

GROUP OF INDEPENDENT ARCHITECTS IN IRELAND

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Competition Authority
14 Parnell Square
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14th January 2004

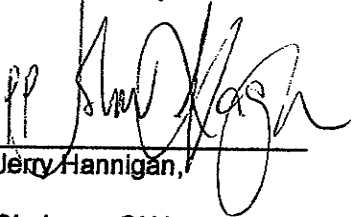
RE:- Response to the Competition Authority's Study on Competition in Professional Services in Ireland: Consultation Document 2: Architects, November 2003.

Dear Sir/Madam,

Further to our meeting of the 15th December 2003, in relation to the above, we enclose herewith the GIAI Response.

We understand that you may wish to arrange a further meeting in relation to same and we look forward to hearing from you.

Yours faithfully,



Jerry Hannigan,

Chairman GIAI

Encl.

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Response to the Competition Authority's Study of Competition in Professional Services in Ireland: Consultation Document 2: Architects, November 2003.

Set out below is our response to the questions posed by the Authority in their Consultation Document.

January 14, 2004.

Question 1:

Are competitions for public sector projects run satisfactorily? Are suitable Architects ever prohibited from entering, and if so, on what grounds?

It has been the policy and pursuit of GIAI for some years to highlight and report anomalies in the method by which Architectural Competitions for Public Sector Projects are conducted. For the most part these are conducted and prepared on behalf of relevant Local Authorities by the Royal Institute of the Architects of Ireland with fairly consistent documentation.

In the case of each of the following three examples of RIAI organised competitions, GIAI made strong representations to the relevant County Managers, Department of the Environment, Office of Public Works (and the Competitions Authority) opposing the uncompetitive limitation stated in each project –

“open to Architects/Architectural practices holding a qualification listed in the EU Architects Directive 85/384/EEC or equivalent.”

In the case of the *“Rathmines Square and Leisure Centre Architectural Competition (Dublin)”* the addendum *“or equivalent”* was not even stated.

Sample Public Sector Competitions:

- (a) Martin Valley Sculpture Park (Cork)
- (b) Waterford North Quays (Waterford)
- (c) Rathmines Square and Leisure Architectural Design Competition (Dublin City)

It is GIAI's assessment that the relevant Buyers, by virtue of the exclusion of non 85/384/EEC candidates, were most likely unaware or insensitive to this effective marginalizing of a large body of non academically qualified Architects from architectural competitions. It is GIAI's understanding that there was communication between the various County Managers, (who in fairness appeared to take the matter seriously when alerted) the DOE, and the RIAI to resolve the situation. Unfortunately what has resulted from these actions has actually disimproved the situation for non-academically qualified Architects and at least half the members of GIAI who are not on the “Ministers List”. They are effectively **disenfranchised** from an important area of operation.

The practice of Architecture on the National Territory is a tested legal right not compromised by 85/384/EEC which overlooked the existence of several hundred non academically qualified Architects when enacted, thereby creating the current *“qualifications”* impasse which works against these Architects by perception, even on the National Territory, via the public and legal profession etc. The right to continued practice was communicated to the leading Lending Agencies and County Managers via the “Lillis” DOE circular dated 14 January 1993 (copy attached) and again

specifically addressing Architectural Design Competitions, via the "McCarthy" DOE circular dated 7 January 2002 which stated:

"pending enactment of the legislation proposals and the introduction of a domestic registration scheme, architects who do not have the qualification cited in the Architects Directive should not be automatically excluded from competing in any architectural competition organised by or on behalf of Local Authorities." (Copy attached).

On 16 June 2003 (McCarthy) the DOE (possibly in reaction to the GIAI campaign) issued a further circular on Architectural Competitions effectively **undoing** the foregoing by directing that in future the criteria for competitions will be cited "*to cater for all categories of Architect*", in the caption of:

"Architects holding qualifications under the EU Directive 85/384/EEC (Architects Directive) or equivalent"*.

