



Office of the Director of
**Telecommunications
Regulation**

Information Notice

ODTR Response to Department of the Taoiseach Consultation “Towards Better Regulation”

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Oifig an Stiúirthóra Rialála Teileachumarsáide

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A Foreword

This consultation on ‘better regulation’ is timely and of critical importance.

The interaction between citizens and their public authorities needs to be of the highest quality.

Citizens are entitled to fair, clear, efficient, helpful and effective delivery of the public services they need. They are entitled to expect that those services are well thought out and constantly brought up to date in a fast moving and ever increasingly competitive world. To ensure that users get the best in terms of price, choice and quality for goods and services generally and that people can maintain and develop their standard of living and contribute effectively and creatively to the economy, businesses need likewise to have access to necessary services and freedoms delivered to high standards.

It is a matter for Government to determine what public services should be provided and whether restrictions need to be established or removed, either directly or otherwise, on entry to or exercise of any profession or business. It is important that the Government’s consideration of the issues is based on the best in terms of analysis and options for implementation, and is followed by high quality execution. As an independent economic regulator, we have responded to this consultation concentrating our replies on the key issues involved in providing that analysis and carrying out implementation.

Choice is a fundamental tenet of democracy, and providing as much choice to citizens – and others of all races and creeds living in Ireland – is a fundamental value. This consultation is about how that value may be realised in practice. Enabling alternative suppliers operate effectively – in effect, providing for competition – is key. There may be some exceptions, but these should be reviewed carefully to ensure that any limitations are kept to the minimum. It has to be recognised that all consumers do not have sufficient information to judge for example the standards of specialised professional advice. However, the regulation of training and qualification that may stem from this does not justify quantitative restrictions on entry. There is a need for public provision of key citizens’ rights such as education or health services, for without public provision many citizens would be excluded altogether, and it just has to be accepted that public provision may limit choice to some degree. Again, the extent of the limitation on choice should be carefully reviewed periodically to see whether equitable provision really has to limit choice in a fast moving world.

The independent economic regulators have been established for sectors in transition from monopoly to competition which gives users – whether business or residential – better opportunities to obtain the best in terms of price, choice and quality of service. Regulators need to be empowered to ensure that new entrants can enter and develop their businesses so that competition does in time become self-sustaining. Much of the work of regulators therefore is concentrated on industry issues, but it is very important to maintain key functions in respect of users which help to maintain focus on the purpose of regulation and how the regulated services are actually experienced by users. There are two key regulatory issues in relation to consumers – firstly empowerment by ensuring that there is information about services and effective redress for failures and secondly, effective substitution for competition where necessary to encourage efficiency and quality of service.

A standard level of information and codes of conduct for users may be required of suppliers: in the absence of good operator information or other publications, regulators may develop and publish material, although the processes for exact comparability and review may make this a complex and heavy process. Good quality service is provided effectively only by companies who are, from the Board and CEO, to the most recently arrived customer care clerk, committed to providing it: quality control has to be properly integrated into all activities; it is not simply a matter of having somebody absorb complaints. ‘Outsourcing’ complaint handling to a third party will never achieve the kinds of internal changes needed to ensure that customers get high quality service all of the time. Where regulators can be effective is in setting codes of conduct and providing a route for appeals where the internal quality control and complaint system fails to work adequately. The information obtained in this way by regulators is also valuable in terms of monitoring performance against licence obligations.

Consumer groups are less powerful and well resourced as compared with others in Ireland at present, and it is important that their input is actively sought and supplemented with good research which will clarify their issues and practical plans to deliver what is needed. It cannot be assumed that they will be in a position in many cases to make technical submissions on issues and alternative ways should be found to meet their needs.

Most of the debate about how much regulation is enough or too much is conducted between parties who are regulated and those who compete or would wish to compete with them. Looking at the question from the point of view of Ireland and Irish users generally, it is clear that there is limited competition in many areas and that this must change. What form this change will take will depend on a case by case examination – there may be a few areas where simply eliminating barriers to entry will result in effective competition right away: In many more there may be a need for a different type of regulation to facilitate the development of competition.

