

High Level Interdepartmental Committee on the Recommendations Contained in the Consumer Strategy Group Report

- Final Report -

Background

The Consumer Strategy Group (CSG) was established in March 2004 to advise and make recommendations for the development of a national consumer policy. The Group was established against a background of concerns at the lack of a discernible national consumer strategy, the increasing international focus on empowerment of consumers, and perceptions on the part of certain groups of consumers and various media and economic commentators that Irish consumers were not getting a fair deal. The Group was chaired by Ms. Ann Fitzgerald, CEO of the Irish Association of Investment Managers.

The Group presented its final report to the Minister on 2nd March 2005. The Report contains 33 principal recommendations, implementation of which would require action on the part of a variety of different Government Departments and Agencies. The Report was formally launched on 18th May 2005.

The Government, in its response to the Report, decided on 3rd May 2005 to establish a High Level Inter-Departmental Committee to examine the recommendations in the CSG Report. The Government also decided that the Committee should report back to the Government within three months with a detailed implementation plan, including in regard to the role and functions of the new National Consumer Agency.

All Government Departments were invited to become members of the Inter-departmental Committee as was the Competition Authority, given its statutory mandate to provide advice to the Government. A number of Departments chose not to be represented on the Committee. A full list of membership together with the Terms of Reference for the work of the Committee are at Appendix A to this Report.

The Committee which was chaired by the Department of Enterprise, Trade and Employment commenced its work on 14th June 2005. The Committee met on 4 occasions and the Department of Enterprise, Trade and Employment also held a number of bilateral meetings with interested Departments.

The Committee's Report in relation to the implementation of the recommendations in the Consumer Strategy Group's Report is submitted hereunder for the Government's consideration.

The Department of Enterprise, Trade and Employment wishes to express its appreciation to all Departments, their agencies and regulators and their representatives who participated in the work of the Committee for their contribution and cooperation in compiling this Report.

(References in the Report to the “Group” refer to the Consumer Strategy Group. References to the “Committee” refer to the High Level Inter-departmental Committee)

Recommendation 1

Structural Change - Establish the National Consumer Agency which would be independent of the Department of Enterprise, Trade and Employment, have responsibility for a range of functions designed to research and respond to the needs of consumers and have the resources to carry out these functions effectively. These functions are advocacy, research, information, enforcement, education and awareness. The Agency would also develop a partnership approach with Government regulators, business, consumer organisations and unions in promoting and safeguarding the interests of consumers.

Responsibility: Department of Enterprise, Trade and Employment

Background

The CSG expressed the view that Ireland's current approach to consumer issues is marked by a heavy emphasis on consumer protection and an absence of planned, regular programmes of consumer information, of research into the needs of consumers and advocacy on their behalf.

The CSG recommended that a new independent National Consumer Agency, incorporating the existing Office of the Director of Consumer Affairs, was the best way to fill the resulting policy vacuum.

The Government at its meeting on 3rd May agreed in principle to the establishment of the National Consumer Agency (NCA). They also agreed to the appointment by the Minister for Enterprise, Trade and Employment of a Board of the new Agency to act in an interim capacity until such time as the Agency can be established on a statutory basis.

The Government also agreed that the Implementation Plan to be prepared by the High Level Inter-Departmental Committee should address in particular the role and functions of the NCA.

The High Level Inter-Departmental Committee examined this recommendation in the light of the detailed recommendations on the role and functions of the new Agency as set out in Chapter 15 of the CSG Report. The Committee looked in detail at the main characteristics of the new Agency, including structure and funding and at each of the proposed functions of the Agency.

View of Committee and Conclusions

The Committee's conclusions and recommendations are set out below. The Committee recommends that work begin immediately within the Department of Enterprise, Trade and Employment on drafting the necessary heads of legislation to establish the new Agency on a statutory footing.

NCA Structure and Funding

The NCA should have a Board of Directors appointed by the Minister for Enterprise, Trade and Employment with the consent of the Minister for Finance.

The Agency should have a Chief Executive Officer appointed by the Board.

The CEO would be subject to direction by the Board in regard to the operation of the Agency.

The Agency shall appoint a Statutory Enforcement Officer for the purposes of consumer legislation

Subject to direction from the Board on overall policy objectives, the Enforcement Officer should be statutorily independent of the Board in the operation of his/her enforcement functions.

The NCA would be independent of the Department of Enterprise, Trade and Employment and staff of the agency would not be staff of the Department.

Subject to agreement with representatives of staff in the ODCA and subject also to limits on overall staff numbers agreed with the Departments of Enterprise, Trade and Employment and Finance, the new Agency would have the right to recruit staff directly. The Committee also noted with regard to the terms and conditions of staff, that this will be a matter to be addressed by and agreed between the Minister for Enterprise, Trade and Employment and the Office of the Director of Consumer Affairs, and will be subject to the consent of the Minister of Finance.

The Agency should be encouraged to outsource resources and expertise in so far as is practicable.

Funding for the NCA should be in the form of a grant within the vote of the Department of Enterprise, Trade and Employment. The accounting officer would be the Secretary General of the Department of Enterprise, Trade and Employment. The CEO of the Agency would be an accountable person amenable to the Oireachtas in that regard.

Funding for 2006 and subsequent years will be discussed and agreed as part of the normal estimates process having regard to the role and functions of the NCA as agreed by Government on foot of this implementation plan.

The C and AG would be responsible for carrying out an annual audit of the Agency.

The Agency should be required to prepare Statements of Strategy and Annual Reports and be subject to the same operational procedures as other state and public sector bodies.

The issue of responsibility for credit intermediaries and pawn brokers is one that should be decided following a period of consultation with the Financial Regulator, the Department of Finance, the Department of Enterprise, Trade and Employment and relevant industry interests and should conclude prior to the establishment on a statutory basis of the NCA.

Advocacy Function

The Committee are of the view that this will be a key function of the NCA.

The enabling legislation should establish the role of the Agency in advising the Minister for Enterprise, Trade and Employment on consumer policy and consumer issues generally. This would allow for the Agency to be consulted in regard to new legislation and policy proposals as required.

The Committee believe that it would be impracticable that the Agency should have an automatic right to require the Competition Authority to engage in market studies.

The relationship between the Agency and the Authority should be set down in a formal cooperation agreement, with statutory underpinning as provided for under section 34 of the Competition Act 2002. This will enable full exchanges of relevant information between the two agencies, including on possible breaches of competition law. Such exchanges can include details of the action the Authority intends to take on foot of any information provided by the Agency.

The Agency should **not** have a statutory right to challenge decisions of sectoral regulators, as recommended by the CSG. Rather the legislation should allow for the adoption of bi and multi-lateral Memorandums of Understanding between the Agency and the various sectoral regulators which would allow for the input of a variety of views on a consultative basis before decisions which impact on consumers are made.

Subject to necessary confidentiality requirements, such Memorandums of Understanding should include provisions for the sharing of information so as to allow the Agency to comment on proposals in an informed and meaningful way.

Subject to the same confidentiality requirements, nothing in law should prevent the Agency engaging in public debate on the subject matter of such decisions in order to articulate a consumer view.

The Regulators to whom these latter provisions would apply would be specified by Order made by the Minister for Enterprise, Trade and Employment.

Other advocacy functions including intervention in public debate, promoting alternative dispute resolution procedures and mechanisms, relationships with other consumer groups and State agencies and with consumer authorities in other jurisdictions, including in particular Northern Ireland, would be day to day matters for the Agency but would be facilitated by legislation as appropriate.

Research

The Committee believes that Research will be the function of the NCA which will underpin all its other activities. Proper performance of its role in this regard will allow the Agency to form authoritative views on what issues are of primary concern to consumers and to determine an appropriate and informed consumer response.

Much of the activity in this area would be the day to day responsibility of the Agency but should be outsourced in so far as is practicable to minimise resource constraints.

The research function of the Agency should be facilitated by the enabling legislation in so far as is appropriate.

Information

The Committee supports the key recommendations of the CSG under this heading, namely the establishment of a National Referral Hotline and a web-based Information Portal. They should be facilitated by the enabling legislation in so far as it is necessary to do so.

The Committee notes that an information portal for consumers has been established as part of the OASIS web site. The Committee believes that this should become the responsibility of the NCA who would be responsible for its operation and content as well as for branding and promoting it in such a way as to ensure that it is brought to maximum public attention.

In implementing these recommendations, the Agency should consult and cooperate, as it considers appropriate, with other State and private sector bodies with a consumer or quasi-consumer function.

The Agency should examine the feasibility of outsourcing much of these functions.

Education and Awareness

The Committee supports the recommendations of the CSG under this heading and believes that educating consumers and increasing awareness of consumer issues is a vital pre-requisite to developing an effective consumer lobby in Ireland. It is also a critical factor in facilitating the empowerment of consumers and in encouraging the cultural shift that will allow consumers to exercise that power in an interactive way that will benefit themselves, business and the economy as a whole.

The Committee supports the notion that the education of consumers should not be the responsibility only of primary, secondary and third levels. Nonetheless, in so far as the involvement of those sectors is concerned, the Committee recognises that cooperation between the Agency and all levels of the education sector will be dependant on many factors, not least other pressures impacting on curriculum development.

