

APPENDIX 2  
(referred to in paragraph 2.1)

**The reference**

1. On 24 February 1988 the Director General of Fair Trading sent to the Commission the following reference:

The Director General of Fair Trading in exercise of his powers under sections 47 (1) and (2), 49 (1) and 50 (1) of the Fair Trading Act 1973 (hereinafter called 'the Act'), hereby refers to the Monopolies and Mergers Commission the matter of the existence or possible existence of a monopoly situation in relation to the supply within the United Kingdom of civil engineering services.

The Commission shall investigate and report on the questions whether a monopoly situation exists in relation to such supply and, if so:

- (a) by virtue of which provisions of section 7 of the Act that monopoly situation is to be taken to exist;
- (b) in favour of what person or persons that monopoly situation exists;
- (c) whether any steps (by way of uncompetitive practices or otherwise) are being taken by that person or those persons for the purpose of exploiting or maintaining the monopoly situation and, if so, by what uncompetitive practices or in what other way;
- (d) whether any action or omission on the part of that person or those persons is attributable to the existence of the monopoly situation and, if so, what action or omission and in what way it is so attributable; and
- (e) whether any facts found by the Commission in pursuance of their investigations under the preceding provisions of this paragraph operate, or may be expected to operate, against the public interest.

In this reference 'civil engineering services' means the services supplied by persons who have been admitted to the membership of the Institute of Civil Engineers and who offer to the public their services as consultants in that field.

The Commission shall for the purpose of this reference limit consideration to agreements and practices relating to the advertising of civil engineering services, whereby persons offering such services conduct their affairs as mentioned in section 7 (2) of the Act.

The Commission shall report on this reference within a period of 9 months from the date hereof.

(signed) GORDON BORRIE  
*Director General of Fair Trading*

24 February 1988

2. On 24 February 1988 the Chairman of the Commission, acting under section 4 of the Fair Trading Act 1973 and Part II of Schedule 3 thereto, directed that the functions of the Commission in relation to the reference should be discharged through a group consisting of six members of the Commission, including himself as Chairman. The composition of the group is indicated in the list of members which prefaces this report.

3. Notices inviting evidence were placed in:

<i>The Times</i>	<i>Independent</i>
<i>Financial Times</i>	<i>Building</i>
<i>Daily Telegraph</i>	<i>Estate Times</i>
<i>Guardian</i>	<i>New Civil Engineer</i>

4. We received evidence from the Institution of Civil Engineers, the Association of Consulting Engineers, other professional bodies, a number of firms of consulting and civil engineers and several other sources.

5. We provisionally concluded that a complex monopoly situation existed in favour of the members of the group consisting of members of the Institution of Civil Engineers and that the observance of the rules of both the Institution of Civil Engineers and the Association of Consulting Engineers contributed to the establishment of the monopoly situation. We subsequently informed these two bodies of the provisional conclusion. Both were given an outline of the points which required consideration when assessing the effect of the monopoly situation on the public interest. We invited both bodies to make written representations and to attend hearings.

6. We thank all those who helped us with our inquiry, and in particular the Institution of Civil Engineers and the Association of Consulting Engineers.

## APPENDIX 3

(referred to in paragraphs 3.18 and 4.20)

### Main elements of rules of selected professions governing advertising and publicity

<i>Signs, nameplates, stationery, etc</i>	<i>Permitted media</i>	<i>Touting/ canvassing/ suplicating</i>	<i>General content</i>	<i>Fees</i>	<i>Claims of superiority</i>	<i>Specialisms</i>	<i>Derogation from dignity of profession</i>
<b>The Law Society</b> Various specified restrictions	No unsolicited visits or telephone calls, with specified exceptions		Publicity to be legal, not inaccurate or misleading, in good taste and to conform with BCAP	Fee statements allowed: specified exceptions. No direct comparison with or direct criticism of fees of any other identifiable solicitor or solicitors	No comparison with or criticism of quality of service provided by any identifiable solicitor or solicitors. No reference to success rate	Publicity about particular fields of work allowed only if in fact able to handle such work. Factual claims of experience in particular fields allowed. Claims for specialisation or expertise in particular fields allowed only if member of relevant Law Society panel or possesses qualification recognized by Law Society for this purpose	When obtaining or attempting to obtain instructions, must do nothing which in any manner compromises or impairs or is likely to impair the good repute of the solicitor or of his profession
<b>The Law Society of Scotland</b> 'In any way he thinks fit'		Touting and canvassing prohibited	No inaccuracy or misleading statements	No fee comparison with others	No claim of superiority over others in quality of practice or services		Not to be by such means or of such a character as may reasonably be regarded as bringing the profession into disrepute
<b>The Institute of Chartered Accountants in England and Wales</b> General requirement for professional dignity and good taste	Advertising, in any medium, permitted	No unsolicited telephone calls or visits	Regard for ASA standards	No fee comparison or quote. Free consultations over fees may be offered	No claim of superiority and no belittling	Specialisms may be advertised	Not to obtain or seek work in an unprofessional manner
<b>General Dental Council</b>	No unsolicited telephone calls	Touting and canvassing prohibited	Legal, decent and truthful, with regard for professional propriety. Claims must be capable of substantiation. No flamboyant grandiose or misleading descriptions of any services	Fee quote allowed	No claim of superiority	No indication of specialist expertise. Mention of particular types of treatment allowed	Not to be of such a character that could reasonably be regarded as likely to bring the profession into disrepute

