

COMMENTS OF THE COMPETITION AUTHORITY ON PROPOSALS BY THE MINISTER FOR HEALTH AND CHILDREN FOR STATUTORY REGISTRATION OF CERTAIN HEALTH AND SOCIAL CARE PROFESSIONALS

A. Preliminary

1. The Competition Authority welcomes the opportunity to comment on the proposals of the Minister for Health and Children in this area. The Authority notes that the scope of the Minister's proposals is extremely wide, encompassing a wide range of professions supplying a very varied range of services, in some cases exclusively within the public sector and, in others, in both the public and private sectors. As such, the proposals require the most careful consideration and analysis, and the Authority's general concern in making these comments is to (a) test the hypothesis that a registration system of the breadth and scope proposed is actually necessary or warranted at all, and (b) ensure that any new statutory registration system planned is transparent, and enhances the quality of service to consumers without restricting competition in the professions concerned.
2. It is sometimes argued that the health sector is unique, and that it is not appropriate to apply competition policy concepts to it, particularly as regards the supply of professional services. The Authority does not accept that line of argument, and considers that professions operating in that sector are as amenable to competition considerations as any other. Undoubtedly, the fact that consumers' health is involved (in addition, perhaps, to their financial or other interests) does raise special concerns as regards the quality of service supplied, and who may supply it, and the Authority shares that concern. In the Authority's view, however, while strong emphasis should certainly be placed on ensuring quality and safety, this should be done in a way which does not facilitate, or condone, anti-competitive activity.
- 3.1 The "Conclusion" section at the end of the Minister's document states as follows—

"The proposals set out in this document have emerged from intensive discussions with the professional bodies involved. They reflect a considerable degree of consensus on how a registration scheme might operate. The proposals are now being put to the members of the professions for their consideration. The Minister for Health and Children is anxious to proceed with these proposals and, if they are acceptable to the professions, his Department will set about drafting the necessary legislation immediately."
- 3.2 While the Authority understands the wisdom of consulting with the professions involved as he proceeds with the development of his proposals, it is, in the Authority's view, extremely important to broaden the process at this stage by inviting views from other quarters, so that other issues may be properly considered.

4. In this context, the Authority is concerned to note the statement on page 26 of the Minister's Document that he will only proceed to legislate "*if the proposed scheme is acceptable to the professions*". In the Authority's view, the proposals are either appropriate to introduce or they are not, and acceptability to a particular interest group should not be relevant.

B. Authority Views on Statutory Registration of Professions generally

1. ECONOMIC JUSTIFICATION FOR MARKET REGULATION

- 1.1 From an economic point of view, the main reason for regulating professional services is to correct or prevent market failures that result in inadequate quality or safety. If consumers cannot evaluate the quality of the service, it is difficult for high-quality, high-cost practitioners to coexist, profitably, with their low-quality counterparts and the average quality of service can decline unacceptably. Related to this is deceptive over-treatment, when consumers have inadequate information about the options open to them and the likely range of outcomes and some practitioners take advantage of their ignorance to supply “too much” service.
- 1.2 The regulatory response to ensure quality or safety often takes the form of registration rules requiring practitioners to be qualified to a certain level. Set standards and codes of conduct for professional services, coupled with disciplinary rules, are employed to help maintain quality and identify over-prescription. Many professional associations carry out some of these functions for their own members on a non-statutory basis.
- 1.3 But regulation often tends to, directly and/or indirectly, reduce competition unless adequate safeguards are put in place to prevent this, and there is a substantial body of informed literature, both in Ireland and elsewhere, which demonstrates that professional regulation can all too easily result in restrictions with adverse impacts. For example, a system of regulation which allows for, or condones, limits on entry to a profession, the prevention of truthful advertising or the collective setting of fees can lead to higher priced services without improving quality. Such systems, in the Authority’s view, raise strong concerns from a competition point of view.

