Organisation for Economic Co-operation and Development

DAF/COMP/WP2/M(2024)1/ANN1/FINAL

Unclassified

English - Or. English

27 November 2024

DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
COMPETITION COMMITTEE

Working Party No. 2 on Competition and Regulation

Summary of Discussion of the Roundtable on Competition and Regulation in Professions and Occupations

Annex to the Summary Record of the 77th Meeting of Working Party No. 2

10 June 2024

This document prepared by the OECD Secretariat is a detailed summary of discussion of the roundtable on Competition and Regulation in Professions and Occupations, held by Working Party 2 on 10 June 2024.

Please contact Ms Federica MAIORANO if you have questions about this document.
[Email: Federica.Maiorano@oecd.org]

JT03556356

Summary of Discussion of the Roundtable on Competition and Regulation in Professions and Occupations

On 10 June 2024, Working Party 2 of the OECD Competition Committee held a roundtable discussion on competition and regulation in professions and occupations. The roundtable was chaired by Professor Alberto Heimler.

The **Chair** explained that the discussion would take place in three parts. The first part would cover recent efforts at regulatory reform in the professions. The second part would focus on cases of reintroduction of professional services regulations after prior repeal. The third part would concentrate on antitrust enforcement in the professions.

Before beginning the discussion, the **Chair** noted that Working Party 2 last had a discussion on professional services in 1999. The Chair remarked that while he initially expected the discussion would centre on steps taken in the early 2000s to create a more competitive environment in professions and licensed occupations, with scope for discussing the role of recent technological changes on regulation. Instead, the **Chair** observed that many of the same issues persist, a quarter of a century later. This includes the existence of unjustified, unnecessary or overly burdensome regulatory restrictions, due to either countries not eliminating them or due to the reintroduction of some regulations. The Chair noted that the submissions from member states largely focused on the regulation of professional services, not occupational licensing, and thus the discussion would focus more on the former.

The two experts invited to present on this topic were Professor **Morris Kleiner,** Professor of Labor Policy, University of Minnesota; and Professor **Alex Robson**, Deputy Chair, Productivity Commission of Australia.

The **Chair** indicated that the discussion would be divided into three parts:

- Regulatory reform in professional services;
- The reintroduction of previously eliminated regulations; and
- Issues surround antitrust enforcement in professional services.

1. Regulatory reform in the professions

The **Chair** began by giving the floor to the **Secretariat** to present the key findings from the background paper.

The **Secretariat** outlined that in recent years there has been a renewed interest in examining policies relating to professional regulation and occupational licensing, driven largely by the proliferation of the number of jobs subject to such policies. Economic policymakers are concerned that these policies are not providing sufficient benefits when traded off against the risks of higher prices, poor consumer outcomes, reduced competition and weak productivity.

Given the lack of universal definitions for terms central to these topics, the Secretariat provided a taxonomy of policies surrounding regulation of professions and occupations. The four categories of such policies are those that:

- Determine how an individual can enter the market, be that in terms of skills and training or a numerical or geographic limit on the number of providers;

- Define specific activities that only can be provided to consumers by these professions or occupations;
- Govern the behaviour of providers (such as banning discounting or fixing prices);
- Decide how oversight works within the professional occupation, which typically varies on how much role the state or industry plays in governance, and how to handle misconduct.

There are also two categories of explanations for regulations of professions and occupations: public interest and private interest. The public interest case for regulation is that ordinary consumers may lacks the ability to make a judgement about quality or necessity of services, and that there should be minimum standards of skills and ethics among the service providers; or that low quality service may cause harm to members of the public. The private interest explanation is that such regulations are primarily driven by a desire to rent-seek, and limit competition, as incumbents with concentrated interest in the regulations are more effective at lobbying for their goals than consumers with diffuse interests. The OECD background note additionally surveys the academic literature on the costs and benefits of professional regulation and occupational licensing, explores examples of competition authority advocacy activities on this topic, and looks at what new technological innovations might mean for the professions and occupations, as well as competition in these markets in the future.

