

competition in the economy
 vigorous competition drives productivity growth, innovation and value for all
 consumers
 innovation
 productivity
 economy
 growth
 productivity
 economy
 consumers
 innovation
 productivity
 growth
 economy



productivity
 growth
 innovation
 and
 value
 for
 all
 consumers
 in
 the
 economy
 productivity

Submission to The Business Regulation Forum – Reducing the burden of regulation on business

Submission S/06/004

June 2006



CONTENTS

Introduction	1
Banking	2
Transfer of Mortgage Rights	2
Price Regulation of Bank Fees and Charges.....	4
Insurance	5
Waste	7
Inefficient Regulatory Procedures	7
Competitive Tendering.....	8
Electricity	10
Ensuring the independence of ESB National Grid	11
S.I. 60 of 2005 – A Missed Opportunity.....	11
A structural approach to the electricity market.....	12
Barriers to entry	14

INTRODUCTION

- 1.1 The Competition Authority welcomes the opportunity to comment on the Business Regulation Forum's consultation on lessening the regulatory burden faced by businesses in Ireland. The Forum states that *"a wider definition of 'regulation' would also, include, in addition to Acts of the Oireachtas and Statutory Instruments, Bunreacht na hÉireann and the Treaties, rules and regulations of the European Union. Such a definition might also extend to subsidiary rules and regulations, such as those made by Local and Regional Authorities, and self-regulating bodies with regulatory powers"*, and that it wishes to consider regulations which may restrict competition or market entry.
- 1.2 Businesses suffer not only when regulation unnecessarily limits their own room for manoeuvre, but also when inappropriate regulation of markets that provide business inputs causes their cost base to rise. Inappropriate or incorrectly applied regulation can restrict entry and inhibit competition, thereby raising prices and the cost of doing business in Ireland, and reducing competitiveness. This is the focus of the Competition Authority's submission to the Business Regulation Forum.
- 1.3 The Competition Authority has identified a number of sectors of the economy where competition problems are contributing significantly to business costs and can be remedied by regulatory reform. Better regulation of the banking, insurance, waste and electricity sectors will lead to more competition and will reduce business costs, allowing businesses to become more competitive, both in Ireland and abroad. This submission details recommendations made by the Competition Authority to better regulate each of these sectors to promote competition, following detailed critical analysis of the sector.
- 1.4 Additionally, the Competition Authority expects to publish the Final Report of its study of Competition in Legal Services later this year. Legal services are also a key input for doing business in Ireland and so the Report's recommendations will have ramifications for the Business Regulation Forum's area of expertise. The Competition Authority will furnish the Forum with a copy of the Final Report on Competition in Legal Services for its consideration.
- 1.5 The Competition Authority has also identified a number of instances where businesses are prevented from entering markets due to regulations championed by incumbents designed solely and specifically to limit competition. This submission gives examples of anti-competitive business-led regulatory barriers to entry in the taxi, pharmacy, retail and pub trades. Lack of competition in markets where consumers, rather than businesses, are the main customers, pushes up the cost of living in Ireland and hence wage demands and thus is bad for all businesses.
- 1.6 Finally, the Competition Authority is happy to meet the Business Regulation Forum to discuss the issues raised herein further.

BANKING

- 2.1 In its report on *Competition in the (non-investment) Banking Sector*,¹ published in 2005, the Competition Authority found that, while large businesses were well-served by the corporate banking market, smaller businesses were less well-served by retail banks.
- 2.2 The Report made a total of 25 recommendations in three areas, Personal Current Accounts, Lending to SMEs and the Payment Clearing System. Recommendations were directed to the Financial Regulator, the Irish Payment Services Organisation, the Minister for Finance, the Irish Bankers Federation and retail banks themselves. A number of recommendations have already been implemented in full, while others are currently in the process of being implemented.
- 2.3 Although many of the restrictions on competition in the banking market arose as a result of the behaviour of the banks themselves, as opposed to regulation, a number of regulatory issues were identified which served to stifle competition to the detriment of business customers. Two of these issues have yet to be resolved.

