Competition** |
| ❑ | ❑ | ❑ | ❑ | ❑ |

6. Please indicate the extent to which you believe there have been difficulties in recruiting Opticians in Ireland over the past 3 years.

| Difficulty in Recruiting Opticians | | | |
|---|---|---|---|
| **Extremely Difficult** | **Very Difficult** | **Difficult** | **No Difficulty** |
| ❑ | ❑ | ❑ | ❑ |

7. Please indicate your view on the following entry or conduct requirements for the Opticians' profession in Ireland.

| | **Support Requirements** | **Do Not Support** | **Don't Know** |
|---|---|---|---|
| Level of educational requirements for entry into training for Optometrist | ❑ | ❑ | ❑ |
| Opticians Board Requirements for Dispensing Opticians | ❑ | ❑ | ❑ |
| Rules Governing separate profession of ophthalmic and dispensing opticians | ❑ | ❑ | ❑ |
| Rules Regulating Advertising | ❑ | ❑ | ❑ |

8. Please indicate the approximate average annual change in total fee income for your practice over the period 1999 - 2001.

| Percentage Average Change in Fee Income € | | |
|---|---|---|
| | **Increase** | **Decrease** |
| Over 200% | ❑ | ❑ |
| 150 – 199% | ❑ | ❑ |
| 100 – 149% | ❑ | ❑ |
| 50 – 99% | ❑ | ❑ |
| 25 – 49% | ❑ | ❑ |
| 10 – 24% | ❑ | ❑ |
| 5 – 9% | ❑ | ❑ |
| 0 – 4% | ❑ | ❑ |
| Other, please specify | ❑ | ❑ |

9. Please indicate the approximate average gross salary/earnings for Opticians and the average salary/earnings for entry level Opticians in your practice.

| **Annual Entry Level Salary** | **Average annual Salary/Earnings** |
|---|---|
| € ___,000 | € ___,000 |

10. Please indicate the approximate professional fees (including VAT) charged by your practice for the following two examples of services.

| | |
|---|---|
| Professional fees charged for eye test/ prescribing spectacles. | € _____ |
| Professional fees for dispensing spectacles | € _____ |

11. Please indicate the approximate annual expenditure, if any, which your practice spends on advertising / marketing of your services €_____

| | **Yes** | **No** | **Not Feasible to know fees in advance** |
|---|---|---|---|
| 12. Do you provide information in advance to your clients on what will be the total fees and expenses for your services? | ❑ | ❑ | ❑ |

| | **Always** | **Usually** | **Sometimes** | **Never** |
|---|---|---|---|---|
| 13. Are your clients provided afterwards with a detailed breakdown of the composition of the fees and expenses for your services? | ❑ | ❑ | ❑ | ❑ |

**Other Comments**

Please outline any other comments or views you may have on any aspect of competition in the ophthalmic profession in Ireland. Please use additional pages as required.

_____
_____
_____
_____
_____
_____

# Confidential Survey of Insurance Companies

1. Please indicate how often your company has used the services of external Solicitors or barristers during the past five years:

| Profession | Never Before | Less than 5 times in the last 5 years | 1-5 times per year | 6-10 times per year | 11-20 times per year | 21-30 times per year | 31-50 times per year | More than 50 times per year |
|---|---|---|---|---|---|---|---|---|
| Solicitor | ❑ | ❑ | ❑ | ❑ | ❑ | ❑ | ❑ | ❑ |
| Barrister | ❑ | ❑ | ❑ | ❑ | ❑ | ❑ | ❑ | ❑ |

2. Please indicate your view on the importance of the following factors influencing your choice of Solicitor.

| Factors Influencing Choice of Solicitor | | | | |
|---|---|---|---|---|
| | Extremely Important | Very Important | Important | Not Important |
| Fees/Price Competitiveness | ❑ | ❑ | ❑ | ❑ |
| Quality of Services | ❑ | ❑ | ❑ | ❑ |
| Reputation | ❑ | ❑ | ❑ | ❑ |
| Degree of Specialisation | ❑ | ❑ | ❑ | ❑ |
| Customer Trust | ❑ | ❑ | ❑ | ❑ |
| Location of Practice | ❑ | ❑ | ❑ | ❑ |