The **Chair** kicked off the roundtable discussion by noting Portugal's thorough reform of professional regulations, including introducing an independent regulator. The Chair asked Portugal why an independent regulator was necessary, how the independent regulator is judged, and how regulated professions have reacted to the regulator.

Portugal explained that at the centre of the reforms of self-regulated, or liberal, professions, was a 2003 law which mandated mandates the creation of independent regulatory bodies within professional associations, which were previously optional and lacked sufficient powers. These bodies now have authority over regulatory matters such as professional internships and disciplinary issues, and their composition must include a majority of non-registered members. The reform aimed to reduce conflicts of interest and unnecessary barriers. Professional associations have opposed the reform, particularly objecting to the composition and election process of the regulatory bodies. Despite challenges, the Constitutional Court ruled in February 2023 that the reform does not violate constitutional principles, supporting the measures to mitigate conflicts of interest.

The **Chair** then asked Denmark about a recent study the Danish Authority conducted on the legal profession. The Chair asked Denmark about the recommendations resulting from the study and why policy interventions are necessary in lieu of adequate competition in the market.

Denmark explained that they are generally interested in market studies of professional services sectors due to the relatively low exposure to international competition, and that they focused on the legal profession because of its high earnings relative to professions that require similar levels of education, such as dentists and accountants. Denmark explained that a unique aspect of the legal profession is that firms are often worker-owned, therefore earnings can come from both individual salary as well as business revenue. The primary recommendation discussed was for lawyers to amend their industry code of ethics or have legislators amend the Danish Administration of Justice Act to require more transparency of pricing. Denmark finally explained that the status quo has led to suboptimal results due to existing regulations restricting competition, prevent competition from other adjacent

sectors, and allowed lawyers to benefit from asymmetric information due to the complexity of the service.

The **Chair** then moved on to Bulgaria, noting its Commission on Protection of Competition (CPC) has issued several recommendations to eliminate unjustified regulations restricting competition, though so far was only successful in eliminating the master's degree requirement for pharmacists.

Bulgaria explained that the CPC has adopted more than 20 competition advocacy opinions over the past 20 years relating to professions and occupations. These opinions have made recommendations regarding the regulation of numerous professions ranging from architects and veterinarians, through to creative industries (such as writers). Bulgaria echoed the Chairs' comment that the greatest success of the CPC has been the abolishment of the requirement for a pharmacy owner to be a masters-level pharmacist. Bulgaria elaborated that this success occurred because the CPC effectively argued that the separation of pharmaceutical activity from business management would allow pharmacists to greater concentrate their professional efforts. However, in other cases, the CPC has been unable to convince state authorities to remove regulations due to professional associations' continued insistence that anticompetitive regulations are necessary to ensure quality and consumer protection.

Besides regulations on licensing, Bulgaria also highlighted a new policy allowing unions and associations of creative professionals to set minimum prices. Bulgaria expressed concern that this policy would impede the entry of new participants into the market, as consumers of the service would likely turn to more experienced creatives rather than a new creative if they must pay a minimum price. In the long run, this could constrain supply and only serve incumbents.

Picking up on the theme of minimum tariffs, the **Chair** turned to Greece to discuss its abolishing of minimum tariffs and subsequent introduction of a "legal fee" policy for some professions.

Greece began by noting that the Hellenic Competition Commission (HCC) advocated for the abolishment of various restrictions to the access of liberal professions. As part of an economic reform in Greece, the HCC worked with the national government to review more than 50 professions and issued close to 30 legal opinions on various geographic and tariff restrictions. As a result, many restrictions were abolished, including restrictions on minimum tariffs. For professions such as lawyers and engineers, minimum prices have been replaced by "legal fees," which are fees to be paid to the servicer in the absence of a valid written agreement. Greece acknowledged that while these fees were not intended to serve as a replacement for minimum prices, there is a risk that they will become a de facto minimum price.

