

THE MONOPOLIES AND MERGERS COMMISSION

# Architects' Services

## A Report on the Supply of Architects' Services with Reference to Scale Fees

*Presented to Parliament in pursuance of  
Section 83 of the Fair Trading Act 1973*

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*Ordered by The House of Commons to be printed  
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<sup>1</sup>These members formed the group which was responsible for this inquiry (see paragraph 2).

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## Introduction

1. On 19 September 1973 the Department of Trade and Industry sent the following reference to the Commission:

### **Monopolies and Mergers Acts 1948 and 1965**

*Reference to the Monopolies Commission*

*Architects' Services*

The Secretary of State in exercise of the powers conferred upon him by sections 2(1) and 6 of the Monopolies and Restrictive Practices (Inquiry and Control) Act 1948, as amended and extended by sections 1(3) and 2 of the Monopolies and Mergers Act 1965, hereby refers to the Monopolies Commission for investigation and report the supply in the United Kingdom of architects' services.

2. The Commission shall in respect of the supply of such services investigate and report:

- (i) whether the conditions to which the said Act, as so amended and extended, applies in fact prevail and if so in what manner and to what extent;
- (ii) on the things which are done by the parties concerned as a result of, or for the purpose of preserving, those conditions;
- (iii) whether the said conditions or all or any of the things done as aforesaid operate or may be expected to operate against the public interest.

3. The Commission shall in investigating for the purposes of this reference whether the said conditions prevail limit consideration to conditions which prevail or may prevail by virtue of arrangements or practices (falling within section 2(4) of the Act of 1965) whereby two or more persons supplying the relevant services charge fees calculated by reference to an agreed scale.

4. For the purpose of this reference 'architects' services' means the services ordinarily provided in the course of their professional practice by persons registered under the Architects (Registration) Acts 1931 to 1938.

*(Signed)* C E COFFIN

*Under Secretary*

*Department of Trade and Industry*

Dated this 19th Day of September 1973

Since this reference was made before the commencement of the Fair Trading Act 1973, our report is made, as provided for by paragraph 7 of Schedule 11 to that Act, in accordance with the enactments under which the reference was made.

2. On 28 September 1973 the then Chairman of the Commission, Sir Ashton Roskill QC, acting in accordance with the provisions of section 1 of the Monopolies and Mergers Act 1965 and paragraph 9 of Schedule 1 thereto, directed that the functions of the Commission in relation to the investigation under this reference should be discharged through a group consisting of seven members of the Commission under his own Chairmanship. Sir Ashton Roskill retired from the Commission on 30 November 1975. Mr J G Le Quesne QC was appointed a member of the group when he joined the Commission in October 1974, and upon becoming Chairman of the Commission on 1 December 1975 Mr Le Quesne appointed himself Chairman of the group in accordance with the provisions of section 4 of the Fair Trading Act and paragraph 12 of Schedule 3 thereto. The group included Mrs Jacqueline Inchbald and Mr J Gratwick, whose appointments as members of the Commission expired on 31 January 1975 and 31 March 1976 respectively. The names of the other four members who formed the group are indicated in the list of members which prefaces this report.

3. We received evidence from a number of bodies representing suppliers of architects' services and from some individual suppliers. The bodies included the Architects Registration Council of the United Kingdom, the Royal Institute of British Architects, the Faculty of Architects and Surveyors, the Incorporated Association of Architects and Surveyors, the Royal Incorporation of Architects in Scotland and the Royal Society of Ulster Architects.

4. We also received evidence from many other witnesses, representing a cross-section of the main types of users of architects' services, including the Department of the Environment and other Government Departments mainly responsible for building construction programmes, local authorities and local authority associations, public corporations, housing associations, industrial and commercial companies and others. We took oral evidence from some of these witnesses.

5. We obtained information for purposes of comparison about methods of charging for architects' services in several other countries.

6. On 24 October 1975 we informed the six bodies named in paragraph 3 of our provisional conclusion that conditions to which the 1948 Act (as amended and extended) applies prevailed in respect of the supply of architects' services by virtue of arrangements or practices of the kinds specified in the reference. We also notified them of issues that required consideration in deciding whether the conditions, or all or any of the things done as a result of or for the purpose of preserving the conditions, operated or might be expected to operate against the public interest. The bodies made certain representations to us in writing and in June 1976 their representatives attended a hearing for the purpose of discussing these matters with us. At this hearing the Royal Institute of British Architects was represented by counsel.

7. On 26 January 1976 the Secretary of State, in exercise of powers conferred by sections 107 and 110 of the Fair Trading Act 1973, made the Restrictive Trade Practices (Services) Order 1976. This Order extends the operation of

Part I of the Restrictive Trade Practices Act 1956 (which previously had applied only to agreements relating to goods) to agreements between persons carrying on business in the United Kingdom in the supply of services. The Order, however, does not cover the services of architects in their capacity as such which are excluded by virtue of section 109(3) and Schedule 4 of the Fair Trading Act, and it does not therefore affect the present inquiry.