<i>Signs, nameplates, stationery, etc</i>	<i>Permitted media</i>	<i>Touting/ canvassing/ supplanting</i>	<i>General content</i>	<i>Fees</i>	<i>Claims of superiority</i>	<i>Specialisms</i>	<i>Derogation from dignity of profession</i>
<b>The Chiroprodists Board</b> To be dignified and professionally restrained in character	Written and audio visual allowed		To be headed State Registered Chiroprodist. No other material to be larger or more prominently displayed than the heading. Accurate and restrained. Should not be false, fraudulent, misleading, deceptive, self-laudatory, unfair or sensational	No explicit claims for superiority in personal skills, equipment or facilities			
<b>The British Chiroprody Association</b>		Canvassing/soliciting/ supplanting prohibited	BCAP or IBA Code	Can be quoted above a set minimum			
<b>The Society of Chiroprodists</b> Name plates etc, to be of a professional character, dignified and restrained	Not to take advantage of right to submit or comment upon copy in the press as a means of advertising. Also applies to press interviews. Size of announcements of practice regulated		BCAP, dignified and restrained in character		No deprecation of professional skill, knowledge, services or qualifications of other members for the purpose of obtaining patients or work		
<b>General Optical Council</b>			Claims must be capable of substantiation, legal, decent, honest and truthful		No claims of superiority and no reference to efficiency or facilities of others		Not to be of such a character that could reasonably be regarded as likely to bring the profession of ophthalmic optician or of dispensing optician into disrepute

<i>Signs, nameplates, stationery, etc</i>	<i>Permitted media</i>	<i>Touting/ canvassing/ supplanting</i>	<i>General content</i>	<i>Fees</i>	<i>Claims of superiority</i>	<i>Specialisms</i>	<i>Derogation from dignity of profession</i>
<b>The Physiotherapists Board</b> Signs should be accurate and professionally restrained	Unrestricted		Should not be false, fraudulent, misleading, deceptive, self-laudatory, unfair or sensational		No explicit claims of superiority in personal skills, equipment or facilities		
<b>Chartered Society of Physiotherapy</b>	No unsolicited personal or telephone calls	Forbidden	Accurate and professionally restrained. Not to be false, fraudulent, misleading, deceptive, self-laudatory unfair or sensational		No explicit claims of superiority		To adhere at all times to personal and professional standards which reflect credit on the profession
<b>The Institution of Structural Engineers</b> According to conditions set out in guidelines on site sign-boards and use of the Institution's logo	Advertisements in newspapers, journals, and directories, radio and TV allowed. Text limited to the name of the member and his firm, address and telephone number, with a brief description of the services offered. Format should be 'discreet'. Free to contribute to items in the press, radio and television to give information of help or interest to the public	Can send letters to persons or organizations who may have an interest in receiving the information	Must be factual and not misleading. Freedom to inform that is helpful to the public, while upholding the professional dignity of a member as an engineer.		No extravagant or self-laudatory language. Not to be unfair to other members or other professions. Must not imply that the services offered may be obtained only from that member or that they are better than those offered by others	May state qualifications of members of a firm or partnership and give description of the services available	Employed members must use their 'best endeavours' to ensure that their employers do not in any advertising or approach to clients compromise their professional standing
<b>The Chartered Institution of Building Services Engineers</b> Any medium permitted			BCAP or IBA Code		Forbidden		Publicity not to undermine the status of the profession

