SCOTLAND’s ECONOMIC FUTURE POST-2014

SUBMISSION FROM WHICH?

Introduction

Which? is responding to the Committee’s Inquiry on its economic focus aspect.

Which? is the independent voice of all UK consumers and for the past 13 years we have had dedicated Scottish representation, campaigning on issues as diverse as food, health and housing, as well as competition and legal services.

For example, we have successfully campaigned to help improve access to NHS dentistry, for better information for Scottish homebuyers, and to improve the quality of information about food for consumers. We successfully pursued the first super-complaint in Scotland, which is introducing competition into legal services (Alternative Business Structures).

As part of our monthly consumer insight tracker survey, we gather data from Scottish consumers. Using our most recent data, we have analysed Scottish consumers alongside UK consumers to better understand Scottish-specific consumer issues and dynamics.

This has revealed that significantly more Scottish consumers (57%) rate the UK economy as poor than UK consumers in general (48%). In a similar vein, 39% say they expect the UK economy to worsen over the next year, compared with 30% for the UK as a whole.

Energy, fuel and food prices top the list of consumer worries for both Scots and those in the UK. But Scots are generally more likely to be concerned about particular issues than the rest of the UK, in particular energy prices (91% vs 84%), future tax levels (71% vs 63%) and public spending cuts (70% vs 64%).

Public services are more trusted by Scottish consumers, with 67% telling us they trust the NHS (UK – 54%). Interestingly, given its different and Scottish-specific regulation, the water industry is also more trusted by Scots (59%) than the whole of the UK (47%).

As part of our role representing all consumers we are working with the Scottish Government to help ensure the highest levels of protection for Scottish consumers in regard to any new regulatory and consumer landscape.

This submission builds on the response we gave to the Scottish Government on its papers on economic and competition regulation and on consumers in an independent Scotland.
Consumers at the heart of reform
Which? considers it critical for Scotland to place consumers at the operational heart of its governance post-2014, whatever the referendum result.

In terms of the reforms to the competition, consumer and regulatory landscape in an independent Scotland mooted by the Scottish Government, our emphasis is on having a regulator or regulators with sufficient clout to stand up for consumers in the face of vested interests. Our priorities in any new structure would be:

- Co-ordinated, consistent and effective enforcement, with good links between local and national levels;
- Redress mechanisms that deliver for consumers and aid well-functioning markets, preferably through relevant ombudsman schemes;
- A mechanism for opt-out collective redress in competition law breaches;
- Sufficiently resourced regulator(s) that are technically proficient enough to keep on top of market trends and understand cross-sectoral dynamics to deliver better regulation;
- Flexible regulator(s) who can respond to evolving consumer demand and markets. This would be enhanced by a supercomplaint mechanism for consumer groups;
- If there are multiple regulators, effective co-ordination and co-operation between them is essential.

To deliver these outcomes, we consider the following focuses to be key:

- Clear objectives for market regulators, including some focussed on fair treatment of consumers, alongside those promoting well-organised and transparent market processes and fair and strong competition;
- The right regulatory mindset and culture. The financial crisis is a salient example of the importance of this. This mindset should include an appetite for taking on difficult challenges in the pursuit of good consumer and market outcomes.
- Independence. Market regulation must be – and be seen to be – independent. This means a separation between it and Government and between it and its sector(s). Regular performance reviews against agreed criteria should be carried out. Meetings should be held in public and minutes published.
- The Scottish Parliament should have a crucial role in scrutiny of the performance of market regulation in post-2014 Scotland, potentially through its Committee system.
- Enforcement work should include techniques that get to the heart of how a market is actually working, such as mystery shopping and other observational research as part of a programme of consumer research.
- Appropriate fines and penalties will also be needed, alongside the ability to hold individuals as well as organisations to account.
- Opt-out collective redress should run on a cy-pres system, including a loser pays principle and the approval of designated representative bodies – without moving to the US-style class action system.
There may be benefits to combining regulators where the sectors being regulated share characteristics. There may also be the benefit of avoiding regulatory capture.

Attention would need to be given to cross-border issues between Scotland and the rest of the UK. Clarity as to where organisations will have to operate to two different sets of rules will be essential.

It is critical that any new landscape does not risk limiting government and regulatory advocacy solely to government-funded bodies. There may be an enhanced risk of this where public bodies have enforcement powers which could potentially make it difficult to also criticise (for example if the enforcement is not effective). The Government needs to ensure that the regulators are able to listen to expertise from the widest range of organisations on Scottish consumers’ experiences and problems, including non-government voices such as Which?

The regulatory landscape – experiences from other jurisdictions
The experience of other countries should also be born in mind. From Which?’s conversations with consumer groups in the countries that have already moved to a more combined regulator model, it would appear that the consumer experience varies. Where it works well, the benefits of clarity and increased clout are evident. However, on the downside, other countries have seen a dilution of consumer protections and reduced appetite to enforce.

Spain: In Spain, the new arrangements appear to have led to a substantial dilution of consumer protections and enforcement of those protections, albeit they are still in transition.

Australia: In Australia there was a considerable concentration of power in the Australian Competition and Consumer Commission (ACCC) in 2010. To date, this seems to have led to an improvement in consumer protection via a combination of the increased powers and a change of personnel at the top. That change has seen the ACCC develop an appetite for risk on behalf of consumers, in turn resulting in multi-million dollar fines in successful court cases (and some lost cases). The combined regulator has excellent contact with (our sister organisation) Choice, including a working arrangement whereby any issue raised by Choice is automatically considered by the ACCC.

Holland: Consumentenbond (CB) reports that the new combined regulator (the ACM) so far seems to be working well - although it is very early days as it was only set up in April 2013. CB also stressed the importance of key personnel at the ACM, particularly those from the consumer authority and telecoms regulator.

Which?
January 2014