

Competition in Professional Services

architects

The Competition Authority is undertaking a study across a range of eight professions in the construction, legal and medical sectors of the Irish economy. The specific professions being reviewed are engineers, architects, dentists, optometrists, veterinary surgeons, medical practitioners, solicitors and barristers

March 2006



The Competition Authority
An tÚdarás Iomaíochta

CONTENTS

TABLE OF CONTENTS	i
GLOSSARY OF TERMS	iii
EXECUTIVE SUMMARY	v
RECOMMENDATIONS	vii
1. INTRODUCTION	3
BACKGROUND TO THE REPORT ON ARCHITECTS	3
STRUCTURE OF THIS REPORT	4
2. THE ARCHITECTURAL PROFESSION	7
THE ROLE AND FUNCTIONS OF ARCHITECTS	7
RELATED AND OVERLAPPING SERVICE PROVIDERS	8
REGULATION OF ARCHITECTS	8
MINIMUM STANDARDS REGULATION	8
RECOGNITION REGULATION	9
FOREIGN-TRAINED ARCHITECTS	10
RECOGNITION OF FOREIGN-TRAINED ARCHITECTS	10
COMPLAINTS	11
REPRESENTATIVE BODIES	11
DEMAND FOR ARCHITECTURAL SERVICES	11
INFORMATION ASYMMETRY	12
PUBLIC SECTOR SELECTION OF ARCHITECTS	12
SUPPLY OF ARCHITECTURAL SERVICES	12
COMPETITIONS	13
ARCHITECTS' INCOMES	13
PRICES OF ARCHITECTURAL SERVICES	14
3. REGISTRATION OF THE TITLE "ARCHITECT"	19
RATIONALE FOR STATUTORY REGISTRATION AND	
RESERVATION OF TITLE	20
INDEPENDENT REGULATION	21
REGULATORY BOARDS AND COMMITTEES	24
STANDARDS OF PROFESSIONAL CONDUCT	28
RECOGNITION OF ARCHITECTS IN OTHER EU MEMBER STATES	30
IMPLICATIONS FOR RELATED PROFESSIONS	33
4. RESTRICTIONS ON OFFERING ARCHITECTURAL SERVICES	37
ARCHITECTURAL COMPETITIONS	37
ELIGIBILITY FOR ARCHITECTURAL COMPETITIONS	37
ADMINISTRATION OF ARCHITECTURAL COMPETITIONS	39
OPINIONS ON COMPLIANCE	40
PROFESSIONAL INDEMNITY INSURANCE	42
EDUCATION	44

5.	RIVALRY AND COMPETITION BETWEEN ARCHITECTS	49
	ADVERTISING RESTRICTIONS OF THE ROYAL INSTITUTE OF THE ARCHITECTS OF IRELAND	49
	FEE INFORMATION PROVIDED BY THE ROYAL INSTITUTE OF THE ARCHITECTS OF IRELAND	50
6.	CONCLUSION	55
7.	APPENDICES	61
	APPENDIX 1: SUBMISSIONS IN RESPONSE TO PRELIMINARY REPORT	61
	APPENDIX 2: EXPLANATORY NOTES	62

Previous page: Entrance Hall, Irish Architectural Archive, Merrion Square, Dublin.

Winner Irish architecture awards 2005 (Dublin over €3m)

Architect: Office of Public Works, Architectural Services

Photo courtesy of the Office of Public Works.

GLOSSARY OF TERMS

Architect

Architects provide professional services to individuals and organisations planning a construction project. They design the overall aesthetic and look of buildings and other structures, taking into consideration factors such as the need for structures to be functional, safe and economical and to suit the needs of those who use them.

Architects Directive

The Architects Directive (85/384/EC) provides for mutual recognition of diplomas, certificates and other evidence of formal qualifications in architecture among the EU Member States. In the case of Ireland, the Directive gives architects with certain academic qualifications, as well as members of the Royal Institute of the Architects of Ireland, the right to practice as architects in other EU Member States.

Architectural Technician

Architectural technicians support architectural technologists, architects, engineers, surveyors and other professionals within the construction industry. They specialise in the application of technology to architecture, building design and construction.

Architectural Technologist

Architectural technologists have similar skills to those of architectural technicians but also have specialist skills enabling them to negotiate the construction process and manage the process from conception through to completion.

Central Statistics Office

The Central Statistics Office was established in 1949 and has a mandate for *"the collection, compilation, extraction and dissemination for statistical purposes of information relating to economic, social and general activities and conditions in the State"*.

Computer Aided Design (CAD)

Much architectural design work is computerised and the interaction between different construction industry professionals often requires designs to be in electronic format. The use of CAD increases the scope for work relating to construction in Ireland to be carried out in other jurisdictions, particularly if the client is a multi-national company based outside Ireland.

Consumer Price Index

The Consumer Price Index is a monthly survey conducted by the Central Statistics Office designed to measure the change in the level of prices of consumer goods and services.

Group of Independent Architects in Ireland

The Group of Independent Architects in Ireland is a representative body for architects, the majority of whom are practically-trained. It has a membership of approximately 70.

Higher Education Authority (HEA)

The Higher Education Authority is the statutory planning and development body for higher education and research in Ireland. The HEA has wide advisory powers throughout the whole of the third-level education sector. In addition it is the funding authority for the universities and a number of designated higher education institutions.

Information Asymmetry

Information asymmetry is a condition in which at least some relevant information is known to some but not all the parties involved. Information asymmetry causes markets to become inefficient, since not all the market participants have access to the information they need for their decision making process.

Irish Architects Society

The Irish Architects Society is a representative body for architects. The majority of its members do not have formal qualifications but are admitted to membership following submission and consideration of a portfolio of completed work.

Irish Public Bodies Mutual Insurances Limited (IPB)

Irish Public Bodies Mutual Insurances Limited was established by the Local Authorities (Mutual Assurance) Act 1926. IPB underwrites the insurances of Local Authorities, the Health Service Executive, Vocational Educational Committees, Higher Education Institutions, Regional Fisheries Boards, Harbour Authorities, County Enterprise Boards, Regional Authorities, State sponsored bodies and related organisations.

The Law Society of Ireland (The Law Society)

The Law Society of Ireland was founded in 1773 and is the educational, representative and regulatory body of the solicitors' profession in Ireland.

The Minister's List

The Minister's List is the name given to a list of architects created by the Minister for the Environment, Heritage and Local Government in 1996. The purpose of the list was to ensure that practically-trained architects were eligible for public sector projects and allowed to enter architectural competitions in Ireland. The list consists of individuals considered by the Minister to be sufficiently skilled and experienced to warrant such recognition.

Opinions on Compliance

An Opinion on Compliance with building regulations is required in most cases when a borrower is raising finance where a building is used as collateral. The system of Opinions on Compliance is an ad hoc one which has evolved to satisfy financial institutions that a building conforms to legal requirements. Opinions on Compliance may be provided by certain groups, including those with architectural qualifications or practically-trained architects on the "Minister's List".

The Royal Institute of the Architects of Ireland (RIAI)

The Royal Institute of the Architects of Ireland, founded in 1839, is the largest representative body for architects in Ireland. As of January 2006, the RIAI had 2,355 members.

Regulating Better

The Government White Paper designed to improve national competitiveness and policy implementation by ensuring that new regulations and legislation are more rigorously assessed in terms of their impacts, more accessible to all and better understood.

EXECUTIVE SUMMARY

The Competition Authority has only a small number of concerns about how the architectural profession operates in Ireland. Unlike some other professions reviewed by the Competition Authority, architects are not restricted by layers of unjustified or disproportionate restrictions on competition. Competition seems to be working well for consumers of architectural services and the economy as a whole. Where the Competition Authority has identified unnecessary or disproportionate rules or restrictions, the Royal Institute of the Architects of Ireland (RIAI) has been proactive in addressing the Authority's concerns.

However, the Competition Authority is concerned that proposed changes in how the architectural profession is regulated in Ireland will have negative consequences for consumers and for some members of the profession. These changes are proposed in the Building Control Bill 2005. The Competition Authority is particularly concerned about the level of influence and control given to the RIAI over the system which determines who can be called an architect. The RIAI represents the vast majority of architects in Ireland.

If these proposals are implemented they will establish in law a conflict of interest where the RIAI will represent the interests of its members while at the same time be responsible for the rules and practices which are designed to protect the public interest.

The Competition Authority is proposing the establishment of an Architects Council of Ireland. This would be an independent, transparent and accountable body to regulate the architectural profession. The establishment of an independent system would bring the regulation of architects into line with other professions in Ireland such as doctors and dentists and with other sectors of the economy such as financial services. In countries such as the UK, Australia, Finland and the Netherlands, the registration of architects is controlled by an independent body.

The Competition Authority is also concerned about the composition of the various boards and committees it is proposed will regulate the architectural profession. Appointments to these decision making bodies should not be made by the RIAI. The Competition Authority also recommends that a number of safeguards be put in place regarding the proposed Code of Professional Conduct.

Finally, the Competition Authority makes recommendations regarding the recognition of Irish architects in other EU countries and the broad scope of the reservation of title:

- Recognition of Irish architects abroad should be on the basis of their recognition on the register, and not on membership of a private representative body, the RIAI;
- The Building Control Bill 2005 makes it an offence to mislead the public by using the term architect "*either alone or in combination with any other words or letters, or name, title description, implying that the person is so registered*". The broad scope of this reservation of title could have the unintended effect of restricting other professions, such as "architectural technicians" and "landscape architects", from using these titles to describe their services. Only the title "architect" should be reserved.

Additional recommendations relate to the few remaining areas where the Competition Authority has identified that competition in architectural services is unnecessarily restricted:

- Eligibility to enter architectural competitions for public sector projects;
- The provision of Opinions on Compliance with Building Regulations;
- Requirements for professional indemnity insurance; and
- The need for flexibility in architectural education.

Practically-trained architects, who are not on a list of qualifying architects (known as “the Minister’s List”), are currently excluded from entering architectural competitions run by public bodies such as local authorities or the Office of Public Works. This list was established by the Minister for the Environment, Heritage and Local Government in 1996 and has not been amended since that date. Allowing such individuals to enter these architectural competitions will increase the pool of potential competitors and enable local authorities and taxpayers to reap the full benefits of competition by being able to choose from a wider variety of service providers.

Opinions on Compliance with Building Regulations are required by financial institutions in most cases where a borrower is raising finance for the purchase of a building. The Law Society’s list of those professionals suitable to provide Opinions on Compliance excludes practically-trained architects who are not on the Minister’s List but who may have sufficient ability to provide these Opinions. The Competition Authority recommends that the Law Society should re-evaluate its list in order to allow other competent individuals to provide Opinions on Compliance. This will offer greater choice to consumers and in some cases reduce their costs.

The Competition Authority recommends changes to the level of professional indemnity insurance for architectural practices required for public sector projects. Currently, Irish Public Bodies Mutual Insurances Limited (IPB) advises public bodies to require architectural practices to have indemnity insurance of €6.3 million irrespective of the type or value of the project. This high level of insurance excludes many small firms from providing services to public bodies. The Competition Authority recommends the use of a sliding scale of professional indemnity requirements based on the cost of the overall project. Such a sliding scale has already been developed by the Department of the Environment, Heritage and Local Government. Use of the sliding scale will allow smaller architectural practices to compete with larger practices without having to carry higher than necessary levels of insurance, thereby reducing their costs.

Finally, the Competition Authority recommends greater flexibility in architectural education through the provision of part-time and modular courses. Currently only full-time courses are on offer. Educational institutions should allow other relevant technical training to contribute towards an architectural qualification. These measures will allow individuals in related occupations to build on their qualifications and progress in the profession thereby ensuring an adequate supply of architects and increasing choice for consumers.

A number of the concerns identified by the Competition Authority in its preliminary report on the architects’ profession¹ have now been addressed.

- The rules of the RIAI which unnecessarily restricted advertising by architects were removed in May 2004;
- The RIAI no longer publishes information showing percentage fees for different project types. The only fee information now published by the RIAI is contained in an independent survey which includes information on percentage, fixed and time-based fees;
- There has been a significant increase in the number of architecture training places in Ireland with the opening of new schools of architecture in Waterford and Limerick in 2005. Another new school will open in Cork in 2006.

It is estimated that there are approximately 3,800 people providing architectural services in Ireland.² Individuals in related disciplines in the construction industry, such as engineers or builders, may also provide architectural services. Survey figures suggest that architects’ salaries typically range from around €40,000 to €80,000.³ Salaries within the public sector range from approximately €31,000 for an entry-level architect up to €116,000 for a Principal Architect.⁴ Owners of architectural practices may receive profits in addition to salary income.

1. Published in November 2003.

2. *Construction Industry Skills Monitoring Report*, Expert Group on Future Skills Needs, July 2003. See <http://www.skillsireland.ie/press/reports/index.html>

3. June 2003 figures compiled by Hays Montrose on www.hays.ie

4. These figures, for 2004 salaries, are presented by the RIAI on www.riai.ie The RIAI observes that salary levels within the Architect, Senior Architect, and Assistant Principal Architect salary ranges will vary according to differences in individuals’ qualifications and experience.

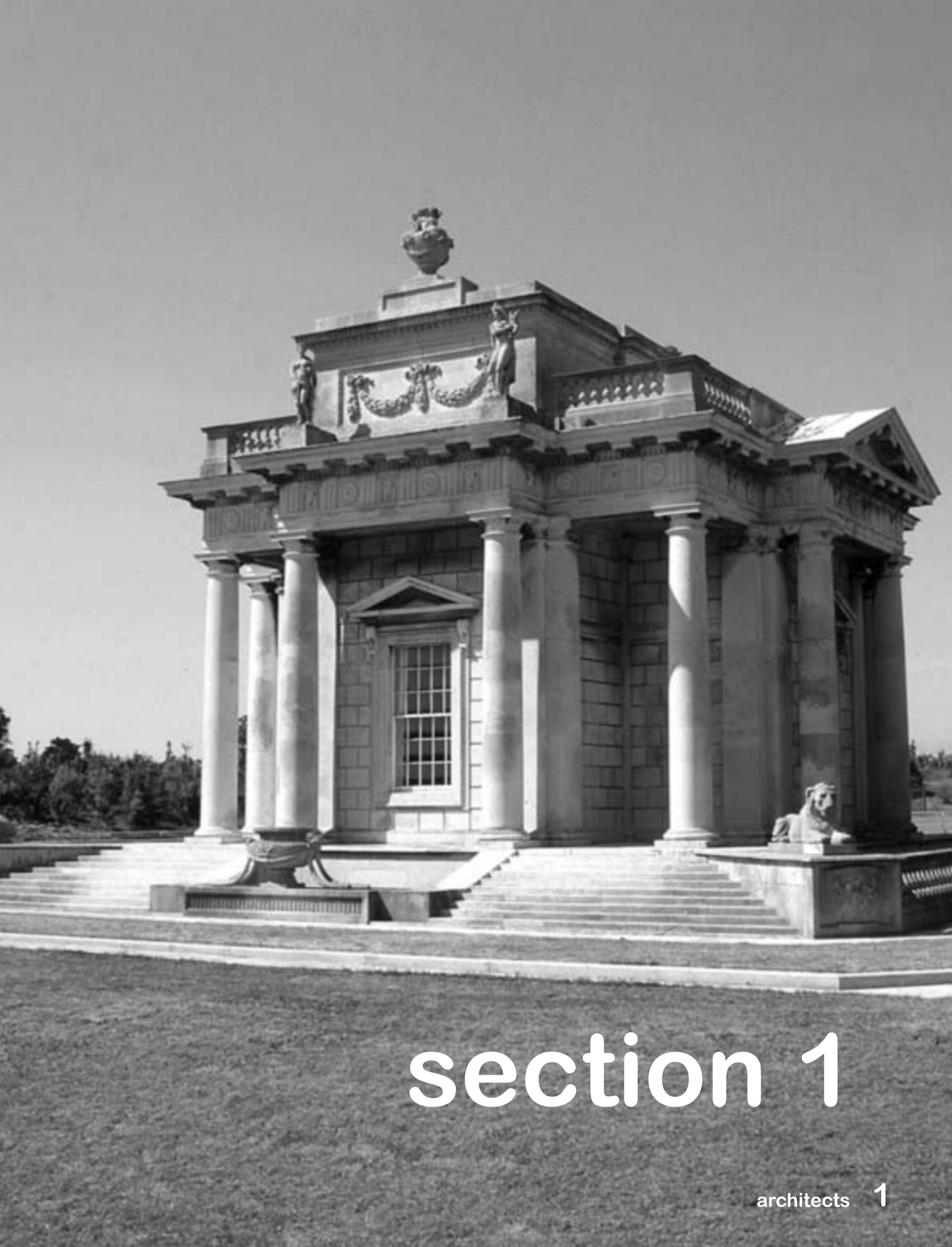
Recommendations

Recommendation 1:	Establish an independent Architects Council of Ireland
Details of Recommendation	By
The registration body should be independent of professional representation. This is best achieved by establishing an Architects Council with a majority of lay members as well as architect members to provide technical knowledge and market expertise.	Minister for the Environment, Heritage and Local Government
Recommendation 2:	Increase the independence of the boards and committees provided for in the Bill
Details of Recommendation	By
Amend Sections 10, 18, 20, 21 of the Building Control Bill 2005 (which refer respectively to the Admissions Board, the Technical Assessment Board, the Professional Conduct Committee and the Appeals Board), and also section 66, to provide that: (a) there will be a majority of ordinary committee members from outside the architectural profession; (b) a majority of ordinary committee members from outside the architectural profession shall be a quorum requirement; (c) chairpersons will be appointed directly by the Minister for the Environment, Heritage and Local Government; and (d) architectural representation on boards and committees shall be on the basis of election from the register of architects.	Minister for the Environment, Heritage and Local Government

