

Unclassified

English - Or. English

31 May 2024

**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
COMPETITION COMMITTEE**

Working Party No. 2 on Competition and Regulation

Competition and Regulation in Professional Services – Note by Romania

10 June 2024

This document reproduces a written contribution from Romania 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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Overview

1. The main aspects that have been subject to the analysis and repeated interventions of the RCC are those regarding the market access when the conditions are excessive and are not motivated by the need to ensure a high level of quality of the services offered, especially the quantitative restrictions - limiting the number of professionals on the market, as well as those regarding the specific rules for carrying out the activity, such as: setting fixed tariffs or restricting advertising.
2. Certain exclusive rights granted to several professions can be added in the same category (e.g. an activity entrusted to notaries, but which could also be carried out by other legal professions, like the mandatory intervention of notaries only in real estate transactions), but also regulations of market behavior (business structure, inter-professional cooperation).
3. The actions of the competition authority mainly concerned the following aspects:
 - Elimination of tariffs/fees' regulation and advertising bans, considered as disproportionate to the purpose, especially when associated with other restrictions (e.g. limitation of professionals' number). The RCC expressed its position that the setting of prices/tariffs/fees (mandatory or recommended, minimum or maximum) by the legislator or, worse, by the professional bodies, essentially distorts the market, eliminating one of its essential parameters, namely the determination of the price according to demand and supply. The lists of mandatory minimum tariffs virtually destroy any possibility of competing on the market with prices below the fixed level, to the detriment of the customers, who are thus deprived of the possibility of obtaining lower prices. At the same time, it has a negative impact on the quality of services by guaranteeing a minimum level of revenue to providers, who are thus no longer interested in offering better quality.
 - The lists of mandatory, even recommended, maximum prices can prove to be equally unfavorable if the aim of this mechanism is to eliminate some service providers from that market or to align the market to the maximum level, eliminating or significantly reducing price competition. The removal of tariff lists, regardless of their nature, would not only stimulate price competition, but could also lead to an increased concern for increasing the quality of services. In this respect, it is worth mentioning the example of lawyers in Romania who, after a complete revocation of the minimum fees' lists, they resiled from that decision by reintroducing in their law recommended minimum fees established by the decision-making body of the National Union of Romanian Bars (UNBR). Restrictions on commercial advertising affect, in particular, those newly entering the profession who are unable to promote their services, strengthening, therefore, the position of those with a long history in the profession. The consumer is also deprived of any possibility to compare the services provided by different providers and to make an informed choice on the basis of objective criteria.
 - Elimination of the quantitative restrictions by limiting the number of legal forms (e.g. notarial offices) often based on geographic and demographic criteria, leading to an artificial price increase of these services. If the access to the profession is, in most cases, following an exam/competition, on which occasion, a sorting of future

professionals is carried out, and after a period of internship, usually two years, a new selection of them follows, it can be said that these stages are necessary and sufficient to ensure a high level of competence. In this context, in the view of the competition authority, an additional restriction, through limitation of the members' number of the profession, seems unjustified.

- Waiver of exclusive rights and permission granted to those who are not, for example, notaries, to provide services in the field, less complex. In general, the grant of an exclusive right to a particular profession must necessarily derive from its fundamental characteristics and not exclusively to obtain the greatest possible material benefits for the members of the profession.
 - Establishment of independent regulators for the liberal professions, with most of the members non-professional. It is very important that the conditions imposed on new entrants in the profession are not excessive, that their fulfilment is assessed impartially (predominantly by those who are not their direct competitors) and under equal opportunities, and that those dissatisfied with their result can contest that decision.
4. Through the steps taken, the RCC does not pursue a total deregulation of the liberal professions, considering that there are certain situations where additional regulation may be necessary to guarantee the quality of the services offered (e.g. examinations upon entering the profession, traineeship period, continuous professional training), especially on the market segments affected by market failures.
5. However, existing regulations in the liberal professions sector continue to contain a number of restrictions affecting competition, which mainly concern the following aspects:

Notaries

6. The profession of public notary is strictly regulated in Romania by Law no. 36/1995 regarding: access to the profession, organisation of the profession and the establishment of the minimum notarial fees.
7. The Ministry of Justice is the main body regulating the notarial profession and has the right, by primary law, to issue an order setting mandatory minimum fees for notarial offices for their notarial procedures and acts. Fees are either gradual/progressive, i.e. in instalments and percentages, or in fixed amounts.
8. The minimum fees for the most important notarial acts and procedures (in terms of rate and value) are set by the Ministry of Justice, at the proposal of the Council of the National Union of Public Notaries from Romania (UNNPR).
9. As a result of the advocacy activity and, subsequently, of an investigation conducted by the competition authority, in 2017 the fees for certain categories of notarial acts and procedures were liberalized, so that the role of the consumer for those notarial services is no longer just a static one, in the relationship between supply and demand, the clients of the notarial offices having the possibility to negotiate the fees and obtain fees' reduction.
10. The number of notaries is established/updated by the Ministry of Justice, at the proposal of the UNNPR Council. When formulating the proposed update, the following aspects are taken into consideration:
- proposals from the Chambers (each Chamber corresponds to a Court of Appeal);
 - the number of the public notaries in office;

