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**Working Party No. 2 on Competition and Regulation**

**Competition and Regulation in Professional Services – Note by Bulgaria**

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This document reproduces a written contribution from Bulgaria 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  
<https://www.oecd.org/competition/competition-and-regulation-in-professional-services.htm>

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## *Bulgaria*

### 1. Competition advocacy in professional services

1. The removal of restrictions on competition in the field of professional services has been an important priority in the activity of the Bulgarian Commission on Protection of Competition (CPC) for nearly 20 years.

2. Using its powers of competition advocacy, the CPC has adopted more than 20 opinions, making numerous recommendations to improve competition in a number of professional services in Bulgaria. These recommendations have been prepared on the basis of an in-depth assessment, taking into account the principles laid down in the reports and studies of the European Commission, the Organisation for Economic Co-operation and Development, as well as the experience of other EU Member States in the field of protection of competition in the provision of professional services.

3. The CPC recommended removing the possibility of setting minimum prices for the services of architects, engineers, attorneys, auditors, veterinarians, valuers, surveyors as well as for those exercising creative activity as a liberal profession (actors, artists, musicians, dancers, composers, writers, etc.). According to the CPC the fixing of minimum prices represents one of the most serious infringements of competition as it limits price competition between market participants. Minimum prices can in no way be a guarantee of quality. Their effect is to protect inefficient market participants.

4. Membership in a professional organisation is often required as a condition for practicing a given liberal profession. According to the CPC, this requirement could be necessary in view of the effective implementation of regulatory and control functions assigned by the state to the relevant organisation. Where this is not necessary, professionals should be able to choose which professional organisation to join (architects, engineers, veterinarians, surveyors). Where possible, certain functions should not be concentrated in one organisation. In this regard, in relation to auditors, the CPC proposed the introduction of more than one organisation responsible for the training and licensing of candidate auditors to compete in the preparation of candidates with uniform standards approved by the state. As regards the valuers, the Chamber is the only organisation that has the right to organize exams necessary for practicing the profession. This has led to foreclosure of the market for a period of about 3 years because the Chamber has not organized exams. That is why the CPC suggested the trainings and exams to be organized by other organisations and not by the Chamber which should be obliged to enter in the register of independent valuers everyone who has passed such an exam. The CPC stated that the power of the Supreme Bar Council to organize and conduct the examination of attorneys and junior attorneys could restrict competition as by granting the right to market participants to determine whether their potential competitors enter the same market, conditions for bias in the examination are created.

5. Professional services are characterized by requirements for practicing the profession, such as education and experience, which aim to ensure high quality of the services provided. However, in some cases these requirements are higher than necessary and unjustifiably limit the number of market participants. In this regard, the CPC recommended reduction of the period of internship in the specialty, necessary for acquiring a limited capacity for independent development of projects of a certain category by the architects and engineers. The CPC considered that the requirement a lawyer with a legal experience of less than 2 years to be admitted as a junior attorney, would lead to unjustified

closure of the market for two years for persons who already have considerable experience and legal qualification to practice law independently. In addition, there is an unjustified separation of lawyer practice and attorney practice as a condition for obtaining the rights of an attorney which restricts the entry into the market of attorney services for persons with the same educational qualification and experience in the field of legal services. Also, in its advocacy practice, the CPC proposed the requirement the owner of a pharmacy to be only master-pharmacist to be abolished, as well as to drop the requirement of three years of professional experience for a manager of a veterinary medical centre. The Commission found that, in order to improve competition between industrial property agents, it is necessary to change the definition of their required work experience so as to provide an opportunity for all eligible persons to practice. After examining the conditions for competition on the market of translation services, the CPC recommended removal of the requirement legalized translations to be performed only by translation agencies, but not by individuals practicing the liberal profession of translator.

6. The CPC made other recommendations to remove some unjustified barriers to entering the market. Thus, the Commission recommended dropping of the requirement the candidates for notaries to indicate only three judicial districts in which they would like to practice, as well as to remove age restrictions for notaries and the requirement to be Bulgarian citizens. The CPC also found that it is necessary to cancel the ban on an intern, assistant or deputy veterinarian to open a professional practice within a radius of 30 km from the office or clinic where he worked. The legal uncertainty caused by the incomplete and unclear legal framework was also identified as a barrier to entering the market of legalized translations. When assessing market entry barriers, the CPC always analyses whether a given restriction is justified by another objective of public interest. For example, the CPC decided that the requirement the determination of eye refraction to be performed by an ophthalmologist, but not by an optometrist, is imposed by the nature of the service itself in order to guarantee people's health.