As the telecommunications regulator, it may be useful to set out our position on spectrum use. The infrastructural deficit in Ireland is well documented and which more intensive use of spectrum could help alleviate. It is important that the appropriate spectrum to meet the requirement is made available as easily and as cheaply as possible in this context. Spectrum licensing bears a resemblance to both planning permission and ‘rules of the road’. The need arises because radio signals can interfere with each other, disrupting and degrading services. Interference can arise from crowding too many services together and/or from having services with different operational characteristics too close together (e.g., terrestrial radio and satellite). Allocation of frequencies and associated rules for different uses (‘rules of the road’) is generally agreed internationally to prevent the second of these problems. Frequency assignment to individual users is necessary for some types of use such as mobile telephony, but not for others such as low power wireless LANs which can be exempted from individual licensing provided that they operate within certain limits. Like planning permission, spectrum rules should be as simple and as limited as possible and only be applied where necessary to protect the environment. The ODTR view is that the first preference is to exempt equipment from licensing where possible, next to provide access to spectrum on a first come first served basis and only if neither of these are appropriate, to run special competitions. It is important, and in line with EU law in the matter that restrictions on entry are kept to a minimum.

Turning to the final part of the paper, it may be useful to consider some of the broad issues involved. It is important that properly made regulatory decisions are implemented quickly and the development of a code of substantial civil sanctions would be very helpful in this regard. The right of appeal against decisions is fundamental, and indeed is guaranteed in our Constitution to the Courts. It is difficult to balance the need for a good appeal system and the potential for it to be used to delay important changes for others, but the introduction of specialised Courts and the use of judicial review – which is more rigorous in Ireland and so provides more protection to plaintiffs than in some other jurisdictions – will help in this regard. The new Telecommunication Directives provide for appeals to take account of the merits in any case. It appears to us that this requirement can be met by a judicial review in a specialised part of the High Court.

This consultation is an important milestone in the development of the Irish administration and to its capability to deliver the expert and flexible regulation that we need for the future

B Specific Comments on the Consultation

4 Performance of the Economy and Consumer awareness

4.7 Consumer Welfare

Question [a] How can consumers be given a broader choice of suppliers of goods and services?

Answer-To ensure that consumers can avail of the highest level of choice in goods and services it is important that any the barriers to new entrants or competition are removed and that consumers are fully informed both in terms of the choices available to them and their rights. The onus to provide this data should be with the supplier of the goods and services. Generally, competition amongst firms to obtain the consumers' business encourages each of them to reduce prices and underlying costs for given products, introduce new products, improve quality and generally attract consumers. It also encourages entry by firms that have innovative ideas, or more efficient ways of supplying the market than existing firms. In all of these ways, competition acts to maximise the welfare of consumers and serves to provide them with a broader choice of suppliers of goods and services.

Question[b]-How can consumers be better informed as to their rights and given the necessary information to make choices with regard to products and services.

Answer- To ensure that consumers are as well informed on their rights and the choices open to them it is important that the provider of products or services are required to provide both comprehensive details of the prices for their product and services as well as setting out clearly the consumer's rights. Details on where consumers can seek further redress should they not be satisfied by with the suppliers responses should also be available i.e. the Director of Consumer Affairs, Independent Regulators, Ombudsman, etc.

However we believe it is the supplier of the goods or services who must retain primary responsibility for this activity. To upset this balance would only serve to both undermine a consumer's right to seek redress from a supplier and encourage suppliers themselves to abdicate their responsibility for dealing with their customers by shifting the focus for handling their service quality problems to a third party.

[c] Question-How can consumer interests be more fully incorporated into the governance and consultation processes? For example, is there a means of reflecting consumer interests more effectively within Social partnership structures?