The Committee also welcomes the proposal for cooperation between Fáilte Ireland, FÁS and business, professional and trade organisations and believes that satisfied customers are an important business asset.

The committee agrees that developing consumer awareness should be part of a life-long learning experience.

The Committee believes that developing cooperation with all relevant agencies should be the joint responsibility of the Agency and those other parties whose cooperation is sought. Consequently, while this function should be facilitated by enabling legislation as required, such legislation should not be prescriptive in nature.

Enforcement

The Agency will, once legislation is enacted, assume the statutory enforcement function currently vested in the Director of Consumer Affairs. That function should be performed by the Statutory Enforcement Officer of the Agency who shall be independent of the Board of the Agency in that regard.

The Committee foresees that enabling the Agency to impose on-the-spot fines may cause difficulties of a legal and constitutional nature and recommends that this proposal be subject to detailed analysis and discussion with the Attorney General's Office on foot of this Implementation Plan and in the context of preparing draft heads of legislation.

Equally, the power to apply to the courts for closure orders against businesses and rogue traders should be circumscribed to ensure that it can only be exercised in cases of the most serious and flagrant breaches of consumer law.

The Committee notes the recommendation to benchmark enforcement processes against best European practice and expressed concern that differences in legal systems applicable in other jurisdictions would make this impracticable. However, benchmarking of overall policy objectives (e.g. zero tolerance as against voluntary compliance, numbers of enforcement officers and so on) might be instructive and beneficial.

The Committee supports the proposals for the introduction of a professional qualification for enforcement officers in the new Agency as well as for a pilot project for locating enforcement officers in different regional locations. Implementation of these recommendations should be left to the day-to-day responsibility of the Agency but suggests that staff representatives of existing enforcement officers within the ODCA be fully consulted in regard to any such plans.

Recommendation 2

Groceries Order - Revoke the Groceries Order immediately

Responsibility: Department of Enterprise, Trade and Employment

Background

The Consumer Strategy Group devoted a whole Section (i.e. Part 13) of its Report to the Groceries Order and its effect on the retail price of groceries. The Report traces the history of the Order and the developments in the retail grocery trade during the lifetime of the Order.

In charting these developments, the Group has highlighted the fact that although the widespread perception of the Order is that it bans below cost selling, the Order as promulgated in 1987 actually prohibits retailers from selling goods at a price which is less than the net invoice price at which they bought them. The key difference between below cost and below invoice price relates to the practice of off-invoice discounts which the Group contends is widespread in the grocery trade and which can be very significant in terms of the real cost of a product. The Group contends that by preventing retailers from passing on discounts from suppliers the Order has the effect of placing upward pressure on grocery prices.

The Group also contends that aside from the “below invoice” provisions, legislative and marketplace developments since 1987 have made many of the other provisions of the Order inoperable. The Group whilst calling for the total abolition of the Order does reflect in its Report that arguments can be made for both its abolition and retention and the Group has listed both sets of arguments in detail in its Report

View expressed at High Level Inter-Departmental Committee

The Inter-departmental Committee in considering this recommendation noted the fact that the Attorney General had advised that revocation of, or any amendment to, the Groceries Order would require primary legislation.

The Committee further noted that the Minister for Enterprise, Trade and Employment had, with the approval of the Government, embarked upon a public consultation process in relation to the future of the Groceries Order which he expected to conclude at the end of July, 2005 following which the Minister would make proposals to the Government in regard to the future of the Order

Conclusion

In the light of the public consultation process already underway, the Committee did not examine this recommendation in detail.

Instead the Committee confined itself to noting that the Minister for Enterprise, Trade and Employment intended to make proposals to the Government in relation to the Order’s future following completion of the public consultation process.

The Committee expressed the view that it would be in the interests of both business and consumers that a decision on the future of the Order should be made as early as possible in order to remove any uncertainty in the public's mind on the issue.

Recommendation 3

Alcoholic and Non-Alcoholic Beverages - Abolish the limit on the numbers of pub licences awarded.

Responsibility: Department of Justice, Equality and Law Reform

Recommendation 4

Introduce new forms of licences (for example, for cafes) designed to cater for changing consumer tastes in the market place.

Responsibility: Department of Justice, Equality and Law Reform

Background

The Consumer Strategy Group has found in its Report that Ireland is the most expensive country in the EU for alcoholic and non-alcoholic beverages. Whilst the Group accepts that indirect taxes such as excise duty and VAT are major components of the final price of alcoholic drinks and are comparatively higher than elsewhere in the EU, other factors also give rise to the high prices in this country.

In the Group's view, principal among these other factors is the manner in which the licensed trade is regulated and the Code of law under which it operates which the Group contends is severely limiting competition in the trade to the detriment of consumers' interests. The Group also believes that the current licensing system has done little to encourage innovation in the pub trade which in turn places little pressure on the supply chain.

The Group is particularly concerned in relation to the level of concentration of suppliers in the draught beer market and especially in relation to the entry process under the current licensing system. The Group's view is that the effect of the licensing requirements is that competition in the licensing trade is severely restricted.

The Group has therefore recommended that the current limit on the number of pub licenses be abolished in the same manner as happened in the taxi industry.

View expressed at High Level Inter-Departmental Committee

The Department of Justice, Equality and Law Reform informed the Committee that the liquor licensing regime had been reviewed in some detail by the Commission on Liquor Licensing which was established by the Government in 2000. As a result, the Government's proposals in this area are set out in the General Scheme of the Intoxicating Liquor Bill 2005 which was recently published and on which the Minister for Justice, Equality and Law Reform sought the views of the public and interested parties.

The Department advised that the Government had decided, as a result of its consideration of the issues involved, to retain the requirement that no new license may be issued without another being extinguished.

The Department further stated that, following the public consultation process and consultation with the Taoiseach, the Minister for Justice, Equality and Law Reform had decided not to proceed with the café bar concept but instead to replace the idea with a radical reform of the licensing regime for restaurants.

The Department informed the Committee that it would be necessary to examine whether or not the retention of the extinguishment requirement and the decision not to proceed with the café bar concept constitute an obstacle to freedom of movement within the EU or if they infringe EC Treaty rights to establishment and freedom to provide services. The matter is under consideration in the Department and the advice of the Attorney General's Office has been sought.

The Department of Health and Children informed the Committee of their concerns at this recommendation and stated that international evidence is very strong that increasing availability of alcohol leads to an increase in alcohol related problems. This approach has been endorsed in both reports of the Strategic Task Force on Alcohol.

Alcohol is not an ordinary product and should not be subject to ordinary commercial practices. Alcohol is a drug which for some people is addictive and is a factor in a range of social and public health problems such as public order offences, suicides, drownings, traffic accidents, emergency attendances, cancers etc. The cost of alcohol related problems imposed on Irish society was estimated at €2.6 billion in 2003.

The Department of Health and Children strongly recommended that until a reduction in overall consumption occurs, no additional availability should be considered unless in very exceptional circumstances (substantial population areas with no alcohol outlets and a health impact assessment undertaken by the planning authority).

The Competition Authority contended that the current licensing regime imposed avoidable costs in excess of €1 billion on the economy, has led to higher alcoholic and non-alcoholic drink prices, reduced publicans incentives to innovate, deprived the Exchequer of Revenue and also had, if anything, aggravated the inappropriate use of alcohol. The Authority argued that there was no causal link between overall alcohol consumption and the number of pub licences. The Authority was of the view that by not removing the requirement to extinguish an existing pub licence before issuing a new licence, the proposed legislation represented a missed opportunity for moving towards a regulatory system that worked for society as a whole rather than for a small number of existing businesses. The Authority expressed the same view in relation to the withdrawal of the recent published proposals on café bars.

Conclusion

The Committee noted that this issue had been the subject of recent debate at political level and that decisions on how to proceed had already been made by the Minister and by the Government.

The Committee envisage that in the future, the National Consumer Agency can be an advocate for change in this area if they perceive such change to be in the best interests of consumers.

Recommendation 5

Ensure that planning is not used as a barrier to entry in respect of pub and other forms of licence.

Responsibility: Department of the Environment

Background

As stated above, the Consumer Strategy Group is of the view that competition in the licence trade should not be inhibited by those who would seek to use the planning system to create a barrier to entry in respect of pub and other forms of licence

View expressed at High Level Inter-Departmental Committee

The Department of Environment, Heritage and Local Government advised the Inter-departmental Committee that the Planning and Development Act, 2000 - 2004 does not have any provisions restricting the development of licensed premises.

However the Department stated that it was in discussions with the Department of Justice in relation to a proposed amendment to the Planning Act whereby local authorities would be required to include objectives for the regulation and control of the siting of licensed premises in their functional areas as part of their development plans.

In addition the Department stated that following discussions at cabinet, the Minister for the Environment, Heritage and Local Government amended the Planning and Development Regulations 2001 to the effect that future changes of use from a shop to an off-licence will require planning permission.

This proposal has been approved by way of resolution of both houses of the Oireachtas and became operative on 14 July when signed by the Minister for the Environment, Heritage and Local Government.

The Department of the Environment further advised that the Consultation Guidelines on the Local Authority Development Plans which it expected to issue shortly to Local Authorities would specifically advise planning authorities of the need to ensure that planning is not used as a barrier to entry, or to limit competition.