3. Please indicate your views on the importance of the following factors influencing your choice of Barristers.

| Factors Influencing Choice of Barristers | | | | |
|---|---|---|---|---|
| | Extremely Important | Very Important | Important | Not Important |
| Fees/Price Competitiveness | ❑ | ❑ | ❑ | ❑ |
| Quality of Services | ❑ | ❑ | ❑ | ❑ |
| Reputation | ❑ | ❑ | ❑ | ❑ |
| Degree of Specialisation | ❑ | ❑ | ❑ | ❑ |
| Customer Trust | ❑ | ❑ | ❑ | ❑ |
| Location of Practice | ❑ | ❑ | ❑ | ❑ |

4. Please indicate the extent to which you believe price competition exists in the Solicitors' and Barrister's professions (for example their willingness to offer competitively low fees to secure business).

| Profession | Virtually no Price Competition | Very little Price competition | Limited Price Competition | Significant Price Competition | Extensive Price Competition |
|---|---|---|---|---|---|
| | | | | | |
| Solicitors | ❑ | ❑ | ❑ | ❑ | ❑ |
| Barristers | ❑ | ❑ | ❑ | ❑ | ❑ |

5. Please indicate whether you believe it is desirable that there be price competition in the Solicitors' and barristers' professions.

| **Desirability of Price Competition** | | |
|---|---|---|
| **Profession** | **Yes** | **No** |
| Solicitors | ❑ | ❑ |
| Barristers | ❑ | ❑ |

6. Please indicate the extent to which you believe there exists competition for clients within the Solicitors' and Barristers' professions in terms of innovation and quality.

| **Profession** | **Virtually No Innovation or Quality Based Competition** | **Very Little Innovation or Quality Based Competition** | **Limited Innovation or Quality Based Competition** | **Significant Innovation or Quality Based Competition** | **Extensive Innovation or Quality Based Competition** |
|---|---|---|---|---|---|
| Solicitors | ❑ | ❑ | ❑ | ❑ | ❑ |
| Barristers | ❑ | ❑ | ❑ | ❑ | ❑ |

7. To what extent do you believe that business customers (such as insurance companies and other corporate users) are able to assess the quality of services provided by Solicitors and Barristers?

| **Profession** | **No Difficulty Whatsoever in Assessing Quality** | **Able to Assess Quality** | **To Some Extent Able to Assess Quality** | **Not Able to Assess Quality** |
|---|---|---|---|---|
| Solicitors | ❑ | ❑ | ❑ | ❑ |
| Barristers | ❑ | ❑ | ❑ | ❑ |

8. Would you be in favour of clients being provided with more information on the prices/fees and other information on the quality of services offered by Solicitors/barristers through publicity and/or information campaigns and/or advertising and other means?

| **Profession** | **In favour of more information on prices/fees and other factors** | **Not in favour of more information on prices/fees and other factors** |
|---|---|---|
| Solicitors | ❑ | ❑ |
| Barristers | ❑ | ❑ |

9. Please indicate your view on the following entry or conduct requirements for the legal profession in Ireland.

| | **Support Requirements** | **Do not Support Requirements** | **Don't Know** |
|---|---|---|---|
| Level of education requirements for entry into Barristers' Profession | ❑ | ❑ | ❑ |
| Level of educational requirements for entry into Solicitors' profession | ❑ | ❑ | ❑ |
| Solicitors restriction against forming limited companies | ❑ | ❑ | ❑ |
| Barristers' restriction against forming Partnerships/Limited Companies | ❑ | ❑ | ❑ |
| Restrictions on Direct Assess to Barristers by Lay Clients | ❑ | ❑ | ❑ |
| Barristers' Restriction on advertising | ❑ | ❑ | ❑ |
| Solicitors' guidelines on advertising (the Solicitors Advertising Regulations of 1996) | ❑ | ❑ | ❑ |
| Restrictions on Solicitors forming multidisciplinary Partnerships with other professionals | ❑ | ❑ | ❑ |
| Current policy on Solicitors' right of audience in all courts of Ireland | ❑ | ❑ | ❑ |