<i>Signs, nameplates, stationery, etc</i>	<i>Permitted media</i>	<i>Touting/ canvassing/ supplanting</i>	<i>General content</i>	<i>Fees</i>	<i>Claims of superiority</i>	<i>Specialisms</i>	<i>Derogation from dignity of profession</i>
<b>The Royal College of Veterinary Surgeons</b>							
To be of a professional character	Radio and TV permitted, subject to general content and dignity of profession considerations	No unsolicited personal calls or mail. No invitations to Open Days to non-clients	Nothing to be included in breach of the law or omitted if the law requires its inclusion. To be honest, truthful and capable of substantiation. Not to be so worded as to abuse trust of lay public or exploit their lack of experience or knowledge of the advertiser, his services or the services of other vets. Not to be directly or indirectly aimed at children or young persons. Nothing likely in the light of generally prevailing standards of decency and propriety to cause serious or widespread offence	Not to be quoted. (Reasons related to difficulty of quoting in advance for the services.) Availability of preliminary estimate can be advertised	Forbidden. Other vets not to be disparaged	Claims to specialization for/bidden. Additional qualifications can be shown. May not indicate that only one species or class of animal treated. May indicate services principally so provided on condition emergency first aid services for other animals shown	Not to contain any material or be in a form or be published or circulated in a way which would be likely to bring the profession into disrepute. Proper professional tone to be maintained

APPENDIX 4.1  
(referred to in paragraph 4.4)

**Institution of Civil Engineers**

***Advertising and Publicity***

The following Council Pronouncement was approved for publication by the ICE Council on 18 June 1985:

1. The conduct of members in regard to advertising and publicity is governed by the Institution's Rules for Professional Conduct made by the Council on 19 March 1963, and modified in 1971, 1973 and 1982 in accordance with Bylaw 32.
2. Members are reminded in particular of the requirements of Rules 2, 4-6 and 9.
3. The guidance which follows is intended to assist members in the practical interpretation of these Rules. This guidance supersedes or as necessary incorporates the Council Pronouncements on professional conduct of February/March 1939, July 1965, May 1961, May 1967, July 1971 and December 1971, together with the Council Pronouncements on civil engineering works and publicity of November 1945 and April 1964, which are hereby cancelled.
4. Members may, without infringing the Rules of Professional Conduct, publish through any recognised medium advertisements of the services which they, their companies or the partnerships to which they belong are able to offer to prospective clients or employers.
5. Such advertisements should be plain statements of facts which are open to verification. They may list by name the Corporate Members in particular firms or partnerships, and state their professional qualifications. They may state whatever range of particular specialisations they, or the firm or partnership concerned may have to offer, illustrated by reference to or by description of actual works for which they, the firm or partnership may have been responsible, or, where they have played a part in such works, specifying the nature and extent of their participation.
6. Such advertisements should be plain in style, and must not in their wording or presentation infringe the Rules of Professional Conduct.
7. Members may prepare brochures and informatory letters which conform to paras 4 to 6 above. Such brochures may be supplied and letters circulated to clients or to potential clients who have requested them, or who have a genuine potential interest, but should not be the subject of general unsolicited circulation.
8. Members may issue news releases to the press, radio and television in regard to their own work, provided that they are factual and do not infringe the Rules of Professional Conduct.
9. Members are reminded that Institution Proceedings and other publications are the appropriate means of publication of fully detailed professional and technical papers on civil engineering subjects. Such papers are of the essence of the learned society role of the Institution.
10. Members are free, however, to:
  - (a) write articles in the press or for radio and television,
  - (b) be interviewed or named in the press or on radio or television,
  - (c) take part in radio or television programmes, films or other public appearances,in regard to their own work or in regard to matters of wider civil engineering interest provided that they deal with discretion with matters of opinion, as distinct from matters of fact, and in writing or speaking avoid any infringement of the Rules of Professional Conduct.

11. Members may permit their names to appear with illustrations of works with which they have been professionally connected, published as parts of advertisements other than those published in accordance with paras 4 to 6 above, but members are expected to ensure that their names appear in an unobtrusive manner and not in any way as suggesting solicitation of professional work.
12. There is no objection to the appearance of the names of Corporate Members on commemorative tablets and stones on completed works, and a Corporate Member may exhibit his name on works in course of construction.
13. Members may, in reply to invitations in the press or otherwise, agree to have their names included in a panel or other list being prepared by a local or other authority for future works to be carried out by the authority. They may also enquire of any public body whether they maintain such a panel or list and apply to have their names included.
14. Whether for individual or combined display members may use sign-boards of their own design provided that in their style and content they conform generally to the guidance regarding advertising in paras 5 and 6 above.

## Association of Consulting Engineers

### *Guidance on Publicity*

#### 1. *Image*

All Members share responsibility for the impression which the general public obtains of the Profession of Consulting Engineers. The best impression will result from work well executed during and after its completion. Individually and collectively much can be done to maintain a favourable image.

