

# **Application by the Institute of Chartered Accountants of Scotland**

A report by the Office of Fair Trading to the Scottish Government on the likely competition effects of the Institute of Chartered Accountants of Scotland becoming a body authorised to grant Confirmation Rights under sections 25- 29 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990

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# 1 GENERAL SUMMARY

- 1.1 The advice below concerns an application by the Institute of Chartered Accountants of Scotland (ICAS) to be designated as a body authorised to grant its members rights of audience and rights to conduct litigation. The advice is given on the basis of information supplied to the Office of Fair Trading (OFT) by the Scottish Government in August 2008.
- 1.2 Under sections 25-29 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (as amended) (the Act), if a body wishes to grant rights of audience or rights to conduct litigation it must apply to the Lord President of the Court of Session and the Scottish Government.
- 1.3 The President and the Scottish Government must seek the advice of the OFT who shall consider whether granting the application would have, or be likely to have, the effect of restricting, distorting or preventing competition to any significant extent.
- 1.4 ICAS is a professional body that seeks to make an application to enable its members to acquire Confirmation Rights before the Sheriffs Courts of Scotland. Its application for authorised status contains disciplinary rules and procedures and qualification regulations that, together, govern the practice of its members.
- 1.5 For the reasons discussed in the following paragraphs, we believe that the designation of ICAS as an authorised body would not have, or be likely to have the effect of restricting, distorting or preventing competition to any significant extent. On the contrary, it is likely to increase competition in the provision of this type of executry service. That said, we note that ICAS's rule limiting applicants to Practising Certificate (PC) holders only, some 10 per cent of members, may limit the pro-competitive benefits which may flow from the grant of the application.

## **2 ICAS'S APPLICATION AND ITS LIKELY COMPETITION EFFECTS**

### **The market for confirmation services**

- 2.1 In Scotland an executor is appointed to administer the estate of a deceased person. His role is to establish the value of the assets, transfer them to the beneficiaries and pay any debts. Confirmation is the legal document that provides executors with the authority to undertake these tasks and application for confirmation rights is made to a Sheriff Court in Scotland. These services have traditionally been provided by high street law firms. Over 800 law firms in Scotland are listed with the Law Society as offering this service.
- 2.2 ICAS believes that its practising members, by virtue of their qualifications as Chartered Accountants and of their knowledge and experience of personal and trust affairs, taxation and compilation of all kinds of financial statements, are appropriate persons to be engaged in these services. It further believes that the public would wish to engage its members' services.
- 2.3 ICAS proposed to only allow those of its members who hold:
- a. Practising Certificates (PC), estimated at 10 per cent of members,
  - b. can demonstrate appropriate training, and
  - c. have made satisfactory arrangements for the handling of monies belonging to the estate
- should be permitted to apply for Confirmation Rights.

### **ICAS's application**

- 2.4 ICAS is a professional body of chartered accountants with over 200 member firms and 17000 members. Its application is to enable certain members to acquire rights in relation to all Sheriffs Courts in Scotland limited<sup>1</sup> to the following:
- a. petitions to a Sheriff Court for appointment of executor's dative in intestate estate and some testate estates
  - b. application to a Sheriff Court to resolve informalities in the

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<sup>1</sup> See Section 1 of its Application

- execution of certain Wills
- c. applications to a Sheriff Court to resolve queries regarding the domicile of the deceased
  - d. applications to the Court of Session where an original will has been lost but there is an extant copy
  - e. written applications to a Sheriff Court to present the inventory of the deceased's estate, which is the basis for which confirmation will be granted.

## Likely effect on competition

- 2.5 We consider first the likely effect on competition of ICAS members being authorised apply for Confirmation Rights in an area that is at present the preserve of solicitors.
- 2.6 To the extent that ICAS members will be able to conduct work currently reserved to solicitors, granting ICAS's application should increase the number of professionals who may carry out the services described in paragraph 2.4 above. This may be expected to stimulate competition in the market for those services. Consumer benefits that may flow from an increase in competition include an increased choice of service providers and the possibility of reduced costs.
- 2.7 In addition, consumers may benefit from the need to instruct fewer professionals in relation to Confirmation. Instructing a solicitor will no longer be necessary.
- 2.8 Although for these reasons granting the ICAS's application is likely to have a positive effect on competition, these pro- competitive effects may be limited if the ICAS's rules are unduly restrictive. The OFT's report, *Competition in Professions*<sup>2</sup>, identified three broad categories of restriction that may typically relate to professional rules: restrictions on entry, restrictions on conduct and restrictions on methods of supply. We consider ICAS's rules under these categories.

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<sup>2</sup> OFT 328 Competition in Professions, published March 2001. The report is available on the OFT website at [www.offt.gov.uk](http://www.offt.gov.uk)

### *Restrictions on entry*

- 2.9 The entry requirements are set out in section 2 and 5 of the Application. Confirmation Rights will only be provided to PC holders who have completed suitable training as described in the application.<sup>3</sup>
- 2.10 Overall, limiting applicants to those who have PC's may impose requirements that go beyond what is necessary to ensure an appropriate standard thus deterring potential applicants and limiting the pro-competitive benefits which may flow from the grant of the application.

### *Restrictions on conduct*

- 2.11 ICAS's Rules of Conduct contains rules that govern the way in which its members may practise. These do not raise competition concerns.

### *Restrictions on methods of supply*

- 2.12 From the information provided in the application, it does not appear that ICAS rules prevent members from forming partnerships (or other business structures) with either other bodies or with other professionals.

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<sup>3</sup> See page 8

### 3 CONCLUSIONS

- 3.1 In summary, designating ICAS as a body authorised to grant Confirmation Rights would not have or be likely to have the effect of restricting, distorting or preventing competition to any significant extent. On the contrary, it is likely to increase competition in the market for the supply of Confirmation services.
- 3.2 However, ICAS's rules restrict the number of applicants. Such rules may therefore lessen any increase in competition which would otherwise result from the grant of the application. In the light of the findings of the OFT's report *Competition in Professions*, we would like ICAS to review the rule which we have identified in paragraph 2.3 above.