7. Regulation in the field of professional services sometimes results in limiting the possibilities of the professionals to compete freely. In this regard, the CPC recommended the abolition of the ban on advertising by notaries and attorneys and the ban on comparative advertising by auditors, as well as the removal of the restriction the veterinarians to practice only on the territory of one veterinary region.

8. The CPC proposed the removal of regulations that lead to placing some market participants in a privileged position over others. An example of such are the powers of the professional organisation of veterinarians to determine the number and the list of veterinarians with whom to conclude a contract for the implementation of the state prophylactic program, as well as to decide which veterinarians to be granted free use of veterinary clinics which are state property. A similar risk is also present from the requirement to create a separate list of controllers and inspectors at the Registry Agency, different from the register of registered auditors. The CPC found that an obligation for private enforcement agents to pay state and local fees payable for obtaining information about the debtor does not place them in a disadvantaged position compared to state enforcement agents, since the latter do not bear the financial and economic risk of their activity and therefore are not "undertakings" within the meaning of the competition law.

9. In some cases, the CPC found regulations that lead to limiting the possibilities of those practicing professional services to decide for themselves how to organize their activities. The CPC considers that such restrictions may reduce the variety of available services and prevent the development of new business models. This is the case with the ban on combining the activity of an architect with that of a constructor, construction

entrepreneur or consultant. With regard to the activity of pharmacists, the CPC proposed permitting of horizontal integration by allowing the creation of pharmacy chains. The requirements for office, equipment and personnel for translators of legalized translations also have a negative effect on competition.

10. The CPC has also identified regulations in the field of professional services that reduce the incentives of the suppliers to compete actively. With regard to a requirement for the valuers to present annual report about their activity to the Chamber, the CPC expressed an opinion that this creates a risk of exchange of sensitive information within an association of undertakings.

## 2. Changes in the regulation of professional services

11. Probably the biggest success of the competition advocacy in the field of professional services is that as a result of the decision of the CPC the requirement the owner of a pharmacy to be only master-pharmacist was abolished. Now everyone can own pharmacy as long as he/she has concluded an employment contract or a contract for management with a master-pharmacist.

12. However, generally it is very difficult to convince the competent state authorities to remove regulations that restrict competition. This is probably because professional associations, while unable to deny the benefits of competition, continue to insist that anticompetitive regulations are necessary for the quality of professional services and consumer protection. They also add to this argument the need to create registers and licensing regimes to ensure transparency and security regarding the liberal professions. These registers and permits are assigned to industry chambers, and this is an inadmissible assignment of administrative functions to bodies of industry organisations.

## 3. Recent advocacy opinions

13. It is not only that it is very difficult to remove the restrictions of competition in professional services, but there is a growing trend to introduce more anticompetitive regulations, including in professions that were not regulated before. With regard to this recently the CPC adopted two advocacy opinions concerning real estate brokers and tourist guides.

### 3.1. Real estate brokers

14. By Decision 454 of 25 April 2024 the CPC adopted a competition advocacy opinion that the Draft Law on Intermediary Services in Real Estate Transactions contains numerous restrictions on competition.

15. The identified restrictions on competition directly or indirectly lead to the same overall effect, namely reserving the activity of intermediary services in real estate transactions only for real estate brokers and excluding from the market those participants for whom this is not a main activity. This leads to limiting the possibility of some market participants, such as, for example, lawyers and tradesmen, to provide intermediary services in real estate transactions. The smaller number of participants in the market, including the difficult access to it, will lead to a decrease in consumer choice and an increase in the prices of these services.

16. The overall effect is most clearly expressed in the direct requirement the activity as an intermediary in real estate transactions to be reserved only for real estate agencies, supported by the requirement for a statement to exercise as a main activity “real estate intermediation/operations”. The requirement for legal capacity to exercise activity as an intermediary in real estate transactions limits the number of participants and, accordingly, competition in the market, without being necessary to ensure the quality of services and guarantee the interests of consumers. Such requirements cannot in any way be justified for a profession for which no special education is required. In addition, the requirement for experience makes it in practice impossible for new market participants to enter the market as independent intermediaries. Creating a register of intermediaries in real estate transactions will also limit competition by narrowing the range of market participants to only those who are dealing mainly with this activity. At the same time, such a register cannot in any way contribute to the awareness and protection of consumers, as well as to the increase of tax collection.

