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COMPETITION COMMITTEE**

Working Party No. 2 on Competition and Regulation

Competition and Regulation in Professional Services – Note by Croatia

10 June 2024

This document reproduces a written contribution from Croatia 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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Croatia

1. Croatian Competition (hereinafter: Agency, CCA) based on Article 25, Paragraph 3 of the Competition Act ("Official Gazette", No. 79/09, 80/13 and 41/21; hereinafter: ZZTN) is authorized to issue opinions on the compliance of applicable laws and other regulations with provisions of ZZTN and to issue opinions that promote or raise knowledge about competition and raise awareness and information about the role of competition policy and law.
2. In that context, the CCA has dealt with the issue of professional services several times in its practice. In its contribution, the CCA would like to present two most recent examples, in regard to lawyers' registration fees and the Chamber of Architects respectively.

1. CCA's opinion on determination of registration fees in the Croatian Bar Association (HOK)

3. In 2022, the CCA conducted analysis of chamber system in the Republic Croatia, concretely of the Croatian Bar Association. The Agency examined Decision on the Determination of Fees for the Registration in the Directory of Lawyers from March 14, 2019 (hereinafter: Decision), which submitted by the HOK on the request from CCA.
4. In the Decision, it is stated that for the first entry in the Directory of Lawyers of the HOK, a registration fee of HRK 37,500.00 (EUR 5,000.00) is determined, which is paid after the first entry in the Directory of Lawyers of the HOK, and before taking the solemn oath. During each subsequent registration in the HOK Directory of Lawyers, a lawyer who has been registered once is no longer obliged to pay the registration fee. The obligation to pay does not apply to trainee lawyers who are already registered in the Register of Trainee Lawyers of the HOK and who have effectively spent at least three years practicing as a lawyer from the date of registration in the Register of Trainee Lawyers of the HOK until acquiring the right to be entered in the Register of Lawyers. Legal trainees who are already registered in the HOK's Register of Legal Practitioners and who have effectively spent at least two years practicing law, from the date of their entry into the HOK's Register of Legal Practitioners until acquiring the right to be entered in the Register of Lawyers, at the time of their first entry into the Register of Lawyers HOK pay 50% of the registration fee of HRK 37,500.00. The Agency reviewed the Law on Legal Profession (hereinafter: the Law), which regulates the organization and operation of the legal profession as an independent service that ensures the provision of legal assistance to natural and legal persons in the exercise and protection of their rights and legal interests.
5. Based on this Law, lawyers must join the Association as an independent organization with the status of a legal entity, and the lawyer is obliged to regularly pay the membership fee and meet other obligations towards the Chamber. In connection with the level of the registration fee, the CCA, by looking into comparative practice, determined data on the level of registration fees in certain countries of the European Union, namely: Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, France , Germany, Malta, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Norway, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, and also reviewed the amounts of registration fees in other countries, in Albania and Serbia. By looking at the comparative analysis, the CCA concluded that the registration fee in most of the analysed countries

amounts to an average of 100 to 300 EUR, while some countries do not have an institute of registration fees as such. Also, it was concluded that the differences in the payment of registration fees depending on the category of registrant (lawyer) are significantly smaller compared to the Republic of Croatia and, as a rule, amount to around EUR 200 on average.

6. Based on the Statute of HOK, the Board of Directors makes a decision on changes to the Tariff on rewards and fees for the work of lawyers and determines the amount of registration fees, membership fees, fees for giving consent to law firms, death benefits and other benefits for lawyers and trainee lawyers.

7. On the basis of Article 3, paragraphs 1 and 3 of the ZZTN, it is prescribed that undertakings, in the sense of the ZZTN, are considered to be trading companies, merchants, associations of undertakings, craftsmen and other legal and natural persons who, performing economic activities, participate in production and/or to the circulation of goods, i.e. to the provision of services, state bodies and units of local and regional self-government, when they directly or indirectly operate on the market, as well as all other legal or natural persons (associations, sports organizations, institutions, owners of copyright and similar rights and others) that operate on the market. ZZTN is also applied to undertakings which, on the basis of special regulations, are entrusted with the performance of services of general economic interest, to undertakings which by their nature are monopolies that generate income or which, on the basis of assigned special or exclusive rights, are entrusted with the performance of a certain activity and only in cases where the application of the ZZTN would not prevent, legally and factually, the performance of the tasks that are established for them by special regulations and measures and for which these persons were established. Following the above, and respecting the significance and importance of the service provided by lawyers as members of the Bar Association, it is indisputable that in terms of competition regulations, lawyers, members of the Association are undertakings, and the Association is an association of undertakings.

