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**Boosting Competition
in Ireland**

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Line Vogt,
Michael Wise**

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David Rae, Line Vogt and Michael Wise

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Abstract

Boosting competition in Ireland

While Ireland's economic performance has been impressive, there are too many sectors where producers are shielded from competition, at the expense of consumers. The loss in efficiency from these policies will become more noticeable as Ireland's growth rate settles down towards more normal levels. International evidence suggests that enhancing competition is an important means for lowering prices and boosting productivity and innovation. This paper reviews the main areas for reform, including retail trade, pharmacies, professional services such as legal and medical services, and various network industries including electricity, telecommunications and inter-city buses. It also appraises the structure and enforcement of competition law.

This paper relates to the 2006 Economic Survey of Ireland (www.oecd.org/eco/surveys/ireland).

JEL classification: K21; L11; L16; L22; L8; L9.

Key words: Productivity; competition; regulatory reform.

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Résumé

Dynamiser la concurrence en Irlande

Bien que les performances économiques de l'Irlande soient impressionnantes, il subsiste encore trop de secteurs où les producteurs sont protégés de la concurrence, au dépend des consommateurs. Le manque d'efficacité résultant de ces politiques devient plus manifeste à mesure que le taux de croissance s'établit à des niveaux plus normaux. D'un point de vue international, tout indique que renforcer la concurrence est un moyen efficace pour réduire les prix et stimuler la productivité et l'innovation. Ce document passe en revue les principaux secteurs à réformer, notamment le commerce de détail, les pharmacies, les services professionnels tels que les services de santé et juridiques, ainsi que divers secteurs de réseaux, en particulier celui de l'électricité, des télécommunications et des bus intercommunaux. Ce document examine aussi la structure et l'application de la loi sur la concurrence.

Ce document de travail se rapporte à l'Étude économique de l'Irlande 2006 (www.oecd.org/eco/etudes/irlande).

Classification JEL : K21 ; L11 ; L16 ; L22 ; L8 ; L9.

Mots clés : Productivité ; concurrence ; réforme réglementaire.

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Boosting competition in Ireland

by David Rae, Line Vogt and Michael Wise¹

Over the past two decades, Ireland has considerably reformed its overall approach to competition in general and to the regulation of individual sectors. A pro-competition culture is taking hold among policymakers and the general public, partly in response to some highly visible successes from some of its early deregulations. However, there are still too many sectors where producers are shielded from competition, at the expense of consumers. There is compelling international evidence that anti-competitive restrictions tend to lower growth, reduce employment and raise prices (OECD, 2005). At first glance, Ireland's stellar economic performance might suggest that it has relatively little to worry about. However, there are several reasons why policymakers should not be complacent. *First*, a great deal of Ireland's success can be attributed to its well-functioning and liberal labour market. This has helped cushion some of the problems in its product markets. *Second*, insufficient competition in certain industries creates welfare and efficiency losses that are hidden by the strong growth of the economy as a whole – growth that is largely generated by factors unrelated to competition in the more sheltered sectors of the economy. *Third*, competition issues in the utilities sectors in particular are only now starting to become a constraint, with the country facing bottlenecks in areas such as electricity, transport and waste disposal. *Finally*, while it may be hard to see the impact of a lack of competition on aggregate economic performance, it has had a clearer impact on how the gains have been shared. A striking feature of Ireland's economy is its high prices in certain sectors, implying that too many of the benefits of Ireland's boom have been captured by producers rather than being passed on to consumers in the form of lower prices. All these problems will become much more important now that Ireland's trend rate of growth has fallen towards more normal levels.

In 2001, the OECD's *Review of Regulatory Reform in Ireland* (OECD, 2001) concluded that there were many positive aspects of Ireland's regulatory reform regime such as its openness to international trade and the progress made in reforming the telecommunications, road freight and airline sectors. However, its assessment was that competition policy enforcement has been a weakness and pointed to a legacy of policy that favours the interests of producers over consumers. It also pointed to regulatory and competition weaknesses in a range of sectors, mostly services and utilities. In response, the government presented a report in January 2004 entitled *Regulating Better*. The aim of the report was commendable: to lay down guidelines for new regulations; to start a process of reviewing and streamlining existing rules; and proposing that a working group be established to follow up on the recommendations from the OECD *Review*. Implementation has been less impressive. As shown in Annex 1, there has been little progress on the majority of the recommendations made in the OECD's report.

1. This paper was originally prepared for the *OECD Economic Survey of Ireland* published in March 2006 on the responsibility of the Economic and Development Review Committee. The authors are grateful to colleagues in the OECD, especially Boris Cournède, Peter Hoeller, Jorgen Elmeskov, and Maria Maher for their helpful comments. Special thanks go to Desney Erb for her technical assistance. The authors can be contacted at david.rae@oecd.org.

Ireland has a golden opportunity to push ahead with its regulatory reform agenda while the transition costs are low. Many European countries find regulatory reform difficult because they need to be carried out in a less favourable economic environment and with a dysfunctional labour market. In Ireland's case, job growth remains high, so adjustment costs from regulatory reform are likely to be low – people and resources displaced from one industry should easily find employment elsewhere. This almost-unique opportunity for reform should not be wasted.

Regulatory policies in individual sectors

Regulatory policies differ in focus and scope across different private service sectors. In some inherently competitive sectors, such as retail distribution and professional services, competition is hampered by entry controls and licensing restrictions. On the other hand, many network industries are characterised by “natural monopoly” segments and competition has been difficult to introduce. In these industries, some efforts have been directed towards securing non-discriminatory third party access to the networks and opening the potentially competitive segments to competition. A particular concern is the possibility for cross-subsidisation between monopoly areas and competitive activities, requiring a clear separation between the various activities. Moreover, the market power of incumbents often implies that the playing field is anything but level. International experience shows that the potential gains from opening up network industries to competition can be very large.

Anti-competitive restrictions in the retail sector are resulting in high prices

The structure and dynamics of the retail sector have changed dramatically over the past decade. Outlet density remains smaller than in most OECD countries and value added per unit of labour cost is the second highest in the European Union (Table 1), which suggests that entry barriers may be inflating profit margins. In 2003, all categories of consumer goods and services except clothing were more expensive in Ireland than in the EU15 (Figure 1). Not surprisingly, the sectors that are least exposed to competition from abroad tend to be the ones where the price difference is highest. Examination of individual products reveals especially large price differentials for branded products (Consumer Strategy Group, 2005). These gaps cannot be explained by differences in business costs or tax rates. Instead, they point towards weak competition. This section highlights the grocery sector, pharmacies and pubs, which stand out regarding inefficient regulation.