In introducing Spain, the **Chair** commented on its unique situation, because the national competition authority has the power to bring local governments that do not comply with national law before a court for review. The Spanish region of Catalonia had issued a decree that only architects and technical architects would be able to carry out the technical inspections of buildings. The Chair asked Spain why Catalonia had issued such a decree, and whether local or national law would be followed.

Spain affirmed that Catalonia had decreed that only architects and technical architects would be able to carry out the technical inspections of buildings. The Spanish authority on competition (CNMC), studied the issue and found this policy was a barrier to entry that restricted effective competition by unduly favouring architects and technical architects. National courts agreed with the CNMC and the decree was annulled. However, three years after the Spanish Supreme Court ruling, the same court ruled that such a decree could be

justified for public safety reasons. Thus, the current situation is ambiguous. When the Chair asked again why the Catalonian government would pursue such a policy, Spain responded that they believe it is due to the influence of professional associations.

The **Chair** then shifted the discussion to Mexico, where the Comisión Federal de Competencia (COFECE) has been very active in advocating against the introduction of restrictive regulations in the professions. In particular, a recent case where a state government had proposed the creation of an Interinstitutional Commission for the Supervision of Real Estate Services where both state government representatives and practitioners would participate. The initiative had several anticompetitive features that COFECE advocated to eliminate. The Chair asked Mexico about the necessity of the real estate commission and whether the commission could inhibit the development of digital real estate platforms.

Mexico replied that any commission in which regulated agents participate brings concerns of unduly benefitting incumbents, collusion, and otherwise anticompetitive behaviour. The commission creates and operates a voluntary registry accreditation scheme, which could have a negative effect on competition if it is not operated in a transparent and non-discriminatory manner, even if it is voluntary. Mexico answered the Chair's questions regarding necessity by saying that the real estate commission was not necessary, as the claimed issues of public concern such as safety and environmental security were not resolved by the regulations. Mexico noted that COFECE recommended alternative approaches such as reputational schemes, e.g. disclosure requirements or digital platforms.

At this point the **Chair** turned to Professor Kleiner to provide his expertise on occupational licensing, focusing on the type of occupations where licensing is more common and more restrictive (particularly in the US), and what the evidence suggests about the impact of occupational licensing reforms.

Professor Kleiner commenced his presentation by defining occupational licensing and tracing its historical evolution in the United States. He clarified that occupational licensing is a government-issued credential necessary for performing specific tasks, which differs from registration and certification, the latter of which does not require a license to practice in the occupation. Professor Kleiner explained the historical context of these regulations, highlighted early academic work, such as Milton Friedman's influence through his book *Capitalism and Freedom*, and the subsequent involvement of key policymakers like the US Treasury and White House Council of Economic Advisors, who have driven the collection of extensive data on occupational licensing in the United States. This data, primarily gathered by the US Census Bureau, has also influenced similar initiatives in countries like Canada and across the European Union, reflecting a growing international interest in the topic.

In exploring the determinants of occupational licensing, Professor Kleiner emphasised the role of professional associations and the varying adoption rates of regulations between US states. He noted that larger states by population, such as California and Illinois, were early adopters due to their ability to manage the administrative costs required for licensing. Smaller states, including Wyoming and Vermont, generally followed suit much later. He also pointed out that occupations associated with health and safety risks were typically licensed earlier, for example, doctors and dentists. Furthermore, the involvement of professional associations significantly increases the likelihood of licensing laws being passed, often within a few years of their establishment, highlighting their influence in shaping legislative outcomes.

Professor Kleiner concluded by discussing the implications of occupational licensing on wages, employment, and service quality. He explained that while licensing often leads to

higher wages for workers within licensed occupations, it simultaneously reduces employment by creating barriers to entry, such as exams and apprenticeships. These barriers can also result in higher prices for services without a corresponding improvement in service quality. Studies in the US and Europe demonstrate that while relaxing regulations in certain fields, such as healthcare, can improve outcomes without raising costs, licensing generally has minimal impact on the quality of services.

