

**COMPETITION AUTHORITY POSITION PAPER**

**ON THE NATURE OF THE OFF-LICENCE AND THE METHOD OF  
ACCESS TO THE OFF-LICENSED TRADE IN THE INTERESTS OF  
PROMOTING COMPETITION**

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## **Contents**

<i>Executive Summary</i>	<i>1</i>
<i>Section 1: Introduction</i>	<i>4</i>
<i>Section 2: Background</i>	<i>5</i>
<i>Section 3: The Nature of the Off-licence in the State</i>	<i>7</i>
<i>Section 4: The Impact of the Current Regime on the Off-licence Trade</i>	<i>12</i>
<i>Section 5: Off-licence Regimes in Other Countries</i>	<i>17</i>
<i>Section 6: Conclusions and Recommendations</i>	<i>22</i>
<i>Appendix I</i>	
<i>Appendix II</i>	

## Executive Summary

Existing legal barriers to entry into the drinks industry distort competition. These restrictions make it impossible for the market to function efficiently or in the best interests of the consumer.

It is beyond doubt that the excessive consumption of alcohol creates considerable social, medical and socio-economic problems.<sup>1</sup> These are the main reasons normally put forward by those lobby groups in favour of the retention of existing licensing restrictions. However, in the view of the Competition Authority (the “Authority”), the restrictive measures currently in place cannot be justified on the grounds that they may form part of an alcohol policy aimed at minimising the injurious effects to health of consumption of alcoholic beverages. In the first place, current licensing restrictions lead to over-supply in some areas and under-supply in others; both cannot simultaneously operate to restrict access to alcohol. Secondly, even in areas where such restrictions lead to under-supply, the effect on the availability is moot. In any case, the desired policy objectives can be achieved by measures that are far less restrictive of competition. A more practical, less restrictive, and more effective model to address alcohol abuse without limiting normal consumption would be to regulate marketing, to provide suitable information and social measures and to implement appropriate taxation schemes.

Entry into the drinks trade is still practical in most cases only by purchasing an existing licence, notwithstanding the provisions of the Intoxicating Liquor Act, 2000. In this way, market entry and exit remain inextricably linked and barriers to entry in one area are gained at the expense of increased barriers to exit in others. This occurs even though the licensing laws were, on their face at least, not specifically designed to restrict competition, but rather to provide a system of licensing, supervision and sanctions governing the supply of alcohol.

The Competition Authority firmly considers that claims made with regard to any positive consequences of the current system must be examined in the light of other means of achieving the same objective that are more efficient and are less restrictive of competition.

The off-licence trade differs from the on-licence trade in many respects. These include the differences in consumer demands and preferences as to consuming alcohol on and off premises, and differences in supply (including the range and type of beverages available in the on and off-licence sectors).

Liberalisation of the off-licence trade would result in lower prices *within any given taxation framework*, broader product range and improved quality of customer service. There has been a large increase in the number of dedicated off-licences in recent years in response to consumer demands, which was noted in the submission of NOFFLA to the

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<sup>1</sup> The European Alcohol Action Plan adopted in 1993 by the Regional Committee for Europe of the World Health Organization set as an objective for all European States belonging to the WHO a 25% reduction in alcohol consumption by the year 2000 compared with consumption in 1980.

Commission where it is stated that the number of off-licences in the State more than doubled in the decade between 1988 and 1998. The Authority notes that this has coincided with a large increase in the range of products available in off-licences, a marked improvement in service levels and a favourable impact on prices, as was shown in the econometric study conducted by Harmon and Murphy on behalf of the Authority as part of the Interim Drinks Study.

Many submissions to the Commission highlight the detrimental impact that excessive alcohol consumption may have (particularly under-age drinking as it relates to the off-licence). There is no doubt that alcohol abuse can have serious injurious effects from a social and medical point of view. Traditionally, governments and policy makers attempt to control the consumption of alcohol by restricting or otherwise regulating all or some of the following:

- the number and density of outlets that serve alcohol within a given distance of the consumer,
- the price of alcohol
- the hours that these outlets are open, and critically,
- the enforcement of legal restrictions on the type of person who can buy alcohol.

In this State, the policy response to the social and economic ills associated with excessive alcohol consumption has been to limit the granting of new licences to outlets that serve alcohol via licensing restrictions, to limit opening hours, to restrict the type of person who can buy or sell alcohol (through age limits) and to impose high level of taxes on the consumption of alcohol. However, the current licensing system does not achieve the policy objectives aimed at minimizing the injurious effects of excessive alcohol consumption in a proportionate, non-discriminatory or uniform manner. Entry restrictions are not an effective or proportionate way in which to control the consumption of alcohol as they distort competition and are not geographically neutral and ultimately may have little or no effect on consumption because they are so indirect. Moreover, policy objectives in relation to the sale of alcohol can be better achieved by measures that are less restrictive of competition.

It is the opinion of the Authority that the optimal method of controlling the consumption of alcohol is through the taxation system in a regime of free entry and exit, coupled with appropriate retail marketing restrictions. Through taxation the Government can control the level of alcohol consumption and the market can determine the structure of the industry (for example, inefficient outlets would close in response to an increase in excise taxes). In addition, by controlling consumption by taxation, the revenues that accrue are captured by the Government rather than by licence holders, as they currently are through a restrictive licensing regime. These revenues can then be targeted at reducing those particular demand patterns for alcohol, which are known to be socially harmful. At present, these revenues are retained as rents (profits in excess of those which would be earned in a normal competitive environment) by private individuals and are not available for spending on social purposes. Further, a less restrictive means of checking excessive

alcohol consumption, and one which international best practice has consistently endorsed, particularly in relation to tobacco and alcohol products, is to regulate retail marketing.

The most socially beneficial way of achieving a lower incidence of under-age drinking is not by imposing arbitrary quantitative restrictions on entry to the off-licence trade, but rather, by tailoring the system of detection and punishment appropriately and, in particular, reducing the likelihood of under-age drinkers successfully purchasing alcohol at any given off-licence. The expansion of the range of penalties and the movement away from the “nuclear option” of the revocation of a licence in the 2000 Act are thus to be welcomed. Information, opinion-forming and other preventative measure will also acquire new importance in efforts to bring about new drinking habits in this country.