Answer-Enabling consumers to have a say in the development of policy can clearly play an invaluable part in the development of any such policies. Sectoral regulators already seek through their extensive use of the consultative process to

engage interested parties in the debate/discussion. However to derive maximum benefit from this process and to facilitate a balanced debate particularly where the issues are often complex it is necessary to recognise and respond to the often diverse nature of consumer groups and try to ensure that they are as fully informed of all the relevant details as possible. One of the key challenges in this context is to engender a longer-term relationship with the relevant consumer groups given that the issues under discussion can often be broad and diverse.

[d] Question-Are there regulations in certain sectors that promote producer interests at the expense of consumers.

Answer-Arguably any product or service that is not open to the full rigours of competition can potentially result in the consumer interests not being to forefront. This may be in terms of price, quality of service, etc. Restrictions on access to a profession or limitations to new entrant businesses could be considered to accentuate this sort of risk.

[e] Question- Are there areas where more regulation is necessary to protect and promote consumer interests.

Answer-There are some areas in the Irish Marketplace which are not yet fully competitive and where the need for regulation exists to protect the broader consumer interest and to enable competition to become sustaining. Gas, Electricity, Post and Telecommunications would be some examples where this might apply. Without some form of regulatory intervention barriers to entry may be high, this in turn can serve to limit the development of competition. This can further impact upon the quality of service and the impetus to innovate may also be low. In a broader context a lack of a competitive market place here for such utility services could, if left unchecked result in an undermining of Ireland's overall competitiveness.

[f] Question-Are there adequate and effective arrangements in place for the appeal of regulatory decisions by consumers.

Answer-Broadly speaking many decisions by sectoral regulators are open to judicial review on issues of processes and reasonableness. This provides the basis for an appeal should the need arise. The extensive use of the consultative process and other inter-actions with consumer group seek to minimise the need for this sort of judicial review. In the communications arena the new EU Electronic Communications Directive also provides that the merits of a cases need to be factored into any considerations by the appropriately appointed court or Board of Appeal. We would however be of the view that the normal judicial review in Ireland would already have considered/factored this element in.

4.8 Competitiveness

[a] Question-Are there particular regulations that are unduly restrictive either in establishing new companies or businesses or in everyday operational terms by imposing unnecessary or unduly costly compliance burdens

Answer-Regulations which seek to limit access or the establishment of new business whether of a numerical or geographical basis can run the risk of impeding the development of competition and with it the development of new entrants. They also can limit the degree and speed of any innovation that may take place in the sector or service. The only justification in our view for restricting access is on the basis of where resources are limited relative to the number of providers/potential providers who want to/are competent to exploit them.

[c]Question-Are there regulatory reforms which would facilitate easier access to investment capital by new or existing enterprises? Should Governments engage in major programmes of investment [e.g. of major strategic national assets] or is this best left to the private sector?

Answer-Ireland has made major strides in recent years in attracting private investment capital to fund major infrastructural programmes. There will nevertheless remain situations where given our demography, rural dispersal, etc a role for Government's direct intervention will be necessary in the case of clear market failure. The key challenge to determining where or when is intervention should take place would normally arise in the context of a clearly set-out national policy with which defines the objectives, etc. This would normally seek to capture the contributions of all interested parties and would provide the predictability and certainty that the private sector needs to build their business cases upon. The risk of having Government intervention outside of the context of a clearly articulated national policy is that it might in fact not address or address fully the right issues and might put at risk the private sector making further investments in specific areas or activities.

[e]Question-Does the regulatory framework foster a culture of innovation and encourage enterprise, both large and small to develop new ideas and adapt to changing economic circumstances?

Answer-Typically Regulatory frameworks that promote and support competition create the platform upon which innovation can flourish. Conversely frameworks which seek to restrict access or minimise competition or place too onerous conditions on businesses have been internationally recognised as limiting both the speed and drive for innovation. This lack of innovation can also result in higher prices and lower levels of customer service.

4.28 Competition and scale

[a] Question-How should regulators, including independent sectoral regulatory authorities, achieve a balance in their decisions between commitments to competition and social goals in situations where the achievement of social goals is perceived to be adversely affected by decisions made based on competition criteria.