Table 1. Key structural features of the retail sector2003 or latest year available¹

	Outlet density ²	Persons employed per enterprise	Value added ³	
			Per employed person	Per unit of labour costs
Ireland	47	9	96	125
Austria	52	7	93	89
Belgium	74	2	188	91
Czech Republic	137	3	52	92
Denmark	45	8	80	98
Finland	44	6	115	106
France	70	4	125	102
Germany	30	10	88	98
Hungary	113	3	35	80
Italy	124	2	82	74
Luxembourg	60	7	113	110
Netherlands	49	9	81	115
Norway	65	6	88	99
Poland	113	3	34	42
Portugal	138	3	63	96
Slovak Republic	9	15	58	121
Spain	124	3	89	95
Sweden	64	5	102	84
Switzerland	53	7	11	..
United Kingdom	34	15	85	118
Average ⁴				
European Union ⁵	68	6	100	100
EU11 countries ⁶	52	7	106	103

1. 2002 for Germany, Luxembourg and Poland; 2001 for Belgium and Switzerland.

2. Number of enterprises per 10 000 inhabitants.

3. Value added adjusted by current purchasing power parities. European Union = 100.

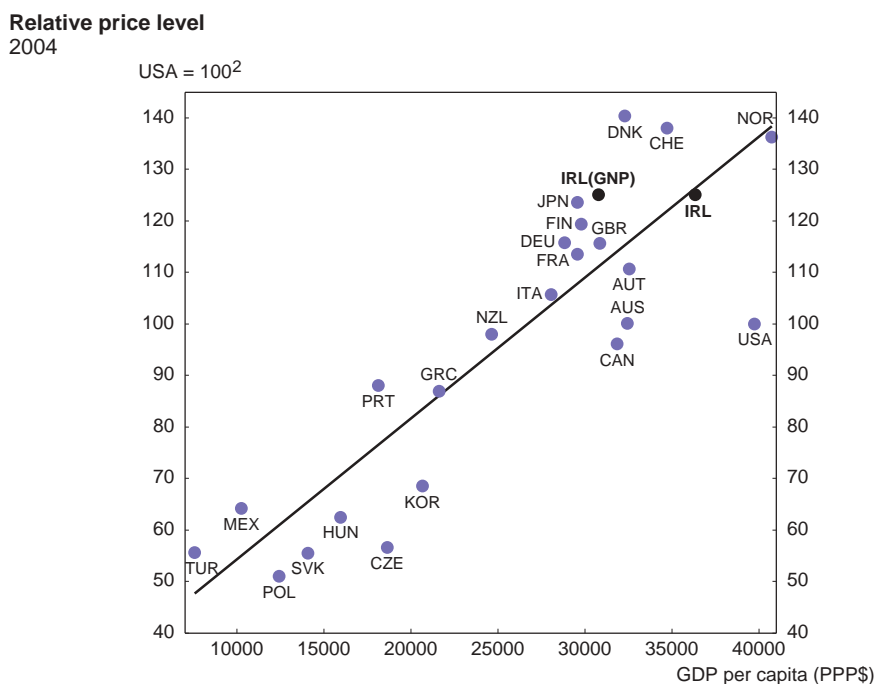
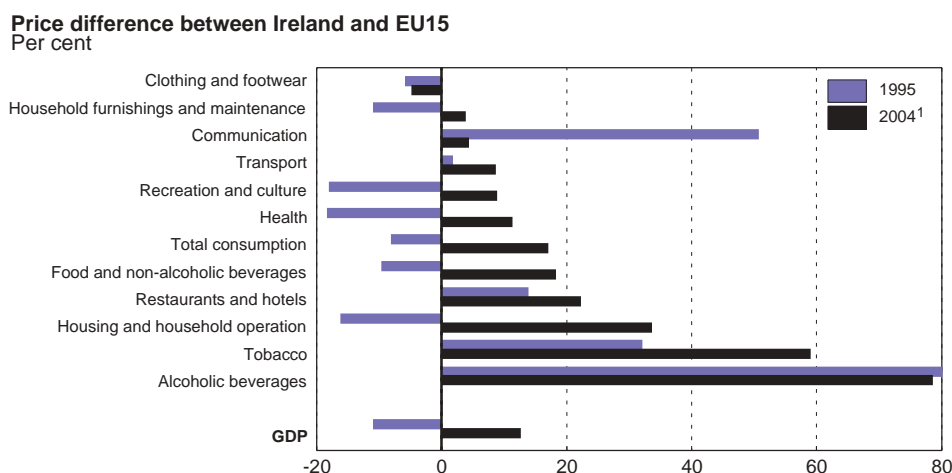
4. Unweighted average of EU15 countries.

5. Excluding Greece.

6. Excluding Greece, Italy, Portugal and Spain.

Source: Eurostat and OECD Annual National Accounts databases, January 2006.

Figure 1. Prices are high



1. Provisional data.
2. Purchasing power parities (PPPs) divided by the exchange rate.

Source: OECD, Annual National Accounts database, April 2006 and Eurostat database, September 2005.

The Groceries Order boosted prices and reduced competition

One of the main impediments to competition in the retail sector has been the Groceries Order. From 1987 to 2006, it prohibited selling most grocery items (except fresh and frozen food)¹ below the invoiced price and obliges wholesalers to charge the same price to all retailers. Its effect was that a large buyer could negotiate a discount for buying in bulk, but these typically would be off-invoice and therefore the savings could not be passed on to consumers. The result, not surprisingly, was high prices. Average prices of processed food have increased much faster than in other EU countries since the mid-1990s – retail food

prices have increased by 25% in five years, yet farm gate prices have increased by just 5% (Fingleton, 2004). Overall food prices are around 20% higher than in the EU15 (Figure 1). The Competition Authority estimates that the Groceries Order cost the average household around € 480 per year. The perverse effect of the regulation on consumers was highlighted in 2005 when a grocery store was fined for selling baby food and nappies below the invoice price.