Ireland’s licensing laws should, and increasingly are, being formulated into structures that comply with international best practice. In these regimes, the licensing laws facilitate competition in the provision of alcohol whilst being always mindful of the potentially harmful effects of alcohol. In moving towards this new regime the Authority remains of the opinion that only those legal barriers that relate to qualitative criteria directly relevant to the social dimension of the sale of alcohol should be retained. These include the suitability of the applicant, the suitability of the premises, compliance with fire and safety and health regulations and with all applicable planning provisions. Existing statutory arrangements for the retail of alcoholic beverages in Ireland run counter to international best practice, and indeed, could be argued to violate EC Treaty obligations relating to free movement and competition.

Specifically the Authority recommends the reconstitution of the licensing laws with the following features:

- the repeal of the prohibition on the granting of new licences (as contained in Section 2 of the Licensing (Ireland) Act 1902);
- the retention and possible enhancement of only those legal barriers which relate to qualitative criteria directly relevant to the social dimension of the sale of alcohol such as:
  - the suitability of the applicant (to be addressed through a licensing scheme);
  - the suitability of the premises;
  - compliance with fire and safety and health regulations and with all applicable planning provisions.

## **Section 1: Introduction**

This position paper sets out the Competition Authority's views on the nature of the off-licence and the method of access to the off-licensed trade in the interests of promoting competition.

This Competition Authority position paper is drawn up in the light of the Commission on Liquor Licensing's terms of reference, which are to:

“Review the Liquor licensing system in the light of all relevant factors, including systems for the licensing of alcohol in other countries...make recommendations to meet the needs of consumers, while taking due account of the social, health and economic interests of a modern society.”

The Commission on Liquor Licensing (henceforth the Commission) has been set the agenda that it will “examine the nature of the off-licence and particularly the method of access to the off-licensed trade in the interests of promoting competition” within three months of the date of the first meeting (11 December 2000).

The position paper is structured as follows.

- Section 2 reiterates the Authority's views in relation to liquor licensing generally, which were set out in detail in the Authority's Interim Drinks Study (1998)<sup>2</sup>.
- Section 3 examines the nature of the off-licence and highlights the key characteristics of this sector in the State.
- Section 4 examines the impact of the current system (and the likely impact of the system as modified by the Intoxicating Liquor Act, 2000) on consumers and addresses some of the concerns expressed by various parties in their submissions to the Commission.
- Section 5 deals with some developments in off-licence regimes in England, Wales, Scotland, Australia and New Zealand.
- Section 6 sets out recommendations in relation to the practical measures that may be taken in relation to the “method of access to this area of the trade and the nature of the premises that might be licensed.”

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<sup>2</sup> Competition Authority, Interim Study on the Liquor Licensing Laws and other Barriers to Entry and their impact on Competition in the Retail Drinks Market (23 September 1998). We refer to this henceforth as the Authority's Interim Drinks Study.

## **Section 2: Background (The Authority's Interim Drinks Study)**

This Section summarises the main recommendations that were made in the Authority's Interim Drinks Study (1998) in the light of recent developments.

The remaining legal barriers to entry into the drinks industry still distort competition. The restrictions that remain inherent in the system of licensing in the drinks trade make it impossible for the market to function efficiently and in the best interests of the consumer.

Entry into the drinks trade is still practical in most cases only by purchasing an existing licence, notwithstanding the provisions of the Intoxicating Liquor Act, 2000 (henceforth "the 2000 Act"). In this way, market entry and exit remain inextricably linked. This will have the impact in the short to medium term, of lowering the barriers to entry into those geographic areas where the price of licences was previously high (in the era of restricted geographical mobility), whilst at the same time increasing the barriers to exit in those areas where there is a relative oversupply of licensed premises. Thus, the system keeps the number of licences in rural areas artificially high. In this regard it is instructive to remind the reader of a conclusion from the Authority's Interim Drinks Study,

“... one counter proposal which may be made is to maintain the general prohibition on the issue of new licences but to provide for the geographic mobility of licences. With this change, it may be argued, licences will migrate from rural areas to Dublin, thereby eliminating the geographic anomalies of the current system. The Authority considers such an approach to be inadequate. Simply increasing the geographic mobility of licences, particularly rural licences, will, for the time being, reduce the height of the entry barrier in Dublin. However, a necessary side-effect of this reform will be to increase the value of rural licences. Therefore, the benefits of the reform in urban areas are only achieved at the cost of increasing the height of entry barriers in rural areas.”

It must also be noted that even though the licensing laws restrict competition, this was never its intended effect. As was found in the case of *Powers Supermarkets* (1988) IR 206:

“The object of the (Acts) was to safeguard the public interest by preventing a proliferation of licensed premises...and not to shelter existing publicans from competition...”

This point was recently re-iterated by the Minister for Justice, Equality and Law Reform and it is both fundamental and instructive to the deliberations of the Commission.

Claims made with regard to any positive consequences of the current system must meet the test that there is no equivalent alternative by which to achieve the same objective that is less restrictive of competition. Even if the current system has any unintended positive

consequences, it is likely to be the case that other measures, that are less restrictive of competition, would be better suited to meet such policy goals.

In summary, only those legal barriers that relate to qualitative criteria directly relevant to the social dimension of the sale of alcohol should be retained. These include the suitability of the applicant, the suitability of the premises, compliance with fire and safety and health regulations and with all applicable planning provisions.



### Section 3: The Nature of the Off-Licence in the State

In this section the Authority examines the nature of the off-licence and highlights the key characteristics of this sector in the State. In particular, attention is paid to the difference between the on-licence and off-licence trades.

#### 3.1 The Off-licence Market

A licence is required to sell alcohol in the State. As well as the regular on and off-licences there are also wine, restaurant and hotel licences, to name but a few. Traders holding 13,505 on-licences and 698 off-licences currently supply the market in conjunction with holders of other types of licence. Traders holding on-licences can also function as off-licences, i.e. can sell liquor for consumption off premises. The distribution of licences between Dublin and the rest of the State, as issued by Customs and Excise for the year ending 30/09/1998, is given below.

*Table 1. Distribution of On and Off- licences<sup>3</sup>*

	On-Licences	%	Off-Licences	%
Dublin	1,580	12%	220	32%
Non-Dublin	11,925	88%	478	68%

We can see that Dublin has some 12% of the total number of on-licences in the State. The corresponding figure for off-licences is 32%.

The number of licences per 10,000 people based on census data from 1996 is given below.