Answer-In the context of sectoral regulators their main aim ought to be to facilitate the rapid development of a competitive, leading edge sector that provides end users with the best in terms of price, choice and quality, attracts business investment and ensures ongoing social and economic growth.

Regulators are conscious of the need to ensure access to key/critical services regardless of the ability to pay. The definition of such a USO will normally be made by Government. The Regulator can then implement the arrangements on behalf of Government and advise on the costs and implications of the various scenarios which go into developing such policies.

[b] Question- How can various considerations be balanced when regulating. For example, how can it be ensured that regulations do not impose restrictions which might lead to higher prices and lack of customer choice, etc?

Answer- Firstly in our view it is important that Public Officials responsible for regulation are appropriately qualified and trained to recognise what are the issues which may arise and how best they can be dealt with. Before any new arrangements for entry into a profession or business are established it should perhaps be necessary to carry out a review and then perhaps a Public Consultation.

Secondly in seeking to facilitate the development of a competitive market, sectoral regulators such as the ODTR need to be aware of the impacts that any changes they may make have particularly on more vulnerable members of society. Whilst, for instance the Government's welfare schemes may be the primary way of achieving the desired outcomes in this area nevertheless regulators may sometimes need additional regulatory provisions that facilitate further protection. Where such issues arise we believe that it is important to weigh-up the advantages and disadvantages of the options available, consult widely about possible impacts, in order to be able to take an informed approach within the framework of Irish legislation. This type of approach is vital wherever there may be policy objectives that appear to conflict.

Going forward it clearly should be the aim of sectoral regulation to develop and sustain a competitive industry which can assist in achieving social goals by contributing to overall economic growth and providing lower prices, more choice and higher quality of services for end-users.

[c] Question-How can the advocacy, promulgation and enforcement of coherent competition policy be strengthened?

Answer-Apart from initiatives such as promotion, education, etc a number of other tangible steps that could be considered are:

-Reinforcing competition policy as the cornerstone of all government related activities

-Highlighting the benefits that can accrue when cases are pursued for non-competitive behaviour. This should include the strengthening of enforcement powers and the provision of a system for civil fines.

-Ensuring that adequate trained staffs are available to undertake the necessary research and investigations

[e] Question-Can a strategy be articulated on a sector-by-sector basis of anti-competitive practices within the economy?

Answer-Yes we believe that at high-level such an approach could be undertaken. Materiality of impact should be used to determine in which order such an approach would be adopted and clearly variations exist between sectors and the approaches will need to reflect this. Perhaps developing a pilot project should be considered to ensure that any variations do not serve to undermine the overall potential that such an approach might offer.

[f] Question-Is it possible to devise and implement a test to ensure that disproportionate restrictions, which protects existing suppliers are not introduced under the guise of social policy objectives?

Answer- Yes, we believe that two key principals should be followed in every case. Firstly anything that tends to limit entry or the expansion of any trade or profession should be subject to detailed scrutiny to ensure that any limitations are for good reasons and proportionate to needs. Secondly major programmes should be subject to an impact analysis which will serve to identify who will be affected and what options are available to achieve results.

Sectoral regulators, including the ODTR's main aim in this area is to ensure [in so far as the regulation falls within our jurisdiction] that they contribute to achieving social policy objectives whilst not restricting entry into their respective sectors. This is achieved through developing an in-depth understanding of their respective markets, consulting widely and having close contacts with user groups and existing/potential market participants.

[g] Question-Should we allow regulations that permit restrictions to entry? If so should price controls be used to ensure, etc.

Answer-As a general rule we believe that restrictions to entry where the primary purpose is to limit competition should be avoided. However there may be some areas where restrictions have to be deployed due to limitations and provide for transparency and predictability for the users thereof. One such area would be spectrum usage.

Price controls can be used successfully to ensure that any provider who is either dominant or has significant market power is not able to take unfair advantage of that position. There are however alternatives available. These would for instance in the case in something like spectrum require those wishing to use it to enter perhaps a competitive bidding process. This helps ensure that successful bidders are committed to at least maintaining a pre-specified level of service provision and quality.

