

Competition Authority publishes consultancy report on the professions.

The Competition Authority today (20th March 2003) published the report into competition in eight professions carried out by Indecon International Economic Consultants.

The Indecon Report to the Authority concludes the main research phase of the Authority's overall Study. It presents Indecon's analysis of competition in 8 professions:

- Engineers and architects in the construction sector;
- Medical practitioners, veterinary surgeons, dentists and optometrists in the medical sector;
- Solicitors and barristers in the legal sector.

At a press conference today, Mr. Alan Gray, Managing Partner of Indecon, outlined the main contents of the Report.

Thanking Indecon for their report, the Chairman of the Authority, Dr John Fingleton said, "Indecon are to be complemented for their extensive research and comprehensive Report. The Report provides a detailed base for the remainder of the Authority's Study. We have chosen to publish it today to stimulate an informed and transparent debate about the issues across a range of professional markets during the remainder of the Study."

Dr. Fingleton outlined the Authority's plans for the remainder of the Study. "The Authority will now move on to complete the Study profession by profession, starting with engineers. Using the Indecon findings and our own research, we will shortly publish a Consultation Paper on competition on each profession, starting with engineers. This Consultation Paper will be published to permit public

consultation before the final report is produced.” Dr. Fingleton also thanked the many professional bodies, their members and others who had assisted Indecon and the Authority thus far.

At present, it is envisaged that the separate reports on each profession will appear in the following order: engineers, architects, dentists, optometrists, veterinary surgeons, medical practitioners, solicitors, and barristers.

Dr. Fingleton stressed that the Authority would not be commenting on the Indecon Report at this stage. “The Authority will consider carefully the findings in this Report before proceeding to form its own view on how the restrictions on competition identified may best be addressed. I would hope that we can find that competition works well in some areas, and use those as examples for other areas where it may not work so well. For the remainder of the Study, we will continue constructive and informative dialogue between the Authority and the professions so as to ensure that our final recommendations will be based on a detailed and reasoned analysis of competition grounded in an informed understanding of the facts of each market.”

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For further information contact 01 804 5406 or 086 601 9655. The Indecon Report on Competition in the Professions is published on the Authority’s website, at www.tca.ie/professions.html. This Press Release has three annexes:

Annex 1: Detailed Notes for Editors

Annex 2: Summary of Indecon Findings

Annex 3: Summary of Indecon Findings-Profession by Profession

ANNEX 1: NOTES FOR EDITORS

The Background to the Study

Section 30 of the Competition Act 2002 provides that the Competition Authority may on its own initiative undertake to “study and analyse any practice or method of competition affecting the supply and distribution of goods or the provision of services or any other matter relating to competition”. The following criteria are taken into account when determining whether to undertake a study:

- The economic importance of the sector or market;
- The intensity of competition;
- The existence of public or private barriers to entry;
- The degree of public interest; and
- The impact on Authority resources.

The study started in May 2001 following an OECD Report on Regulatory Reform which suggested that competition in the professional services sector in Ireland could be stronger. Following a Preliminary Public Consultation process, the Authority announced Terms of Reference for the study on 10 December 2001 indicating that the study would cover competition in 8 professions in 3 sectors:

- Engineers and architects in the construction sector;
- Medical practitioners, veterinary surgeons, dentists and optometrists in the medical sector; and
- Solicitors and barristers in the legal sector.

In March 2002, Indecon International Economic Consultants were selected to conduct the main research phase of the study following a tendering process.

The Terms of Reference for the study are:

- To study and analyse methods and practices affecting competition in the provision of certain professional services, with a view to identifying any potential or actual restrictions on competition, whether arising from legal provisions, professional rules or customs, or otherwise, that have an appreciable effect on competition; and
- To identify and evaluate any consumer benefits claimed for any such restrictions and to consider whether the restrictions are proportionate to the achievement of any such benefits.

The Authority has consulted publicly a number of times already on the study, and this approach will continue for the remaining phases.

Today's publication is a Report from Indecon International Economic Consultants to the Authority, and is an interim stage of the larger study. The Authority will not comment on Indecon's findings at this stage.

The Remainder of the Study

The Authority will produce reports on individual professions in the following order: engineers, architects, dentists, optometrists, veterinary surgeons medical practitioners, solicitors and barristers

Each stage will involve:

- The Authority producing its own report. This will be based on Indecon's work and the Authority's own research.
- The drafting of Consultation Papers to be published by the Authority. Responses will be invited, covering corrections of facts, correction of presentation arguments, new arguments, or proposals for change.
- Oral hearings with interested parties may be held if the Authority deems it useful

- Publication of a final report.

It is envisaged that reports on each of the eight professions will be finalised during 2004.

The Authority is not inviting submissions or observations on the Indecon Report at this stage. As the Authority works through each professional sector, it will publish draft reports for public comment. Comments or views on the Indecon findings should be held until then.

