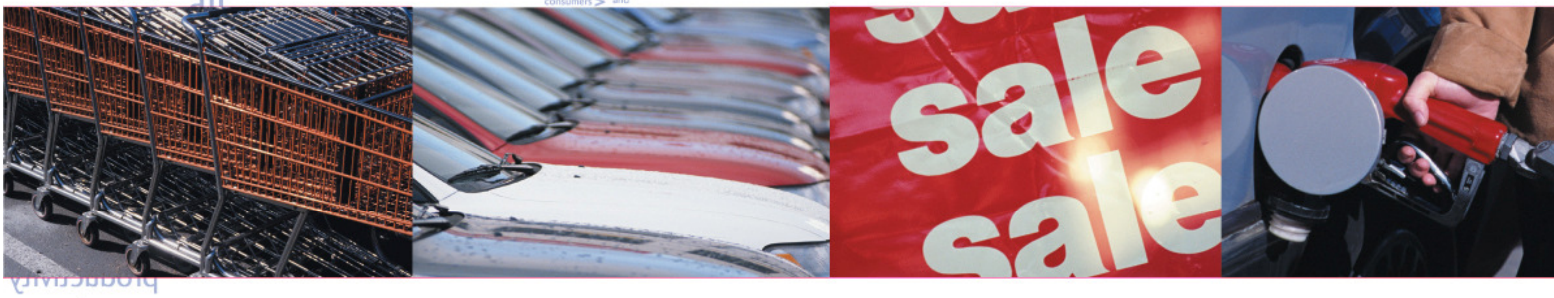


Submission to the Organisation for Economic Cooperation and Development (OECD)

OECD Review of the Irish Public Service

S/07/03

31 July 2007

The Competition Authority
An tÚdarás Iomaíochta

1. INTRODUCTION

1.1 The Terms of Reference of the OECD Review are extremely wide-ranging, and it is not practical to attempt to address them all. In this short submission, the Competition Authority highlights a small number of issues which it believes the Review Team should address, and which would help the Public Service to deliver appropriate policies to achieve national economic aims.

1.2 These issues are addressed under two broad headings: the provision of public services and public policy making.

1.3 The Competition Authority would be happy to discuss these issues further with the Review Team, if that was thought useful.

2. THE PROVISION OF PUBLIC SERVICES

2.1 For policy makers the first task is to identify which services should be provided by the public service and then whether to provide them directly or via the private sector.

Benchmarking Public Services

2.2 A key task in this process is to identify when competition and market prices will support and contribute to desired policy outcomes and those areas where other measures are required. The clearest benchmark is a price set in a competitive market. Such prices signal willingness to pay on the part of a buyer. Consequently market prices provide the strongest incentive for suppliers to provide value for money.

Competitive Neutrality

2.3 Where the public service is involved directly in the provision of services it may compete with the private sector supplying services, (e.g. State Companies such as VHI, ESB). In some cases, too, a public body may, in addition to competing with private suppliers, also set the rules of the game (e.g. local authorities in the waste sector). In these situations the competitive process – and the process of public policy-making generally – will be enhanced if there is *competitive neutrality*, i.e. where a private provider is not placed at an unfair competitive disadvantage by regulatory rules which favour the State provider. Such disadvantage may arise through, for example, asymmetric regulatory requirements or procurement processes. The Competition Authority understands that such a policy has been adopted in recent years in some OECD countries.

Public Procurement

2.4 In other situations there may be public funding of private agencies, rather than direct public provision. In such a situation it is important that, as much as is possible, the private sector suppliers should compete for the relevant contracts.

2.5 Where competitive tendering is used, it is important that the administrative processes promote competition to ensure value for money and efficient outcomes. There are ways in which procurement processes may not promote competition. These include:

- Excessive (pre) qualification criteria, such as unnecessarily high levels of required professional indemnity insurance, can discourage firms (especially smaller firms) from competing for contracts;

- Contracts which do not include specific time periods and/or review processes for poor performance can lead to poor value for money and reduce the opportunities for alternative suppliers to compete.

Recommendations

2.6 The Competition Authority recommends that the OECD's review of the public service should include an assessment of:

(a) whether there is scope for greater use of competition and market prices to promote efficiency and value for money in the public service;

(b) whether, and to what extent, there is scope for the Government to formally adopt a policy of competitive neutrality; and

(c) whether public procurement, as it currently operates, promotes efficiency and value for money.

3. PUBLIC POLICY MAKING

Regulation

3.1 Regulation pervades the lives of both individuals and firms. There is an enormous *stock* of existing regulation, and a never-ending *flow* of new regulation. By common consent, much of the existing stock is outdated, badly-designed, over-prescriptive, inadequately-enforced and even unnecessary. As regards the flow of new regulation, the Competition Authority would query how much of this is actually necessary, and whether policy-makers have routinely asked themselves whether there are more suitable alternatives, such as information campaigns and tax incentives.

3.2 The OECD has already reported on this issue in Ireland in 2001, at the Irish Government's invitation, and many of the recommendations made in that Report – *Regulatory Reform in Ireland* – are as valid today as they were then. The Government endorsed the OECD's approach in general. In particular, it published in 2004 an excellent policy framework, a White Paper titled *Regulating Better* setting out principles for better regulation.[1] The principles are:

- Necessity – is the regulation actually necessary? Are there alternative policy instruments?
- Effectiveness – is the regulation targeted, will it work?
- Proportionality – do the advantages outweigh the disadvantages of the regulation? Does the regulation only go as far as it is necessary to go?
- Transparency – have stakeholders been consulted and is there available material to clearly explain the regulation? Are the processes used open to public debate?
- Accountability – is it clear who is responsible to whom and for what? Is there a clear appeals process?
- Consistency – is the regulation consistent with regulations that already apply? Does the regulation draw on best practice from regulation in other areas?