*Table 2. Licences per 10,000 people in the State<sup>4</sup>*

	On-Licence	Off-Licence
Dublin	14.93	2.08
Non-Dublin	46.44	1.86

We can see that areas outside Dublin are much better served in terms of on-licences than are Dubliners, with over 46 on-licences per 10,000 of population in rural areas as compared to 15 per 10,000 people in Dublin. There is not much difference between the number of off-licences per 10,000 of population between Dublin and the rest of the State.

Prior to 1902 there was no legal quantitative limit on the number of licences, on or off, which could operate in the State at any one time. The Licensing (Ireland) Act 1902 introduced limits on the issue of new licences. Except in very narrowly defined circumstances, no new licences could be granted.

<sup>3</sup> Source: Revenue Commissioners in response to request from the Minister for Finance

<sup>4</sup> Sources: Revenue Commissioners in response to request from the Minister for Finance, Census of Population 1996.

“From and after the passing of this Act no licence shall be granted for the sale of intoxicating liquors, whether for consumption on or off premises, except...” (Section 2 of the 1902 Act)

Entry to the market could only be achieved by extinguishing another existing licence. A distinction was made between rural and urban licences. Prior to the 2000 Act, in order to establish a new urban off-licence, one had to extinguish two rural licences or one urban licence from the same licensing area. Following the 2000 Act, licences can be moved on a one for one basis throughout the State. The effect of this change has been to increase the geographic mobility of all licences.

Given that urban areas such as Dublin are under-licensed, as indicated by the relative values of urban and rural licences (before the 2000 Act the average rural licence value on the second-hand market was in the region of IR£60-70,000, but urban licence values ranged from IR£200-600,000<sup>5</sup>), there is likely to be a change in the distribution of licences illustrated in the tables above. Specifically, licences are likely to migrate toward urban centres such as Dublin.

The fact that licences, on or off, sell on the secondary market for positive amounts is an indication that the market is characterised by excess demand. The values that these licences trade for are indicative of the “rent” (profits above those which could be earned in a normal competitive environment) associated with the quantitative restriction on licence numbers. Because the changes in the licensing legislation are so recent, the precise effect on the value of off-licences is difficult to determine. However, sources in the auctioneering sector indicate that while some licence holders have been seeking amounts in the region of IR£130-135,000, true values, in the longer run are most likely in the region of IR£100-110,000.<sup>6</sup> There may be a drop in licence values in Dublin and other urban areas which, if sustained, may provide evidence that the excess demand problem in urban areas has been (or will eventually be) somewhat relieved. The ability of

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<sup>5</sup> Sources in the auctioneering trade have indicated these values. In their “Licensed Review 2000”, Morrissey’s report that since the 2000 Act two licences were transferred to the Grafton Street Downtown Area. It is also stated that prior to the new Act “a licence that would have qualified for transferral to the Grafton Street Downtown Area could have cost upwards of £700,000.”

<sup>6</sup> If we were to aggregate the predicted value of individual licences over all licences in the State, both on and off (14,000 approx.), then we get an approximate total value in the region IR£1.4 – 1.54 billion. This value is indicative of the gains that would accrue to consumers if quantitative restrictions on entry to the liquor trade were removed. However, this value may be inaccurate for at least two reasons. First, the simple calculation carried out here implicitly assumes that liberalisation of entry would reduce the value of licences to zero. This, however, may not be the case. Apart from the quantitative restrictions on the number of operators allowed to enter the market, there are other barriers to entry. For example, a new entrant must comply with planning laws. This kind of entry barrier may have the effect of giving a licence a positive value. For this reason the above figures may tend to over-estimate the true potential gains from liberalisation. On the other hand, a second factor that would tend to mitigate this problem arises because of what is referred to as dead-weight loss. Dead-weight loss refers to that portion of the gains from trade that are lost by society, i.e. by both consumers and producers. Liberalisation of entry would re-capture this loss. Thus, if these factors tend to cancel each other out, the above figures represent a reasonable estimate of the potential gain available from the liberalisation of entry.

urban areas to absorb new licences will, of course, be limited by such things as planning restrictions etc.

### 3.2 Consumer Demand

The off-licence trade differs from the on-licence trade in many respects. This section lists some of the key features that distinguish consumer demand for on and off-licence services.

- In the off-licence the decision to purchase alcohol is generally made before any alcohol is consumed. Thus, decisions tend to be made in a sober and considered fashion and for deferred consumption. This however, may not be the case entirely with on-licensed premises that sell liquor for consumption off premises. In this case consumers tend to purchase alcohol for continued consumption.
- The pattern of consumption tends to be different in the off-licence trade with consumers consuming less beer and more spirits and wines than in the on-licence sector. In their submission to the Commission NOFFLA cites the Household Budget Survey in terms of consumption patterns in the on and off-licence sectors.

*Table 3. Patterns of Consumption in On and Off Sectors<sup>7</sup>*

	Wine	Beer	Spirits
% purchased 'off'	33.1	39.5	27.4
% purchased 'on'	2.7	87.5	9.8

As we can see from the above there is a marked difference in the pattern of consumption in the on and off sectors.

- When people purchase alcohol for off premises consumption they can choose with whom they wish to consume. Thus, for many people, off premises consumption of alcohol represents the opportunity to consume in a more secure environment.
- The consumer bears some of the storage costs, i.e. the trader does not need to store the alcohol until its final point of consumption.
- The ease of availability of off-licensed premises is important to consumers. In their submission to the Commission NOFFLA state that the most important single factor in their business' competitive advantage was convenience to customers (28.2%). Further, NOFFLA states that the Household Budget Survey shows more off-premises consumption in Dublin and the Dublin region than in other areas. Thus, it may be inferred that there is currently unsatisfied demand in rural areas and that some individuals that are consuming alcohol on premises might like expanded options to consume alcohol off premises. The changes that have been set in motion by the 2000 Act will exacerbate this situation as licenses migrate toward the urban areas. The likely effect is that more people will consume on rather than off premises. One potential consequence of this may be an increased incidence of 'drink driving'.

<sup>7</sup> Source: NOFFLA - Submission to the Commission on Liquor Licensing.

### 3.3 Supply

The supply of alcohol for off sales is very distinct from a number of perspectives. This section lists the salient points.

- The range of products stocked by off-licences tends to be much broader than in on-licensed premises. 21.4% of NOFFLA members rate their range of products as the most important factor in their competitive advantage. The NOFFLA submission to the Commission is instructive in this regard. A cursory glance at the range of wines, spirits and beers stocked in NOFFLA associated outlets can confirm this. The following table depicts the average number of lines carried in NOFFLA affiliated off-licences.<sup>8</sup> It should also be noted that for any of the three categories depicted in the table below, there is a greater variety available in the Dublin area.

