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Working Party No. 2 on Competition and Regulation

**Executive summary 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 Executive Summary by the OECD Secretariat contains the key findings from the roundtable on Competition and Regulation in Professions and Occupations held during the 77th meeting of Working Party 2 on 10 June 2024.

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

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Executive summary of the Roundtable on Competition and Regulation in Professions and Occupations

By the Secretariat¹

On 10 June 2024, Working Party No. 2 on Competition and Regulation held a roundtable to discuss the topic of competition and regulation in the professions and occupations. Considering the background note prepared by the OECD Secretariat, the written contributions, as well as the discussion by delegates and expert panellists, the following key points emerged:

1. There has been renewed interest from policymakers and academia on the impact of professional regulations and occupational licensing on competition in markets

Evidence gathered by labour economists in academia and by governments suggests that there has been enormous growth in the number of jobs that are subject to some form of professional regulation and occupational licensing. In many OECD countries, these types of jobs now represent over a quarter of all workers. An additional complicating factor is that there are large variations between countries and within countries in which jobs fall within the scope of professional regulations and of occupational licensing, as well as the type of regulations imposed. These differences limit workers' mobility towards jurisdictions with higher entry requirements or with otherwise inconsistent regulations from the jurisdiction the workers originate from. While acknowledging that they may reflect each jurisdiction's specificities, the significant differences in the extent to which professions and occupations are regulated raises questions about the validity of these regulation's policy objectives.

2. The regulation of professions and occupations aims at ensuring the quality of the services provided

The positive public interest case for regulation is that as the services of professionals and occupations are those where the ordinary consumer lacks the ability to make a judgement about quality or if the service was necessary at all, there should be minimum standards of skills and ethics among the service providers. Professional regulations and occupational licensing are also justified on the basis that society more broadly also needs certain services to be provided to a sufficient standard to ensure that other members of the public are not harmed by low quality service.

These objectives translate into regulations setting entry requirements into the profession or occupation, including academic qualifications, training or apprenticeship requirements, as well as examinations. Moreover, behavioural regulations such as restrictions on advertising and on pricing also have the stated objective of ensuring quality.

3. Evidence suggests that frequently, the public policy benefits are not adequately achieved when traded off against the risks of reduced competition, higher end prices, poor consumer outcomes, and weakened productivity

While ensuring quality is a key objective for regulating professions and occupations, in practice there does not seem to be strong evidence that regulation has positive effects on

¹ This executive summary does not necessarily represent the consensus view of the Working Party participants. It does however identify key points from the discussion at the Roundtable, including the views of the expert panellists and the participants' oral and written contributions.

the quality of services. However, the literature does not investigate other positive effects that regulation may achieve, such as the signalling value of certifications for new entrants.

The expert speakers discussed empirical evidence on the impact of regulation, such as findings that entry regulation restricts the number of suppliers on the market, when they act as independent service providers, and restricts the pool of workers for companies that may wish to enter the market or expand, such as law firms or accounting firms. There is a positive wage premium associated with occupational regulations, even though its magnitude varies by profession or occupation, as well as across the wage distribution within a given profession or occupation. The literature also tends to conclude that tighter regulation is associated with higher prices and mark-ups of the services subject to regulation, with some evidence that the effect of higher prices and lower access to services does not fall on all consumers in a uniform way but impacts disadvantaged consumers more.

4. Competition authorities have played a role in regulatory reform in the professions and occupations

Using their advocacy functions, competition authorities have played a major role in reforming aspects of professions or occupations in order to promote more competition. One such way is through conducting market studies on services where professionals have a monopoly. These market studies have concluded, for instance, in recommendations that professions introduce an independent regulatory authority that can operate autonomously from the members of the profession, or in requirements to disclose prices for services in advance.

The types of regulations competition authorities have provided opinions on include things such as setting minimum prices for services or setting unnecessarily high barriers to be get a licence (e.g. a master's level degree). Beyond providing advocacy opinions, some competition authorities have the capacity to bring legal action against government entities that administer a professional or occupational licensing regulation they believe undermines competition.

In addition to market studies and ad hoc advocacy opinions, some competition authorities have been involved in wider policy reviews of a profession or occupation. Competition authorities have participated in reviews of markets such as maritime ports services or the construction sector. As part of this, they have recommended removing job requirements such as caps on numbers of workers or nationality requirements.

5. Some jurisdictions have seen the reintroduction of regulations which undermine competition in the professions and occupations

While there have been a number of notable successes in reducing the levels of anticompetitive regulation in professions and occupations, some jurisdictions have seen backsliding in recent years. Following the removal of regulations such as minimum fees for services, minimum distances between service providers and prohibitions on advertising through a series of reforms, some countries have re-established mechanisms setting minimum prices for the services of professionals, under the guise of *fair compensation*.

Competition authorities may even play a decision-making role in relation to the fees and the permitted number of service providers in a profession, with the specific aim of improving competition, enhancing transparency, and ensuring fees better reflect the actual cost of providing services. These powers are very rare though.

6. Antitrust enforcement activities remain a relevant tool to promote competition in professions and occupations

Some delegations discussed the role traditional antitrust enforcement activity can play in promoting competition in the professions and occupations. This can occur through the imposition requirements to eliminate anticompetitive clauses in professional association rules, and long-term monitoring of the sector.

Other authorities have used their enforcement powers to negotiate an outcome when they detect rules in a profession that unnecessarily restrict free competition. For example, a competition authority worked with the professional body for doctors to remove a total ban on offering inducements to patients to switch to a new medical practitioner. The authority and professional body were able to update the language to ensure malicious actors could not use inducements to undermine public safety, but also to ensure doctors and dentists could compete fairly on price. By contrast, some authorities have so far only provided recommendations to professional associations they have identified as engaging in behaviour that may restrict competition.

7. Regulatory frameworks need to adapt to technological innovation and the development of new professional profiles

The discussion covered the potential for digitalisation and AI to transform professional services, with a focus on maintaining competitive markets. This includes reduced information asymmetries between consumers and professionals, new ways of professional expertise being created, and perhaps even the ability to rely on AI-driven expert systems to provide the services currently delivered by professionals. Experts highlighted the evolving nature of occupations and the importance of adapting regulatory frameworks to accommodate new professions and technological advancements. This requires a consistent application of regulatory principles in increasingly service-based economies.

Experts noted current regulatory trends, including mutual recognition policies and new types of jobs seeking the status and regulatory protections of a profession. The rapid evolution of occupations like genetic counsellors and music therapists into ones that seek to define themselves as a profession and establish exclusive rights were noted.

Increasing digitalisation provides opportunities to use technology to share and recognise qualifications and licenses across domestic and international borders. This can increase competition by enhancing labour mobility.