

SUBMISSION

**To: The Secretary, The Competition Authority, 14 Parnell Square,
Dublin 1.**

From: Self-Insured Task Force

Re: Study of Competition in Legal Services

This outline submission is on behalf of the Self-Insured Taskforce whose members are drawn from Semi-States, Local Authorities, State agencies and private companies. Collectively, we hold provisions against claims in excess of €650ml and employ around 70,000 staff. We have a unique perspective on the issue of legal services but this submission is focused solely on the area of personal injury litigation.

By 2003 litigation overheads had grown to 46% on top of compensation in personal injury claims. Defendants have some control over their own costs by competitive tendering. But, as the Competition Authority itself experienced, it is not possible to directly employ barristers who can retain rights of audience in Court and this would be a considerable saving for many organisations. Accordingly, we support your proposals numbered 11, 12 and 13 which would also allow direct access to Members of the Bar without the need to employ a solicitor for that purpose.

From a defendant's viewpoint claimants' legal costs are excessive, unpredictable and, as your own research demonstrated, not in proportion to any complexity of the issues. The extent to which legal costs are uncontrollable is reflected in the report from Mrs. Justice Susan Denham indicating that there is little effort to control outlay when a defendant who has no say in their being incurred is expected to pay. Even the Regulatory Review Report from the Incorporated Law Society indicates that Section 68 of the Solicitors (Amendment) Act 1994 is not being complied with fully. We would support proposals 27, 28 and 29 but would go further in proposing that copies of Section 68 letters should be furnished to the defendant so that exposure to costs can be transparently ascertained at the outset of litigation. As reflected in your proposals 30, 31 and 32 the current taxation system is rarely used because of dissatisfaction with its uneconomical operation and lack of transparency, so we would support a body independent of the legal establishment being established with publication on the internet of determinations per fee item.

The amount expended on legal services has grown considerably over recent years even in organisations where the volume of litigation has reduced, which reflects your finding of an increase to over €1bl in 2001 from €320million in 1992. We would ascribe much of that increase for personal injury litigation to the abolition of maximum scales for recoverable costs and the introduction of advertising by solicitors. We are prepared to make available data which our members collated to assist the Working Group on Legal Costs which is expected to report to the Minister for Justice later this year. No doubt you will wish to review that report before finalising any of your recommendations.

Rather than make an exhaustive submission at this stage we would suggest that the Competition Authority meet with our Members to discuss various views, some of which are recorded in this preliminary document. As you are probably aware, in recent times substantial reforms to the litigation system have been introduced the impact of which may address a number of your concerns but some of which may result in further restrictive or anti-competitive practices.

Our most immediate concern is that it seems consideration is being given to increasing the jurisdiction of the Circuit Court from €38,000 to €100,000 based on an ill-conceived expectation that this would reduce costs. The reality is that the last jurisdictional increase, coupled with advertising by solicitors, had significant negative consequences for competitiveness of the Irish economy as a whole and did nothing to introduce rivalry between providers of legal services.

In recent times there has been some amelioration in the frequency of questionable personal injury claims which is more than co-incidental with the ban on advertising by solicitors introduced in February 2004. We are, therefore, most vehemently opposed to your proposal number 21 to remove such restrictions. There is no evidence that such advertising introduced cost rivalry between lawyers in the past, but it did promote a “blame & claim” culture to the detriment of both social activities and economic competitiveness.

It is notable that many of the issues identified in your study remain unresolved from similar findings in 1982 by the Restrictive Practices Commission and again in 1990 by the Fair Trade Commission, so there is an element of scepticism about any real reform. Your proposal for an independent Legal Services Commission to replace the functions where the Law Society has the conflicts of interest which you identify does, however, seem to be a practical starting point which also mirrors recent changes in England.

Anne Hughes
CHAIRPERSON
SELF-INSURED TASKFORCE

18th July 2005.