On conclusion of the overall study, the Authority may:

- Seek changes to existing practices, present recommendations and where appropriate issue best practice guidelines to Government, relevant regulators, professional bodies and others with a view to the removal of unnecessary impediments to competition.
- Publish information about markets or practices that improves knowledge and understanding of, or stimulates and improves competition generally in some or all of these sectors.
- Offer a clean bill of health
- Make recommendations for regulatory reform

ANNEX 2: SUMMARY OF INDECON FINDINGS – GENERAL

- Three types of restriction are common across the eight professions examined in the Indecon Report (solicitors, barristers, engineers, architects, veterinary practitioners, medical practitioners, dentists and optometrists).
- First, *restrictions on entry* to each profession comprise academic requirements, professional education/training requirements and character requirements. The academic requirements are largely independent of the professional regulatory bodies, which exercise more control over the other requirements. In the legal professions, the regulatory bodies have exclusive control over the professional education and training of new solicitors and barristers. With the exception of engineering, the professions also impose restrictions on the transfer of qualified practitioners from other countries into the Irish market.
- Second, many of the professions are characterised by limitations on the amount of *advertising* practitioners can undertake. In the barristers' profession, there is an absolute ban on advertising. Members of the solicitors' profession are prohibited from undertaking comparative advertising and from making any unsolicited approaches to clients or potential users of their services. These restrictions also apply to members of the medical professions, who are also prohibited from advertising specialist expertise knowledge. In the medical professions, press advertisements are subject to size restrictions and architects are restricted in promoting their work in the written media.
- Third, with the exception of architects, engineers and optometrists, *regulation of organisational form* prohibits individuals from practising their profession within limited liability structures. Furthermore, solicitors and barristers are prevented from forming multidisciplinary practices (MDPs) with other professionals.

ANNEX 3: SUMMARY OF INDECON FINDINGS – PROFESSION BY PROFESSION

Solicitors

Entry Restrictions

1. The Law Society's monopoly on the provision of the professional practice courses for trainee solicitors is likely to restrict the number of entrants to the profession.
2. The Requirement that Solicitors whose second or subsequent place of qualification is Northern Ireland or England and Wales have 3 years post-qualification experience in the jurisdiction in which their qualification was subsequently obtained before entering the Roll of Solicitors in Ireland may act as an entry barrier to the Irish profession.
3. The Requirement that Barristers have three years post-qualification experience in order to transfer to practise as solicitors is likely to act as a barrier to entry to the solicitor's profession.

Restrictions on Conduct

4. With the exception of personal injury services, the restrictions on comparative advertising and the

prohibition on solicitors making unsolicited approaches to clients or members of the public in any area of the law is likely to restrict normal competitive behaviour on the market for solicitors' services.

Restrictions on Demarcation

5. The restrictions on solicitors based in Northern Ireland and England & Wales, together with lawyers from other EU Member States, providing conveyancing, trust and probate services in Ireland, in the same way they can provide other legal services in Ireland, are likely to restrict competition on the market for these particular services in Ireland.
6. The Absence of a system of licensed conveyancers reduces competition on this segment of the market.

Restrictions on Organisational Form

7. The Prohibition on Solicitors forming limited liability partnerships and limited liability companies hinders the profession

in competing internationally and may reduce economic efficiency.

8. The prohibition on solicitors practising with members of other professions is likely to reduce competition and dynamic efficiency (innovation in legal and financial services).

Barristers

Entry Restrictions

9. The King's Inns monopoly on the provision of the Diploma in Legal Studies course, a conversion course for non-law graduates and others (minimum age 25 years) seeking admission to train as barristers, is likely to restrict the number of entrants to the profession.
10. The King's Inns monopoly on the provision of the Barrister-at-Law (BL) degree course is likely to restrict the number of entrants to the profession.
11. The absence of remuneration of devils during their period of pupillage is likely to act as an entry barrier to the profession.

Restrictions on Conduct

12. The rules preventing barristers from advertising are likely to restrict the operation of competition between barristers.
13. The prohibition on clients directly accessing the services of barristers in all areas of work (including contentious work) is likely to restrict competition between barristers.

Restrictions on Demarcation

14. The customs and traditions serving to minimise the number of 'solicitor advocates' in the superior courts limit the supply-substitutability between the two branches of the legal profession and therefore are likely to restrict competition on the market for barristers' services.
15. The prohibition on fully qualified Employed barristers (having fulfilled the pupillage requirements as well as being called to the Bar) competing with practising barristers (members of the Law Library) is likely to restrict competition on the market for barristers' services.

- Restrictions on Organisational Form
16. The requirement that barristers operate only as sole practitioners and the prohibition on barristers forming multidisciplinary practices with other professionals are likely to restrict competition on the market for barristers' services.

Engineer's Profession

- Restrictions on Conduct
17. The continued publication of the historical ACEI/IEI fee scales (on the ACEI's website) could restrict or distort competition among registered and unregistered consulting engineers.
18. The advertising codes of the ACEI and the IEI act as a barrier to entry for new practices and could restrict normal competitive behaviour among firms.