8. This reference was sent to the Commission on the same date as a similar reference concerned with the supply of surveyors' services. The two inquiries have been conducted concurrently by the same group of members, and there is some overlap between them since some architects supply surveyors' services as defined in the other reference.

9. We wish to record our appreciation of the assistance given us by the professional associations representing suppliers of architects' services, particularly the Royal Institute of British Architects, and by all the others, including numerous firms of architects, who provided us with information required in our investigation. Some of the information relates to confidential business matters and we have been careful not to disclose any of this information in any way that would identify the firms who supplied it.

## CHAPTER 1

### The conduct of the inquiry

10. The subject of our inquiry is the supply of architects' services in the United Kingdom. Architects' services are defined in paragraph 4 of the reference as the services ordinarily provided in the course of their professional practice by persons registered under the Architects (Registration) Acts 1931 and 1938.

11. The conditions to which the relevant legislation applies shall be deemed to prevail if the supply in the United Kingdom of the services described in the reference is, to the extent of at least one-third, by any two or more persons who so conduct their respective affairs as in any way to prevent or restrict competition in connection with the supply of such services. Paragraph 3 of the reference directed us to limit consideration in this case to conditions which prevail or may prevail by virtue of arrangements or practices whereby two or more persons supplying the relevant services charge fees calculated by reference to an agreed scale.

12. We decided that, in order to obtain the information needed to enable us to form a conclusion on whether at least one-third of the relevant services were provided by persons who charged fees calculated by reference to an agreed scale, it was necessary to conduct a sample survey by postal questionnaire of a large number of architectural practices. A questionnaire was drawn up primarily for this purpose, but also to obtain certain other information to help in our assessment of the system of charging, including information about the costs and profits of suppliers of the services. The letter which was sent with the questionnaire invited the addressees to put forward their views on any other matters relevant to the inquiry which they would like to bring to the Commission's attention.

13. The questionnaire and the sampling arrangements were discussed in detail with the Royal Institute of British Architects, and the other professional associations concerned were informed about them. In September and October 1974 we carried out a pilot survey of about 20 practices to test the draft questionnaire and assess the likelihood of satisfactory response under the main survey. Certain changes were made to the questionnaire in the light of the pilot survey and after further consultations with the RIBA. The main survey was started in January 1975, when we sent 878 questionnaires to addressees chosen on the basis of one in seven of a list of architects and firms of architects believed to be in private practice in the United Kingdom. By 1 June 1975, when we started our analysis of the returned questionnaires, we had received 729 replies, including 588 questionnaires completed by suppliers of the services.

14. In February 1975 we were informed by the RIBA that it had obtained a legal opinion that the statutory conditions referred to in paragraph 1 could not be found to prevail. The reason given was that less than one-third of active architects are principals in private practice, virtually all the remainder being in salaried employment and so could not be supplying their services for fees. We rejected this opinion. The relevant services for the purpose of determining

the prevalence of the conditions are the services provided by architects to clients for fees. In our view architects in salaried employment render their services under a contract of service and are by section 2(1) of the 1965 Act excluded from 'the supply of services' as referred to in that section.

15. The questionnaire survey gave us information on the profitability of architects' practices as a whole. We also commenced an investigation into the relationship between individual project costs and profits in ten selected architectural practices. The RIBA was not, however, satisfied that this investigation was sufficiently representative to be useful, and in view of this we decided not to proceed with it. At our request the RIBA submitted proposals for a job cost survey, which would have entailed an investigation of several hundred projects of different types and sizes. We considered the RIBA proposals but decided not to implement them. Our main reasons were:

- (a) It would be unsatisfactory to attempt a survey which required architects to produce retrospective costings of their projects. Many firms were unlikely to keep the necessary records, and this would affect response. Moreover, the information obtained would be likely to involve arbitrary allocations of costs between projects, particularly costs relating to use of principals' time and to overhead expenditure. Inevitably there would be doubts about the reliability of conclusions drawn from the resulting information.
- (b) It would be difficult to obtain typical jobs within chosen categories, because each building project is unique and prey to so many varying influences which could affect its costs, and this again could throw doubt on the reliability of the results.
- (c) The investigation would be very costly, and the expenditure could not be justified in terms of the value to be gained from it in the context of our inquiry.

The RIBA had carried out a job cost survey in 1962 of 377 jobs from private practices and 126 jobs from local authorities, and we noted that this had not produced sufficient evidence on which to base any detailed recommendations for change in the structure of the scales. We also noted that a survey of architects' design costs by the National Board for Prices and Incomes in 1968, covering about 1,300 individual projects in both public and private offices, did not satisfy the RIBA that it was sufficiently deep and detailed to form a basis for drawing conclusions about the profitability of the scales for different types of work.

16. The architects' professional bodies were supplied with the results of our questionnaire survey, in so far as this was possible without disclosing details which could be attributed to individual practices. The professional bodies themselves answered questionnaires from which we obtained much information about the nature and structure of the architectural profession in the United Kingdom and the scales of charges which the bodies publish.