

Mr Rueben Irvine
The Competition Authority
14 Parnell Square
Dublin 1



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Dear Mr Irvine,

CIOB RESPONSE TO THE STUDY OF COMPETITION IN PROFESSIONAL SERVICES IN IRELAND

We are in receipt of the study of competition in professional services in Ireland, consultation document 2 (Architects-November 2003) and are pleased to have the opportunity to make the following preliminary observations.

Background

1. For almost 170 years the Chartered Institute of Building has pioneered the way in establishing, promoting and maintaining standards of excellence in the construction industry, and now sets the pace on a global scale for the education and professionalism of those who manage the construction of the built environment. The CIOB has over 40,000 members working in over 94 countries.
2. The Chartered Institute of Building in Ireland (C.I.O.B) is a multi-disciplinary professional institution with over 2000 Irish members drawn from a broad spectrum of professions including architecture, surveying, engineering, and project management disciplines. Our categories of membership are identifiable under these and other appropriate professional titles. We have been operating in Ireland for over forty years and our membership embraces professionals in the public and private sectors of the industry. As you may be aware, the Architecture & Surveying Institute merged with this Institute some twelve months ago. Through this process the number of CIOB architect members in Ireland has increased.

General

3. The Chartered Institute of Building is broadly in agreement with the objectives of the Forum for the Construction Industry "to protect clients from the danger of inadequate service from those who describe themselves as professionals but are not professionally qualified and the need to maintain high standards within the Industry". We support the broad thrust of the proposed Forum objectives to improve efficiency and productivity in the construction industry and to secure a regulatory environment, which will promote quality and safety in building and construction.
4. Notwithstanding our participation in the Forum recommendations, the CIOB has some reservations about the implementation of registration of a narrow number of titles as this does not reflect the full spectrum of construction titles, and would caution against any registration process that would result in undue restrictions in the design, supervision and certification of performance compliance of structures. It is worth noting that other construction professionals rely upon their examined levels of competence gained from



their relevant Professional institute. These are relied upon and accepted by the industry together with levels of professionalism achieved by compliance with codes of conduct. We consider that registration in Ireland should ideally relate to all professionals in construction.

5. Our support for the proposed registration of title is in the context that the proposal to legally restrict the use of the title was intended for registration of "title" only, and not "function" and advise that CIOB would not support any restrictions that would unduly restrict the free movement of professional services, right to establishment and competition law. We would also generally concur with your reference in section two, i.e.: *"Additionally, there may be a number of individuals in related disciplines in the construction industry, such as engineers or builders, that may occasionally provide architectural services"* Such examples would also invariably include Building Surveyors and Architectural Technologists, and these would regularly provide professional design and supervision of certain categories of buildings.
6. We would not be in agreement with an attempt to introduce any restrictive practices that would result in a diminished standard of service that would operate against the public interest, as this would be in breach of our Royal Charter which requires us to provide a professional service to ensure "the promotion for the public benefit of the science and practice of Building".
7. We have considered your conclusions and wish to respond as follows, in relation to the following areas.

Rationale for the protection of title

Response

8. The CIOB has participated in the negotiations leading up to the compilation of the draft heads of the Bills for Quantity Surveyors and Building Surveyors and indirectly in the proposed heads of the Bill for Architects, through its former ASI connection. Our participation in the proposal to legally restrict the use of these titles, ('architect', 'quantity surveyor' and 'building surveyor') to those who meet minimum criteria such as academic and professional qualification and/or appropriate practical experience is, *"in the context of the Forum stated objectives of the need to protect clients from the danger of inadequate service from those who describe themselves as professionals, but are not professionally qualified and the need to maintain high standards within the Industry"*, provided they abide by a strict code of conduct and disciplinary procedures governing impartiality, competence, integrity and responsibility of the members of the profession to their clients and the broader society. Our contribution is not to be construed as an endorsement or an encouragement of the continuation of the practice of;
 - Publication of historic percentage fees information
 - Undue restrictions in competitions for public sector projects
 - Restrictions on advertising
 - Inappropriate restrictions on the categories of construction professionals in issuing compliance certification for Planning and Building Regulations
 - Continuance of excessive Professional Indemnity Insurance requirements by public bodies on the recommendations of their insurers
9. Equally we would not be in favour of a restriction in the *"Use of similar existing titles"* as these *"should not be prohibited"* and we would concur with your contention in "3.43" that *"Protection of title should not prevent similar professions, such as architectural*

technicians and architectural technologists, from continuing to use their titles". We would also concur with the inference in 3.17 where it states "The proposed registration would not restrict any individual, registered or unregistered, from offering architectural services, but would restrict the use of this title to individuals who: • have appropriate academic qualifications, or • are members of certain professional bodies, or • can prove that they have sufficient experience of providing architectural services, for example 10 years. i.e. 'grandfather' clause." Regarding the following suggestion *"Any grandfather clause should be permanent"*. In the event of registration of title we broadly support the requirement for the continuation, for some considerable time at least, of an extension of the time period for the operation of a grandfather clause.