- the number of trainee notaries to sit the final examination;
- the requests of the judges of the High Court of Cassation and Justice to be appointed as public notary with exemption from the examination;
- requirements resulting from the extent of the territory, the number of inhabitants;
- the volume and type of notarial procedures requested by the public;
- the annual average of the fees collected by notary offices, by locality.

11. The substantive competence of public notaries refers to a series of notarial acts and procedures expressly provided for by Law No 36/1995 on the public notary and the notarial activity, republished (hereinafter Law No 36/1995). The procedures and documents drawn up within the notarial offices concern: authentication of documents, succession procedures, consultation, legalization of copies, translations, signatures on certifications, specimen signatures, seals, certification of facts and documents, receipt in the warehouse, acts of protest, order, notes and cheques, registration in the Electronic Securities Archive, etc.

12. Territorial jurisdiction is geographically limited (to the district of a court) in the case of successions, but also in the case of divorce proceedings.

13. Prohibitions on commercial advertising are established by UNNPR;

14. Exclusive rights (e.g. in the matter of procedures for the authentication of translational acts of ownership or other rights in rem, etc.) are assigned by law to notaries.

Lawyers

15. UNBR is the one that, based on Law no. 51/1995 for the organization and exercise of the lawyer profession, republished, with subsequent amendments, establishes the recommended minimum fees, practiced by its members;

16. Although the competition authority, through the advocacy measures undertaken, had succeeded in removing from the law regulating the organization and practice of the profession, in 2004, the provision related to the establishment by the professional body of the minimum fees for the services provided by its members, thereafter, in 2017, this provision was reintroduced, the UNBR Council recommending the minimum fees.

17. Also, UNBR establishes by the statute of the profession a series of restrictions on commercial advertising that can be used by the forms of organization of the profession (cabinets, professional civil societies, etc.), especially with regard to the fees charged in relation to clients, but also to the results obtained, the turnover or the rate of success. However, the adoption by the UNBR of a Guide on online platforms' use by lawyers, prepared in accordance with Regulation (EU) 2019/1.150 of the European Parliament and of the Council of 20 June 2019 on promoting equity and transparency for the enterprises that use online intermediation services, and the CCBE Guide on the online platforms' use by lawyers, it is welcomed.

18. The profession of lawyer is exercised only by lawyers registered with a bar association, which is a component of UNBR, the establishment and operation of bar associations outside UNBR being prohibited. At the same time, law firms can be opened only by lawyers that are UNBR members.

Pharmacists

19. The number of pharmacies is limited in urban areas by the Ministry of Health, on the basis of demographic criteria (in Bucharest, one pharmacy per 3 000 inhabitants, in the county-resident cities, one pharmacy per 3 500 inhabitants, and in other cities, one pharmacy per 4 000 inhabitants). There are no limitations in rural areas.

Chartered accountants and licensed accountants

20. Among the conditions that accounting firms/experts must meet is that the majority of shares in a company must be held by accountants/expert accountants. The competition authority has made recommendations so that any interested person, holding investment capital, can open an accounting services company, without the need to include a professional in the field in the share capital structure, or at least to reduce their share in the structure of the company.

Judicial Officers/Executors

21. The minimum and maximum fees for the services provided by judicial executors are established by the Ministry of Justice, at the proposal of the Council of the National Union of Judicial Executors (UNEJ).

22. Here, again, as in the case of notaries, the number of judicial officers is determined by the Ministry of Justice, at the proposal of the UNEJ Council.

Veterinarians

23. As in the case of expert accountants, one of the operating conditions of veterinary clinic with legal personality refers to the mandatory existence in the share capital structure of the professional in the field. The recommendation made by the competition authority is similar as that for chartered and licensed accountants. For example, in the area of human health, it was considered that the existing provision (*a medical office with legal personality can operate if the administrator or at least one third of the members of the board of directors are doctors*), while potentially restrictive, can be justified by the need to ensure a high level of protection of public health and does not go beyond what is necessary to ensure the attainment of this objective.

Tax advisors and financial auditors

24. Similar to the case of expert accountants and licensed accountants, described above.