2. THE ECONOMIC EFFECT OF STATUTORY REGISTRATION

- 2.1 Statutory registration does not of itself remove information asymmetry, but rather lowers the likelihood of lower quality (and indeed lower cost) supply. The fact that all registered practitioners are of an acceptable standard of qualification does not ensure that they will provide an acceptable quality of service, as consumers are still unable to evaluate the quality of service. In addition, if entry to a profession is characterised by excessive restrictions (in particular on numbers entering accredited courses), registration tends to reduce the number of practitioners and to increase the likelihood of excessive fees being charged.
- 2.2 Set standards of conduct and disciplinary procedures may also go toward eliminating unacceptably low quality of service. However, fee-setting or recommended fees schedules have no consumer benefits whatever and, in a market where quality is difficult to evaluate, may have the effect of shielding practitioners from any form of competition. Restrictions on truthful advertising, which is often a signal to consumers with inadequate information, may further prevent price and quality competition.

Auxiliary Professions

- 2.3 In setting the scope of a registered professional title, legislators preclude certain tasks from being carried out by anyone other than a registered practitioner, whether or not they are otherwise qualified to do so. Thus there may exist a particular task (or subset of tasks) within the registered profession's scope, for which an auxiliary professional is equally well qualified, but which he is not permitted to supply. This can have the effect of excluding eminently qualified and experienced personnel from performing such tasks, dampening competition in the market for those particular tasks.
- 2.4 Quite apart from the difficulties of principle which the issue in the previous paragraph raises from the point of view of competition policy, unnecessarily confining the scope of a profession in this way also introduces unnecessary rigidities into the market. Taking the broad health sector as an example, nurses have become substitutes for doctors in some areas of medical practice, the new role of *nursing aide* has emerged, dental hygienists substitute for dentists in cleaning teeth, pharmaceutical firms have substituted for virtually all of the compounding that pharmacists traditionally undertook, etc. Furthermore, the degree of substitution may change over time due to technical change and better training of one profession (e.g. nurses are trained to a higher level now and are thus able to undertake some tasks formerly the exclusive preserve of doctors). Thus there has to be some mechanism that permits this inter-professional competition/substitution to occur or evolve. Again, this could be a useful role for the proposed Registration Council which, in addition to any other role it might be given, might also be given a specific mandate to encourage competition if there are disputes among professions, or indeed different levels or strands of the one profession.

3. ENCOURAGING COMPETITION

The Supply of Registered Practitioners

- 3.2 In order to encourage price and quality competition among a registered pool of practitioners, the Authority sees it as essential that regulatory systems should avoid artificial restrictions on the supply of registered practitioners. The damage done to consumer interests by unnecessary restrictions on entry could far outweigh any benefits which consumers would derive from registration.
- 3.3 The Authority strongly opposes any arrangements which would place control of entry to a profession in the hands of a professional association, since that would naturally lead to conflicts of interest between the members of the professional body concerned and consumer interests. For example, in such a situation, it would obviously be in the financial interests of existing members of a given profession to make it particularly difficult for new practitioners to enter the profession, since such new entrants essentially represent competition which may dilute their profit/income. Criteria for registration, and the registration process itself, should therefore generally be decided and implemented by an independent body, whose membership does not have a majority of the relevant professionals and which adequately represents consumers' interests. Similarly, EU rules on the

free movement of professionals should be implemented by an independent regulatory body and not the relevant professional association.

- 3.4 In addition, registered practitioners should not generally be required to register with a professional association. Such a requirement could possibly offend against practitioners' Constitutional rights of freedom of association.
- 3.5 Where an independent registration body makes recommendations regarding the need for accredited courses, primary consideration should be given to the demand for places on such courses and demand for the profession's services, rather than any considerations of possible over-supply of the market.

Standards of Conduct

- 3.6 It has been suggested previously that professional bodies having statutory powers should be required to submit their codes of conduct to the scrutiny of the Authority, in order to determine that there are no anti-competitive elements contained within them. While the Authority would, of course, fulfil its statutory function under the Competition Acts regarding any such Codes formally notified to it, the Authority would also be fully prepared to give all assistance short of such formal notification, in terms of advice to the Minister and/or his Department in this important area.

