COMPETITION (LIBERAL PROFESSIONS): COMMISSION STATEMENT

Subject: Price fixing
Restrictive practices

Industry: Liberal professions
(Lawyers, accountants, architects, engineers, pharmacists, etc)

Source: Commission Statement IP/03/420, dated 21 March 2003

(Note. The Commission is inviting comments on the regulation of the liberal professions and its effects. According to an independent study carried out for the European Commission, the public would gain if lawyers, architects and other liberal professions were less regulated. Regulation of professional services varies greatly from one European Union country to another, particularly with regard to prices, advertising and inter-professional collaboration.)

For several years, the Commission's competition services have been faced with the question of applying the competition rules, particularly Article 81 of the EC Treaty on restrictive practices, to professional services as a result of complaints, notifications or parliamentary questions. The Commission's action in the field to date comprises three decisions whose main principles have been confirmed by the European Courts. These decisions concerned customs agents' tariffs in Italy, patent agents tariffs in Spain, and the code of conduct of the patent agents at the European Patent Office.

The decision to commission a study on liberal professions arises from the need to know more about the regulations at national level in view of various ongoing cases, of the recent judgments by the Court of Justice in the *Arduino* and *Wouters* cases (on referral from an Italian and a Dutch court respectively) and of an emerging trend among a few public regulators and self-regulators in the Member States of the European Union to ease some of the rules.

The study carried out by the Institute for Advanced Studies in Vienna is meant to open a debate at the European level as to whether the level of regulation for the professionals is out of step with economic developments and technical progress and whether any rules are unjustified under competition law. It compares the regulations governing lawyers, notaries, accountants, architects, engineers and pharmacists in all EU States and concludes that the situation varies considerably from one country to another. Austria, Italy, Luxembourg, Germany and possibly Greece are the countries with the most restrictive regulations for all professions whereas the UK, Sweden, Denmark, the Netherlands, Ireland and Finland show rather liberal regulatory regimes (with the exception of pharmacists in the Nordic countries). The other countries (Belgium, France, Portugal and Spain) appear to be somewhere in the middle.

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On a scale of "regulation indices" from 0 to 12, the study finds that Greece is the country where the legal profession (lawyers and notaries) is the most regulated (9.5) while Finland has practically no rules (0.3). Most other countries cluster around 6. Italy, on the other hand, has the highest regulation index for architects (6.2), a profession which in itself is not the most regulated one since the average across the EU is less than 3. For more information on regulation indices see following table:

	Accountants	Legal	Architects	Engineers	Pharmacists
Austria	6.2	7.3	5.1	5	7.3
Belgium	6.3	4.6	3.9	1.2	5.4
Denmark	2.8	3.0	0	0	5.9
Finland	3.5	0.3	1.4	1.3	7.0
France	5.8	6.6	3.1	0	7.3
Germany	6.1	6.5	4.5	7.4	5.7
Greece	5.1	9.5	n.a.	n.a.	8.9
Ireland	3.0	4.5	0	0	2.7
Italy	5.1	6.4	6.2	6.4	8.4
Luxembourg	5	6.6	5.3	5.3	7.9
Netherlands	4.5	3.9	0	1.5	3.0
Portugal	n.a.	5.7	2.8	n.a.	8
Spain	3.4	6.5	4.0	3.2	7.5
Sweden	3.3	2.4	0	0	12
UK	3.0	4.0	0	0	4.1

The study represents a contribution to the debate and does not reflect the Commission's views. It is based on responses from national professional associations, and looks at regulations on market entry and conduct, such as the regulation of fees (fixed prices, minimum and/or maximum prices), advertising and marketing, inter-professional collaboration, restrictions on geographical locations or on establishment of branch offices, and so on. It concludes, among other things, that there is a trend to lower regulation and that in those countries with low or no regulations there is no evidence that consumers are less protected.

Another conclusion is that countries with low degrees of regulation have relatively lower revenues per professional, but a proportionally higher number of practising professionals generating a relatively higher overall turnover. This would suggest that low regulation is not a hindrance but rather a spur to overall wealth creation. The study is available on the Internet. The Commission would like to receive comments on the study by the end of May. ■