10. In summary the CIOB would not be in favour of registration of titles that would result in effective restriction of function.

Competition authority Statement

11. *"Government policy is that any proposed regulation should be subject to a Regulatory Impact Analysis (RIA)19, and it is recommended that regulation in this case not be implemented until a full RIA has been carried out. Draft recommendations The Department of Environment and Local Government should further examine the need for protection of title in light of the issues outlined above by undertaking a Regulatory Impact Analysis" "The establishment of registration criteria should be transparent" "Regulatory bodies should be independent of those being regulated"*

Response

12. We understand that the Architects registration structure proposed by the DoEHLG /Forum for the Construction Industry is for a Board with a majority of nominees from Government and other bodies independent of the RIAI. Such Boards will obviously require appropriate legislative safeguards and statutory recourse to an appeals system based on natural justice. In the event that a regulatory impact statement is considered necessary the CIOB will cooperate fully with DoEHLG.
13. Q5. *How effective is membership of various professional bodies, such as the RIAI, the Group of Independent Architects of Ireland, the Architecture and Surveying Institute, etc, as a signal of quality to buyers?*

Response

14. We consider that appropriate membership, at corporate level (i.e. Member or Fellow) of professional institutes, such as those listed above, is indicative of a high level of professional training, experience and ethical standards, given that these bodies, like the Chartered Institute of Building, have a strict code of conduct and disciplinary procedures governing impartiality, competence, integrity and responsibility of the members of the profession "to their clients and the broader society.

Q (9) Are individuals with similar skills and qualifications to architects, such as architectural technologists, effectively prevented from providing Compliance Certification? /compliance certification-.....Law Society criteria

Competition authority Statement

15. Regarding performance compliance certification you refer to; *"Opinions on Compliance with Planning and Building Regulations (Compliance Certification) are required for conveyancing and financial purposes for nearly all*

structures designed and built in Ireland. The Law Society of Ireland's Conveyancing Handbook contains guidelines as to the individuals that it considers are suitable for providing Compliance Certification. These individuals are: • persons with a degree or a diploma of degree standard in architecture, • persons who have been in practice as architects on their own account for ten years. This would include persons certified by or included on a list prepared by the Minister for the Environment as persons who in the Minister's opinion are appropriately qualified as described supra, • Chartered Engineers, • persons with a degree in civil engineering, • persons who have been in practice on their own account as engineers in the construction industry for ten years, • qualified building surveyors, and • persons from another jurisdiction in the European Union whose qualification is entitled to recognition in Ireland under the Architects Directive. 4.29 "This list does not automatically include members of any professional organisation, nor does it include individuals who have degrees in related disciplines, such as architectural technology. Architectural technologists specialise in the area of technical design whereas traditional architects also focus on aesthetic aspects of building design"

Response

16. The acceptance by the Law Society, of the foregoing criteria, gives rise to the following anomalous contradictions; In a literal translation (e.g. in relation to the Engineering category), it is flawed, in that it does not discriminate between the Chartered Engineering designations and would in theory allow a non-construction professional e.g. agricultural, biomedical or other category of engineer, to certify compliance. Likewise the acceptance of persons with a degree only, in any of the other disciplines listed, does not provide sufficient rigour as unlike the Chartered bodies, there is no requirement for evidence of professional competence. Notwithstanding the anomalies referred to, the Law Society has endeavoured to provide a list of those eligible to certify compliance with Planning and Building Regulations. The CIOB fully supports the need for professional expertise for certifying professionals, in the foregoing areas, and believes this is best served by appropriately qualified Architects, Structural and Civil Engineers, Construction Engineers and Building Surveyors. Full corporate membership in these designations of such Chartered and other professional bodies listed in the proposed registration of titles, represents the greatest likelihood of providing a competent service to clients requiring certification. Other bodies whose examinations and qualifying mechanisms address the minimum professional and technical requirements could be assessed by an independent organisation such as the Department of the Environment, Heritage and Local Government in conjunction with the Forum for the Construction Industry.
17. Q (6) "Are the Building Regulations, along with the system of Compliance Certification used for conveyancing and financial purposes, an effective method of enforcing minimum safety standards for new buildings?"

