

**CONFERENCE
REGULATION OF PROFESSIONAL SERVICES
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There are two key elements to our approach of dealing with professional regulation in the UK

1. In this market what does the consumer need?
2. In supplying this need what is the least market distorting means of delivery?

Why do we approach it this way?

1. **Professionals are in a market.** If you provide a service or product for money – you are in a market. This is true even if you think you are somehow beyond or above a market. Once that transaction is a market transaction then the operation of the market takes hold.
2. **Markets generally deliver for consumers:** effective competition is the optimal policy for driving productivity and efficiency and ensuring consumers do not get ripped off.
3. **Competition policy is a subset of consumer protection policy.** They are not separable. Consumer protection policy builds the base from which efficient markets work. Competition policy ensures that the markets are efficient.
4. **Policy is a matter of ordering:** as a matter of policy it is important to define the need and then the delivery mechanism – rather than the other way around. Many elements of professional regulation identify the delivery mechanism and then try to fit the need to it. As a result they pick the wrong delivery mechanism and fail to address the need.
5. **Regulation depends on your starting point:** professional self-regulation starts as self interested protection. It then adapts that self interest to the needs of its consumers. This can work in some areas – but tends to fail under the weight of its internal contradictions.

So what does this lead us to conclude:

1. Competition between professionals is the first step in delivering benefits to consumers
 - a. Any argument for a restriction must be judged from this standpoint
2. There should **never** be a blanket exemption from competition rules for professional services. If there are elements to the profession that require market restrictions then they should pass the normal competition test – or for us – is this the least trade distorting way of delivering the benefit that is being sought?
 - a. For example: price fixing – if the object is to stop consumers being overcharged is this the least market distorting way of achieving that end? It is in fact the most market distorting and tends to ensure that consumers do not benefit from price cuts driven by competition
 - b. For example – advertising restriction – if the object is to stop consumers being duped or mislead are advertising restrictions the answer? It depends – in prescription drugs – yes advertising should be restricted; in opticians, pharmacy, legal services – generally no. The reason? Information/knowledge imbalances.
3. Market restricting professional rules are generally designed to protect the professionals not the consumer
 - a. UK examples:
 - i. restrictions on comparative advertising between opticians makes the job of new entrants very difficult and protects incumbents
 - ii. the abolition of retail price maintenance (RPM) in the UK pharmacy sector. The pharmacy lobby claimed it was in the consumer interest to let the industry rig prices. It was not. They claimed thousands of pharmacies would close if RPM ended – they did not.

- iii. Limits on who could do conveyancing in the house moving market restricted the market and kept up charges. Deregulation worked.
- iv. Dentistry. We made the first ever supercomplaint in the UK in 2001 about private dentistry. Reforms and deregulation of restrictions will make this market function better for consumers.
- 4. Professional self interest produces poor redress mechanisms and ineffective sanctions:
 - a. The complaints procedure for the Law Society is a poor system that engenders little faith among those that use it.
 - b. The General Medical Council have, however, attempted to reform their rules following the wave of terrible medical scandals (Harold Shipman, Bristol Royal Infirmary et al).

So to return to our starting point from which we judge professional services:

- 1. In this market what does the consumer need?
 - a. The consumer interest in professional regulation demands
 - i. Value for money charges that are justifiable, clear and transparent
 - ii. Effective and independent redress mechanisms when things go wrong
 - iii. Credible deterrence for poor performance
- 2. In supplying this need what is the least market distorting means of delivery?
 - a. On charging – fair and open competition between suppliers who advertise their services and prices and have to spell out what those charges are because of market transparency.
 - b. Truly independent redress mechanisms that do not just serve to frustrate consumers and restrict their rights of redress
 - c. Truly independent redress mechanisms that deliver justice for all parties and do not just let professionals off the hook as part of the old-boys club mentality.

So what does this mean in relation to the work of DG Competition?

We very much welcome the interest that they have taken and wish them well in their work. Their analysis to date is on the right tracks and should not be derailed simply because the vested interests of professional regulation make a lot of noise. This is a case where the volume of the opposition shows how right the work is – not how wrong.

There should not be ANY blanket derogation from competition law for ANY profession. If a profession has anti-competitive rules then it should be forced to apply for a specific exemption for them on a case-by-case basis. The UK experience with the excellent work of the Office of Fair Trading with professional bodies shows how useful this process can be. Here one by one the professions are being forced to address their behaviour and rules like never before – in the interests of consumers not themselves.

In professional services – like any other market – the consumer interest is served by letting the market work to its fullest extent and only allowing restrictions to that market that are truly in the interests of consumers, not just the adapted side-effects of the self interest of a professional body.

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