*Table 4. Product Ranges available in NOFFLA off-licences<sup>9</sup>*

	Dublin	Non-Dublin
Wine	353	214
Spirits	93	78
Beer	57	43

- There is a greater emphasis on certain aspects of customer service in the off-license trade. This is particularly true with respect to wines where many merchants offer advice to customers enabling them to make more informed decisions. 13.6% of NOFFLA members rate quality of service as the most important factor in their business' competitive advantage.
- The off-licence serves an additional function as the entry point into the market for new alcoholic products. Because of the relatively large investment required to introduce a new product for consumption on premises, it is often the case that new beers etc. are 'tested' on the off premises market. This is a valuable function as it improves the efficiency of the market.

### 3.4 Further Comment

Many of the submissions to the Commission on Liquor Licensing argue that the number of off-licences should include the total number of on-licence premises in the State. However, in our view, to do so would be incorrect for the reasons outlined above. In addition, whilst an on-licence can also sell alcohol for consumption off the premises, the main reason why such a demand exists in consumers is their desire to continue to consume alcohol after normal pub closing time (or inability to procure an alcoholic beverage in an off-licence).

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<sup>8</sup> Source: NOFFLA - Submission to the Commission on Liquor Licensing.

<sup>9</sup> Source: NOFFLA - Submission to the Commission on Liquor Licensing.

In recent times many on-licence holders have set aside a dedicated area of their premises to serve the off-licence market under the auspice of the *Cheers* and *Next Door* initiatives. Notwithstanding the fact that these off-licences have much more in common with the independent off-licence there may be a difference in the manner in which they will be run. An independent off-licence (i.e. an off-licence that is not attached to a on-licence premises) will be run in competition with nearby on-licensed premises.<sup>10</sup> However, it may also be the case is that an off-licence that is attached to an on-licensed premises, will be run as a complement to the on-licence holder's main business.

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<sup>10</sup> It may be argued that independent off-licensed premises are not, in any meaningful way, in competition with on-licensed premises. One thought experiment that may throw some light on this issue would be to examine the effect of an increase in the price of all goods in the off-licence sector and examine the consequences. For instance, would the off-licence lose customers to on-licensed premises; would on-licensed premises raise prices in response; or would on-licensed premises dedicate areas for off sales and compete directly with the independent off-licence sector. At this juncture, it is the opinion of the authority that the decision to consume on as opposed to off premises is not particularly price-sensitive. Given that there already exists a 30-40% price differential between alcohol sold for on and off consumption, only a very large rise in off-licence prices would induce individuals to change to on premises consumption. Moreover, the likely effect of a rise in off-licence prices would be a change in consumption patterns within the off-licence range, i.e. individuals would simply substitute toward the cheaper varieties of off-licence products. However, there are likely to be some marginal consumers who will choose to consume on premises in response to a rise in off-licence prices. The likely effect of this is that on-licensed premises will raise prices, but probably not enter into direct competition with independent off-licences. In this way it may be argued that on and off premises consumption are separate markets.

## **Section 4      The Impact of the Current Regime on the Off-licence Trade**

This section sets out our views on the impact of the current system (and the likely impact of the system as modified by the Intoxicating Liquor Act, 2000) on consumers.

The Intoxicating Liquor Act 2000, made provisions relating to the following,

- permitted trading hours,
- measures to clamp down on under-age drinking, and
- new licensing arrangements regarding entry into the sector.

Of greatest interest to us here is the change in the licensing arrangements. Prior to the 2000 Act, the state was divided into separate licensing districts, i.e. rural and urban. In order to establish a new off-licence one had to buy and extinguish two rural licences or one town/city licence to get a licence. In addition, there was a prohibition on the granting of a licence within one mile of an existing licensed premises. The 2000 Act establishes the entire State as a single licensing unit and a new licence can be issued anywhere in the state in substitution for an existing licence unless the Circuit Court refuses the application on the grounds of the fitness of the applicant, the fitness of the proposed premises, the suitability of the premises for the needs of persons residing in the neighbourhood and the adequacy of the existing number of licensed premises in the vicinity of the proposed new premises.

### **4.1      Entry Barriers and their Impact on the Consumer**

#### *The height of entry barriers*

The 2000 Act has had an effect on the ease of entry into the off-licence trade. According to NOFFLA, "...the cost of entry has decreased significantly..." This assessment of the situation is not entirely accurate in that there are very different implications depending on the area that a new entrant would like to enter. While the height of barriers to entry, as measured by the cost of a licence, has fallen in urban areas, this is not necessarily the case in rural areas. To the extent that a new entrant wanted to open up an off-licence in a rural area the cost of entry has certainly not fallen. Under the previous regime, two rural licences could have been acquired for about the same price as a single rural licence now commands. The impact of this will be to raise the barriers to exit from rural areas. If licence holders were willing to continue to trade in rural areas with a small level of business at a licence value at the levels that they were before the 2000 Act, they are much less likely to exit now that the value of their licence has doubled. As most of these licences are on-licences, this makes it difficult to acquire a licence for a dedicated off-licence, for example, one to be operated in conjunction with a grocery store.

#### *The impact on consumers*

The current licensing system for off-licences is in a state of flux, since the impact of the 2000 reforms is working its way through the system. Notwithstanding this fact, the

Authority is of the opinion that there are clearly some points that can be raised in relation to the licensing system for off-licences as currently constructed.

Any industry in which entry can only occur by inducing an incumbent to exit the industry adds an additional burden on the new entrant. In relation to other goods and services that are controlled for social and public health reasons, it is notable that no similar obligation is placed on either tobacconists or bookmakers (under the 1931 Betting Act).

Liberalisation of the off-licence trade would result in greater competition among off-licence traders and that this would bring with it lower prices, broader product range and improved quality of customer service. In contrast, it has been argued by the VFI in their submission to the Commission that the opposite is true. Whilst it may be possible to construct theoretical economic models purporting to show that entry will not lead to lower prices, broader range of products and improved quality of customer service, these models are only special cases and are not much more than theoretical possibilities (albeit in this instance based on dubious assumptions). We present more detailed comments on the VFI's economic model in Appendix I. However, it is stated in the submission of NOFFLA to the Commission that the number of off-licences in the State more than doubled in the decade between 1988 and 1998.<sup>11</sup> This has coincided with a large increase in the range of products available in off-licences, a marked improvement in service levels and a favourable impact on prices, as was shown in the econometric study conducted by Harmon and Murphy on behalf of the Authority as part of the Interim Drinks Study.