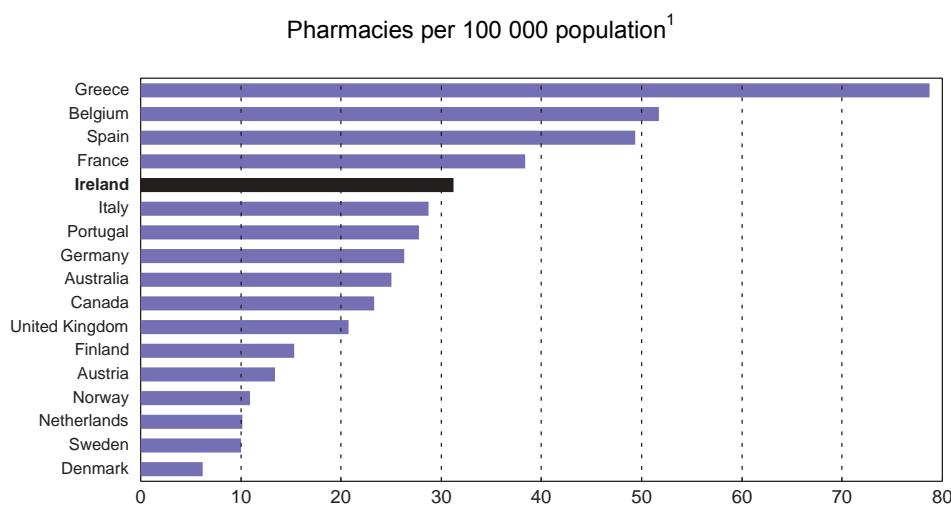
The government has recently abolished the Order (in March 2006). This is a very welcome step that will bring considerable benefits for consumers and little if any downside except for the large wholesalers who currently are the biggest beneficiaries of the rule. While rules about below cost sales, marketing practices and discrimination can be appropriate in some circumstances, they need to take account of the potential effects on consumer welfare. A rule against discrimination, for example, should permit consideration of differences in costs, available alternatives and competitive responses rather than punish every price difference as an offence. In any case, the current provisions against predatory pricing in the competition legislation are good enough for that purpose.

Another obstacle to competition in the retail sector is the Retail Planning Guide, which is a government-issued guideline for local authorities that deals with retail development and includes guidelines on location and floor space. In effect, it has imposed a cap on floor space in an attempt to avoid “superstores” on the fringes of towns, either because they are viewed as blights on the landscape or in order to protect small local shopkeepers. In this sense, it is clearly a barrier to competition. The government recently removed the 6 000 square metre cap on non-food retail outlets to allow an IKEA store to open up in Dublin. This is a good step, but there is no reason to restrict it to non-food outlets.

Restrictions in the pharmacy industry are out of proportion to their objectives

A combination of entry restrictions and price regulations has resulted in an uncompetitive, distorted and expensive retail pharmacy sector. Ireland is the fourth most expensive country in the euro area for medicines (Department of Health, 2003). Pharmaceutical prices at all levels of the distribution chain are set by government-industry agreement. Wholesale prices are set by comparing UK prices and an average of five other countries, taking the lower of the two. The retail margin depends on who is paying. For medical card holders, the government fully reimburses the patient and pays a fixed disbursement fee of around € 3 per item to the retailer; other prescriptions and non-prescription medicines have a 50% markup. Overall, the retail margin is around 33%, which is one of the highest in the European Union (Purcell, 2004). Moreover, unlike in many other countries, pharmacists are not permitted to reduce costs to the consumer and insurer by substituting a cheaper generic equivalent.

The industry also has severe entry restrictions. Pharmacies have exclusive rights to sell prescription-only pharmaceutical products as well as some over-the-counter drugs that in other countries are available in supermarkets. Unlike many other EU countries, however, ownership has not been restricted to pharmacists. There has been a chronic shortage of places at pharmacy school, in part because Trinity College had a monopoly on training until 2003, although training places have more than doubled since then. Entry of foreign-trained pharmacists is difficult. Even Irish citizens who are trained in the United Kingdom (or somewhere else in Europe) face the restriction that for the rest of their career they will be unable to open or manage a new pharmacy in Ireland. All they can do is buy into a pharmacy that has been running for at least three years. In 1996, additional restrictions were imposed whereby new pharmacies were not permitted to locate near existing ones, but these were abolished in 2002. All these restrictions (except perhaps the first) do nothing to promote health care; they are purely anti-competitive restrictions on entry. Consequently, pharmacies are changing hands at very high prices. In 2005, the government announced that it would remove the “three year rule” on foreign-trained pharmacists in conjunction with updated fitness-to-practice legislation. As with the removal of the Groceries Order, this is a very positive step and should be implemented swiftly.

Figure 2. Ireland has many pharmacies

1. 2002 for Australia, Canada and Ireland; latest year available for other countries (1998-2001).

Source: Purcell, D. (2004), "Competition and Regulation in the Retail Pharmacy Market", *Studies in Public Policy*, No. 14, The Policy Institute, Trinity College, Dublin.

Delivering lower prices and better service to the Irish people is more complicated than simply removing all entry restrictions. The essential problem is that the retail margin on pharmaceuticals is too high. Unless the reimbursement system is reformed as well, removing restrictions on entry may just lead to an avalanche of new pharmacies as people try to capture the rents. Indeed, Ireland already has a relatively large number of pharmacies per capita (Figure 2). Free entry on its own would be unlikely to drive down retail prices because for most people drug costs are fully reimbursed by public and private insurers, so there is little incentive to shop around for the best price. A better option would be to: *i*) replace the 50% retail markup with a flat rate dispensing fee (as recommended by the Brennan Commission in 2003); and *ii*) auction the right to run a pharmacy (*i.e.* have pharmacists compete *for* the market, but not necessarily *in* the market). The auction would be over the retail margin, so this arrangement has the advantage that it would bid down the margin to a more sensible level. Subsidies or public service obligations could be incorporated to ensure adequate supply in rural areas.

Pubs are a good example of the perverse effects of barriers to entry

The pub market is another good example that illustrates how entry restrictions can be a clumsy way of pursuing social policy objectives and can have unintended consequences that make consumers worse off. In 2003, Ireland was the most expensive country in the EU15 for alcoholic drinks, with prices almost 80% higher than the EU average (Figure 1). In large part this is because alcohol taxes are the highest in the EU but it does not help that the industry was to all intents and purposes run by a cartel. Until recently, the two vintners' federations (one for Dublin, one for the rest of the country) made "recommendations" on prices and profit margins to their member pubs. Under pressure from the Competition Authority, the Associations agreed in 2005 to stop what amounted to price fixing. Entry restrictions are an additional explanation. The government's policy is to issue no new pub licenses. While licences can now be bought from existing pubs and transferred to another region, there are anti-competitive restrictions in that an application can be refused on the grounds that there are already enough pubs of a similar character in the neighbourhood. The scale of the rents that the system creates can be gleaned from the market price of a licence, which is currently around € 140 000 (and in the years prior to being able to transfer licences across regions, a Dublin licence cost around € 450 000). The restriction also creates an incentive to build large "industrial" pubs rather than smaller cafés or the traditional neighbourhood pub. Aside from the efficiency

considerations, this may worsen the health problems associated with a “binge boozing” culture. In effect, the system has become a tax on drinkers but with the tax revenue going to publicans or licence holders rather than the government. The government has proposed a partial opening up to competition by introducing a café bar licence but the Competition Authority believes that this will not go far enough to promote competition. Instead, it would be more effective simply to remove the ceiling on the number of pub licences. The government can raise tax rates further if it is concerned about the health impacts.

