PRICING POLICY (ARCHITECTS): THE BELGIAN ARCHITECTS CASE

Subject: Pricing policy
Associations of undertakings
Professional bodies

Industry: Architects
(Implications for other professions)

Parties: Belgian Architects' Association (Ordre des architects / Orde van architecten)

Source: Commission Statement IP/03/1500, dated 5 November 2003

(Note. The Commission's Statement of Objections, directed at the Belgian architects' fee scales, is the latest move in the Commission's campaign to extend the long arm of competition law to professional, in addition to commercial, activities. This is a specific case; more generally, the Commission is seeking cooperation from the professions in a review of professional practices in the light of competitiveness among professional firms.)

The Commission has sent the Belgian Architects' Association a warning that its recommended minimum fee scale could constitute a violation of European Community's competition rules. The Commission's Statement of Objections reflects the preliminary view of the Commission and does not prejudice the final outcome of the case. The Belgian Architects' Association now has two months to reply to the Commission's preliminary objections and can also ask for an oral hearing.

In the Commission's view, fixed or recommended fee scales can harm both the consumers and the professionals. It is highly doubtful whether these fee scales really contribute to guaranteeing a high level of quality. On the contrary, they can prevent consumers from finding the best match to their needs in terms of value for money. The professionals have no incentive to innovate and become cost efficient.

According to the Commission's preliminary view a recommended minimum fee scale, as established by the Belgian Architects' Association, may constitute an infringement of Article 81 of the EC Treaty for the following reasons. A recommended fee scale is likely to provide a price floor preventing efficient service providers from competing on price if their efficiency allows them to produce the service at lower cost. Price floors also protect less efficient competitors and reduce the incentive to improve quality and price of professional services.

The recommended fee scale lays down the architects' fees as a percentage of the value of the works realised by the entrepreneur. In the Commission's preliminary

view, fees charged for professional services should reflect the architect's skills, efficiency and his costs and perhaps his fame or notoriety and should not be dependent solely on the value of the works or the price of the entrepreneur. In any event, the architect should determine his fee independently of competitors and in agreement with the client only.

The Belgian Architects' Association may have abused its regulatory functions by adopting a rule whose object is the restricting of competition under the guise of a "deontological rule". The Association's fee scale dates back to 1967. This fee scale was never formally endorsed by the State. The recommended minimum fee scale is meant to apply to all architectural services provided in Belgium, regardless of whether the intervention of an architect is legally required or not.

According to the Commission's preliminary investigation the fee scale is frequently used in architects' contracts. The economic importance of architectural services in Belgium is considerable. In 2000, the turnover achieved in the provision of architectural and engineering services and related technical consultancy amounted to €4.4 billion. This corresponds to 15% of the turnover achieved in the Belgian construction sector.

Ten years after its first decision condemning the fixed tariffs for professional services in that case those provided by Italian customs agents, the Commission is disappointed to see that such minimum price agreements still persist. This is why it has now sent the Belgian Architects' Association a Statement of Objections informing it that its recommended minimum fee scale could constitute a violation of the European Community's competition rules and that a fine could be imposed.

In the context of the Commission's stocktaking exercise on professional rules, the Commission invited all the professions to examine fee scales and other restrictive regulations and to reconsider whether they were truly necessary to guarantee proper practice of the profession.

Recommended fee scales have already been scrutinised by the French competition authorities and by the Office of Fair Trading (OFT) in the United Kingdom. The French Competition Council prohibited the French Architects' Association from further elaborating and distributing fee scales. The OFT came to the conclusion that the Royal Institute of British Architects' (RIBA) indicative fee guidance could facilitate collusion. It then accepted the RIBA's new fee guidance based on historical information and the collation of price trends that did not provide a lead on the current year's prices.

Now that the Commission is taking up the case of the Belgian architects, it is also to be interpreted as a strong signal that similar rules in other countries should be reviewed as well. In his speech at the Liberal Professions Conference on 28 October, Commissioner Mario Monti encouraged professional associations to review their rules and warned them that "using antitrust instruments is always possible where necessary". ■