The Scope of the Profession

- 3.7 Where, within a registered profession's scope, there exist tasks which an *auxiliary* professional is well qualified to carry out, the Authority considers it essential that a system be devised whereby these tasks can be performed under supervision or, preferably, directly by the auxiliary profession concerned. The design and implementation of such a system should, naturally, be the responsibility of the regulatory authorities, and not of the profession itself.

4. THE ROLE OF PROFESSIONAL BODIES

- 4.1 Where any system of statutory registration is introduced, the primary concern of the Authority is to ensure that any enhancement of the role or responsibility of professional bodies does not run the risk of encouraging, condoning or facilitating anti-competitive activity. On the other hand, the Authority considers it entirely appropriate that professional bodies should continue to perform roles appropriate to such bodies, e.g. promoting the profession in the eyes of the public, publishing journals, dealing with individual member cases, contributing to debate on the role of the profession, providing career advice to student members and advising the regulatory structures on issues of continuous professional development, curriculum content etc.

C. JUSTIFICATION FOR EXPANDING STATUTORY REGISTRATION TO FURTHER HEALTH PROFESSIONS

1. RATIONALE IN THE DOCUMENT

- 1.1 This section of the Authority's comments addresses the fundamental question as to whether the introduction of a system of statutory registration on the scale proposed by the Minister is justified at all, having regard to the benefits expected to be gained thereby. In the Authority's view, the rationale for such a sweeping reform, set out on pages 4 and 5 of the Consultation Document, is weak – of the five reasons advanced, only the first seems to the Authority to have any merit (i.e. to allay public “consumer protection” concerns). Each of the reasons advanced by the Minister for the proposals is considered in turn in paragraphs 2 to 5 below.
- 1.2 As will be clear from the detailed comments below, the Authority understands the need for proper protection of consumers in the health sector, as in any other. However, in the Authority's view, it must always be clear that the measures required for such protection are transparent, that they represent the minimum required for the purpose, that they do not facilitate anti-competitive activity or behaviour, and that the public benefits to be expected therefrom outweigh any such disadvantages they may involve. The Authority thus queries the need for statutory registration and whether, in terms of the justifications given on pages 4 and 5 of the Consultation Document, the policy objectives could be achieved through less heavy-handed and restrictive means.
- 1.3 It does not appear to the Authority, on the face of the document, that this kind of analysis has yet been done in this case, and the Authority considers that the proposals should not proceed until that process is carried out.
- 1.4 Indeed, the Authority is especially concerned to note that the Minister may have in mind extending the statutory registration proposals even beyond the 13 extra professions currently being considered¹. Assuming the creation of one Registration Board per profession, as the Document proposes, this could ultimately involve up to 35 such Boards, each with its own staff and financial requirements, its own procedures and structures etc. What this seems to imply is potentially an enormous, cumbersome and highly expensive regulatory structure, without any guarantee of the benefits it is aimed at producing.
- 1.5 If, nonetheless, the Minister's proposals proceed as outlined in the Consultation Document, the Authority considers, as a minimum, that the kind of transparent analysis referred to above should be carried out on a case-by-case basis, before being introduced in the case of any particular profession. Such a role could be assigned to the proposed Registration Council, before any specific profession is made subject to registration requirements, or any particular Registration Board is established.

¹ Footnote 1 of the Consultation Document states that “Registration could also be extended to cover others currently classified as health professionals but with a range of qualifications. These would include physicists, analytical chemists, cardiac catheterisation technicians, clinical engineering technicians and ECG technicians. This list is not exhaustive; in fact there are some 35 or so grades in the health services which could come within the overall term ‘health and social care’”.

2. PUBLIC PROTECTION

- 2.1 The first justification given in the Document is “*the legitimate concern of members of the public to be guided and protected so that they are confident that the professional providing the service is properly qualified and competent*”.
- 2.2 While the Authority’s main concern would be with professions whose members engage to any extent in private practice, or who offer their services directly to the public (since that is where competition considerations are most likely to arise), nevertheless the Authority would question the necessity for registration requirements to apply to professions whose members may operate exclusively in the public sector. In such cases, the buyer of the professional services concerned, i.e. the State, appears to be in an ideal position to specify the employment, qualification requirements it wishes to impose on its prospective (or indeed actual) employees, without the need for elaborate registration systems and structures. In such cases, it is, in the Authority’s view, the responsibility of the employer to make sure such employees reach the required standard, not just initially but throughout their term of employment.

