

Summary of advisory report 27

THE INFLUENCE OF LAW AND REGULATION ON INNOVATION

The Minister for Economic Affairs put two questions to the Advisory Council for Science and Technology Policy (AWT), which the Council considers in this report:

- The effect of law and regulation on innovation in the business sector
- The government is pursuing a policy on competition that is aimed at strengthening competition, and a policy on technology that focuses on encouraging collaboration. Are these at odds with each other?

Effect of law and regulation on innovation in the business sector

A number of laws and rules are specifically aimed at encouraging innovation in the business sector, e.g. the patents act, tax incentives for R&D, etc. However, the majority of laws and regulations were not created to encourage innovation, but were motivated by considerations of safety, quality, the environment, etc. Nonetheless, many of these laws and rules have a big impact on the innovation process.

A number of comments can be made on the current view that legislation and regulations have a stifling effect on innovative capacity. Simple recipes like 'deregulation is good' are misleading; the Council can demonstrate this with many examples. It is not the scope and degree of detail that from an innovation point of view are relevant, but the flexibility in the laws and regulations. Flexibility means characterising the law or regulation as being open or closed, with 'open' meaning there is room for different approaches in order to satisfy requirements (the end is fixed, the means are variable); 'closed' means the only way is by the prescribed route (the means for achieving specific ends are fixed). Another important factor is whether the laws and regulations render it possible to take advantage of changing circumstances swiftly and adequately.

In general, an 'open' system provides more room for innovation than a 'closed' one; if too much is laid down in legislation and regulations, little room is left for new approaches. On the other hand, an 'open' system also generates uncertainty: people do not know whether certain paths they have chosen are permissible. There is, therefore, a field of tension. On the one hand, citizens as well as the government need clarity (certainty about safety, the environment, etc.) as does the business community (is it permitted?): on the other, all the stops of the 'innovation machine' are pulled right out when regulations are 'open' and provide room for varying interpretations, but this flexibility in turn produces uncertainty. A balance is needed.

By and large there is not much that can be said about this balance; the interrelationships between legislation and regulations and innovation potential are too multifaceted and complex. No simple recipes can be provided; indeed, simple recipes in fact do injustice to the diversity in practice and consequently can nip many potential innovations in the bud. Given this complexity of relationships, the Council advocates that new laws and regulations be accompanied by an innovation impact report: examining new laws and regulations for intended and unintended side effects on innovation. The proposal is wide-ranging - relating, for example, to environmental legislation that has a directly demonstrable impact on innovation, as well as to tax legislation which may have an impact on the willingness to take risks, etc. - and its implementation is certainly not straightforward, but the interests, in the Council's view, are great. It is of crucial importance to consider explicitly the possible consequences of new laws and regulations for the innovation potential in trade and industry before their introduction. In the first instance it is up to the department most concerned to draw up this report, or to have it drawn up. The Minister for

Economic Affairs could play an examining role in this.

Relationship between competition and innovation

We know from practice that especially competition between companies has the effect of encouraging innovation. Competition 'forces' companies to remain on their toes and to continually search for new ways of holding on to their position and, where possible, of reinforcing it. This does not mean that collaboration is always 'wrong'. Collaboration is sometimes necessary because companies want to spread the costs and the risks; innovation is a perfect example.

There are also disadvantages attached to collaboration on innovation. In the first place for the company itself: its grip on the innovation process is not as tight, collaboration takes time and money, and there's no getting around the fact that the returns have to be shared with partners. But there are also disadvantages for the economy as a whole: there is the risk of innovative companies being excluded from participating in certain joint ventures, and the participating partners may, if their relationship takes on a more permanent character, be less inclined to introduce innovations. Weighing up the advantages and disadvantages to the company is naturally something a company should in the first instance do itself. It is the government's task to weigh up the impacts on society. Due to the complexity of the 'triangular relationship' between competition, collaboration and innovation, it is impossible to give clear, general criteria. The Council is in favour of a system of response to complaints. It takes the view that as little as possible should be laid down in advance in the Competition Act and in legislation and regulations governing technology policy on what is and what is not permitted in the sphere of collaboration. What is important is that attention be paid to signals from the business community and from society and that they be dealt with case by case. If collaboration between companies is anti-competitive, it is expected that the injured parties will lodge a complaint. In this way, it will be possible to build up case law in this field which will give companies something to hold onto and will consequently have an anticipatory effect while offering sufficient scope for flexibility. The Council finds that the new Competition Act in principle provides sufficient opportunities for this, although it will be necessary to go through a learning process in practice. It concludes that the new Competition Act and collaboration-based technology policy can in principle easily go hand in hand.

