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Competition and Regulation in Professional Services – Note by Slovenia

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This document reproduces a written contribution from Slovenia submitted for Item 8 of the 77th meeting of Working Party 2 on 10 June 2024.

More documents related to this discussion can be found at
www.oecd.org/competition/competition-and-regulation-in-professional-services.htm

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1. Policy developments and challenges

1. There is a range of over two hundred professions or occupations in Slovenia that are subject to professional regulation and/or occupational licensing, referred to as *regulated professions*.¹ The regulated professions are extremely diverse and they require various types of qualifications, as they include professions such as medical doctors, attorneys, cave guides, teachers, librarians, piston engine operators, brokers, hairdressers, and many more. The competent ministries, for instance Ministry of Health, Ministry of Culture, Ministry of Justice, etc. oversee regulated professions. On top of that in certain fields specific associations, chambers, and similar organisations exist that may participate in issuing particular licences (for example The Medical Chamber of Slovenia, The Slovene Bar Association, The Chamber of Craft and Small Business of Slovenia, etc.). To varying degrees, these professional organisations also promote and maintain standards within respective fields and as such oversee their activities, and self-regulate.

2. Given the substantial number of regulated professions, there is a large body of national regulation including laws and by-laws pertaining to specific professional fields. As a member of the EU Slovenia is also subject to Directive 2005/36/EC of The European Parliament and of The Council of 7 September 2005 on the recognition of professional qualifications (Directive 2005/36/EC).

3. With this background and considering the diversity of regulated professions, there was no systemic changes of regulation of particular professions. However, there might have been certain changes or adjustments introduced to requirements or standards within particular field or indeed profession, given the fact that they, as mentioned above, self-regulate, but those only merit a greater public debate in exceptional cases that will be described in following segments of this contribution.

4. While Slovenian Competition Protection Agency (CPA) regularly participates in interdepartmental coordination stages of legislative process, it is not required to specifically review changes in regulation of professional services from a competition law perspective on a regular basis. Furthermore, the restriction of markets by authoritative legal acts and actions is forbidden in general and the CPA may give its opinion regarding any piece of (proposed) legislation that could restrict the free operation of undertakings on the market, including one that might apply to professional services.² The CPA has not however issued any such opinions regarding regulation of professional services as of yet. It also has to be mentioned, that these opinions of the CPA are not legally binding for the authority issuing these provisions.

5. CPA may also always act ex officio as an enforcer when suspicion of hindering of competition by a professional organisation is raised and opens an investigation.

¹ Source: <https://spot.gov.si/en/topics/list-of-regulated-professions/>

² Prevention of the Restriction of Competition Act, Official Gazette of the Republic of Slovenia, No. 130/22 (hereafter: ZPOMK-2), Part VII.

2. Impact of regulation

6. As a preface to discussion about general impact analysis of regulated professions it should be noted that there is no robust system of ex-post analysis of regulated professions legislation in place in Slovenia. There is a considerable lack of transparent resources on the particular topic, so the views of this contribution are in considerable part focused only on activities of the CPA. It is well beyond the scope of this contribution to speculate why this is; however, it seems that the fact that the range of the regulated professions is so broad and diverse, and overseen by several different bodies might play a significant role.

7. As there is no requirement to conduct (proposed) regulation review from competition law standpoint, there is similarly no requirement to execute ex-post evaluation studies. Any ex-post reviews might be conducted by the CPA in the context of opening an investigation in a suspected infringement of competition law.

8. One of the more comprehensive policy analysis of the impact of regulation of professions occurred in the context of the EU-wide review of the Directive 2005/36/EC. The analysis resulted in reform recommendations in 2016³ and subsequent update of reform recommendations in 2021.⁴ The review was focused only on selected regulated professions that are covered with Directive 2005/36/EC, specifically architects, civil engineers, accountants and tax advisors, lawyers, patent/trademark agents, real estate agents, and tourist guides.

9. According to the 2021 recommendations update, Slovenia implemented some qualification requirements for architects by slightly reducing training requirements but brought in mandatory professional development obligation. Slovenia made some, but not significant adjustments regarding civil engineers, as it on one hand reduced the number of specialities, but on the other hand increased other requirements. Further, regarding lawyers, Slovenia remains one of the countries with the longest total duration of schooling and training to obtain qualification (9 years). Slovenia still imposes a total ban on advertising of legal services and the 2021 recommendation update again called for loosening the restriction. This has not happened as of yet. Regarding real-estate agents, the 2021 recommendation update challenged Slovenia to revisit the duration of mandatory qualifications requirement. Finally, regarding regulation of tourist guides, the updated recommendations of 2021 pointed out that Slovenia should clarify regulatory framework governing tourist guides, given the diverging regional regulation, since municipalities may still lay down specific conditions for access to profession in specific tourist areas.

10. The 2021 recommendation update concludes that there was no substantial progress in removing regulatory barriers across the board, for all member states. As can be seen from minimal changes described above, this applies to Slovenia as well, however it should be noted as well that the Directive 2005/36/EC is not applied frequently in Slovenia, as there is no large influx of workers from other EU member states that would seek work in these regulated professions in Slovenia.