3. SANCTIONING PROFESSIONAL MISCONDUCT

- 3.1 The second and third justifications deal with the protection of the profession itself against professional misconduct by a minority which brings the good name and reputation of the majority into disrepute. However, no examples are given of the type of misconduct intended to be covered. In their absence, it is difficult not to conclude that such a measure would simply be a self-serving one which would allow members of the profession to dissociate themselves from cases which attract negative publicity.
- 3.2 In the Authority’s view, if a professional is an employee, then it is the responsibility of his or her employer to take disciplinary action in the event of incompetence or misconduct. If the professional is self-employed, it is, in the Authority’s view, arguable that allegations of incompetence or misconduct should, in the interests of the protection of the public, be investigated in an open forum rather than privately. It should be added here, however, that this would be of less concern if the Registration Structures proposed in the Document were seen to be truly independent of the profession concerned.
- 3.3 Perhaps most importantly, however, is a concern that – in the absence of any indication as to what is intended to be covered here – ‘misconduct’ may be construed to include practices which the profession itself may feel ‘undesirable’ but which, from a competition perspective, are in fact highly *desirable*, e.g. freedom to advertise truthfully, compete on price, deal with customers of a colleague professional etc. In the Authority’s view, such competition is entirely appropriate, proper and in the interests of consumers.

4. LEGISLATIVE FRAMEWORK FOR EDUCATION, QUALIFICATIONS ETC.

- 4.1 In the fourth justification put forward, the Consultation Document states that “*registration would provide a legislative framework for the appraisal and approval of education and training courses, examinations, qualifications and institutions, thus ensuring the proper development of education and training across the professions*”. It is not at all clear what the link between these laudable aims and statutory registration is, or why registration would have to be compulsory in order for such proper educational development to operate. The education system seems to work perfectly well in other sectors where statutory registration does not apply.

5. EU DIRECTIVES ON MUTUAL RECOGNITION OF QUALIFICATIONS

- 5.1 Finally, it is claimed that registration would provide a more widely informed and participative forum for the administration and implementation of the EU Directives on Mutual Recognition of Third Level Qualifications. Again, the Authority’s view is that registration would not have to be compulsory for this aim to be achieved. Indeed, the Authority would be extremely concerned, with regard to any of the professions currently under review, to avoid a situation developing similar to that already existing in the Pharmacy profession where, in the Authority’s view, an EU Directive on Mutual Recognition was implemented in Ireland in a way which unnecessarily restricted entry to that profession.

6. COMPATIBILITY WITH EU COMPETITION LAW OF EXPANDED REGISTRATION REQUIREMENTS

- 6.1 A question arises as to the compatibility of the Minister’s proposals with the Competition provisions of the EU Treaties, notably Article 86(1) of the EC Treaty. This states that –

“In the case of public undertakings or undertakings to which Member States grant special or exclusive rights, Member States shall neither enact nor maintain in force any measure contrary to the rules contained in this Treaty, in particular to those rules provided for in Article 12 and Articles 81 to 89.”

- 6.2 This raises the need to ensure that the Minister’s proposals are consistent with the State’s obligations under the Treaty. At the very least, such obligations appear to rule out the delegation to professional bodies of the type of registration and other requirements set out in the Consultation Document.
- 6.3 In this context, Articles 81 and 5 of the EC Treaty require Member States to refrain from introducing or maintaining in force measures, even of a legislative nature, which may render ineffective the competition rules applicable to undertakings. The European Court of Justice has frequently held that Articles 81 and 5 of the EC Treaty are infringed where a Member State “ .. *requires or favours the adoption of agreements, decisions or concerted practices contrary to Article 81 or reinforces their effects, or where it deprives its own rules of the*

character of legislation by delegating to private economic operators responsibility for taking decisions affecting the economic sphere”.