The Competition Authority stated that it was most important to ensure that the Intoxicating Liquor Bill, 2005 be drafted sufficiently tightly so that those with a commercial interest in restricting further pub development were prevented from doing so. The Authority advised that it had proffered this advice in the course of the recent public consultation on the Bill.

Conclusion

The Committee agreed that vested interests should not be allowed to use the planning process to create barriers to entry or to prevent competition in the marketplace. The

Committee acknowledged that the planning process has to be open and transparent, with a built in legal appeal system through An Bord Pleanála. Overall, this allows for a thorough examination of all issues in a planning application, including valid grounds for objections to permissions being granted. Effect on the position of competitors is not a valid planning ground to object to the grant of planning permission.

The Committee noted that the Department of the Environment, Heritage and Local Government intended to include specific provisions in the Local Authority Development Plans Consultation Guidelines, which it expected to issue shortly, reminding planning authorities of the need to ensure that planning is not used as a barrier to entry or to limit competition.

The Committee agreed that in drafting legislation in these areas, it would be essential to ensure that planning is not used to prevent competition in respect of pub and other forms of licence and noted that this matter is under discussion between the Departments of Environment and Justice. The Committee also noted the statutory role of The Competition Authority under competition law to advise Ministers about the impact on competition of legislative proposals.

Recommendation 6

Fruit and Vegetables - Increase the number of licences granted to traders

Responsibility: Department of Enterprise, Trade and Employment

Recommendation 7

Apply a consistent approach to casual trading regulations across all local authorities by means of statutory based guidelines. This may require an amendment to the Casual Trading Act of 1995.

Responsibility: Department of Enterprise, Trade and Employment

Background

The Consumer Strategy Group refers to the manner in which local authorities are carrying out their responsibilities of issuing casual trading licences under the Casual Trading Act, 1995. The Report highlights concerns at the lack of consistency amongst local authorities in exercising their licensing functions. In particular there is a large variation in the fees imposed by local authorities and there are significant differences in the level of facilities provided to traders.

The CSG concluded that this lack of consistency has stifled the potential of casual trading as a retail channel and thereby limited the choices available to consumers.

The Group has recommended the introduction of statutory guidelines that would prescribe the basis upon which local authorities would issue casual trading licences.

The Consumer Strategy Group has also found that some 75% of fruit and vegetable produce is sold in Ireland through the multiples and that unlike other European countries, fruit and vegetable markets, licences for which are issued under the Casual Trading Act, 1995, are not a significant channel for fresh produce sales in this country and this may be impacting on prices to the consumer. The Group has recommended an increase in the number of licenses issued to fruit and vegetable traders.

View expressed at High Level Inter-Departmental Committee

The Department of Enterprise, Trade and Employment advised the Inter-departmental Committee that a working group has already been established to draw up guidelines for local authorities in issuing casual trading licences. The work of this group is almost complete and draft guidelines are being submitted to local authorities for consultation. It is hoped that the guidelines would be finalised in the Autumn.

The Department also drew attention to changes in the licensing regime in 2004 which exempted sellers of certain fruit and vegetables from the need to have a licence during certain peak selling times in the year.

The Department stated that it expected that the final Guidelines would include a specific provision advising local authorities of the need to encourage the sale of fresh fruit and vegetable produce.

The Department advised that the introduction of statutory guidelines as recommended by the CSG would necessitate amending the 1995 Act. The Department indicated that it was amenable to amending the Act to allow for the issuing of statutory guidelines and suggested that any such amendment could be drafted in the context of the overall review of extant consumer protection legislation being undertaken by the Department (See Recommendation No. 20).

The Department stated it was of the view that the voluntary guidelines should be reviewed after 12 months in operation and that statutory guidelines in this area should only be imposed if the voluntary code was not working. The practice of issuing licences to fruit and vegetable traders would be reviewed in the same context and changes introduced if necessary.

Conclusion

The Inter-departmental Committee considers that this recommendation should be implemented by means of the Guidelines being drawn up by the Department of Enterprise, Trade and Employment which the Committee agrees should contain a specific provision advising local authorities of the need to encourage the sale of fresh fruit and vegetables.

The Committee agreed that the Guidelines should allow for the position to be reviewed after an appropriate period of time to ascertain what effect the Guidelines are having in relation to the issuing of casual trading licences and indeed whether the number of licences issued to fruit and vegetable traders has increased.

The Committee recommended an amendment to the Casual Trading Act, 1995 to facilitate the introduction of statutory based guidelines at some future point if required.

Recommendation 8

Pharmaceuticals - Change the current methodology for establishing manufacturers' prices of pharmaceuticals. Include a consumer impact assessment to ensure that all consumers are getting best value for money.

Responsibility: Department of Health and Children

Background

The Consumer Strategy Group in its Report found Ireland to be one of the more expensive countries in the Eurozone for medicinal/pharmaceutical products. The Report further found that recent price inflation in pharmaceutical products has been consistently higher in prescription drugs than in other medicines, although this is true for the Eurozone and not just Ireland. The Group took the opportunity in its Report to outline the mechanism used in Ireland for reimbursing the cost of pharmaceuticals under the various drug payment schemes.

Essentially the mechanism involves a negotiation process between the Department of Health and Children and the Irish Pharmaceutical Healthcare Association (IPHA) which involves agreeing a mechanism to determine the price of individual drugs for reimbursement purposes, currently by comparing the UK price with the price in a basket of 5 other countries and adopting whichever is the lower price. Under this process the price is determined for reimbursement purposes for a particular period during which the price cannot increase

The CSG has expressed concern in relation to the current methodology for establishing the manufacturers' prices for pharmaceuticals and in particular that there is no specific consumer representative involvement in the aforementioned negotiations. The Group has recommended that the next round of negotiations should include a consumer impact assessment to ensure that all consumers are getting best value for money.

View expressed at High Level Inter-Departmental Committee

The Department of Health response on this recommendation is quoted in full as follows.

"All aspects of the GMS and community drugs schemes are under review. In particular, the Department has signalled its intention to renegotiate the national IPHA/APMI (The Association of Pharmaceutical Manufacturers of Ireland) Agreement with the drug industry on drug pricing and supply. The Cabinet Committee on Health has approved recommendations from the Senior Officials' Group for renegotiation of the Agreement, in the context of various reports including Brennan, the Joint Finance-Health Working Group, the Health Service Procurement Improvement Project and the Pharmacy Review Group. The Pharmacy Review Group, in particular, included direct representation from the Consumers Association of Ireland and the Competition Authority. Issues to be examined include the provision of value for money and assessment of patient benefit through pharmacoeconomic assessment and the current methodology for pricing licensed prescription medicines."

The Department of Health also advised the Department of Enterprise, Trade and Employment in bilateral discussions that it intended through the negotiation process to reduce the price for prescription drugs in line with recent price trends across Europe by application of the pricing mechanism in monitoring and review of prices, including end-of-patent products. The Department also indicated that it would seek to expand the number of countries used in the above mentioned comparison basket so as to ensure that the reimbursement mechanism would reflect prices in a broader band of countries.

The Competition Authority appreciated the sensitivity of the forthcoming negotiations but stressed the importance of securing a better outcome for Irish consumers and taxpayers from the process. The Authority was strongly of the view that the basket of comparator countries used under previous agreements has resulted in higher prices in Ireland than if a broader set of countries was used. The Authority stated that it was most important that the forthcoming negotiations should result in prices in Ireland being lower in comparative terms rather than simply tracking recent general trends across Europe

Conclusion

The Committee noted the views of the Department of Health and Children and welcomed their commitment to securing value for money through an expansion of the list of reference countries included in the review process and by means of a thorough pharmaco-economic assessment of patient benefit.

The Committee welcomed the commitment of the Department of Health to secure lower prices. The Committee was of the view that at a minimum, every effort should be made to ensure that a significantly greater number of lower price European countries are included in the reference list under the Agreement.

The Department of Enterprise, Trade and Employment and the Competition Authority also expressed support for the introduction of greater transparency into the process and urged the Department of Health and Children to arrange for the publication of comparative data on medicine prices across EU member states at both manufacturer and retail level.

Recommendation 9

Review the GMS/DPS schemes to redress the current imbalance in cross-subsidy of pharmacy incomes by DPS consumer payment.

Responsibility: Department of Health and Children

Background

The Consumer Strategy Group in its Report detailed the manner in which pharmacists are reimbursed by the State in respect of GMS and DPS/other patients. The key difference in reimbursements in respect of the two groups relates to the 33% margin (50% mark up) on the ingredient cost of drugs which is reimbursed in respect of DPS patients alone.

The CSG has expressed concerns in its Report that the manner in which the GMS and the DPS schemes currently operate effectively involves a significant cross subsidy of pharmacy incomes by DPS consumer payment. The Group has recommended that this imbalance be redressed.

View expressed at High Level Inter-Departmental Committee

The Department of Health and Children advised that this recommendation did involve certain contractual and industrial relations issues. The Department of Health and Children stated that it intended to review and replace the current remuneration system under the drug payment schemes with a common remuneration system across all the main schemes. The Department advised that because of resource constraints it would not be possible to address this issue ahead of the forthcoming IPHA (Irish Pharmaceutical Healthcare Association) negotiations.

