

THE COMPETITION AUTHORITY



**Study of Competition in Professional Services in
Ireland: Consultation Document 2**

ARCHITECTS

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EXECUTIVE SUMMARY

The Competition Authority is conducting a study of competition in the market for professional services, and is focussing on eight professions: engineers, architects, dentists, veterinarians, barristers, solicitors, optometrists, and medical practitioners. Consultation documents on each profession will be released that include draft recommendations for changes and solicit views on our analysis of each profession. The first of these, on engineers, was released earlier this year. This document gives the Authority's views on architects.

Conclusions

The architectural profession has relatively limited restrictions on entry and a light regulatory structure focused on ensuring minimum safety standards. This has operated to the benefit of clients. Some restrictions exist, most notably in the area of architectural competitions, publication of fee information that creates possibilities for collusion, and restrictions on advertising. These restrictions should be removed so as to improve competition. In this regard, the Authority has received positive indications from the professional bodies that they are willing to resolve any competition issues arising from this investigation.

A fundamental issue for architectural services is the proposed restriction on the use of the title of architect. The case has not been adequately made for such a restriction. Any such registration system could, together with the lack of third-level places and the huge excess of demand over supply for such places, create substantial barriers to entry to the profession. This could have negative consequences for clients, in terms of the choice of architects, the fees charged and quality provided, and consequent negative effects on the aesthetic quality of Ireland's built environment if clients choose to use individuals other than skilled architects to provide architectural services. Therefore, a regulatory impact analysis should be undertaken before this proposal is progressed further. Should registration ultimately be found necessary, any registration system should be administered by an independent, preferably statutory, body that does not face a conflict of interest.

The architectural profession

Architects primarily provide services relating to design of buildings and the supervision of construction. Although the main benefit of architectural design services accrue to clients, these services can create externalities (positive or negative effects upon individuals other than clients) stemming from the aesthetic result of the architects' designs, and whether buildings are designed and constructed safely.



The public interest is best served when architectural practices respond to market demands, and clients are able to obtain appropriate quality services at competitive fees. This does not mean that buyers should always select architects on the basis of the lowest fee, or that all architectural fees should necessarily be reduced, as a certain level of fees is only relevant in relation to a specified level of quality. It does mean, however, that any regulation should be focused only on issues of irretrievable market failure and should correct the market failure using methods that least restrict competition.

There are no formal barriers preventing individuals or practices, including foreign-based architects, from providing architectural services in Ireland. While the majority of providers of service have third-level qualifications, some market participants have acquired their skills predominantly through practical experience. This unrestricted entry into the architectural profession assists in creating a competitive environment and, correspondingly, provides buyers with a large choice of potential architects. Additionally, there is general satisfaction regarding the quality of architectural work in Ireland and many users of architectural services are able to access high quality work at competitive prices. This provides evidence that the approach of relatively open entry into the profession along with specific safety regulations governing architectural services can be an appropriate method of facilitating competition without reducing quality and risking the safety of clients and the general public.

Within the profession, there does not appear to be a high degree of specialisation across architectural practices, with many different practices able to provide most architectural services and able to provide services for both large and small projects. A special feature of architectural markets is the open competitions, typically held for unique, public sector projects. On average, use of such competitions is positive, although some architects have been prevented from entering them.

Some clients, such as the Office of Public Works, have a good knowledge of architecture and are able to use competition to ensure that they are charged competitive fees and ensure that the quality of service they receive is satisfactory. However, other smaller, inexperienced buyers may be less likely to ensure that they receive services of an appropriate quality and are competitively priced and could be more vulnerable to any anti-competitive regulations or practices, because of their lack of knowledge of the professions.

The most effective method of addressing this information asymmetry between architects and uninformed buyers is to use direct regulation relating to the quality of the services provided, and to allow for various quality signals, such as professional reputations, qualifications, titles, membership of professional bodies and advertising. These signals can be used to indicate the quality that potential clients can expect from different architectural practices. Many of these signals,



particularly membership of professional bodies, can, and are, developed within the profession, without requiring Government involvement.

Entry restrictions

Although there are no statutory barriers that hinder entry to the profession, there are potential competition concerns regarding the educational system.

Educational barriers

A major concern is the number of architecture graduates from Irish architectural schools and the availability of part-time courses. Although any shortage of architects can be addressed to some extent by the relatively open entry for foreign-trained architects, the difficulty in training abroad, allied to demand for domestic places hugely outstripping supply, results in a moderate entry barrier to the profession. Moreover, the inability of individuals to train part-time constitutes an issue for practically-trained architects who wish to acquire formal qualifications but cannot afford to cease practising.

While the Higher Education Authority (HEA) has recommended a moderate increase in the number of places for architects, this would not have a major impact. Accordingly, the HEA should consider how to better ensure that the supply of graduates meets the market demand and ensure third-level qualifications can be obtained part-time.

Rivalry restrictions

There are few direct obstacles to architects competing with each other. However, some competition issues arise from the rules and practices of the main professional architecture body in Ireland, the RIAI. Other issues arise from the system of compliance certification used for conveyancing purposes and the insurance requirements public bodies place upon architectural practices.

Advertising restrictions

The RIAI's restrictions on advertisements work against competition. Truthful advertising that is not designed to mislead is often the best means of reducing buyers' search costs, and can reduce information asymmetries and facilitate effective competition. Additionally, advertising restrictions make it more difficult for new firms to make themselves known to potential buyers, and limits the ability of firms to enter new geographic areas. Therefore, the Authority recommends that all restrictions on advertising be removed, save for the requirement that advertising must be truthful.

RIAI fee information

The RIAI also publishes information on historic average fees, which it suggests assist clients by providing useful information. However, average fees may not be of use to clients as exact fees can vary considerably depending upon project



specifications. Clients are likely to be better served obtaining direct quotes from rival architects.

This concern is exacerbated by the use of fees based on percentages of total construction costs. Percentage fees can create incentives for architects to increase total construction costs; they can provide a simple focal point around which to collude; and they can also lead to fee increases because of rises in unrelated construction costs.

Therefore, the fee information provided by the RIAI is of very little benefit to consumers, and, when combined with percentage fees, can potentially facilitate collusive behaviour and raise the level of architectural charges. Accordingly, all fee information should be removed from RIAI material.

Prohibition on entering architectural competitions

The RIAI's rules include a stipulation that members can be prevented from participating in architectural competitions that the RIAI does not approve of. Given the number of providers of architectural services who are members of the RIAI, this has the potential to restrict competition and breach of section 4 and/or section 5 of the Competition Act, 2002. However, the RIAI has indicated a willingness to remove this rule, which would allay competition concerns in this regard.

Demarcation: architectural technologists

A further issue affecting the competitive environment within the profession is the extent to which architects are recognised for the purposes of providing Opinions on Compliance with Planning and Building Regulations (Compliance Certification). Compliance Certification is required for conveyancing purposes for all new buildings.

Some architects, or similar disciplines such as architectural technologists, are not recognised for the purposes of providing Compliance Certification, despite the fact that they may be sufficiently skilled and experienced to provide such certification.

Professional indemnity insurance

The Irish Public Bodies Mutual Insurances Limited (IPB) advises public bodies on the level of professional indemnity insurance they should require from construction industry contractors. IPB has advised public bodies to require architectural practices to have professional indemnity insurance of a minimum of €6.3 million, irrespective of the project type or value. By requiring insurance cover of this size, the increase in the cost of insurance premiums may effectively prevent small practices from seeking public projects.

Regulation and registration of title

Building Regulations specifically govern the quality of architectural work. These regulations set out specific building design and construction requirements for



health and safety purposes and seek to ensure that all clients of architects receive a minimum quality of service to ensure safety.

In addition to the Building Regulations, the Government is proposing to introduce statutory protection of the title 'architect'. This proposed change in the regulatory structure is included in the Building Control Bill (which also proposes to regulate the title of quantity surveyor) and is the most important regulatory issue facing this profession.

The Authority's concern over this proposed scheme is twofold:

- (1) A compelling case has not been made that restricting the use of the title of architect would be beneficial, and that this regulatory intervention is necessary. Competition for architectural services works relatively well, and there is a danger that reserving the title of architect will restrict the provision of such services. The absence of a detailed assessment is not consistent with the Government's approach of submitting new regulations to careful assessment via a Regulatory Impact Analysis.
- (2) If regulation is introduced, a professional architectural body should not control the system of registration, as it creates potential for the regulation to be open to abuse in an anti-competitive manner. Any registration should be applied by a statutory body that has access to the experience and skills required to make the relevant decisions, yet does not face a conflict of interest by having interests within the profession. In this regard, the proposed involvement of the Royal Institute of Architects of Ireland (RIAI) raises concerns.

An example of an independent and transparent regulatory body is the Architects Registration Board in the UK, established in 1997. This Board is comprised of a number of architects, who provide sufficient technical expertise, but has a majority of lay members. It is operated independently of professional architectural bodies and has a specific consumer focus. This ensures that the Board does not represent the interests of practising architects and, therefore, it does not face a conflict of interest.

Process

The Authority seeks submissions on the analysis, draft recommendations, and consultation questions in this paper from architects, professional bodies, clients, and any other interested parties. Submission must be received by the Competition Authority by the 5th of January 2004.

Following this consultation process, the Authority will publish a final report on the architectural profession, which may recommend changes to existing practices or regulations and provide information that improves the understanding of competition generally. Additionally, the Authority reserves its right to take any legal action it considers necessary under the provisions of the Competition Act, 2002.