- 6.4 While the extent to which competition rules should apply to the professions has not been finally settled by the European Court, it has nevertheless been clearly acknowledged that ‘... *independent professionals exercising an economic activity*’ constitute undertakings for the purpose of Article 81. In *Commission v Italian Republic*, for instance, it was stated that the concept of an undertaking “...*covers any entity engaged in an economic activity, in particular an activity consisting in offering goods and services on a given market, regardless of its legal status and the way in which it is financed*”.
- 6.5 Finally, the introduction of statutory registration requirements on such a wide scale raises concerns as to whether there is a risk of running counter to fundamental EU principles concerning Free Movement.

D. Specific Comments on the Minister's Proposals

1. PROPOSED STRUCTURES OF REGISTRATION SYSTEM

The Authority's General View

- 1.1 In order to encourage competition on price and quality among a registered pool of practitioners, the criteria for registration and the registration process itself should be decided and implemented by an independent body which adequately represents consumer's interests; a majority of the members of the registration body should not also be members of the relevant professional body, and the registration body should be independent of any professional body or association.
- 1.2 However, while the Authority welcomes the proposals' rejection of the idea of making the relevant professional body the Registration Board for that profession, the document appears inconsistent on this point, i.e. page 16 states that "*the system of statutory registration will essentially be operated by the professions themselves*". Also, page 43 states that "*it may be possible and indeed desirable for certain activities of the statutory committees or the registration boards to be 'sub-contracted' to the professional body*"². In the Authority's view, it should be made explicitly clear that the various new bodies will be independent of, and remain separate from, any professional association.
- 1.3 In general, the Authority considers that the proposed structure of individual independent Registration Boards, three Statutory Committees, and a Registration Council to co-ordinate and oversee the registration system as a whole, although potentially unwieldy and cumbersome, is reasonable in the circumstances, subject to the detailed comments below.
- 1.4 On the other hand, the suggested roles for the Council listed on page 8 of the document appear vague, and of no real substance, and would not appear of themselves to warrant the creation of such a body at all. Indeed, the subsequent text confirms that "*the Council would not have a formal supervisory role over the Registration Boards*". The only real roles foreseen appears to be to act as an appeal body against disciplinary decisions of the individual Registration Boards, or as a fall-back in case the Boards fail to perform their functions. On balance, in the Authority's view, the latter two roles of the Council are in themselves sufficient to establish such an over-arching body, and are probably necessary, if only to guard against regulatory capture³.
- 1.5 Page 7 states that -

"Any proposed structure and legislation must be flexible enough to accommodate various changes, including a significant increase in the number of professions regulated."

² If the delegated functions included accreditation and implementing the EU Directives on free movement of professionals, this would give the professions involved significant control of entry to their profession and be a clear case of conflict of interests.

³ Regulatory capture arises primarily where members of a regulatory body work in the regulated market themselves or are in such close and constant contact with professionals in the market that the interests of suppliers are better understood and better represented than those of consumers.

This implies that the Minister has a further set of professions in mind, to which similar structures and systems might be applied in the future. This raises concerns for the Authority, since it implies a view that all professions should, in principle, be subject to statutory registration and regulation. The Authority does not share that view, and considers that regulatory instruments and approaches should only be used where a market failure indicates a need for them, and where no other non-statutory system is viable to ensure quality of service supply and consumer safety.

1.6 Page 7 also states that -

“The legislation must allow for the Council, the Statutory Committees and the Registration Boards to be able to modify structures, make policy and delegate functions as will be necessary.”

In the Authority’s view, the powers of the various elements of the proposed structures need to be spelled out in detail, to avoid the kind of regulatory capture referred to earlier. In particular, the Authority considers that it should not be the function of the Council, Boards etc. to modify their own structures, since that appears to be a matter more appropriate to the Minister. More importantly, these bodies should not be empowered to ‘*make policy*’ (certainly in the normally understood sense of that term), since that would be to usurp the Minister’s own functions.