4.30 Physical Infrastructure

4.34 [a] Question-having regard to ongoing work in relation to regulation issues that impact on physical access and transport, etc.

Answer-Achieving lower prices and improved services will generally only take place where a truly competitive market place exists. The assumptions that this in turn would result in lower public safety is not necessarily a valid one, if clearly defined service and safety conditions were installed and rigorously policed.

[b] Question-An inefficient planning system can have the effect of delaying important developments, as suggested for instance by certain bodies in relation to the provision of waste recovery and disposal infrastructure. Are the recent reforms in the planning system sufficient to ensure that no undue delays arise in the provision of public infrastructure?

Answer-Considerable progress has been made on this issue. Concerns however still exist particularly where vital yet contentious new developments are required such as masts, waste disposal units etc. This can result in lengthy delays which, in turn place unusual pressures on existing infrastructure as well as putting at risk private sector involvement. It also potentially creates an image of Ireland as a place where major projects cannot be executed either on time or within budget.

The availability of sufficient trained staff within local authorities particularly in the planning and engineering areas will also play a critical part on the delivery of new infrastructure in a timely fashion.

5. Quality of Governance

5.19[a] Question-How effective is the Irish approach to judicial review in comparison with similar procedures in other OECD member States, etc

Answer-The Irish Judicial Review standards are more rigorous than those in some other jurisdictions and so provide more protection to plaintiffs than in some other jurisdictions. Judicial reviews in so far as they are typically faster and the issues are more clearly defined than alternative approaches such as Appeal Boards are favoured by the ODTR. Appeal Boards still leave open a further right of appeal for instance to the courts. This could add considerably to the timeframes involved. In a fast moving sector such as telecommunications this could in turn give rise to delays on business decisions and perhaps even future investment plans.

[b] Question-Are there skills and awareness issues relating to competition principals which should be addressed in respect of the judicial system, etc

Answer-The complexity of the issues facing all of those involved in regulation, compliance, competition law and enforcement continues to grow. Areas such as electricity, telecommunications and gas are often also highly technical and it is therefore increasingly important that all those involved in areas such as competition policy and the law are fully briefed/trained on the issues involved.

[c]Question- Should cases be assigned to judges having regard to particular expertise in competition matters as recommended by CMRG?

Answer-As above-The complexities involved and the need for speedy decision making places a very significant burden on all those involved. The ability to 'stream' cases of a commercial nature to specific judges would go some way to alleviating these issues as well as sending an important message on Ireland's commitment to maintaining and developing a competitive economy.

[d]Question-What alternatives might there be to existing legal processes with the need for expedient development, etc

Answer-Striking the correct balance here is in our view critical. Examples already exist in other sectors of where arbitration, mediation and conciliation can be used and as long as the starting premise contains pre-specified binding agreements between the parties then they clearly have a role to play. However practical experience demonstrates that parties often treat these 'bodies' as quasi-courts and therefore the benefits that might have accrued are often either dissipated or maybe lost entirely. The constitutional right of appeal to the courts always remains.

[e]Question-Is there a case for greater synergy between the courts and the Office of the Ombudsman, etc.

Answer-Given that there is often a need for intervention at an early stage with a quick and robust decision making process available we are unclear what benefits this may bestow particularly if it were to add an additional level to any decision making process.

5.29 Alternatives to regulation

5.31[a] Question- Given that consumers have traditionally been a diffuse group, how can their voice be strengthened?

Answer-In our experience there are in fact two issues involved here

i One is to engage the various groups/associations, etc involved to allow them to convey their views.

ii The second is to build relationships beyond the discussions on either single or specific issues.

We make extensive use of the consultation process to pro-actively seek out the views of representative groups/bodies as well as individuals. We publish a range of material including some aimed specifically at consumers as well as publishing operator codes of practices, comparative performance data, etc to try to ensure a continuing two-way flow of information. However maintaining a high level of inter-action is, we find a challenge particularly when interest in particular subjects can ebb and flow and where there can be frequent personnel change, etc.

