An tUdaras Iomaiochta
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Parnell House, 14 Parnell Square, Dublin 1, Ireland

Health Care and Competition Law and Policy in Ireland

Presentation to FTC/DoJ

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Presentation Outline

- Irish Competition Law and the Competition Authority
- Overview of the Irish Health Sector
  - Public Health System
  - Private Health Sector
- Selected competition issues in the medical subsectors
  - Health Insurance
  - The Hospital Sector
  - The Pharmaceutical Sector
  - Professional Regulation
- Concluding Comments – Health Competition Policy Going Forward

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Irish Competition Law

- Competition legislation
- Competition Authority functions:
  - Enforcement: Cartels and Abuse of Dominance
  - Merger Control
  - Advocacy
- Advocacy - obligations/powers:
  - Advise Ministers and governmental bodies on new and existing legislation
  - Conduct studies of markets and sectors
  - General advocacy efforts

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Overview of the Irish Health Sector

- Economic Importance:
  - 6.5% of GDP or $10.5 billion in 2001 (and climbing)
  - 76% of this came from public sources
  - 21.5% of all public expenditure (and climbing) or €2,300 per capita
- Public-Private Mix:
  - 31% of population have complete public cover (or entitlement)
  - Remaining 69% of population have limited subsidised cover (drugs and hospital stays)
  - But entitlement does not equate to timely access – long waiting lists

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Irish Health Sector - Public

- Fragmented and old organisation:
  - Department of Health and Children
  - 10 Regional State Health Boards
  - Multiple semi-autonomous health agencies
- Funding:
  - Predominantly through general taxation (more than 80%)
  - Also, through out-of-pocket expenses
  - Revenue from public hospital beds used by private patients
- Performance and value for money:
  - Funding has increased by 125% over the last five years – little perceived improvement with waiting lists still long
  - Many reports on the issue
  - Consensus is that radical overhaul is required

The Irish Health Sector - Private

- Markets exist in
  - GP medical and specialist services
  - Pharmaceuticals
  - Hospital care
- Private Health Insurance
  - 47% of the population have private cover
  - State-owned VHI has approximately 87% market share
  - BUPA Ireland has approximately 13%
- Two-tierism – private insurance as a queue-jumping mechanism

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Perceived Problems

- At a general level, questions about:
  - Waiting lists
  - Medical inflation
  - Extra-territorial purchase of public health services
  - Inflexible health system
  - The role of the State in regulation, supply and demand
- At the individual market level there are questions about:
  - Hospital capacity
  - Competition in primary care
  - Prices for specific services
  - Medical professions
  - Pharmacy/pharmaceutical issues
  - Risk equalisation

Health Insurance

- Only two firms:
  - VHI (state owned) had effective statutory monopoly until 1994.
  - BUPA Ireland, the only new entrant (in 1996), has approximately 13% market share.
  - Competition perceived to be weak – not surprising.
- Likely barriers to entry:
  - Community rating and Risk Equalisation (RE).
  - Ministerial involvement and uncertainty about RE.

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Health Insurance (contd)

- BUPA in EU courts on grounds that Risk Equalisation is a State Aid to VHI
- Study of Competition by Health Insurance Authority is ongoing
- Privatisation of VHI on/off the table – too big to privatise as a single company ?

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The Hospital Sector

- The private hospital sector consists of both private and 'public' elements:
  - 20% of public hospitals beds have been designated for use by private patients, but this portion is regularly exceeded
  - About 15% of total hospital bed capacity is privately owned
  - Thus, about a third of hospital beds are available for private use
- Public beds available for private use are charged at a rate below economic cost
- Implication – the public hospital sector has probably inhibited the growth of the private hospital sector

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The Pharmaceutical Sector

- Retail pharmacy unconcentrated, but heavily regulated – large rents available
- Major underprovision in Pharmacy education
- Retail Pharmacy is highly regulated:
  - Restrictions on establishment, e.g., new pharmacies could not open near existing ones (removed in 2002)
  - Restrictions on overseas graduates
  - New restrictions on the establishment of chains mooted
- Price Regulation at Import/Wholesale/Level – prices set by agreement with the Department of Health
- Retail Prices high – uniform 50% retail margin for private prescriptions

Professional Regulation

- Enforcement difficult:
  - Many restrictions bound up in public regulations.
- 3 basic restriction types –
  - Entry
  - Behaviour
  - Organisational Form
- Major Role for Advocacy – large-scale Competition Study of 8 professions including medical practitioners (MD), optometrists (O) and dentists (D).
- Proportionality the key

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Professional Regulation (contd.)

- Preliminary Study Findings:
  - Restrictions on entry, e.g., through education (MD, D, O), transferring from other countries (MD & D), the manner in which posts within the public system are filled (MD), demarcation (D)
  - Restrictions on advertising, e.g., type of information and size or none allowed at all (MD, D, O)
  - Restrictions of organisational form, e.g., no limited liability (MD), not within corporate structures (D).

Health Competition Policy Going Forward

- Competition in Health care often perceived as not relevant:
  - In principle, because it's sacrosanct
  - In practice because markets often don't exist
  - In law because public regulation prevents it
- Implication – much greater role for Advocacy, for some time to come
- Authority plans to stimulate debate on healthcare and competition through public consultation process

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Specific Issues

- Collective action
- Pharmacy/Pharmaceuticals
- Competition and the Professions
- Health insurance
- Out-sourcing of public services to private providers

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Conclusion

- National systems may differ…….
- ……but the problems are familiar.

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