The **Chair** then clarified with Professor Kleiner that there could be certain activities or services, not just occupations, that require licensure. Kleiner defined this as a scope of practice. That is, professions may expand their market power by reducing the number activities unlicensed professionals may engage in. For example, hair shampooers did not require licenses, but then organisations representing cosmetologists and barbers advocated for shampooers to also require licenses, which has occurred in some US states.

The **Chair** thanked Professor Kleiner before turning to Ireland to discuss the introduction of an independent regulator for legal professions. The Chair specifically asked why the requirement that that only solicitors are allowed to provide conveyancing services had not yet been eliminated.

In responding to the Chair's question about legal professions, **Ireland** first outlined the reasons why the industry association for lawyers claims conveyancing services can only be done by a solicitor. Firstly, solicitors must carry damage insurance to cover instances of negligence. Secondly, solicitors must adhere to the Law Society's professional code of conduct, which stresses independence, representing clients' interests and avoiding conflicts of interest. Finally, because conveyancing touches on many areas of law, it would not be feasible to provide a separate course to train people solely in conveyancing. Ireland's Competition and Consumer Protection Commission (CCPC) still advocates that a separate conveyancing licence would be beneficial, however the independent legal regulator continues to cite technical reasons why reform is not possible. Ireland also noted that the CCPC had conducted market studies of several other professions, finding that while there is no one-size-fits-all approach to regulating a profession, there are competition concerns in a range of sectors. The CCPC has been active in highlighting concerns in the dental industry, and has had some success in advocating for changes in the self-regulation of engineers..

Moving to Lithuania, the **Chair** noted that Lithuania introduced a mandatory competition assessment system in 2019, and that Ministry of Justice modified its proposal to regulate some professional services as a result of an advocacy report by the Competition Council. The Chair asked whether the advocacy report was issued within a formal competition assessment process, and if so, how the process works.

Lithuania affirmed that the mandatory assessment was introduced in 2019 and that more institutions within the government were undertaking them. Based on an evaluation by Lithuania's Competition Council, almost 60% of the Council's recommendations result in other institutions amending their proposals in accordance with the Council's advocacy opinions. In the specific case of the Ministry of Justice proposed reforms, the Competition Council participated in government meetings and provided their opinion when the Council believed particular amendments may restrict competition.

The **Chair** remarked that the Philippines also requires competition assessments, before asking about a law that removed some unnecessary regulatory restrictions, such as nationality requirements for certain professions.

Philippines began by giving background on its national competition policy. The Philippine Competition Commission (PCC) and the National Economic Development Authority issued a joint circular in 2020 which called for the adoption of the National Competition

Policy (NCP) by government agencies. This included relaxing nationality requirements in many cases (such as builders), though some professions, such as law, remain exclusive to Filipinos. The NCP also requires a review of restrictive policies, which has been occurring in tranches since 2021. There is some tension between the PCC and the Professional Regulation Commission regarding balancing competition with quality assurance, which is being headed off through system in which the PCC flags potential competition barriers in regulations and the Professional Regulation Commission responds to these flags. One example presented was a medical board putting in place local geographic restrictions, which was done away with quickly as the Philippines only has one set of standards for doctors.

Staying on the theme of geographic limitations in the professions, the **Chair** turned to Australia to discuss its recent implementation of mutual recognition of professional and occupational licences across Australian states. The Chair noted that many of the mutual recognition requests had been made in occupations not considered professions, but that fewer requests were made in the professions.

Australia noted that in fact mutual recognition is an issue in both the professions and other occupations. Australia highlighted three liberalisations that it undertook. One was the allowance of non-lawyers to practice conveyancing, which led to a significant reduction in prices for this service. The next was the establishment of a national profession for legal services. Finally, the most significant reform was granting automatic mutual recognition. Without mutual recognition, workers in some professions and occupations would have to go through an onerous process to gain licensure in a new state. Australia also mentioned that mutual recognition between Australia and New Zealand is becoming increasingly common as part of their free trade agreement.