## **4.2 The Availability of Alcohol and The Potential Detriment to Society**

Many submissions draw the Commission's attention to the potential detrimental impact that certain patterns of alcohol consumption may have on society. These relate to under-age drinking, binge drinking etc. The Authority accepts, and completely supports, the legitimate interest that society has in seeking to limit such negative consequences that are related to certain patterns of alcohol consumption.

What follows examines the means available to the State to control such behaviour and show that there are more efficient and targeted instruments to address these issues, other than quantitative restrictions on the number of licences (which will work in the current licensing context to ensure that the number of licences does not fall in perpetuity).<sup>12</sup> However, a more general point is worth stressing first. Those negative aspects of alcohol consumption for which the consumer does not pay are referred to in economic theory as negative externalities in consumption and constitute a market failure. It is well recognised

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<sup>11</sup> According to "The Irish Off-licence Sector: An Economic and Business Profile", a NOFFLA publication, in 1988 there were 268 off-licences and in 1998 there were 589 off-licences, representing a 119.8 % increase, i.e. a more than doubling of the number of off-licences within a decade.

<sup>12</sup> It is an explicit feature of pre 2000 Act legislation that the number of licences in the state would fall. This follows directly from the two-to-one relationship that existed between urban and rural licences. The current one-to one system ensures that the number of licences will remain constant, i.e. does not fall in perpetuity.

that the best way to remedy this kind of market failure is through taxation. Taxation discourages consumption and at the same time may provide funds to mitigate the problems associated with alcohol consumption.

### *Under-age drinking*

It has been argued by a number of bodies that liberalisation of the off-licence trade, and in particular the resulting greater number of off-licences would result in a greater incidence of under-age drinking.

Access to alcohol is determined by many variables including;

- the number and density of outlets that serve alcohol within a given distance of the consumer,
- the enforcement of legal restrictions on the type of person who can buy alcohol,
- the hours that these outlets are open, and critically,
- the price of alcohol.

In all societies governments and policy makers attempt to control the consumption of alcohol using all or some of these instruments. It is noticeable that in the case of tobacco quantitative controls on the number of outlets that supply tobacco are not enforced. Recently, there have been moves to register the sellers of tobacco and curbing the hours in which tobacco can be sold. However, in relation to tobacco it has been recognised that young smokers are price sensitive and taxes have been raised accordingly. In addition, efforts have been made to ensure that cigarettes cannot be sold in small quantities. This step was taken when it was realised that it was overwhelmingly minors who exhibit this kind of consumption pattern.

In the current context, the policy has been (until the 2000 Act) to attempt to reduce the number of outlets that serve alcohol via licensing restrictions, to restrict opening hours and to impose high level of taxes on the consumption of alcohol. We contend that the current licensing system does not achieve these desirable social objectives in a uniform manner. Alcohol will remain available in numerous outlets in small rural areas etc. In this manner, using restrictions on entry to regulate the consumption of alcohol is not the optimal manner in which to control the consumption of alcohol. It is clear that of the other three elements of access, price would act in a regionally neutral manner and would actually tackle the problem that policy makers would like to address directly.

It is always best to address problems that arise with the consumption of a good directly. If the excessive consumption of alcohol has short-term private gains that are much less than the social costs (and the long term costs for the consumer) then the optimal manner in which to reduce consumption is through taxation. In addition, by controlling consumption by taxation the revenues accrue to the Government rather than to licence holders. These rents can then be targeted at reducing those particular demand patterns for alcohol, which are known to be socially harmful (under-age and binge drinking etc.).



If the State attempts to control under-age drinking purely through limiting the number of off-licences, then any increase in the number of off-licences in a given area will, tautologically, lead to a higher incidence of under-age drinking<sup>13</sup>. However, the most socially beneficial way of achieving a lower incidence of under-age drinking is not by imposing arbitrary quantitative restrictions on entry to the off-licence trade, but rather, by tailoring the system of detection and punishment appropriately, and in particular, reducing the likelihood of successfully purchasing alcohol at any given off-licence. For instance, by having a system that tailors the penalty to suit the infringement, enforcement agencies have a credible threat at their disposal. In contrast, the “nuclear option”, i.e. the revocation of the licence, is not credible and consequently rarely used. The reforms in the 2000 Act explicitly faces up to these realities and takes steps to deal with them accordingly.

It is also important to bear in mind that research into underage drinking in Scotland reveals that most alcohol consumed by minors is obtained by older youths who are legally entitled to purchase alcohol.<sup>14</sup>

### *Public health*

It has been argued by various parties that greater availability of alcohol will have a detrimental effect on public health. This relates to concerns about issues such as the health of the adult population, the incidence of alcohol related violence, disruption to work, alcohol induced accidents (including drink driving), marital problems etc. The VFI state that,

“Those who advocate more licences ignore the fact that too much competition, while it may lead to lower prices, certainly inevitably leads to lowering of standards, a raising of the volume of consumption of cheap products with appalling consequences for society at large”.

This issue should be entirely separate to the issue at hand. The government has a range of policy instruments at its disposal to discourage the abuse of alcohol. Along with education and law enforcement, we re-iterate that the most important instrument available to the government is taxation. Certainly it is true that, by restricting entry and therefore competition in the off-licence trade that prices will be higher and that consequently consumption will lower. However, the same effect can be achieved through taxation, without affecting the rights of individuals to earn their livelihood in a trade for which they may be perfectly well qualified. Moreover, taxation is the more socially equitable means of doing so. The restriction of entry allows existing licence holders the benefits of higher prices, i.e. monopolistic profits. Taxation, on the other hand, takes those artificially created benefits so that they may be distributed in a more equitable fashion.

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<sup>13</sup> If we accept that a minor has a certain likelihood of successfully purchasing alcohol at any given off-licence, then a greater number of off-licences in a given area implies a greater likelihood of eventual “success” in terms of the minor obtaining alcohol illegally.

<sup>14</sup> See “Crime and Criminal Justice Research Findings No. 34 1999: An Evaluation of the Teenwise Alcohol Projects”, Scottish Executive, Central Research Unit.