Architects

- Entry Restrictions
19. The way in which 'grandfather' independent architects and *some* members of the Group of Independent Architects in Ireland (GIAI) will be assessed for entry to the proposed new register of

architects could act as a barrier to entry to the profession going forward.

Restrictions on Conduct

20. The RIAI does not have recommended, mandatory or minimum scales of charges. It does, however, publish information on the levels of charges based on surveys and market rates as a way of informing consumers/clients. We believe this practice is likely to restrict competition on the market.
21. The RIAI's restrictions on paid and print media advertising by its member architects, which are not given in the Code of Conduct, are likely to restrict competition on the market for architectural services in Ireland.

Veterinary Surgeons

Entry Restrictions

22. The position of one institution as the sole provider of veterinary education in Ireland amounts to a monopoly situation, which has the potential to act as a barrier to entry to the veterinary profession

and adversely affect potential competition in the marketplace.

23. The restriction in place in relation to the number of study places available each year at the Faculty of Veterinary Medicine points to a significant constraint on entry to the profession, which we believe is likely to act as a barrier to potential competition.
24. The Absence of recognition of non-EU/EEA trained veterinary surgeons wishing to practise in Ireland results in a barrier to entry to foreign practitioners and may constrain potential competition in the profession.

Restrictions on Conduct

25. The restrictions placed on advertising by veterinary surgeons are likely to be harmful to normal competitive behaviour and constrain the entry of new and more innovative veterinary practices into the market.

Restrictions on Demarcation

26. The limitation on the scope of practice of veterinary nurses constrains entry into the market of a new independent branch of the profession and therefore

limits potential competition in the profession.

Restrictions on Organisational Form

27. The prohibition on the formation of limited liability practices by veterinary surgeons is likely to constrain the growth of veterinary practices and the entry of new and possibly more efficient practices into the market.

Medical Practitioners

Entry Restrictions

28. The limitation on the number of study places available at the Irish schools of medicine acts as a constraint on graduate entry to the medical profession in Ireland and is therefore likely to limit potential competition in the marketplace.
29. The process of registration of doctors wishing to transfer from other countries to practise in Ireland constitutes a potential barrier to entry within the medical profession.
30. The process of determination of the number of consultant posts and the filling of such posts is such that the supply of consultants is not sufficiently

responsive to the demand for specialised healthcare and acts as barrier to competition within the profession.

31. The process of creation of GMS posts and filling of vacancies may act as a barrier to entry to the medical profession by restricting the creation and development of new and potentially more innovative GP practices, limiting the choice of GPs available to patients and constraining competition.

Restrictions on Conduct

32. The practice of referral of patients to specialist consultants in most cases is likely to be harmful to consumer interests through increasing the cost of access to patients of specialised healthcare services.
33. The restrictions placed on advertising by doctors restrict the availability of information to patients and could restrict competition between practitioners.

Restrictions on Organisational Form

34. The tradition within the medical profession precluding the practice by GPs of medicine within

limited liability structures is likely to constrain the growth of GP practices and the entry of new and possibly more efficient practices into the market.

Dentists

Entry Restrictions

35. The absence of registration status for suitably qualified denturists and dental technicians is likely to result in a barrier to entry to the profession and therefore adversely affect potential competition in the market.
36. The transfer arrangements in relation to dentists from non-EU countries wishing to practise in Ireland are also likely to act as a barrier to entry to the profession and constrain potential competition in the market.
37. The Limitation on the Number of Places available for Study at Irish Schools of Dentistry acts as a barrier to entry to the profession and is therefore likely to constrain competition in the market for dental services.

Restrictions on Conduct

38. The restrictions placed on advertising by dentists, by

constraining normal competitive behaviour, are likely to adversely affect competition in the dentists' profession.

Restrictions on Demarcation

39. The restriction that dental hygienists must work under the supervision of dentists is likely to constrain the entry of new practices operated by hygienists, reduce the overall supply of dental services and adversely affect competition and consumer interests.

Restrictions on Organisational Form

40. The prohibition on the practice of dentistry by corporate bodies is likely to constrain the growth of practices and the entry of new and possibly more efficient dental practices into the market.

Optometrists

Entry Restrictions

41. The limitation on number of study places available for the Optometry degree course acts as a barrier to entry to the profession and is likely to constrain potential competition in the marketplace in Ireland.

Conduct Restrictions

42. The controls on advertising by optometrists are likely to be harmful to normal competitive behaviour within the profession.

Restrictions on Demarcation

43. The restrictions concerning the prohibition on the sale of readymade spectacles or other visual aids by persons other than registered medical practitioners or opticians is unduly restrictive from a competition perspective.

Other Regulatory Issues

44. The composition of membership of the Opticians Board should include specific consumer representatives.

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