3.3 If these principles were all fully adhered to in practice, this would make an enormous contribution to public confidence in the public service, as well as the capacity of the public sector to adapt to the needs of the 21st Century. While strenuous efforts are being made to roll out a system of Regulatory Impact Assessments across the public service, the real impact of this has yet to be seen in a comprehensive manner.

3.4 One key point to bear in mind is that existing, as well as proposed new regulations, should be subject to continuing questioning and analysis. In other words there should be no presumption in favour of the *status quo*.

[1] http://www.betterregulation.ie/index.asp?locID=22&docID=-1

3.5 To make this happen, some one powerful Government body needs to become its 'champion', someone to oversee and monitor the application of these principles across the policy-making board. That someone might be either the Taoiseach's Department itself, or alternatively the Department of Finance; what is required is a body with the authority to makes things happen.

3.6 The second general requirement is for a comprehensive and pervasive programme of training to be put in place across the public service, to make sure that public servants both fully appreciate the need to adhere to the principles, and also have the training and expertise to employ them.

3.7 Two particular initiatives which would help the Better Regulation agenda are:

(a) a policy of *sunsetting* new regulations where possible, i.e. that new Regulations would be expressed to lapse after a given time unless expressly renewed. This would force policy makers to justify publicly and transparently why existing regulations should be renewed. This could be done on a pilot basis in the first instance.

(b) a policy of mandatory *notice and comment*, in the case of all new secondary legislation. Many regulations are introduced without debate, or opportunity for interested parties – including independent bodies like the Competition Authority – to comment on their likely effects, adverse or otherwise. The OECD recommended this in its 2001 Report, *Regulatory Reform in Ireland*, but it was not implemented.

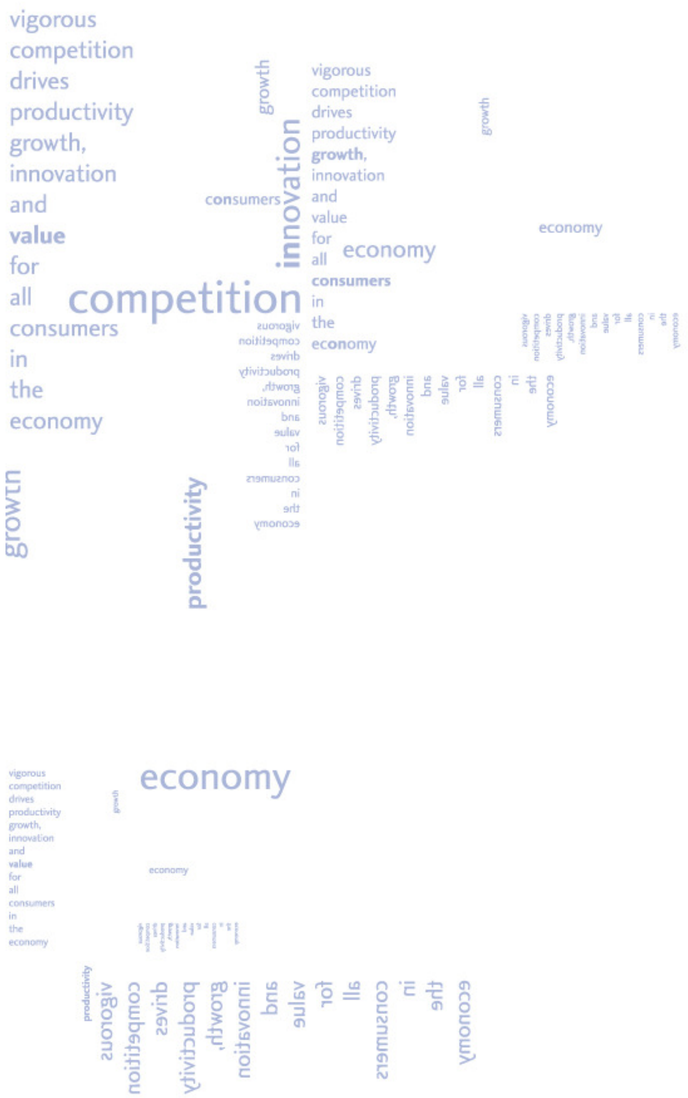
Policy Planning

3.8 The approach in Ireland to public policy planning has been somewhat *ad hoc* over the years. While there is nothing inherently wrong in principle with incremental approaches to planning (and some of the literature testifies that this is simply the way that public systems have operated since time immemorial), there has nonetheless been a dearth of systematic approaches to policy planning in Ireland, with little by way of formal public policy reviews. This is undoubtedly improving in recent years (e.g. the Ports Review), but much could be learned from the UK, where public policy reviews are commonplace. These feature widespread consultation at an early stage, a high degree of transparency and, crucially, a firm timeline for all stages in the process – which is generally adhered to.

3.9 The better regulation principles, outlined above, already provide policy-makers with a useful framework for wider public policy decision making, whether administrative or political.

Recommendations

3.10 The Competition Authority recommends that the OECD's Review of the public service should include an assessment of how well the Government's own existing policy principles, contained in *Regulating Better*, are being implemented and how Ireland approaches policy planning in general.



The Competition Authority, Parnell House, 14, Parnell Square, Dublin 1, Ireland
Tel: +353 (0)1 8045400   LoCall 1890 220224 e-mail: info@tca.ie

www.tca.ie