Under the current regulatory environment you reference the following

Competition authority Statement

18. "To ensure that all architectural work in Ireland meets certain minimum safety standards, a system of building standards was introduced in the early 1990s. 2.45 Specifically, the Building Control Act 1990 provides for: • Building Control Regulations; • powers of enforcement and inspection for Building Control Authorities; and • Building Regulations. 2.46 The Building Control Regulations, effective from 1992, supplement the basic powers of inspection and enforcement given to Building Control Authorities". "The Building Regulations deal with more specific technical construction issues such as

building standards, workmanship, conservation of fuel and energy and access for people with disabilities. The Building Regulations are broad functional requirements, or general statements of intent of the relevant regulation. Technical Guidance Documents provide specific guidance on how to comply with the Regulations. Primary responsibility for compliance with the requirements of the Building Regulations rests with the designers, builders and owners of buildings."

Response

19. The current system of Building Control by Local Authorities focuses primarily on the lodgment of Commencement notices and Fire Safety certificates. The inspection regime is concerned mainly with a random monitoring system with a typical coverage of 10% in many cases. The current Building Control process is not an approval system. Continental research has shown that up to 60% of defects are caused by design defects. In the current non-approval system many design faults are inherent in designs before they are discovered and in many cases are almost impossible to correct. At present many designers are employed merely to get Planning permission, and buildings are being constructed, with no site supervision by the designer.
20. This is compounded at the residential end of the market, where house builders and developers actively discourage professional inspections, and, opinions on compliance are based on superficial inspections (snagging) at the completion stage. It has become normal practice on large and medium sized housing developments (and in some cases small developments) to refuse to allow work-in-progress inspections by client's professional representatives. While for multiple units, Homebond, DoEHLG Inspectors, and other Insurers carry out limited inspections; this is not a satisfactory situation. Building Surveyors, Structural and Civil Engineers and Chartered Builders also carry out inspections.
21. *Q10. Regarding the need for expertise and independence, what is the most appropriate method, or organisation, for determining who should be able to provide Compliance Certification?*

Response

22. We believe that Chartered Architects, and other appropriately qualified Architects, Chartered Building Surveyors and other appropriately qualified Building Surveyors, Appropriately qualified Chartered Engineers and Chartered Builders and other appropriately qualified construction professionals, are best placed to provide compliance certification provided they abide by a strict code of conduct and disciplinary procedures governing impartiality, competence, integrity and responsibility of the members of the profession to their clients. We contend that such persons should also carry an appropriate level of Professional indemnity insurance.

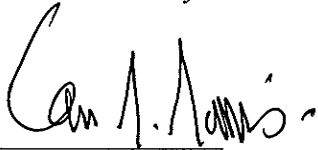
Conclusion

23. The Chartered Institute of Building broadly supports the Forum for the Construction Industry and the Department's objectives to provide for protection of the public from an inadequate level of service. We do not endorse restrictive practices that have developed over the years and welcome the critical examination of these findings.
24. We fully concur with the need to ensure the establishment of fair, impartial and transparent registration criteria and regulatory boards, where applicable. We believe that membership, at corporate level i.e. Member or Fellow (or Associate in the case of the Society of Chartered Surveyors) of professional institutes, in the area of Architecture and Building Surveying and appropriately qualified Engineers in Construction, provides the

the best assurance, from a client's perspective, of identifying professionals to carry out the design and quality control of buildings, to address the statutory requirements.

25. Only appropriately qualified construction professionals should carry out compliance certification.
26. There is an urgent need to examine the effectiveness of the current Building Control system and increase the level of inspections coupled with, at the very least, a plan and "building type" approval system, as in other E.U. countries.
27. Self-certification by architects, building surveyors and appropriately qualified engineers etc, should only be considered in conjunction with a combination of an increase in Local Authority inspections and resources, where necessary, in addition to the introduction of an approval system (i.e. plan and "building type" approval system) in the interest of public health & safety.
28. Self-certification should not be implemented as a substitute for these proposed measures, given the current deficiencies in existing practices in the industry and the inadequacies in the performance compliance system,

Yours sincerely



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