Recommendation 3:	The Code of Conduct should be approved by the Professional Conduct Committee after a public consultation process and after consultation with the Competition Authority
Details of Recommendation	By
Amend Section 53 of the Building Control Bill 2005 to provide that: (a) the Professional Conduct Committee (rather than the RIAI) should draft or approve the Code of Conduct and any subsequent amendments; (b) the Code of Conduct, and any subsequent amendments should be subject to a public consultation process; and (c) when approving the Code of Conduct, or any subsequent amendments, the Professional Conduct Committee should consult the Competition Authority.	Minister for the Environment, Heritage and Local Government
Recommendation 4:	Recognition in Europe should require registration rather than RIAI membership
Details of Recommendation	By
The Minister for the Environment, Heritage and Local Government should, at the earliest opportunity, seek to amend EU Directive 2005/36/EC (Recognition of Professional Qualifications) to provide that the existing criteria (in Annex V) of " <i>membership</i> " or " <i>associate membership</i> " of the RIAI be replaced with " <i>registration</i> " by the regulatory body (either an independent body or, as proposed, the RIAI).	Minister for the Environment, Heritage and Local Government
Recommendation 5:	Amend Section 15 of the Building Control Bill 2005 to avoid unnecessary restrictions on non-architects
Details of Recommendation	By
(a) Amend Section 15 of the Bill to provide that it is illegal for anyone to use the title architect when they are not registered as such; and (b) Make an appropriate amendment to the description "<i>either alone or in combination with any other words or letters, or name, title or description</i>" to ensure that unrelated professions are not unnecessarily restricted.	Minister for the Environment, Heritage and Local Government

Recommendation 6:	Ensure all recognised architects can enter architectural competitions
Details of Recommendation	By
The Minister for the Environment, Heritage and Local Government should, within 12 months of this report and once every three years thereafter, review local authorities' administration of competitions to ensure that all recognised architects are able to enter competitions.	Minister for the Environment, Heritage and Local Government February 2007
Recommendation 7:	Re-evaluate the list of persons recognised for the purposes of Opinions on Compliance
Details of Recommendation	By
(a) Following the introduction of a registration system, the Law Society should amend its list of persons suitable to provide Opinions on Compliance to ensure that all registered architects are included; and	The Law Society Within three months of the establishment of a Register of Architects
(b) Pending the introduction of a system of statutory registration of the title "architect", the Law Society should re-evaluate its list of persons suitable to provide Opinions on Compliance with relevant planning and building regulations, with a view to including any individual with sufficient professional indemnity insurance.	The Law Society July 2006
Recommendation 8:	Promote and monitor the use of sliding scales of professional indemnity insurance requirements
Details of Recommendation	By
(a) Irish Public Bodies Mutual Insurances Limited should henceforth refer its clients to the sliding scale and guidelines produced by the Department of the Environment, Heritage and Local Government when advising them in relation to professional indemnity insurance for construction projects; and	Irish Public Bodies Mutual Insurances Limited April 2006
(b) The Department of the Environment, Heritage and Local Government should, within 12 months of this report and once every three years thereafter, review the use by local authorities of its sliding scale of professional indemnity insurance requirements for contracted architects.	The Department of the Environment, Heritage and Local Government March 2007

Recommendation 9:	Provide more flexible ways for training architects
Details of Recommendation	By
(a) The Higher Education Authority, together with educational institutions, should look at further ways of allowing the number of places for third level study of architecture to respond to market demand for graduates;	The Higher Education Authority Implemented September 2005
(b) Educational institutions providing architectural education should seek to enable the provision of part-time and modular courses in addition to the provision of full time courses; and	Educational institutions September 2007
(c) All educational institutions providing architectural education should allow for other relevant technical training to contribute towards a full architectural qualification.	Educational institutions September 2007
Recommendation 10:	Remove unnecessary restrictions on advertising
Details of Recommendation	By
Advertising restrictions of any of the professional bodies, including the RIAI, should be narrowly focused on false or misleading advertising rather than being overly prescriptive. All other restrictions on advertising should be removed.	The Royal Institute of the Architects of Ireland Implemented May 2004
Recommendation 11:	Cease the inclusion of actual percentage fees in draft contracts published by the Royal Institute of the Architects of Ireland
Details of Recommendation	By
The Royal Institute of the Architects of Ireland should cease the publication of actual percentage fees in draft contracts.	The Royal Institute of the Architects of Ireland Implemented 2004



section 1

1. INTRODUCTION

- 1.1 Ireland has, in general, a regulatory environment supportive of a competitive market for architectural services. An open regulatory structure, with few barriers preventing individuals or businesses from providing architectural services, contributes to a high degree of competition that benefits consumers. The proposed new system of regulation by statutory registration of the title "architect" has the potential to improve upon the current system but also the potential to cause more problems than it cures by investing statutory functions in a body which could have a potential conflict of interest.
- 1.2 This report contains 11 recommendations designed to ensure the system of regulation of architects is updated in a way which offers consumers greater protection and facilitates competition.

Background to the Report on Architects

- 1.3 The purpose of this Report is to identify any regulations or practices that may restrict competition within the architectural profession; 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 Competition Authority aims to ensure that competition works well for consumers. One of the Competition Authority's functions under section 30 of the Competition Act 2002 is 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*".
- 1.5 This Report is part of a wider study of a number of professions. Following an OECD Report⁵ in 2001, which suggested that competition in the professional services sector in Ireland could be stronger, the Competition Authority commenced a study of selected professions. The professions chosen were: engineers, architects, dentists, optometrists, veterinary surgeons, medical practitioners, solicitors and barristers.
- 1.6 The initial process of the study involved a research phase and report by Indecon International Economic Consultants. Their report "*Indecon's Assessment of Restrictions in the Supply of Professional Services*" was published in March 2003.⁶
- 1.7 The Competition Authority published a preliminary report on the engineering profession in August 2003 and a final report in December 2004. Preliminary reports have been published on the architectural profession (November 2003), the solicitors' and barristers' professions (February 2005), the dental profession and the optometry profession (both December 2005).
- 1.8 The Competition Authority published its preliminary report on the architectural profession in November 2003. This document presented preliminary analysis and recommendations and sought comments from interested parties. Several parties provided responses and were consulted by the Competition Authority in the preparation of this final report.⁷

5. *Regulatory Reform in Ireland*, OECD, 2001.

6. Indecon's Assessment of Restrictions in the Supply of Professional Services. See www.tca.ie/professions.html.

7. A list of submissions received is attached at Appendix 1.

Structure of this Report

1.9 The Report contains a general overview of the architectural profession followed by a detailed examination of the restrictions that limit competition in the market for architectural services. The remainder of the report is structured as follows:

- Chapter 2 describes the architectural profession in Ireland, including a description of what architects do, the variety of markets for architectural services and an outline of the regulatory environment in which architects operate;
- Chapter 3 analyses the most significant outstanding issue: the proposal by the Minister for the Environment, Heritage and Local Government to introduce a system of registration of the title "architect", to legally prescribe who can use the title "architect";
- Chapter 4 analyses restrictions on offering architectural services such as the lack of flexibility in education and training, the enforcement of minimum standards and eligibility criteria for competitions.
- Chapter 5 analyses rivalry within the profession, i.e. how architects compete with each other, focusing on rules or practices with the potential to reduce rivalry and thereby reduce competition; and
- Chapter 6 provides an overall conclusion on competition in the provision of architectural services.



section 2

2. THE ARCHITECTURAL PROFESSION

Summary

- 2.1 This chapter outlines the services provided by architects and related construction and design professionals and describes the regulatory and commercial environment in which they operate.
- 2.2 Architects offer a number of services directly to the general public such as:
 - Designing and overseeing the construction of buildings and other structures; and
 - Providing Opinions on Compliance with planning and building regulations.
- 2.3 Most architects work in the private sector, in specialist architectural firms. Most of these firms consist of fewer than three architects. Architects are also employed by public sector employers such as local authorities and the Office of Public Works, and in educational institutions.
- 2.4 Currently, architects do not have to register with a statutory body before offering their services to the public. However, certain services can only be provided by architects recognised under the EU Architects Directive or under the "Minister's List".⁸
- 2.5 An important feature of the market for architectural services is the use of competitions to select architects for unique, large scale projects for which original designs are required.
- 2.6 The architectural profession will shortly be affected in an important way by legislative change. The Building Control Bill 2005⁹ proposes to introduce the concept of registration of title as regards architects. This means that anyone who wishes to use the title "architect" will have to have their name on a statutory register. Certain competition issues arise from the initial draft of this Bill, as published, and the Competition Authority's views on this are given in detail in Chapter 3.

The Role and Functions of Architects

- 2.7 Architects design and oversee the construction of buildings and other living and working environments.¹⁰ Designing buildings has many aspects including:
 - Understanding clients' needs;
 - Aesthetics and environmental awareness;
 - Functionality and sustainability of construction;
 - Efficient use of materials;
 - Compliance with relevant regulations; and
 - Awareness of cultural and social considerations.
- 2.8 Project management and construction of buildings requires a variety of tasks, some of which are undertaken with other architects or with non-architect service suppliers such as engineers and construction contractors. These tasks include:
 - Selecting construction contractors;
 - Supervising construction; and
 - Providing formal certification that the structure complies with planning law and meets health and safety requirements as stipulated in the Building Regulations.

8. See paragraphs 2.19 to 2.24 for an explanation of this term.

9. Published December 2005.

10. As noted by the RIAI "Architecture influences every aspect of our lives – through the houses we live in, the offices or factories we work in, the places we spend our leisure time and even the streets we move about in." For a full description of the functions and attributes of architects see the Schools and Careers page on www.riai.ie

- 2.9 To perform the tasks and functions set out above, an architect requires a broad set of skills including: design ability, knowledge of architectural history and theory, a good understanding of mathematics and physics, and understanding of relevant legal requirements, such as planning, safety and access regulations.
- 2.10 While clients benefit most directly from architects' services, the wider community also benefits from a well-designed, safe, and aesthetically pleasing built environment, at home, at work and elsewhere.

Related and Overlapping Service Providers

- 2.11 Some services provided by architects are also available from other suppliers, such as architectural technologists and architectural technicians. Technologists, for example, specialise in building design and construction, providing specialist skills in these areas. They can also initiate and manage a building project from conception to completion. Architectural technicians tend to be involved in developing the specific detailed aspects of a structure for which an architect has created an overall design. Engineers and builders also provide some of these services.

Regulation of Architects

- 2.12 The regulatory environment for architectural services in Ireland comprises a mixture of statutory requirements together with voluntary self-regulation, although this is about to change, as detailed in Chapter 3. Many of the self-regulatory mechanisms, such as Opinions on Compliance, have evolved in response to market requirements. The regulatory environment is populated with a variety of players, such as the EU, the Government and representative organisations.
- 2.13 The current regulatory environment has two key elements:
- Minimum standards; and
 - Recognition regulations.

Minimum Standards Regulation

- 2.14 The system of building standards regulation, in place since the early 1990s, allows for on-the-spot inspections, but more generally places the onus on designers, developers and property owners to ensure that work undertaken meets the standards required by building regulations, i.e. it is a system largely of self-regulation via self-certification.
- 2.15 Specifically, the Building Control Act 1990 provides for:
- *Building Regulations* – relating to the design and construction of buildings, material alterations and extensions, the provision of services, fittings and equipment and change of use of buildings;
 - *Building Control Regulations* – providing for matters of procedure, administration and control in the implementation of the building regulations; and
 - *Enforcement and inspection powers.*
- 2.16 The primary purpose of the Building Regulations, effective from 1992, is to provide for the health, safety and welfare of people in and around buildings. The Building Regulations apply to nearly all types of construction, including material alterations to existing buildings, and deal with technical construction issues such as building standards, workmanship, conservation of fuel and energy and access for people with disabilities. A feature of the present system is that pre-construction approval is required only in relation to fire safety requirements and planning requirements.

- 2.17 Primary responsibility for compliance with the requirements of the Building Regulations rests with the designers, builders and owners of buildings and, as discussed below, Opinions on Compliance play an important role in enabling owners, builders and designers to meet their legal obligations. Criminal penalties for breaching the Building Regulations include a maximum fine of €12,700 and/or imprisonment for a term of up to two years.¹¹
- 2.18 The Building Control Regulations, also effective from 1992, supplement the basic powers of inspection and enforcement given to Building Control Authorities¹² by requiring those responsible for constructing buildings to notify Building Control Authorities and to obtain the relevant Fire Safety Certification.
- 2.19 The responsibility for undertaking inspections lies with local authorities. In practice local authorities carry out spot checks for compliance. While local authorities are supposed to inspect 15% of all construction projects, submissions suggested that this target is rarely met, with one respondent suggesting that a figure of 10% is more typical.¹³ Inspections are also undertaken if necessary on foot of complaints from the public.
- 2.20 The Building Control Bill 2005 proposes to strengthen the provisions of the Building Control Act 1990. In addition, the Bill proposes the introduction of a system of registration of title for certain building professions, including the architects' profession. This proposal is examined in detail in Chapter 3.

Recognition Regulation

- 2.21 There is currently no requirement in Ireland to register with a regulatory body to either practise as an architect or to use the title "architect" although this is about to change as described in Chapter 3.
- 2.22 In practice, most architects supply services after having obtained academic qualifications. A significant minority of architects are practically-trained, having acquired the necessary experience over many years of working under the supervision of other architects. It may be the case that people calling themselves architects have neither the academic qualifications nor the practical experience required to provide competent services.
- 2.23 While there is currently no restriction on who can use the title "architect", two regulatory decisions have a significant influence on who can supply certain architectural services:
- EU Directive 85/384/EEC (the "*Architects Directive*"); and
 - The "*Minister's List*".
- 2.24 The Architects Directive, given effect in Ireland by S.I. No 15 of 1989, provides that Irish architects with certain academic qualifications, or those who are members of the largest representative organisation – the Royal Institute of the Architects of Ireland (RIAI), have the right to practise as architects in all EU Member States.
- 2.25 The Directive is important because, unlike Ireland, many other Member States restrict the use of the title of architect and/or allow only registered individuals to provide architectural services. Accordingly the Architects Directive does not recognise experienced, practically-trained architects. In 1990, the Irish Government proposed an amendment to the Directive to also recognise practically-trained architects. This proposal was defeated in the European Parliament, with the effect that practically-trained architects in Ireland (who are not members of the Royal Institute of the Architects of Ireland) remain unrecognised in other Member States.
- 2.26 To take account of the Irish context, where practically-trained architects are recognised as fully competent to supply architectural services, a "Minister's List" was created in 1996. This list consists of individuals then

11. Section 17 of the Building Control Act 1990.

12. Local Authorities were designated as Building Control Authorities in Section 2 of the Building Control Act 1990.

13. The Chartered Institute of Building - Submission to the Competition Authority, January 2004

considered by the Minister for the Environment, Heritage and Local Government to be sufficiently experienced and skilled to be recognised as architects. The purpose of the list was to ensure that practically-trained architects were eligible for public sector projects and to enter competitions in Ireland, even though they were not recognised by the Architects Directive.

