

To: The President of the Croatian Competition Council & The Members of the Croatian Competition Council

From: Massimiliano Gangi & André Bywater

Re: Liberal Professions Competition Advocacy

The seminar on “Competition Law and Policy in the Liberal Professions” took place on February 7 at the Croatian Competition Agency (“CCA”) with the participation of approximately 12 CCA staff members. At the seminar, the recent work carried out by the European Commission and by the EU Member States in the area of Liberal Professions, with specific reference to lawyers, notaries, accountants, engineers, architects and pharmacists, was presented and discussed between the two project experts and the CCA staff members. The five most common main areas of restrictions were examined, namely: price-fixing; recommended prices; advertising regulations, entry requirements and reserved rights, and, rules governing business structure and multi-disciplinary practices.

The purpose of this seminar was to not only examine the economic and legal issues that underpin the particular competition issues that arise in the Liberal Professions context but also to encourage the CCA to include Liberal Professions as one of the areas to target as part of its Competition Advocacy Programme.

The anti-trust enforcement and competition advocacy intervention undertaken by the European Commission and by the Member States’ National Competition Authorities (“NCAs”) in the area of Liberal Professions has recently centred on three main parallel forms of action:

- a comprehensive review of existing national legislation and professional bodies’ own regulations. These reviews have aimed at verifying whether there are provisions which unduly restrict competition and if so, whether they are justified or not on public interest grounds, such as the safeguard of adequate service quality, the prevention of conflicts of interest, etc;
- the submission of competition advocacy reports to the national Parliaments and Governments based on the above-mentioned review, with the aim of presenting suggestions for regulatory reform which would promote efficiency and enhance the welfare of professional services’ users (both business and private citizens); and,
- prosecution of the most harmful anti-competitive practices, for example, the European Commission 2004 Decision censuring price recommendations by the Belgian architects’ association. In addition, the legal obligation on the NCAs to disapply national legislation prescribing anti-competitive restrictions such as price-fixing is now an established EU principle (following the 2003 C.I.F. European Court of Justice Judgement) and the European Commission has urged the NCAs to use such power.



During the seminar, the official Opinion issued by the CCA on the Croatian Bar Association's statutory price-fixing powers with regard to lawyers' fees as well as the excessive and discriminatory membership fee was presented and discussed. During the discussion about the CCA's Opinion, additional competition-restricting competition provisions in the legal profession were singled out, such as the ban on advertising and excessive restrictions on market access. The project experts are of the view that although the Opinion is a start in dealing with competition issues in the Liberal Professions much more work still needs to be done.

Taking into account the significant importance of ensuring access to high-quality services at affordable prices for Croatian companies and consumers, we would like to put forward, within the framework of this EU Cards project, our assistance to the CCA in dealing with this important area of competition policy advocacy/intervention.

In particular, we suggest the following plan of action for the CCA:

- the CCA should undertake a comprehensive stocktaking exercise focussing on the 6-7 most important Liberal Professions in Croatia (maybe the same ones singled out by the European Commission) looking in detail at the relevant regulatory regime governed either by laws or by professional bodies' own regulations. This exercise should be aimed at detecting the existing anti-competitive provisions and at verifying whether such provisions are justified or, instead, unnecessary, applying the EU "proportionality principle.". We suggest focussing on the most harmful anti-competitive provisions, namely: (i) price-fixing; (ii) price recommendations; (iii) unjustified exclusivities, and; (iv) advertising bans. We wish to point out that the time and resources necessary for such an exercise should not be too significant - for example, if there is clear evidence of a price-fixing practice then no market analysis needs to be undertaken;
- the CCA should consider undertaking a comprehensive stocktaking exercise focussing on the 6-7 most important liberal professions in Croatia (maybe the same ones singled out by the European Commission) looking in detail at the relevant regulatory regime governed either by laws or by professional bodies' own regulations. This exercise should be aimed at detecting the existing anti-competitive provisions and at verifying whether such provisions are justified or, instead, unnecessary, applying the EU "proportionality principle." We suggest focussing on the most harmful anti-competitive provisions, namely: (i) price-fixing; (ii) price recommendations; (iii) unjustified exclusivities, and; (iv) advertising bans. We wish to point out that the time and resources necessary for such an exercise should not be too significant - for example, if there is clear evidence of a price-fixing practice then no market analysis needs to be undertaken;
- oral hearings, conferences and meetings should be organized with representatives of the Liberal Professions' professional bodies in order to discuss the need for regulatory reform, especially in light of EU accession.



In this regard, we wish to draw to your attention that after EU accession the CCA will be required to disapply laws regulating Liberal Professions when they are not compatible with Article 81 & 82 of the EC Treaty;

- following the conclusion of public consultation with Croatian professional bodies, the CCA should present a comprehensive advocacy report to the Croatian Government and Parliament; and,
- the prosecution of agreements or concerted practices by professional associations which clearly restrict competition and are not explicitly foreseen in any national law.

We also suggest that the CCA hold a workshop/seminar that presents the legal and economic principles which form the basis for the current regulatory review being conducted both at the EU level and by the EU Member States' national authorities. This workshop can be organized within the framework of our project and representatives of professional bodies, relevant Ministries (including the Ministry of Justice in particular) and consumer associations should be invited. Such an event would provide an opportunity for constructive dialogue between the professional bodies and the CCA

We believe that the abovementioned process will ensure the CCA's contribution to the alignment of the Croatian Liberal Professions regulatory framework to that prevailing in the European Union.

We would be happy to discuss any of the above issues with you at your convenience.

February 2006

André Bywater and Massimiliano Gangi