This circular unfortunately went on to give, in our opinion, a flawed definition of "*or equivalent**" which recognises only those on the "*Ministers List*" and now effectively **excludes** the remaining non academically qualified Irish Architects. This has sent shockwaves up and down the country to practitioners in contact with GIAI as there is now fear that the new departure will again be used in the public perception issue of exactly who can and cannot practice architecture. It is vital that the Competitions Authority fully understand how Public Notices like these can be used against individuals for non Architectural Competition matters like Certification etc., which is dealt with elsewhere in our submission.

It is GIAI's view, therefore that the uncompetitive situation on Architectural Competitions can only be rectified by either omitting entirely a qualification caption for competitions (at least until the question of National Registration is concluded) or to roughly follow the Competition Example as attached "*Hellenikon Metropolitan Park, Athens*" which states that "*the competition is open to Architect-Urban Designers or Planners worldwide who have the right to practice the profession in their country of residence etc.*" Alternatively Irish competitions in the future should simply state "*open to all Architects entitled to practice on the National Territory.*" It is now a prime objective of GIAI that the DOE formally reinstate the Pre June 2003 regime as we are aware of at least one civil action currently being formulated.

RIAI will argue that the need for their "*qualifications*" caption format is an economic one for Buyers and that any other format re. qualification will result in an expensive 2/3 stage elimination / development of competition design process. GIAI reject this argument as a smokescreen for effective 'control' of the profession as afforded by the hasty introduction of 85/384/EEC to the exclusion of others as outlined. In any event, few Architectural Competitions are decided without incremental assessment and phasing of the design concept.

Being familiar with the inner workings of the RIAI assessment process and with the exception of the foregoing, GIAI are satisfied that **competitions for Public Sector Projects are run satisfactorily.**

Prior to the (McCarthy) circular of 16 June 2003 Architects were effectively **deterred** from entering Architectural Competitions where they could not automatically apply (85/384/EEC stipulation) mainly because any practice about to commit disproportionate work hours to a competition could be reluctant to submit themselves to a suitability process ("*or equivalent*") in advance.

For certain Architectural Practices since that date, Competitions are now a non starter (i.e. non-listed Architects). This is signally uncompetitive and for that reason GIAI assert that "*suitable Architects are prohibited from entering... Architectural Competitions*". It is incredible that certain architects cannot enter competitions while they can on the other hand legally practice Architecture on the National Territory.

In particular the GIAI fail to understand the need for the restrictive screening practice, as it currently exists, while it is obvious that the quality of entry and design should be sufficient.

Question 2:

Is it appropriate that the RIAI organises competitions on behalf of Buyers of Architectural Services?

RIAI are by far the largest architectural body in Ireland, with GIAI a distant second. RIAI have built up an efficient and competent service to their Architect Members and have advised Government Buyers over a lengthy period as befits their primary status in the Irish Architectural forum. With the exception of Competition matters outlined previously and certain Advertising practices stated later, RIAI are the appropriate agency to organise Architectural Competitions where they have proven an expertise in the selection of Panels to access Qualitative Designs, quite often to non RIAI members and non nationals. As stated later, GIAI believe that **only** a National Registration System for the practice of Architecture in Ireland will resolve and clarify the disparaging qualifications issue causing a loss of competition to Buyers of Architectural Services. GIAI believe this situation will prevail until a Registration System is introduced.

It is appropriate that RIAI administer competitions on behalf of buyers of architectural services if the matter of Architects Qualifications is resolved.

Question 3:

Is the description, in Section Two of this paper, of the architectural profession and the different markets within it, accurate? Are there other factors that should be considered when defining different markets?

Section 2 is a reasonably accurate description of the workings of the Architectural Profession in Ireland. However, Section 2.9 is inaccurate as highly skilled, practically trained architects who are not Members of the RIAI cannot practice or offer services abroad due to the restrictions imposed by the EU Architects' Directive 85/384/EEC.