It is critical in this overall context that the ethos and training of all regulators emphasises that the function of regulators is to deliver benefits for users and that they must work towards maintaining and developing the capability of user groups. All the decisions they make must have regard to user interests.

[b]Question- Is there a requirement for an Administration Procedures Act as an ex ante device to compliment the FOI Act of 1997 and the Ombudsman legislation, etc.

Answer-We are not convinced given the complexities and range of the issues involved that the introduction of an AP act would be of material benefit. In Ireland, due to its relatively small size we need to be able to move with speed and flexibility so that we can achieve as good if not better results than much larger administrations elsewhere. It is important that the degree of process is designed having regard to the scale and nature of the Irish resources rather than that of larger countries such as the US.

[c]Question-What role can IT play in tackling information asymmetries, as between producers, consumers and regulators?

Answer-One identifiable benefits would perhaps be to allow for a more standardised approach to areas such as consultations by perhaps looking at uniform/typical system based documentation processes. However the range of scenarios that need to be accommodated may undermine any perceived benefits.

Another benefit might be the real time sharing of data. Here again a standardised approach may assist all sides in understanding and applying the relevant data. Consideration of any relevant Data Protection issues would clearly have to be factored in.

[e] Question-How can we promote greater use of alternative forms of regulation? In particular, can self-regulation and co-regulation be used to a greater extent.

Answer-Greater use of alternative forms of regulation has in other markets tended to take place as part of the evolution of a sector rather than as imposed solutions. The UK telecommunications market for instance today after 19 years of regulation provides the basis to support a higher level of co-regulation than the Irish market does. This is because the Irish market is relatively speaking still at the formative stage and requires more direct intervention than a more mature market would. There is also a need in relatively small markets such as Irelands with perhaps two-to-three dominant operators to ensure the full rigours of competition are pursued and policed. However even in the UK and other arguably more developed markets there are still times/issues particularly with the introduction of new products or services where direct regulatory intervention is required. New entrants have to gain sufficient critical mass and confidence and the encumbrant needs to see the new entrants as less of a threat and more of a potential wholesale customer for these dynamics to start to come into play. In the telecommunications sector, except in a few instances in some of the Scandinavian countries, self-regulation remains an ambition rather than a reality.

[f] Question-What forms of consultation might be appropriate in different regulatory contexts?

Answer-In a market that is still at a formative stage, consultations are likely to be more prescriptive than they would be in either a co or self-regulated markets. In all formats, but particularly in less developed markets giving the consumer a direct voice will be of higher significance. There would also be a need to ensure that in a co/self regulated markets that they remain fully competitive. This can particularly be the case if there were only a limited number of companies operating in a given market.

5.36 [a&b] Question-Should Government have a specific policy on managing the variety of roles that is may be called upon to play in certain circumstances: i.e. a policy maker, shareholder, regulator, and consumer? What are the principles on which a decision should be made to set up an independent regulator instead of starting or continuing a function in a Govt. Dept.

Answer-Prior to the setting up of an independent sectoral regulator, a review should be undertaken—either at EU or Government level - to consider how competition in that sector might best be developed. It is likely that, where there has been a state monopoly (or a state-backed monopoly or established quantitative restrictions), that specific measures may be needed to ensure that competition can be started and become self-sustaining, in addition to the application of Competition Law. These may include divestiture of State assets and consideration of any social objectives and how they may be provided most efficiently in the new market framework and/or the establishment of a sectoral regulator.

In deciding to set up an independent regulator, it should be noted that such a body will have the freedom to act but within a narrower framework set by statute than that set for a Minister and Department. A Government Department has general powers to develop new programmes within its broad remit: an independent regulator has only the specific powers provided in law. This is the case whether or not that framework has been developed in an EU context and transposed into Irish law, or developed here. In the latter case, consideration has to be given as to whether the separation of the functions involved from the Minister/Department is the best way forward and the range of functions to be provided.

