Fuellng a whole new crisis

The soaring cost of petrol and diesel is threatening to do severe damage to the economy at a time when it is least able to absorb such a blow. Crude oil prices have risen by almost $20 a barrel over the past two months and motorists have also been chagrined by retail prices of over €1.05 for a litre of diesel, which motorists were charging €1.54. Indeed, the AA figures have been overstated by events with most service stations now charging €1.70 or more for a litre of petrol. This compares with €1.14 for a litre of petrol and €1.60 for diesel. This compares with €1.17 for a litre of petrol. No doubt people have also been chagrined by the increase in fuel prices, prices which are charged by motorists who are beginning to hammer their fuel prices. Hauliers, taxi drivers and coach operators are also suffering badly.

And who is responsible for this sorry situation? Dearer crude oil is certainly part of the problem but, even at its current price, crude oil still represents only a third of the retail cost of motor fuel. The main culprit is of course the Government, with its excise duties and VAT making up half the price of diesel at the pumps and well over half the price of petrol. Therefore, the Government has passed the point of diminishing marginal returns. Financial Minister Michael Noonan should cut our excessive fuel duties before they inflict even further damage on the economy.

This of course means that calls on the Government to reduce fuel duties by cutting taxes will be met with replies that it can’t afford to lose the revenue which they bring in. Nonetheless, even with a 4c increase in petrol and diesel duties in last December’s Budget, the Government’s total revenue from excise duties was flat for the first seven months of the year. The Government must be clear that, when it comes to excise duties on motor fuel, the Government has passed the point of diminishing marginal returns. Financial Minister Michael Noonan should cut our excessive fuel duties before they inflict even further damage on the economy.

Lower bond yields good news

Yesterday’s decline in Irish government bond yields below the psychologically important 6pc barrier represents good news for this country as we gradually seek to work our way back to fiscal solvency.

The yield, or implied interest rate, on long-term Irish government bonds is now at half of the 14pc which it reached at one point last year.

That’s the good news.

The bad news is that, even at 6pc yields, there is no way that Ireland could return as scheduled to the international bond markets next year.

There is some sort of second bailout, which will almost certainly not be called that, almost inevitable.

However, falling Irish bond yields weren’t the only piece of good economic news yesterday.

Internationaly there is growing investor confidence that, after refusing to engage with the problem for almost three years, the ECB and Europe’s governments are finally getting serious about fixing the euro.

If this turns out to be the case then Irish bond yields almost certainly have much more to fall.

Time to open court doors and let justice be seen

With a few exceptions, justice in Ireland is shrouded in public. If a party’s barrister goes to court and makes an argument, you get to hear what the barrister says. You get to listen to the proceedings.

However, if that same barrister reduces his argument to a written form and sends his legal submission to the judge and his opponent, then you do get to see that document (even if you offer to pay for a copy!).

Does that make sense? You know it doesn’t.

Not only does it not make any sense, but it runs contrary to the English-speaking countries of the common law world do not do this. The High Court of Australia posts attorneys’ legal submissions on its website – a day or so after they are filed.

In the United States, at both the federal level and in every state, legal submissions are posted on the websites of the two dominant electronic publishers: Westlaw and LexisNexis.

And if a person cannot find them there, she has access to them at the relevant courthouse as a matter of federal constitutional right.

In Canada, England, Wales, New Zealand, and South Africa, a person is in place for the public to request such documents. Such requests are subject to judicial discretion, but they are frequently granted.

And here in Ireland, no process is in place to ask for copies of these documents. Indeed, the courts of record do not even maintain the documents on file.

I do not doubt that there are a few classes of cases that call for some level of confidentiality. One might exempt from automatic disclosure legal submissions in cases involving minors, ungroen allegations of sexual misconduct, confidential business information, ongoing criminal prosecutions heard by courts and national security.

But the vast majority of cases going through the courts do not involve such claims. The legal submissions in those cases should be public, and that is the policy in every other major English-speaking jurisdiction.

Why should you care? First, the current position of the Irish courts is inconsistent with modern notions of justice. Defendants are certainly part of the problem but, even at its current price, crude oil still represents only a third of the retail cost of motor fuel. The main culprit is of course the Government, with its excise duties and VAT making up half the price of diesel at the pumps and well over half the price of petrol.

Second, these submissions often form the basis of hearings, oral arguments, and other trial court or appellate procedures. Such proceedings are incomprehensible (or nearly so) without access to these documents. A party wishing to refer to these documents during such proceedings; likewise a party wishing to frame their answers by referencing the arguments and factual assertions made in their submissions or those of their opponent.

Although the public can attend all such hearings under the Irish Constitution’s “open courts” provision, the right to “hear” such proceedings is not meaningful without access to the parties’ submissions. This is particularly true in so-called complex litigation involving multiple parties, multiple issues, and multiple jurisdictions.

Third, competition for legal services is stifled by the lack of public access to these documents. Attorneys who wish to practice in a specialty which is new to them lack access to a library of written documents for use as models.

Ultimately, this blocks up the price for legal services at the expense of overall consumer welfare.

Moreover, in regard to the bottom of the economic ladder, these restrictive trade practices might entirely prevent the poorest litigants from having access to the justice system. Not only can you not afford a lawyer, but you have no access to model legal submissions.

Fourth, the only way journalists can get copies of legal submissions in advance of a hearing is to ask (actually, beg) attorneys on the case for copies.

The attorneys are not obliged to turn copies over to the press, but if the attorneys do turn copies over to journalists, that too has troubling transparency implications. Attorneys can extract favourable coverage from journalists covering public proceedings. Journalists who do not “play ball” simply do not get access to the documents. If you want honest newspapers and media coverage, you have to open the courts up.

The Legal Services Regulation Bill has recently been formally introduced by Justice Minister Alan Shatter. The Bill’s text is not yet being finalised; indeed, it has not yet finished full review in committee.

There is still time for an amendment directing the superior courts of Ireland to maintain copies of a party’s legal submissions as part of the official case records.

There is still time to institute, excluding exceptional circumstances, some reasonably transparent process permitting public access.

The public has every right to know who is lobbying the judiciary