Question 4:

Are there any particular markets where architectural practices may be able to take advantage of market power by over-charging buyers or providing inadequate quality services (for example, markets for small projects for uninformed, irregular buyers)? If so, what is the source of the market power?

It is our view that the client (buyer) is well protected from over-charging at all market levels, be it large or small Commercial, Public Bodies, Government Agencies and more particularly to what is alluded to as the more vulnerable smaller or 'domestic client'. Large Commercial, Government and Public Bodies are more often than not repeat clients and are well aware of the fee structures, expertise and services offered by Architectural Practices.

Where a client is new to the market he has a number of ways to query fees, including word of mouth, interview prior to appointment, or obtaining a number of competitive quotations. In addition to this he has access to a large range of service providers, not necessarily architects. With regard to competitive fees, architects are in direct competition with their professional colleagues together with a large range of providers, such as; engineers, building surveyors and practitioners with varied backgrounds (e. g. part-time practitioners down to persons with basic computer aided design skills).

Advertising (though not widely used), helps to propel the name of the architectural practice into the client market, but offers little in the way of guarantee with regard to quality of services offered. Most clients will engage architects using referral or word of mouth making it easier to assess ability, and very seldom will the approach be made via telephone book or other sources. With regard to the quality of services offered, most established architectural practices will submit a proposal letter outlining scale of fees and range of services on offer, in the interest of both parties. The qualitative aspect of the service offered if not always ensured, is further protected through professional indemnity insurance and membership of professional bodies.

Registration of the title 'Architect' would be simplest way of enforcing client rights, ensuring that the Architect is answerable to a Registration Authority appointed by Statute, thus giving clients a reasonable expectation that the registered architect is suitably qualified and is capable of providing a competent level of service.

Question 5:

How effective is membership of various professional bodies (Royal Institute of Architects of Ireland, Group of Independent Architects of Ireland, Architecture and Surveying Institute, etc.) as a signal of quality to buyers? Are these signals more important for certain buyers?

Membership of various professional bodies representing architects should be seen as a signal of quality to the buyer of architectural services but membership can and is used to take advantage, mislead and scare the buyer into a choice which is anti-competitive.

Over the past ten years the Royal Institute of Architects of Ireland (RIAI), who represent 80% of Irish architects and are in a dominant position, have advertised to suggest in the strongest terms that only members of the RIAI are qualified architects and the use of services from others creates a risk and that others are below EU and accepted standards. The use of the now well established statement *Is Your Architect Qualified?* appears in newspapers (Sunday Tribune), Golden Pages directory and other directories, Web Sites, newspaper articles and leaflets distributed by RIAI members in local authority offices etc. is a misuse of membership of a professional body and is clearly anti-competitive.

The persistent and on-going advertisement campaign by the RIAI has been quite successful and has created a wide and general perception by most buyers that members of the RIAI are the only qualified and suitable architects. An example of this is the popular RTE television programme *OUR HOUSE* hosted by architect Duncan Stuart who constantly refers to '*A Qualified Architect*' when advising and discussing on featured projects. Indeed in a recent programme a representative of the Consumer Association of Ireland was interviewed and stated that persons should only use '*a Registered Architect*', thus implying that a national register of architects exists at present.

Registration of the title Architect, as proposed by the Department of the Environment, would eliminate such misleading advertising and statements, and go a long way to level the playing pitch in the architectural profession. It would follow then that competition between architects would be based on cost, level of service provided, reputation etc. and not on misleading scare tactics. This would therefore benefit any buyer of architectural services.

Question 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? If not, why not?

The GIAI commends use of the Building Control Act and Regulations thereunder and in our view the Regulations are a good method of setting minimum standards in building construction. However, it is the policing and enforcement of the regulations that the system falls down. There is no effective submission and approval system except for Parts A and B-Structure and Fire. Legally it is the responsibility of the developer or building owner to ensure compliance with the regulations. The Local authorities do not seem to be able to meet their inspection targets and enforcement is sporadic to say the least.

