

Mrs O'Sullivan - ICTU's Submission

W. A. G. G. G.

16th January 2007

*BT 11/12
1/07*

Mr Philip Kelly
Assistant Secretary
Department of An Taoiseach
Government Buildings
Upper Merrion Street
Dublin 2

Re: Consultation Process – Regulatory Appeals

Dear Philip,

As I have indicated to you Congress is very anxious to play an active role in the consultation process on regulatory appeals. We wish to do so because we are increasingly concerned about the evolution of economic regulation in the economy and the processes used by individual economic regulators in arriving at their decisions.

While the consultation paper on regulatory appeals is a well written and thought provoking document, in the view of Congress reforming one part of the economic regulation infrastructure will not remedy the inherent problems which we have identified with the system as a whole. In our view there are at least three very significant flaws that should be rectified.

Firstly, the way economic regulation has evolved has been very ad hoc. There are now at least five organisations in the economy that have some degree of responsibility for the regulation of a sector or an activity and there are plans to devolve such responsibility to new or existing organisations. In our view we need a new structure that would provide for a more efficient and less costly system of economic regulation. More importantly, however, we need to develop a common and more balanced terms of reference that would guide the operation of economic regulation across the economy. Most organisations charged with the responsibility for regulation operate under a regime that has a single purpose, that of promoting competition. Despite the fact that the decisions of such bodies impact on practically every citizen the wider public interest is very often ignored. You may recall that in 1999 the then Minister for Public Enterprise invited observations on proposals for Governance and Accountability in the Regulatory Process. At that time Congress suggested the establishment of a National Regulatory Commission. We envisaged that such a Commission would co-ordinate the activities of the various sectoral regulators, while at the same time providing a consistent approach to regulation in the economy based on a broad and a balanced terms of reference. If this proposal had been adopted many of the difficulties we are now experiencing could have been avoided.

12 Parnell Square
Dublin 1
+353 1 8897777
+353 1 8872111
congress@ictu.ie

The second fundamental flaw in the current system concerns the accountability of the sectoral regulators. As pointed out above decisions of regulators can impact significantly on every citizen. Despite this the level of interaction between regulators and citizens is very minimal. More worryingly, it seems that once a decision has been taken there is little that can be done to seek to have that decision altered. It is vital that a more robust system of accountability is developed.

The third flaw concerns the appeals system. As the consultation paper points out the appeals system is complex and usually involves reference to the superior courts. While it is true that the designers of the current system were well intentioned, the system is over complex and not available to the vast majority of citizens. While any new system of appeals may continue to have a role for the superior courts there are some matters that need to be taken account of in any redesign of the system. Firstly, the early stages of the process need to be simplified. It should be possible for an individual or an interested representative organisation to question a decision or the process leading to the making of that decision. Secondly, the involvement of the superior courts needs to be examined. A number of questions arise. Firstly, have the superior courts the expertise to deal with complex regulatory issues. Secondly, the use of the judicial review procedure will only examine the fairness of the process leading to the making of the decision and not the decision itself.

In our view, while it is appropriate to examine how the decisions of economic regulators are appealed, that exercise on its own will not rectify the significant problems with the system as a whole. It is time for a root and branch review and in the view of Congress our original suggestion of a National Regulatory Commission merits further examination.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Liam Berney', with a stylized flourish at the end.

Liam Berney
Industrial Officer