Transfer of Mortgage Rights

- 2.4 Small businesses frequently secure business loans on mortgages. Transferring a loan secured in this manner to a financial institution offering a better deal can become complicated by the difficulties involved in switching the mortgage security. Mortgages are not standardised documents; therefore detailed legal checks need to be completed in the event of a mortgage being transferred. This complexity is derived in part from the legal foundations underpinning the granting and transfer of mortgages.
- 2.5 The cost base of small businesses is unnecessarily inflated if they are prevented from switching to a better value loan due to legal complications involving the transfer of mortgages. The Competition Authority therefore made two recommendations to facilitate loan switching by amending legislation to permit standardisation and transfer of mortgages:

¹ Available online at http://www.tca.ie/banking/banking_report_final.pdf

Recommendation 13: Develop standard mortgage document

Details of Recommendation	Action by
a. The Irish Bankers Federation (IBF) should develop and promote the use of a standard form of mortgage document ² and ancillary security documents in consultation with relevant parties. ³	IBF December 2006
b. Legislative changes required to permit implementation of this recommendation should be identified by the Department of Finance, and appropriate amendments introduced.	Minister for Finance June 2007
c. The implementation of this recommendation should be designed so as not to create a barrier to the development of a cross-border market in mortgages, as envisaged in the European Commission Green Paper on cross-border mortgages. ⁴	

Recommendation 14: Facilitate easier transfer of mortgages

Details of Recommendation	Action by
a. Following consultation with relevant parties, the Minister for Finance should bring forward legislation allowing the transfer of a mortgage to a new loan provider without any change in the mortgage's validity or priority over other mortgages. The Department of Finance should also prepare other legislative changes as necessary to facilitate the transfer of mortgage security among financial institutions.	Minister for Finance June 2007
b. The implementation of this recommendation should be designed so as not to create a barrier to the development of a cross-border market in mortgages, as envisaged in the European Commission Green Paper on cross-border mortgages.	

2.6 The purposes of these recommendations are to ensure that consumers, in general, are able to transfer mortgages easily between financial institutions, and to ensure that businesses, in particular, are able to switch their loans easily and effectively, even if these loans are secured against mortgages.

² The term "mortgage" specifically refers here to the document assigning ownership of a property to a lender in return for a loan, and not the lending, interest and repayment terms.

³ For example, the Law Society, the Land Registry, the Registrar of Deeds, the Department of Finance, the Financial Regulator and the Irish Mortgage Council.

⁴ "Mortgage Credit in the EU". Available online at http://europa.eu.int/comm/internal_market/finservices-retail/home-loans/index_en.htm#greenpaper

Price Regulation of Bank Fees and Charges

- 2.7 Competition in retail banking is also stifled by price regulation. Section 149 of the Consumer Credit Act, 1995, requires that bank fees and charges be notified to and authorised by the Financial Regulator. Price regulation is most commonly implemented in markets where competition is highly unlikely to develop, for example, the natural monopoly aspects of electricity and natural gas transmission and distribution. However, price regulation is an inappropriate tool for competitive and potentially competitive markets.
- 2.8 Price regulation of bank fees and charges hurts business by preventing dynamic efficiencies in pricing. By creating risks and limiting the commercial freedom of banks, S.149 has the effect of limiting innovative behaviour by existing market participants and discouraging entry by potential participants, thereby restricting businesses' choice for banking services.
- 2.9 However, the wholesale removal of price regulation, while ultimately desirable, may not be appropriate until there is clear evidence that a competitive market in retail banking has developed.
- 2.10 The Competition Authority has accordingly recommended that the price regulation of banking fees and charges end once improvements have been made to how consumers and businesses can switch their current account between banks and are informed about changing interest rates.

Recommendation 6: Remove Price Regulation once competition improves

Details of Recommendation	Action By
The Minister for Finance should bring forward legislation to end the economic regulation of fees and charges once all other recommendations to facilitate and improve market entry and switching have been successfully implemented and are working in practice.	Minister for Finance Following implementation of other Recommendations 1, 2, 5, 7, 8 and 9

- 2.11 The implementation of this recommendation will reduce the indirect and efficiency costs associated with the inability of financial institutions to respond quickly and effectively to the needs and demands of business customers.