It is likely that any sector for which an independent regulator is chosen is expected to undergo rapid change with the regulator as a catalyst for forcing that change. There is therefore a balance to be struck between setting a very detailed and specific legal framework which encapsulates Government/Oireachtas thinking/concepts for the regulator. Unfortunately this will/can rapidly become dated. This can result in less a flexible or efficient approach to regulation. The alternative maybe to provide a regulator with a somewhat wider remit but one that will better stand the test of time.

[c] Question-Should the accountability of independent sectoral regulators to the Oireachtas be strengthened, and if so, what measures are required taking account of the role of, etc.

Answer-Government in determining the need or otherwise for independent regulators recognise the advantages/disadvantages that such an approach can bring. Legislative and regulators practice is to attend Oireachtas Committees.

[d&e] Question Are there adequate procedures for handling customer complaints in regulated industries/Could customer complaints function currently undertaken by sectoral regulators be carried out by independent sectoral complaints commission, etc?

Answer-In the context of the telecommunications sector there is now, we believe, in place sufficient procedures to handle customer complaints. Prior to the deregulation of state utilities, consumers who were dissatisfied with the response received regarding a complaint could contact the Office of the Ombudsman. Since liberalisation of the telecommunications, television transmission, electricity and gas sectors, the Office of the Ombudsman has ceased to act in this capacity for these areas. Consequently, consumers will inevitably contact the appropriate sectoral regulator who may, like the ODTR have a policy, in light of relevant legislation, for handling complaints. Some complaints may have a regulatory bearing (say a breach of a licence condition regarding service provision), while others may be less clear (say disputes over billing amounts) in terms of the power to intervene or seek a resolution. In the latter case the ODTR will seek to use its 'good offices' with the operator concerned in order to reach a mutually acceptable solution or to advise the consumer of other means of redress.

It is considered that sectoral regulators should not have responsibility for dealing with consumer protection in the sense of considering and responding to consumer

complaints, as it is the operators themselves who **must** retain primary responsibility for this activity. To upset this balance would in our view only serve to both undermine a consumer's right to seek redress from an operator and encourage operators themselves to abdicate their responsibility for dealing with their customers by shifting the focus for handling their service quality problems to a third party.

The primary emphasis of the consumer policy of sectoral regulator should be to focus on empowering the consumer to take direct action regarding poor service provision, quality or other issues. The regulators role in this regard is to create the tools that allow the consumers to achieve this directly with their service provider themselves. Due to the failure of the market to provide an adequate level of protection for their customers (while competition is developing) service providers need to be encouraged, through the implementation regulatory measures (such as Codes of Conduct, Service Level Agreements etc), to deal with their customers issues in an effective manner. The regulatory body should not however seek to become a substitute for an operator's failure to do so adequately. Rather their role is to provide the means, by which consumers can seek redress directly, thereby minimising the need for inefficient case-by-case intervention that does little to tackle the root of the problem. Indeed, a situation whereby multiple regulatory agencies are dealing with consumer complaints can be considered to be an inefficient use of resources. It is also confusing for the consumer in that no single body is identifiable to them in the event that they wish to seek advice or assistance regarding a complaint.

[f] Question-Are there additional powers that regulators need to carry out their functions?

-Do they need additional safeguards to avoid industry capture?

-Apart from their existing powers, how can it be ensured that regulators have access to accurate, relevant and timely information, etc?

Answer-The powers that regulators such as the ODTR need to carry out their functions are those which allow for timely intervention and which can provide for sufficient recourse, should it be needed. These powers need also to provide for a level of penalty that is likely to act as both a deterrent and in the case of abuse result in a fine which is at least commensurate with the impact of the offence. The existing arrangements whilst arguably meeting the later objective still require that a criminal prosecution be carried out by the DPP if this approach was to be adopted. The introduction of a system for substantial civil fines would be very beneficial in the context of the resolving of major issues within reasonable and appropriate timescales. The present use of a criminal prosecution significantly caveats a regulator's capacity to meaningfully intervene in a fast moving dynamic sector such as telecommunications.

