

IMC

Irish Mortgage Council

The Competition Authority
1 Parnell Square
Dublin 1

April 13 2005

Irish Mortgage Council response to The Competition Authority Report on the Legal Profession.

Dear Sir/Madam,

Please find attached the response of the Irish Mortgage Council to the Competition Authority Report on the Legal Profession.

Yours faithfully,



Eimer O'Rourke
Secretary

Irish Mortgage Council response to The Competition Authority Report on the Legal Profession.

Context

The Competition Authority issued its report on the legal profession on 25 February 2005.

The report contains a range of recommendations in the areas of:

- *Regulation – separation of Regulation from Representation through the establishment of an Independent Legal Services Commission*
- *Legal Education*
- *Senior Counsel*
- *Legal Fees and the Taxation of costs*
- *Existing restrictions on business structures, holding dual titles, direct access and barrister practice, advertising, recognition of foreign legal qualifications*
- *Conveyancing*

The recommendations in respect of conveyancing have a direct relevance to banks and building societies in so far as the recommendation envisages them as providers of conveyancing services. Equally any proposals to widen the provision of conveyancing services impact on mortgage lenders as consumers of conveyancing services.

Accordingly, the response of the Irish Mortgage Council focuses exclusively on this area.

Irish Mortgage Council response to the Competition Authority Recommendations

The Irish Mortgage Council supports any measures which promote innovation in the delivery of conveyancing services, which will allow this field to keep pace with the dynamic mortgage and housing markets.

Therefore, the Irish Mortgage Council:

- Supports Proposal 14 to allow financial institutions to provide conveyancing services and support the removal of any additional restrictions applying to the provision of such services by Building Societies
- Supports Proposal 15 so that solicitors employed by financial institutions can provide conveyancing services for persons other than their employer
- Supports Proposal 16 to allow the entry of licensed conveyancers trained to a high and consistent standard.
- Supports Proposal 17 that the Legal Services Commission should have responsibility for regulating the training, qualification and operation of licensed conveyancers.

Irish Mortgage Council response to the Competition Authority Questions

Q11a)

What practical problems could arise to hinder the expansion of the range of suppliers of conveyancing services?

Users, particularly mass users, such as mortgage lenders, would need to have confidence in the ability of each category of supplier to perform the necessary functions in respect of mortgage lending:

- to obtain for the lender a valid security document
- to ensure that the property has good marketable title

This is currently achieved by way of the Certificate of Title system. This system would either need to be amended or extended to include further suppliers of services or an alternative developed.

Confidence will also be underpinned by high quality, specialist training. The challenge will be to provide specialised training and yet be satisfied that all matters which can affect a title under general law will be taken into account.

IMC fully supports the efforts of the Law Reform Commission to pursue the e-conveyancing Agenda, and concur that it will ultimately make the conveyancing process easier. However, as with any period of change and evolution, training covering existing and incoming systems will be a more difficult task than training in a static environment.

Finally, the report refers to financial institutions and goes on to state that IFSRA already supervises financial institutions. The term financial institution can refer to quite a wide range of entities, not all of whom are supervised by IFSRA. Further consideration may need to be given to the terminology used here.

Q11b

Should regulation of conveyancing be different for solicitors and non solicitors? If yes, why?

The rules applying to the operation of conveyancing should be the same regardless of the qualifications of the persons carrying out the activity. The nature and extent of regulation should be proportionate to the activity and any risks inherent therein.

Q11c

What other potential suppliers of conveyancing services exist? What regulatory issues would need to be addressed if the range of suppliers of conveyancing services was extended beyond that in Proposals 14-17.

IMC has no specific proposals in response to this question.

Additional Comment: Proposed regulation re “tying” of services and cross subsidisation of services

Paragraph 8.21 suggests that regulation may be needed to address certain concerns in relation to financial institutions providing conveyancing services. “Permitting banks to provide conveyancing services could result in tying (for instance, the sale of mortgages on condition the buyer also purchases the bank’s legal services).....”

We would draw the Competition Authority’s attention to Section 127 of the Consumer Credit Act. Subsection (1) sets out a prohibition on linking of services or “tying” as referred to in 8.21.

127.—(1) A mortgage agent shall not make or offer to make to any person, or arrange or offer to arrange for any person, a housing loan which would be subject to a condition that any financial services, conveyancing services, auctioneering services or other services relating to land which that person may require, whether or not in connection with the loan, shall be provided by the agent or through a subsidiary or other associated body of such agent.

8.21or cross subsidisation (using profits from the market for mortgages to sell legal services below cost).

Section 127(2) prohibits the bundling of services such that the consideration for each must be separately identified, which ensures full price transparency where more than one service is provided.

(2) Where, in connection with the making or arranging of a housing loan, more than one service is made available by a mortgage agent or one or more of his subsidiaries, the agent shall not, and shall ensure that each of his subsidiaries does not, make the services available on terms other than terms which distinguish the consideration payable for each service so made available; nor shall any of the subsidiaries make the services available on terms other than terms which make that distinction.