INSURANCE

- 3.1 In March 2005 the Competition Authority published *Competition Issues in the Non-Life Insurance Market*,⁵ focussing principally on motor insurance, employer liability and public liability insurance, and on insurance intermediaries. The Study made a total of 47 recommendations designed to facilitate switching, reduce barriers to entry and improve transparency and consumer information in the insurance markets surveyed. Vibrant competition in insurance markets results in drops in premiums for business customers, as insurance firms become more efficient, and as they pass through cost savings to their customers.
- 3.2 Close attention must be paid to promoting competition in insurance to the benefit of business consumers, particularly in the light of recent initiatives in the insurance industry. The establishment of the Personal Injuries Assessment Board (PIAB), for example, has reduced the regulatory burden both on claimants and on insurance companies and has led to a reduction in the cost of settling personal injury compensation claims, as well as reducing the time taken to conclude claims. A competitive insurance market is vital to ensure that these benefits are fully passed through to consumers and businesses in the form of significantly lower insurance premiums. Businesses benefit from better-designed regulations which foster an environment which promotes competition and competitiveness.
- 3.3 Numerous recommendations in the *Insurance Study* were directed at the Financial Regulator, which has statutory responsibility for regulating the insurance market. These recommendations are designed less to mitigate the effects of bad regulation, than to promote light-handed regulation in the best interests of consumers. In the case of employer and public liability insurance, these consumers are businesses. Improvements in the regulation of insurance will help to promote competition in insurance to the benefit of businesses by facilitating switching, promoting rivalry and reducing barriers to entry to other insurers considering entry to the market.
- 3.4 The Competition Authority has made the following recommendations of particular relevance to businesses with respect to better regulation in the areas of switching and rivalry among insurers:

⁵ Available online at http://www.tca.ie/insurance/insurance_report_vol1.pdf

Recommendation I1: The Financial Regulator should modify its code of conduct for insurers to require that renewal notices for liability insurance be sent by insurers so as to reach buyers at least eight weeks prior to the expiration of the buyer's existing policy.

Recommendation I3: The Financial Regulator should modify its code of conduct for motor and liability insurers to require that renewal notices include a certified history of claims for the buyer. Claims histories should cover at least the previous five years and include any outstanding claims from earlier years.

Recommendation I4: The Financial Regulator should modify its code of conduct for motor and liability insurers so that they are required to provide a certified claims history to any buyer upon request. Claims history information should be provided in hard copy if so requested by a buyer.

Recommendation I9: The Department of Transport should establish guidelines, procedures, and reporting requirements that would permit eligible firms to self-insure motor risks.

- 3.5 The Competition Authority has made the following recommendations of particular relevance to businesses with respect to better regulation in the area of barriers to entry:

Recommendation I10: The Financial Regulator should issue guidelines detailing the regulatory requirements, including solvency standards, it will apply to insurers seeking to enter the Irish motor or liability insurance marketplace. To the extent that new entrants are required to meet standards in excess of those for existing suppliers, the guidelines should justify these increased standards.

Recommendation I11: The Financial Regulator guidelines called for in Recommendation I10 should include the justification for any solvency standards that are in excess of the EU requirements. Any standards in excess of EU requirements should be proportionate.

- 3.6 The Authority keeps the position in relation to its recommendations under regular review and is engaging with both the Financial Regulator and the Department of Transport with a view to progressing their implementation.

- 3.7 Once implemented, these recommendations will make regulation work better for businesses in three ways:

- First, business customers of insurance companies will be afforded greater opportunities to shop around for their insurance cover
- Second, businesses which meet the requisite eligibility criteria may consider self-insuring
- Third, potential new entrants should find it easier to enter the Irish market and offer insurance products to Irish consumers.

WASTE

- 4.1 In October 2005, the Competition Authority published its Enforcement Decision E/05/2002 concerning allegations of excessive pricing of household waste collection services in northeast Wicklow.⁶ Although the Authority did not find that abuse of dominance had occurred, it did find that regulatory delays constitute significant barriers to new entry and expansion in the market.
- 4.2 While the Competition Authority's decision focussed on household waste collection, the regulatory failures it identified apply equally to businesses. Waste collection constitutes a significant ongoing cost for businesses, especially those which produce large volumes of waste relative to their size. According to IBEC, waste costs to businesses have increased by 23% over 2004 and 2005.⁷
- 4.3 Barriers to entry and expansion in establishing recycling and sorting facilities such as transfer stations⁸ add to this cost burden for businesses by reducing competition in the closely-related waste collection market, leading to higher input costs for businesses and associated decreases in competitiveness. Improving regulation of recycling and sorting facilities can be expected to reduce the magnitude of this cost burden on businesses.
- 4.4 While additional waste management infrastructure would constitute a significant and necessary step towards the promotion of competition in household waste collection in Ireland, it would not in itself be considered sufficient to remedy the existing problems in a number of local markets across Ireland. In that regard further options need to be considered to improve the competitive framework in this sector. The Competition Authority has considered evidence from a broad range of international experience and this international evidence favours competitive tendering as a way of ensuring that household waste collection undertakings provide consumers with a good service at competitive prices.