³ Communication From The Commission to The European Parliament, The Council, The European Economic And Social Committee and The Committee Of The Regions on reform recommendations for regulation in professional services, COM/2016/0820 final.

⁴ Communication From The Commission to The European Parliament, The Council, The European Economic And Social Committee and The Committee Of The Regions On taking stock of and updating the reform recommendations for regulation in professional services of 2017, COM/2021/385 final.

3. Activities of the CPA – recommendations, interventions, and advocacy

11. As pointed out so far there is no regular activities on behalf of the CPA in the field of regulated professions, only case by case activities, be it in form of a potential infringement investigation or issuing opinions on potentially un-competitive legislation.

3.1. Attorneys

12. The CPA was involved in one of the most public attempts at introducing changes that could represent significant barrier to entry in a regulated profession. The Slovene Bar Association in 2016 attempted to raise the registration fee for 260% (from 2500 EUR to 9000 EUR). The proposition was heavily criticised within the legal sector, as the proposed registration fee represented an exorbitant economic burden for new attorneys and thus a significant barrier to entry.⁵

13. When learning about the proposed fee hike, the CPA looked into the proposed changes and requested information and explanation from the Slovene Bar Association. While there was no official investigation conducted, the CPA obtained information from all interested parties and also conducted some constructive meetings. As there was no official investigation, there was also no decision adopted by the CPA, however after the CPA's activities and following relatively substantial criticism within the sector as well as in wider public, the fee hike was not applied.

14. On the other hand, the same registration fee was increased to 3000 EUR in 2019 without significant discussion within the legal sector and with basically no public discussion, as well as no intervention by the CPA. Since the increase was not outrageous, as the one proposed in 2016, and as such did not represent a significant barrier to entry, the lack of discourse is understandable.

3.2. Administrators/liquidators in insolvency proceedings

15. An Administrator/liquidator must perform their tasks and competences in accordance with the Financial Operations, Insolvency Proceedings and Compulsory Dissolution Act⁶ and regulations issued on its basis, and in accordance with other acts applicable to insolvent debtors and regulations issued on their basis, and with the rules of the profession of persons who carry out transactions for other persons as agents. In a specific proceeding, the administrator/liquidator is appointed by the court with a decision on initiating insolvency proceedings. For each case, the court must appoint a new administrator from the list of selected administrators of an individual district court according to the order of sequence numbers of the permit to perform the function of an administrator.

16. The CPA is currently monitoring the changes to Financial Operations, Insolvency Proceedings, and Compulsory Dissolution Act that could raise some competition law issues regarding regulated professions. In September 2023, the so-called Amendment H was introduced to the Act without any relevant public debate. The amendment introduced novelties for fulfilling requirements in order to obtain the permit to become an

⁵ According to Statistical Office of Republic of Slovenia, the average gross salary in attorneyship in May 2016 came to 1.927,81 EUR, while average net salary in attorneyship in same period amounted to 1.207,45 EUR. Source: <https://pxweb.stat.si/SiStatData/pxweb/sl/Data/-/0701011S.px>.

⁶ Official Gazette of the Republic of Slovenia, No. 176/21 – official consolidated version, 178/21 – corr., 196/21 – Dec. US, 157/22 – Dec. US, 35/23 – Dec. US, 57/23 – Dec. US in 102/23.

administrator/liquidator in insolvency proceedings (referred to in the Act as the *receiver*, also *bankruptcy receiver*).

17. Administrator/liquidator (hereinafter: Administrator) is a highly regulated profession, overseen by the Ministry of Justice that issues permits, and Chamber of Insolvency Administrators of Slovenia with obligatory membership for all that wish to work as Administrators. Requirements to obtain a permit to work as an Administrator (suitable level of education, work experience, etc.) include a notoriously rigorous examination in written and oral form, that must be successfully completed by the candidates. Before Amendment H, the Ministry of Justice regularly conducted examinations several times per year, however the Amendment introduced new Art. 114(2), according to which the examination is conducted only if the Ministry of Justice receives the proposal either from one or more courts, or the Chamber of Insolvency Administrators of Slovenia. The Ministry can still conduct the examination on its own discretion, if they conclude that that is necessary for ensuring the proper execution of the insolvency procedures.

18. This manner of conducting examinations is highly questionable from competition law standpoint since it does not include clear criteria on when the examination could be conducted, but is instead left to arbitrary decision of different bodies. This barrier to entry in practice precludes the potential new entrants to join the profession.

19. The CPA is currently looking into possible interventions that could be made at this point – since Administrators are appointed by courts in specific cases, the question is raised if they are performing an economic activity in the context of competition law.

3.3. Advocacy

20. The CPA has not been active in the advocacy for more competitive structures of regulated professions as of yet, but focused its resources on addressing the potential competition issues in a more ad hoc manner. At this point and in the regulatory landscape described above, a more focused approach seems more productive in the field of regulated professions.

21. CPA is however following development in multiple sectors and areas of regulation and that includes regulated professions, so as to use all available instruments, including advocacy, in particular circumstances.