The Competition Authority stated that it did not consider that the 50% mark-up on the ingredient cost of drugs reimbursed to pharmacists under the Drugs Payments Scheme had any basis in contract. The Authority expressed the view that the mark-up was not justified and should be abolished immediately.

Conclusion

The Committee believe that this is an important issue for consumers and taxpayers and noted the stated intentions of the Department of Health and Children to introduce a common remuneration system across all the main drugs schemes.

Given the importance of this matter, the Committee recommended that immediate consideration be given to augmenting the resources in the Department of Health in order to accelerate this process.

The Committee was also of the view that given the Competition Authority's statutory responsibility under the Competition Acts to advise Ministers and Government there would be merit in the Authority providing advice to the Department of Health in

relation to any competition implications arising from its proposed review of this area. The Department and the Authority should agree the mechanism by which the Authority might perform this role. The Committee also agreed that a key objective of the review should be to obtain improved value for money for both the exchequer and the consumer in the operation of the schemes.

Recommendation 10

Strengthen and broaden the current optional incentive scheme for GPs to encourage generic prescribing.

Responsibility: Department of Health and Children

Background

The Consumer Strategy Group has stated in its Report that approximately 85 to 90% of all prescriptions issued in Ireland are for branded drugs. The Report contends that as branded drugs are more expensive than their generic equivalents, considerable savings could be made by greater substitution of branded drugs by generics.

By way of an example the CSG estimates that potential savings of approx.€5.5 m could be achieved if generic drugs were substituted for branded products in 11 of the top 30 drugs dispensed. The Report notes the existence of an optional incentive scheme to encourage doctors to prescribe generically but is concerned that take up of the scheme is low.

The CSG has recommended that the scheme be strengthened and broadened. The Group is also of the view that consumer awareness of generics needs to be promoted so that consumers can discuss this option with their GPs

View expressed at High Level Inter-Departmental Committee

The Department of Health and Children advised the Committee that the purpose of the current Indicative Drugs Targeted Scheme (IDTS), which was introduced in 1994, is to encourage rational prescribing and that it had no specific generic component. The Department stated that whilst it fully supported the increased use of generics where appropriate, it was of the view that this could best be addressed at the point of supply/sale rather than at the point of prescribing.

The Competition Authority contended that from the point of view of the consumer and the taxpayer, there needed to be a commitment at this time that specific improvements be made in the incentive scheme by a specific date. The Authority also urged that the circumstances under which pharmacists can supply generic equivalents to consumers be expanded.

Conclusion

The Committee concluded that promoting the greater use of generic substitutes, where appropriate, could best be achieved at the point of dispensing (point-of-sale) rather than at the point of prescribing. The Committee noted the commitment of the Department of Health and Children under recommendation 12 to address the issue of generic substitution by pharmacists. The Committee urged that in considering this issue regard should be had to the reference price systems operated in other EU Member States (which essentially provide for reimbursement at the lower price level within a

therapeutic category). The Committee also agreed that in promoting the greater use of generics, regard be had for the need for total transparency and the importance of maintaining consumer confidence in the case of certified generic substitutes.

Recommendation 11

Display prices for branded and generic drugs in pharmacies at point of purchase.

Responsibility: Department of Health and Children, Department of Enterprise, Trade and Employment

Background

The Consumer Strategy Group's Report highlights the significant price differential between the cost of branded drugs as against their generic equivalents. The Group has recommended that given this price gap the price of both branded and generic drugs should be displayed in pharmacies so as to allow consumers to make ready choices.

View expressed at High Level Inter-Departmental Committee

The Department of Health and Children advised the Inter-departmental Committee that it intended to make provision in forthcoming legislation to improve the price transparency of prescribed drugs. The timing of this legislation was dependant on the initial enactment of priority legislation to regulate the pharmacy sector.

The Competition Authority considered that increased price transparency at the point of sale could not await the enactment of primary legislation at some future unspecified date. The Authority suggested that IT could offer some solutions in this area for example through pilot programmes involving the use of PC databases or touchscreen technologies in pharmacy outlets

The Committee noted that price display was also a responsibility of the Department of Enterprise, Trade and Employment within whose remit was the promulgation of price display orders for a number of sectors (such as motor fuel, alcohol, restaurants, and hairdressing salons).

The Committee noted that obliging pharmacists to physically display the price of all branded and generic prescription drugs would be logistically difficult.

Conclusion

The Committee agrees that the achievement of price transparency in the pharmaceutical sector is critical and concluded that the Department of Health should be urged to find ways of accelerating the implementation of this recommendation. In this regard, the Committee agreed that the Department of Health and Children should give urgent consideration to possible IT solutions of the type mentioned above to the issue of price transparency

At a minimum, the legislation proposed by the Department of Health should include specific provisions to improve the price transparency of pharmaceutical products by ensuring, as recommended by the Pharmacy Review Group and approved by the Cabinet Committee on Health, that consumers are informed of prices in advance of the

filing of a prescription, and by the inclusion of prices on all receipts and refund documents, including in the case of GMS dispensing.

The Committee also considers that the GMS Payments Board database of medicine prices should be opened to public access.

Recommendation 12

Allow pharmacists to provide generic substitution for branded drugs.

Responsibility: Department of Health and Children

Background

The Consumer Strategy Group notes in its Report that unlike some other EU countries, pharmacists in Ireland are not allowed to substitute a prescribed branded drug with a cheaper generic equivalent. The Group recommends amending the legislation to allow for generic substitution by pharmacists.

View expressed at High Level Inter-Departmental Committee

The Department of Health and Children advised that it intended to address the issue of generic supply in the context of the forthcoming negotiations with the IPHA/APMI.

The Department of Enterprise, Trade and Employment whilst supporting the concept of generic substitution urged that in allowing for greater substitution of branded drugs by generics the impact on pharmaceutical manufacturers be carefully monitored to ensure that their research and development capabilities are not unduly affected. The Department of Health and Children noted that, in light of the current low level of research and development investment in Ireland compared to the EU and the very small size of the market relative to Irish manufacturing output, there are other issues more significant in terms of encouraging Research and Development investment.

Conclusion

The Committee fully supported the concept of generic substitution by pharmacists.

The Committee noted that the Department of Health intended to address this issue in its Autumn negotiations with the IPHA and the APMI.

Recommendation 13

Passenger Transport - Separate the regulatory and ownership functions of the Department of Transport.

Responsibility: Department of Transport

Background

In its Report, the Consumer Strategy Group argues that the Department of Transport has a conflict of interest in that it acts as both regulator and owner of the majority of bus services and all rail services. The Group has recommended that these functions should be separated.

View expressed at High Level Inter-Departmental Committee

The Department of Transport advised the Inter-departmental Committee that it fully accepted this recommendation.

The Department advised that the present position derives from the 1932 Transport Act, which it acknowledges may not be appropriate for current commercial enterprises.

The Department advised the Committee that the Minister for Transport had announced his intention to establish an independent National Public Transport Commission (NPTC). However, following the launch of Transport 21, the Minister for Transport established a team led by Professor Margaret O'Mahony to finalise the remit, structures and human resource requirements of a proposed transport authority for the Greater Dublin Area. The Minister for Transport will review how best to proceed with public transport reform and the proposal for a Public Transport Commission after the Team has reported and the Government has made decisions on the proposed transport authority for the Greater Dublin Area.

Conclusion

The Committee notes the Minister's intention to review how best to proceed with the proposal for a Public Transport Commission after the Government has made decisions on the proposed transport authority for the Greater Dublin Area.

Recommendation 14

Broaden the remit of the Aviation Regulator to include taxis, buses and other forms of passenger transport.

Responsibility: Department of Transport

Background

In its analysis of the transport area, the CSG expressed the view that the plethora of regulators in the passenger transport sector (for example there are separate regulators for the aviation industry, bus and rail services and the taxi sector) hinders consumer focus and service consistency. The CSG has recommended combining all the regulatory activities which impact on transport into a single body

View expressed at High Level Inter-Departmental Committee

The Department of Transport advised the Inter-departmental Committee that it was currently reviewing the question of consolidation of regulation in respect of all forms of public transport.

The Minister intends to review how best to proceed with the proposal for a Public Transport Commission after the Government has made decisions on the proposed transport authority for the Greater Dublin Area.

With regard to the question of broadening the remit of the Aviation Regulator to include the above-mentioned forms of public transport, the Department of Transport advised the Committee that a review of the institutional arrangements for safety and economic regulation of the aviation sector was currently underway with a view to ensuring that Ireland is consistent with EU policy on aviation regulation. The Department of Transport felt that it would not be appropriate to broaden the remit of the Commission for Aviation Regulation at this time.

In relation to passenger sea transport, the Department of Communications, Marine and Natural Resources stated that the possibility of appointing a Ports Regulator, along the lines of the Aviation Regulator, had been considered as part of a High Level Review by consultants engaged by the Department. The outcome of the review was that the case for a Ports Regulator had not been established. As an alternative, the Department advised that it proposed that disputes between port companies and port stakeholders, which would include passenger ferry operators, would be resolved through arbitration.