DRAFT RECOMMENDATIONS

The Competition Authority recommends that changes should be made to the educational system to ensure a more adequate supply of entrants to this profession and that the proposal to restrict the use of the title architect should be examined further. Other improvements to competition would result from changes to a small number of rules and practices of the Royal Institute of Architects of Ireland (RIAI). Implementing these recommendations would provide a safe harbour for the RIAI regarding these specific issues, with regards to compliance with the Competition Act, 2002. Any new information that affects these issues may affect this safe harbour. In general, professional bodies should assess their rules and practices to ensure compliance with the Act.

Recommendations regarding entering the profession:

- 1) The Higher Education Authority, together with educational institutions, should look at further ways of:
 - i. allowing for the number of places for third-level study of architecture to respond to market demand for graduates;
 - ii. offering a part-time degree in architecture, either as a separate school, or as an addition to an existing program.

Recommendations regarding proposal to restrict the use of title 'architect':

- 2) The Department of Environment and Local Government should justify the need for protection of title in light of the issues outlined above by undertaking a Regulatory Impact Analysis.
- 3) If, after addressing these issues, the registration of title is justified, any regulatory body should be sufficiently independent. This means that
 - i. it should be administered by an independent body, preferably statutory, in a transparent manner, and
 - ii. decisions by the body should be taken by boards that have an independent majority that are not selected by parties that have interests within the profession.
- 4) To ensure that the requirements for registration are not unduly restrictive, more open and transparent consultation processes should be used so that all interested and affected parties have the ability to comment on the precise details of any registration system.

Recommendation regarding rivalry restrictions:

- 5) Advertising restrictions of any of the professional bodies, including the RIAI, should be narrowly focussed on false or misleading advertising rather than being overly prescriptive. All other restrictions on advertising should be removed.
- 6) The RIAI should remove any fee information in their published material.



CONSULTATION QUESTIONS

There are a number of issues that the Competition Authority would appreciate comment on:

Questions regarding the architectural profession:

- 1) Are competitions for public sector projects run satisfactorily? Are suitable architects ever prohibited from entering, and if so, on what grounds?
- 2) Is it appropriate that the RIAI organises competitions on behalf of buyers of architectural services?
- 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?
- 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 this market power?
- 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?
- 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?

Questions regarding the ability of individuals to enter the architectural profession:

- 7) Is there a sufficient number of educational institutions, courses or places for individuals to study architecture? If not, will an increase of 45 places sufficiently address this shortage?
- 8) Do you agree with the general assessment of the educational sector outlined in Section Three?

Questions regarding Compliance Certification:

- 9) Are individuals with similar skills and qualifications to architects, such as architectural technologists, effectively prevented from providing Compliance Certification?
- 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?

Questions regarding professional indemnity insurance:

- 11) Is there evidence that requiring €6.3 million of professional indemnity insurance cover is excessive?



- 12) Is there evidence that requiring €6.3 million of professional indemnity insurance cover would raise insurance costs for architectural practices?
- 13) If so, what affect would this have within the architectural profession?
- 14) Regarding the overall effects on the market for architectural work for public bodies, what is the best approach for determining the appropriate level of professional indemnity insurance that architectural practices should have?

Questions regarding complaints procedures:

- 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?

General question:

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



SECTION ONE: INTRODUCTION

BACKGROUND TO THE STUDY OF PROFESSIONAL SERVICES

- 1.1 Section 30 of the Competition Act 2002 provides the Competition Authority with the authority to “study and analyse any practice or method of competition affecting the supply and distribution of goods or the provision of services or any other matter relating to competition”.
- 1.2 Following an OECD Report¹ in 2001, which suggested that competition in the professional services sector in Ireland could be stronger, the Authority commenced a study of selected professions. The professions chosen were: engineers, architects, dentists, optometrists, veterinary surgeons, medical practitioners, solicitors, and barristers.
- 1.3 The purpose of the study is to identify any regulations or practices that may restrict competition within these professions; to evaluate any consumer benefits claimed to exist from any such restrictions; and to consider whether the restrictions are proportionate to any benefits.
- 1.4 The initial process of the study involved the selection of Indecon International Economic Consultants to conduct the main research phase. Indecon subsequently published a report, in March 2003, “Indecon’s Assessment of Restrictions in the Supply of Professional Services”.²
- 1.5 The Competition Authority’s approach to completing the professions study involves producing a consultation document for each profession that outlines the Authority’s draft views and recommendations. The Authority will then consider the responses of interested parties before finalising a report and recommendations for each profession.
- 1.6 In their report, Indecon expressed the view that the architectural profession contained relatively few restrictions to competition.³ Despite the general pro-competitive nature of the profession, Indecon did indicate that there are a number of practices and regulations that have the potential to restrict competition.

Structure of this paper

- 1.7 After the executive summary this document is structured as follows: the first section provides an overall background to the professions study; the second section outlines the market for architectural services and how competition

¹ OECD ‘Regulatory Reform in Ireland’, Review of Regulatory Reform, 2001.

² See <http://www.tca.ie/professions.html>.

³ Whilst it is not necessary for readers to be familiar with the Indecon report, for a more complete understanding of the context issues, readers may wish to read those chapters in the Indecon report which deal with general issues (Chapters 2 and 3) and the chapter regarding architects (Chapter 7).



works in this market; the third section deals with potential entry barriers in this profession, including the issue of statutory regulation; the fourth section deals with issues relating to restrictions to rivalry within the market; the fifth section deals with complaints processes; and the final section provides an overall conclusion.

THE CONSULTATION PROCESS

1.8 This consultation paper uses Indecon's findings as a basis for proposals for changes to regulations and practices that may enhance competition to the benefit of buyers. The Authority seeks submissions on the analysis and draft recommendations in this paper from all interested parties, including:

- architects and architectural practices,
- professional architectural bodies,
- buyers of architectural services, such as Government departments and agencies, private companies and individuals, and
- any other individuals or organisations that have contact with, or an interest in, the architectural profession, for example, the Law Society of Ireland.

1.9 Following this consultation process, the Authority will publish a final report on the architectural profession. The final report may recommend changes to existing practices or regulations, provide information about markets or practices that improves the understanding of competition generally. Additionally, the Authority reserves its right to take any legal action it considers necessary under the provisions of the Competition Act, 2002.

1.10 If you intend making a submission, please indicate anything in your response that you consider to be a business secret.

Where possible, submissions should be provided electronically to: markets@tca.ie

Hard copy submissions can be sent to: Reuben Irvine,
Competition Authority,
Parnell House, 14 Parnell Square,
Dublin 1.

1.11 Submissions must be received by the Competition Authority by the **5th of January 2004.**



THE COMPETITION ACT, 2002

- 1.12 Restrictive behaviour on the part of suppliers of professional services, and certain rules, decisions and practices of their representative associations, may breach section 4, and potentially section 5, of the Competition Act, 2002. While this consultation document highlights some restrictions and practices that the Authority believes have the potential to restrict competition, the Authority recommends that professional associations engage in self-assessment of their rules, decisions and practices, to ensure that they do not breach the Act.
- 1.13 Professional bodies in the architectural industry should assess their rules, decisions and practices, to ensure that they do not breach the Competition Act, 2002.

Note 1.1: Section 4 of The Competition Act, 2002

Section 4 of the Competition Act, 2002 prohibits “all agreements between undertakings, decisions by associations of undertakings and concerted practices which have as their object or effect the prevention, restriction or distortion of competition in trade in any goods or services in the State or in any part of the State” including “those which -

- (a) directly or indirectly fix purchase or selling prices or any other trading conditions,
- (b) limit or control production, markets, technical development or investment,
- (c) share markets or sources of supply,
- (d) apply dissimilar conditions to equivalent transactions with other trading parties thereby placing them at a competitive disadvantage,
- (e) make the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which by their nature or according to commercial usage have no connection with the subject of such contracts.”



SECTION TWO: THE ARCHITECTURAL PROFESSION

INTRODUCTION

- 2.1 Architects provide important services not only in ensuring the safe and quality design and construction of housing and work environments for people throughout Ireland every day, but also by applying their expertise and ability to the design of structures that provide aesthetic benefits to the wider community.
- 2.2 Architects' main functions consist of designing and supervising the construction of buildings. This can involve leading design teams consisting of other industry participants, such as engineers and construction contractors. A typical contract between a client and an architect will involve the architect providing building designs, obtaining planning permission from the relevant local authority, assisting with the selection of other construction contractors and supervising construction and finally providing a formal certification that the structure complies with the planning code and meets health and safety requirements as stipulated in the Building Regulations.
- 2.3 There is no requirement to register with any regulatory body to practise as a professional architect or to use the title "architect". Despite unrestricted entry to the profession, most architects enter the profession after obtaining academic qualifications although a significant minority do not obtain these and are practically trained, having acquired the necessary experience over many years of working under the supervision of other architects. As there is no registration requirement for architects in Ireland, the total number of architects engaged in private practice is unknown. Our best estimate is that there are 2,500 – 3,000 persons providing architectural services in Ireland. 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.
- 2.4 Some survey figures suggest that architects' salaries typically range from around €27,000 to €90,000.⁴ Furthermore, owners of architectural practices may receive profits in addition to salary income. Applying these figures to our estimate of architectural numbers suggests that the total annual architectural income in Ireland could be in the vicinity of €150 million.
- 2.5 Although some architects specialise in certain building types, most architects can perform a broad range of architectural work. Along with academically and practically trained architects there are also other similar architectural service providers that offer many of the same services as architects. These include architectural technologists, town planners and

⁴ Merrion Resources, jobs.ie website.