While it is accepted that there are many competent architectural practices who are meticulous in ensuring the compliance of their projects, it is common for breaches of the regulations to occur during construction with no effective inspection or professional input prior to the occupation of the building.

The issue of compliance certification is dealt with under questions 9 and 10.

Question 7:

Is there a sufficient number of educational institutions, courses or places for individuals to study architecture? If not, will an increase sufficiently address this shortage?

There are not sufficient numbers of courses in Ireland for individuals to study Architecture. The deficiency in the market which currently demands the employment of non nationals is a primary indicator of this position.

It is questionable whether an increase of 45 places will sufficiently address this shortage

It is recommended that at least two new courses be founded in appropriate educational institutions to provide additional full time courses in Architecture.

It is also recommended that an existing educational institution be requested to provide an "Open Architecture Course" which would be module based delivering a Degree Level qualification. This should provide courses in Architecture and Architectural Technology on a module basis.

In addition the GIAI consider that it is worthy to consider the wider field of qualifications in Architecture. In particular the lack of Degree courses in Architectural Technology in Ireland is a worthy topic. Degree level qualification in Architectural

Technology is now recognised as being the European model in Technical Architecture.

It is worthy to note that all other building professions provide for alternative routes within their profession leading to Degree Level qualification, i. e. part-time module based academic courses.

The architectural profession leaves no avenue open for the prospective architect or architectural technologist to follow such a path, the only recourse being, to leave full time employment in order to take up a five year full time course in architecture or four year full time course in architectural technology within educational institutions which currently offer very limited places.

Question 8:

Do you agree with the general assessment of the educational sector outlined in Section Three?

We would concur with the views expressed in this general assessment.

Question 9:

Are individuals with similar skills and qualifications to architects, such as architectural technologists, effectively prevented from providing compliance certification?

At present the guidelines published by the Law Society of Ireland in their Conveyancing Handbook list persons who in their opinion are suitably qualified and experienced to provide a certificate or opinion on compliance. In our opinion this list is restrictive for the following reasons:

- (a) The phrasing in paragraph 2 of their guidelines reads "in practice as architects on their own account for ten years" needs to be amended. As noted in the Competition Authority's Report there are a number of highly skilled, practically trained architects that are not on the Minister's list but who would be eligible to qualify for registration under the grandfather clause, should this legislation be enacted. Such architects, who are not, "in practice on their account", but who are practicing as salaried architects are being excluded from signing certificates on behalf of their practice by these guidelines. The amended wording should read; "practicing as architects", and omit the wording, "on their own account for ten years".

- (b) This equally applies to architects exiting from salaried employment who wish to set up in private practice.
- (c) A practically trained architect with less than ten years experience and other suitably qualified architectural professionals, such as the architectural technologist, may have more technical knowledge and experience in accessing compliance with planning and building legislation in comparison with a recent graduate who is academically qualified in architecture.

Any definition of who should be eligible should include all who are at present providing certificates/ opinions. The effect on practitioners who may be prevented from offering opinions on compliance is potentially profound, as they would be effectively unable to provide their clients with an essential part of their service.

A set of pro-forma documents for opinions on compliance which are standardised and recognised throughout the profession for all to use is essential, as currently many different versions abound.

Question 10:

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?

With due regard to the established position of persons who are accepted when providing opinions/certificates, providers of compliance certification should always carry a sufficient level of professional indemnity insurance cover. Architects in salaried employment would be covered by their Employer's professional indemnity insurance policy. Therefore any method to regulate or control who should provide compliance certification should include a requirement to carry professional indemnity insurance and thus ensure that the buyer/user is protected.

Question 11, 12, 13 & 14:

Is there evidence that requiring 6.3 million Euro of professional indemnity insurance is excessive?

Is there evidence that requiring 6.3 million Euro of P.I. cover would raise insurance costs for architectural practices?

If so, what effect would this have within the architectural profession?

Regarding the overall effects on the market for architectural work for public bodies, what is the best approach for determining the appropriate level of P.I. that architectural practices should have?