Conclusion

The Committee noted the review to be carried out on how best to proceed with the proposal for a Public Transport Commission after the Government has made decisions on the proposed transport authority for the Greater Dublin Area.

The Committee agreed that because of the current review of institutional arrangements for safety and economic regulation of the aviation sector, it would not be appropriate at this stage to broaden the remit of the Aviation Regulator in the manner recommended by the CSG.

The Committee expressed satisfaction that the implementation of reform as proposed would rationalise regulation in the manner suggested by the CSG- even though the outcome would be two regulators rather than one. The Committee accepts there are good policy reasons for this approach.

In relation to passenger sea transport, the Committee noted the Department of Communications, Marine and Natural Resources' intention that disputes between port companies and port stakeholders would be resolved through arbitration.

Recommendation 15

Undertake an independent pilot study to evaluate the introduction of a centralised information system, which would also include integrated route planning.

Responsibility: Department of Transport

Background

The CSG in its Report has found that there is a lack of integration in passenger transport services. The Group is of the view that better integration of services could help to enhance the transport choices available to consumers which is particularly important given the small and spatially dispersed population in Ireland.

Research conducted by the Group indicates that while there is some integration in passenger transport, both within and between modes, the overall level of service integration needs to be improved further and the different modes have traditionally been planned largely in isolation from each other. The Group has, therefore, called for a much more integrated approach to transport planning in the future by further integration of infrastructure, timetables, fares, ticketing and information.

View expressed at High Level Inter-Departmental Committee

The Department of Transport advised the Inter-departmental Committee that it was supportive of this recommendation. Effective implementation will require the necessary statutory powers to be granted to an appropriate authority most suited to providing and managing a centralised passenger transport information system.

The Department advised that it intended to examine how to give effect to the details of this recommendation in the context of the proposals for a transport authority for the greater Dublin area and its review of the proposal for a National Public Transport Commission.

The Committee was advised by representatives of a number of the Regulatory Bodies in this area that consideration could be given to requiring operators, as a condition of their licence, to provide information to a regulator in relation to timetabling and that this information would be included as part of a centralised information/service provision.

It was also suggested to the Committee that licensed operators could be levied to fund the centralised information system. The Committee was of the view that issues of funding could best be addressed in the context of legislation to give effect to decisions emerging from the considerations of the Department as outlined above.

Conclusion

The Committee noted that the Department of Transport will consider how to give effect to this recommendation in the context of any legislation that may be required to give effect to decisions of the Government on the proposed transport authority for the

Greater Dublin Area and the Department's review of the proposal for a national Public Transport Commission.

The Committee recommends that this legislation include requirements for transport operators to share timetabling, route and all other relevant information and that it provide also for a levy on operators as a means of funding the central information service.

Recommendation 16

Planning - Oblige local authorities to demonstrate how needs of consumers have been explicitly taken into account at the forward planning level stage and in dealing with planning applications in relation to retail and other service provisions.

Responsibility: Department of Environment, Heritage and Local Government

Background

The Consumer Strategy Group in its Report has highlighted the impact of planning and the planning system on consumers in terms of sustainable development, the deregulation of pub licences, developments in transport and the retail planning guidelines as well as individual planning developments.

The Group acknowledges that the planning process is intended to be accessible to all members of the public and that it does incorporate a unique redress mechanism for citizens through an Bord Pleanála.

Nevertheless, the Group was of the view that the reality is that consumer interests are not considered in the planning process to the same extent as other relevant interests. The Group attributed this to the fact that Irish consumers, unlike most vested interests, are not organised in terms of lobbying or articulating their concerns.

In these circumstances, the Group was of the view that it was incumbent upon public bodies such as planning authorities to ensure that the views of consumers are sought out and fully taken into account in the planning process.

The Group, therefore, has recommended that local authorities be placed under an obligation to demonstrate how the needs of consumers were taken into account in the planning process.

View expressed at High Level Inter-Departmental Committee

The Department of Environment, Heritage and Local Government advised the Inter-departmental Committee that the Planning and Development Act, 2000 specifically provides for extensive public consultation by local authorities with all sectors of the community throughout the different stages of preparing development plans. The Department expects to issue shortly draft guidelines to local authorities for consultation on the preparation, implementation, monitoring and review of development plans.

The Department indicated that it intended to take the opportunity in the guidelines to specifically remind local authorities of their obligations to take the needs of consumers into account in planning for retail development.

The Department also advised that the development plan guidelines would strongly recommend that planning authorities produce an “Issues Paper” to assist the public in engaging in the consultation process for the preparation of development plans. It is

envisaged that the Issues Papers would concentrate on areas such as housing demands, employment trends, consumer needs and so on.

The Department expressed concerns that any requirement obliging local authorities to undertake market research in order to fully ascertain consumer views could impact negatively in terms of further delaying the planning process.

On the question of individual planning applications, the Department stated that the planning process was open and transparent and that planning authorities and an Bord Pleanála were required under the process to have regard to all written submissions/observations made in relation to any proposed development. The Department stated that for reasons of equity there could be no question of affording preferential treatment to any one party or interest in the consideration of individual planning applications.

Conclusion

The Committee in accepting the importance of greater consumer input into the planning process was anxious to ensure that any measures in this area should not have the effect of causing further delays in the planning system.

The Committee concluded that this recommendation should be implemented through the proposed Guidelines which the Department of Environment, Heritage and Local Government intends to issue to local authorities in relation to the preparation, implementation, monitoring and review of development plans.

The Committee noted that the Guidelines would include specific provisions in relation to the requirement for local authorities to ensure that the needs of consumers are fully considered in the planning process.

While the Committee has not had the opportunity to itself examine the draft guidelines, it does recommend that they be prepared in such a way as to underline the need for a strong consumer focus on planning issues, and to ensure that all possible assistance is given to individuals and groups wishing to engage with the consultation process.

In relation to individual planning applications, the Committee noted that existing procedures entitled parties, including consumer interests, to make submissions in relation to proposed developments and that planning authorities were required by law to take these views into account in the course of deciding on applications.

Whilst the Committee did not necessarily envisage bodies such as the National Consumer Agency routinely becoming involved in individual planning applications, the Committee noted that it would be open to the NCA to input into the process in relation to any proposed developments that could have a particular consumer impact.

Recommendation 17

Interpret the Retail Planning Guidelines in a manner that promotes competition and which is consistent across all local authorities.

Responsibility: Department of Environment, Heritage and Local Government

Background

The Retail Planning Guidelines issued by the Department of Environment, Heritage and Local Government to local authorities essentially relate to issues such as the location of sites and the amount of retail floor space to be provided in retail developments. Whilst noting in its Report that the Guidelines are not mandatory, the Consumer Strategy Group has expressed concerns that local authorities are implementing the Guidelines in an overly prescriptive manner.

The Group is of the view that this prescriptive interpretation may result in local authorities underestimating future retail space requirements and possibly responding negatively to planning applications that they view as exceeding the quantitative guidelines, thereby effectively inhibiting competition and restricting consumer choice.

View expressed at High Level Inter-Departmental Committee

The Department of Environment, Heritage and Local Government advised the Inter-departmental Committee that one of the key objectives of the Retail Planning Guidelines, which were only reviewed earlier this year, is to facilitate a competitive retail environment. The Department added that the reviewed Guidelines explicitly recognise that it is not the purpose of the planning system to inhibit competition, preserve existing commercial interests or prevent innovation and that the Guidelines specifically advise local authorities to avoid taking any actions which would adversely affect competition in the retail market.

Conclusion

The Committee acknowledged that the Retail Planning Guidelines, which had been reviewed earlier this year, contain specific advice to local authorities that in interpreting the Guidelines they should avoid taking any action which could adversely affect competition in the retail market and that their actions should be focussed on the need to facilitate a competitive retail environment for the future.

The Committee was of the view that future reviews of the Retail Planning Guidelines should include analysis as to the effectiveness of the Guidelines in promoting competition.

Recommendation 18

Utilities - Provide a strong consumer voice in the regulated sector to complement the regulators, especially in energy and telecommunications, in order to ensure full consideration of consumer issues in the regulatory process.

Responsibility: Department of Communications, Marine and Natural Resources,
Department of Enterprise, Trade and Employment

Background

The Consumer Strategy Group's Report highlights the importance of utilities to the everyday lives of consumers and in particular the impact of the cost of utilities bills on consumers' household budgets.

The Report analyses recent developments in the utility sector particularly in terms of the delegation of pricing and service delivery decisions to bespoke regulators in most of the utility services. Notwithstanding the independence of the regulators and the fact some regulatory processes in this area benefit from the advice of dedicated user or consumer groups, the CSG has expressed concerns at the level of consumer input into the current regulatory process particularly in the energy and telecommunications sectors.

The Group has recommended that there should be a strong consumer voice in the regulated sector so as to ensure full consideration of consumer issues in the regulatory process.

View expressed at High Level Inter-Departmental Committee

A number of Government Departments represented on the Inter-departmental Committee as well as Regulatory Bodies expressed concern that the CSG Report could be read to mean that a body such as the National Consumer Agency should be given statutory right to challenge the decisions of sectoral regulators.

