Follow-up to the report on competition in professional services

2006/2137(INI) - 05/09/2005 - Non-legislative basic document

PURPOSE : to present a follow-up the Report on Competition in Professional Services, and report on unjustified restrictions.

CONTENT : professional services are a key sector of the European economy and are entrusted with the delivery of services of considerable public importance. Figures for 2001 show that 'business services' generated approximately 8% of total turnover of the EU. The sector is characterised by high levels of regulation. This is often a mix of State regulation, self-regulation and custom and practice, which has evolved over a number of years. The Commission's work in the area of the professional services has been targeted at examining whether the current regulatory mix is the most efficient and least restrictive of competition, or whether better regulation, more adapted to the modern world could help spur economic growth, and deliver better services and value for consumers.

The Commission published a Report on Competition in Professional Servicesin February 2004 and suggested that a proportionality test should be used to assess to what extent anti-competitive professional regulations and rules truly serve the public interest and can be objectively justified. This Communication reports on progress in the review and removal of such unjustified restrictionsby Member States using the detailed analysis contained in the Commission staff working document annexed to the Communication. (Please see SEC(2005)0164).

The Commission looks at reasons why some targeted regulation might be necessary and who benefits from it. The report describes activities by the Commission and national competition authorities, as well as progress made by Member States in reviewing and eliminating disproportionate restrictions in legislation and the rules and regulations of professional bodies. Over a third (9 in total) of Member States report that analytical work is underway, which it is hoped will lead to substantive reform in the near future. Six other countries report that minor reforms have been made e.g. a slight easing of qualitative entry qualifications.

The key conclusion is that more urgency by the majority of Member States to bring about systematic pro-competitive reform in this sector would bring about significant economic and consumer benefits. In practical terms, this means Member States taking 'political ownership' of this work at national level to drive forward the reform process. The weight of tradition should not be underestimated as affecting the pace of change, and in many countries regulators fail to see how things can be done differently.

Moreover, the professions themselves have in general not been actively promoting it. The current picture could also indicate that some countries have relatively weak regulatory oversight of the professions. This could be caused by the economic phenomenon of regulatory capture, which is not uncommon especially in areas subject to self-regulation. The Commission recognises that it is the Member States' prerogative to determine to what extent they want to regulate the professions directly by State regulation, or to leave the matter to self-regulation by professional bodies. However, good governance would require that Member States oversee the impact of national self-regulation to guard against it becoming overly restrictive and detrimental to customers' interests.

The Commission remains fully committed to bringing about wide scale reform to this sector and encourages Member States to take the initiative to drive forward reform at national level. It is up to

national regulatory authorities and professional bodies to bring about change having due regard to the specificities of the relevant profession in each country. Experience shows that such a process will not start without strong political backing.

As a start Member States should initiate analytical work to review existing restrictions. A first stage of this could be to identify those restrictions on competition, which can be removed quickly without further analysis being necessary e.g. certain fixed and recommended prices, and certain advertising restrictions. At the same time, more substantial structural analysis should begin – for example of regulatory structures - to assess the need and open the way for wider reforms. This would enable Member States to make good progress by 2010. The Commission's further refinement of its economic analysis of the different markets for professional services, leads the Commission to the conclusion that consumers and one-off users may have a greater need of some carefully targeted regulatory protection. However, the main users of professional services – business and the public sector – may have no, or only very limited, need of regulatory protection. The position with respect to small business users is not entirely clear and further work is required to assess their specific needs. The current regulatory set-up is unsatisfactory for these two latter groups given its lack of flexibility and hinders the development of innovative and demand-driven services.

The Commission will continue to act as a facilitator in this exercise, helping to spread best practice. It will increase partnership working with national competition authorities, who have already started some promising work, so that they take even greater ownership to progress this at national level. It will also continue and improve its relations with national regulatory authorities by organising a more structured debate and raising the profile of this work with them. This will pave the way for greater co-operation between national competition authorities and regulatory authorities.

Finally, the Commission will consider taking further appropriate enforcement action using the EC competition rules, including the option of intervening under Article 86 if possible and necessary.