2. COMPOSITION OF REGISTRATION COUNCIL

- 2.1 It is proposed that the Council comprise an independent chairperson, one representative each of public health employers, the private health sector and the education sector, and one consumer representative. The document also proposes that each profession should be entitled to one nominee; however, since the proposals cover up to 13 separate professions, this means that the professions themselves would effectively control the Council. This control would be further underpinned if extra professions become subject to registration requirements, since each extra profession covered would also be entitled to its own Council nominee. As outlined earlier, the Authority considers that a statutory registration body should not be controlled by representatives of the profession it seeks to regulate, and it recommends, accordingly, that the proposals be revised to remove such controlling interests.
- 2.2 As regards the ‘consumer representative’ suggested, the Authority recommends that the Minister appoint such a representative in consultation with the Minister for Enterprise, Trade and Employment, as is the case with other registered health professions, e.g. the Dental Council.
- 2.3 As for the method of nomination of professionals, this also should be decided by the relevant Board, and not the professional association itself, so that a nominee would not have to be an association member.

3. ROLE/FUNCTIONS OF REGISTRATION BOARDS

- 3.1 The proposed functions of the Registration Boards for each profession are outlined on page 10 of the document, and the Authority offers comments on some of these, as follows-
- 3.2.1 *“to determine, in consultation with the relevant professional bodies, the criteria for registration, including approved qualifications, education, training and practice experience;”*. A footnote adds that *“the functions relating to accreditation of courses could be ‘subcontracted’ by the Board to the relevant professional body”*.
- 3.2.2 In keeping with its general concern about statutory control of a profession being vested in the profession itself, the Authority considers that the function of accrediting courses should be carried out by an (independent) Registration Board, and not by the professional body concerned.
- 3.3.1 *“to adopt and if necessary revise as appropriate a Code of Conduct and Ethics for the profession, in consultation with the relevant professional body/bodies”*. A footnote adds *“Since most professional bodies already have a code of ethics, it is likely that the Registration Board would simply adopt that existing code. Alternatively it could add to or vary the existing code”*.
- 3.3.2 Professional associations’ codes of ethics may include restrictions on fee-setting, location and truthful advertising which are often anti-competitive without any benefits to the consumer. Therefore the Authority considers that the Boards should ensure that professional codes do not include such artificial restrictions on competition and, if they do, to vary the codes accordingly. Indeed, the proposals acknowledge that alleged breaches of a Code of Conduct and Ethics relating to advertising or ‘poaching’ clients may be outside the remit of the committees – so why include them in such a code? As indicated earlier, the Authority would be prepared to assist in identifying any such anti-competitive provisions.
- 3.4.1 *“to set the scope of, and limits to, the type of clinical/professional practice to be carried out by the profession. This would be done in consultation with the relevant professional body/bodies”*.
- 3.4.2 The Authority considers that the greatest care should be taken to avoid excluding the operation of legitimate ‘auxiliary professions’. Where, within a registered profession’s scope, there exist tasks which an auxiliary professional is well qualified to carry out, a system whereby these tasks can be performed under supervision or, preferably, licensed or registered as a separate profession should be considered by the Registration Board. Any sub-committee which may be formed to consider establishing such a system should have a majority of non-professional representatives. The role of the Registration Council in ensuring that the Boards perform their duties would be very important here to ensure that auxiliary professionals’ interests and consumers’ interests are given due weight and consideration.
- 3.4.3 In this context, the Authority welcomes the proposal (page 21) that the Registration Council and individual Registration Boards should be empowered to establish specialist registers and/or licensing arrangements in the future.

3.5.1 The document further proposes (page 11) that -

“In carrying out certain functions, including areas in which the relevant professional bodies have a particular expertise, it would be open to the Registration Board to.....formally delegate the function to a third party, such as the relevant professional body”

3.5.2 As already stated, the Authority considers that Board functions should not, in general, be delegated to a professional body; the only exception to this principle might, in the Authority’s view, be functions of an entirely mechanical/procedural nature, such as the physical maintenance of registers, removal of names therefrom, etc.

4. COMPOSITION OF REGISTRATION BOARDS

4.1 As in the case of the Registration Council, the document also proposes that each Board be dominated by representatives of the profession concerned, and the Authority puts forward the same view as to the undesirability of this as it has regarding the Council.