[g] Question- What would be the advantages and disadvantages of restoring the Ombudsman's remit in areas now under the aegis of sectoral regulators

Answer-The advantages of the current arrangements through sectoral regulators is that they can provide a timely and industry informed intervention. Amongst the

disadvantages that the introduction of an Ombudsman to the process is that it could result in further delays as it provides another level of redress/appeal. The information the process provides for regulators is very valuable contribution in determining how operators are performing and for determining patterns of failures, etc.

6 Efficiency and effectiveness of the Public Sector

6.5 [b] Question What reason if any are there for restricting entry into a particular industry or sector to be restricted via a licensing regime?

Answer-At a principal level we believe that the restriction of access should only be used in certain designated contexts and should not enable restrictive practices or other such anti-competitive behaviour to take place.

6.6 Equality, equity and Social Inclusion in the delivery of public services

6.7 [a] Question-Other than on a case-by-case, is it possible to set out principals or criteria that should underpin PSO, etc.

Answer-We believe that whilst developing a ‘common’ approach it may be possible that the specifics involved in determining what the appropriate public service obligations should be would, across the whole gambit of areas/sectors risks this exercise becoming either in-effectual/unworkable.

6.8 Clarity, Coherence, Effectiveness and Accessibility of Regulation

6.18 [a] How can we assess the level of enforcement and compliance, etc

Answer-There are a numbers of ways this can be done including audits, consultations with target user groups, tracking abuses, etc. However this would need to be done on a sector-by-sector basis with clearly defined and agreed criteria from the outset.

[b] Question-Can we develop criteria to determine when regulations are considered to be obsolete or ineffective.

Answer- We believe there are a number of measures which can act as indicators. These would include-If a market is deemed to be fully competitive then arguably regulation may be unnecessary, conversely when regulations are either constantly flouted or the prime objectives are not being achieved then the question of effectiveness arises. A key element in measuring this is to have a clear understanding of what the initial objectives of the regulation were, understanding why this is not being achieved as it might for instance be market failure rather than regulatory failure which is creating the obsolescence or ineffectiveness.

[b]Question-To what extent can/should policy-making be evidence based? To what extent is such evidence available to policy makers, etc?

Answer- All decisions by public bodies should be reasoned and reasonable. Ideally policy making has clear objectives in mind and the better informed it is to any gaps/deficiencies, etc the more likely it is to achieve it's objectives. However in some areas data is not collected sufficiently often to allow for a detailed and robust analysis. We believe that further efforts need to be made to ensure that the level of relevant data available in Ireland is on a par with best international practice in terms of content and distribution and thereby seek to reduce/minimise information asymmetries.

[c] Question-What impact will RIA have on timing, etc?

Answer- Whilst we recognise that undertaking an RIA may delay the initial stages of policy development and may not be suitable in all occasions, we nevertheless believe it will help ensure a focused approach which captures as many of the key inputs as possible and will lead to a more robust policy making environment. It should however be introduced on firm but gradual basis and concentrated on key areas initially. This will assist in minimising any major problems at introduction.

[d&e] Question- Under what circumstances will RIA be conducted, etc/ How do we ensure an implementation of RIA, etc.

Answer-The RIA process should be utilised when consideration is being given to the formulation of new regulations or at the time of material changes to existing ones. Given that it is ideally evidence based, seeks to collate the widest level of inputs and seeks to quantify the costs and benefits it should contribute to the quality of both legislation and regulation.

Clearly however the use of the RIA process may not be appropriate in every-case and materiality and proportionality also need to be considered. There are also cases where either the speed to decision making or the general uncertainties surrounding the issue/sector make it impractical to use RIA, nevertheless these should be the exceptions.

Whilst additional resources are likely to be necessary we believe that this would be offset by the higher level of analysis that such a structured approach will bring which should in turn benefit the final legislation or regulation created.

[g] Question-How will the consultation process be conducted?

Answer-There are a number of different models already in place of how good quality consultations can be undertaken. These should be reviewed in the context of trying to develop the optimal processes.