At this point, the **Chair** introduced Business at the OECD (BIAC), who in their contribution had suggested the development of an analytical framework for the assessment of unjustified regulatory restrictions. The chair pointed out that 15 years prior the OECD developed the competition assessment toolkit and that many jurisdictions have adopted a competition assessment procedure, so the Chair asked what improvements BIAC would suggest.

BIAC suggested that the OECD and competition authorities should move beyond advocacy efforts and place a greater emphasis on enforcement. Additionally, BIAC viewed some of the competition analyses to be inconsistent between jurisdictions. Thus, BIAC encouraged competition authorities to be given a "checkpoint position" such that they could identify, flag, and address restrictive measures and suggested a more harmonised approach across competition authorities.

The **Chair** expressed support for BIAC's call for competition authorities to be more active in the regulation of professions and occupations, before turning to Chinese Taipei. The Chair noted Chinese Taipei's successful elimination of minimum tariffs for professions such as Certified Public Accountants, engineers, and attorneys, and asked about the impact of geographic restrictions in a small country such as Chinese Taipei, particularly in the legal profession.

Chinese Taipei acknowledged recent successes in removing minimum tariffs but noted that several legislators in its congress had proposed reinstating minimum rates for Certified Public Accountants, though their initial efforts have thus far failed. Turning to the question of licensing for lawyers, Chinese Taipei explained that there is only one national bar exam for lawyers, but that prior to 2020 lawyers must register with local bars and pay fees to these bars. The justification is the continued functioning of local bars, which provide services such as pro-bono legal services and continuing education for lawyers. The Fair

Trade Commission (CTFTC) noted that the local registration requirement could be non-trivial and questioned whether the services of local bar associations were actually being utilised. After 2020, lawyers would only have to register with the national bar association but would still have to pay a cross-jurisdiction fee to the national association.

The **Chair** next introduced France to present on its 2015 reform law. Before turning the floor over to France, the Chair asked why the reforms did not include the elimination of professional tariffs, why these tariff regulations are necessary, what is the structure of the fee regulation (e.g. minimum fees, maximum fees, fixed fees), and whether tariff regulation interferes with broader advocacy objectives.

France explained that the 2015 reform law was broad and aimed to encourage the revival of growth in investment and employment. It aimed to pragmatically reduce obstacles to promote growth, including through simplifying the rules and making the regulation of professions more transparent. One such move towards transparency was the introduction of a new principle for setting and reviewing fees for regulated professions, the aim being to bring down these fees by ensuring they reflect the actual costs incurred by professionals. The new fee schedule is now set by decree, after consultation with the Autorité de la Concurrence. This law also simplified the conditions under which legal professionals such as notaries, bailiffs and auctioneers can set up their practice.

France explained that the 2015 reform established the principle that services provided in competition with other providers not subject to a regulated tariff should not be subject to a regulated tariff. This led to the liberalisation of some tariffs. However, in the case of services provided by a profession with a monopoly on the service, it was determined that regulation was still appropriate to reduce rent-seeking and because many of the services are not paid for by the end-consumer (e.g. subsidised healthcare services or certain services in legal proceedings). Such fees are fixed and are meant to be proportionate to the underlying costs of providing the service, rather than being a minimum or maximum price. France noted the scope for professionals to provide discounts has increased. The competition authority regularly provides advocacy opinions on the method for setting tariffs, and it has also been entrusted by the legislature to assess the need for increasing numbers within a profession. This policy had a significant impact in the case of notaries, where the supply has increased by more than 40%, and has also significantly increased the number of women and young people in the profession since the reforms began. France also noted that these reforms have prompted reactions from the professions, which the competition authority has been able to identify as part of its efforts to curb anti-competitive practices. For example, the liberalisation of certain tariffs may have led professionals to agree to artificially maintain their own fixed prices.

