

LOWRI EVAN'S INTRODUCTORY SPEECH AT "RZECZPOSPOLITA", WARSAW ON 4 MARCH 2005

Introduction

Ladies and gentlemen.

It is a pleasure to be with you today and to have been invited to participate in what promises to be a stimulating discussion about competition and the liberal professions.

I would like to pass on my thanks to "Rzeczpospolita" and its chief editor is Mr Grzegorz Gauden, for arranging and hosting today's event and for the kind invitation to participate.

I would like to start today's discussion by giving a brief resume of the Commission's position and work in this area, and make some observations on my perception of the regulation of the professions here in Poland.

Let me start by saying that this is a very complicated and sensitive subject.

The liberal professions are entrusted with the delivery of services of considerable public importance. They work within a highly regulated framework which is a mix of State, self-regulation, and custom and practice.

Within this regulatory framework, the professional governing bodies often have important degrees of freedom to control a wide number of activities including rights to enter and practise the relevant profession. And this is the position here in Poland too.

The exercise of these powers can thus have a significant impact on the interests of consumers, the economy, and on society generally, especially where the professions concerned have exclusive rights to supply certain services.

In policy terms, we think it's important to see whether the existing regulatory mix is the most efficient, or whether there is a need for better regulation, more adapted to the present requirements and which could help spur economic growth and employment. The Commission,

and some Member states, are concerned that the current mix of professional regulations and rules across the EU may be serving to directly or indirectly restrict competition.

This is important because professional services are a significant input for the economy and business. The Italian antitrust authority for example has estimated that in Italy an average of 6% of costs of exporting firms are due to professional services. From a macroeconomic perspective, the quality and competitiveness of professional services have spill over effects across the whole economy.

Professional services are also directly relevant for consumers. Competition for professional services will continue to take place mainly at local level for the foreseeable future. Greater choice in the range of services available and in their prices empowers customers to choose for themselves the combination of price and quality which best suits their needs.

For these reasons, professional services are clearly part of the Lisbon agenda. A key part of this reinvigorated agenda is to improve regulation and ensure all markets are as competitive as possible. Your project on the liberal professions could therefore not be more timely.

The Commission's Report on Competition in Professional Services

The Commission produced its report on Competition in Professional Services¹ on 9 February 2004. This Report was supplemented by the Stocktaking Exercise on Regulation of Professional Services in the new EU Member States, published in November 2004². It focused on six professions: lawyers, notaries, engineers, architects, accountants and pharmacists

The goal of the Report was to set out the Commission's thinking on the scope for reform and modernisation of the specific professional rules in these six professions selected for detailed study.

¹ The Report is available at:

http://europa.eu.int/comm/competition/liberal_professions/final_communication_en.pdf

² Stocktaking Exercise on Regulation of Professional Services - Overview of Regulation in the New EU Member States dated November 2004, can be found at:

http://europa.eu.int/comm/competition/liberalization/conference/overview_of_regulation_in_the_eu_professions.pdf

In the report the five main categories of potentially restrictive regulation in the EU professions are identified as being: (i) price fixing, (ii) recommended prices, (iii) advertising regulations, (iv) entry requirements and reserved rights, and (v) regulations governing business structure and multi-disciplinary practices.

The Report also outlines the elements of the Community legal framework within which those restrictions have to be analysed. The Report proposes that ultimately, a ‘proportionality test’ should be applied, in order to ensure that the restrictive effect of these regulations do not go beyond what is necessary to fulfil their objective.

The Report concludes by proposing a future course of action including a mix of competition advocacy and enforcement, to be carried out both at European and at national level, and promises to report on progress in 2005.

Action since the Report

Since the publication of the Report, the Commission has been working closely with the European professional bodies to clarify and discuss the justification for existing professional rules. Our aim is to try and identify those which are overly restrictive, and explore the scope to modernise them either by eliminating or changing them. We have asked the European professional bodies to relay our concerns to the relevant national professional association.

We have also been talking to consumer organisations to gauge their views on the restrictions the Commission has identified.

In countries where the liberal professions are particularly heavily regulated, we have been holding a structured dialogue with national regulators both bilaterally and through more formal meetings.

We have also of course turned our attention more specifically to the 10 new Member States. Broadly speaking, we have confirmed that the findings that we drew based on EU 15 apply to EU 25.

We have also been considering further appropriate enforcement action using the EC competition rules. For example, the Commission adopted a decision on 24 June 2004, against Belgian architects, regarding the use of recommended prices.

Role of national authorities

The role of the national authorities, both competition authorities and regulatory authorities, is crucial. Much more important than the role of the Commission, I would say.

The professions are regulated at national rather than EU level. It is logical therefore that the National Competition Authorities take the initiative in this area at national level working closely with the national regulators. They are usually better placed than the Commission to really understand what is happening in the markets concerned.

So we were very pleased when the Office for Competition and Consumer Protection published in May 2004, its excellent report aimed at highlighting factors that impede the development of competition in a number of different professions in Poland.

We have learned a lot from reading this report, and it has added significantly to our understanding of the regulation of the professions here.

It shows that the most highly regulated profession in Poland by far is the legal profession. This confirms our assessment, and is not surprising, corresponding as it does, with the situation in other Member States.

Polish architects, engineers, tax advisors and accountants, or bookkeepers, have more liberal regimes, which similarly mirrors the position in other Member States. That is not to say, however, that there are not regulatory barriers and excessive rules in these professions also, and which need to be examined carefully to ensure their continuing justification. For example, the prohibition on advertising for Tax Advisors warrants reflection.

But the most pressing issue has to be to tackle the extremely restrictive entry controls to the legal profession. I know that this is currently the subject of extensive debate here and I would like to add to this debate with perhaps some provocative comments of my own.

The professional associations in Poland have what amounts to near exclusive jurisdiction over the ultimate decision on entry to the legal profession. This arrangement gives rise to risk that decisions on entry would be taken in the interest of the profession, and not for the wider good of society and the economy. What is the incentive in the present system for the profession to favour the interest of business and consumers over the interest of its own members?

This inherent risk could easily be avoided by making these decisions subject to independent scrutiny, perhaps by an independent regulator.

I would also like to mention briefly the Codes of Ethics that lay down rules on professional conduct and which exist in nearly all the professions here.

The starting point is that codes of ethics are useful tools in underpinning high standards of professional behaviour. However, provisions within codes of ethics can be problematic when they either directly, or indirectly, serve to stifle competition among professionals and keep prices high.

I am thinking here particularly of the loyalty provisions in the Codes. Such provisions should be looked at critically, and to the extent that there is a risk that they do inhibit competition, then it might be better that such rules be removed, or recrafted to avoid this possibility.

Another issue is self-regulation. Arguably, in a mature democracy, it is not necessarily justified that some groups can be “free” of the control of democratically elected Parliaments. If a group has a role in pursuing the general interest, then the general interest should be specified and defined by a public authority, not a self-regulatory authority.

Conclusion

To conclude, let me stress the importance the Commission attaches to this project.

We are not advocating complete deregulation across the sector. The Commission is wary of regulatory change for its own sake; we are basically arguing for careful re-regulation. We are calling on national regulators and professional bodies to take a critical look at existing rules

with an open mind to see if they are the most efficient and least restrictive of competition to achieve their desired public interest objective.

We are confident that improvements can be made right across the board.

Here in Poland, the Office for Competition and Consumer Protection has made an excellent start. I would urge all interested parties to get involved in the process of a systematic review of your regulations. The Commission is ready to help and facilitate this process. This morning provides us with an excellent opportunity to debate this and maybe focus on how this could be done.

I look forward to participating fully.