In the current market the norm is for practitioners to carry a level of cover commensurate with the extent of the architectural services they provide. This is normally arrived at on an annual review basis, taking into account the fee income, value of works certified, scope and nature of projects undertaken, particular risks and in consultation with their insurance broker and in turn the insurance company providing cover.

A requirement for a level of cover well in excess of the normal cover a practice would carry is restrictive and indeed prohibitive given the premium levels payable for such cover. It would prove impossible in the first instance to pass the cost of such cover on to the client by way of increasing the levels of fees charged, and in the long term to fund such a level of cover from year to year based on the annual level of income generated by the practice. Thus the majority of practices would be effectively excluded from Public Sector Projects, resulting in a limited number of providers and in turn a highly uncompetitive market in this area.

Such a level of cover would be highly disproportionate to the value of small to medium range building contracts and the fee chargeable in such cases.

This level of cover would not be required outside Public Sector projects, unless the size and value of the project justified it.

Other methods which could be considered are decennial insurance policies specific to particular buildings, but payable on a once off basis by the client in lieu of the requirement for the design team to maintain professional indemnity cover, or the provision of professional indemnity insurance by a design team under separate cover related to the specific project only.

Question 15:

Are the current complaint handling procedures within the architectural profession adequate? if not would the setting up of an independent body to rule on complaints be of benefit to clients, having regard to the additional costs that it might impose?

At present complaints can only be made to an individual professional body against a member of that body. The current complaint handling procedures within the profession do not encompass all practitioners and do not, therefore, either assist all buyers or address all instances of professional misconduct.

The importance of identifiable standards for good service, established on behalf of buyers is indisputable. An independent complaints board would be a clear means of maintaining these norms and would avoid the short-comings of a self-policing mechanism. Accordingly, the GIAI acknowledges the benefits of an independent complaints board. However, it should be noted that professional misconduct can arise without causing harm to a particular buyer. These instances should be considered

when determining the remit of a complaints board tasked with addressing complaints from buyers. Additionally, it might be wise to consider the extent to which the existence of such a board should affect the disciplinary powers/duties of professional bodies.

It should be noted that within the framework for the pending architects registration bill there is a complaints procedure whereby a separate complaints board will be set up to adjudicate on such complaints, which by its nature will encompass complaints against all registered architects.

Question 16:

Are there any other issues relating to the regulation of the architectural profession, or the practices within it, that could affect competition?

Due to the unregulated nature of the architectural profession in Ireland at present the body representing the majority of architects is free to adopt various methods of promoting the use of their members by potential clients to the exclusion of the remainder of architects. This has a negative effect on the existence of a transparent and competitive market for architectural services.

The introduction of a consumer interest orientated registration system for the use of the title 'architect' in describing one's profession will in our opinion go a long way to satisfying user expectations as to the level of service normally provided by an architect and in turn enable clients to evaluate differences in charges for a particular service based on such an expectation.

We note that you feel that the case for registration has not been sufficiently made and your opinion that in the event of the introduction of a registration system, it should be operated by an independent statutory body rather than by a professional organisation representing architects.

While we understand the nature of your concern in this regard, we feel that the system of registration as envisaged in the proposed legislation contains a high degree of independence in the makeup of the Registration Body. In particular the appointment of persons from outside the architectural profession, by the various statutory bodies listed to do so, to the registration board, the admissions board and the professional conduct committee will in our opinion enable the registration body to operate on a fair and impartial basis and incorporates a balance in favour of consumer interest.

Given the balanced approach to protecting consumer interest and providing for an effective registration of the title 'Architect' the GIAI are in support of the proposed Registration System, which it is hoped the Minister for the Environment will bring forward as a Bill to the Dail in the short term. The GIAI have been involved in the process of formulating the specific nature of the Minister's proposed method of registration, following on from the recommendations as set out at page 15 of the Strategic Review Committee's Report on the Construction Industry, dated April 1997.