These Departments were of the view that allowing the decisions of independent regulators to be challenged in this manner would totally undermine the integrity of the regulatory process.

Notwithstanding these concerns, there was a consensus among the Committee that the regulatory process would benefit from a greater consumer input. The Committee was of the view that this could be best achieved by providing mechanisms allowing the NCA to input into the process on a consultative basis before decisions are made rather than allowing the NCA a statutory right to challenge decisions.

The Committee felt that bilateral and multi-lateral formal Memoranda of Understanding/Co-operation Agreements between the NCA and the various sectoral regulators offered the best mechanisms for achieving greater consumer input into the regulatory process.

Conclusion

The Committee concluded that it would be neither appropriate nor practicable to grant the NCA a statutory right to challenge the decisions of sectoral regulators.

The Committee nonetheless agreed that the regulatory process would benefit from a greater consumer input. The Committee concluded that this should be achieved through the NCA entering into formal Co-operation Agreements/Memoranda of Understanding, as appropriate, with the various sectoral regulators in furtherance of existing requirements for consultation and co-operation with the Director of Consumer Affairs, and that such Agreements should allow for a consumer input as part of a consultative process.

The Committee, whilst noting that the details of individual agreements should be worked out between the NCA and the relevant regulator, it was of the view that such agreements should be subject to confidentiality agreements and based on certain universal principles, in particular information sharing, reciprocal consultation and cooperation in regard to consumer awareness campaigns.

The Committee agreed that the power for the NCA to enter into such agreements should be provided for in law and that power be granted to the Minister to extend the application of the provision to new regulators by means of Ministerial Order.

Recommendation 19

Current Government Policy and Processes - Increase resources of the Competition and Consumer Policy section in the Department of Enterprise, Trade and Employment, particularly to enhance legislative capability.

Responsibility: Department of Enterprise, Trade and Employment

Background

The CSG has argued in its Report that given the crucial role played by the Department of Enterprise, Trade and Employment in shaping national consumer policy that the current resources of the Competition and Consumer Policy Section of the Department, should be increased to meet the challenges arising from implementing the CSG Report and also updating the current code of consumer protection law.

View expressed at High Level Inter-Departmental Committee

The Department of Enterprise, Trade and Employment advised the Inter-departmental Committee that it had increased the staff resources of the Consumer Policy Division by 30% and that the Department had engaged outside legal expertise to assist in the review of the extant code of consumer law, which it advised is already underway.

Conclusion

The Committee noted that the Department of Enterprise, Trade and Employment had increased the resources of its Competition and Consumer Policy Section by 30%. Whilst this was considered adequate to undertake the proposed policy and legislative reform in this area, the Committee agreed that staffing resources in the Section be kept under review as the reform implementation programme developed.

Recommendation 20

Accelerate the legislative review currently being undertaken by Department of Enterprise, Trade and Employment and include any legislative changes necessitated by the Group's recommendations.

Responsibility: Department of Enterprise, Trade and Employment

Background

The Consumer Strategy Group in its Report contends that the current code of consumer protection law, some of which is over 100 years old, is failing to meet the needs of the modern consumer. The Group has argued that the review of the existing code of consumer law currently being carried out by the Department of Enterprise, Trade and Employment should be accelerated so as to ensure that a clearer, more effective and more easily understood framework of law is put in place.

View expressed at High Level Inter-Departmental Committee

The Department of Enterprise, Trade and Employment advised the Inter-departmental Committee that it fully accepted the need to modernise the current code of consumer protection law. The Department advised that it had increased the resources of its Competition and Consumer Policy Section and had engaged outside legal expertise to accelerate this work.

The Department advised that legislative measures arising from the implementation of recommendations in the CSG Report would be included in whatever proposals emanate from the codification review referred to above. The Department indicated that it expected to finalise drafts heads of a bill in the course of 2006.

Conclusion

The Committee noted that the Department of Enterprise, Trade and Employment had dedicated additional resources to updating the existing code of consumer protection law. The Committee further noted that the Department expected to have draft heads of a bill in this area finalised in 2006.

Recommendation 21

Incorporate consumer considerations in regulatory impact analysis (RIA) procedures; consumer-proof all relevant Government decisions.

Responsibility: Department of An Taoiseach, All Government Department

Background

The Consumer Strategy Group attributes much of the current deficits in consumer policy to the lack of a strong consumer voice. It believes that consumer considerations are not specifically taken into account in the legislative and Government decision making processes.

The Group has recommended that the Government's better regulation agenda should be developed in a manner that ensures that proper consideration is given to consumer concerns and that consumer considerations should be formally incorporated into the Regulatory Impact Analysis procedures.

View expressed at High Level Inter-Departmental Committee

The Department of the Taoiseach advised the Inter-departmental Committee that the Government decided in June 2005 to introduce Regulatory Impact Analysis (RIA) in all Government Departments. RIA will apply to all proposals for primary legislation involving changes to the Regulatory framework, significant Statutory Instruments and draft EU Directives and Regulations.

It was pointed out that the Report on the Introduction of Regulatory Impact Analysis produced earlier this year specifically states that consumer groups must be consulted as part of the process.

The Department of the Taoiseach stated that the significance of consumer impact will be highlighted in RIA Guidelines which it is currently drawing up and which it will issue to all Government Departments in the Autumn.

Conclusion

The Committee noted that the Department of the Taoiseach intended to issue Guidelines to all Government Departments in relation to the operation of RIA. The Committee further noted that the Guidelines would highlight the importance of including consumer considerations as part of the RIA.

In addition to the Department of Enterprise, Trade and Employment's lead role in terms of consumer proofing proposals for Government decision, the Committee noted that where an RIA is required, sponsoring Departments will also have responsibility for ensuring that consumer impacts are adequately addressed in the RIA and that this will accompany the Memorandum for Government. The Committee was of the view that

such considerations would help to ensure that consumer considerations would be incorporated into the Government decision making process

The Committee further recommended that the National Consumer Agency be given a specific statutory remit of advising the Minister for Enterprise, Trade and Employment in regard to consumer policy and consumer issues generally. This would facilitate their involvement in assessing the consumer impact of new policy and legislative proposals.

Recommendation 22

Organisations in Ireland with a Consumer Remit - Review in three years' time, the effectiveness of the Financial Regulator in carrying out its consumer protection role.

Responsibility: Department of Finance

Background

The Consumer Strategy Group in its Report notes that the Financial Regulator was established in 2003 with two main statutory responsibilities namely the prudential regulation of financial institutions and the protection of consumers of financial services. The Group refers in its Report to the potential for conflict for the Regulatory Authority in carrying out these two distinct roles. The Group recommends that the effectiveness of the Financial Regulator in carrying out its consumer protection role be reviewed in 3 years time.

View expressed at High Level Inter-Departmental Committee

The Inter-departmental Committee agreed that in carrying out such a review all stakeholders of the Financial Regulator, particularly those representing consumers, should be consulted.

Conclusion

The Group concluded that the Department of Finance should commence a review of the consumer protection role of the Financial Regulator in three years time (a period which corresponds to the first five years of its operation) and that all relevant stakeholders should be consulted as part of that review.

Recommendation 23

Ensure that the Money, Advice and Budgeting Services is represented on the Consultative Consumer Panel of the Irish Financial Services Regulatory Authority.

Responsibility: Department of Finance

Background

The Consumer Strategy Group in its Report refers to the Consultative Panels established by the Financial Regulator. In particular the Group is concerned that, given its work with over-indebted and vulnerable consumers, the Money Advice and Budgeting Service is not represented on the Consumer Consultative of the Financial Regulator.

View expressed at High Level Inter-Departmental Committee

The Department of Finance advised the Inter-departmental Committee that under the legislation providing for establishment of consultative panels to Financial Regulator, it is, in the case of the Consumer Consultative Panel, the Minister for Finance who appoints the members of the panel. In making such appointments, the Act obliges the Minister to consult with the Minister for Enterprise, Trade and Employment and such other bodies that in the Minister's opinion represent the interests of consumers.

The Department of Finance advised the Committee that this procedure had been faithfully followed in appointing the members of the current Consumer Consultative Panel. The Department further advised that it did not favour providing statutory rights of representation for particular bodies as in its view this would not necessarily result in a more representative or effective Panel.

Conclusion

The Committee noted that the Minister for Finance in appointing members of Financial Regulator's Consumer Consultative Panel is under a statutory obligation to consult not only with the Minister for Enterprise, Trade and Employment but also with other consumer organisations. The Committee noted that this procedure had been carried out in appointing the members of the current panel.

The Committee agreed that providing a statutory right of representation to any one body would not be appropriate. However, they noted the openness of the Department of Finance to appoint the MABS to the Panel as and when an opportunity arose.

Recommendation 24

Consumer Legislation and Enforcement - Commission research into small claims enforcement procedures currently available to consumers with a view to establishing whether a more streamlined and effective process can be put in place.

Responsibility: Department of Enterprise, Trade and Employment

Recommendation 25

Increase the limit of the maximum award to €3,000 in the small claims procedure in the District Court.

Responsibility: Department of Justice, Equality and Law Reform

Recommendation 26

Review the small claims award limit every two years and adjust by means of Ministerial Order, if appropriate.