8. From the point of view of competition rules, it is also indisputable that the HOK has the right to determine the level, i.e. the amount of the registration fee, taking into account the different categories of persons who are registered in the HOK's Directory of Lawyers, depending on whether they are trainee lawyers, trainee lawyers with insufficient seniority or persons who are registered for the first time in the Directory of Lawyers of the HOK (the so-called "other lawyers"). In this sense, certain, appropriate and proportionate differences in the amount of the registration fee can be considered objectively justified, however, the amount of the registration fee should not be significantly different. Namely, from the aspect of competition, the amount of the registration fee in question is viewed as a financial condition, i.e. a possible, certain financial **barrier to access to that market**.

9. Therefore, it should not be significantly different, i.e. excessive, disproportionate, limiting. Since membership in the HOK is mandatory for lawyers and payment of the registration fee is mandatory, it is concluded that registration in the HOK Directory of Lawyers, i.e. payment of the registration fee, is a condition for access to the market for the provision of legal services. Therefore, any condition for access or participation in the market that is disproportionate, excessive, restrictive, etc., certainly represents an obstacle to access and participation in that market from the perspective of regulations on competition. As a result of all the above, the CCA concluded that the registration fee of HRK 37,500.00 for the first registration of a lawyer in the HOK's Directory of Lawyers is excessive and represents a barrier to access to the market for the provision of legal services.

10. According to the information available to the CCA, following to the CCA's opinion HOK changed the fee which now amounts to EUR 3,000.00. Here the CCA would like to emphasize that starting from 2024 it systematically monitors the results of its opinions,

such as the one issued to HOK, by formally requesting the addressees of the opinions to inform the Agency about their actions which they have undertaken following the opinion.

2. Croatian Chamber of Architects

11. The CCA started ex-officio proceeding against the Croatian Chamber of Architects from Zagreb, based on the complaint alleging distortion of competition by conclusion of a prohibited agreement within the meaning of Article 8 of the Croatian Competition Act. Namely, After having conducted a preliminary market investigation in the services provided by certified architects based on the initiative submitted by the University of Zagreb, Faculty of Science, the CCA decided to open the infringement proceeding against the Croatian Chamber of Architects.

12. The complainant stated that the Croatian Chamber of Architects refused to assign a record number for the tendering process including the drafting of the bidding documents for the construction and outfitting of a modern research centre for the preparation, synthesis, categorisation, and study of new materials at the Faculty of Science. The complainant added that in the explanation of the refusal the Faculty of Science stated that the value of the estimated purchase price for the drafting of the design documents and technical specifications had not been in compliance with the legal requirements of the Croatian Chamber of Architects, specifically, with the Ordinance on tenders in the area of architecture, urbanism, interior design and landscape design of 14 July 2014 (Tendering Ordinance), and the Ordinance on norms in the provision of architects' services of 13 December 2013 (Norms Ordinance), both available in the Croatian language on the website of the Croatian Chamber of Architects.

13. The results of the preliminary market investigation indicated that the Croatian Chamber of Architects has no power for price setting in the provision of architects' services pursuant to the specific rules regulating the area concerned. In addition, there is circumstantial evidence that the Croatian Chamber of Architects has set minimum prices for the provision of certified architects' services restricting their freedom to set the price of the service they provide, causing harm to final users of their services, which could constitute a prohibited agreement within the meaning of Article 8 of the Competition Act.

14. Thus, in this particular matter, the CCA will investigate into the provisions under the Tendering Ordinance and the Norms Ordinance raising competition concerns and assess their compliance with competition rules, in order to determine whether the application of the challenged provisions since 1 April 2019 constitutes a prohibited agreement in the sense of Article 8 of the Competition Act.

3. Conclusion

15. In its contribution, Croatian Competition Agency focuses on issues of competition and regulation in the professional services sector, specifically within the context of competition rules in Croatia. It gives some details on the CCA's actions regarding the regulation of professional services, with examples including lawyers' registration fees and the Chamber of Architects.

16. The short analysis presented by the CCA highlights the balance required between regulation and competition within professional services. Through specific cases, such as the evaluation of lawyers' registration fees, the CCA illustrates its role in ensuring that regulations do not hinder competition, but rather support a fair and dynamic market. Such

approach is crucial in maintaining the integrity and efficiency of professional services, ensuring they operate under principles that promote fairness and competition, benefiting both the professionals and the broader public.

17. The CCA will continue to monitor professional services and their associations and chamber systems and will react whenever deemed necessary to point out an irregularity in conduct, propose a change in regulations or determine the basis for initiating a proceeding.