Inefficient Regulatory Procedures

- 4.5 The Competition Authority's investigation found that regulatory delays in processing transfer station application requests appear to be widespread, not only in Wicklow, but also nationwide, with reports of some requests taking 3-4 years to complete. Faced with such long delays in getting regulatory approval, potential entrants may decide not to enter the waste collection market and to invest their capital elsewhere, in markets where they are able to enter more quickly, and earn a rate of return sooner. For firms already competing in the market, such delays may prevent them from expanding in a timely manner in order to meet consumer demand and take advantage of economies of scale and scope.

⁶ This decision may be viewed online at http://www.tca.ie/decisions/enforcement/e_05_002.pdf

⁷ IBEC Press Release, April 24th, 2006. Available online at <http://www.ibec.ie/ibec/press/presspublicationsdoclib3.nsf/wvPCICCC/4857F2C55F5AA9348025715A003089C8?OpenDocument>

⁸ A transfer station is essentially a depot used by a waste collection firm to separate and sort the waste material it has collected, for further recycling, composting, baling or disposal.

- 4.6 The granting of permits to commercial waste companies is governed by the Waste Management Act, 1996, the Waste Management (Amendment) Act, 2001 and by the various Waste Management Regulations. In September 2005, the Minister for the Environment, Heritage and Local Government published draft Waste Management (Facility Permit & Registration) Regulations. The draft Regulations amend the Waste Management (Permit) Regulations, 1998 and the Waste Management (Collection Permit) Regulations, 2001 respectively. The Minister has not yet published the final Regulations.
- 4.7 Following the precepts of *Regulating Better*, the Competition Authority recommends that the Waste Management Regulations establish clear guidelines for the ten authorities responsible for granting permits. The purpose of these guidelines should be to ensure that applications for permits are processed in a timely, efficient, transparent and effective fashion. Lengthy delays in the processing of applications serve no purpose except to hinder competition in the waste management sector. In this respect, the Authority notes that S.16 of the draft Regulations lays out the following timelines for determination of an application:
- Within 12 weeks from the receipt of a valid application Period for determination of an application; or
 - Within 6 weeks of the receipt of further information from applicants such extra information is deemed necessary in order to make a reasoned decision.

Recommendation

As part of its draft Waste Management (Facility Permit and Registration) Regulations, the Department of the Environment, Heritage and Local Government should ensure that clear guidelines are laid out for the appropriate authorities detailing how such permit applications should be evaluated and what timescales should be attached to the evaluation and approval process. The current S.16 of the draft Regulations satisfies this criterion and should be implemented fully in legislation.

Competitive Tendering

- 4.8 The market for household waste collection operates under rules set by the Waste Management Act, 1996 (“the Waste Management Act”). After the enactment of the Waste Management Act local authorities could withdraw from such activities and allow private operators to provide such services instead or opt for a public/private mix in the supply of waste collection services. In Wicklow, for example, this changeover to exclusively private collection occurred in 2000, while in Dublin city the local authority still continues to provide household waste collection services but the private sector is involved in collecting recyclables. Under the Waste Management Act local authorities are required to provide waste collection services in cases where there is “no adequate waste collection service in a part of the local authority functional area” unless the local authority is of the opinion that the estimated costs are “unreasonably high”.

- 4.9 The significant number of complaints received by the Competition Authority combined with the results from the Competition Authority's investigation indicate that the current model of competition created by the Waste Management Act is not working well for consumers. The call for change by the Minister of the Environment, Heritage and Local Government is also consistent with this conclusion.⁹ Furthermore, there is a general consensus from international experience that a combination of economies of scale and density is sufficient to lead to something close to natural monopolies in local geographic areas. This is further reinforced by the existence of regulatory barriers to expansion in this market.
- 4.10 On the basis of its analysis, the Competition Authority recommended that a radical overhaul of the current regulatory framework for household waste collection services should be considered by the Department of the Environment, Heritage and Local Government. In that respect The Competition Authority recommended that the Department introduce competition *for* the market, i.e., the procurement of services by local authorities from service providers following competitive tendering processes. This system should replace the existing model of competition *within* the market, i.e., where waste providers "compete" side-by-side with each other.
- 4.11 International experience indicates that:
1. Competitive tendering yields significant cost savings compared to side-by-side competition (side-by-side competition is the form of service provision for household waste collection used in much of the State at present);
 2. Competitive tendering does not lead to a lower quality of collection service;
 3. Competitive tendering yields significant cost savings compared to provision by public authorities.
- 4.12 Competitive tendering processes are an effective way of ensuring value for taxpayers', consumers' and businesses' money in situations where competition within the market is not working effectively.