**Other Comments**

Please outline any other comments or views you may have on any aspect of competition in the legal provision in Ireland. Please also outline your views on any reasons which would prevent greater competition/will maintain quality. Please use additional pages as required.

_____
_____
_____
_____
_____
_____

# Survey of Health Insurance Companies re Competition in the Medical Profession

1. Please indicate the extent to which you believe price competition exists among members of the medical profession (for example their willingness to offer competitively low fees to secure business).

| Virtually No Price Competition | Very Little Price competition | Limited Price Competition | Significant Price Competition | Extensive Price Competition |
|---|---|---|---|---|
| ❑ | ❑ | ❑ | ❑ | ❑ |

2. Please indicate whether you believe it is desirable that there be price competition in the medical profession.

| Desirability of Price Competition | |
|---|---|
| Yes | No |
| ❑ | ❑ |

3. Please indicate the extent to which you believe there is competition for clients within the medical profession in terms of innovation and quality.

| Virtually No Innovation or Quality Based Competition | Very Little Innovation or Quality Based Competition | Limited Innovation or Quality Based Competition | Significant Innovation or Quality Based Competition | Extensive Innovation or Quality Based Competition |
|---|---|---|---|---|
| ❑ | ❑ | ❑ | ❑ | ❑ |

4. To what extent do you believe that you and other business customers are able to assess the quality of services provided by members of the medical profession?

| No Difficulty Whatsoever in Assessing Quality | Able to Assess Quality | To Some Extent Able to Assess Quality | Not Able to Assess Quality |
|---|---|---|---|
| ❑ | ❑ | ❑ | ❑ |

5. Would you be in favour of clients being provided with more information on the prices/fees and other information on the quality of services provided by members of the medical profession through publicity and/or information campaigns and/or advertising and other means?

| In favour of more information on prices/fees and other factors | Not in favour of more information on prices/fees and other factors |
|---|---|
| ❑ | ❑ |

6. Please indicate your view on the following entry or conduct requirements for the medical profession in Ireland.

| | Support Requirements | Do Not Support Requirements | Don't Know |
|---|---|---|---|
| Level of Education requirements for entry into Medical Profession | ❑ | ❑ | ❑ |
| Restrictions against forming Limited Companies | ❑ | ❑ | ❑ |
| Restrictions on Advertising | ❑ | ❑ | ❑ |
| Doctors' ability to form Multidisciplinary Partnerships | ❑ | ❑ | ❑ |

**Other Comments**

Please outline any other comments or views you may have on any aspect of competition in the medical profession in Ireland. Please also outline your views on any reforms that would promote greater competition while maintaining quality. Please use additional pages as required.

_____
_____
_____
_____
_____
_____

# Omnibus Survey Questions for Sample of Population
# (Indecon Survey of the Public)

1. Please indicate how often you have used the services of the professions listed below during the past five years. (Please tick ✓ the appropriate boxes)

| **Profession** | **Never before** | **Less than 5 times in last 5 years** | **1 – 5 times per year** | **6 – 10 times per year** | **11 – 20 times per year** | **More than 20 times per year** |
|---|---|---|---|---|---|---|
| Solicitor | ❑ | ❑ | ❑ | ❑ | ❑ | ❑ |
| Barrister | ❑ | ❑ | ❑ | ❑ | ❑ | ❑ |
| Doctor/Medical Practitioner | ❑ | ❑ | ❑ | ❑ | ❑ | ❑ |
| Dentist | ❑ | ❑ | ❑ | ❑ | ❑ | ❑ |
| Veterinary Surgeon | ❑ | ❑ | ❑ | ❑ | ❑ | ❑ |
| Optometrist/Optician | ❑ | ❑ | ❑ | ❑ | ❑ | ❑ |
| Architect | ❑ | ❑ | ❑ | ❑ | ❑ | ❑ |
| Engineer | ❑ | ❑ | ❑ | ❑ | ❑ | ❑ |