- 2.27 The Minister's List is only a partial solution. There is no mechanism for adding to the list those architects that have acquired significant experience since 1996. The Minister for the Environment, Heritage and Local Government has proposed reform of the recognition arrangements through registration of title for architects. This proposal is discussed in greater detail in Chapter 3.

Foreign-trained architects

- 2.28 Foreign-trained architects can supply services in the Irish market either by locating in Ireland or by offering their services from abroad, typically through large international architectural firms.
- 2.29 As with Irish-trained architects, there is currently no requirement for foreign-trained architects wishing to offer services in Ireland to register with a regulatory body to either practise as a professional architect or to use the title "architect". However, foreign-trained architects wishing to offer certain services - such as the provision of Opinions on Compliance - must be recognised in order to be eligible to do so.¹⁴
- 2.30 In the period 2004-2005, 190 foreign-trained architects joined the Royal Institute of the Architects of Ireland, compared to 139 Irish-trained architects.¹⁵

Recognition of Foreign-trained Architects

- 2.31 Architects trained in another EU Member State are entitled to recognition in Ireland under the Architects Directive, described earlier. Architects trained outside the European Union may be recognised in Ireland through reciprocal multi-lateral agreements in place with non-EU countries.¹⁶
- 2.32 There are no regulatory restrictions within Ireland that prevent Irish buyers from purchasing architectural services from abroad. This allows Irish companies and tax-payers (in the context of public sector purchases) access to a wider market for architectural services and the benefits of greater choice and greater competitive pressure on price that competition between a larger, more varied, set of suppliers brings.
- 2.33 Advances in Computer Aided Design (CAD) mean that much architectural design work is computerised and the interaction between different construction industry professionals often requires designs to be in electronic format. The use of CAD increases the scope for work relating to construction in Ireland to be carried out in other jurisdictions, particularly if the client is a multi-national company based outside Ireland. For example, an American-based company undertaking construction in Ireland may engage the services of an American-based architectural firm to design the construction.¹⁷

14. A list of professionals suitable to provide Opinions on Compliance is set out in the Conveyancing Handbook produced by the Law Society.

15. Royal Institute of the Architects of Ireland: Letter to the Competition Authority, December 2005

16. The Architects Council of Europe, of which the RIAI is a member, signed Mutual Recognition Agreements with the US Architectural Profession in 2005 and with Mexico in 2001.

17. Recent examples of projects undertaken by foreign architects and architectural practices include the Millennium Wing for the National Gallery, the Millennium 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.

Complaints

- 2.34 There is no single comprehensive process for dealing with complaints about architectural services. Professional organisations have disciplinary processes to deal with complaints against their own members. For services supplied by architects who are not affiliated to a professional body, the only option open to clients seeking redress for breach of contract and/or negligence is through private legal action.
- 2.35 Submissions on this issue have, in general, expressed dissatisfaction with the lack of a comprehensive complaints process. For example, the Group of Independent Architects in Ireland pointed out that

"At present complaints can only be made to an individual professional body against a member of that body. The current complaint-handling procedures within the profession do not encompass all practitioners and do not, therefore, either assist all buyers or address all instances of professional misconduct."¹⁸

Several submissions stated a preference for an independent body that would apply to all architects regardless of membership or otherwise, of any particular professional organisation. Some submissions expressed the view that the complaints process, which is part of the proposed registration system, would go some way towards resolving these issues. The proposed registration system is discussed in Chapter 3.

Representative Bodies

- 2.36 In Ireland there are a number of professional representative bodies for architects and related disciplines. These include the Royal Institute of the Architects of Ireland (RIAI), the Group of Independent Architects in Ireland (GIAI), the Architecture and Surveying Institute, the Irish Architects Society, the Association of Building Engineers, and other similar organisations. The RIAI is the largest body of architects and has approximately 2,355 active members and 463 member practices. This constitutes a majority of all architects in Ireland.

Demand for Architectural Services

- 2.37 Demand for architectural services comes from both public and private buyers. Homeowners will tend to be small scale and infrequent purchasers whereas larger organisations, such as firms or Government agencies, will be more frequent purchasers.
- 2.38 Although there is considerable variation in the type of work undertaken, there is one significant common feature. The project-specific nature of architectural work means that specific technical and contractual details must be agreed in relation to each job. Contractual details negotiated typically include: targets and timelines for the architectural service to be judged against, incentives to meet certain budgetary requirements, other details regarding any subcontracting, and provisions giving the client the necessary degree of flexibility to request changes in the project.

18. Group of Independent Architects in Ireland – Submission to the Competition Authority, January 2004.

Information asymmetry

- 2.39 Most clients of professional service providers will be at an information disadvantage relative to suppliers of services. In the case of architectural services, infrequent and first-time buyers are typically not well informed about the quality of service available from different architects and how competitive fees are for different services. They may not be able to readily obtain word-of-mouth recommendations from previous buyers or other construction contractors and may find the search costs involved in getting a large number of rival quotes excessive relative to the total project costs. For larger and frequent purchasers the disadvantage will tend to be less and, in some cases, will be of only trivial significance.
- 2.40 Information asymmetry is common to many markets for professional services and provides a basis for regulation. Such regulation tries to protect consumers by counteracting the information advantage enjoyed by suppliers. The impact of information asymmetry can be reduced through the existence of quality marks. High-level membership of a professional organisation, such as being a Fellow or Chartered Member, can provide a strong signal of quality.

Public Sector Selection of Architects

- 2.41 Many of the large-scale architectural projects initiated in Ireland are commissioned by Government departments and agencies, including local authorities. These projects are subject to either EU Directives on Procurement or, if below the relevant threshold, the Public Procurement Guidelines of the Department of Finance.¹⁹
- 2.42 Many local authorities use in-house architects to assist in selecting architectural practices, using their experience to ensure that the services offered are of sufficient quality and the fees charged are competitive.

Supply of Architectural Services

- 2.43 Architectural services are provided in a variety of ways. Some architects operate as sole traders, others in partnerships or limited companies. The majority of architectural practices consist of fewer than three architects.²⁰ Some architects firms specialise; others provide a wide range of services. Architects are also employed in non-architectural firms, central and local government and academic institutions.²¹
- 2.44 The majority of architects supply services via specialist architectural firms. A small number of practices are large in size and may employ other professionals in addition to architects. There are a small number of integrated "one-stop shop" suppliers of architectural services offering a wide range of construction services, thus removing the need for clients to have separate contracts with a range of different parties. These firms tend to be large and, although providing services in the State, are typically based in the United Kingdom.
- 2.45 Architectural practice fees tend 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 is typically for commercial and/or public sector clients.

19. For full details of procurement thresholds refer to www.procurement.ie. The relevant threshold for works is €5.923 million. For services, including design, the thresholds are €0.154 million for Government departments and offices and €0.237 million for local and regional authorities. The EU Directives include the requirement of advertising for tenders in the Official Journal of the European Union.

20. See Table 7.4 "Indecon's Assessment of Restrictions in the Supply of Professional Services" available at <http://www.tca.ie/professions.html>

21. 63% of RIAI members are employees, either in the public or private sector, while 37% are partners or principals in private practice. Source: Royal Institute of the Architects of Ireland - Submission to the Competition Authority, December 2005

- 2.46 It does not, however, follow that small architectural practices carry out only small projects and large practices serve only large clients. Small practices will often seek, and be engaged for, projects of varying sizes. Smaller architectural practices may, for example, acquire larger projects in situations where architects are selected by design competitions. Such competitions provide an important mechanism for smaller practices to grow and develop.

Competitions

- 2.47 Architectural competitions are an important feature specific to the market for architectural services. Generally, architectural competitions are used for unique, large-scale projects for which original designs are required. Examples include Dun Laoghaire Pier and the Millennium Spire. Individuals and firms can maintain or develop expertise, experience and market profile by submitting entries for architectural competitions. Although requiring investment of significant time and resources, winning, or even being recognised for having submitted a quality design, can generate beneficial publicity and enhance an architect's reputation.
- 2.48 Architectural competitions allow a broad range of interested parties to submit designs for a specific project. Judges then select the best design according to specific criteria and the selected architect is commissioned for the project.
- 2.49 Architectural competitions may consist of a two-stage process whereby applicants anonymously submit preliminary designs for the project in the initial stage. These designs are then used to create a short-list of applicants. Stage two generally includes an interview to ascertain whether the applicants have the expertise to manage the project to completion. If so, they are invited to produce more detailed designs from which the winning entry is chosen.
- 2.50 Local authorities seek to ensure that good design is combined with sufficient experience and knowledge to complete the project. They may insist that an inexperienced firm, if selected, form an alliance with an experienced firm.²²

Architects' Incomes

- 2.51 The total number of architects engaged in private practice is unknown. The Expert Group on Future Skills Needs estimated that there were approximately 3,800 architects employed in Ireland in 2002.²³ Individuals in related disciplines in the construction industry, such as engineers or builders, may also provide architectural services.
- 2.52 Survey figures suggest that employed architects' salaries typically range from around €40,000 to €80,000.²⁴ Within the public sector, salaries range from approximately €31,000 for an entry-level architect up to €116,000 for a Principal Architect.²⁵ It should be noted that owners of architectural practices may receive profits in addition to salary income.

22. An example of this approach is the design and construction of Fingal County Hall.

23. *Construction Industry Skills Monitoring Report*, Expert Group on Future Skills Needs, July 2003. See <http://www.skillsireland.ie/press/reports/index.html>

24. June 2003 figures compiled by Hays Montrose on www.hays.ie

25. These figures, for 2004 salaries, are presented by the RIAI on www.riai.ie

The RIAI observes that salary levels within the Architect, Senior Architect, and Assistant Principal Architect salary ranges will vary according to differences in individuals' qualifications and experience.

Prices of Architectural Services

2.53 The Central Statistics Office does not collect data in relation to fees charged for architects' services. The Indecon survey²⁶ of architects showed that 90.8% of architectural practices who responded had experienced an increase in fee income in the period 1999-2001 while 9.2% of those who responded had experienced a decrease in fee income. Table 1 below shows a breakdown of the extent of the increase among firms who reported an increase in fee income in the period.

Table 1: Average approximate increase in fee income of Architects 1999 - 2001

Extent of increase	Percentage of responses
Over 200%	4.3%
150-199%	4.3%
100-149%	4.8%
50-99%	13.3%
25-49%	24.5%
10-24%	23.9%
5-9%	14.9%
0-4%	10.1%

Source: Indecon Survey of Architects, Table 7.3: *Indecon's Assessment of Restrictions in the Supply of Professional Services*

2.54 The Royal Institute of the Architects of Ireland (RIAI) published an independent survey²⁷ of member practices' fees and charges for the period 2001-2004, carried out by Millward Brown IMS. According to the survey, architects tend to charge on a percentage basis. For example, the average percentage fee charged for house extensions varied from 12.5% for extensions with a projected building cost of €50,000 to just under 10% for extensions with a projected building cost of €1,000,000.

2.55 In the case of Opinions on Compliance, Indecon found that the average fee for handling typical certificates of compliance for an extension to a residential house was €386.²⁸ The Millward Brown IMS survey for the RIAI showed that fees charged for Opinions on Compliance varied from €45 to €750 with an average of €315.17.

2.56 Given that architects' fees tend to be based on a percentage of the projected building cost, their incomes will keep pace with changes in construction costs. The Annual House Building Cost Index²⁹ published by the Department of the Environment, Heritage and Local Government tracks the changes in house-building costs on a yearly basis. The graph below compares the increase in building costs with the increase in consumer prices in the period 1991-2004.

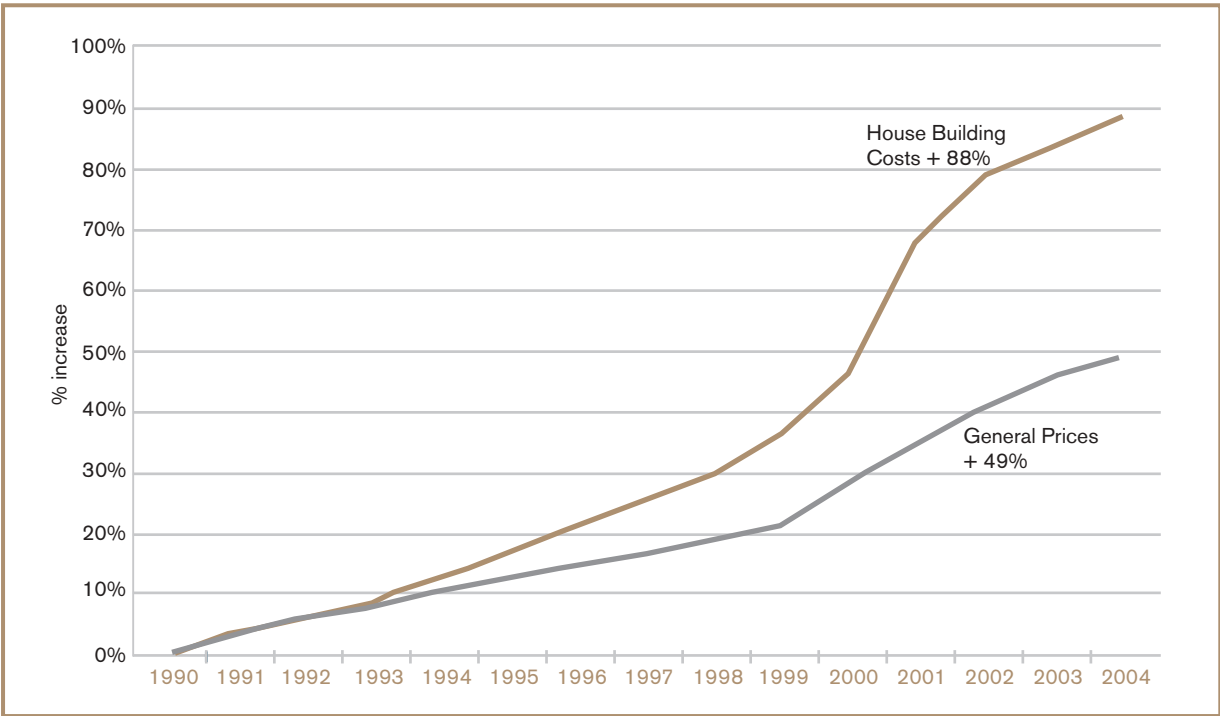
26. See <http://www.tca.ie/professions.html>

27. RIAI Practice Fees and Charges 2001-2004

28. Excluding VAT, stamp duty, registration and search fees.

29. The index relates solely to labour and material costs and does not include items such as overheads, profit, interest charges, land development etc.