#### 2. *Information*

It is also important that information about the services available from Consulting Engineers is accessible to those who require it when they want it. The need for care in identifying suitable firms should not be minimized and the source of advice for doing so indicated. It should be explained that professional assistance should neither be asked for nor given lightly.

#### 3. *Independence*

The virtue of independence needs to be explained and the consequent benefit of engaging Members of the Association of Consulting Engineers stated. The fact should be emphasized that Members have no connections with contracting or manufacturing concerns enabling them to act as true fiduciary advisors to their clients.

#### 4. *Collective Promotion*

The responsibility for ensuring that the general public are aware of the various functions of Consulting Engineers, recognize the professional nature of their services, understand the basis of their remuneration and are able to seek suitable assistance should they need it is a collective one in which the Association and its Regional Groups play a leading role.

#### 5. *Individual Promotion*

Individuals are nonetheless encouraged to play their part within the framework of the Association's Articles, specifically 15(iii), 15(viii) and 15(xv), so as to ensure the wellbeing of the profession and to serve the public at large. In the paragraphs set out below guidance is given on the many facets of promotion. Members seeking advice on publicity matters should apply the spirit of their professional behaviour and consult the Secretary for confirmation when in doubt. Deserved recognition for good work is normally obtainable without transgressing professional ethics. The only factor to observe is that appropriate information should be readily available as soon as a potential Client seeks it but not forced upon him unsolicited.

#### 6. *Sponsorship*

Sponsorship of occasions with a charitable intention are now commonplace. Members may understandably wish to assist some of these events. Before doing so, care should be taken to check that the benefits are indeed destined for a worthy cause, ie one which has registered charity status, is educational or otherwise non-profit-making. Support may then take the form of donations, help with the organization or participation in the events themselves. In doing any of these things publicity for the Association as a whole should be the aim wherever possible. Thus in the first instance, if a list of donors is to be published, Members of the ACE should ask for their names to be placed together. Where help is given with organization, the ACE logo as well as the firm's name should be apparent on all literature and signs. Finally, the markings on and about participants should be restrained but readable.

### *7. Site Notice Boards*

The use of site notice boards is encouraged by the Association. Boards should be so positioned and of such size that they can be read without difficulty from the nearest point of public access (normally a highway). The boards should conform with the pattern laid down by the Association to harmonize in size and in style with those of any other construction professions involved (eg RIBA or RICS).

### *8. Directory Entries*

Members are encouraged to make use of the yellow pages of telephone directories or any appropriate directory. In all directory entries the description 'Consulting Engineer' should be qualified with words indicating the engineering discipline proffered eg 'civil, chemical, etc' and the basic information elaborated upon where possible by adding any of the specialist headings utilized in the Consulting Engineers Who's Who and Year Book which are pertinent to the publication in which the directory entry is to appear. As a guide, a directory is a reference book which can be retained separately by the holder; Prestel and similar view data systems fall within this category. The intention to include entries of a directory style in the proceedings of a non-engineering professional institution announcing a firm's relevant expertise in a non-engineering specialization should be referred to the Association for consideration.

### *9. The Consulting Engineers Who's Who and Year Book*

This publication gives Members' firms the best opportunity to make known their capabilities in some detail. The Association has no editorial responsibility for this useful publication but plays a part in advising on its format and has considerable interest in its accuracy and the professional correctness of its entries. The Association also endeavours to have this publication circulated widely.

### *10. Notification of Changes in Firms, Partnerships, Addresses, etc*

Announcements may be sent to the public press for printing in their editorial and notice section on such matters as opening or changing the address of a firm's office and on the appointment and retirement of principals or other key staff. These may include factual information on the appropriate specializations of the firms as given in the Consulting Engineers Who's Who. Such announcements may be copied to existing or previous Clients.

### *11. Interviews: Press or Broadcasting*

Members are encouraged to give interviews if so requested to journalists or on the radio or television provided that their comments are factually helpful, not critical of others and not overweening. Wherever possible Membership of the Profession of Consulting Engineers should be made evident, and the maximum care taken to ensure that contributions are not misrepresented.

### *12. Articles in National or Technical Press*

Similarly Members are encouraged to contribute articles to the National or Technical Press but should not pay or seek payment for doing so. However copies of the articles may subsequently be purchased provided this is not a prerequisite of printing the article. Again Membership of the Association should be indicated.

### *13. Exhibitions*

Members and their firms may participate in exhibitions. In such circumstances they should act collectively with other Members under the banner of the Association and promote the ACE utilizing its publicity material. To this end members should contact the Association before committing themselves to action.