Some professional services still have unnecessary anti-competitive restrictions

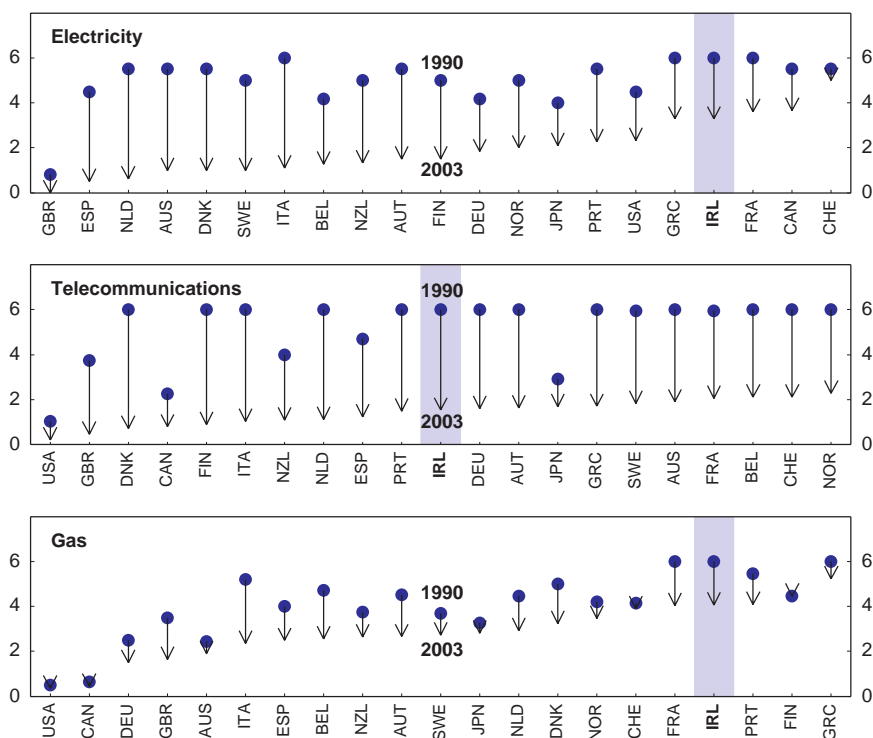
Although there has been some progress in recent years, regulatory barriers in various professional services are still excessive. Ostensibly at least, these rules are intended to protect consumers, but can lead to high prices, reduced quality and less innovation. The medical and legal professions are especially restricted in terms of entry requirements, fee competition, advertising restrictions, demarcation and rules on organisational structure (Indecon, 2003; OECD 2001). The Competition Authority has been a vocal advocate for reform to professional services, producing many recommendations for removing anti-competitive regulations and barriers to entry.

For solicitors, there are three entry restrictions that are especially harmful for competition. First, the Law Society has a monopoly on training. Second, solicitors who finish their training in Northern Ireland, England or Wales have to get three years experience there before being allowed to practice in Ireland. Third, barristers must get three years experience before they can transfer to practise as solicitors. Entry restrictions are severe for barristers as well. The bar council has a monopoly on training and restricts the number of places available in the law school. Moreover, restrictions on advertising that are stricter than necessary to prevent and discipline false and misleading representations may restrict normal competitive behaviour. Restrictions on forms of practice and prohibition of practice with other professions may also reduce competition. In February 2005, the Competition Authority issued a preliminary report on restrictions in the profession. A final report is expected soon.

There is only a limited number of study places for medical, veterinarian and dental services. This is compounded by the slow registration process for EU-trained professionals who want to work in Ireland and by the absence of recognition of qualifications for non-EU trained professionals. Restrictions on comparative and fee advertising also make it difficult for outsiders to establish a practice in Ireland.

Structural reform of various utilities would improve efficiency and lower prices

Government ownership and various regulatory barriers contribute to inefficiency in some of the major utilities which, by OECD standards, remain relatively highly protected (Figure 3). The most serious problems are found in the electricity industry. Energy demand has increased rapidly on the back of Ireland’s strong economic growth. Despite six years of government effort to liberalise the electricity market, neither generation capacity nor competition has increased much and bottlenecks are a distinct possibility in coming years. As a result of transmission constraints, net electricity imports are only 2% of total supply. The slow capacity increase combined with negligible imports has resulted in electricity prices that are among the highest in Europe (Table 2). Ireland is especially reliant on fossil fuels to generate electricity (gas and oil account for 57% of production, with coal providing another third), so the increase in oil and gas prices throughout 2005 will drive Irish electricity prices even higher. The impact of capacity constraints can be seen by comparing the electricity and natural gas markets. There is ample spare capacity to import natural gas from the United Kingdom, so retail natural gas prices are below the EU average (Table 3).

Figure 3. Utilities are still protected to a considerable extent¹

1. The scale of the indicators is from 0-6, from least to most restrictive of competition.

Source: Conway, P. and G. Nicoletti (2006), "Product Market Regulation in Non-manufacturing Sectors in OECD Countries: Measurements and Highlights", *Economics Department Working Papers*, OECD, Paris, forthcoming.

Reform of the energy market has begun but is far from finished. The basic regulatory framework for both the electricity and gas markets has been improved since 1999 and an independent regulator, the Commission for Energy Regulation (CER), was established to oversee the reform process. Liberalisation of the electricity market began in 2000 when major industrial consumers of electricity were able to choose their supplier. The market has been fully liberalised to all customers since February 2005.

The benefits of liberalisation are severely curtailed by the fact that the state-owned and vertically integrated Electricity Supply Board (ESB) continues to dominate the market. This company owns the transmission grid and around three-quarters of the generation capacity (but has 90% of the pricing power as it owns most of the variable capacity). In addition, it appears that ESB still has some power to influence transmission system planning. There are considerable transmission bottlenecks within Ireland, which is one reason why there has been little interest by foreign operators in entering the market. Given the conflict of interest that ESB faces as both a generator and an owner of the transmission network, the two functions of ESB should be split apart. Separating the natural monopoly elements from the potentially competitive parts of the industry in this way is becoming standard practice in other countries. Splitting the generator side into competing suppliers should also improve competition, but the issues here are more complex. A single coal-fired station (Moneypoint) supplies around half the night-time electricity load, with three stations providing most of the rest (Fitz Gerald, 2003). This means that even if ESB were split up, there would be few players in the market. The risk is that the uncertainty created by such a market environment would add to the cost of capital and potentially outweigh the benefits of competition. So when introducing competition among generators, it would be useful to develop financial instruments such as financial transmission rights and the auctioning of virtual capacity to help hedge some of this risk.