Recommendation

The Department of the Environment, Heritage and Local Government should consider a radical overhaul of the current regulatory framework for household waste collection services. In that respect The Competition Authority recommends that the Department introduce competition for the market, i.e., the procurement of services by local authorities from service providers following competitive tendering processes. This system should replace the existing model of competition within the market, i.e., where waste providers "compete" side-by-side with each other.

⁹ Department of Environment, Heritage and Local Government press release, "Roche Announces Review of Waste Regulations" 5 July 2005.

ELECTRICITY

- 5.1 Businesses in Ireland are being forced to pay high electricity prices, in part because government regulation has stymied the development of competition in the Irish electricity market. According to the National Competitiveness Council, of ten EU countries surveyed, Ireland is the 2nd most expensive country for industrial electricity prices after Italy, while the UK is the cheapest. Electricity prices for industry have increased by approximately 50% over the past 5 years.¹⁰ If Ireland wants to stay at the forefront of competitiveness in high-tech, value-added industries, it cannot afford to have such comparatively expensive input costs.
- 5.2 One of the major barriers to the development of competition in electricity is government regulation. Legislation has, on the one hand, curbed the powers of the CER, while on the other hand supported the dominant position of ESB, the state-owned incumbent.
- 5.3 The current legislative regime has relied to heavily on regulation, instead of real competition, and has failed to promote competition in the best interests of business users. A regulatory approach necessarily imposes a second-best solution on the market. Regulation acts as a surrogate for competition, attempting to mimic the beneficial effects of competition and the attendant discipline imposed by the market on prices and costs. However, regulation can never perfectly mimic competitive outcomes and therefore can never fully realise the benefits of effective competition, such as greater efficiency or innovation. This is because there are information asymmetries between regulated firms and regulators, which allow the regulated firm to set prices above cost and extract super-normal profits.
- 5.4 Regulation pervades the electricity sector at all levels. While this might be expected at the outset of any liberalisation process, there are no indications that the extent of regulatory involvement in the sector is set to diminish now that the market is fully open. This has two principal implications. Firstly, since regulation can only ever produce a second best outcome compared with effective competition, businesses can never reap the benefits of full competition. Secondly, the burden of regulation is significant and comes at a cost, which electricity customers end up paying.
- 5.5 The Competition Authority has consistently made three recommendations to promote competition in Ireland's electricity sector through better regulation:
 - a. Creating an independent National Grid;
 - b. Splitting ESB power generation assets to encourage competition in power generation;
 - c. Increasing interconnection with Northern Ireland and the UK.

¹⁰ "Tackling the energy monopoly" *Sunday Business Post*, May 14th, 2006

Ensuring the independence of ESB National Grid

- 5.6 The experience in Ireland to date indicates that the arrangements set out in current legislation do not work. Significant market entry has not occurred and prices to industrial customers remain higher than in other EU Member States. One of the principal reasons for the failure of the current approach is the way in which the relationship between the ESB and ESB National Grid was legislated for. Because responsibilities for design, construction and maintenance of the transmission network are divided between ESB National Grid and the ESB, the possibility exists for ESB to frustrate ESB National Grid in developing the network to benefit itself, for instance by delaying preliminary work for procurement, detailed project design and specification, project construction or project review. Shared responsibility also allows the ESB to continue to heavily influence the availability of transmission circuits. This sends strongly negative signals to the investment community, whose enthusiasm for funding construction of generating plant may be curbed by potential discriminatory behaviour influencing their possibilities of access to the network.
- 5.7 Only a truly independent Transmission System Operator will send the correct signals to potential market entrants that all generating plant will be treated equally, as the motivation for discriminating in favour of incumbent generators is removed by structural measures, and investment is incentivised. Where the system operator remains linked to the incumbent power provider (ESB), this has a chilling effect on the market. The maintenance of the link will signal to the market and to potential market entrants, that the Government's commitment to full and fair competition is open to question.
- 5.8 Ensuring the independence of ESB National Grid will increase the receptivity of the market to competition, leading to increased efficiency and consumer welfare, and stronger national competitiveness, and will also lead to less, and simpler, regulation.