Graph 1: Comparison of increases in building costs and consumer prices 1990-2004



Source: Annual House Building Cost Index: Department of the Environment, Heritage and Local Government, www.environ.gov.ie
Consumer Price Index Annual Percentage Changes: Central Statistics Office, www.cso.ie

- 6.7 These conflicts should be addressed by separating the roles of regulation of architects and representation of architects. The Competition Authority recommends that an independent body - an Architects Council of Ireland - be established to provide a registration system. The Architects Council of Ireland would have a majority of non-architects on its governing council, appointed by the Minister for the Environment, Heritage and Local Government, and be ultimately accountable to the Oireachtas. Architect representatives on the Council and its committees would be elected from the Register of Architects. An Architects Council of Ireland, so established, would be consistent with the regulation of other professions in Ireland, such as doctors, dentists, and vets. It would also be consistent with initiatives to increase transparency, independence and accountability, such as in the auctioneering and legal professions.
- 6.8 However, if the RIAI is to be the regulating body for architects in Ireland, the Building Control Bill 2005 should be strengthened to promote a registration system that primarily benefits consumers of architectural services. The Bill currently gives the RIAI considerable influence over the system. In particular, the Competition Authority recommends changes to the methods of appointment of the architects and chairpersons on the various boards and committees and that a number of safeguards be put in place regarding the proposed Code of Professional Conduct.
- 6.9 Finally, the Competition Authority makes recommendations regarding the recognition of Irish architects in other EU countries and the broad scope of the reservation of title proposed.

Restrictions on Competition Identified

- 6.10 The Competition Authority has identified only a few remaining areas where competition in architectural services is unnecessarily restricted:
- Eligibility to enter public sector architectural competitions;
 - The provision of Opinions on Compliance;
 - Requirements for professional indemnity insurance; and
 - The need for flexibility in architectural education.
- 6.11 Practically-trained architects who are not on the Minister's List are excluded from entering public sector architectural competitions. Allowing such individuals to enter architectural competitions will increase the pool of potential competitors and enable local authorities and taxpayers to reap the full benefits of competition by being able to choose from a wider variety of service providers.
- 6.12 Opinions on Compliance with Building Regulations are not a legal requirement but are required by financial institutions in most cases where a borrower is raising finance for the purchase of a building. The Law Society's list of those professionals suitable to provide Opinions on Compliance excludes practically-trained architects who are not on the Minister's List but who may have sufficient ability to provide these Opinions. The Competition Authority recommends that the Law Society should re-evaluate its list in order to allow other competent individuals to provide Opinions on Compliance. This will offer greater choice to consumers and in some cases reduce their costs.
- 6.13 The Competition Authority recommends that the level of Professional Indemnity Insurance required of architectural practices be reduced from the current level of a flat €6.3 million irrespective of project type or value, and that the sliding scale developed by the Department of the Environment, Heritage and Local Government be used instead. Use of the sliding scale will allow smaller architectural practices to compete with larger practices without having to carry higher than necessary levels of insurance, thus reducing their costs.

section 3



3. REGISTRATION OF THE TITLE "ARCHITECT"

Summary

- 3.1 There is currently no statutory system in Ireland for the registration of architects, or for determining who may or may not use the title "architect". However, the Building Control Bill 2005³⁰ will, if enacted, fundamentally alter that situation by providing for such statutory registration. Only registered persons will be allowed to use the title "architect".³¹ The Bill proposes that the Royal Institute of the Architects of Ireland (RIAI), as the largest representative body for architects, will be the statutory registration authority.³² The Bill thus proposes statutory regulation by the profession itself rather than by an independent agency. The Building Control Bill's proposals raise issues of potential conflicts of interest - between the commercial interests of architects generally and the interests of consumers - which could lead to competition problems, and these are considered in this chapter.
- 3.2 The overriding purpose for establishing a registration system is to protect consumers from unscrupulous or dangerous suppliers of architectural services. At the same time, it is important that consumers should benefit to the maximum extent possible from competition for architectural services.
- 3.3 The implementation of statutory registration of the title "architect" gives rise to two key questions which have implications for competition and for consumers of architectural services:
- (i) Who should control the system for registration of architects?; and
 - (ii) What regulations would registration require?
- 3.4 Regarding who should be in charge of a system of regulation of a profession, two models of regulation are:
- (i) Regulation by the profession itself, subject to statutory limitations; or
 - (ii) A regulatory agency independent of the profession, in particular independent of professional representative organisations, with its functions, structures and funding mechanisms established by Statute and accountable ultimately to the Oireachtas.
- 3.5 The Competition Authority recommends an independent regulator - an Architects Council of Ireland - with responsibility for the registration of the title of "architect". The Architects Council of Ireland would have a majority of non-architects on its governing council, appointed by the Minister for the Environment, Heritage and Local Government, and be ultimately accountable to the Oireachtas. Architect representatives on the Council and its committees would be elected from the Register of Architects. An Architects Council of Ireland, so established, would be consistent with the regulation of other professionals in Ireland, such as doctors, dentists, and vets, and with initiatives to increase transparency, independence and accountability in the auctioneering and legal professions. An independent Architects Council of Ireland would also be consistent with the principles set out in *"Regulating Better"*³³ and would minimise the potential risk that regulations, such as admission criteria and/or conduct regulation, would be of most benefit to architects rather than consumers.
- 3.6 The Government has introduced the Building Control Bill 2005, which proposes registration by the Royal Institute of the Architects of Ireland (RIAI). The Building Control Bill includes provisions to ensure that non-architects' views are represented, but nevertheless the RIAI is given considerable influence over the system and will face a potential conflict of interest between, on the one hand, furthering the interests of its members, and on the other hand protecting consumers. If the RIAI is to be the regulating body for architects in Ireland, the Building Control Bill 2005 should be strengthened to promote a registration system that primarily benefits consumers of architectural services. In particular, the Competition Authority recommends the following amendments to the Bill:

30. Published December 2005.

31. The Bill also includes provisions for the registration of two other professions: Quantity Surveyors and Building Surveyors.

32. Section 10, of the Building Control Bill 2005, as initiated. This and all subsequent references to the Bill refer to the draft as initiated, i.e. as published on 22 December, 2005.

33. Government White Paper available at www.betterregulation.ie

- The architects appointed to the various boards and committees which are proposed to administer the registration system should be elected from the Register of Architects, rather than nominated by the RIAI;³⁴
 - The chairpersons of the various committees should be appointed by the Minister for the Environment, Heritage and Local Government, rather than by the RIAI;
 - The proposed Code of Professional Conduct should be drafted or approved by the Professional Conduct Committee and not, as proposed, by the RIAI; and
 - The proposed Code of Professional Conduct should undergo a public consultation process and be "competition-proofed" by the Competition Authority.
- 3.7 Finally, this chapter discusses two other issues addressed in the Bill which raise concerns about their impact on competition.
- The Building Control Bill 2005 proposes that registered architects wishing to be recognised in other EU countries do so by availing of a guaranteed right to membership of the RIAI. Instead, the Architects Directive should be amended so that all architects registered in Ireland are automatically recognised in the EU.
 - The Building Control Bill 2005 makes it an offence to mislead the public by using the term architect "*either alone or in combination with any other words or letters, or name, title description, implying that the person is so registered*". The broad scope of this reservation of title could have the unintended effect of restricting other professions, such as "architectural technicians" and "landscape architects", from using these titles to describe their services. Only the title "architect", i.e. that word used alone, should be reserved. Additional protection for architects is unnecessary to attain the goals of the Bill and should be dropped.

Rationale for Statutory Registration and Reservation of Title

- 3.8 Reservation of title is one of a number of tools which can be used to regulate professional services for the purposes of consumer protection. Reservation of title limits who can call themselves by a particular title, such as "solicitor" and "medical practitioner", to those who have achieved certain qualifications/experience or who are members of a particular professional body. It provides a signal of quality to consumers and helps them to distinguish between competent professionals and rogues or less experienced suppliers.
- 3.9 Reservation of title does not of itself imply that only persons with the title can perform certain functions. For example, in Ireland, the title "Chartered Engineer" tells potential customers that the engineer with the title has reached a certain level of qualifications and experience; there are no services that only a Chartered Engineer is allowed to provide and Chartered Engineers compete with other engineers (and, in certain circumstances, with other professions such as architects).
- 3.10 Reservation of title can, however, in combination with other regulations, in effect imply that only persons with the title can perform certain functions - for example, by limiting the access of other professions to a particular set of potential customers. When considering statutory registration of a title, it is vital that the regulation should not place restrictions on the use of similar or related titles or restrict the legitimate operations of alternative and auxiliary suppliers of services.

34. In the interim, until a register is established, it is appropriate for the RIAI to nominate architects to sit on the various committees proposed in the Bill.

Independent Regulation

Summary

3.11 The Building Control Bill 2005 proposes that the Royal Institute of the Architects of Ireland (RIAI) will become the registration body for architects in Ireland.³⁵ The RIAI is the largest representative organisation for architects in Ireland. In principle, the RIAI will face a clear potential conflict of interest between representing the interests of its members on the one hand, and regulating in the public interest on the other hand. The Competition Authority reiterates its concerns as expressed in its Preliminary Report and recommends that the regulation and registration of architects should be the responsibility of an independent agency and not the responsibility of the RIAI. At a minimum, the functions of representation and regulation should be clearly differentiated and separated within the RIAI, with no possibility for the exercise of one function to influence the exercising of the other.

Nature of Restraint

3.12 The Building Control Bill 2005 proposes that the RIAI will be the body responsible for the registration of architects in Ireland.³⁶

Effect of the Restraint

3.13 Combining regulatory and representative functions in the same body raises issues regarding conflicts of interest between regulating for the protection of consumers on the one hand and furthering the interests of the profession on the other. These two functions can conflict, and housing them in the same organisation lacks transparency. Furthermore, it creates the potential for disproportionate regulation whereby regulations are put in place that offer little or no protection to consumers but protect the profession from competition.

International Experience

3.14 The United Kingdom's Architects Registration Board (ARB) provides an example of a transparent separation of regulatory and representative roles. The ARB is a self-funding independent body with a clear consumer protection mandate that regulates the use of the title "architect". The ARB balances the requirements of protecting consumers and of ensuring that standards of architecture are maintained by having a majority of lay individuals on the board along with a number of practising architects, who are able to provide expert technical input. In addition, however, the ARB is independent of the main representative body, the Royal Institute of British Architects.

3.15 Australia provides another example of independent registration of architects. The principal representative organisation, the Royal Australian Institute of Architects (RAIA), does not register architects in Australia. Registration, including the recognition of architects from other jurisdictions, is the responsibility of independent boards in each Australian State or Territory.³⁷

3.16 Within the EU, however, it is common for architects' representative organisations to exercise a regulatory function. In only 4 countries (Finland, Malta, the Netherlands and the United Kingdom) is the national registration body distinct and independent from the profession.³⁸ Some countries - Ireland, Cyprus, Denmark, Estonia, Latvia and Sweden - do not at present have any organisation responsible for the registration of architects.

35. Section 10 of the Bill as initiated.

36. Section 10(1) states that the RIAI shall be the "registration body" for regulating architects in Ireland.

37. For further information on the Architects Accreditation Council of Australia and the Royal Australian Institute of Architects refer to <http://www.aaca.org.au> and <http://www.architecture.com.au>

38. Information provided by the RIAI. For further information refer to: <http://www.ace-cae.org>

Analysis of the Competition Authority

- 3.17 Having regulatory and representative functions within the same organisation creates an inherent conflict. The potential for conflicts of interest can be best managed through the maximum possible separation of regulation and representative functions.
- 3.18 The conflict of interest arises because regulation is supposed to protect consumers whereas professional representation services involve promoting the interests of architects. These two objectives can often clash. The risk to consumers, and to the economy more generally, is that the representative function would dominate, that is, regulations would be established that benefit the profession without any benefit to consumers, or perhaps to the detriment of consumers because they serve the profession.
- 3.19 Combining the regulatory and representative roles is inconsistent with the principles set out in the Government White Paper "*Regulating Better*"³⁹. This is particularly the case with respect to the transparency and accountability of regulatory agencies to citizens rather than to members of the profession being regulated. Combining the two roles is also inconsistent with the regulation of other professions in Ireland – for example the Medical Council, Opticians Board and Health and Social Care Professions Registration Boards are all independent of the professions they regulate – and with initiatives for greater independence in the regulation of auctioneers and the legal profession.⁴⁰
- 3.20 Combining regulatory and representative roles could also distort the market for representative services for architects.⁴¹ By virtue of its size and recognition under the Architects Directive, the Royal Institute of Architects of Ireland (RIAI) already has a prominent position in the market for representation. Adding regulatory status to the RIAI in Ireland will make it harder for competing associations to become established as they could be perceived as not being able to exert the same influence on the regulatory system as the RIAI. In addition, given the RIAI's prominence, an architect may be encouraged, or feel it necessary, to join the RIAI in order to further his or her career.

Solution

- 3.21 In its preliminary report the Competition Authority recommended the following:
- The Department of the Environment, Heritage and Local Government should justify the need for protection of title in light of the issues outlined above by undertaking a Regulatory Impact Analysis;
 - If, after addressing these issues, registration of title is justified, any regulatory body should be sufficiently independent. This means that:
 - It should be administered by an independent body, preferably statutory, in a transparent manner; and
 - 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;
 - 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.
- 3.22 The Competition Authority's concern with registration as proposed in the Building Control Bill 2005 remains that the proposed regulatory body is not independent of the profession. Indeed the proposed regulatory body is the opposite. It is proposed that the registration body for regulating architects in Ireland will be the principal representative organisation in Ireland.

39. www.betterregulation.ie

40. The Minister for Justice, Equality and Law Reform has announced the establishment of a Property Registration Authority and a Legal Ombudsman. The Competition Authority in its Preliminary Report on the Legal Profession, released in February 2005, proposed the establishment of an independent regulatory body for the legal profession.

41. In October 2004 the High Court in *The Competition Authority v O'Regan et al.* recognised the existence of a market for representation services. At present this decision of the High Court is subject to appeal.

- 3.23 The Competition Authority recommends a clear and transparent separation of regulatory and representative functions. This would be most clearly achieved by establishing an Architects Council of Ireland - an independent regulatory body with a majority of the Board from outside the profession to be regulated, representing other stakeholder interests.⁴² Such a body could be self-financing.
- 3.24 An independent body would not face the conflict of interests that could arise for the Royal Institute of Architects of Ireland (RIAI). Consequently, an independent regulatory body would encourage proportional regulation, i.e. regulation that protects consumers while at the same time enables them to benefit from competition in the market for architectural services.
- 3.25 Removing the inherent conflict of interest that arises from self-regulation would enhance the credibility, transparency and accountability of the regulator to citizens and promote public confidence in the system of regulation.
- 3.26 Independent regulation would place architects on a more consistent footing with the regulation of other professions in Ireland and would also enable the RIAI to concentrate on its *raison d'être*, i.e. representing the interests of its members.
- 3.27 The cost of independent regulation would, as in the proposed model, be borne by the profession (although ultimately the costs of any regulation are paid for by consumers of architects' services). The establishment of an independent regulatory body would thus involve no impact on the Exchequer.

Recommendation 1: Establish an independent Architects Council of Ireland	
Details of Recommendation	By
The registration body should be independent of professional representation. This is best achieved by establishing an Architects Council with a majority of lay members as well as architect members to provide technical knowledge and market expertise.	Minister for the Environment, Heritage and Local Government

- 3.28 If the best model of regulation – a stand-alone transparent independent regulatory body – is not pursued, the regulatory and representative functions should be at least clearly differentiated and separated within the RIAI, with no possibility for the exercise of one function to influence the exercising of the other. For example, there should be a clear distinction between a fee for registration and a fee for membership and there should be no cross-subsidisation of representative functions by income obtained from registration fees.⁴³
- 3.29 In the absence of full independence, the separation of functions within the RIAI – while less transparent than full independence – would reduce the incidence of conflicts of interest that might otherwise influence representative and regulatory functions.

42. An independent regulatory body could have responsibility only for regulating architects or could potentially be part of a body with responsibility for other professions, including the others listed in the Bill. See, for example, the Health and Social Care Professionals Act 2005 which has an independent Registration Board for each profession being regulated, each of which reports to an overall Council, on which a member of each profession sits.

43. It could be argued that this is provided for in section 68 of the Bill, whereby the RIAI is required to submit audited accounts for the registration functions. However, production of accounts is not of itself a guarantee against cross-subsidisation.