- architectural technicians. Many of the services that these professionals supply overlap with those of architects. For instance, architectural technologists are oriented more towards technical design (whereas more traditional architects also focus on aesthetic aspects of building design). Town planners specialise in urban and rural planning, and architectural technicians tend to be involved in developing the specific detailed aspects of a structure for which an architect has created an overall design.
- 2.6 Most architectural practices are small – the majority of practices consist of fewer than three architects.⁵ A small number of practices are large in size and may employ other related professionals. Some architects employed by consulting practices leave to set up their own practices in competition with former employers. This tends to produce a stream of new, relatively small practices entering the sector. Other architects are employees of industrial organisations, central and local government, while a small number are employed in academic institutions.
- 2.7 There are a number of professional bodies for architects, including the Royal Institute of Architects of Ireland, the Group of Independent Architects in Ireland, the Architecture and Surveying Institute, the Irish Architects Society, the Association of Building Engineers, and other similar organisations. The Royal Institute of Architects of Ireland (RIAI) is the largest body of architects and has approximately 2060 members, including 500 member practices. This constitutes approximately 70 to 80 percent of all architects in Ireland.
- 2.8 Although some architects may focus on a particular type of work, such as domestic projects, income for many architectural practices tends to come from a combination of commercial, government, and domestic clients. In some regional areas where the level of commercial activity is relatively low, some smaller architectural practices may primarily service small domestic buyers, whereas in more urban areas, a larger share of work may be for commercial and/or public sector clients.
- 2.9 Advances in Computer Assisted Design (CAD) mean that much architectural design work is computerised and, in recent years, CAD has become standard throughout the profession. Interaction between different construction industry professionals also often requires designs to be in electronic format. Because of the use of this technology, architectural design work relating to constructions in Ireland can be done in other jurisdictions. This is more likely to occur if the client is a multi-national company based outside of Ireland. For example, an American-based company that wishes to undertake construction in Ireland may engage the services of an American-based architectural firm to design the construction. Similarly, there are no regulatory restrictions within Ireland that prevent Irish buyers from purchasing architecture services from abroad, or prevent Irish

⁵ Table 7.4 of the Indecon report.



architecture practices from providing services abroad. This overall freedom of movement operates to the benefit of competition generally, and thus favours Irish buyers.

Aesthetic effects

- 2.10 In addition to building safety, building aesthetics and overall design can be important as it affects third parties and the wider society. Well-designed buildings contribute to the positive appearance of their surroundings, and thus benefit those who live or work in, or are subject to these buildings.
- 2.11 Therefore, any restrictions on the supply of architects, or limitations on their ability to compete with each other, is likely to have a negative overall effect on the aesthetic appearance and overall quality of the built environment. Limiting the number of architects capable of good design, and/or preventing them from engaging in competition to develop the most aesthetically pleasing buildings, could lead to buildings of lower quality design being erected, with corresponding losses to aesthetic quality. This is because restrictions that enable architects to charge excessive fees could lead prospective clients to use non-architects that are less likely to focus upon aesthetic aspects of building design.
- 2.12 Moreover, in a framework where most architectural clients have fixed levels of expenditure for projects, any forces that tend to raise the costs of hiring architects is likely to leave less funds for the building and the associated materials itself. This could further harm the overall quality level of new buildings. In summary, the external effects on aesthetics constitute a major reason to ensure that competition works well within the profession.

HOW ARCHITECTURAL MARKETS OPERATE

- 2.13 The actual methods used to select an architect or architectural practice tends to vary between different types of buyers.

Large commercial buyers

- 2.14 Commercial buyers that regularly require architectural services tend to use favoured practices on an ongoing basis. These practices may have been initially selected through word-of-mouth recommendations. Alternatively, buyers may have undertaken more formal selection processes involving interviewing selected practices. Some businesses, such as property developers, may employ in-house architects.
- 2.15 Buyers that do not require regular architectural work tend to rely upon word-of-mouth recommendations from other buyers, especially for smaller projects (typically those with a total construction cost of less than €1 million). For larger projects, buyers may undertake a more rigorous selection



process that may involve seeking references, holding interviews and comparing fees.

- 2.16 Because of the nature of architectural work, specific project and contractual requirements would be discussed in relation to each job. Details negotiated could include targets and timelines for the architectural service to be judged against, incentives to meet certain budgetary requirements, other details regarding any subcontracting, or provisions that provide the client with the necessary degree of flexibility to request changes in the project.
- 2.17 In rare cases, commercial buyers may hold competitions (see below) similar to those held by public buyers.
- 2.18 In summary, the provision of architectural services for larger commercial projects appears to operate reasonably competitively. The majority of larger buyers are well-informed and capable of using the competitive process to obtain their desired combination of price and quality.

Public buyers

- 2.19 Many large-scale architectural projects are commissioned by public bodies. Government departments and agencies that purchase architectural services include the Office of Public Works, the Department of Health, etc. Many local government bodies, including local authorities, are also important buyers of architectural services. Such projects are often large in nature.
- 2.20 Projects commissioned by public buyers are governed by the Public Procurement Guidelines and the European Union Directives regarding the award of public service contracts. The Guidelines stipulate that different processes are to be used for projects of different values, including the advertisement of larger projects in the Official Journal of the European Communities.
- 2.21 Many of these agencies also utilise in-house expertise, in the form of experienced architects, who assist in selecting architectural practices and ensuring that services offered are of sufficient quality and the fees charged are competitive. However, there are some indications that the relevant Government agencies could use their buyer power more effectively to obtain the best value possible.⁶ Specifically, public bodies often do not have the flexibility that large private companies have when negotiating contracts. For example, public bodies may not be able to commit to multi-year budgets for construction projects. Consequently, public agencies may have to pay a premium to construction industry professionals to cover this budgetary uncertainty.

⁶ See Appendix One of the Competition Authority's Engineering Profession Consultation Paper for a more detailed discussion, <http://www.tca.ie/professions.html>.



Competitions

- 2.22 A particular feature of the market for architectural services is that public buyers frequently decide upon an architect or architectural practice by holding competitions. This is a specific aspect of the architectural market, which does not normally occur in other markets for professional services.
- 2.23 Generally, competitions are used for unique large-scale, public sector projects for which original designs are required as opposed to standardised structures. Examples include monuments, art galleries and museums. Competitions allow a broad range of interested parties to submit designs for a specific project. Judges select the best design according to specific criteria and the selected architect is commissioned for the project. Alternatively, competitions may consist of a two-stage process whereby applicants submit rough designs for the project in the initial stage. These designs are then used to create a short-list of applicants who are invited to produce more detailed designs, from which the winning entry is chosen.
- 2.24 Competitions provide opportunities for architects to build recognition and experience. Designing entries for competitions involves the investment of a significant amount of time and resources by architects. Winning, or even being recognised for having submitted a quality design, can provide architectural practices with beneficial publicity and can greatly assist practices in expanding and becoming more successful.
- 2.25 Many architectural competitions, particularly those held on behalf of local authorities, are organised and run by the RIAI, usually at the request of the commissioning body. Although RIAI-run competitions have tended to operate to a high level of efficiency and transparency, a concern regarding the RIAI running competitions is that it may benefit its own members. Specifically, some architects have felt that they have been prevented from entering competitions if they are not members of the RIAI or do not have certain academic qualifications.
- 2.26 Previously, entry to competitions was limited to architects recognised under EU Directive 85/384/EEC (the 'Architects Directive'). This directive, effective since 1985, provides architects with certain academic qualifications the right to practice as architects in all EU member states. This directive is required because many states restrict the use of the title of architect and/or allow only registered individuals to provide architectural services. Because the Architects Directive does not recognise experienced, practically-trained architects, in 1990 the Irish Government proposed an amendment to the Directive to allow these architects to be recognised. This proposal was defeated at the European parliament.⁷

⁷ Of relevance is that the RIAI opposed this proposed amendment and lobbied the European Parliament to reject the proposal put forward by the Irish Government.



- 2.27 Additionally, in 1996 the Minister of the Environment established a list of 170 practically-trained architects (the 'Minister's list') who were considered to be sufficiently experienced and skilled to be recognised as architects and enter competitions, but who were not recognised by the Architects Directive because they were not academically trained.
- 2.28 Despite the existence of the Minister's list, some competitions have been restricted to architects recognised by the Architects Directive. In response, the Department of the Environment and Local Government has issued a number of circulars to local authorities, stating that entry should be open to architects qualifying under the Architects Directive, plus architects on the Minister's list. Although this should ensure greater freedom of entry for future competitions, there are likely to be a number of experienced, highly skilled, practically-trained architects that are not on the Minister's list and continue to be prevented from entering competitions.

Consultation questions

- Q1. Are competitions run satisfactorily? Are suitably skilled architects ever prohibited from entering, and if so, on what grounds?
- Q2. Is it appropriate that the RIAI organises competitions on behalf of buyers?

Domestic buyers

- 2.29 Architects also supply services to domestic and small commercial buyers. The majority of such services are provided for relatively small-scale projects. Generally, smaller architectural firms engage in such projects, but larger firms also supply these kinds of services, particularly if they have temporary spare capacity.
- 2.30 Selection of architects by domestic buyers may be based upon advertisements in publications, such as the Golden Pages, or on the basis of word-of-mouth recommendations. These direct personal recommendations from other buyers, or others involved in the construction industry, are particularly important in the selection of architects for smaller domestic projects.
- 2.31 Gauging the prevalence of pro-competitive practices, such as requesting quotes from rival architects, amongst these buyers is difficult. Similarly, it is difficult to gauge the importance placed upon membership of various organisations.
- 2.32 Many of these buyers, particularly irregular and first-time buyers, are not well-informed about the quality of service available from different architects and what competitive fees are for different services. Some may be unaware of the extent of the architectural services they require and who is able to provide them. Specific architectural service characteristics, including fees,



are generally a matter of private negotiation between architects and clients and are not easily or publicly available. This means that many prospective buyers may not know the fees and quality of service that other larger and/or more knowledgeable buyers face for similar services.