17. The overall anticompetitive effect of the proposed regulations is indirectly complemented by requirements increasing the costs of entering the market, which may not be economically justified to be incurred by persons providing intermediary services in real estate transactions not as a main activity. Such requirements are indemnity insurance, periodic trainings, fee for entering into the register and a requirement to operate from a specific address. At the same time, these requirements are not justified. Having insurance does not protect consumers, as in any case the damages suffered must be proven, which is the burden of the consumers. In addition, preconditions are created to limit competition also in the organisation of periodic courses, since they must be approved by the Chamber, which also organizes courses. Each broker can decide for himself/herself what courses he/she needs instead of participating in courses just because they are mandatory. Requiring an address does not guarantee that in the event of a problem consumers will be able to find the relevant broker at the address.

18. The establishment of a Chamber of Real Estate Brokers to determine whether new competitors will enter the market, as well as whether their existing competitors will remain in the market, may also have an adverse effect on competition.

19. The lack of necessity of the proposed regulations on the market of intermediary services in real estate transactions is also confirmed by international studies. According to the Communication of the European Commission on reforms in the regulation in professional services of 2021, the profession of real estate agent is not regulated in 10 EU Member States, which indicates that this market can function without regulation. This conclusion is also confirmed by the average values of the OECD indicators of product market regulation, according to which the profession of real estate agents has the lowest degree of regulation.

### **3.2. Tourist guides**

20. By Decision 474 of 9 May 2024 the CPC adopted a competition advocacy opinion that the regulations of the activities of tourist guides contain restrictions on competition. The requirement of legal capacity to provide tourist guiding services restricts competition, as it may to some extent narrow the number of participants in the market, resulting in higher prices and lower quality services. At the same time, this barrier to entering the market is not justified, as it does not guarantee the quality of the services provided. In addition, the profession itself does not require the introduction of special measures to protect consumers, since these services are not decisive for their health and life. The CPC also found that the separate elements of the legal capacity requirement – education, practical training and exam, represent unjustified barriers to entry into the tourist guide services market. The

options for meeting the education requirement are so wide and various that it is not possible every option to guarantee the availability of the necessary knowledge. The profession of tourist guide is not among those in which practical training is necessary due to a risk of serious harm to consumers as a result of insufficiently good implementation. The exam for legal capacity requires very broad knowledge that may not be necessary to organize the specific tours. It is important for the tourist guide to be familiar with the tourist sites in the settlements in which he/she operates and not with all the tourist sites in the country and the detailed historical and other data related to them. The analysis of the individual elements of the legal capacity requirement confirm that it is not justified and necessary. Anyone can make a detailed study of the sights of a given city and prepare a guided tour, and the quality of the services offered will determine whether he/she will stay in the market. Therefore, the question of who stays in the market should be decided by the natural market mechanisms of demand and supply, not by regulation.

21. The CPC considers that the envisaged registration regime is not justified as it does not affect the protection of a significant public interest, but only aims to provide public information. At the same time, the register would not be able to provide information to consumers on the basis of which they could make an informed choice of a tourist guide, due to the narrow scope of data that the register contains.

22. The circumstance that the existing market participants at the time of the regulation of the profession are not considered less prepared than those who have passed the exam for legal capacity is another evidence that this exam does not contribute to the quality of the services of the tourist guides and, accordingly, new entrants in the market are unjustifiably placed in an unprivileged position compared to the existing market participants at the moment of the introduction of regulation, which constitutes a restriction of competition.

23. The CPC is of the opinion that the ban on foreign guides to perform their functions outside the vehicle leads to a restriction of competition on the territory of the country. Removing of this ban would be of significant benefit to consumers in choosing travel services and receiving quality service.

24. The opinion of the CPC is in line with the Communication of the European Commission of 2021, which recommends that all Member States that regulate this profession should consider whether the regulation of tourist guiding services is justified and proportionate.