5. COMPOSITION OF STATUTORY COMMITTEES

Preliminary Proceedings Committee (PPC)

5.1 Again, the Authority considers that this Committee should not be controlled by members of the relevant profession. It suggests, moreover, that one of the five Committee members should be a specific representative of consumers’ interests.

Health and Fitness to Practice Committees

5.2 The structures proposed in the case of these two Committees, on the other hand, are significantly more balanced and acceptable. However, given that a matter will not come before either of them unless referred by the *Preliminary Proceedings Committee*, this, in the Authority’s view, underlines the need to ensure that the latter Committee is considerably more independent, as already recommended above.

6. OPERATION OF HEALTH AND FITNESS TO PRACTICE SYSTEM

6.1 It is stated (page 33) that, among the matters which would trigger an investigation, would be (a) *“Any action considered by the Registration Board to bring the profession into disrepute”*, (b) *“An official complaint by a registered colleague”*, (c) *“A complaint against a practitioner by a professional body”*. The Authority re-iterates its concern that rules which it considers as anti-competitive (e.g. bans on advertising or poaching clients, rules allowing collusive price-fixing) should not be regarded as matters appropriate to a disciplinary code or proceeding. While the Authority is reassured by the suggestion on page 34 that the Preliminary Proceedings Committee might consider such complaints as outside its remit, it re-iterates that statutory structures should play their part in ensuring that such anti-competitive practices do not occur.

7. REGISTRATION OF EXISTING PROFESSIONALS

- 7.1 It is proposed (pages 18 and 19) that existing professionals could only be registered if, *inter alia*, they “*signed up to the code of ethics set out by the relevant Registration Board*”. As indicated earlier, the greatest care should be taken to ensure that such people are not required to sign up to any code containing, requiring or encouraging practices which the Authority would consider as anti-competitive.
- 7.2 Procedures should be put in place so that those who have not practised for some time are able to become registered practitioners and practise without unnecessary delay (p.20), e.g. make courses available, facilities for supervised practice, ensuring that examinations/interviews are not hindered by lengthy waiting lists, etc.

8. ‘GRANDPARENTING’

- 8.1 It is not specified in the proposals exactly who would decide the criteria and standards to be met (p.23). The Authority recommends that these be decided and implemented by the Registration Boards, with adequate consumer representation, as already outlined.
- 8.2 Page 24 of the document states that “*in accordance with the discussions with the professional bodies, not all existing practitioners should automatically be eligible for assessment under grandparenting*”. The Authority would be concerned if this statement meant that professional bodies were dictating who should even be *eligible for assessment* and who should not, but notes that the document does not put forward any specific proposals in this area.

9. TRAINING/ACCREDITATION

- 9.1 The document rightly points to the many challenges to the education system which will arise from the need to ensure that those working in professional areas are appropriately qualified. The retraining of those who have not practised for some time, “Grandparenting” and Continuing Professional Development will all put a lot of pressure on the education system; in the Authority’s view, that system will need to be equipped to cope with these challenges *before* the introduction of statutory registration.
- 9.2 However, the Authority would be even more concerned at issues raised by the restricted number of education/training places available in relation to some of the professions covered to begin with, and the formidable barrier to entry to the profession concerned which such restrictions represent. This type of restriction arises frequently in relation to professions in the health sector, including some of those the subject of the present proposals, e.g. physiotherapy, radiography, speech and language therapy, occupational therapy etc. The Leaving Certificate points required for places on degree courses in these areas appear to be considerably above the minimum requirements for entry to such courses, and this would suggest that demand for entry into these professions is highly constrained. If

Registration Boards are to have the function of determining, *inter alia*, the education and training required by registrants, they should, in the Authority's view, also be required to ensure that sufficient education places are available to meet the demand for such places.

- 9.3 A first step would be to remove any exclusivity from educational institutions engaged in training professionals, so that any institution which meets transparent, objective and non-discriminatory standards, laid down and enforced by regulatory bodies independent of the professions themselves, should be entitled to train professionals. This would allow supply to adjust naturally to meet demand.

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12 January 2001