- 2.33 However, despite the informational asymmetry referred to, overall there is no evidence of widespread dissatisfaction amongst domestic architectural clients. There is no substantive restriction on the ability of such buyers to shop around. Furthermore, the use of recommendations and architects' reputations assists clients in overcoming any information asymmetry.

DIFFERENT ARCHITECTURAL MARKETS

- 2.34 The provision of architectural services is usually referred to as one market as architects share common abilities, skills and supply similar services. However, from a competition perspective, it is more appropriate to consider the different relevant markets that may exist within the profession. As there does not appear to be a great level of specialisation amongst architects, with the majority of architects able to perform most architectural functions, it appears more appropriate to differentiate architectural markets by the following criteria:

- size of projects,
- geographic area, and
- buyers experience and knowledge of architecture.

Size of projects

- 2.35 On the supply side, on average, larger-scale projects are more likely to be performed by larger architectural practices. However, small practices will often still seek, and be engaged for, projects of varying sizes. In particular, smaller architectural practices may be able to acquire larger projects where architects are selected by design competitions. The process of winning competitions or being selected for large projects is an important mechanism for allowing smaller practices to grow and develop. Additionally, larger architectural practices may be engaged in small projects, particularly where an architectural practice has an ongoing relationship with a regular buyer.
- 2.36 On the demand side, large purchasers are more likely to be able to exert countervailing buyer power, and ensure that fees charged are competitively priced. This is largely because search costs are a relatively small proportion of the total costs of a large project, and, in the case of competitions, the actual method of selection encourages competition between potential suppliers.



Geographic area

- 2.37 For large-scale projects, the market for architectural practices may be international, as evidenced by the foreign architects that have entered competitions in Ireland.⁸ Additionally, if only design services are required, these can be supplied from any location with the assistance of information technology. Even if it is not international, the market for large-scale projects is at least national in size.
- 2.38 However, for smaller domestic projects the relevant markets are likely to be smaller geographic areas. This is because buyers tend not to undertake extensive search activity outside their particular location. Similarly, cost prevents most practices providing architectural services, especially construction supervision services, a significant distance from where they are based.

Buyers' experience and knowledge of architecture

- 2.39 The different types of buyers and their demand characteristics could also potentially be used to distinguish markets within the architectural sector. Of relevance is the level of knowledge or experience of clients in purchasing architectural services, for example whether clients are repeat or one-off purchasers. Regular clients of architects are more likely to be familiar with likely fees and quality that can be expected from different architectural practices.
- 2.40 Irregular or one-off buyers, however, may not be so well informed and may find it much more difficult to judge quality and fees prior to contracting an architect. Furthermore, for an irregular buyer requiring an architect for a small project, the search costs involved with getting a large number of rival quotes may be excessive in relation to the total project costs. Additionally, they may not be able to readily obtain word-of-mouth recommendations from previous buyers or other construction contractors. To the extent that prospective clients do not shop around and/or obtain references, there is a possibility that architects or architectural firms may be able to discriminate between uninformed, irregular buyers and regular, well informed buyers in regard to the fees charged and quality of service offered.

Summary

- 2.41 There are different geographic markets for small architectural projects, whereas large-scale projects may attract interest from architects all over Ireland and also from abroad, especially if architects are chosen by way of competitions.

⁸ See paragraph 3.12.



- 2.42 It may also be possible for architects to discriminate between different clients on the basis of clients' experience of using architects, particularly between inexperienced, one-off domestic clients and other more experienced clients. However, this may be difficult given the prevalence of obtaining recommendations.
- 2.43 Overall, the market shows some typical characteristics of markets for professional services. While small and uninformed buyers may face some problems in assessing quality, this has not by itself substantively limited competition. One possible exception is with regard to architectural competitions, where there may have been some restrictions on entry in the past. It is important that any such restrictions do not continue in future.

Consultation Questions

- Q3. Does the above constitute an accurate description of the architectural profession, and the different markets within it? Are there other factors that should be considered when defining different markets?
- Q4. 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 consisting of small projects for uninformed, irregular buyers)? If so, what is the source of this market power?
- 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? Are these signals more important in certain markets, or for certain buyers?

CURRENT REGULATORY ENVIRONMENT

- 2.44 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



- by requiring those constructing buildings to notify Building Control Authorities and to obtain the relevant Fire Safety Certification.
- 2.47 The primary purpose of the *Building Regulations*, also effective from 1992, is to provide for the health, safety and welfare of people in and around buildings. 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 apply to the construction of new buildings and to extensions and material alterations to existing buildings and to certain changes of use of existing buildings. These Regulations apply to nearly all types of construction. Buildings that are exempted from the Building Regulations include garages, glasshouses and small storage sheds.
- 2.48 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. Criminal penalties for breaching the Building Regulations can include a maximum fine of €12,700 and/or imprisonment for a term of up to two years.⁹
- 2.49 Additionally, it is common conveyancing practice for vendors of buildings to provide Opinions on Compliance with Planning and Building Regulations (Compliance Certification) from suitably qualified persons for all new buildings. This is because the absence of appropriate certification may result in difficulty for a vendor in selling a property, or for a borrower raising finance where a building is used as collateral.
- 2.50 To assist solicitors in determining who is sufficiently skilled to provide Compliance Certification, the Law Society of Ireland provides guidelines in its Conveyancing Handbook. The Law Society states that individuals that have standard architectural or civil engineering qualifications, or a sufficient amount of relevant professional experience, are appropriate (see paragraph 4.28 below).
- 2.51 This certification requirement effectively operates as a *de facto* system of enforcement of the Building Regulations, whereby the Law Society recommends who should provide Compliance Certification.

Summary

- 2.52 Generally, the Building Regulations and legal certification requirements work well as a method of ensuring safety in relation to building construction. However, there is an issue regarding the Law Society's guidelines relating

⁹ Section 17 of the Building Control Act, 1990.



to who is suitable for providing compliance certification. This issue is dealt with in Section Four.

Consultation question

Q6. 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?



SECTION THREE: BARRIERS TO ENTRY

Note 3.1: Barriers To Entry

Barriers to entry are direct or indirect limits or restrictions on the ability of potential suppliers to enter a particular market. These restrictions operate to prevent efficient new entrants from coming into the market and offering further choice to buyers. A market with such barriers to entry may see existing suppliers (known as incumbents) protected from competition and the threat of competition. The resulting lack of competitive pressure can lead to serious adverse effects on buyers, as incumbents may be able to charge higher prices, offer lower quality services and offer less choice. This protection may also mean there is less incentive for incumbents to innovate and to respond to the needs of buyers.

Entry barriers to a market may arise naturally, because of the peculiar aspects of an industry that make successful entry difficult, such as difficulties in establishing a reputation. Entry barriers may also arise directly from actions taken by incumbent suppliers which make entry more difficult. For example, incumbents may raise the costs to buyers of switching to a new entrant. Regulations limiting who may operate in a particular market create direct barriers to entry.

Markets for professional services tend to have regulatory barriers to entry. It is usually claimed that these barriers correct potential market failures arising from the perceived inability of buyers to evaluate professional services. That is, restricting many potential entrants into a professional market is defended as necessary to ensure that practitioners offer a high quality service despite the potential inability of buyers to distinguish between a high quality service and a low quality service (before or even after receiving the service).

However, such regulatory barriers can operate to deny buyers choice and protect incumbents from any threat of competition without correcting any market failure. In particular, quantitative entry restrictions (where there are direct limits on the number of professionals who may supply a service) are likely to limit competition severely and hurt buyers, without ensuring a high-quality service is provided. Quantitative limits can occur, for example, directly through regulations limiting the number of those who can practise, or indirectly through limitations on the educational opportunities for training in the area.

ENTRY INTO THE ARCHITECTURAL PROFESSION

- 3.1 There are no legal barriers preventing individuals or organisations from providing architectural services or using the title of architect. Regardless of this, the majority of architectural work is undertaken by those who have formal degrees, certificates, or diplomas in architecture from universities or third-level colleges. There is also a small number of practically-trained



- architects (approximately 300) who provide architectural services and operate successfully.
- 3.2 Two third-level institutions provide degrees in architecture in the state: University College Dublin (UCD), and Dublin Institute of Technology (DIT), Bolton Street. Both offer full-time courses leading to a degree in architecture over a five-year period. Between them, they offer roughly 105 places a year for students.
 - 3.3 There is considerable evidence that the number of places is limiting those who wish to study architecture. The CAO points requirements of both courses have risen considerably over the last 10 years, to the extent where they are now well beyond the “required” entrance level laid down by the institutions for admittance, with the UCD requirement now well over 500 points. The DIT system also has a high points requirement, but uses a broader system, including interviews, to make a final selection. In terms of difficulty of admission at DIT, last year there were nearly a thousand applicants for approximately fifty places.
 - 3.4 While the provision of architectural services is not restricted to those with formal training as architects, there is nonetheless considerable demand for those with third-level qualifications. The current shortage in the number of domestic places has resulted in large numbers of Irish nationals going to the UK to study architecture, including Northern Ireland where there are now two schools of architecture operating.
 - 3.5 Nonetheless, given the high demand for places, and the somewhat higher financial costs of studying abroad, entry to the profession would be made easier if the number of places in Ireland was increased.
 - 3.6 The Expert Skills Group, under the aegis of Forfas, has recently recommended that an extra 45 places for third-level study be created in the medium term. It is envisaged that these extra places will be added to the two existing schools, rather than a third school being set up.¹⁰
 - 3.7 While any expansion is a positive sign, the relatively limited increase will not ensure that the supply of third-level places comes anywhere close to meeting the demand for suitably qualified persons. This is unfortunate, as having to study abroad raises the cost of entry to the profession. The overall effect of the limitation on places is almost certainly a restriction on the number of architects practising in the State. Given the importance of architectural services, and the external benefits offered by high-quality design, this has a negative effect on the welfare of Irish citizens.
 - 3.8 Two further issues exacerbate this problem. One is that there is no available method of part-time study for an architectural degree, nor is it

¹⁰ See Forfas Third Report of the Expert Group on Future Skills Needs. http://www.forfas.ie/futureskills/reports/fskills_3.htm



envisaged that any such method will be available in the future. The lack of any part-time method of study may constitute a considerable barrier towards further developing the skills of those who work in the general area of architecture without a formal degree.