After clarifying with France that there is only policy proposals to eliminate tariff regulations in some professions, the **Chair** then turned to Slovenia. The Chair commented on recommendations that have been issued on professions in Slovenia, for example eliminating the ban on advertising by lawyers. The Chair asked Slovenia which body issued these recommendations and whether they were followed. Additionally, the Chair, noting that Slovenia stated 200 professions are regulated in their report, asked which professions that are regulated are of particular concern.

Slovenia explained that the recommendations referred to in the report are the EU Commission's recommendations and that no domestic body has issued any recommendations. Slovenia also stated that the ban on advertising had not been lifted, and that this ban has created complications in the context of social media such as LinkedIn, as the ban is strict and includes attorneys referencing the number of court proceedings they are involved in, cases won, and number of clients. Another recommendation for lawyers is

reducing the length of training, which is currently relatively long, nine years. This also has not been changed.

Moving on to the number of regulated professions, Slovenia explained that part of the reason why so many (220 in all), professions are regulated is because professions that might seem similar, such as a mining design engineer and head of operations at an energy facility are considered separately regulated professions. Thus, there is tremendous specialisation in the regulation of professions. Additionally, some professions that one might not expect to be regulated are still regulated in Slovenia, such as chimney sweep, school librarian, archivist, museum technician, and fishermen. Thus, Slovenia simply regulates a lot of professions.

The **Chair** shifted to Brazil and noted that the Brazilian Competition Authority (CADE) and the OECD Secretariat have undertaken a thorough analysis of the regulation of port services, which was released in 2022. One component of the report regarded the restrictive regulation of pilots of port service boats, including a nationality requirement and a cap on numbers. The port sector was heavily reformed in 2024. The chair asked how the CADE-OECD report impacted the reforms, and how CADE advocated to the government.

Brazil explained that the CADE-OECD report compared the Brazilian context with international best practices, and demonstrated how competition policy could improve the port sector. A 2024 law included some recommendations from the report but did not incorporate all of them. For example, while the report recommended regulatory powers be transferred from the Brazilian Port Authority to the Sectors Regulatory agency, and changes to the way the Port Authority assigns shifts to port workers, these rules remain in place. On a positive note, ports and port service providers can now freely negotiate prices. Brazil concluded by stating that CADE continues to advocate for more recommendations from the report to be implemented and praised the work done by the OECD to convince society and policymakers that existing restrictions may undermine competition, economic development and consumer welfare.

The Chair then paused the Roundtable for delegates to take a short break.

2. “Regulatory restrictions are back”.

Returning from the break, the **Chair** began the second part of the discussion. The Chair called on Italy, where between 2006 and 2012 a number of reforms eliminated unjustified regulatory restrictions in the professions based on a number of advocacy reports by Italy’s competition authority; for example the bans on advertising and the establishment of minimum tariffs. The Chair asked why minimum tariffs for professional services were reintroduced in 2023.

Italy noted that its reforms occurred in waves, beginning with the abolition of mandatory minimum fees and bans on advertising in 2006, the prohibition of minimum geographic distances between professionals in 2012, and the Italian Competition Authority (AGCM) being granted the power to issue a preventative and mandatory opinion on the proportionality of new legislative or regulatory measures with respect to the public interest. However, Italy explained that recently a push back on liberalisation has started. In 2017, there was a decree that invalidated contractual clauses that set a price lower than the one set out in ministerial decrees. In 2023, a law was passed requiring fair compensation for professionals, with the stated objective of offsetting the contractual imbalance between the professionals on the one hand, and large businesses that use their services on the other. Italy specified that this provision applies only to contracts with banking and insurance firms, medium and large companies, public bodies, and state-owned enterprises.

Italy explained that the AGCM opposed this law through advocacy opinions in which they argued that fair compensation is price fixing and is not proportionate to the objective and is not effective. The reasons given were that there is no guarantee that minimum fees would translate into adequate quality and that it may serve as a barrier to entry for young professionals. The Chair followed up by asking who decides what fair compensation is. Italy replied that if a self-regulatory body exists in the profession, then the self-regulatory body decides. Otherwise, the National Observatory for Fair Compensation decides.