Table 2. Pre-tax electricity prices in Europe
In euro cents per kilowatthour (kWh), 1 July 2005¹

	Industrial consumers			Domestic consumers	
	Small	Medium	Large	Small	Large
Ireland	14.5	9.0	6.9	12.0	7.5
Austria	9.4	6.0	4.4	9.5	6.9
Belgium	11.6	7.5	5.6	11.0	7.5
Czech Republic	8.1	5.8	4.3	7.3	4.5
Denmark	7.6	6.5	..	9.6	8.1
Finland	6.1	5.0	3.9	7.8	4.8
France	..	5.3	..	9.1	..
Germany	16.8	8.1	7.0	13.5	7.6
Greece	9.5	6.5	4.5	6.4	5.5
Hungary	11.2	7.5	5.1	9.0	7.2
Italy	11.5	9.1	7.4	15.1	..
Luxembourg ²	16.0	7.0	3.9	13.1	7.8
Netherlands	11.0	8.1	5.3	11.1	7.1
Norway	6.7	5.5	3.5	11.8	6.5
Poland	8.0	5.0	4.1	7.2	4.4
Portugal	11.8	7.4	5.3	13.1	8.5
Slovak Republic	10.5	6.9	..	11.2	6.6
Spain	10.4	6.9	5.3	9.0	5.9
Sweden	7.0	5.4	4.5	8.1	6.5
United Kingdom	7.7	6.4	4.8	8.8	5.7
Unweighted average					
EU15	10.8	6.9	5.3	10.5	6.9
Liberalised markets ³	7.0	5.8	4.2	9.2	6.3

1. 1 January 2005 for France; 1 July 2004 for industrial consumers in Luxembourg. The level of consumption is based on an annual rate of 30, 2 000 and 70 000 MWh for industrial consumers, 3 500 and 20 000 kWh for domestic consumers.
2. Fifty per cent power reduction during hours of heavy loading for industrial consumers.
3. Nordic countries and the United Kingdom.

Source: Eurostat database, January 2006.

ESB's dominant position is not helped by the fact that Ireland is virtually a closed electricity market. Inter-connectors with Northern Ireland have a capacity of less than 7% of the south's production, and two-thirds of that is tied up under long-term contracts. The governments of Northern Ireland and the Republic are committed to developing an integrated electricity market for the whole island. This could be helpful because it expands the market and because Northern Ireland is connected to Scotland (although transmission capacity on that link is also limited). The first step is to build an integrated wholesale market with a single market operator. This is planned to be in place by July 2007. In the longer term, a significant upgrade of transmission capacity is required. A single market would allow greater security of supply, less need to build new generation plants, increased competition and the opportunity to diversify away from fossil fuels. The Irish government is also looking at building inter-connectors to the United Kingdom,² linking Ireland with the wider European market.

Table 3. Pre-tax natural gas prices for industry
By type of consumer, in euros per gigajoule (GJ), 1 July 2005¹

	Small	Medium	Large
Ireland	7.2	5.6	..
Austria	6.8	6.5	..
Belgium ²	6.1	5.2	3.8
Czech Republic	5.5	5.3	5.0
Denmark	10.6	5.8	4.8
Finland	8.5	6.8	5.0
France	..	6.2	..
Germany	8.1	7.8	6.3
Hungary	6.2	6.4	5.2
Italy	..	5.5	..
Luxembourg	7.0	7.0	4.3
Netherlands	6.6	4.6	4.0
Poland	6.4	5.6	4.8
Portugal	9.1	6.8	4.7
Slovak Republic	5.3	5.3	5.1
Spain	5.1	4.9	4.6
Sweden	9.7	8.1	6.2
United Kingdom	7.4	6.4	4.7
Average ³			
EU15	7.7	6.2	4.8

- 1 July 2003 for medium consumers in Ireland and Italy; 1 January 2005 for France, Germany, Luxembourg and Sweden; 1 July 2004 for Belgium and large Swedish consumers. Small, medium and large consumers are defined using the following thresholds for annual consumption: 4 186, 41 860 and 418 600 GJ.
- For small consumers in Belgium: fixed supply (non-erasable) for non-specific applications that can easily be substituted by residual fuel oils.
- Unweighted average of data appearing in table.

Source: Eurostat database, January 2006.

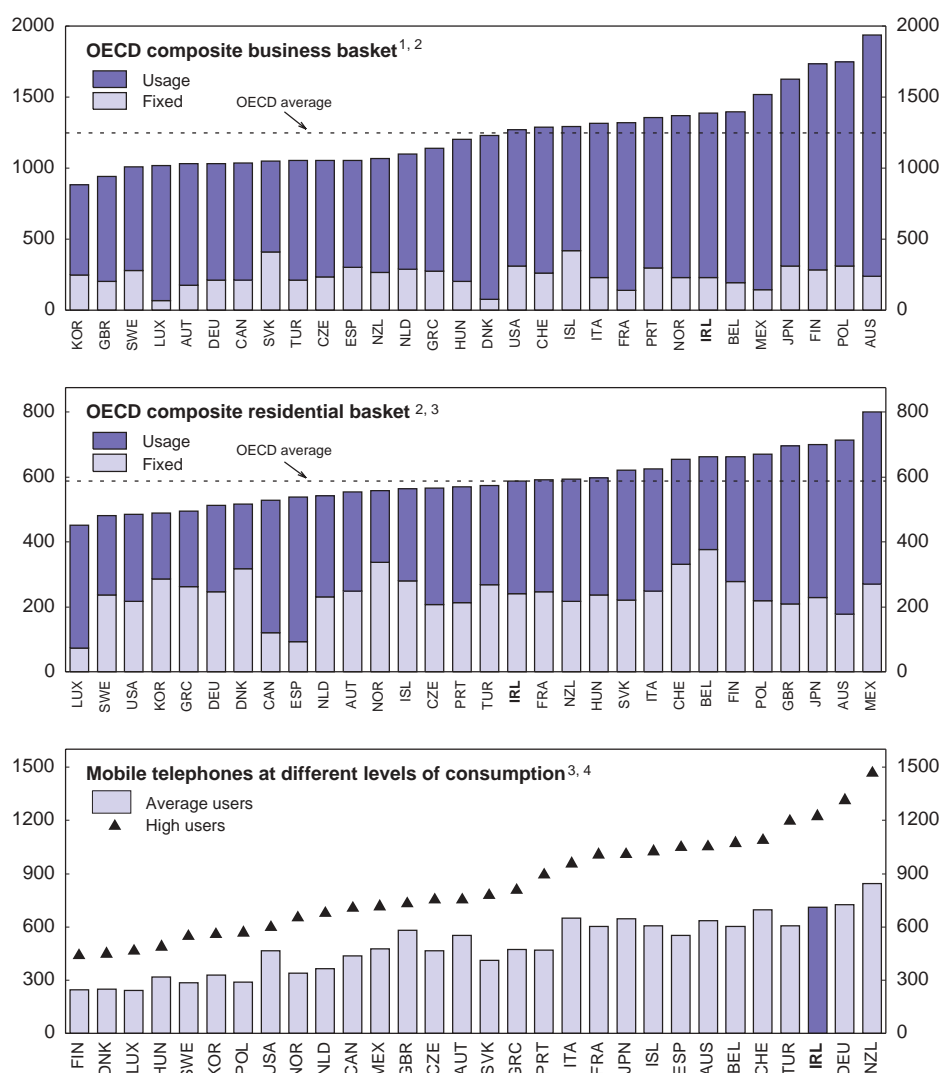
Problems in the telecommunications industry are contributing to a low take-up of broadband

Ireland completed full liberalisation of its telecom market in December 1998. This liberalisation has been one of several factors making Ireland an attractive location for foreign investment. The market is developing in a similar way to telecom markets abroad – fixed line penetration has stagnated, the broadband market is expected to grow rapidly over the next two to five years and the introduction of 3G services should bring potential benefits to both operators and subscribers.

