

**COMPETITION IN PROFESSIONAL SERVICES
HUNGARY
23-Feb-2000**

In Hungary deregulation of professional services began after the social-economic changes of 1989. The motivation of this process had rather general political than competition policy character, in so far as the limitation of the state's role and in the framework of this limitation the strengthening of civil organisations was the declared target and possible economic effects and consequences were taken into consideration only partially.

This effort motivated the repeated amendments from 1994 of the Civil Code. These amendments resulted in the creation of framework rules and in the incorporation of public body as separate legal entity. In the Hungarian law chambers with the legal status of public bodies have strong public law authorisations: public body the establishment of which is provided for by statute is an organisation having self-government and registered members. These organisations fulfil public tasks linked to their members or to their members' activities. Statutes may define public tasks to be fulfilled by public bodies. A public body has all the powers, which are defined by statute, and which are necessary to fulfil its public tasks and it enforces these rights through its self-government. Act may stipulate that some public tasks can be fulfilled exclusively by public bodies or, that certain activities can be pursued only by members of public bodies. Chambers and professional organisations are the most important public bodies. In the case of professional organisations the requirement that certain professions can be pursued only by members of public bodies is a general regulatory solution.

Since the change of the social-economic regime numerous statutes have been adopted for the regulation or deregulation of certain professional services:

- to pursue legal or partially legal services
 - Chamber of Hungarian Advocates (Act XI/1998)
 - Chamber of Hungarian Court Bailiffs (Act LIII/1994)
 - Chamber of Hungarian Judicial Experts (Act CXIV/1995)
 - Hungarian Notaries Chamber (Act XLI/1991)
 - Hungarian Chamber of Patent Attorneys (Act XXXII/1995)
- to pursue auditing activities
 - Chamber of Hungarian Auditors (Act LV/1997)
- to pursue engineering and architectural activities

COMPETITION IN PROFESSIONAL SERVICES - Hungary - 23-Feb-2000

- Hungarian Chamber of Engineers (Act LVIII/1996)
- Hungarian Chamber of Architects (Act LVIII/1996)
- to pursue sanitary activities
 - Hungarian Medical Chamber (Act XXVIII/1994)
 - Hungarian Chamber of Chemists (Act LI/1994)
- other activities which can be pursued exclusively with membership of chambers
 - Hungarian Veterinary Chamber(Act XCIV/1995)
 - National Chamber of Hunters (Act XLVI/1997)
 - Professional Chamber of Private Detectives (Act IV/1998)

The basic general characteristics of the different statutes on professional chambers from a competition policy point of view are as follows:

- chamber membership is obligatory, consequently certain activities can be pursued only by members, membership being a precondition for pursuing them;
- different further normative conditions of market entry are defined (citizenship, residence, office, insurance, qualification, practice, etc.);
- in the case of certain chambers special exclusions relate to certain activities which may or may not be pursued parallel with the original professional activities;
- the chambers have wide varieties of authorisations (e.g. professional/ethical rules, postgraduate studies, rules of examinations);
- the chambers have different kinds of authorisations (e.g. they may establish professional/ethical norms, rules relating to training, examinations, sites or the equipment of premises/offices, they may publish recommended fees of services or recommended minimum fees, etc.);
- the chambers may impose different kinds of sanctions in the case of violation of the professional/ethical rules (up to suspension or exclusion) etc.

Among these authorisations it is worthwhile to mention those price-related ones which have special importance from a competition policy point of view: there are altogether five statutes on chambers/professions containing express provisions on prices, there are two out of these five (Act on Advocates and Act on Patent Attorneys) to which objection cannot be made since they contain declaration on free prices in so far as they stipulate that fees of advocates / patent attorneys can be freely contracted.

There are four professional organisations (physicians, veterinarians, engineers and architects) which are authorised by statutes to publish recommendations of restrictive character. Out of these four, in the case of services of physicians and veterinarians, the chamber may publish recommendations on the minimum fees. In the case of engineers and architects the chambers may issue minimum recommended

prices on condition that content requirements of services belonging to the given prices have to be defined also at the same time. The elaboration of recommended prices or the issuance of these prices cannot be subjected to competition law enforcement in the case of these chambers.