The **Chair** thanked Italy before turning to Romania, where a similar reintroduction of regulations had occurred.

Romania began by saying that the Romanian Competition Council has kept an eye on the way liberal professions are regulated, as members of the liberal professionals are well-represented in its parliament. Romania observed that professionals advocate for legal protections and privileges and sometimes succeed. Romania stated that minimum fees were eliminated in 2004 and reintroduced in 2017. In the case of the legal profession, the National Association of Romanian Bars has a legal right to set minimum fees among lawyers. The argument in favour of minimum fees was that low prices affect quality of service; thus, minimum prices are necessary to guarantee quality (including to guarantee resources to access to continuing education). Romania went on to explain that through the Romanian Competition Council's advocacy efforts it has developed a collaborative relationship with the National Association of Romanian Bars and to date, the Association has not adopted any minimum tariffs in the legal sector.

Next, the **Chair** introduced Kazakhstan, explaining that Kazakhstan had established an independent regulator for auditing services, but that the regulator was dismantled and the market has returned to self-regulation.

Kazakhstan began by commenting that the professional services sectors and their regulation are increasingly important to Kazakhstan as the country continues to develop and increases the size of the service economy increases. In 2015, the Kazakh Minister of Finance, together with UN Trade and Development and the Association of Chartered Certified Accountants began an assessment of corporate reporting and made recommendation on bringing standards in line with international best practices. This led to the 2020 creation of the Professional Council on Audit Activities as part of legislation to improve audit regulation. Kazakhstan clarified that this independent oversight body is not a government body. However, some in the audit community opposed the Council's existence, advocating for a return to self-regulation. The Minister of Finance remains concerned that self-regulation will not address issues in the market for auditing services nor increase confidence in auditors. Thus, a commission has been established to discuss proposals for further improvements of legislation on auditing. Kazakhstan concluded by emphasising the challenge of finding a balance between government intervention and self-regulation, and the need for broad dialogue between stakeholders.

At this point the **Chair** moved to expert Professor Alex Robson from the Productivity Commission of Australia, which recently issued a report on the Australian labour market and productivity. Professor Robson was asked to describe the report, present its main conclusions, discuss how best to recommend for pro-competitive regulatory reform, and outline what the Productivity Commission is.

Professor Robson began by outlining the role and operations of the Australian Productivity Commission, focusing on its independence, transparency, and community-wide approach to economic, social, and environmental issues. The Commission, composed of around 180 members, operates independently of the government but is commissioned by it to undertake inquiries. The report mentioned was the "Advancing Prosperity" review, which assessed

Australia's productivity performance, highlighting concerns over the country's slowing productivity growth, a trend that mirrors global patterns in many OECD economies. The report emphasised the importance of many small, long-term productivity improvements that could enhance living standards and wages.

Professor Robson then shifted to the challenges faced by Australia in boosting productivity within a predominantly services-based economy, where 80% of GDP and 90% of employment are in services sectors. Professor Robson noted that productivity growth in services has been slower than in goods markets, posing a significant challenge given the dominance of services in the economy. The nature of productivity improvements in services, he explained, differs from traditional manufacturing-based improvements, focusing more on quality enhancements and product variety rather than cost reductions through mechanisation or labour shedding.

A key part of the Professor Robson's contribution delved into the Productivity Commission's recommendations regarding occupational licensing, an area of concern within Australia's labour market. Professor Robson discussed the regulatory framework of occupational licensing, questioning whether it is more effective to regulate inputs (qualifications and standards) or outputs (service quality). He highlighted the potential restrictions on market entry and competition posed by current licensing practices, arguing that alternative regulatory approaches, such as performance-based monitoring or negative licensing, could be more efficient. The Productivity Commission's recommendations included expanding the recognition of international licences, aligning visa and licensing processes, and encouraging state-level trials to explore expanded scopes of practice.