Responsibility: Department of Justice, Equality and Law Reform

Background

Arising out of a successful pilot procedure in the District Court in 1991, the Small Claims Court was established on a nationwide basis in 1993. Aimed at assisting the consumer in seeking redress through the courts system in small civil cases, the main advantage of the procedure from the consumer perspective is that their only Liability in terms of costs is the €9 fee.

The Consumer Strategy Group in its Report has urged that the limit of the maximum award in the Small Claims Procedure in the District Court be increased from its current level of €1,269.74 to €3,000. The Group recognised the possibility that increasing the maximum award too much might negatively erode the consumer ethos of the Procedure by encouraging greater use of legal representatives by defending retailers etc. Nonetheless, it was firmly of the view that the current level of the maximum award had not kept pace with inflation and was effectively excluding a lot of ordinary consumers. By way of comparison, the Group has pointed to the fact that the award limit for similar procedures in Northern Ireland is £2,000 (Stg.), the U.K. £5,000 (Stg.) and the average in the U.S. is \$5,000.

Furthermore, the Group expressed the view that the maximum award limit available under the Small Claims Procedure should be reviewed every 2 years and where appropriate adjusted by means of Ministerial Order.

The Group also found that consumers who obtain decrees against traders who fail to pay up in response to judgments against them often find it difficult to collect the monies awarded to them. If the trader does not pay, the consumer can usually apply to the District Court Registrar in order to have the order of the District Court forwarded to the Sheriff for execution.

Disputes can arise between the trader and the Sheriff as to the precise ownership of goods and frequently the Sheriff will make a return to the Small Claims Registrar in which he/she declares that he/she was unable to take goods in execution of the District Court judgment. This can effectively make it impossible for the claimant to exact appropriate compensation from the recalcitrant traders involved.

View of High Level Inter-Departmental Committee

The Department of Justice, Equality and Law Reform advised the Inter-departmental Committee that it had consulted the Courts Service and that they were both broadly in favour of increasing the maximum claim which could be handled by the Small Claims procedure. Equally they favoured a review of that amount on a periodic basis. The Department further noted that the Legal Costs Working Group established by the Minister is also expected to consider the jurisdictional limit of the Small Claims Court and the range of cases it deals with and hopes to submit its report to the Minister for Justice, Equality and Law Reform later this year.

In order to progress this issue, the Department will seek proposals from the Courts Service in this area, to include an evaluation of the logistical issues arising. In considering the size of the initial and any future increases, regard would have to be had for the general jurisdictional limits of the District Court (currently €6,350), which the Small Claims procedure could not of course exceed, as well as any legal issues arising as a result of increasing the amount of a matter dealt with by a Summary process.

On foot of the Courts Service submission and any suggestion made by the Legal Costs Working Group, the Department will seek the Minister's approval to, inter alia, increase the monetary limit before the end of the year. In order to give effect to an increase in the limit, the District Court Rules Committee will be requested to amend the existing Court Rules.

Insofar as enforcement procedures are concerned, the Courts Service and the Department have stated that a review of the procedures would be timely from their perspective. This issue of enforcement is a complex one and best practice in other jurisdictions should be examined, while taking into account the underlying differences between legal systems.

Finally, the Committee were advised that the European Commission has brought forward proposals for a Regulation to provide for a European Small Claims Procedure. Negotiations on the proposal are at a very preliminary stage with many Member States, including Ireland, having expressed reservations about some elements of the proposal as presented.

As currently framed, the proposed procedure, in addition to applying to cross-border cases, could apply to cases which are purely domestic in nature and would also apply to certain matters, such as the recovery of small business debts, which are not dealt with under the Irish Small Claims Procedures. Inclusion of such matters would change the focus of the existing Irish procedures and would clearly have an impact on their scope. Any domestic development in the area of Small Claims will certainly have to have regard to the progress of the draft Regulation.

Conclusion

The Committee concluded that the current limit of the maximum award under the Small Claims Procedure should be increased and that the amount should be reviewed regularly. The Committee favoured the limit being increased to €3,000 but noted that the knock on effect of increasing the limit to this level on the resources of the Courts would have to be considered. The Committee noted that the Department of Justice, Equality and Law Reform intended to bring forward proposals on this matter by the end of the year.

The Committee further agreed that a review of the procedures should be undertaken on a joint basis by the Department of Justice, in conjunction with the Courts Service and the Department of Enterprise, Trade and Employment. The National Consumer Agency might also wish to make an input. This review should commence in early 2006.

Finally the Committee noted that the proposed European Small Claims Procedure Regulation, when agreed, was likely to have an impact in this area and agreed that developments in negotiations would need to be monitored.

Recommendation 27

Business and the Consumer: Codes of Practice - Promote the use of codes of practice by all businesses and encourage self-regulation schemes.

Responsibility: Department of Enterprise, Trade and Employment

Background

The Consumer Strategy Group in describing Codes of practice in its Report notes that they are primarily intended to govern the behaviour of the businesses that subscribe to them and that their effectiveness is determined by a number of factors, including the awareness of consumers, the monitoring of their implementation and the willingness of the sectoral organisation to ensure that its members observe the code in question both in letter and spirit.

The Group is of the view that in general terms, Codes of Practice can play an important part in protecting the rights of consumers and from the consumer point of view the most useful aspect of these codes is the degree to which they provide for redress mechanisms.

When the consumer has a complaint in respect of a particular product or service, obtaining redress can be a simple matter, less costly both for the consumer and the business, if the steps to be taken are well defined and transparent.

Redress mechanisms may be provided for by the sectoral organisation or trade association concerned and may include alternative dispute resolution systems such as arbitration or mediation. Such mechanisms would be a critical part of any code of practice.

The Group is concerned, however, that within the private sector, Codes of Practice are not currently widely operated.

View of High level Inter-Departmental Committee

The Committee agrees that the provision of effective redress mechanisms is an important tool of consumer policy and can be a valuable business asset in building consumer confidence in a company's product or service.

The Committee notes that under the Consumer Information Act, 1978 it is a function of the Director of Consumer Affairs to "encourage and promote the establishment and adoption of codes of standards" in regard to the advertising and description of, and the provision of information on, "goods, services, accommodation and facilities." The Committee agrees that this definition would need to be expanded in any amending legislation establishing the National Consumer Agency

Conclusion

The Committee agreed that the term Customer Service Charter should be adopted to more accurately reflect the intention behind the recommendation.

The implementation of Customer Service Charters in the private sector which provide transparent and effective means of redress should be actively encouraged by Government, the Department of Enterprise, Trade and Employment and by the National Consumer Agency, including as appropriate through the Social Partnership process and informal dialogue with business.

The Committee also agreed that it should be a statutory role of the National Consumer Agency to promote the use of Customer Service Charters by business, trade and professional organisations.

Recommendation 28

Introduce standardised statutory codes of practice across all public sector bodies.

Responsibility: Department of the Taoiseach

Background

The Consumer Strategy Group's Report highlights the importance of businesses and Government developing Codes of Practice in terms of how they deal with customers and clients. The Group is of the view that Codes of Practice or Customer Charters not only improve the welfare of consumers but can also be a valuable tool for businesses and Government in terms of feedback on their performance.

The Group in noting that all Government Departments and Offices are obliged to have Customer Charters has expressed concern in relation to the variations in the detail of existing Charters and also the different levels of commitment of public sector organisations to Customer Charters. The Group has recommended the introduction of standardised Statutory Codes of Practice/Customer Charters across all public sector bodies.

View expressed at High Level Inter-Departmental Committee

The Department of the Taoiseach advised the Inter-departmental Committee that following a Government decision in 2003, all Government Departments and Offices are obliged to produce Customer Charters. The Department expressed the view that the variations in existing Charters could be explained by the variations in the roles, functions and size of Government Departments and Offices themselves and also by the fact that Customer Charters are a relatively new initiative.

The Committee noted that Government Departments and Offices will be required to include in their Annual Reports an account of their performance against the commitments in their Customer Charters. As part of quality assuring and monitoring the Charter Initiative, an independent evaluation of Customer Charters would be carried out.

In the area of redress mechanisms, the Department of the Taoiseach explained that a considerable number of such mechanisms already existed in areas such as the Ombudsman, the Commissioners for Information, Data Protection, Tax and Social Welfare Appeals, the Agriculture Appeals system in addition to specific mechanisms in the equality and employment fields etc.

Conclusion

The Committee agreed that all bodies in the non-commercial public sector should introduce Customer Charters, but that standardising such Charters across the public sector could be problematic given the wide variety in the roles, functions and size of the various public bodies.

The Committee considered that a better option would be for the Department of the Taoiseach, in consultation with other Government Departments and Offices, to draw up broad guidelines setting out the basic principles upon which Customer Charters in non-commercial public sector bodies should be based. The Committee agreed that the guidelines should contain certain core elements, such as provision for dealing with customer complaints, but that they should be adaptable, subject to the agreement of the parent Department, to the circumstances of particular bodies.

The Committee agreed that the Customer Charter Initiative should be subject to independent evaluation before the question of imposing statutory Charters would be considered.

Recommendation 29

Establish private sectoral complaints boards as an alternative means of redress.