- 3.9 A second issue is the size of the Irish architecture schools, which are small by international standards, and accordingly are not in a position to offer anything other than a general course. An increase in size could permit schools to offer specialist courses, and thus increase the diversity of architectural services available to consumers.

Entry by foreign-trained architects

- 3.10 As referred to above, another source of architects in Ireland is foreign-trained architects. Evidence suggests that foreign-trained architects are being employed in increasing numbers.¹¹ To facilitate the hiring of architects trained outside the European Economic Area (EEA), there are several reciprocal multi-lateral arrangements in place with non-EEA countries by which qualifications and title held by foreign-trained architects are recognised by many of the professional bodies in Ireland.
- 3.11 Although non-EEA nationals are eligible for work permits as employees, immigration restrictions would appear to prevent individual architects that are non-EEA citizens from moving to Ireland and forming their own practice.
- 3.12 Additionally, foreign-based architects and architectural practices are able to enter the Irish market and undertake projects. Recent examples of projects undertaken by foreign architects and architectural practices include the Millennium Wing for the National Gallery, the Dublin Spire, the Dublin Dental Hospital, the extension to the Crawford Art Gallery in Cork and the renovation of Patrick Street and Grand Parade in Cork City.

Analysis

- 3.13 In summary, there are no serious regulatory barriers to entering the architectural profession in Ireland. Similarly, there are no specific barriers to new practices based in other EU member states wishing to provide architectural services. In addition, it is not uncommon for employed architects to leave their employers and form their own practices that compete directly with their former employer.
- 3.14 However, the supply of architectural places at third-level institutions in the State is far exceeded by demand. While there is a modest increase envisaged, and students can study abroad, the overall effect is to form a barrier to entry to the profession which will not be substantially improved by the small rise in places. In particular, if the proposed registration scheme goes ahead (see below), the lack of any third-level qualification that can be

¹¹ The RIAI states that in 2001, 42 of 114 new members were trained outside Ireland.



obtained part-time could limit the ability of those working in the general area to signal their quality by earning the title “architect”.

3.15 While entry from abroad eases the academic barrier to entry, it is probably not sufficient. Given there seems clear evidence that demand vastly outstrips supply, and will continue to do so for the immediate future, it is unfortunate that there are not more ambitious plans to have more flexibility to increase numbers, for example, by allocating the number of academic places in response to market demand for graduates. The overall effect of further increases would clearly produce considerable future benefits for Irish consumers of architectural services.

Consultation questions

- Q7. Is there a sufficient number of educational institutions, courses or places for individuals to study architecture? If not, will an increase of 45 places sufficiently address this shortage?
- Q8. Do you agree with this general assessment of the educational sector?

Draft Recommendation:

The Higher Education Authority, together with educational institutions, should look at further ways of:

- (i) allowing for the number of places for third-level study of architecture to respond to market demand for graduates;
- (ii) offering a part-time degree in architecture, either as a separate school, or as an addition to an existing program.

PROPOSED REGISTRATION OF TITLE ‘ARCHITECT’

Proposed legislative protection of title

3.16 In 2001 the Government approved the Heads of the Building Control Bill, in which it proposed to legally restrict the use of the title of ‘architect’ to those who meet certain criteria such as academic qualification or practical experience.¹² This Bill also proposes to restrict the use of the titles ‘quantity surveyor’ and ‘building surveyor’. As the title of architect would be protected by Statue, it would operate as a State-sponsored signal of quality to buyers, although the registration system would be administered by the Royal Institute of Architects of Ireland (RIAI).

¹² This Bill is currently with the Parliamentary Counsel Office for formal drafting. Before being enacted the Bill must first be introduced into the Dail for debate. See www.environ.ie.



- 3.17 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. This is referred to as a 'grandfather' clause.

Rationale for the protection of title

- 3.18 Proponents of registration, including the RIAI and the Forum for the Construction Industry, consider that reservation of title is necessary to protect clients and ensure architectural services are of appropriate quality.¹³ Restricting access to this title would reduce the degree of information asymmetry between prospective clients and architects by providing prospective clients with a signal of quality, especially as any individual can offer architectural services.
- 3.19 Registration of title could also allow architects that are members of professional bodies that are less well known than the RIAI to achieve greater recognition by buyers who might otherwise consider using only RIAI member architects. Those running competitions for architects could use this title as an alternative method to limiting entries than using architects recognised by the Architects Directive and the Minister's list. The proposed grandfather clause could provide architects not eligible through either of these avenues with access to this title and, therefore, allow them to enter competitions. Similarly, registration could also provide the Law Society with a title that it could use as a prerequisite for recognising architects for the purposes of providing Compliance Certification.

¹³ "Ireland – Building our Future Together", report of the Strategic Review of the Construction Industry, April 1997, "A Framework for Registration for the Architectural Profession in Ireland", RIAI, October 1999, "Submission to the Department of the Taoiseach on Towards Better Regulation: Consultation Document", RIAI, July 2002.



Note 3.2: Asymmetric Information and Professional Services

Asymmetric information

A key issue in relation to professional services is the ability of buyers to judge the quality of services offered by different professionals. Additionally, the complex nature of many professional services means that, professionals supplying these services are often in a better position to judge how much of a particular service the buyer requires, and what a competitive price for that service is. Furthermore, some services are sufficiently complex that buyers may not be able to judge the effectiveness, or value for money, of a specific professional service even after they have received the service. This difference in knowledge between the suppliers and buyers is referred to as information asymmetry.

Asymmetric information can lead to market failure, in that buyers may purchase too much, or not enough, of certain services. This market failure can have significant negative consequences over time. For instance, it may prevent high-quality, high-cost practitioners coexisting, profitably, with lower-quality counterparts, because buyers may not be able to distinguish between them. It may even prevent buyers making any purchases and prevent a market from operating at all.

Information asymmetry can be moderated if repeat purchases allow buyers to build up experience regarding certain services and/or professionals. Additionally, the issue of asymmetric information can be resolved by the use of various methods of indicating or signalling service quality.

Signalling quality

Professionals may use various methods to signal the quality of their services directly to buyers, such as obtaining titles and/or qualifications, establishing reputations, advertising, or becoming members of professional bodies. Membership of a professional body, for instance, can require members to maintain certain standards, and provides an incentive to ensure that other members do likewise, so that the organisation as a whole can create a reputation that may otherwise be difficult for individual members to create. This can provide buyers with a degree of certainty regarding the quality of service they will receive from these members.

An alternative method by which quality can be gauged, is if the service, or service provider, is evaluated by an independent third party. This evaluation service may be provided by the state or could be supplied by private operators in response to demand from buyers.



An advantage of quality-signalling is that information asymmetries can be resolved by market-based responses to buyers' demands without imposing costly regulation and without restricting competition. Additionally, higher-cost, high-quality professionals can coexist alongside lower-quality, lower-cost professionals, benefiting buyers by providing them with the opportunity to purchase the quality of service that best suits their needs.

This compares with regulatory approaches that do not typically provide specific incentives for professionals to respond to buyers' demands. However, if market-based solutions to information asymmetry are not sufficient to correct market failure, regulation may be appropriate, provided that the benefits of imposing specific regulation exceed the costs. Regulation may target:

1. the specific service in question, or
2. the individual professional providing the service

(1) Regulating minimum standards of service

Imposing specific regulations governing minimum standards for professional services can provide certainty for buyers, especially regarding safety, such as building regulations. This approach has the advantage of not directly restricting entry to the profession. However, it may not be appropriate in all circumstances as enforcing minimum standards may be impractical or excessively costly given the unique nature of some professional services.

Additionally, regulations should not set standards too high, as this could prevent buyers from purchasing services that they would otherwise choose to purchase.

(2) Regulating entry to the profession

Another regulatory approach is to restrict the individuals who may provide specific professional services. Although, quantitative entry restrictions are inappropriate, as discussed in Note 3.1, qualitative entry restrictions, relating to characteristics such as qualifications, experience, etc, can ensure that all those providing professional services at least have the ability to provide services to a minimum standard.

However, ensuring that members of a profession are able to provide services of a certain quality is no guarantee that these professionals will have an incentive to do so if there is information asymmetry. Furthermore, in contrast to situations where there is the threat of competitive entry, the existence of regulatory entry barriers may reduce the incentive for incumbent professionals to provide quality services and value for money.