Regulatory Boards and Committees

Summary

- 3.30 The Building Control Bill 2005 proposes the establishment of various boards and committees, to administer the registration system. The presence on the committees of nominees from outside the profession ensures that the consumer's interest will be represented. However, the Competition Authority's concerns about the independence of statutory registration, as previously expressed in its preliminary report, remain. The composition of the committees is such that there is the potential for the nominees of the Royal Institute of Architects of Ireland (RIAI), if and when they hold the same view, to prevail over members who are not nominated by the RIAI.
- 3.31 The Competition Authority recommends that there be a majority of non-architect votes (including any casting vote) on any boards or committees of the proposed regulatory body, and that the chairperson of any such board or committee should be appointed directly by the Minister for the Environment, Heritage and Local Government, rather than being nominated for that purpose by the RIAI as is proposed in the Bill.⁴⁴ The Competition Authority also recommends that architect members of the committees should be elected from the register of architects.

Nature of the Restraint

- 3.32 The Building Control Bill 2005 proposes that the Royal Institute of the Architects of Ireland (RIAI) be the registration body for architects in Ireland⁴⁵ but with decision-making powers vested in the following boards and committees with key responsibilities for the registration of architects:
- An Admissions Board for the purposes of registering persons as architects;
 - A Technical Assessment Board to consider applications for registration from persons who do not fall within any of the categories set out in the Bill;
 - A Professional Conduct Committee with the power to prepare codes of professional conduct and the power to investigate complaints of alleged professional misconduct; and
 - An Appeals Board.
- 3.33 The boards and committees comprise members nominated by the RIAI and also members nominated by the Minister for the Environment, Heritage and Local Government. The composition of these bodies is set out in the table below.

Table 2: Proposed Structure of Registration System

Regulatory Element	Chair	Architects Nominated by RIAI	Non-Architects Nominated by Minister
RIAI Council	1	23	0
Admissions Board	1	3	4
Technical Assessment Board	1	3	4
Professional Conduct Committee	1	3	4
Appeals Board	1	2	3

44. Section 10(5) of the Bill as initiated.

45. Section 10(1) of the Bill as initiated states that the RIAI shall be the registration body. The RIAI Council comprises 24 persons elected by RIAI members.

- 3.34 The chairpersons of the Admissions Board, the Technical Assessment Board, the Professional Conduct Committee and the Appeals Board would be appointed by the registration body, i.e. the RIAI, subject to the prior approval of the Minister for the Environment, Heritage and Local Government.⁴⁶ The remaining members of these bodies will be nominated by the Minister for the Environment, Heritage and Local Government.⁴⁷ The Bill does not specify in detail the process of nomination for RIAI-nominated members. It is anticipated however, that the architect members of the boards and committees could be nominated without election by the RIAI, and might include non-RIAI architects.
- 3.35 Avenues for appealing decisions of these boards and committees are provided for in the Bill.

Effects of Restraint

- 3.36 As shown in Table 2, the Building Control Bill 2005 proposes that a majority of the ordinary members of each of the Boards involved, and of the Professional Conduct Committee, must be non-architects.⁴⁸ When the chairperson of each body is included, however, there will be an equal number of RIAI-nominated members and non-RIAI nominated members. Consequently, a chairperson's casting vote may, even if only infrequently required, increase the potential for the interest of the RIAI to be able to predominate over the interest of consumers. In other words, there is the risk of the chairperson's casting vote, if and when required, being more likely to go with the RIAI, should the RIAI nominees decide to vote as a block.
- 3.37 The Bill allows for the RIAI to nominate architects to the boards and committees. While it is possible that a non-RIAI member architect could be elected or nominated, this would seem unlikely. It is more likely that the architect members of the boards and committees will be Royal Institute of Architects of Ireland (RIAI) members, with the consequence that architects who do not wish to be members of the RIAI may not have their interests adequately represented and there will be a risk that regulatory decisions will be biased in favour of RIAI member architects over architects who are not members of the RIAI.

International Experience

- 3.38 In the UK the Board of the Architects Registration Board has 15 members, of whom eight are non-architects appointed by the Privy Council. The remaining seven members are architects elected by the profession.⁴⁹ The effect of this structure is to ensure that the Board has sufficient technical architectural expertise, but that the interests of the profession do not, and are not perceived to, prevail over other interests, particularly the interests of consumers of architectural services.

Analysis of the Competition Authority

- 3.39 The primary concern with the committee structures proposed in the Building Control Bill 2005 is, again, insufficient independence from the Royal Institute of the Architects of Ireland (RIAI). The proposed committee structure does not serve well the interests of consumers of architectural services. The Bill would simply underpin in legislation two conflicts of interest, firstly between the RIAI and consumers and, secondly, between RIAI architects and architects who are not RIAI members.

46. In the case of the Professional Conduct Committee, the consent of the Minister for Enterprise, Trade and Employment is also required prior to the appointment of the chairperson.

47. For the Professional Conduct Committee and the Appeals Board one of the nominees of the Minister for the Environment, Heritage and Local Government will be appointed subject to the consent of the Minister for Enterprise, Trade and Employment.

48. The Department of the Environment, Heritage and Local Government has submitted that this proposal emerged following discussions with the Competition Authority when the Preliminary Report on Architects was published.

49. UK Architects Act 1977 Schedule 1.

- 3.40 As proposed, the chairperson of each of the Admissions Board, the Technical Assessment Board, the Appeals Board and the Professional Conduct Committee, would be "*appointed by the registration body, subject to the prior approval of the Minister*".⁵⁰ Of course, a chairperson appointed in this way would not necessarily vote in accordance with the wishes of the RIAI. However, in deciding on the composition of committees, the potential for this to happen, or the mere perception that it could happen, and its effects should it occur, should not be ignored. It is possible that the "non-architect voice" would systematically be at a disadvantage relative to the "RIAI voice".
- 3.41 The composition of the boards and committees, as set out in the Bill, is weighted too much in favour of the profession, and more particularly in favour of the RIAI. This increases the potential for regulation to be disproportionate, i.e. to restrict competition to the benefit of architects and to the detriment of consumers.
- 3.42 While the presence of lay people provides a counterbalance to the influence of the RIAI, the independence of the various boards and committees should be stronger than is currently provided for.

Solution

- 3.43 The Competition Authority recommends that the boards and committees of the regulatory body should each have a clear majority of members from outside the architectural profession. In addition the Competition Authority recommends that quorum requirements should include the presence of a majority of non-architect ordinary members at all meetings of the boards and committees for business to be properly transacted.
- 3.44 The Competition Authority recommends that the professional representation on boards and committees of the regulatory body should be on the basis of election from the profession rather than nomination by the Royal Institute of Architects of Ireland (RIAI), which is a subset of the profession.
- 3.45 If it is ultimately decided that the RIAI should be the registration body, then the Competition Authority would make three recommendations consistent with the above comments.
- i First, there should at all material times be a majority of lay members on the Admissions Board, the Technical Assessment Board, the Professional Conduct Committee and the Appeals Board.
 - ii Second, the chairpersons of the Admissions Board, the Technical Assessment Board, the Professional Conduct Committee and the Appeals Board should be appointed on the same basis as the non-architect committee members. Appointment should be directly by the Minister for the Environment, Heritage and Local Government, rather than by the registration body subject to the prior approval of the Minister. The Minister might well seek advice from representative organisations, such as the RIAI, but ultimately the decision to appoint would be the Minister's.
 - iii Third, all registered architects, by way of elections, should have a say in who represents the architectural profession on the boards and committees. Rather than nominating directly from the RIAI Council, or administering elections amongst its members, the RIAI's role, as the registration body, should be to administer elections with all registered architects having the right to vote.⁵¹ This is the model used in the regulation of other professions in Ireland such as Dentists and Optometrists.

50. The relevant provisions are in Sections 10, 18, 20 and 21 respectively of the Bill as initiated.

51. As a practical matter it is likely that, in order to have committees established immediately upon enactment of the Bill, architect members will need to be nominated rather than elected, for an initial period, with subsequent appointments being by election. Consistent with Section 65 of the Bill as it relates to the tenure of committee members, this interim period should be no more than three years.

- 3.46 Implementing the recommendations outlined above would remove the risk of architects who are not members of the RIAI being excluded from representation in the regulatory process. The overall effect of the recommendations would be to increase the independence and accountability of the regulatory system which, in turn, would add to the credibility of regulation and registration.

Recommendation 2: Increase the independence of the boards and committees provided for in the Bill	
Details of Recommendation	By
Amend Sections 10, 18, 20 and 21 of the Building Control Bill 2005 (which refer respectively to the Admissions Board, the Technical Assessment Board, the Professional Conduct Committee and the Appeals Board), and also section 66, to provide that: (a) there will be a majority of ordinary committee members from outside the architectural profession; (b) a majority of ordinary committee members from outside the architectural profession shall be a quorum requirement; (c) chairpersons will be appointed directly by the Minister for the Environment, Heritage and Local Government; and (d) architectural representation on boards and committees shall be on the basis of election from the register of architects.	Minister for the Environment, Heritage and Local Government

Standards of Professional Conduct

Summary

- 3.47 The Building Control Bill 2005 proposes to require the Royal Institute of the Architects of Ireland (RIAI) to establish a Code of Professional Conduct, by which all registered architects would have to abide. The risk with all such Codes of Conduct is that, however well intended, rules and regulations governing conduct may be disproportionate. In particular, competition may be restricted to the detriment of consumers and to the benefit of some or all architects.
- 3.48 Any Code of Conduct should not inhibit competition for architectural services. There is a risk that, however well intentioned, disproportionate regulations may be put in place that restrict competition beyond what is necessary, to the detriment of consumers of architectural services. The risk of disproportionate restrictions on competition will exist irrespective of whether an independent body or the RIAI is responsible for the registration of architects. The Competition Authority recommends that it be consulted in the drafting of a Code of Conduct.

Nature of Restraint

- 3.49 The Building Control Bill 2005 proposes the establishment of a Professional Conduct Committee⁵² and the establishment of professional conduct standards. The Bill provides for a Code of Conduct to be designed by the RIAI. The Code of Conduct will set out standards of professional practice and conduct and all registered architects will have to abide by the Code.⁵³
- 3.50 Under the Bill, any person may appeal to the Professional Conduct Committee concerning any action of a registered professional alleged to amount to professional misconduct. The Professional Conduct Committee will have powers to investigate complaints and to impose sanctions, including removal from the register.⁵⁴

Effect of Restraint

- 3.51 The effect of such a Code will be to restrain the behaviour of architects. The impact of the Code on consumers will depend on whether the restraints in the Code are sufficient to protect consumers from harm while still enabling consumers to benefit from competition in the market for architectural services.
- 3.52 The Building Control Bill 2005 gives the RIAI the responsibility for drafting the Code of Conduct. Consequently, while the Professional Conduct Committee, with a mix of architect and non-architect members, would rule on specific cases brought before it, the Code itself will be drafted by the RIAI. This means that the Code will not be drafted from an independent perspective.
- 3.53 Establishment of a Professional Conduct Committee creates a structure for handling complaints against RIAI members, and for disciplining improper conduct. The composition of the Committee will also provide a forum for a consumer perspective. The existence of a credible complaints handling structure will provide an incentive for architects to supply quality services, which in turn will be to the benefit of consumers.
- 3.54 It is not clear what scope of activity would be covered by the Professional Conduct Committee. The RIAI will be given authority to prepare a Code of Conduct. However, the Building Control Bill 2005 does not require the Code to be subject to approval by any agency outside the RIAI. Consequently, the Bill establishes the possibility and the opportunity for the RIAI to introduce restrictions on activities that promote rivalry between architects, for example, advertising. Such rules would not be in the interests of consumers.

52. Section 20 of the Bill as initiated.

53. Sections 53-56 of the Bill as initiated.

54. Sections 54 and 55 of the Bill as initiated.

International Experience

- 3.55 In the UK, the Royal Institute of British Architects (RIBA) is the largest representative organisation for architects. Breaching its Code of Conduct can ultimately lead to expulsion from RIBA. However, this in itself does not prevent an architect from legally retaining his or her title. The most serious sanctions - of suspension or expulsion from the register - are administered by an independent body, the Architect Registration Board through its Professional Conduct Committee.⁵⁵
- 3.56 In Australia the Royal Australian Institute of Architects (RAIA) is the largest representative organisation for architects. Recently, in October 2005, its Code of Conduct was the subject of a review by the Australian Competition and Consumer Commission (ACCC). The ACCC had concerns on potentially anti-competitive provisions in relation to advertising. Once its concerns were satisfactorily addressed the ACCC granted authorisation to the RAIA's Code of Conduct.

Analysis of the Competition Authority

- 3.57 It is usual for representative organisations to have rules governing members' behaviour. Of interest is what is contained in the rules and how penalties, particularly expulsion, are administered. There are two major concerns about the Professional Conduct Committee as it is proposed in the Building Control Bill 2005.
- i First, neither the Professional Conduct Committee nor the Code itself, as proposed, is sufficiently independent of the profession. The RIAI will be responsible for establishing the Code - this implies a conflict of interest and a risk that regulations will be disproportionate and not in the interests of consumers. In effect, the RIAI would be empowered to devise an enforceable set of conditions and standards under which it is legally permissible to act as an architect. This would create strong conflicts of interest for the RIAI.
 - ii Second, codes of conduct have the capacity to limit competitive behaviour to the detriment of consumers, irrespective of how they are established, or who is responsible for their administration. For example, a Code of Conduct could, for whatever motive, result in restrictions on which functions an architect could perform and/or on the way architects compete with each other, neither of which is likely to be in the interest of consumers. The Competition Authority has commented on this issue in relation to other professions such as Dentists and Optometrists.⁵⁶
- 3.58 Consequently, in order to serve the interests of consumers, the provisions of a Code of Professional Conduct should be limited only to those provisions necessary to protect consumers of architectural services.

Solution

- 3.59 Responsibility for approval of the Code of Conduct should rest with the Professional Conduct Committee rather than with the Royal Institute of the Architects of Ireland (RIAI) as is currently proposed in the Building Control Bill 2005. The Code of Conduct should also be subject to a public consultation process and the Competition Authority should be consulted in order to ensure an independent assessment of the potential competition impacts that might arise. Similar mechanisms exist for other professions, in particular those professions covered by the Health and Social Care Professionals Act 2005.⁵⁷

55. For further information refer to <http://www.arb.org.uk/regulation/code-of-conduct/contents.html>

56. The Competition Authority's preliminary reports on Optometrists and on Dentists are available on the Authority's website, www.tca.ie

57. Section 32(3) of the Health and Social Care Professionals Act 2005 provides that when a registration body proposes a bye-law relating to codes of ethics, the bye-law should be submitted to the Competition Authority. The Competition Authority provides its opinion as to whether the bye law would be likely to result in prevention, restriction or distortion of competition.

- 3.60 The most important effect of this recommendation would be to ensure that regulation of professional conduct is proportionate and does not unnecessarily restrict competition to the detriment of consumers. It is particularly important that the Code of Conduct does not unnecessarily restrict rivalry between architects as this would not benefit consumers.

Recommendation 3: The Code of Conduct should be approved by the Professional Conduct Committee after a public consultation process and after consultation with the Competition Authority

Details of Recommendation	By
Amend Section 53 of the Building Control Bill to provide that: (a) the Professional Conduct Committee (rather than the RIAI) should draft or approve the Code of Conduct and any subsequent amendments; (b) the Code of Conduct, and any subsequent amendments should be subject to a public consultation process; (c) When approving the Code of Conduct, or any subsequent amendments, the Professional Conduct Committee should consult the Competition Authority.	Minister for the Environment, Heritage and Local Government

Recognition of Architects in other EU Member States

Summary

- 3.61 The Building Control Bill 2005 provides that membership of the Royal Institute of the Architects of Ireland (RIAI) will not be a requirement for registration in Ireland.⁵⁸ RIAI membership is, however, the relevant criteria for practically-trained architects seeking recognition in EU Member States.⁵⁹ Practically-trained registered architects wishing to offer services in EU Member States will be required to join the RIAI regardless of whether they wish to do so. Academically-qualified architects will not be subject to any such requirement.⁶⁰
- 3.62 For registration to be credible the same criteria should apply to all architects within Ireland and within the EU. Otherwise the system will be incomplete, discriminatory and consequently lacking in credibility to consumers within Ireland and the EU. In other words, mutual recognition in other EU Member States should be on the basis of recognition by the registration body in Ireland. This should be the case whether the registration body is an independent body or the RIAI. Recognition in EU Member States should not depend on membership of the RIAI or any other organisation.
- 3.63 To achieve consistency of recognition within Ireland and within EU Member States, the Competition Authority recommends that the Department of the Environment, Heritage and Local Government should seek to amend the relevant European Directive at the earliest opportunity.