S.I. 60 of 2005 – A Missed Opportunity

- 5.9 S.I. No. 60 of 2005, the European Communities (Internal Market in Electricity) Regulations, designed to implement EU Directive 2003/54/EC, and amend and update the Electricity Regulation Act, 1999, and the European Communities (Internal Market in Electricity) Regulations, 2000 (SI 445 of 2000), represented a golden opportunity to finally resolve some of the structural impediments which bedevil the Irish electricity industry and deprive consumers of effective competition. Instead, the status quo ante persists.
- 5.10 The independence of ESB National Grid is currently provided for under regulation 9 of SI 445 (as amended), while the Infrastructure Agreement is governed by regulation 18, as amended. The new EU Directive does not envisage the exact type of structure described in SI 445, but Article 10.2(c) of the Directive specifically demands the removal from integrated electricity undertakings of the type of powers granted to the ESB by Irish legislation:

"2. In order to ensure the independence of the transmission system operator referred to in paragraph 1, the following minimum criteria shall apply:....."

(c) the transmission system operator shall have effective decision-making rights, independent from the integrated electricity undertaking, with respect to assets necessary to operate, maintain or develop the network. It shall not permit the parent company to give instructions regarding day-to-day operations, nor with respect to individual decisions concerning the construction or upgrading of transmission lines, that do not exceed the terms of the approved financial plan, or any equivalent instrument"

- 5.11 At the very least, S.I. 60 of 2005 should have ensured that the provisions stated here were enshrined in Irish law, such that effective decision-making rights rest with ESB National Grid. However, this has not happened. The relevant paragraphs in the new legislation are, in all key respects, identical to those laid out in S.I. 445 of 2000. This means that decision-making rights remain both are partial and encumbered.
- 5.12 The best means of complying with the independence principles of the Directive, however, is total, complete, unencumbered separation of the ESB and ESB National Grid, that is, going beyond the decision-making independence specified by the Directive, to full legal separation. Any other solution will be sub-optimal. Full separation of each party is a more efficient, streamlined solution which will incentivise investment, decrease the regulatory burden, and allow each party to concentrate wholeheartedly on its core competencies. Until this occurs, businesses will continue to pay too much for their electricity needs.

A structural approach to the electricity market

- 5.13 Current energy policy has failed to deliver greater efficiency in the electricity sector, or real competition throughout the market. Businesses are suffering and will continue to suffer until the problems facing the electricity sector are addressed and until the dominance of the ESB is tackled in a meaningful way and effective competition develops. For this to occur, a structural solution must be implemented. The Competition Authority has reiterated on numerous occasions over the past five years that the following steps should be taken to promote competition in the electricity market:

Recommendation

Vertically separate the generation, transmission and distribution, and supply components of the ESB into separately owned, managed and operated entities; this would involve complete legal, managerial and operational independence of ESB National Grid/EirGrid from the ESB.

Recommendation

Horizontally separate ESB power generation assets to encourage competition in power generation. This would require ESB to divest part of its power generation portfolio. Divestment would need to be carefully monitored to ensure that the ESB did not just divest old, inefficient plant, but also mid-merit plant, which acts as the price-setting plant 99.5% of the time.

Recommendation

Broaden geographic electricity markets by increasing interconnection with Northern Ireland and expediting the construction of interconnectors with the UK. Strengthening interconnection with the UK market will have the dual effect of increasing security of supply and reducing ESB dominance.

- 5.14 A structural solution to market liberalisation avoids many of the pitfalls associated with regulation by allowing the market to perform its role of satisfying consumer demand, rather than having regulation approximate this role. While potentially costly at first, a structural solution also avoids the recurrent costs which a regulator imposes on an industry. In addition, a structural solution allows for a degree of elegance which regulation, with its risks of over-regulation, regulatory capture and regulatory fatigue cannot offer.