Eircom, which was state owned until 2001, remains the dominant player with 79% of the fixed-line market.³ The small size of the market may be one reason why there is little interest in entering, although the slow progress in unbundling the local loop may also be a contributing factor. Despite that, prices for residential customers do not appear particularly high by international standards although business customers pay slightly above the average (Figure 4). Problems in the mobile market are more significant. Currently, there is an effective duopoly (the top two firms have 89% of the mobile market) although Eircom re-entered the market in 2005 by buying the third operator that has the remaining 11% of market share. Prices are high. The market has been affected by delays in several key areas. In particular, the granting of the third GSM licence was delayed by disagreements over specifications and subsequent court cases, and may well be delayed again because of a dispute between the regulator and the company originally granted the third license.⁴ Mobile number portability was introduced in July 2003 in an attempt to increase competition, but take-up has been slow. To promote competition further, ComReg stated in January 2005 that the two main networks will be opened to virtual operators.

Figure 4. Telecommunications charges

In US dollars, August 2005



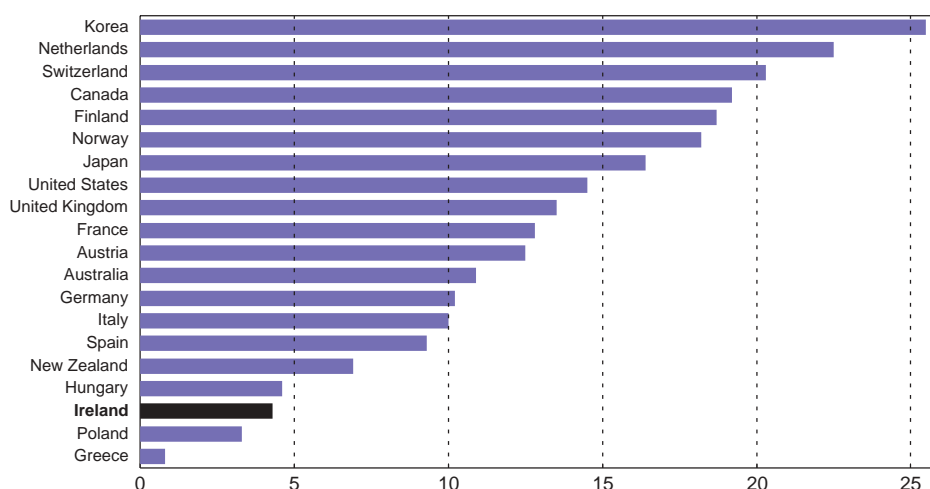
1. Excluding value added tax (VAT).
2. Calls to mobile networks and international calls are included.
3. Including VAT.
4. Pre-paid cards are excluded.

Source: OECD Communications database, January 2006.

The take-up of broadband internet has been surprisingly slow (Figure 5). Part of the problem is that Eircom has been dragging its feet in opening up the local loop. A second factor is that the retail price of broadband⁵ and the cost that potential providers face to access unbundled local loop lines have for several years been more expensive than in most comparable countries. These issues are probably related to insufficient competition. In 2006, the government announced it would boost ComReg's enforcement powers *via* the Competition Act in an effort to open up the local loop more quickly.

Figure 5. Broadband take-up has been slow

Broadband subscribers per 100 inhabitants, June 2005



Source: OECD Broadband Statistics, June 2005, www.oecd.org/sti/ictindicators.

Airports and buses are the main competition issues in the transport sector

Transport costs are important for Irish competitiveness, and much progress has been made in several areas such as taxis and airlines. However, little progress has been made in improving the competitiveness of airports and the reform of bus transport has been incomplete.

Taxis

Taxi reform has been a success. Until 2000 the number of taxi licenses was restricted and taxis were hard to get. A taxi licence cost more than € 100 000. Restrictions on the number of licenses were removed in November 2001. Since then, the number of taxis in the Dublin area for example has quadrupled. The industry is still subject to price control. The new Commission for Taxi Regulation, which has taken over the responsibility for setting maximum prices from local authorities, is also empowered to set standards regarding vehicle quality. It is important that these powers are used only to provide sensible protection for consumers and not as a backdoor route to re-regulation and protection of the existing operators. Moreover, it may be helpful for the taxi regulator – and many of the other sector regulators – to enter into Memorandums of Understanding with the Competition Authority to ensure a consistency of competition policy across sectors.

Air traffic

Airlines are largely deregulated and Irish consumers have considerable choice of carrier. At the end of 2003, there were 37 airlines operating regular scheduled services to 83 different destinations from Dublin, which is by far the predominant hub. Since the deregulation of the Ireland-UK air travel market in the mid 1980s and the EU market in the mid-1990s, increased competition has made low cost fares more available to the costumers. In 2006, the government announced its intention to sell a majority stake in the national airline, *Aer Lingus*, although it will retain at least 25% ownership. The airports, in contrast, have suffered from regulatory problems. The three main airports (Dublin, Cork and Shannon) are all publicly owned. Dublin airport faces capacity constraints because over the past few years expansion has been put on hold by the government pending policy decisions. However, it announced in 2005 that a second terminal would be built. To encourage regional development, Cork and Shannon airports have consistently lost money by setting prices too low. As part of a regulatory overhaul that came into force on 1 October 2004, the

Aviation Commission will no longer set the maximum price for Cork and Shannon in the hope that their new autonomy will increase incentives to earn a reasonable rate of return.

