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Submission to the Irish Auditing and Accounting Supervisory Authority on the legal protection of the term “Accountant”

(Response to Consultation Paper CP 1/06)

Submission S/06/002

May 2006



1. INTRODUCTION

- 1.1 The Competition Authority welcomes the opportunity to comment on Consultation Paper CP1/06 issued by the Irish Auditing and Accounting Supervisory Authority ("IAASA") on the legal protection of the term "Accountant". IAASA also proposes to consider whether it is desirable/appropriate that persons providing accountancy services to the public, other than those who are members of prescribed accountancy bodies, should be subject to regulation and/or supervision and, if so, to what extent and how such regulation/supervision might be facilitated.
- 1.2 One of the functions of the Competition Authority is to provide Ministers, Government Departments and legislators with an informed competition perspective on proposed primary and secondary legislation, so as to discourage the passing of legislation that may unnecessarily inhibit competition. Section 30(1)(e) of the Competition Act 2002 provides that the Competition Authority advise public authorities generally on issues concerning competition which may arise. It is in this context that the Competition Authority makes the following submission.

2. OVERVIEW

- 2.3 The accountancy profession is, in general, an adaptable and agile one, always able to respond to new market opportunities and directions. This is, to a great extent, because it is not tied down by layers of regulation. The profession is generally lightly regulated, except for detailed statutory provisions about auditing and, to a lesser extent, insolvency practice, and the Competition Authority is strongly of the view that that is the way things should stay.
- 2.2 New Regulation should only be introduced where there is clear evidence of market failure, or very damaging consumer harm, and that is patently not the position here. Thus, there is no case, compelling or otherwise, for introducing a system of regulation for the profession generally.
- 2.3 On the contrary, introducing such a system would put at risk the suppleness and agility of the profession and its ability to respond to client need that is its strength - be that in traditional areas such as tax advice or management accounts, or in emerging fields such as succession planning.
- 2.4 New layers of regulation would also stultify further growth and innovation and deaden creativity, since its prime effect is to create a rule-driven institutional dynamic, as opposed to fostering market-based risk and reward.

3. THE ROLE OF THE ACCOUNTANT

- 3.1 Accountants generally work as employees of public or private sector organisations or as owners or employees of accountancy practices.
- 3.2 There are three broad areas of work carried out by accountants:
- The statutory audit of company accounts, which can only be carried out by registered auditors i.e. members of an accountancy body recognised under the Companies Acts who hold a valid practising/auditing certificate. Changes in statutory audit thresholds¹ will remove the audit obligation from a number of small companies;
 - Insolvency services, e.g. liquidations, receiverships, examinerships; and
 - General work of a financial nature carried out on behalf of industry, financial services, the public and other sectors, and for individuals.
- 3.3 Given that statutory auditing work is regulated by EU Directives and domestic legislation and is restricted to qualified auditors, the question of protection of the term “accountant” mainly relates to the work of a general nature carried out by accountants and others. The latter area of an accountant’s work is not confined to accountants but is also frequently carried out by accounting technicians or other providers of services to businesses. For example, insolvency work is not regulated and is frequently carried out by members of the legal profession, company secretaries and non-professional people (particularly in the case of small companies).
- 3.4 Many accountants offer their services to the public². Many accountants in public practice offer specialised services such as taxation, company secretarial services and consultancy. Others assist organisations and individuals in the preparation of accounts and tax returns. Accountants also frequently prepare accounts for sole traders, farmers etc. These individuals are not required by law to have their accounts audited or produced by a qualified accountant and many choose to prepare their accounts themselves rather than retain a third party to do so.

4. RESERVATION OF TITLE

- 4.1 Affording legal protection to any title, such as “accountant” in this instance, should only be done where there is a clear public interest case requiring such protection. This is because any system of statutory regulation of a title automatically creates barriers to entry and market rigidities which can have negative effects for consumers of the services. Regulation of a profession can all too often result in increased prices to consumers, who face a smaller pool of suppliers who may not compete as vigorously, without improving quality. A public interest case for protecting a group of suppliers from competition arises only where:

¹ Section 53 of the Companies (Accounting and Auditing) Act 2003 increased the audit exemption threshold from €317,474 to €1,500,000 for financial years commencing after 1st July 2004.

² This is referred to as “public practice”.