To conclude, Professor Robson touched on the need for regular reviews of licensing policies to ensure they remain relevant and effective over time. Additionally, Professor Robson advocated for the adoption of digital licensing to reduce administrative burdens and improve the evidence base for licensing decisions. This would allow for a more data-driven approach to occupational licensing, ensuring that policies are both effective and responsive to the changing needs of the economy. The discussion underscored the importance of maintaining a flexible and adaptive regulatory environment to foster productivity and economic growth in Australia and elsewhere.

3. Antitrust enforcement in the professions

The **Chair** then moved discussion to antitrust enforcement in the professions. The Chair began with Argentina, where the Competition Authority has intervened in some antitrust cases. Two of the three cases mentioned in the note resulted in sanctions with fines. Argentina went on to detail the cases. The cases against the biochemists and pharmacists' professional bodies both led to fines and required the professional associations to eliminate the restrictive competition clauses. In the case involving a professional body for dentists, no fine was handed down, but a three-year period of monitoring to ensure compliance took place.

Next, the **Chair** called upon Latvia, where the competition authority had a long informal negotiation with the medical association regarding specific rules which restrict physicians from enticing patients away from their colleagues. To understand the extent of this enticement ban, the Chair used the example of doctors using free visits to entice patients away colleagues – would this be considered enticement?

Latvia began by affirming that a doctor advertising a free first visit would have been prohibited under a previous version of the policy. Latvia acknowledged that the primary reason for this policy was to protect patients from malicious doctors using these

inducements, but also stated the importance of finding a balance. The competition authority determined the restriction was written too broadly with no consideration of possible benefits, as it could prohibit doctors and dentists trying to entice patients with better prices, service, or other benefits, thus harming consumer welfare. After negotiation, the medical association agreed to update the language to reflect the competition authority's recommendation.

The **Chair** noted that in Croatia, rules on lawyers had required them to pay a EUR 5000 fee to the chamber of lawyers. The Croatian competition authority had negotiated this down to EUR 3000. The Chair asked why EUR 5000 was unacceptable, but EUR 3000 is okay.

Croatia explained that the competition authority compared registration fees for the Croatian Bar Association to fees for bars in other EU countries and found that the norm is between EUR 100 and 300, while some countries do not even have such fees for bar registration. In Croatia, joining the bar and paying membership fees is necessary to enter the legal services market. The competition authority found this barrier to be limiting and competition-restricting and therefore recommended a reduction to EUR 3000. This was only a recommendation, not a mandate or a negotiation, and the authority only found out later via publicly available information that the bar reduced the fee.

4. Future developments and technological innovation

For the final part, the **Chair** concluded by noting that digitalisation and artificial intelligence may affect the professions significantly. The Chair ceded the floor to the expert speakers to comment on innovation in the professions.

Professor Kleiner thanked the Chair and began by noting that occupations are not static, giving the example of genetic counsellors and music therapists, which did not exist 30 to 40 years ago, but have evolved rapidly and are now seeking or have become licensed. Other occupations, such as upholsterers and watchmakers, have been rapidly deregulated, in the latter case the occupation as a category has all but disappeared in the United States. Professor Kleiner concluded by pointing out another innovation: reciprocity, a policy similar to mutual recognition in which states recognise licences from other US states, has been adopted in some form by 20 states, beginning with Arizona.

The **Chair** commented on the fact that these new occupations are seeking licensure, as opposed to the government or customers seeking licensure, indicating licensing is generally anticompetitive. The Chair then turned to Professor Robson.

Professor Robson noted that he had been reading Friedman's *Capitalism and Freedom* the prior night, and that it was striking how little has changed surrounding the topics discussed in the Roundtable, despite 62 years passing and the world experiencing huge technological innovations and churn in what occupations are most common. The fundamental trade-offs remain the same. Professor Robson emphasised that in increasingly service-based economies there is a lot at stake in getting regulation right and applying principles in a consistent manner.

With this, the **Chair** recalled that similar discussions also took place 25 years prior, and noted it is likely these discussions will continue.