2. Please indicate the extent to which you believe price competition exists among the members of each of the following professions (for example, the willingness of the professions to offer competitively low fees to secure business)

| **Profession** | **Virtually No Price Competition** | **Very Little Price Competition** | **Limited Price Competition** | **Significant Price Competition** | **Extensive Price Competition** |
|---|---|---|---|---|---|
| Solicitor | ❑ | ❑ | ❑ | ❑ | ❑ |
| Barrister | ❑ | ❑ | ❑ | ❑ | ❑ |
| Doctor/Medical Practitioner | ❑ | ❑ | ❑ | ❑ | ❑ |
| Dentist | ❑ | ❑ | ❑ | ❑ | ❑ |
| Veterinary Surgeon | ❑ | ❑ | ❑ | ❑ | ❑ |
| Optometrist/Optician | ❑ | ❑ | ❑ | ❑ | ❑ |
| Architect | ❑ | ❑ | ❑ | ❑ | ❑ |
| Engineer | ❑ | ❑ | ❑ | ❑ | ❑ |

3. To what extent do you believe consumers are able to assess the quality of services that are provided by each of the following professions?

| **Profession** | **Very Well Able to Assess Quality** | **Able to Assess Quality** | **To some extent able to assess quality** | **Not able to assess Quality** |
|---|---|---|---|---|
| Solicitor | ❑ | ❑ | ❑ | ❑ |
| Barrister | ❑ | ❑ | ❑ | ❑ |
| Doctor/Medical Practitioner | ❑ | ❑ | ❑ | ❑ |
| Dentist | ❑ | ❑ | ❑ | ❑ |
| Veterinary Surgeon | ❑ | ❑ | ❑ | ❑ |
| Optometrist/Optician | ❑ | ❑ | ❑ | ❑ |
| Architect | ❑ | ❑ | ❑ | ❑ |
| Engineer | ❑ | ❑ | ❑ | ❑ |

4. Do you believe that consumers are usually given information in advance of the services that they are required to pay for by the following professions?

| **Profession** | **Believe consumers know in advance what they are required to pay** | **In favour of more information or prices/fees and other factors** |
|---|---|---|
| Solicitor | ❑ | ❑ |
| Barrister | ❑ | ❑ |
| Doctor/Medical Practitioner | ❑ | ❑ |
| Dentist | ❑ | ❑ |
| Veterinary Surgeon | ❑ | ❑ |
| Optometrist/Optician | ❑ | ❑ |
| Architect | ❑ | ❑ |
| Engineer | ❑ | ❑ |

5. In some countries steps have been taken to introduce greater flexibility to permit para-professionals or specialist providers to perform specific or more routine tasks traditionally done by professions. Please indicate your view on the general merits of such measures and your views on some specific examples.

| | **Extremely Supportive** | **Very Supportive** | **Supportive** | **Not Supportive** | **Don't Know** |
|---|---|---|---|---|---|
| Expansion of scope for dental nurses and dental technicians | ❑ | ❑ | ❑ | ❑ | ❑ |
| Greater flexibility in the range of professionals who can provide property conveyancing services other than independent Solicitors | ❑ | ❑ | ❑ | ❑ | ❑ |
| Use of veterinary nurses to undertake certain specified procedures | ❑ | ❑ | ❑ | ❑ | ❑ |
| Greater overall flexibility to permit more para-professionals or specialist providers | ❑ | ❑ | ❑ | ❑ | ❑ |