- It is *necessary* to protect consumers from a harm that they are currently experiencing, e.g. inadequate availability of quality services;
 - It will be *effective* in protecting consumers from that harm; and,
 - It is the most *proportionate*, targeted tool for achieving consumer protection, after other options have been considered, which does not unnecessarily restrict competition in any way.
- 4.2 Legal protection of a professional title necessarily involves introducing a registration system for the professionals concerned, and the effort and resources required to put this in place should not be underestimated. Of more concern, however, is that introducing such a system can bring in its wake other significant competition problems.
- 4.3 For example, reservation of title rarely stands on its own, and is often accompanied by the introduction of enforceable standards of professional conduct. IAASA itself appears to recognise this, since it proposes to consider applying full-blown regulation to accountants of all types. However, it is the experience of the Competition Authority that professional conduct rules can often cloak anti-competitive policies and practices (for example bans on advertising either generally or as regards fees, bans on accepting clients of a fellow-professional without the latter's "permission", price competition and fee undercutting). Put simply, much pro-competitive behaviour in the professional area can often be wrongly regarded as professional misconduct.
- 4.4 In this context, the Competition Authority reviewed in detail the *Rules of Professional Conduct* and the *Ethical Guide for Members* of the Institute of Chartered Accountants in the late 1990s under the (then) Competition Acts, and published its formal Decision in 2000. A copy of this Decision is enclosed as Appendix 2. This shows that, even where professional conduct was governed by self-regulation, significant anti-competitive problems could be institutionalised – which the Institute was ultimately prepared to remove. The Competition Authority advises that giving such Rules statutory force should be avoided.
- 4.5 Registration systems can often affect the ability of **auxiliary professionals** to carry out tasks which come within the scope of a registered profession and which the auxiliary professionals are well qualified to provide. Accounting technicians for example are well qualified to do some of the tasks carried out by accountants such as preparing sets of accounts.
- 4.6 Overall, the Competition Authority is of the strong view that there is no clear public interest case which would warrant the legal protection of the term "accountant".

5. PREVIOUS CONSIDERATION OF PROPOSALS TO PROTECT THE TERM "ACCOUNTANT"

- 5.1 The Review Group on Auditing, which reported in 2000³, considered whether the provision of accountancy services and the holding of oneself out as an accountant should be the subject of statutory protection. The Group concluded that restricting the provision of accountancy services to accountants or registered accountants would be extremely difficult, not least because of the difficulty in defining the term "accountancy services" and distinguishing accountancy services from bookkeeping or business advisory services. On the question of statutory protection of the term "accountant", the Group concluded that there was no compelling case for recommending statutory protection for the term "accountant" at that time but that the issue should be kept under review.
- 5.2 The reasons against recommending statutory protection of the term accountant which were listed by the Group in its Report were:
- The term "accountant" or "registered accountant" is not suitable for protection having regard to the diverse nature of accountancy services and the common usage of the term. Services such as those provided by a legal services accountant or turf accountant are not intended to be covered by such legal protection. Even within the accountancy area, many persons would be competent to prepare a proper set of accounts, even though they may not be formally qualified;
 - It is up to each of the accountancy bodies to promote the merits of its accountancy qualification, and each member of such a body can readily distinguish his/her standing for the benefit of business and the general public by appending that membership to his/her name;
 - There is no evidence of public demand for such a protection, and no evidence of abuse of the term has come to the attention of the Department;
 - Such a statutory protection would impose costs on the State for little benefit, as the unqualified persons would simply re-describe themselves as a financial consultant or some other term.
- 5.3 These reasons are as valid today as they were when the Review Group reported in 2000. In fact, they may even be more important at the present time. There has been considerable public debate about lifting the minimum threshold for company audits. If the Government responds to this by raising the threshold, a considerable portion of stable and predictable income will not be available to accountants, and the temptation for the profession would be to copperfasten the activities left open to it by enshrining restrictive and anti-competitive rules in statute.
- 5.4 The statutory protection of the title "accountant" was raised during the passage of the Companies (Auditing and Accounting) Act 2003 with an

³ Report of the Review Group on Auditing, July 2000

amendment protecting the term accountant being defeated at Committee Stage.

6. PRINCIPLES OF BETTER REGULATION

6.1 The Government White Paper "*Regulating Better*"⁴ sets out the following six principles of good regulation:

- Necessity
- Effectiveness
- Proportionality
- Transparency
- Accountability
- Consistency

6.2 These principles should be borne in mind both in the context of proposals to introduce new regulation and in reviewing existing regulation. In the case of proposals to introduce regulation of a profession, such as accountants in this instance, the principles of Necessity, Effectiveness and Proportionality are particularly relevant.