Analysis

3.20 In analysing this proposal, there are two key issues that must be addressed:

- a) Has regulatory intervention been sufficiently justified?
- b) If so, how can the negative effects of any regulatory intervention be minimised?

a) Has regulatory intervention been sufficiently justified?

3.21 As outlined by the OECD, the proportionality principle suggests that regulation of professions should be focused on those markets in which undesirable effects exist, and should address any market failure using means that restrict competition least.¹⁴ However, the architectural profession works well overall, and any problems of substandard architectural services would be best dealt with by direct regulatory intervention, such as the enforcement of building regulations by implementing an inspection regime. Restricting the use of this title may (i) restrict competition, and (ii) not provide the benefits claimed. Specifically:

Registration is not likely to affect the quality of architectural work

3.22 Market failure can arise if building designs and construction are not of a sufficient standard to ensure safety, not only for those involved in hiring the architect but also unrelated third parties.¹⁵ To ensure buildings are constructed to adequate safety standards, direct regulation in the form of building regulations have already been introduced. The system of Compliance Certification also works as a *de facto* system of enforcement of these regulations.

3.23 Additionally, there is no evidence of wide-scale dissatisfaction amongst clients regarding the standards of architectural work, nor has there been a significant number of safety incidents as a result of faulty design and construction. On the contrary, there is anecdotal evidence to suggest that these regulations have improved the quality of architectural service, and individuals who are not able to provide services of the necessary standard have ceased offering architectural services.

3.24 To the extent that the existing regime of building regulations and Compliance Certification for conveyancing and financial purposes does not ensure that safety standards are met in some instances, the best method of resolving any such issues would be to enforce compliance directly rather than restrict the use of the title architect. This could involve imposing mandatory requirements for architects to provide confirmation, or 'sign-off', that all building regulations have been met. Another option would be to

¹⁴ "Competition in Professional Services", OECD, 2000.

¹⁵ Harmful effects to unrelated parties are referred to as negative externalities.



- implement an inspection regime, as is successfully carried out in many other jurisdictions.¹⁶
- 3.25 Another market failure that can arise from architectural work relates to the aesthetic effects (discussed in Section One) that building design has on unrelated third parties, whether these effects are positive or negative.
- 3.26 The best policy approach to correct for these externalities is to directly target the objective of raising architectural standards. One approach could be to provide incentives for good architectural designs, for example, by providing awards. Other approaches could involve requiring certain buildings to meet certain specific design standards, similar to how existing zoning requirements prohibit buildings from being used for industrial purposes in residential areas because of the negative impact this would have on other residents. The planning code requires that buildings should be granted planning permission where they meet a standard of 'proper planning and sustainable development'.¹⁷ However, in practice 'proper planning' is interpreted minimally and is not used to require excellence in design standards.

Clients can obtain information regarding architects' quality

- 3.27 Another possible cause of market failure is that buyers may not be able to judge architects' quality prior to hiring. However, protecting a title for those with the ability to provide quality services does not necessarily ensure that these individuals will provide quality services if significant information asymmetry exists.
- 3.28 In any case, information asymmetry regarding the ability of an architect is usually overcome by the use of recommendations from previous clients, as well as the existence of professional bodies that seek to ensure high standards among their members. Providing prospective clients with information regarding whether architects have been subject to any complaints can also help overcome any information asymmetry. It is this ability of prospective clients to gauge an architect's ability by signals of quality, such as reputation, assisted by the number of small geographic markets within Ireland, that provides an incentive for the overwhelming majority of architects to provide satisfactory quality services.

Title could be used to restrict entry

- 3.29 A statutorily protected title of architect could be used as a requirement for applying for public sector work, particularly competitions. Therefore, registration could restrict the number of architects eligible to enter public sector competitions. This is similar to the current situation whereby only

¹⁶ Sections 6 and 11 of the Building Control Act, 1990 contain provisions for these options to be implemented.

¹⁷ See section 36, Planning and Development Act 2000.



architects recognised by the Architects directive and those on the Minister's list are eligible to enter public sector competitions.

- 3.30 Similarly, any protected title could be used by the Law Society as a prerequisite for providing Compliance Certification. Although, this could create greater certainty for determining who is eligible to provide these services, using this title as a requirement could potentially exclude some individuals who may be suitably skilled but may not be eligible for this title, such as architectural technologists (see Section Four).

Registration is not costless

- 3.31 Although the proposed system of restricting the use of this title may be considered 'self-financing' in that applicant architects are charged for the costs of operating this regulatory regime, rather than the Government directly providing funding, this regime should not be regarded as being costless. Any registration fee, effectively an architects' registration tax, would be passed on to clients to the extent that it raises the costs of providing architectural services.¹⁸ Such a fee could also deter some architects from applying. Furthermore, the resources used in a registration system could be more effectively used in other areas, for example, a building inspection regime.

Summary

- 3.32 Although there are concerns surrounding the existing situation, specifically in terms of architects who are eligible to enter competitions or provide Compliance Certification, it is not clear that statutory protection of title is the best method of addressing these issues. Competition for architectural services works relatively well, and there is a danger that reserving the title of architect would restrict competition in the area.
- 3.33 As such, there does not yet seem a compelling case for the registration system. Any restrictions on competition would have to be justified by a clear need for regulatory intervention, and that need has not been clarified. 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.

¹⁸ Another issue raised by the application of this fee is if different fees would be charged to different applicants and whether this would disadvantage some applicants.

¹⁹ Regulatory Impact Analysis is evidence-based policy-making where regulatory proposals are based on an objective assessment of available evidence. See "Towards Better Regulation", Consultation Document, Department of the Taoiseach, February 2002, and "www.betterregulation.ie". Specifically RIA:

- (i) attempts to quantify the likely impacts arising from regulatory proposals,
- (ii) has a built-in consultation requirement whereby all affected parties and wider society can offer views before regulations are enacted,
- (iii) reports on the alternatives considered,
- (iv) reports on how the regulation will be enforced and any potential problems that may be anticipated in achieving compliance.



- 3.34 Absent a stronger public interest justification, based upon a Regulatory Impact Analysis, the title of architect should not be restricted, as it is not obvious that restricting the use of this title addresses any market failure.

b) How can the negative effects of any regulatory intervention be minimised?

- 3.35 If a RIA concludes that statutory protection of the title of architect is the best method of addressing any market failure, it is important that a registration system does not provide any opportunity to be used in an anti-competitive manner. A core function of the State is, where possible, to intervene to correct market failure that harms consumers. To eliminate the possibility that the regulatory intervention itself to benefit the profession to the detriment of consumers, it is crucial that the regulatory body is independent of any potential conflicts of interest.

Regulatory bodies should be independent of those being regulated

- 3.36 To remove any conflicts of interest, decisions of the regulatory body should be made by boards or committees that have a majority of independent individuals who do not have any interest in the profession itself and have been selected by a transparent, independent process. This means that the majority of any board or committee should not consist of individuals selected by professional bodies representing the interests of architects.
- 3.37 Allowing a regulatory function to be controlled by those with interests within the profession also creates an image that the State is willing to allow conflicts of interest within its regulatory structures. This has the potential to lead to a lack of public confidence in the regulatory process more generally. An insufficiently independent, transparent registration process would also increase the likelihood of costly legal challenges by individuals who consider that they are being unjustly excluded from using a protected title.
- 3.38 An example of a regulatory body that eliminates conflicts of interest and is run with a clear consumer protection mandate is the Architects Registration Board in the UK. This board has the responsibility for regulating the title of architect in the UK and was given its current form in 1997. This board balances the requirement of protecting consumers and ensuring standards of architecture are maintained by having a majority of lay individuals along with a number of practising architects, who are able to provide expert technical input. It is run independently of the main representative body, the Royal Institute of British Architects, and functions well.



The establishment of registration criteria should be transparent

- 3.39 Much of the effect of any registration system depends upon the precise detail of the system and empowering legislation. Therefore, it is important that there is sufficient opportunity given to all parties effected by the restriction of title to comment on draft legislation.
- 3.40 Although there has been extensive consultation with the five main architectural bodies and the Forum for the Construction Industry, which includes a range of construction industry participants, some architects and professional architectural bodies claim to have been excluded from this consultation process, despite repeated requests for inclusion. This suggests that the consultation to date has not been representative of all interests within the construction industry.
- 3.41 Because not all affected individuals have had sufficient opportunity to provide input into the proposal, there is a danger that this could result in some sufficiently skilled and experienced individuals not having access to the title architect. This would mean that the title may not provide an accurate signal to buyers and could hinder their ability to select appropriate architects.

Any grandfather clause should be permanent

- 3.42 If sufficiently-experienced, practically-trained architects are suitable to obtain the title of architect now, there is no justification for preventing similar architects from using this avenue to achieve this title in the future. Therefore, any grandfather clause should be a permanent feature of any registration system, otherwise sufficiently experienced architects would be prevented from not only using the title architect, but also from entering public competitions.

Use of similar existing titles should not be prohibited

- 3.43 Protection of title should not prevent similar professions, such as architectural technicians and architectural technologists, from continuing to use their titles.

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.

If, after addressing these issues, the restriction of title is justified, any regulatory body should be sufficiently independent. This means that



- (i) it should be administered by an independent body, preferably statutory, in a transparent manner, and
- (ii) decisions by the body should be taken by boards that have an independent lay majority that are not selected by parties that have interests within the profession.