### *14. Brochures*

Firms are encouraged to maintain brochures describing and illustrating their work, giving details of their history and principal achievements. Such brochures should be used to respond to enquiries but may also be distributed to existing Clients.

#### 15. *House Magazines*

House magazines and other publications produced for the benefit of the firm's staff are to be commended. If suitable they may be distributed to existing Clients and Professional contacts as a matter of interest.

#### 16. *Captions to Photographs*

Whenever a photograph of an engineering work is published (eg in support of a technical article) it is desirable that credit is given to those concerned. Firms should do what they can to ensure that this is done. In return credit should be given to Architects, Contractors etc in any caption to a photograph utilized by Members themselves.

#### 17. *Congratulatory Announcements*

Where it is common practice abroad for firms to put congratulatory announcements in the local press on such occasions as a Ruler's anniversary, Members are recommended to act collectively within the ACE insignia. Similarly where special commemorative brochures are prepared or announcements made to signify the completion of a project at home or abroad any Member's firm concerned in wishing to participate should collaborate with other Members and indicate Membership of the Association. Such announcements should concentrate on the service which has been satisfactorily provided, and give the address of the office responsible.

#### 18. *Greeting Cards*

The exchange of cards at Christmas (and occasionally at other times) is behaviourally unexceptional.

#### 19. *Advertisements for Staff*

Classified advertisements for staff should avoid by their layout and wording any suggestions that could be interpreted that the advertisement is intended to draw attention to the firm rather than to its need for staff.

#### 20. *Firms*

Since membership of the Association is individual, the use of the term 'Member Firm' is not correct even though it is often used, loosely, to describe any Firm in which one or more principals are Members. In providing official certificates and references the correct title of 'Member's Firm' or 'Members' Firms' should be adopted. However, it is appreciated that on more informal occasions Members may find themselves using the phrase 'Member Firm' as a matter of convenience. Discretion must then be exercised to see that no misunderstanding is created. Provided this is done, Council will not be likely to object nor to sustain an objection raised by others.

Members may use the eagles' heads portion of the Association's crest (the badge) on their stationery to denote membership, and indeed are encouraged to do so. MConsE may also be added to Members' qualifications. The term 'Members of the Association of Consulting Engineers' may be used if it is clear that it refers to those principals who are Members of the Association and not to those who are not Members. Firms in which any principal is a Member may use the phrase 'Member Firm of the Association of Consulting Engineers' as a general heading.

#### 21. *Client Lists*

Where there are reasons to believe that clients use lists of potential consultants it is in order for Members to enquire what the procedures are for the creation and maintenance of such lists.

#### 22. *Public Relations Consultants*

Members who engage the services of Public Relations Consultants should ensure that they are familiar with the ethics of the profession and the guidance contained in this booklet.

### **23. Consortia**

Where a Member's Firm goes into a consortium, that is a temporary association for a particular project or group of projects, other members of the consortium should be prevailed upon to conform to the ethics of the Association Members if they do not already do so.

### **24. Multi-Activity Firms**

The position of multi-activity firms may sometimes be complex. The conduct of activity in fields other than Consulting Engineers can be viewed separately and in accordance with the ethics of that professional field provided that:—

- (i) the activity concerned is pursued by a firm which is demonstrably separate from the remainder of the Group or Practice.
- (ii) the activity concerned is not one which is practised by Members of the Association.
- (iii) no Member of the Association serves as a Director or Partner in that firm.
- (iv) the name of that firm cannot be confused with that of the Parent Practice.
- (v) the public relations activities, and publicity material disseminated, are in forms which do not bring into disrepute Directors or Partners of the remainder of the Group or Practice who are Members of the Association.

APPENDIX 7  
*(referred to in paragraph 7.1)*

**Fair Trading Act 1973: note on complex monopoly situation**

1. Under the provisions of section 7(1)(c) of the Act a 'monopoly situation' exists in relation to the supply of services of any description if at least one-quarter of all the services of a particular description which are supplied in the United Kingdom are supplied by members of one and the same group consisting of two or more such persons as are mentioned in subsection 7(2) of the Act.

2. Section 7(2) provides that the two or more persons referred to in subsection 7(1)(c) in relation to services of any description, are any two or more persons (not being a group of interconnected bodies corporate) who whether voluntarily or not, and whether by agreement or not, so conduct their respective affairs as in any way to prevent, restrict or distort competition in connection with the supply of goods of that description, whether or not they themselves are affected by the competition and whether the competition is between persons by whom or for whom, services are supplied. Such a situation is described by the Act (section 11) as a 'complex monopoly situation'.

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