58. Section 11(3) of the Bill as initiated.

59. Directive 2005/36/EC (Recognition of Professional Qualifications).

60. In the absence of qualifications from new schools of architecture being recognised in the Directive, graduates of colleges other than UCD and DIT will also be required to become RIAI members, or associate members, in order to be recognised in other EU Member States.

Nature of Restraint

- 3.64 The Building Control Bill 2005 proposes that all architects on the register will be entitled to membership of the RIAI.⁶¹ For practically-trained architects, the only option available for mutual recognition in EU Member States would be through *membership* of the RIAI. There is no such requirement on academically trained architects.

Effect of the Restraint

- 3.65 The Building Control Bill 2005 would give practically-trained architects the opportunity for recognition in other EU Member States - but only if they become members of the Royal Institute of the Architects of Ireland (RIAI). In other words, RIAI membership will be a prerequisite for practically-trained Irish architects wanting to be recognised in other EU Member States.⁶²
- 3.66 The impact of the registration provisions of the Bill on the RIAI will depend on the extent to which registered architects take up the option of membership of that body. Allowing more architects to become RIAI members will provide these individuals with the benefits of membership, including continuing professional development courses, seminars and other services. It will also allow more individuals to take advantage of the marketing and branding activity undertaken by the RIAI. However, as with any private organisation, the RIAI is, and has been, free to extend membership at any time should it choose to do so. On the other hand, it is also possible that some architects may choose instead to become members of another body representing architects.

International Experience

- 3.67 Mutual recognition of title between Australian States and New Zealand does not require membership of any representative organisation. Rather, recognition is on the basis of registration by an independent registration body.⁶³ It is registration rather than membership that is the relevant criterion.
- 3.68 Within Europe the criteria for recognition are specified in the Architects Directive. In the case of the UK, the relevant criteria do not include membership of the Royal Institute of British Architects. For most other EU Member States the EU Directive identifies academic qualifications, rather than membership of a representative organisation, as the relevant criteria.

Analysis of the Competition Authority

- 3.69 At present, membership, or associate membership, of the Royal Institute of the Architects of Ireland (RIAI) is among the criteria for recognition of Irish architects within the EU. The silence of the Building Control Bill 2005 on European recognition is significant, as it establishes in law a double standard: one standard for being legally called an architect in Ireland and another standard to be recognised as a qualified architect in Europe.
- 3.70 In Ireland, all that will be required to legally use the title "architect" will be registration, and the Bill explicitly states that membership of the RIAI is not a prerequisite to registration. To be recognised as professionally qualified in other EU Member States would require something different, namely, membership or associate membership of the RIAI or the relevant degree or diploma from University College Dublin or the Dublin Institute of Technology. Consequently, to be recognised in Europe practically-trained architects will be required to become members of the RIAI.

61. Section 11(3) of the Bill as initiated.

62. The criteria listed in Directive 2005/36/EC (Recognition of Professional Qualifications) Annex V are: Degrees in Architecture from UCD, degrees, or prior to 2002 diplomas, in Architecture from DIT and Associate or Full membership of the RIAI. While Section 11(3) states that membership of the RIAI is not a prerequisite for registration, Section 11(3) does not imply any change to the requirements for recognition within the EU. To be recognised within Europe the relevant criteria is membership of the RIAI rather than registration by the RIAI.

63. Information about architect registration in Australia and New Zealand can be obtained from <http://www.aaca.org.au>

3.71 There are two problems with the difference in treatment of academically and practically-trained architects.

- i First, as currently drafted, practically-trained architects seeking recognition in Europe will be forced to buy a service they may not want, membership of the RIAI.
- ii Second, for registration to be a credible signal of quality, practically-trained and academically-trained architects should be treated in a consistent manner. It is desirable that any actual or perceived discrimination between registered architects of different backgrounds should be minimised. However, as proposed, the Building Control Bill 2005 risks legitimising the differential treatment of practically and academically-trained architects, through a two tier system where the most relevant signal is not registration as such but rather recognition in EU Member States.

Solution

3.72 European recognition should be on the basis of *registration* by the regulating body, whether this is an independent body or the Royal Institute of the Architects of Ireland (RIAI), rather than *membership* of the RIAI or any other private organisation. If required, to achieve this the Department of the Environment, Heritage and Local Government and/or the European Commission should seek to amend the relevant European Directive, namely Directive 2005/36/EC (Recognition of Professional Qualifications). This would remove any discrimination against practically-trained architects and in doing so would be more proportionate to the objective of protecting consumers.

3.73 Particularly in the context of Europe, recognition on the basis of registration alone, rather than membership of the RIAI or any other organisation, would be more transparent, would not advantage the RIAI relative to any other representative organisation, either now or in the future, and would not force a registered architect to opt for RIAI membership unless he or she wished to do so.

Recommendation 4: Recognition in Europe should require registration rather than RIAI membership	
Details of Recommendation	By
The Minister for the Environment, Heritage and Local Government should, at the earliest opportunity, seek to amend EU Directive 2005/36/EC (Recognition of Professional Qualifications) to provide that the existing criteria (in Annex V) of " <i>membership</i> " or " <i>associate membership</i> " of the RIAI be replaced with " <i>registration</i> " by the regulatory body (either an independent body or, as proposed, the RIAI).	Minister for the Environment, Heritage and Local Government

Implications for Related Professions

Summary

3.74 The Building Control Bill 2005 would make it illegal for a non-registered person to mislead the public by purporting to be a registered architect. This is in the interests of consumers. As currently worded, however, the Bill also appears to prohibit the commercial use of titles such as architectural technician, landscape architect or other similar titles in common usage. Such restrictions would be disproportionate and would not benefit consumers. The Competition Authority recommends that the Bill be amended to more precisely target the relevant undesirable illegal behaviour, that is, persons who are not registered as architects but who purport to be so registered.

Nature of Restraint

3.75 The Building Control Bill makes it an offence for an unregistered person to mislead the public by using the term architect *"either alone or in combination with any other words or letters, or name, title description, implying that the person is so registered"*.⁶⁴ The proposed penalty for such an offence is a fine up to a maximum €5,000 and/or imprisonment up to a maximum period of 12 months.⁶⁵

Effects of Restraint

3.76 The Building Control Bill 2005, by referring to the use of the title architect *"in combination with any other words or letters"*, identifies ways in which consumers could be misled and appears to go further and state that only registered architects should be allowed to use the title architect. In other words it would not be legal for a person to describe themselves using the title architect *"either alone or in combination with any other words or letters, or name, title description"*. People in related professions would be required to adopt titles not including the term architect, even if in fact they were supplying architectural services. In particular architectural technicians would not be able to use that title. In addition, other titles such as landscape architect, would also have to be dropped in favour of new or different titles.

3.77 The Building Control Bill 2005 creates legal uncertainty as to what restrictions do or do not apply to related professions. The crucial issue is whether the use of the title architect in combination with other words or letters necessarily implies that a person is a registered architect. It is not possible to say with certainty how a court would interpret this section. If a court were to rule that the use of the term architect in conjunction with other words or letters, necessarily implies that a person is an architect, then many currently used titles would be prohibited. This would be disproportionate and not in the interests of consumers of architectural services, nor indeed would it appear to reflect the general intention of the Bill.

Analysis of the Competition Authority

3.78 It is an important principle that regulation of a professional service should not have adverse side effects on similar but distinct professions. For example, titles such as "architectural technician" and "architectural technologist" and "landscape architect" can convey useful information to potential clients.

64. Section 15(1) of the Bill as initiated.

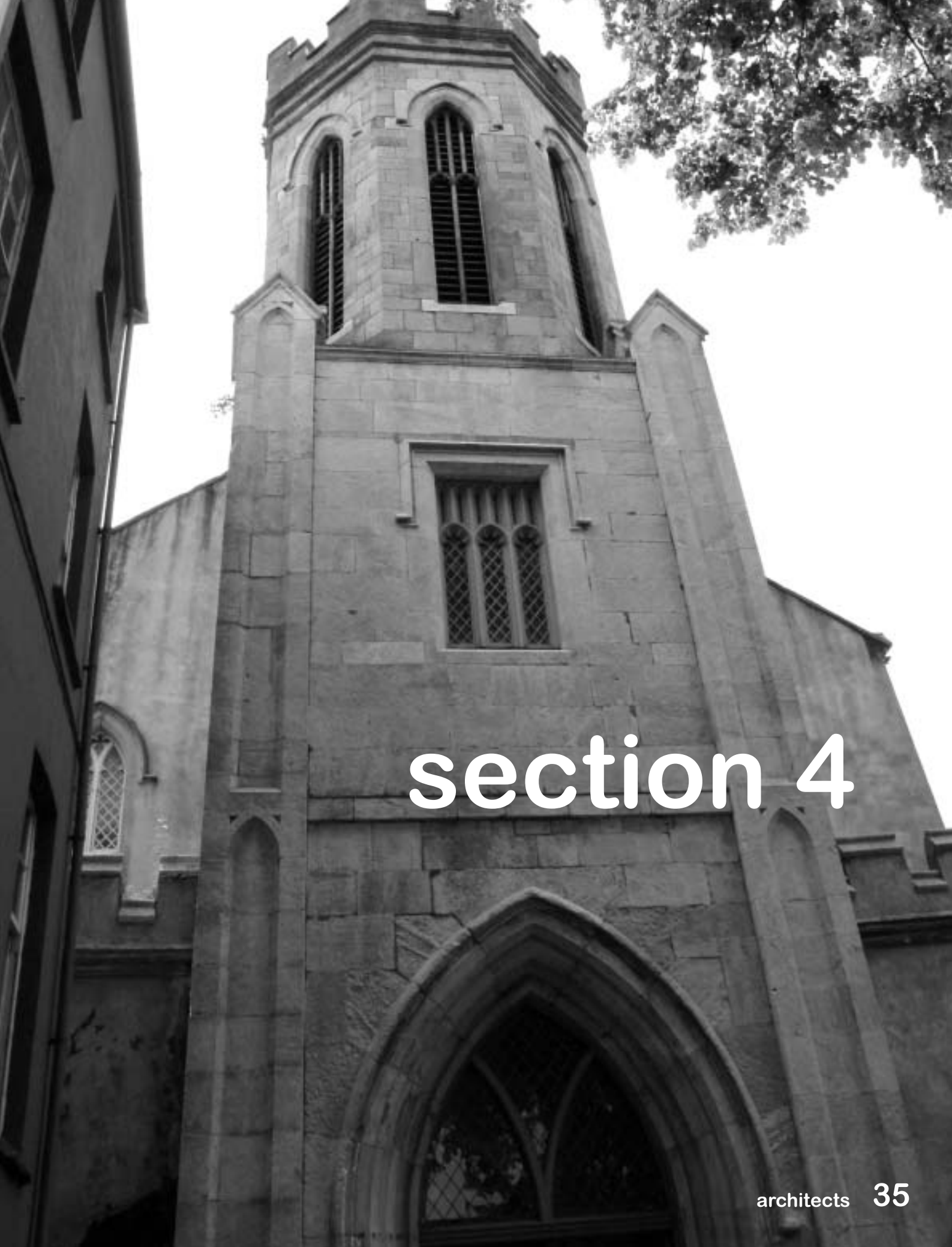
65. Section 15(2) of the Bill as initiated states that a body corporate should be able to include the term "architect" in its name so long as architectural services are controlled and managed by a registered architect, and where, in all premises where architectural services are undertaken, it is under the supervision of a registered architect.

3.79 Any prohibition of related professional titles would have the effect of limiting the ability of non-architects to supply architectural services, which would amount to a form of reservation of architectural functions as well as title. This would be highly disproportionate and not in consumers' interests. It would be desirable to remove the risk of such disproportionate restrictions by more explicitly and simply stating that it is illegal for any person to use the title architect if they are not in fact registered as such.

Solution

- 3.80 The Building Control Bill 2005 should be amended to remove any potential adverse impact on related professions. The problem is with the reference to the use of the term architect "*either alone or in combination with any other words or letters*". Instead the Bill should simply state that it is an offence for someone to call themselves an architect (i.e. that word alone) when they are not so registered. Any additional wording is superfluous and simply increases the possibility of unnecessary restrictions on similar and related professions.
- 3.81 Implementing the Competition Authority's recommendation would remove the potential for disproportionate and adverse impacts on suppliers of architectural services who are not architects. This better targeting of regulation would serve the consumer's interest by ensuring that they retain a wide range of potential suppliers of architectural services, not limited necessarily to architects.

Recommendation 5: Amend Section 15 of the Building Control Bill 2005 to avoid unnecessary restrictions on non-architects	
Details of Recommendation	By
(a) Amend Section 15 of the Bill to provide that it is illegal for anyone to use the title architect when they are not registered as such; and	Minister for the Environment, Heritage and Local Government
(b) Make an appropriate amendment to the description " <i>either alone or in combination with any other words or letters, or name, title or description</i> " to ensure that related professions are not unnecessarily restricted.	

A black and white photograph of a Gothic church tower. The tower is constructed from stone and features a crenellated top. It has several windows: a large, narrow, arched window with a lattice pattern near the top, and a smaller, similar window below it. The tower is flanked by two smaller, arched structures. The overall style is Gothic, with pointed arches and detailed stonework.

section 4

4. RESTRICTIONS ON OFFERING ARCHITECTURAL SERVICES

Summary

- 4.1 There are currently no restrictions governing the general provision of architectural services in Ireland although, as described in Chapter 3, the Building Control Bill 2005 proposes to limit the use of the title "architect". There are, however, restrictions on who can compete in certain markets for architectural services. For example, although anyone can offer architectural services, only recognised architects are generally eligible for architectural competitions. This chapter analyses a number of restrictions affecting certain architects such as eligibility for architectural competitions, the provision of Opinions on Compliance and Professional Indemnity Insurance requirements. The provision of architectural education and training is also examined.
- 4.2 The Competition Authority makes recommendations in relation to:
- Eligibility criteria for architectural competitions;
 - The provision of Opinions on Compliance;
 - The level of professional indemnity insurance required for public sector projects; and
 - Flexibility in the third level education of architects.
- 4.3 Implementation of these recommendations will allow all competent architects to offer certain architectural services. This will increase the choice of architectural service providers to the benefit of the taxpayer and the general public.

Architectural Competitions

Summary

- 4.4 Two potential competition issues arise regarding architectural competitions:
- The eligibility criteria which prevent certain competent architects from participating in architectural competitions; and
 - A representative body such as the Royal Institute of the Architects of Ireland (RIAI) running architectural competitions.

Eligibility for Architectural Competitions

- 4.5 The current criteria for entry to architectural competitions unnecessarily confine eligibility to a smaller pool of competitors. Local authorities and taxpayers are not fully reaping the benefits of competition, which include lower prices, higher quality and more innovation. Regular reviews of local authorities' administration of architectural competitions will ensure that they are choosing from a wide variety of service providers and getting value for money.
- 4.6 The RIAI frequently administers architectural competitions on behalf of buyers. Once there are no unnecessary restrictions on entry to a particular competition, the Competition Authority considers that there is no problem with a professional organisation such as the RIAI administering architectural competitions.