Maintaining a system, which keeps alcohol prices higher than they would be under competitive conditions, but where the profits go to private individuals, cannot be regarded as an appropriate or efficient policy instrument.

*Parsing the incumbent's arguments*

It is important to recognise that certain interests, whilst arguing strongly to keep the restrictions on entry due to the social impacts of certain patterns of alcoholic consumption, argue on the other hand that they would like the Government to lower the excise taxes that are imposed on alcohol, which are there to guard against these negative social consequences. In essence, their position seems to be that all alcohol sold by persons not currently in the industry is bad, however, they would like the Government to allow them to sell more alcohol themselves.

*The impact of taxation under a free entry regime*

It is the Authority's view that the Government can control both the level of alcohol consumption and the number of outlets via the taxation system, under a regime of free entry and exit. If the Government believed that the current number of establishments is excessive it could raise excise taxes, and in a world where no value attached to the licence, the most marginal outlets (i.e. those where there are far too many outlets relative to demand) would close. In this manner, the Government could control the consumption of alcohol but the forces of competition would control who would get to sell alcohol. Under the current regime any moves by the Government to raise excise taxes on alcohol will be seriously resisted so as not to undermine the economics of the current number of outlets that exist.

## **Section 5: Off-Licence Regimes in Other Countries**

This section deals with some current developments in off-licence regimes in countries that not only share a common law tradition with Ireland, but also are perceived as having similar patterns of alcohol consumption. Features of alcohol consumption in Ireland, England and Wales and Scotland include a relatively high proportion of on-sales associated with drinking as a social activity in its own right. In continental countries, on the other hand, alcohol consumption is higher but alcohol is consumed over a longer period of time (as opposed to “binge drinking” on weekend nights) and in conjunction with other activities. In this manner cultural factors are obviously important in developing an appropriate framework for the control of alcohol.

### **5.1 England and Wales**

The liquor licensing laws in England and Wales have recently been scrutinised in a British Government White Paper: “Time for Reform: Proposals for the Modernisation of our Licensing Laws” (Presented to the Parliament by the Secretary of State for the Home Department, April 2000). At present, the sale of alcohol at on-and off-licensed premises is subject to entry controls in the form of licensing both of premises and of the people responsible for the sale of alcohol there, operated by the licensing justices.

In relation to off licences, the White Paper points out that most alcohol is drunk at home and not on licensed premises. It is mostly bought from about 45,000 retail outlets including, for example, supermarkets and the local High Street shop, although there is a growing market in alcohol sold over the Internet for home delivery. The White Paper states that “The vast majority of these shops and stores do not give rise to the levels of disorder and public nuisance associated with pubs and other places where people gather together to drink alcohol socially.” It does recognise that they may be associated with under-age drinking, either through minors purchasing alcohol on their own or with the help of irresponsible adults. Critically, the paper does not conclude that restrictions on the number of off-licences are the appropriate weapon with which to fight under-age drinking:

“...our approach is to balance greater freedom for the consumer to shop for alcohol when he or she wants with tighter controls on underage purchase and measures to ensure no increase in public nuisance.”

Rather, the report proposes what it describes as “tough new measures” (which in fact are very similar to those already in operation in Irish law) to counteract the problem, including:

- Prohibiting sales to people buying on behalf of those under 18 years for consumption in a public place;
- Setting “test purchasing” (whereby the responsible authorities can use children to check whether the law is being observed) on a statutory footing;

- Placing a positive duty on any person engaged in the retail of alcohol to be satisfied as the age of the purchaser before making a sale; and
- Creating an offence of permitting the sale of alcohol to those under 18, so as to make clear the responsibility of the licence holder when sales are made by his or her staff.

In order to guarantee standards in the industry, the White Paper proposes a system of licensing individuals allowed to sell alcohol, as well as the premises. A licence would be granted on the basis of the individual's knowledge of the requirements of alcohol licensing law, relevant requirements of public entertainment and gambling law, alcohol misuse, drugs penetration, and crime reduction measures and partnerships. Possession of an accredited qualification should lead automatically to the grant of a personal licence in the absence of relevant criminal convictions; there would be no need for the licensing authority to try to form its own view of the applicants' knowledge and character. Qualifications should be accredited by the Qualifications and Curriculum Authority and set out in a Statutory Instrument.

## 5.2 Scotland

There were a total of 17,318 Liquor licences in Scotland in 1999<sup>15</sup>. Of these, 6,397 or 37% were off-licences. The total number of liquor licences in Scotland has increased from a figure of 13,892 in 1980, an increase of almost 25% during the intervening two decades. The proportion of off-licences has increased slightly from its base in 1980 of 35%.

On a per capita basis, Scotland had 10 off-licences per 10,000 of population in 1980. The corresponding figure in 1999 was 12. Looking at the large urban areas we can see that they are serviced by about an average number of off-licences per 10,000 of population.

*Table 5. Off-licences per 10,000 of population in Scotland<sup>16</sup>*

City	Off-licences per 10,000 people
Aberdeen	12
Dundee	11
Edinburgh	14
Glasgow	9

Less densely populated areas are serviced by a slightly higher number of off-licences per 10,000 of population in line with the increased travelling time/distances involved. Linking these findings to our research in section 3 of this paper indicates that Ireland has relatively few off-licences as compared to Scotland.

<sup>15</sup> The Scottish Office, Statistical Bulletin: Liquor Licensing Statistics 1999.

<sup>16</sup> Source: The Scottish Office, Statistical Bulletin - Liquor Licensing Statistics 1999.

Liquor licensing in Scotland is governed by an Act of 1976. According to the Justice Department of the Scottish Executive, each local council has a Licensing Board which has the power to grant new licences and to renew licences. Off-licence refusals run at 18% as compared to an average of all licences of 9%, which suggests that the Licensing Boards take their responsibilities seriously. Councils also decide on permitted trading hours. There is no separate licence for the individual as well as the premises, as is proposed for England and Wales. The market is, in fact, viewed as highly regulated. According to the Justice Department of the Scottish Executive, a committee is to be set up to review the operation of the Act. Concerns expressed include the application of different standards and conditions by different licensing boards. To address this, the Convention of Scottish Local Authorities has proposed that a members' network of licensing board representatives be set up to explore and promote the opportunities for developing agreed proposals for law reform, standard conditions and by-laws and best practice.