After their set up the factual operation of the chambers, the crystallisation and taking shape of their restrictive endeavours needed some time.

1. Enforcement practice

Until 1997 restrictive practices of professional organisations and chambers could not be challenged under the Competition Act since its scope did not cover these entities. It was possible to challenge restrictive agreements of practitioners of the same profession, however no proceedings of this kind were commenced in the practice of the Hungarian Competition Office.

An amendment of the Competition Act entered into force on 1 January 1997 making possible direct actions of the competition authority against professional organisations. Nevertheless the amendment contained a twelve months grace period for parties to agreements which became prohibited by virtue of the amended provisions of the Competition Act in order to allow them to modify unlawful provisions of their agreements or to apply for individual exemption arguing that even if they contained anticompetitive provisions, the advantages of them outweighed their disadvantages. This possibility also applied to earlier self-regulations of the professional organisations.

Since the entry into force of these new provisions of the Competition Act individual exemptions have not been requested by professional organisations, two proceedings however, have already been brought resulting in condemning decisions against chambers (Chamber of Hungarian Auditors, Hungarian Veterinary Chamber).

1.1 Cases

1.1.1 Chamber of Hungarian Auditors (Vj-148/1998/18.)

The Competition Office launched proceedings against the Chamber of Hungarian Auditors (CHA) to find out whether certain points of its Ethical Code breach the prohibitions of the Competition Act. After a thorough investigation the Competition Council considered the following facts in its decision:

At the time of the investigation CHA had some 5 000 members 30 percent of which are auditor companies and as much as 60 percent of the income of CHA originates from only five large international auditor companies. Other members are accountants. The relevant market is the accountancy servicing activity on the territory of Hungary which is characterised by a four times oversupply.

The Competition Council considered the Ethical Code at two points: Firstly, under the provision relating to the indirect setting of fees the members may not apply lower prices than the minimal prices defined by the Ethical Code. Until the time of investigation CHA has not published the minimal prices yet and this part of the Ethical Code has been in effect for a few weeks only. The Competition Council considered the definition of minimal prices as restrictive since it deprives the small and unknown auditors from the application of their sole instrument, the price competition.

Secondly, the Competition Council investigated the prohibition on advertising, that CHA applied in its Ethical Code, including advertising in connection with persuasion to order services, making comparison with activities of other auditors, praising the rapidity and quality of services etc. The Ethical Code also prohibited advertising own auditory before professional audience and organising programs to

recruit clients. The Competition Council considered the effect of prohibition on advertising, which is suitable to restrict competition by hindering market entry and limiting the possibility of purchasing service.

The Competition Council pointed out that the Ethical Code restricts the members of CHA in their advertising campaigns, preventing them from taking part in competition in this particular way and it applies stricter conditions concerning comparative advertising than it is permitted under the Competition Act.

Since the Competition Council considered both restrictions as concerted practices, prohibited by the Competition Act, CHA requested exemption from the prohibition although the Competition Council could not find any justification for the conditions of an exemption. Furthermore CHA referred to the fact that its Ethical Code is based on the Ethical Code of the International Federation of Accountants, which organisation CHA belongs to, as well. In the view of the Competition Council, however, the relevant parts of the Ethical Code of CHA did not follow, in several respects, the international rules.

Summarising all these circumstances the Competition Council imposed a fine, amounting to HUF 5 million (about Euro 20 000, USD 21 500), on CHA and ordered it to terminate its restrictive conditions within 30 days of receipt of the decision.

1.1.2 Hungarian Veterinary Chamber (VJ-1/1999/25)

The Competition Office launched proceedings against the Hungarian Veterinary Chamber to reveal whether some points of its Ethical Code were not against the Competition Act. The prohibition of advertising activity, the obligatory application of minimal prices as well as universal application of payment of date and obligatory denial of future service if the client was in delay with its payment were considered by the Competition Council as anti-competitive which violated the prohibition of restriction of competition.

Although the Hungarian Veterinary Chamber argued that these stipulations of the Ethical Code served the interest of consumers, the Competition Council has not found its defence well founded.