Responsibility: Department of Enterprise, Trade and Employment

Background

The Group is firmly of the view that voluntary redress mechanisms such as mediation, arbitration etc. can be much more attractive to both businesses and consumers rather than formal court proceedings in terms of less expense, quicker access, less formality etc. The Group has, therefore, called for the establishment of private sectoral complaints boards as an alternative means of redress.

View expressed at High Level Inter-Departmental Committee

A number of Departments expressed the opinion that it was not clear from the report what the CSG was seeking to achieve through the implementation of this recommendation. The Office of the Attorney General was concerned as to what the Alternative Dispute Resolution Mechanisms/Bodies would be and how the decisions of such bodies could be enforced. The Department of Justice expressed concerns over the imposition of such Complaints Boards on the private sector and concurred with the Department of the Taoiseach that a number of issues would need to be teased out before making a decision their usefulness, including who would run such Boards, how would they be run, who is responsible for financing them, how are the Boards to be established, how are their decisions to be enforced and other similar questions.

The Competition Authority urged a degree of caution in that it would be anxious that any private complaints mechanisms needed to demonstrate strong transparency, particularly in having a sufficient number of members who were not commercially active in the sector concerned.

Conclusion

The Committee was concerned that this recommendation lacked clarity and would need further detailed consideration before any implementation plan could be devised. The Committee believes, therefore, that the concept should be further developed with an input from all relevant Government Departments and the Interim Board of the National Consumer Agency before any proposals are brought to Government in the matter. The Committee noted that the question of developing Alternative Dispute Resolution mechanisms is already under consideration in an EU context and is something that the National Consumer Agency may wish to consider in the course of its work.

Recommendation 30

Price Control - Repeal the Prices Acts 1958–1972 that are relevant to price controls.

Responsibility: Department of Enterprise, Trade and Employment

Background

The Consumer Strategy in its Report has expressed the strong view that price control as a consumer protection measure is a failed policy. The Report in analysing the past experience of price controls contends that the policy often produced perverse results and unintended consequences in that the maximum price often became the minimum price, inflation under price controls was rampant, and price controls did not encourage businesses to control costs. The Group is, therefore, recommending the Prices Acts be repealed in their totality.

View expressed at High Level Inter-Departmental Committee

The Department of Enterprise, Trade and Employment advised the Inter-departmental Committee that the Prices Acts 1958-1972 contain an extensive set of price control provisions and powers which, inter alia, include provisions providing for the fixing of maximum prices by Ministerial Order.

The Department is examining the Prices Acts in the context of the review currently being undertaken of the extant code of consumer protection law (See Recommendation no. 20), with a view to removing all unnecessary price control provisions. The Department advised the Committee that in reviewing the Prices Acts consideration was being given to the possible retention of some reserve power for Government in cases, for example, where supply difficulties might emerge.

The Department pointed out to the Committee that a number of sectors of the economy such as energy, transport, communications, and pharmaceuticals were subject to price controls. The Department stated that whilst these controls are not exercised under the Prices Acts 1958-72, the review of the prices legislation will also examine whether or not there is a case for retaining some form of general price control provision to deal with cases in which competitive market conditions do not operate.

Conclusion

The Committee agreed with this recommendation and noted that the Department of Enterprise, Trade and Employment intended to remove all unnecessary price control provisions in the course of the ongoing review of consumer legislation.

The Committee agreed that the retention of certain residual powers, for example in regard to display of prices, might be desirable and should be taken into account as part of the Review.

Recommendation 31

Structural Change - Expand Social Partnership to include consumer representation on both the Government and voluntary sides.

Responsibility: Department of the Taoiseach

Background

The Consumer Strategy Group's Report places great emphasis on the need for the consumer's voice to be heard in all fora of national and international decision making. The Group is of the strong view that given the importance of the Social Partnership model to Ireland's economic success that the consumer voice should be represented at the social partnership table on both the Government and voluntary sides.

View expressed at High Level Inter-Departmental Committee

The Department of the Taoiseach advised the Inter-departmental Committee that the Department of Enterprise, Trade and Employment, given its statutory mandate for consumer protection policy, was already representing the consumer voice on the Government side at the Social Partnership table.

In relation to the voluntary side, the Department of the Taoiseach advised the Committee that the membership of the Community and Voluntary Pillar of the Social Partnership process would be reviewed in the context of the forthcoming negotiations on a possible new national agreement.

It is open to bodies currently not involved in the process such as the NCA to apply for membership of this Pillar. The Department indicated that applications would be considered on the basis of whether applicants had a national focus, whether they were representative in their nature, whether they had the capacity to meet the obligations and demands arising from membership of the Partnership process and whether their membership would add capacity to the Process to deal with issues more effectively.

Conclusion

The Committee noted that the Department of Enterprise, Trade and Employment was representing the consumer voice on the Government side in the Social Partnership process.

The Committee further noted that the Community and Voluntary Pillar of the Process would be reviewed in the context of the forthcoming negotiations on a possible new national agreement and that it was open to the NCA, through its Interim Board, to apply to be a member of that Pillar.

The Committee noted that the Department of Enterprise, Trade and Employment had indicated that it would support such an application.

Recommendation 32

Structural Change - Continue support for the Consumers' Association of Ireland.

Responsibility: Department of Enterprise, Trade and Employment

Background

The Consumer Strategy Group in its Report highlights the lack of adequate advice and support services for consumers. The CSG is of the view that aside from Government agencies, non-Government consumer advocacy agencies, such as the Consumers' Association of Ireland, can also play an important role in putting the consumer's case.

The Group was of the view that given the voluntary nature of the Association, it should continue to be supported by the State in its activities and indeed that the new National Consumer Agency, once it is established, should work closely with the Association.

View expressed at High Level Inter-Departmental Committee

The Department of Enterprise, Trade and Employment advised the Committee that for the last number of years, it had paid an annual grant to the CAI to assist it in carrying out its activities. The grant paid to the Association in 2004 amounted to €63,000.

Conclusion

The Committee agreed that the Consumer's Association of Ireland should continue to be supported with exchequer funds subject to the following:

- (i) The CAI to submit to the Department of Enterprise, Trade and Employment
 - (a) A satisfactory statement of its overall policy, objectives and strategy including its rules and terms of membership, and
 - (b) an annual business plan incorporating a detailed project proposal for expenditure of state funding
- (ii) The putting in place of a satisfactory review mechanism to establish the effectiveness and value for money arising from the expenditure of exchequer funds.

The Committee further agreed that the level of funding should be reviewed by the Department of Enterprise, Trade and Employment and the Department of Finance at appropriate intervals.

Recommendation 33

Reimburse the Consumers' Association of Ireland for their time spent on public sector committees.

Responsibility: Relevant Government Departments and Agencies

Background

The Consumer Strategy Group in its Report strongly recommends that the National Consumer Agency should work in close co-operation and partnership with non-governmental consumer agencies such as the Consumers' Association of Ireland.

The Report refers to the advocacy activities of the CAI and also the fact that the Association provides consumer inputs to the work of various committees and boards operating under the auspices of the public sector. The Group has expressed the view that these activities impose a considerable strain on the resources of a voluntary body like the CAI. The Group has recommended that the Association should be reimbursed for its work and participation on "public sector" committees.

View expressed at High Level Inter-Departmental Committee

The Department of Finance advised the Inter-departmental Committee that it was totally opposed to paying vested interests for their participation on public sector committees.

Indeed, there was a consensus among the Committee that the implementation of this recommendation could not only be seen as a precedent by other vested interests but could also give rise to the independence of the bodies receiving payment being called into question.

Conclusion

The Committee concluded that the implementation of this recommendation could be seen as a precedent by representative bodies or vested interests and could also have adverse implications in terms of the perceptions of the independence of the Consumers' Association of Ireland.

The Committee were opposed to the implementation of this Recommendation.

Appendix A

High Level Inter-Departmental Committee - List of participating Departments and other bodies.

- 1) Department of Enterprise, Trade and Employment
- 2) Department of An Taoiseach
- 3) Department of Finance
- 4) Department of Transport
 - Commission for Aviation Regulation (CAR)
- 5) Competition Authority
- 6) Department of Communications, Marine and Natural Resources
 - Commission for Energy Regulation (CER)
 - Commission for Communications Regulation (ComReg)
- 7) Department of Education and Science
- 8) Department of Agriculture and Food
- 9) Department of Arts, Sport and Tourism
- 10) Department of Justice, Equality and Law Reform
- 11) Office of the Attorney General
- 12) Department of Community, Rural and Gaeltacht Affairs
- 13) Forfás
- 14) Department of Health and Children
- 15) Department of Environment, Heritage and Local Government

Terms of Reference of Inter-departmental Committee

The Minister proposes that the Committee should operate on the following basis:

- Representation on the Committee to be at Assistant Secretary level and to be chaired by Department of Enterprise, Trade and Employment. A secretariat will also be provided by the Department;
- Departments directly affected by the CSG's recommendations to be fully represented on the Committee and the Committee to be free to discuss relevant recommendations with other Departments and Agencies as they consider appropriate;
- Committee to be free to obtain any independent advice it deems necessary;
Committee to examine all recommendations of the CSG and to prepare a detailed implementation plan within 3 months.