To ensure that the requirements for registration are not unduly restrictive, more open and transparent consultation processes should be used so that all interested and affected parties have the ability to comment on the precise details of the registration system.



SECTION FOUR: RIVALRY

Note 4.1: Rivalry

Along with entry, the other main force ensuring competition in any market is rivalry. Rivalry refers to the competitive process whereby suppliers operating in a market compete for buyers via such means as price, quality, and innovation of products and services. This incentive to attract buyers can, in a well-functioning market, lead to each firm offering lower prices, higher quality, etc, with corresponding gains for buyers.

To ensure buyers benefit fully from competition, the rules and practices should enable suppliers to compete freely. Activities that reduce buyers' ability to make informed decisions regarding the price, quality, and specifications of the service that best suits their needs, hinders the competitive process to the detriment of buyers. Thus, any barriers to buyers' ability to gain this type of information, such as restrictions on truthful advertising, are undesirable barriers to rivalry.

Professionals should also be free to join and establish other professional bodies that compete with existing bodies in terms of representing the interests of professionals or administering any self-regulation required within a profession.

Another rivalry barrier is high switching costs, which prevent buyers from switching easily between different suppliers. An example of imposing high switching costs to reduce rivalry is where buyers are locked into long-term contracts with certain suppliers where there are penalties for opting out of contracts early, for instance if buyers wish to switch to alternative suppliers offering superior value for money.

RIVALRY IN ARCHITECTURE

4.1 Although competition between architects generally works well, there are some rules or practices within the architectural profession that have the potential to restrict rivalry between architects. The rivalry barriers that warrant further consideration include:

- restrictions on advertising imposed by the RIAI on its members;
- publication of information regarding fees by the RIAI;
- a restriction upon RIAI members that prohibits members from entering competitions unless permitted by the RIAI;



- the non-recognition of certain individuals for the purposes of providing Compliance Certification, such as architectural technologists; and
- professional indemnity insurance requirements recommended by the Irish Public Bodies Mutual Insurances Limited.

4.2 Restrictions derived from specific membership rules may have the potential to affect competition within a particular market if the members of a specific organisation constitute a majority of architects within any particular market, or if membership is considered an important characteristic by a large proportion of clients.

Note 4.2: Rules of professional bodies

The existence of professional bodies can benefit buyers of professional services, as membership of these organisations can convey useful signals regarding the quality of service from different service providers. However, to ensure that rivalry between professionals is not diminished, especially between members of professional bodies, the rules of these bodies should meet certain criteria.

The membership criteria of professional bodies should be objective and transparent, particularly if membership of these bodies provides a competitive advantage to their members (for example by allowing suppliers to utilise a reputation for high quality or by providing access to reduced rates of indemnity insurance for instance). In the absence of such criteria, non-members providing equivalent services and having identical characteristics as members may be placed at a competitive disadvantage and any signal of quality that membership conveys may not be accurate.

Furthermore, the rules of any professional body should not have either the intent or effect of diminishing the level of rivalry between members. Notable examples of such rules are those that attempt to specify prices, limit price competition in other ways, or prevent members from competing against each other for work. The use of broad and subjective terms, such as “unfair competition”, should also be avoided as these have the potential to be used in an anti-competitive manner.

Additionally, in many cases professional bodies will be “associations of undertakings” within the meaning of section 4 of the Act, and their rules may be “decisions of associations of undertakings” within the meaning of that section. Therefore, such bodies need to be careful to ensure that their rules do not infringe section 4(1) of the Competition Act, 2002.



RIAI ADVERTISING RESTRICTIONS

4.3 The Code of Professional Conduct of the Royal Institute of Architects of Ireland sets out rules that relate to the promotion of architects' practices and publicity material. In particular, these rules state that:

- members must not pay anything other than amounts which cover the administrative costs associated with any such publications,
- approaches to potential buyers must be made by letter and must not include details regarding previous work, such as designs, unless specifically requested by the potential buyer,
- signs may only be erected on office premises or buildings under construction provided the lettering on these signs does not exceed 50mm on offices and 100mm on construction sites.

Note 4.3: Advertising and professional services

Advertising provides buyers with information regarding both the availability and quality of services and, therefore, helps to reduce the costs incurred by buyers in the process of selecting the appropriate service provider (search costs). Any increase in search costs can lead buyers to reduce the extent to which they “shop around”, thus reducing the intensity of competition in the market place. Therefore, so long as it is truthful and not designed to deceive, advertising plays an important role in facilitating the competitive process and benefiting buyers.

Furthermore, advertising restrictions can also work as barriers to entry. New entrants can be prevented from aggressively pursuing both on-going and one-off buyers. It is in the interests of incumbents, who have built up a sufficient body of goodwill and consumer recognition, to curb the effectiveness of new entrants' promotional efforts. Thus, advertising restrictions, and objections to advertising being undertaken by new entrants, can solidify entrenched market positions and limit innovation. As such, any restrictions on advertising, except those preventing untruthful advertisements, are likely to limit competition.

Views of the RIAI

4.4 The RIAI considers that its restrictions on members' advertising are more likely to encourage factual or balanced advertising. It contends that allowing print media advertising could result in dominance of the market by a small number of large architectural firms and that this would not be in the long-term interests of clients.



Analysis

- 4.5 Advertising restrictions may not have a significant anti-competitive effect in some cases because of the existence of competitions undertaken by public bodies, and the importance of reputation and word-of-mouth to architectural practices in obtaining work.
- 4.6 However, limitations on paid advertisements may prevent advertising campaigns. This can be detrimental to buyers because advertising that is factual and not designed to mislead is the best means of reducing buyers' search costs in a way that facilitates competition in the marketplace. For advertising to be effective, advertisements must be of a sufficient size and visibility so as to be noticed by the public. Moreover, advertising can play an important part in reducing information asymmetry between clients and architects.
- 4.7 In this manner, the RIAI's limitation on size of advertisements is also likely to restrict competition and provide implicit assistance to incumbents. This restriction could also hinder entry in specific markets or geographic areas, as effective advertising can be an important method for new firms to become known in the market, and thus attract new clients and facilitate entry.
- 4.8 Moreover, as RIAI members constitute a majority of architects in Ireland, any advertising restrictions could significantly influence the level of advertising across many regional architectural markets. Additionally, inexperienced buyers may consider RIAI membership an important signal of quality, which could increase the demand for these architects relative to non-RIAI member architects. This could exacerbate any anti-competitive restrictions between RIAI members.

Draft recommendation

Restrictions on advertising by professional bodies should be narrowly focussed on false or misleading advertising rather than being overly prescriptive. Restrictions beyond this are unnecessary, tend to restrict competition and disadvantage buyers, and, therefore, should be removed.



RIAI FEE INFORMATION

- 4.9 The RIAI provides draft agreements that can be used by architects and their clients as a basis for a contract. These draft agreements also include information regarding fees charged by architects.²⁰
- 4.10 The information is presented in a table that shows percentage fees for different types of projects, (projects are divided into three categories, depending upon the complexity of the project) and for different project costs as well as minimum fees for each different project cost band. These fees are indicated to apply from 1 January 2002, and also include the comment “Min” relating to certain fees. The draft agreements state that the fees indicated are essentially historical data, being based upon surveys and market information and are neither mandatory, minimum or recommended and are published for the purpose of negotiation between client and architect.

Views of the RIAI

- 4.11 The RIAI has reiterated that the fee information is not a set of recommended fees but is included to provide potential clients with approximate information regarding what fees could be appropriate for broad types of work. It considers that this information can be useful for inexperienced buyers that are not aware of the cost of architectural services.
- 4.12 The RIAI has further detailed how the fees were obtained from sample data, performed by an independent company that conducted a survey of RIAI members to obtain the fees charged over recent periods of time.

Analysis

- 4.13 The use of mandatory fees by professional bodies is tantamount to price-fixing and is illegal. However, even public information on fees serves as a focal point for collusion between professionals, whether it is tacit or explicit. Publication also increases mutual transparency of fees, which can further facilitate cartel-like behaviour between professionals.

Historic fee information

- 4.14 Information regarding market data can be useful for potential buyers to determine what constitutes a competitive fee for a specific project. Typically, the best source of this information for potential buyers is from more experienced buyers who have employed architects for similar work previously. In some cases buyers may not often have access to this type of information and may have to rely upon more general market survey data if it exists. However, the usefulness of market averages is limited by the

²⁰ See RIAI documents: “Agreement between client and architect for the provision of architectural services” (2002 edition), and “Agreement between client and architect for domestic work”, (2002 edition).



specific nature of much architectural work and the unique character of each project. This means that fees can vary significantly for similar jobs, particularly if clients request changes during projects. Given this, data on average fees, using a rough measure of complexity of project, is not particularly useful to clients. It would be more useful for buyers to obtain quotes or estimates from rival architects and compare these for specific projects, even if fee information exists or fees are well advertised.

- 4.15 Publishing fee information can reduce pro-competitive search behaviour as it reduces the likelihood that prospective clients would obtain quotes from rival architects. This can protect architects from competitive pressure, leading to higher fees than would occur in a more competitive environment. Moreover, many of the average percentage fees provided by the RIAI relate to large-scale projects where clients are more likely to be better informed regarding appropriate fees, thus negating any need for historic average fees as indicators.

Percentage fees

- 4.16 The use of percentage fees also raises competition concerns, as basing fees upon percentages of total construction costs can lead to increases in fees that are not based upon the value of the architectural services provided. For instance, if the cost of construction materials doubles, using a percentage basis for the cost of architect services ensures that architects fees will also double.
- 4.17 Thus, percentage fees may be inherently biased towards increasing the costs of architectural services, and will, as the cost of raw materials rises, unnecessarily lead to further higher costs for clients. Percentage fees are also particularly conducive to collusive behaviour by providing a simple focal point for rival architects to set fees across a range of different projects.