6.3 Necessity – is regulation necessary to protect consumers from harm?

6.3.1 The Review Group on Auditing, referred to above, noted in its Report that "there is no evidence of public demand for such a protection, and no evidence of abuse of the term has come to the attention of the Department"⁵. There does not appear to be any evidence that this situation has changed since the publication of the Group's Report in 2000.

6.3.2 The majority of accountants work in finance, business or industry and do not offer services directly to the public. The largest professional accountancy body operating in Ireland, the Institute of Chartered Accountants in Ireland, estimates that only 35% of its members offer services directly to the public⁶. Professional qualifications from the professional accountancy bodies are widely accepted as a quality mark for accountants. Advertisements recruiting accountants routinely specify that applicants should be qualified or part qualified⁷.

6.3.3 Providing legal protection for the term "accountant" will therefore only impact the minority of the profession who provide services directly to the public. Most buyers of

⁴ "Regulating Better – A Government White Paper setting out six principles of Better Regulation", Department of the Taoiseach. See <http://www.betterregulation.ie/index.asp>

⁵ Report of the Review Group on Auditing, page 162.

⁶ Institute of Chartered Accountants in Ireland website www.icaire.com

⁷ See www.jobs.ie

accountancy services are informed consumers such as small business people who are aware of the services they require and the statutory obligations, if any, which affect them.

6.3.4 One of the reasons advanced for protecting the term “accountant” is to protect the public from accountants who are not professionally qualified. However, we have seen in paragraph 3.4 that a number of the services provided by accountants do not need to be carried out by professionally qualified people. The Companies Acts provide a means of dealing with individuals who carry out statutory audits without being qualified to do so. In that case it would appear to be unnecessary to protect the term “accountant” when the crucial auditing function and title already benefit from statutory protection.

6.3.5 Thus, there is no necessity for legal protection of the term “accountant” at this time.

6.4 Effectiveness – will regulation be effective in stopping harm to consumers?

6.4.1 The extremely broad and varied role of the accountant has already been referred to. A significant proportion of the work of many accountants involves the provision of auditing services. The provision of these services is governed by company law. The provision of auditing services by anyone other than a registered auditor is an offence under the Companies Acts. A high proportion of the work carried out by accountants offering services to the public is therefore subject to statutory control. The balance of the services commonly provided by accountants are services which are supplied in competition with others such as accounting technicians or other providers of services to business. Individuals may also choose to provide services for themselves such as completion of tax returns, preparation of accounts etc. While many people choose to retain an experienced third party to provide such services, due to lack of time or lack of knowledge, many others are happy to do this work for themselves without outside assistance.

6.4.2 Another reason frequently cited for protecting the term “accountant” is the danger of incidents of malpractice. Registration of accountants and protection of the title will not prevent such incidents, which occur among professionally qualified as well as other accountants⁸.

6.4.3 A number of the services provided by accountants in public practice may be provided by people other than accountants. Therefore, providing legal protection of the term “accountant” would not have the effect desired by those who support such a move. Individuals providing such services could simply describe themselves in some other way and continue to operate. This possibility was identified by the Review Group on Auditing in its

⁸ The Institute of Chartered Accountants in Ireland received 104 complaints about members in 2005. Source: Annual Report 2005 available at www.icaireland.ie. The Institute of Certified Public Accountants received 28 complaints about members in 2005. Source: Annual Report 2005 available at www.cpaireland.ie.

Report⁹ and was one of the reasons why the Group recommended against protecting the term “accountant”.

6.4.4 If the term “accountant” was afforded legal protection and accountancy services were being provided by non-accountants in competition with accountants, the accountancy bodies would have to publicise and promote the benefits of using registered accountants to provide these services. There is nothing to prevent the professional accountancy bodies from actively promoting their professional qualifications as an indicator of quality now and indeed they have recently begun doing so, for example through media advertising.

6.5 Proportionality – Is regulation the most proportionate, transparent tool for achieving consumer protection?

6.5.1 Protecting the term “accountant” would have an impact on other groups who use similar titles, such as turf accountants, management accountants and accounting technicians, and may in fact prohibit their use. Accounting technicians in particular may be in competition with accountants in relation to some of the services offered by accountants. These groups could be faced with being in breach of the law for using long established titles or having to find some other way to describe themselves which would of course not have the same meaning for members of the public.