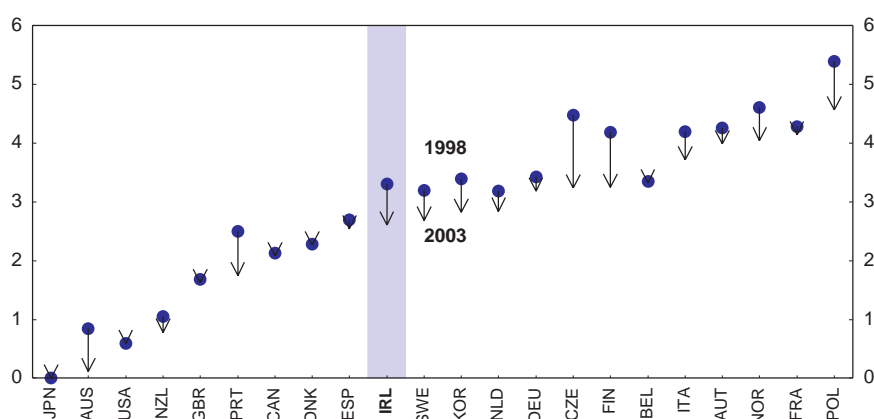
Buses

The bus market is far from competitive. In many countries this might be a comparatively small problem, but in Ireland it adds to the already severe problem of infrastructure bottlenecks, especially as the rail network and other forms of public transport are very limited. The Department of Transport, as regulator, controls prices and the operation of routes, frequency and the number of operators. The Department also has ownership responsibility for the dominant incumbent operator, CIÉ. This state-owned company has a monopoly on public service contracts. Competitors can find it difficult to obtain a licence if it would involve head-to-head competition with CIÉ.⁶ Under pressure from the European Court of Justice, the government is considering liberalising the bus market. It is looking at appointing an independent regulator, allowing private companies to bid for CIÉ routes and letting up to 15% of new routes in Dublin to be run by private operators. These steps, if taken, would be welcome and would contribute to a much needed expansion of the network. However, there is no reason to stop at 15%. If the market is well regulated and if public service obligations are delivered through an appropriate subsidy regime, there is no reason why private operators could not have the whole market if they are able to provide better and cheaper service than the state-run incumbent.

State ownership remains high

A final issue is that Ireland is well behind the best performers when it comes to the level of state ownership. Today, state-owned firms have a monopoly or dominant position in the post, energy, transport, health insurance, television and forestry industries. The government also has interests in airlines and hotels. Although there has been some liberalisation and privatisation since the late 1990s, Ireland remains around the middle of the pack when it comes to state involvement in commercial and potentially competitive industries (Figure 6). State ownership can be a barrier to competition even when there are no formal barriers to entry because state-owned companies can benefit from gentle regulatory oversight, a lower cost of capital due to implicit guarantees, implicit subsidies (or cross-subsidies) and from any dominant position they may retain from their days as protected monopolies.

Figure 6. There is still considerable state ownership¹



1. The scale of the indicators is from 0-6, from lowest to highest share of public enterprises; based on the extent of state ownership and (gross) proceeds from privatisations.

Source: Conway, P. *et al.* (2005), "Product Market Regulation in OECD Countries: 1998 to 2003", *Economics Department Working Papers*, No. 419, OECD, Paris.

Competition law is adequate but hard to enforce

Ireland updated its general competition law in the 1990s but at the time did not establish effective means of enforcing it. After further improvements in 2002, including stronger potential sanctions against hard-core cartels and a much-improved merger review process, the basic institutional structure is now adequate. The Irish Competition Authority (ICA) has more resources and has been using them to launch more investigations against hard-core cartels, issuing dozens of search warrants and summonses. But actual results so far have been limited as the ICA's initiatives have been challenged in the judicial process. As in all countries, enforcement effectiveness depends on persuading the courts about the importance of competition law infringements.

In principle, the sanctions that can be applied against hard-core violations are at least as strong as in other member countries. Firms and individuals face tough criminal penalties, including fines and imprisonment.⁷ However, the Irish constitution appears to rule out imposing fines by administrative order: they can only be imposed by a court as punishment for conviction of a crime. The 2002 amendments tried to facilitate conviction for hard-core offences by providing for something close to a *per se* rule: the law does not permit the defendant to avoid liability by claiming ignorance of the cartel's likely effect on competition. The Act is up for review in 2006 or 2007. It is expected that enforcement processes, including administrative fines, will be considered.

In practice, though, enforcement against hard-core conduct has shown limited results so far, largely because of the need to use criminal-law processes and to meet criminal-law standards of proof. While enforcement against hard-core offences is complex and difficult, the ICA has been proactive in acting against anti-competitive behaviour. It was the first enforcement agency in Europe to secure a criminal conviction for a criminal offence and will become the first to hold a criminal trial in front of a jury for breach of competition law. Nonetheless, substantial cases must be tried by the independent Director of Public Prosecutions (DPP) on referral from the Competition Authority (the Authority can bring a summary proceeding before a lower-level court, but the sanctions there are much smaller). There have been few convictions so far, although it has taken time to adapt to the post-2002 regime and there are several cases currently before the courts. Instead, the Authority has found it more productive in some cases to reach out-of-court settlements that involve promises of good behaviour but no punishment of past violations. For example, price-fixing cases against pub operators were recently concluded by settlement agreements, with no admission of guilt. Some small fines have been imposed against resale price maintenance and boycotts but there have been no convictions for hard-core collusion.

Weak sanctions and uncertainty about the DPP's role also undermines the leniency programme. The programme itself is similar to that in other EU countries, except for the separation of roles between the two bodies. The Authority can recommend immunity but the DPP has sole discretion about whether to grant it. This separation between the Authority and the prosecutor is similar to arrangements in some other countries, such as Canada, Denmark and the United Kingdom, where a separate prosecuting office must handle criminal matters. But the lack of successful leniency cases suggests something is amiss. The leniency programme looks sound in principle, but in practice it may be neither sufficiently asymmetric nor sufficiently transparent and certain. With no reason yet to fear significant penalties, and perhaps some uncertainty about whether coming forward to the ICA will result in a binding commitment from the DPP, parties do not yet have enough incentive to use the leniency programme. Until they do, prosecutions will continue to be difficult.

The merger control system is functioning better since its revisions in 2002. The principal improvement was to remove all ministerial involvement. Decisions about mergers are now made solely by the Authority, applying a competition test⁸ (although the final decision in the media sector still involves the

minister and parliament). The ICA prohibited a merger for the first time in 2004, and it applied conditions on two other matters, also for the first time. Reviews are being handled quickly and efficiently.⁹

Ireland has adapted its enforcement methods to the decentralised EU process that took effect in 2004. Individual exemptions and negative clearances are no longer granted. Ireland has a few “category declarations” covering general classes of agreements, which are analogous to EU block exemption regulations. The most important one concerns vertical agreements, and this has been revised to be consistent with the corresponding EU block exemption, providing for a safe harbour at a market share of 30%. Because Ireland’s 1991 law did not create an effective public enforcement agency, private competition litigation has been unusually important. Ireland’s experience with these cases, mostly about discrimination and refusal to deal, confirm some fears about out-of-control litigation. Court rules are therefore being revised to give the judges more power to manage complex cases, after a private competition case occupied 92 trial days.