Concerns expressed in Scotland about access to alcohol by minors seem to mirror those in England and Wales. According to Crime and Criminal Justice Research Finding No. 34, 1999 "An Evaluation of the Teenwise Alcohol Projects",

"the bulk of alcohol consumed by underage drinkers appears to have been supplied by older teenagers who are often old enough to purchase it legally."

### **5.3 Australia and New Zealand**

Liquor licensing legislation in Australasia generally sets out objectives. For instance, Section 5 of the Victoria Liquor Licensing Act, 1987 sets out the objectives of the Act as follows:

- "5. The object of the Act is to respond to community interest by –
- promoting economic and social growth in Victoria by encouraging the proper development of the liquor, hospitality and related industries; and
  - facilitating the development of a diversity of licensed facilities reflecting consumer demand; and
  - providing adequate controls over the sale, disposal and consumption of liquor; and
  - contributing to the effective co-ordination of the efforts of government and non-government agencies in the prevention and control of alcohol abuse and misuse."

The text of the objects in other Australian states and in New Zealand is given in Appendix II.

According to a paper given to the Dublin Institute of Technology's Seminar on Liquor Licensing Reform in April 1998 by Richard Horsfall, Chairman and Commissioner of the Liquor Licensing Commission in Victoria, legislation prior to the 1987 Act was unsatisfactory. It was over-technical, denied citizens reasonable opportunities to eat and drink and imposed petty and (to the public) incomprehensible restrictions. Licensing processes were expensive, time-consuming and obstructive. The legislation was "encrusted with incremental short-term attempts at reform".

The 1987 Act implemented a substantial simplification and a partial deregulation of Victoria's liquor laws. Its main features were:

- Reduction of alcohol misuse: measures towards a better co-ordinated and consolidated effort at containing alcohol abuse, including independent councils to undertake research, more breath testing, training programmes for staff, education and research and more resources for police enforcement.
- Reform of the objects of the legislation as described above, to focus on community interest, promoting economic and social growth and reflecting consumer demand as well as providing adequate controls over the sale, disposal and consumption of liquor.
- Simplification of the licence categories and reduction of the number of licences and permits available from 35 to 9 (now 10). Procedures for applications for licences, extended hours permits, variations, transfers, removal of licences and other applications were simplified.
- Standardisation of trading hours.
- Simplification of administrative processes. Unless an application is objected to by the Chief Executive Officer of the Commission, the Police, the local authority or a member of the community on suitability or community interest grounds, then, unless a Commissioner calls in the matter on a fundamental issue (which is infrequently done), the Commission MUST grant the application. The bulk of applications are dealt with administratively without a hearing. Only applications which are objected to or called in go before a single Commissioner for a hearing in a tribunal "quasi-judicial" setting (with an appeal to the full Commission).
- Limitation of commercial objections. While the Commission must "have regard to the extent to which businesses carried on under licences and permits in the area to which the application relates are satisfying the need intended to be satisfied by the applicant", it is prohibited from taking into account whether the business of any other licensee may be adversely affected by the grant of the application, or whether the business proposed to be carried on will be successful.
- Facilitation of community input, through publicising all licence applications, including notifying the police and the local authority.

The matters the Commission is required to take into account are the objects of the Act, the community interest generally, the amenity of the area, the suitability of the applicant, the opinion of the local authority, the extent to which businesses carried on under licences and permits in the area are satisfying the need sought to be satisfied by the applicant and whether the grant of the licence will have an adverse effect on the interests of the community in the area.

*Effects of the Act*

In 1987/88 there were 731 licenses to sell packaged liquor in Victoria. By 1990/91 this had increased to 1048, an increase of 26.1%. The number of licences continued to increase thereafter but at a slower rate. By 1995/96 the number had increased to 1112, an increase of 6% over the five-year period. Before the Act and since, the share of the liquor market of sales for consumption off the premises has steadily increased and is now well above 50%. Most of the “competition” disputes heard by the Commission focus on off-premises sales. There is much litigation between the hotels and supermarkets and between the large and small supermarket chains each opposing the others’ applications.

## Section 6: Conclusions and Recommendations

This section sets out conclusions and recommendations in relation to the practical measures that may be taken in relation to the “method of access to this area of the trade and the nature of the premises that might be licensed.”

- The vast majority of on-licence premises do not operate in the same market as the off-licence (as commonly understood) due to such differences as the
  - Bundled nature of alcohol consumption in the on-licence sector
  - The much wider range of drinks available in off-licences
  - The very different consumption patterns between on and off-licences
  - The purchase for deferred consumption pattern is well recognised as distinct from the “impulse” purchase that is normal in the on-licence.
- Increased entry into the off-licence sector will lead to an increased range of products being sold, better customer service, and lower prices *within the taxation framework*. The evidence over the last decade in Ireland bears this out.
- The Commission must examine any claims that the current licensing system ameliorates some of the negative aspects of alcohol consumption, in the light of (i) the disparities it creates between rural and urban areas (i.e. it cannot be claimed that the same policy objectives are achieved, on the one hand by an over-supply, and on the other by an under-supply, of licences) and (ii) the existence of more efficient means of achieving these same objectives, that do not distort competition. Furthermore, through taxation, the State can control alcohol consumption in a manner which, in a free entry regime, would allow the market to determine the number, type and geographic distribution of licences (including off-licences)
- Ireland’s licensing laws are currently being formulated into a structure that complies with best international practice, where the licensing laws facilitate competition in the provision of alcohol whilst being always mindful of its potentially harmful effects.
- Concerns about a possible fall in standards, or low existing standards, could be addressed by rigorous enforcement of existing laws and/or by instituting a scheme for the licensing of individuals to sell alcohol, based on an accredited qualifications, such as that proposed in the UK White Paper.



In light of the above, the Authority recommends the reconstitution of the licensing laws with the following features:

- the repeal of the prohibition on the granting of new licences (as contained in Section 2 of the Licensing (Ireland) Act 1902);
- the retention of only those legal barriers which relate to qualitative criteria directly relevant to the social dimension of the sale of alcohol such as:
  - the suitability of the applicant (to be addressed through a licensing scheme);
  - the suitability of the premises;
  - compliance with fire and safety and health regulations and with all applicable planning provisions.