6.5.2 A more proportionate means of protecting the term “accountant” would be for the accountancy bodies to continue to actively promote the title of accountant and the value of their qualifications.

7. SPECIFIC ISSUES RAISED IN THE CONSULTATION PAPER

7.1 **Should those providing accounting services to members of the public be subject to registration/supervision?**

The Review Group on Auditing identified serious difficulties with trying to define accountancy services which would make it very difficult to subject providers of such services to regulation/supervision. Providers of certain accountancy services, such as auditing services, are already subject to regulation by their professional accountancy bodies who are, in turn, supervised by IAASA. In relation to other services commonly provided by accountants, it has already been pointed out that many of these services are straightforward, are not legally required, can be provided by people other than accountants and indeed may not be availed of at all. The Competition Authority therefore does not consider that it is appropriate to subject those providing such services to regulation/supervision.

⁹ Report of the Review Group on Auditing, page 162.

7.2 Identify the benefits of no legal protection and/or no registration

7.2.1 The introduction of a system of legal protection of the term “accountant” and subjection of providers of accountancy services to regulation or supervision would impose a cost on accountants which would be passed on to their customers, thus increasing the cost of accountancy services. It would also have the effect of reducing the pool of suppliers of accountancy services, again leading to an increase in costs for consumers.

7.2.2 Maintaining the current system, which provides for statutory protection for a key element of the work done by accountants in public practice but allows freedom in relation to other services provided by them, will allow consumers of accountancy services to continue to reap the benefits of competition in accountancy services.

7.3 Any cost from maintaining the status quo

7.3.1 There are no additional costs involved in maintaining the status quo.

8. CONCLUSION

8.1 Having examined the issue from the standpoint of the Principles of Better Regulation and on the basis of the information available, the Competition Authority has concluded that there is no public interest case requiring legal protection of the term “accountant” at this time.

8.2 It follows that the Competition Authority also considers that there is no case for applying full-blown regulation to the accountancy profession either.

8.3 On the contrary, there would be significant downsides to either proposal.

8.4 Representatives of the Competition Authority would be happy to meet with the Irish Auditing and Accounting Supervisory Authority to discuss the contents of this submission.

APPENDIX 1

General views of the Competition Authority on Statutory Registration of Professions

Economic justification for market regulation

From an economic point of view, the main reason for regulating professional services is to correct or prevent market failures that result in inadequate quality or safety. If consumers cannot evaluate the quality of the service, it is difficult for high-quality, high-cost practitioners to coexist, profitably, with their low-quality counterparts and the average quality of service can decline unacceptably.

The regulatory response to ensure quality or safety often takes the form of registration rules requiring practitioners to be qualified to a certain level. Set standards and codes of conduct for professional services, coupled with disciplinary rules, are employed to help maintain quality and identify over-prescription. Many professional associations carry out some of these functions for their own members on a non-statutory basis.

But regulation often tends to, directly or indirectly, reduce competition unless adequate safeguards are put in place to prevent this, and there is a substantial body of informed literature, both in Ireland and elsewhere, which demonstrates that professional regulation can all too easily result in restrictions with adverse impacts. For example, a system of regulation which allows for, or condones, limits on entry to a profession, the prevention of truthful advertising or the collective setting of fees can lead to higher priced services without improving quality. Such systems, in the Authority's view, raise strong concerns from a competition point of view.

The Economic Effect of Statutory Registration

Statutory registration does not of itself remove information asymmetry, but rather lowers the likelihood of lower quality (and indeed lower cost) supply. The fact that all registered practitioners are of an acceptable standard of qualification does not ensure that they will provide an acceptable quality of service. In addition, if entry to a profession is characterised by excessive restrictions (in particular on numbers entering accredited courses), registration tends to reduce the number of practitioners and to increase the likelihood of excessive fees being charged.

Set standards of conduct and disciplinary procedures may also go toward eliminating unacceptably low quality of service. However, fee-setting or recommended fees schedules have no consumer benefits whatever and, in a market where quality is difficult to evaluate, may have the effect of shielding practitioners from any form of competition. Restrictions on truthful advertising, which is often a signal to consumers with inadequate information, may further prevent price and quality competition.