The Authority’s enforcement capacity has improved significantly, although its resources remain below the peer group of small-country competition agencies. After being chronically under-staffed in 2000, the ICA’s authorised staffing level of 59 is now similar to the competition agencies in Greece and Portugal. An increase to about 75 would bring it close to those of Denmark and Finland, but it would remain below those in New Zealand and Norway. The ICA has tried to clarify responsibilities for sectoral issues, which had been a point of controversy, through a series of co-operative agreements with the sectoral regulators for broadcasting, energy, aviation, communications and consumer affairs. As the ICA has emphasised how competition enforcement benefits consumers, awareness of the relationship between competition and consumer policies is improving.

Box 1. Summary of recommendations

- Examine the legal issues associated with giving the Competition Authority power to impose sanctions in order to improve enforcement. Review staffing of the Authority. Try to speed up and lower the costs of court proceedings.
- Make the retail planning guide more flexible to allow bigger stores.
- For pharmacies, replace the 50% retail markup with a flat dispensing fee, auction the right to run a pharmacy and swiftly implement plans to abolish the “three year” rule for pharmacists who were not trained in Ireland’s own limited facilities.
- Remove the ceiling on the number of pub licenses.
- Remove unnecessary restrictions in the legal profession (along the lines of recent reforms in the United Kingdom), especially by abolishing the bar council’s monopoly on legal training. Speed up the registration process to make it easier for foreign-trained doctors, dentists and vets to set up a practice in Ireland. As a general rule, licence holders should not be compensated when entry is liberalised.
- As a matter of urgency, integrate the electricity market with Northern Ireland and the rest of the United Kingdom. Split up ESB by separating the transmission grid from the generation capacity. Consider also splitting the generation side into competing firms.
- Liberalise the bus market. Appoint an independent regulator and remove restrictions on the number of bus routes that can be operated by private firms.
- Reduce state ownership in commercial and potentially competitive industries.

Notes

1. The Groceries Order covers normal grocery items, which essentially covers food and drink but excludes perishables such as fresh fruit and vegetables and fresh and frozen fish and meat.
2. The government is considering a public-private partnership arrangement to build two 500 MW connectors to the UK. This would be equivalent to around 4% of Ireland's electricity consumption.
3. The government sold Eircom by way of an IPO in July 1999. In December 2001 it was taken over by a consortium of financial institutions, Valentia telecommunications. It was floated on the Irish and London Stock Exchanges in March 2004 (ComReg, 2005).
4. See "Company accuses ComReg of moving the goalposts", *The Irish Times*, 15 February 2006.
5. It matters whether price comparisons for broadband are adjusted for purchasing power parities. Broadband is a technology in which the component costs are largely set on international markets (i.e. it is a traded product), so it is more appropriate to not make purchasing power parity adjustments when comparing prices across countries. Broadband appears to be less expensive in Ireland when these adjustments are made because the overall price level is high in Ireland. .
6. In 2004, for example, the private operator Citylink was refused a licence to operate a Galway-Limerick-Cork service. The Department of Transport told the company that there was no indication of demand for such a service (Irish Times, 2005).
7. The fine for horizontal price fixing can now be up to € 4 million or 10% of annual turnover (whichever is greater). An individual violator faces both a fine and imprisonment of up to five years.
8. The substantive test for merger control in Ireland (and the United Kingdom) is the somewhat more general "substantial lessening of competition" standard, rather than the traditional EU test based on dominance. The new EU test, of "substantial impediment to effective competition," is approximately the same in practical effect.
9. Of the 94 transactions the ICA assessed in 2004, 89 were cleared within the one-month "phase one" deadline. Notification thresholds were raised and simplified in order to reduce the number of transactions requiring pre-notification.

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*Annex 1***Follow-up on regulatory reforms**

This annex reviews action taken on the main sector-specific recommendations from the OECD's 2001 *Review of Regulatory Reform in Ireland*. It does not deal with the large number of recommendations concerning the legal framework and the administration of competition law.

Recommendations	Action taken
Remove licensing constraints on free entry, particularly those with quantitative limits.	No action.
Eliminate special-interest rules that inhibit efficient competition, such as the Groceries Order.	In 2005, the government announced its intention to abolish the Groceries Order.
Expand competition in the provision of public services at the local authority level. An effective means would be competitive tendering of public services, within the framework of quality standards and monitoring.	No action.
Vigorously enforce competition policy in the self-regulated professions.	The Competition Authority has published a review of anti-competitive practices in various professions and is following this up.
Eliminate both the restriction on economic freedom of pharmacists educated in other EU countries and the location restrictions on pharmacies.	Location restrictions were removed in 2002.
In legal services, move the control of education and entry of legal professionals from the self-governing bodies, but maintain close ties as regards quality of entrants and content of education and training, and maintain the freedom of solicitors to advertise their fees and areas of specialisation.	No action.
Increase competition in the electricity sector by:	
<ul style="list-style-type: none"> ● Prohibiting further additions to ESB's generating capacity. 	No action.
<ul style="list-style-type: none"> ● Requiring ESB to sell some plants. 	No action.
<ul style="list-style-type: none"> ● Ensure that rules and charges for access to the transmission grid are cost-based and non discriminatory. 	No action.
<ul style="list-style-type: none"> ● Separating transmission from generation if transmission constraints are not relieved or if there is discrimination in access. 	No action.
<ul style="list-style-type: none"> ● Increase transmission capacity with Northern Ireland. 	There are plans to upgrade transmission capacity with Northern Ireland and Wales, but they have not yet been finalised.
<ul style="list-style-type: none"> ● Ensure that long-term contracts do not block further liberalisation. 	No action.
<ul style="list-style-type: none"> ● Free choice for consumers by 2005. 	Achieved
In the gas sector:	
<ul style="list-style-type: none"> ● Shift responsibility for transmission access to the Commission for Electricity Regulation. 	No action.
<ul style="list-style-type: none"> ● Ensure tariffs are cost-based, which may mean they vary across the country. 	No action.
<ul style="list-style-type: none"> ● Separate transmission from the potentially competitive activities. 	No action.
Eliminate peat subsidies and replace them with more efficient regional support.	No action.
In the telecoms sector:	
<ul style="list-style-type: none"> ● Streamline licensing using general authorisation rather than individual licensing. 	Relevant EU Directives have been implemented.
<ul style="list-style-type: none"> ● Do not extend the five-year exclusive licence granted to cable operators past 2004. 	Achieved.
<ul style="list-style-type: none"> ● The cost of the universal service obligation should be calculated and charged to consumers. 	No action.

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