## Appendix I

In a report prepared for the VFI by Richard Donovan of CEA Economic Consultants it is argued the liberalisation of the off-licence trade would result in higher prices. Donovan bases his conclusions on what he refers to as a “correct model of the off-licence sector”. In this model Donovan assumes that “...individual products are identical (containers of alcohol), but that the off-licences are differentiated by their location”. While it is true that off-licences have traditionally tended not to bunch in a geographical sense, it is not correct to assume that they carry identical products. On the contrary, off-licences have exhibited a wide divergence in the range of products stocked and in customer service levels.

Further, Donovan uses a modified Hotelling-*type* linear city model of the off-licence sector.<sup>17</sup> This assumes that, initially, there is a single trader positioned at the halfway mark of a straight line-segment. Two new competitors enter and position themselves either side of the initial trader and at equal distances from it. A numerical simulation is then run and Donovan finds that prices are higher after the entry of the two new traders.

There is however a problem with this analysis. First, there is no reason why there should be two new entrants, there could be more or less. Thus, in a dynamic world, i.e. a world with more than one period, there are likely to be more than three economic actors and the implication is likely to be increased rather than reduced competition. Second, ‘perverse edge-results’ are well-known features of Hotelling-*type* models. Essentially, the perverse results arise because of the line-segment nature of the product characteristic. An alternative model that is often used, and that does not suffer from the ‘perverse edge-result’ drawback of the Hotelling models is Salop’s circular city model.<sup>18</sup> In this model the product characteristic is described in terms of a line segment joined at the ends, i.e. a circle. In this kind of model traders will position themselves equidistantly around the circle. Competition will always be keener as entry occurs and prices will fall. While this model is not an exact reflection of real-life situations, it is a lot closer to real life than that used in the VFI report. Third, a subtle re-interpretation of Donovan’s model could reverse Donovan’s results. If we regard the linear product space not as a geographic characteristic but as a product range characteristic, then the settlement pattern, i.e. traders locating at the extremities should be interpreted as maximal product diversity. If consumers value product diversity, then they may be better off even if prices are higher.

In summary, it is the opinion of the Authority that the numerical example relied upon by Donovan to show that liberalisation of the off-licence trade will result in higher prices rests on unreasonable assumptions and is therefore only a theoretical curiosity and not something that should influence policy.

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<sup>17</sup> Hotelling, H. (1929), “Stability in Competition”, *Economic Journal* **39**: 41-57.

<sup>18</sup> Salop, S. (1979), “Monopolistic Competition with Outside Goods”, *Bell Journal of Economics* **10**: 141-156.

## **Appendix II**

### **Object in Other States and Territories and New Zealand**

#### **Australian Capital Territory**

##### ***Liquor Act 1975: Objects (Section 3a)***

*The object of this Act is to promote and encourage responsibility in the sale and consumption of liquor through the establishment of a scheme of liquor licences and permits.*

#### **New South Wales**

##### ***Liquor Act 1982: Objects (Section 2A)***

*A primary object of this Act is harm minimisation, that is, the minimisation of harm associated with misuse and abuse of liquor (such as harm arising from violence and other anti-social behaviour). The court, the Board, the Director, the Commissioner of Police and all other persons having functions under this Act are required to have due regard to the need for harm minimisation when exercising functions under this Act. In particular, due regard is to be had to the need for harm minimisation when considering for the purposes of this Act what is or not in the public interest.*

#### **Northern Territory**

##### ***Northern Territory of Australia Liquor Act 1978***

There is no clear object specified in the Act.

#### **Queensland**

##### ***Liquor Licensing act 1992: Objects (Part 1.3)***

The object of this Act are:

- (a) To facilitate and regulate the optimum development of the tourist, liquor and hospitality industries of the State having regard to the welfare, needs and interests of the community and the economic implications of change; and*
- (b) to provide a Liquor Appeals Tribunal with jurisdiction to hear and decide appeals authorised by this Act; and*
- (c) to provide for a flexible, practical system for regulation of the liquor industry of the State with minimal formality, technicality or intervention consistent with the proper and efficient administration of the Act: and*
- (d) to regulate the liquor industry in a way compatible with:*
  - (i) minimising harm from misuse of liquor; and*
  - (ii) the aims of the National Health Policy on Alcohol; and*
- (e) to provide revenue for the State to enable the attainment of the objects of this Act and for other purposes of Government.*

## **South Australia**

### ***Liquor Licensing Act 1997: Objects (Section 3)***

*The object of this Act is to regulate and control the sale, supply and consumption liquor for the benefit of the community as a whole and, in particular:*

- (a) to encourage responsible attitudes towards the promotion, sale, supply, consumption and use of liquor, to develop and implement principles directed towards that end (the responsible service and consumption principles) and minimise the harm associated with the consumption of liquor; and*
- (b) to further the interests of the liquor industry and industries with which it is closely associated – such as tourism and hospitality industry – within the context of appropriate regulation and controls; and*
- (c) to ensure that the liquor industry develops in a way that is consistent with needs and aspirations of the community; and*
- (d) to ensure as far as practicable that the sale and supply of liquor contributes to, and does not detract from, the amenity of community life; and*
- (e) to encourage a competitive market for the supply of liquor.*

## **Tasmania**

### ***Liquor and Accommodation Act 1990***

The Tasmanian Act does not specify any object.

## **Western Australia**

### ***Liquor Licensing Act 1988: Objects (Section 5)***

*(1) The primary objects of this Act are:*

- (a) to regulate the sale, supply and consumption of liquor: and*
  - (b) to minimise harm or ill-health caused to people, due to the use of liquor.*
- (2) In carrying out its function under this Act, the licensing authority shall have regard to the primary objects of this Act and also to the following objects:*
- (a) To regulate and to contribute to the proper development of, the liquor, hospitality and related industries in the State:*
  - (b) to cater for the requirements of the tourism industry:*
  - (c) to facilitate the use and development of licensed facilities reflecting the diversity of consumer demand:*

*(d) to provide adequate controls over, and over the persons directly or indirectly involved in, the sale, disposal and consumption of liquor; and*

*(e) to provide a flexible system, with as little formality or technicality as may be practical, for the administration of this Act.*

**New Zealand**

***Sale of liquor Act 1989: Objects***

*(1) The object of this Act is to establish a reasonable system of control over the sale and supply of liquor to the public with the aim of contributing to the reduction of liquor abuse, so far as that can be achieved by legislative means.*

*(2) The Licensing Authority, every District Licensing Agency, and any Court hearing any appeal against any decision of the Licensing Authority, shall exercise its jurisdiction, powers, and discretions under this Act in the manner that is most likely to promote the object of this Act.*