Nature of Restraint

- 4.7 Entry to architectural competitions is limited to architects qualifying under the Architects Directive or those on the Minister's List. The Department of the Environment, Heritage and Local Government has issued circulars to this effect to local authorities.⁶⁶
- 4.8 The lack of any mechanism to update the Minister's List, which was created in 1996, means that practically-trained architects who may have amassed a considerable amount of experience since then have no route for inclusion in the list and therefore remain ineligible to participate in architectural competitions.
- 4.9 In addition, it appears that, to a large extent, the circulars have been ignored and those on the Minister's List excluded, thereby further limiting the numbers eligible to compete.⁶⁷

Effects of Restraint

- 4.10 The Minister's List, consisting of practically-trained individuals considered to be sufficiently skilled and experienced to be recognised as architects, was compiled in 1996. Those on the list are eligible for public sector projects and to enter architectural competitions in Ireland. There is no mechanism by which the list can be updated. This means that other practically-trained individuals, who may have acquired similar skills and experience in the period since 1996, are ineligible to participate in architectural competitions.
- 4.11 Limiting entry to architectural competitions prevents competent persons from providing architectural services to local authorities and Government departments. This unnecessarily limits competition for these services to a smaller pool of competitors. Local authorities and taxpayers are not fully reaping the benefits of competition, which include lower prices, higher quality and more innovation.

Analysis of the Competition Authority

- 4.12 Restrictions on entry to architectural competitions, if any, should be specific to the competition and be objectively defined, e.g. a requirement for an individual to have relevant specialist qualifications or to have sufficient professional indemnity insurance.
- 4.13 Ensuring that all local authorities are aware that practically-trained architects on the Minister's List are also eligible for architectural competitions is only a partial solution. Due to the lack of a mechanism to update the Minister's List, there are likely to be other competent, practically-trained, suppliers of architectural services not on the Minister's List who are consequently ineligible for architectural competitions.
- 4.14 Allowing more extensive entry to architectural competitions would be unlikely to significantly increase the cost of running such competitions. Extending eligibility would also reduce the costs for those applicants who are not members of the Royal Institute of the Architects of Ireland (RIAI), and who to date had to form partnerships with RIAI members to allow them to enter. In such cases, the effect of this entry restriction has been simply to force some entrants to incur extra costs.

66. For example Circular BC10/2003 dated 10 June, 2003.

67. For example, in March 2004 Tipperary Town Council sought tenders only from an RIAI list of architects. The Council later amended the tender to remove the reference to the RIAI list. Another public sector example is the Department of Education and Science, which uses RIAI membership as a reference standard.

Solution

- 4.15 One way of broadening the number of architects entitled to enter architectural competitions is to require that, in the event of the introduction of an appropriate system of statutory registration of the title "architect", all registered architects would be eligible to enter competitions. In the absence of a registration system, providing a mechanism for updating the Minister's List on a regular basis and ensuring that those on the List are eligible to enter architectural competitions would allow all recognised architects to enter competitions for publicly-funded projects.
- 4.16 Whether or not a registration system is introduced, the Department of the Environment, Heritage and Local Government should conduct regular reviews to ensure that all recognised architects are eligible to enter architectural competitions.
- 4.17 Implementation of Recommendation 6 below will ensure that no recognised architects will be unfairly excluded from entering architectural competitions. This will increase the pool of eligible architects, allowing local authorities and taxpayers to reap the full benefits of competition, ensuring they can choose from a wide variety of service providers and get value for money.

Recommendation 6: Ensure all recognised architects can enter architectural competitions	
Details of Recommendation	By
The Minister for the Environment, Heritage and Local Government should, within 12 months of this report and once every three years thereafter, review local authorities' administration of competitions to ensure that all recognised architects are able to enter competitions.	Minister for the Environment, Heritage and Local Government March 2007

Administration of Architectural Competitions

- 4.18 In its preliminary report⁶⁸ the Competition Authority asked for views on whether it was appropriate for the Royal Institute of the Architects of Ireland (RIAI) to run competitions on behalf of buyers of architectural services.
- 4.19 Some submissions to the Competition Authority expressed concerns about RIAI administration of architectural competitions and said that the RIAI should merely "*provide advice and guidance*".⁶⁹ Two alternatives were suggested:
- An independent public procurement body should adjudicate architectural competitions; or
 - A professional representative organisation, such as the RIAI, could run architectural competitions, subject to a requirement for a high degree of transparency, particularly in relation to eligibility.
- 4.20 Submissions on the role of the RIAI in administering architectural competitions generally agreed that RIAI-run competitions have tended to operate efficiently and transparently and to the satisfaction of those using such competitions to select an architect.⁷⁰

68. *Study of Competition in Professional Services in Ireland*, Consultation Document 2: Architects www.tca.ie/professions.html

69. For example, John O'Connor – Submission to the Competition Authority January, 2004.

70. For example, County and City Managers' Association – Submission to the Competition Authority January, 2004.

- 4.21 Once there are no unnecessary restrictions on entry to a particular architectural competition, direct or indirect, then having a professional organisation, such as the RIAI, administering such competitions is not a problem, if that is the preference of the individual or organisation commissioning a project. It is a decision for individuals or organisations commissioning a project to decide how an architectural competition should be run and/or who should organise a competition. The implementation of Recommendation 6 above is therefore sufficient to deal with any concerns regarding local authority competitions.

Opinions on Compliance

Summary

- 4.22 One type of service provided by architects (as well as by other groups outlined below), is the provision of Opinions on Compliance with Planning and Building Regulations. An Opinion on Compliance is not a legal guarantee that a building meets regulations, but, to the extent that the provider of the opinion has sufficient expertise, it does provide a level of confidence that the building conforms to legal requirements. Providing an Opinion is not always straightforward and often involves significant professional judgements, sometimes in relation to a construction with which the Opinion provider has not had a direct involvement.
- 4.23 Opinions on Compliance provide a system of self-enforcement of the Building Regulations. Opinions are not statutorily required and may be provided by individuals not involved in the construction process. This limits the extent of the assurance that can be offered. Some opinions may only relate to two or three of the 12 sections of the building regulations. For instance, an Opinion on Compliance may cover only planning and fire safety regulations.
- 4.24 Borrowers raising finance where a building is used as collateral will in most instances require an Opinion on Compliance. Opinions are typically only acceptable to financial institutions if provided by certain individuals. To assist solicitors advising clients wishing to purchase property, the Law Society of Ireland has outlined, in its Conveyancing Handbook, a list of suitable professionals, namely, individuals with standard architectural or civil engineering qualifications, or a sufficient amount of relevant professional experience.
- 4.25 Conveyancing is currently reserved to solicitors, i.e. only they can supply the services to ensure the legal transfer of land and buildings.⁷¹ Consequently, solicitors' actions in ascertaining compliance with building regulations are highly influential on the operation of the market for architectural services.

Nature of Restraint

- 4.26 The Law Society has identified specific characteristics that individuals should possess in order to give Opinions that would most likely be accepted by a court. These 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, particularly those on the Minister's List;
 - 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.

71. For further details on conveyancing refer to the Competition Authority's Preliminary Report on Legal Services, February 2005, www.tca.ie. A final report will be issued in 2006.

- 4.27 The Law Society's list excludes some practically-trained architects without formal qualifications who are not on the Minister's List, but who may, by virtue of skills and experience acquired since the creation of the List, have sufficient ability to provide Opinions on Compliance.

Effects of Restraint

- 4.28 The Law Society's list results in the exclusion of some competent architects and indeed other professionals from issuing Opinions on Compliance. In such cases, such architects may have to hire another professional who is not excluded from giving an Opinion. Architects who are not recognised for the purposes of providing Opinions on Compliance have to engage an individual recognised for that purpose to provide the Opinion, thus adding to the costs for their clients.

Rationale for the Restraint

- 4.29 The primary purpose of the Law Society's list is to minimise the potential for solicitors to face negligence claims. For example, a claim might arise if a solicitor advised a client to accept an Opinion which later was judged by a court to have been either defective or to have been supplied by an insufficiently skilled individual claiming to be an architect.

Analysis of the Competition Authority

- 4.30 The Law Society's objective, while entirely legitimate, reduces the litigation risk to solicitors at the expense of excluding some competent architects from providing Opinions. This results in reduced consumer choice and associated increased costs.
- 4.31 A stronger inspection regime, such as an independent body responsible for verifying that architectural work complies with the relevant standards, would reduce the demand for Opinions on Compliance.
- 4.32 The Law Society has stated that it would prefer an organisation other than itself to be responsible for providing guidelines to solicitors. Regardless of who might be responsible, any fixed, defined list would be inflexible and would not adequately cover all individuals' circumstances. Wherever any line might be drawn, it could unfairly exclude some sufficiently skilled and experienced individuals. Equally, too lax a standard could allow some individuals who are not competent, and whom a court may not consider competent, to provide Opinions.

Solution

- 4.33 In the event of the introduction of an appropriate system of statutory registration of the title "architect", the Law Society should amend its list of persons qualified to provide Opinions on Compliance to ensure that all registered architects are entitled to provide this service. In the absence of such a system, the Competition Authority recommends that the Law Society amend its list of persons qualified to provide Opinions on Compliance with a view to including any individual with sufficient professional indemnity insurance.
- 4.34 A re-evaluation of the Law Society's list to allow other competent individuals to provide Opinions on Compliance would offer greater choice to consumers and could reduce their costs in some cases.

Recommendation 7: Re-evaluate the list of persons recognised for the purposes of Opinions on Compliance

Details of Recommendation	By
(a) Following the introduction of a registration system, the Law Society should amend its list of persons suitable to provide Opinions on Compliance to ensure that all registered architects are included; and	The Law Society Within three months of the establishment of a Register of Architects
(b) Pending the introduction of a system of statutory recognition of the title "architect", the Law Society should re-evaluate its list of persons suitable to provide Opinions on Compliance with relevant planning and building regulations, with a view to including any individual with sufficient professional indemnity insurance.	The Law Society July 2006

Professional Indemnity Insurance

Summary

- 4.35 The concern with professional indemnity insurance arises in relation to the levels of insurance that Irish Public Bodies Mutual Insurances Limited (IPB) recommend that contractors should be required to have. The high level of professional indemnity insurance required excludes small firms from providing services to public bodies unless they are prepared to incur the additional costs of having a higher level of professional indemnity insurance than they would otherwise need. The Competition Authority recommends the introduction of a sliding scale of professional indemnity insurance requirements based on the cost of the overall project. A move to a sliding scale would allow smaller architectural service providers to offer their services to public bodies, thus providing greater choice for buyers of architectural services.

Nature of Restraint

- 4.36 Irish Public Bodies Mutual Insurances Limited underwrites the insurance of Local Authorities, Health bodies, Vocational Education Committees, Higher Education Institutions, Regional Authorities and other public bodies. As part of this role, IPB advises these bodies on the level of professional indemnity insurance they should require from construction activity contractors, including architectural and engineering practices. IPB advises public bodies to require architectural practices to have a minimum of €6.3 million professional indemnity insurance irrespective of the project type or value.

Effects of Restraint

- 4.37 This requirement affects smaller architectural practices seeking to offer services to public bodies in two ways – increased insurance costs or their exclusion from public sector contracts. The majority of architectural practices have professional indemnity insurance of between €500,000 and €2 million. If they wish to be considered for public sector contracts they must carry a higher level of professional indemnity insurance, thereby increasing their business costs and, potentially, the prices they charge for their services.

4.38 The exclusion of smaller firms and individuals reduces competition within the profession for public projects and, by restricting opportunities for small practices to grow and develop, reduces competition across the wider market.

4.39 A standard level of cover is a pragmatic option for public authorities. The alternative - to assess insurance requirements on a project by project basis - would be both complex and costly. Nevertheless, the standard requirement gives rise to concerns because public sector contracts are an important source of work for many firms and individuals.

4.40 The objective of IPB is to minimise the risk of losses arising from architectural work. This is achieved at the expense of either increasing insurance costs for architectural firms or reducing the number of firms available to provide services to the public sector.

4.41 A more project-specific assessment of insurance requirements would tailor insurance requirements to the size and scope of the work to be undertaken, and accordingly would not exclude some of the suppliers of services currently excluded by a standard requirement as discussed above. The benefits of a more project-specific approach to assessing insurance requirements would need to be balanced against the additional costs and complexity.

4.42 Ultimately, public bodies, as buyers, are best placed to determine the relative trade-offs between a more detailed and complex calculation of professional indemnity requirements versus a less complex system which may reduce the available pool of potential suppliers of architectural practices.

4.43 Submissions⁷² from professional bodies generally expressed the opinion that €6.3 million professional indemnity cover is excessive, particularly given that the majority of architectural practices are small and deal with smaller projects. Furthermore, the maximum claim over the last ten years has been of the order of €1 million, with most claims significantly lower. For larger practices with a number of different projects, or a single medium to large project, cover in the order of €6 million may well be appropriate.

4.44 Irish Public Bodies Mutual Insurances Limited has stated that its advice is not binding on public bodies, and indeed is not always followed, especially in relation to smaller projects. For example, strictly following IPB's advice could render it impossible to engage consultants for smaller projects as the insurance costs would be prohibitive.

Solution

4.45 An alternative to the current situation would be sliding scales of professional indemnity insurance requirements, as indeed occurs at present with the Department of Health and Children, which has a sliding scale whereby €6.3 million professional indemnity insurance is required only for projects in excess of €50 million.

4.46 Such a scale has also been developed by the Department of the Environment, Heritage and Local Government which issued a sliding scale set of guidelines for professional indemnity insurance levels to managers of local and public bodies in August 2004.

4.47 The widespread use of the sliding scale for professional indemnity insurance requirements for architects would

73. New courses commenced in September 2005 at the University of Limerick and Waterford Institute of Technology. A further new architectural degree course, offered jointly by University College Cork and Cork Institute of Technology, will commence in September 2006.

74. University College Dublin, Dublin Institute of Technology Bolton Street, University of Limerick and Waterford Institute of Technology.

75. The architectural degree course offered by Waterford Institute of Technology is a three year course. The RIAI points out on its website, www.riai.ie that graduates of a three year architectural degree course are not eligible for any class of RIAI membership.

mean that smaller architectural practices would be able to compete with larger practices without having to carry higher than necessary levels of insurance, thus reducing their costs. This would result in more competition and greater choice for public sector bodies and taxpayers while achieving the objectives of IPB and without the additional cost and complexity of project specific assessment of insurance requirements.

76. The report *"A Future for Architectural Education in Ireland"* (John Worthington) recommends that the RIAI should *"Explore part-time progression routes more closely integrated with practice for all degree levels: certificate, diploma, bachelor, masters, doctorate and professional degrees"*. See www.heai.ie

Recommendation 8: Promote and monitor the use of sliding scales of professional indemnity insurance requirements

Details of Recommendation	By
(a) Irish Public Bodies Mutual Insurances Limited should henceforth refer its clients to the sliding scale and guidelines produced by the Department of the Environment, Heritage and Local Government when advising them in relation to professional indemnity insurance for construction projects;	Irish Public Bodies Mutual Insurances Limited June 2006
(b) The Department of the Environment, Heritage and Local Government should, within 12 months of this report and once every three years thereafter, review the use by local authorities of its sliding scale of professional indemnity insurance requirements for contracted architects.	The Department of the Environment, Heritage and Local Government March 2007

Education

Summary

- 4.48 In its preliminary report the Competition Authority recommended that the Higher Education Authority should examine ways of allowing for the number of places for the education of architects to increase in response to demand. There has been substantial progress in this regard, with the introduction of two new architectural degree courses in 2005 and another one planned for 2006.⁷³ The increase in the supply of training places has alleviated the concerns of the Competition Authority in this regard.
- 4.49 The remaining concern with architectural education is a lack of flexibility in training in Ireland. It is vital that the Irish education system adapts to provide courses for those wishing to acquire the appropriate qualifications for registration under the proposed system for registration of the title "architect". The lack of flexibility in education restricts the supply of architects, with consequent upward pressures on price and restricted consumer choice. The Competition Authority recommends the introduction of part-time and modular courses and the recognition of relevant technical training to allow architectural technologists and technicians to progress more easily to a full architectural qualification, thereby ensuring an adequate supply of architects.