Summary

- 4.18 The use of average fees is likely to be of limited benefit in this market. When guidance on fees is combined with percentage fees, which are inherently biased towards higher charges and can facilitate collusive behaviour, the overall effect is likely to be anti-competitive and to raise the level of charges in the market for architectural services. Given the number of architects who are RIAI members, this could have a widespread effect, and has the potential to breach section 4(1) and section 5 of the Competition Act, 2002. In summary, this fee information could restrict competition while offering no commensurate benefit.

Draft recommendation

The RIAI should remove any fee information in their published material.



REFUSAL TO SUPPLY SERVICES

4.19 The Code of Professional Conduct of the Royal Institute of Architects of Ireland stipulates that members can only enter architectural competitions that are approved by the RIAI, or a similar international professional body (Rule of Council, A.6, 2). If the RIAI has not approved a competition, a member must seek and obtain the RIAI's approval before entering.

Views of the RIAI

4.20 The RIAI has stated that the intent of the rule is to ensure that competitions are run so as to ensure that there is maximum transparency, clarity and accountability. In any case, the RIAI states that it has not actively prevented members from entering any competitions that it has not approved.

4.21 Additionally, the RIAI has stated that not imposing entry limits would result in an excessive number of applicants, many of whom would not have the ability to provide satisfactory services. This would result in unnecessary costs being imposed upon the organisation running the competition, and could reduce the viability of running such competitions.

Analysis

4.22 Although membership of the RIAI is not compulsory, membership is relatively widespread amongst those who provide architectural services (approximately 70 to 80 percent of all architects). Membership of the RIAI may also be considered an important characteristic, or signal of quality, by potential buyers when selecting an architect. Therefore, any RIAI rules that have the potential to restrict competition amongst rivals, or even have the effect of facilitating co-operation, could have a significant effect on the competitive environment in various architectural markets.

4.23 Competitions can be an important mechanism by which buyers can acquire high-quality architectural services and architects can build up valuable experience and recognition. It is important that that buyers and architects maintain confidence in this process so that competitions continue to be held.

4.24 Ensuring that competitions are properly run, including ensuring that entrants' intellectual property rights are respected, that the jury is sufficiently independent, and that entries are anonymous, is likely to assist the competitive process. However, having rules that effectively permit a boycott by RIAI architects is not an appropriate way to achieve this objective.

4.25 Although the RIAI may have never prohibited an individual member from entering a competition, conveying to the organisation holding the competition that the RIAI has the ability to withhold members' services would constitute anti-competitive behaviour. Such a threat could be used as leverage to ensure that the organisation runs its competition in a manner



that benefits the RIAI's members, for example by excluding certain architects who are not recognised by the Architects Directive.

- 4.26 In summary, this particular rule is highly problematic in terms of its effect on competition for architects' services as it may breach section 4(1) of the Competition Act, 2002.

Development

- 4.27 Since investigation of this issue began, the RIAI has communicated to the Authority that it is prepared to amend this particular rule so as to remove any obligation upon members not to enter competitions that are not approved by the RIAI. This is a welcome development and would allay fears that this rule produces anti-competitive behaviour.



DEMARCATIION: COMPLIANCE CERTIFICATION

4.28 As outlined previously, 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.

Views of the Law Society

4.30 In the absence of any established process for determining who is qualified to provide Compliance Certification, in the mid 1990s the Law Society attempted to determine which individuals a court would consider reasonable for the purposes of providing an accurate assessment of whether a construction has complied with all planning requirements and building regulations.

4.31 Rather than include members of professional bodies, this list relates to specific characteristics of individuals providing architectural services. This is because of the high costs that would be incurred in establishing whether



the standards of all of the different professional bodies are appropriate, especially as new bodies may emerge over time.

Analysis

- 4.32 It is not obvious that this is an exhaustive list of individuals that are suitably skilled to provide certification. Additionally, because of the technical nature of this work, it is not apparent that the Law Society is best placed to decide who is suitable for providing Compliance Certification.
- 4.33 If a system of registration of the title architect is introduced, this title may be used by the Law Society as a prerequisite for providing Compliance Certification. However, it is possible that some architectural service providers, such as architectural technologists, would not be eligible for this title and, consequently, would continue to be prevented from providing Compliance Certification. As providing Compliance Certification is an important factor in choosing an architect, using this title as a criteria for certification could unnecessarily reduce the choice of architectural professionals available to prospective clients.
- 4.34 Therefore, it may be more appropriate for the Government, the Department of the Environment and Local Government in particular, to provide independent, transparent guidelines regarding who is competent to provide Compliance Certification, regardless of whether a system of registration is implemented.

Consultation question

- Q9. Are individuals with similar skills and qualifications to architects, such as architectural technologists, effectively prevented from providing Compliance Certification?
- 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?



PROFESSIONAL INDEMNITY INSURANCE

- 4.35 The Irish Public Bodies Mutual Insurances Limited (IPB) was established by the Government to underwrite the insurance of Local Authorities, Health Boards, Vocational Educational Committees, Higher Education Institutions, Regional Authorities and other public bodies.
- 4.36 IPB advises these public bodies on the level of professional indemnity insurance they should require from construction industry contractors, including architectural and engineering practices. IPB advises public bodies to require architectural practices to have professional indemnity insurance of a minimum of €6.3 million, irrespective of the project type or value.

Analysis

- 4.37 The requirement for architectural practices to have €6.3 million of professional indemnity insurance to cover public projects may exclude smaller practices from seeking these projects because the cost of this insurance may be prohibitively high. The majority of architectural practices have professional indemnity insurance of between €500,000 to €2 million.
- 4.38 Given the potential importance of public work for many practices, for obtaining valuable experience and building professional reputations as well as for income, excluding small practices could reduce the level of competition within the profession generally as well as reducing the choice of architects available for public projects, which could in turn lead to higher fees for these projects.
- 4.39 However, unlike the public bodies that hire architectural practices, IPB is not affected by any increase in architecture fees or lack of choice that could arise from a reduction in competition, but has the task of minimising any risk of losses arising from architectural work. This may result in IPB recommending that public bodies demand architectural practices to have more professional indemnity insurance than is necessary.
- 4.40 Targeting insurance requirements more accurately to specific projects could ensure adequate insurance cover without resulting in a reduction of competition. For instance, the Department of Health has a sliding scale for professional indemnity insurance requirements, whereby €6.3 million is required only for projects in excess of €50 million.

Consultation question

- Q11. Is there evidence that requiring €6.3 million of professional indemnity insurance cover is excessive?
- Q12. Is there evidence that requiring €6.3 million of professional indemnity insurance cover would raise insurance costs for architectural practices?



- Q13. If so, what affect would this have within the architectural profession?
- Q14. Regarding the overall effects on the market for architectural work for public bodies, what is the best approach for determining the appropriate level of professional indemnity insurance that architectural practices should have?



SECTION FIVE: COMPLAINTS

Note 5.1: Complaints procedures

Given the difficulty that buyers may face in judging the quality of professional services, even after purchase, an issue arises as to how best to deal with complaints relating to service quality, professional misconduct or other harm to the buyer. Legal processes may provide an ultimate avenue for seeking any redress, but both the cost and the time required can reduce their usefulness. Specific professional bodies may also provide self-regulation of such matters. However, there may be concerns about the ability and effectiveness of a professional body to regulate its own members. One possible solution is the establishment of an independent complaints body to deal with complaints from buyers. Such a body, while having expertise in the relevant area, should not be primarily composed of people working within the specific profession.

- 5.2 Because professional architectural bodies may compete with each other in terms of both attracting members and buyers, there is an incentive for these bodies to establish sufficiently impartial complaints processes to ensure that membership is considered an accurate signal of quality. However, the information asymmetry between members and their clients can mean that the incentive to ensure impartial complaints processes is reduced.
- 5.3 The proposal to register the title of architect also includes a proposal to establish a board to hear complaints from clients. Similar to the establishment of a regulatory body to register title, a body to adjudicate on complaints should be an independent statutory body, that is not controlled by individuals that have interests as practising architects.

Consultation Question

Q15. 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 benefit clients, having regard to the additional costs that it might impose?



SECTION SIX: CONCLUSION

- 6.1 Generally, the architectural profession is characterised by limited barriers to entry – mainly in the area of third-level places – and a small number of restrictions on rivalry amongst architects. While there are some rules and practices of the main professional body that should be amended – mainly relating to historical/percentage fees and to advertising restrictions - the Competition Authority expects that consultation with the relevant professional bodies will ensure that the issues concerning the regulation of this sector are resolved in a satisfactory manner.
- 6.2 The most important issue facing the regulation of the architecture profession is the proposal to restrict use of the title architect. The case for registration has not been sufficiently made. Further analysis and evidence should be produced before any registration scheme goes ahead. Otherwise, restricting the use of title, together with a general shortage of third-level places for architecture, could severely restrict the total number of architects in the State with corresponding negative effects on clients and society. If a regulatory impact analysis concludes that the title of architect should be restricted, any registration system should be operated by an independent, statutory body rather than by a professional organisation representing architects.
- 6.3 The Authority seeks responses to this document from a wide range of interested parties. A final set of recommendations will be published after the closing date for responses.

Consultation Question

Q16. Are there any other issues relating to the regulation of the architectural profession, or the practices within it, that could affect competition?