Advertising activities by vets are prohibited, under neither the Advertising Act nor the Competition Act. In the view of the Competition Council (1) the prohibition of the Ethical Code deprives vets to improve their market positions by the legally applied means of advertising, and (2) the binding minimal price hinders the market entry and maintains the given relationships among competitors. The binding price cannot be a real condition of the qualified service but recommended price is acceptable to inform consumers and servicing undertakings. In cases when servicing undertakings set lower price than the recommended price at a poorer quality of their services, the Chamber may impose sanctions for quality imperfections. Finally, (3) the Ethical Code limited the members' market activities in gathering new customers by stipulating universal maximum deadlines for payment.

The Competition Council ordered to terminate the restrictive conditions of the Hungarian Veterinary Chamber within 30 days of receipt of the decision, and imposed a fine, amounting to HUF one million (about Euro 4 000, USD 4 300) on it.

2. Legislative activity and competition advocacy

The entry into force of the new Competition Act making possible the direct and legally regulated challenge of anticompetitive activities of professional organisations can be qualified as the most important development concerning the enforcement activity of the competition authority.

Furthermore the competition authority exercises advocacy functions in the process of legislation. This activity could not be fully successful since several times the ministries submitting their draft bills did not make competition advocacy possible. During the legislature work aiming at the establishment of status rules the competition authority had the possibility to express its views only in the case of acts on advocates, engineers, architects, auditors and patent attorneys and even in these cases only limited result has been achieved. Some of these results are as follows:

- the Hungarian citizenship as a condition for membership of the Chamber of Auditors ceased to exist;
- the range of activities which can be pursued parallel with auditing were not limited to the extent as it was intended by the original conception;
- the fees of advocates and of patent attorneys can be freely agreed; and
- the chambers of engineers and architects are not allowed to set minimum prices.

Recently representatives of certain professions (e.g. tax advisors, plant protection engineers, drivers' schools, etc.) try to influence legislators increasingly - presumably stemming from the inherent restrictive possibilities of professional organisations - in order not to grant further legal authorisations for new professional organisations. The competition authority has made several steps in order to push the legislation to resist these temptations.

The competition authority does not have the right to comment on self-regulations of professional organisations, so available information about these organisations is partial only and efforts which have been made so far are limited to formal competition law proceedings.

The Constitutional Court had also several proceedings in connection with provisions stipulating obligatory membership in chambers and with other rules (e.g. citizenship) violating the Constitution potentially. As a result of the decisions of the Constitutional Court made in the years of 1997-1998 many adjustment of these rules has happened and happens taking into account that the right of free choice of profession is declared by the Hungarian Constitution as a basic human right. Consequently subjecting membership in chambers to the condition of Hungarian citizenship making this at the same time to condition of exercising the given profession violates the Constitution. Owing also to the decisions of the Constitutional Court in respect of limitation of law on associations the governmental approach has also changed and it assists endeavours aiming at the establishment of new professional organisations to a more limited extent.

3. Studies, reports

There are no studies and reports about professional services in question. However, there are phenomena showing that practitioners of professions or business associations employing these practitioners evade the restrictive prohibitions of self-regulations relating to members of chambers.

Example: Most of the members of professional organisations are natural persons exercising the given profession. However, these natural persons (e.g. physicians, chemist's etc.) pursue their professional activities in different business associations. Ethic codes of given professional organisations and chambers restrict their members in respect of advertising their activities, nevertheless those are powerless against business associations and their advertisements which business associations are not members of the professional organisations or chambers and as a

result of which they may advertise their health care, physician or medicine distributing activities without being influenced by any special restriction.

4. Other developments affecting competition in the professions

Some phenomena can be mentioned in this field, which show that market interests makes way for itself - even if the method for doing so can be questioned sometimes.

Example: Practitioners of the profession - customers of medicines -are under strong pressure of producers and distributors (e.g. through the latter financing their participation in conferences, by gifts, offers of free extra products, honoraria for participation in testing, etc.) in order to get the practitioners' orders for their products.

Similar phenomena can be observed in the case of architects, when the producer or distributor offers "commission of planning" if the planned construction envisages use of its products.