Nature of Restraint

- 4.50 With effect from September 2005, there are now four⁷⁴ third-level institutions in Ireland providing full-time courses leading to a degree in architecture, generally over a five-year period.⁷⁵ No part-time or modular degree course is available.

Effects of Restraint

- 4.51 The lack of part-time or modular courses leading to a degree in architecture constitutes a barrier to further developing the skills of those who work in the general area of architecture without a formal degree, or with a



section 5

related qualification such as architectural technician. This limits the availability of qualified architects in Ireland, which could have substantial negative effects on competition when the title of architect is protected.

Analysis of the Competition Authority

- 4.52 Teaching degree courses in modular form would allow many modules to be shared between technologists and architects. It would also be easier for architectural technicians to progress to become architects via further education and training. Another approach would be to allow any relevant technical training provided to other individuals, for example architectural technicians, to contribute towards an architectural qualification. Flexible degree courses could facilitate this form of entry. Such an approach has been recommended in a report jointly commissioned by the Higher Education Authority and the Royal Institute of the Architects of Ireland (RIAI).⁷⁶

Solution

- 4.53 In its preliminary report, the Competition Authority recommended that educational institutions and the Higher Education Authority should examine ways to allow the number of architectural training places to respond to market demand for graduates and offer part-time degree courses in architecture.
- 4.54 The introduction of new third level courses for architectural training in Limerick, Waterford (both from 2005) and Cork (from 2006) has increased the number of training places and alleviated most of the concerns of the Competition Authority in this regard.
- 4.55 In relation to the need for flexibility in architectural education, modular and part-time architecture courses should be introduced to complement the current system of full-time architectural education. A mix of modular, part-time and full-time courses would provide more flexibility in the training of architects and would provide an opportunity for individuals in related occupations to build on their existing qualifications when undertaking further training leading to a full architectural qualification.
- 4.56 Allowing alternative avenues towards the title of architect such as part-time, modular or specialised courses will encourage progress in the profession thereby increasing the supply of architects and ensuring more choice for buyers.

(b) Educational institutions providing architectural education should enable the provisions of part-time and modular courses in addition to the provision of full-time courses;	Educational Institutions September 2007
(c) All educational institutions providing architectural education should allow for other relevant technical training to contribute towards a full architectural qualification.	Educational Institutions September 2007

77. 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).

78. For example, a 1% reduction in percentage fee may change the price from one which is profitable to one that is unprofitable. An increase of 1% might be more than necessary to alter a price from being unprofitable to being profitable.

- | | |
|-----|---|
| | |
| 5.1 | Many aspects of how architects compete with one another work very well for consumers. Architects are not burdened by unnecessary structural restrictions on how they can operate, which are a feature of many other professions. For example, architects are allowed to practise as sole traders, in partnerships, as employees or as corporate bodies. |
- 5.2 The absence of unnecessary restrictions on competition between architects has allowed architects the freedom to choose the most suitable practice model for their individual circumstances. For example, a newly qualified architect may choose to work as an employee in an architectural practice before opening his or her own practice or becoming a partner. A new architectural practice can choose a number of avenues such as advertising or participating in architectural competitions to make itself known to potential buyers.
- 5.3 In its preliminary report, however, the Competition Authority identified some rules and practices of the Royal Institute of the Architects of Ireland (RIAI) which had the effect of inhibiting rivalry between architects and made some recommendations for change.
- 5.4 The rules and practices concerned were:
- Restrictions on advertising imposed by the RIAI on its members; and
 - Publication by the RIAI of information regarding fees.
- 5.5 A significant proportion of architects in Ireland are members of the RIAI. Consequently RIAI rules have a significant influence on how the market operates. The impact of RIAI rules on market behaviour is strengthened by the extent to which buyers of services consider RIAI membership to be a sign of quality.
- 5.6 The rules and practices identified by the Competition Authority have now been discontinued. The Competition Authority welcomes the ending of these restrictions on rivalry between architects by the RIAI. These practices, however, serve as a useful illustration of how the rules and practices of professional bodies can impact on competition and the issues are summarised here for completeness.

Advertising Restrictions of the Royal Institute of the Architects of Ireland

- 5.7 Until 2004, the Code of Professional Conduct of the Royal Institute of the Architects of Ireland (RIAI) included unnecessary restrictions on advertising which had the effect of restricting competition for the provision of architectural services. According to these rules:
- Approaches to potential buyers had to be made by letter and could not include details regarding previous work, such as designs, unless specifically requested by the potential buyer; and
 - Signs could only be erected on office premises or buildings under construction provided the lettering on these signs did not exceed 50mm on offices and 100mm on construction sites.
- 5.8 Restrictions on advertising which go beyond ensuring that advertising is not false or misleading generally serve to prevent new service providers from becoming established, making it difficult for them to publicise their arrival. Lack of awareness by consumers of the existence of alternative providers of professional services protects existing providers from competition.
- 5.9 In its preliminary report, the Competition Authority recommended that restrictions on advertising by professional bodies should be narrowly focused on preventing false or misleading advertising and that all other restrictions

- 6.14 Finally, the Competition Authority recommends greater flexibility in architectural education through the provision of part time and modular courses in addition to full-time courses. It is also recommended that educational institutions providing architectural training should allow for other relevant technical training to contribute towards an architectural qualification. These measures will allow individuals in related occupations to build on their qualifications and progress in the profession, thereby increasing the supply of architects and ensuring choice for buyers.

Positive Developments for Competition

- 6.15 It is relatively straightforward for architects to establish themselves in Ireland. The Architects Directive provides for mutual recognition of the qualifications of architects between all EU Member States. There are also provisions for the recognition in Ireland of architects trained outside the EU through reciprocal multi-lateral agreements with non-EU countries.
- 6.16 A number of the concerns identified by the Competition Authority in its Preliminary Report⁷⁹ on the architectural profession have now been addressed. The rules of the Royal Institute of the Architects of Ireland (RIAI) that controlled advertising by architects were removed. Similarly, the RIAI no longer publishes information showing actual percentage fees for different project types. The only fee information now published by the RIAI is contained in an independent survey conducted on its behalf which includes information on percentage, fixed and time based fees.
- 6.17 There has been a significant increase in the number of architectural training places in Ireland with the opening of new schools of architecture in Waterford and Limerick in 2005. Another new school will open in Cork in 2006.



section 6

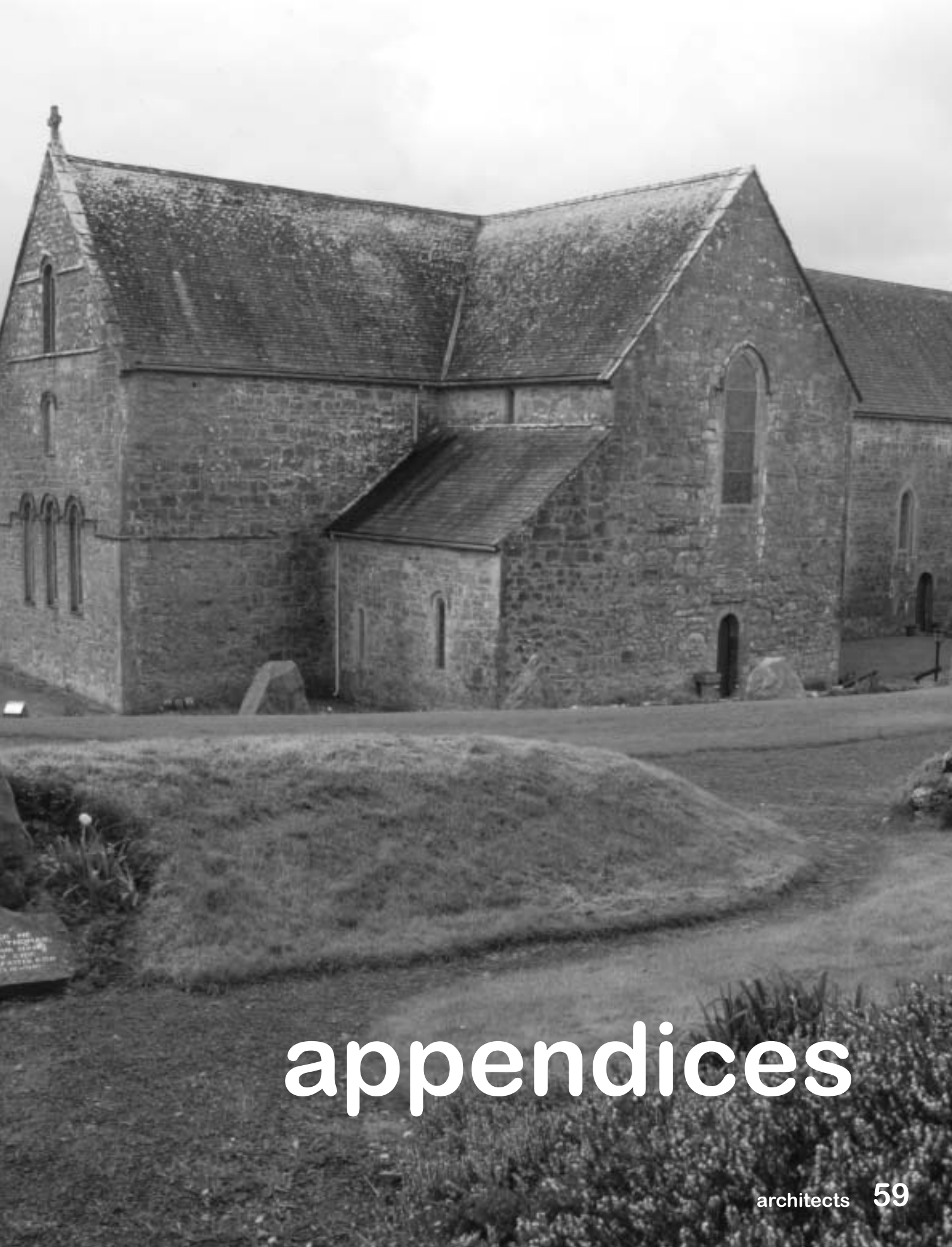
- should be removed.
- 5.10 After consultation with the Competition Authority, the RIAI removed restrictions on advertising in May 2004, apart from requirements for advertising to be truthful and accurate. The Competition Authority welcomes this and is satisfied that its concerns in this area have been ameliorated.
- 5.11 The removal of advertising restrictions by the RIAI means that it is now possible for architects to compete more freely with each other through the use of advertising, thereby increasing the awareness of buyers of architectural services.

Fee Information provided by the Royal Institute of the Architects of Ireland

- 5.12 In the past, the Royal Institute of the Architects of Ireland (RIAI) included information showing actual percentage fees in draft, agreements it provided as a basis for contracts between architects and clients. Included in the draft agreements was information showing actual percentage fees for different types of projects, and for different project costs, as well as minimum fees for each different project cost band.⁷⁷
- 5.13 The provision of this information had the potential to limit competition by reducing the likelihood of negotiation on fees between architects and their clients. A further problem with percentage fees is that they encourage imprecise and inefficient pricing.⁷⁸ 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.
- 5.14 In its preliminary report, the Competition Authority recommended that the RIAI remove all fee information from their published material.
- 5.15 In 2004, the RIAI commissioned an independent fee survey outlining information for the purposes of facilitating negotiation between architects and buyers of services. The survey included information on percentage, fixed and time based fees. This is now the only fee information published by the RIAI. There may be scope in the future for the National Consumer Agency to monitor the survey, for example to ensure the independence and coverage of the survey. The Competition Authority would emphasise that, in relation to the publication of specific advice, information and/or market data, it is the responsibility of the producer of such information to ensure compliance with the Competition Act 2002.
- 5.16 The Competition Authority welcomes the decision of the RIAI to cease the publication of actual percentage fees in draft contracts and is satisfied that its concerns in this area have been ameliorated.
- 5.17 The commissioning of an independent survey on fees by the RIAI has facilitated negotiation between architects and their clients for the provision of architectural services. Buyers are now armed with information on percentage, fixed and time based fees when negotiating with architects. This increased buyer awareness

allows them to shop around and negotiate more effectively.





appendices

7. APPENDICES

Appendix 1: Submissions in Response to Preliminary Report

Association of Building Engineers (UK)
Association of Building Engineers (Irish Branch)
The Chartered Institute of Building
JC Collins and Co Ltd
County and City Managers' Association
Damien Dillon
Robert M Foley
Group of Independent Architects in Ireland
Maire Henry
Higher Education Authority
Irish Architects Society
Irish Public Bodies Mutual Insurances Limited
The Law Society of Ireland
[]
Sean Lynch
Michael Lucey
Donal MacDomhnaill
Brian Montaut
John O'Connor
Royal Institute of the Architects of Ireland (RIAI)
School of Architecture, UCD

Appendix 2: Explanatory Notes

Explanatory Note 1: Barriers to Entry

Barriers to entry are direct or indirect restrictions on the ability of potential suppliers to offer their goods or services in a particular market. In professional services markets, such restrictions prevent efficient new professionals from offering further choice to buyers. Barriers to entry often serve to protect the established members of the profession from competition and the threat of competition. The resulting lack of competitive pressure can lead to serious adverse effects on customers, as established service providers may be able to charge higher prices, offer lower quality services and offer less choice. This protection may also mean less incentive for established members of the profession to innovate and to respond to the needs of their customers with new services and new ways of delivering professional services.

Entry barriers may arise naturally, because of the peculiar aspects of a market that make it difficult to successfully offer services such as difficulties in establishing a reputation. Entry barriers may also arise directly from actions taken by existing suppliers. For example, in professional services established members of the profession may make it difficult for their customers to switch to a new provider. Regulations limiting who may offer particular professional services create direct barriers to entry.

Markets for professional services tend to have regulatory barriers to entry. It is usually claimed that these barriers prevent a potential market failure arising from a perceived inability of buyers to evaluate the professional services. It is defended as necessary to ensure that practitioners offer a high quality service due to the potential inability of buyers to distinguish between a high quality service and a low quality service.

However, such regulatory barriers can operate to deny buyers choice and protect existing suppliers 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 practice, or indirectly through limitations on the educational opportunities for training in the area.

Appendix 2: Explanatory Notes

Explanatory Note 2: Rivalry

To ensure that buyers benefit fully from competition, regulatory 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 hinder the competitive process. Thus any barriers to buyers' ability to gain this type of information, such as advertising restrictions, are undesirable barriers to rivalry.

Advertising that is factual and accurate informs consumers of choices available to them, reduces search costs and facilitates competition in the marketplace. In addition, advertising reduces the information asymmetry between clients and service providers i.e. advertising builds up awareness of the options available. Advertising of prices allows buyers to make meaningful comparisons between service providers.

Professionals should always be free to organise the delivery of their services in different ways and to join and establish other professional organisations that compete with existing organisations in representing their interests or administering any self-regulation required within a profession.

Another type of barrier to rivalry is high switching costs, which prevent buyers from switching easily between different service providers. For example a buyer may be locked in to a long-term contract with a certain provider which includes a penalty for opting out of the contract early.

Explanatory Note 3: Advertising and Professional Services

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

Furthermore, advertising restrictions can also work as barriers to the establishment of a new practice by a professional. For example, a professional who is setting up a new practice may be prevented from pursuing both on-going and one-off consumers. This acts in the interests of those who are established in the profession, and have built up a reputation based on word-of-mouth, to curb the effectiveness of new entrants promotional efforts. Thus, advertising restrictions make it unnecessarily difficult for professionals who wish to open a new practice to establish themselves and also limit innovation in the delivery of professional services. Thus, any restrictions on advertising except those preventing untruthful or misleading adverts, are likely to limit competition.

Appendix 2: Explanatory Notes

Explanatory Note 3: Rules of professional bodies

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

The membership criteria of professional organisations should be objective and transparent, particularly if membership of these organisations provides a competitive advantage to its members (for example by allowing suppliers to utilise a reputation for high quality or by providing access to reduced rates of indemnity insurance). 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 object 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.