BARRIERS TO ENTRY

- 6.1 Regulation can harm businesses in numerous ways – it can increase red tape and compliance costs, delay product launches, stifle innovation, increase input costs and confer advantages on one business over another. Regulation can also act as a barrier to entry. The most insidious aspect of this type of regulation is that it can arise not as a justifiable restriction on competition in response to welfare concerns, but as a mechanism by those already in the market to protect their margins. In this respect regulation can act to favour the haves – those businesses already present in a market – over the have nots, those businesses unable to enter the market. Regulations of this nature imposed on foot of lobbying by business groups reduce competition, raise prices to both personal and business consumers, and prevent otherwise qualified individuals and entities from offering their products and services.
- 6.2 Businesses and business lobby groups spend inordinate amounts of time and money persuading the government of the need to regulate their industries. While the regulation may be nominally intended to protect standards or consumer welfare, its real goal is often to maintain the margins of incumbent businesses by using legal instruments to prevent competition by limiting entry by other businesses. The Competition Authority has in the past advocated for the removal of such restrictions in the taxi industry, for example.¹¹ The removal of the quantitative limit on the number of taxis has been a hugely successful step towards a market that works well for consumers of taxi services – both personal and business users. The Groceries Order, abolished earlier this year, is another example of a regulation which served only to protect grocery retailers from competition.¹²
- 6.3 Other legislative restrictions on competition in particular sectors remain, however. The retail pharmacy sector is characterised by various restrictions designed to maintain the ability of pharmacy owners to earn supernormal profits. Chief among these restrictions is the “three year rule”. The three year rule is a derogation under Art. 2.2 from EU Directive 85/433/EC, which stipulates that pharmacists who are professionally trained in other EU and EFTA countries are prevented from ever managing or supervising a pharmacy that is not more than three years old. This creates a barrier to entry to the retail pharmacy market by restricting those who wish to open a pharmacy to employing pharmacists who graduated in Ireland, if they can find one. Even Irish people who have trained in the UK are prevented from opening their own pharmacy business. There is no clear objective justification for this requirement. The Competition Authority understands that it is due to be removed as part of upcoming pharmacy legislation.
- 6.4 Entry restrictions are also present in the pub market. The powerful vintner’s lobby has been able to ensure that regulations governing the licensed trade protect the interests of vintners themselves, rather than of consumers. Vintners have claimed that such regulations are

¹¹ Competition Authority Submission on Qualitative Improvements in Taxi Services and Future Regulation of those Services to The Department of the Environment & Local Government, April 2002. Available online at <http://www.tca.ie/decisions/submissions/taxisub.pdf>

¹² The Competition Authority’s submission on the Groceries Order is available online at http://www.tca.ie/decisions/submissions/s_05_006.pdf

necessary to combat the detrimental effects on the health of individuals, and on society in general, of excessive consumption of alcohol. The reality is that legislation and regulation shields publicans from competition by putting a quantitative limit on the number of places where alcohol can be sold. This pushes up prices and publican's margins and has contributed to the "superpubs" phenomenon, where heavy and binge drinking are more difficult to monitor. To take an example of the lobbying incumbent publicans have undertaken to maintain their regulatory protection from competition, the draft Intoxicating Liquor Bill, 2005, proposed the creation of a café bar licence which would be granted to premises under 130 square metres in size which would also serve non-alcoholic drinks and hot food. The cost of such a licence would have been a fraction of the cost of normal pub licences. The café bar licence concept was designed to move drinking habits away from binge drinking towards more sociable forms of drinking, and to promote competition and reduce the super normal profits earned by publicans by allowing entry into the on-license market.

- 6.5 Following a vociferous campaign by both the Vintners' Federation of Ireland and the Licensed Vintners' Association, the Minister for Justice dropped the café bar proposal in June 2005. Indeed, the LVA argued both that there is no need for additional liquor licences in Ireland and that the public do not want additional liquor licences.¹³
- 6.6 The examples of the taxi, retail, pharmacy and pub sectors show that competition can be restricted by regulations promoted by incumbents and designed to forestall the possibility of other businesses entering these markets and competing on the merits. Careful RIA must be applied to proposed legislation in order to ensure that it serves the interests of consumers and of competition, rather than incumbents, and that it adheres to the principles laid down in *Regulating Better*.

¹³ LVA submission available online at <http://www.lva.ie/easyedit/files/Codification%20Submission%20May%202005.doc>

