Self–Regulated Professions — Post-Study Assessment

Introduction

In December 2007, the Competition Bureau (the "Bureau") released a study on Self–Regulated Professions: Balancing Competition and Regulation (the "Professions Study"). In addition to developing a discussion on competition issues and general principles pertaining to the interface between the competitive supply of professional services and regulation, the Professions Study examined the regulation of five self–regulating professions (accountants, lawyers, optometrists, pharmacists and real estate agents), with the objective of identifying measures that may be unnecessarily restricting the benefits of competition for Canadians.

The Professions Study outlined 53 recommendations, which were communicated to self–regulating professional bodies across the country for each of the professions covered by the Professions Study. The self–regulating professions considered in the Professions Study were challenged to re–examine the restrictions identified, and to remove those that were not clearly required to protect the public interest. The purpose of this Post–Study Assessment is to review and assess progress made in implementing the recommendations contained in the Professions Study since its release in 2007.

Background

The Bureau initiated the Professions Study with a view to the importance of professional services for Canadians, and in response to studies indicating that markets for these services may not be performing as well as they could. While recognizing that professional regulation can play an important role in protecting the interests of Canadians with respect to the supply of professional services, the Professions Study also outlined a number of ways in which regulation can restrict competition between professionals more than is needed to achieve legitimate public policy objectives, leading to less innovative and efficient, and higher cost supply of professional services. Professional regulation can do this by:
• creating unnecessary entry restrictions through the establishment of excessive educational, training or other requirements for supplying a professional service, or directly or indirectly limiting the number of persons that can enter a profession;

• unnecessarily restricting the inter-jurisdictional mobility of members of professions;

• excluding from the scope of practice for members of a profession or occupation, the supply of services that they are qualified to provide;

• unnecessarily restricting the advertising or marketing of professional services;

• regulating or encouraging the use of specific fee or compensation structures; and

• unnecessarily restricting the business structures available to members of a profession.

The Professions Study also developed a set competition principles for the development of regulations for professional services.

When releasing the Professions Study, the Bureau indicated that it would assess the progress of the five self-regulating professions in implementing the Professions Study recommendations in two years. To that end, in December 2009, the Bureau requested an update from each of the five professions on measures that had been taken in relation to the Professions Study's recommendations. The Bureau would like to thank all parties that responded to the request for input.

The assessment of developments set out below is based on information provided in the responses to the December 2009 request, additional Bureau contacts with representatives of the professions covered in the Professions Study, and monitoring by Bureau staff.

**Assessing Progress in Implementing the Recommendations**

A key Bureau objective in conducting the Professions Study was to increase awareness within the professions of the importance of avoiding unnecessary restrictions on competition. The Professions Study has been effective in accomplishing this objective. In general, representatives of the professions covered in the Professions Study have acknowledged that impacts on competition should be taken into consideration when developing and reviewing regulations.
The impact of the Professions Study in creating awareness of competition issues has extended beyond the five professions noted above. Since the release of the Professions Study, the Bureau has made presentations to, met, or consulted with representatives of a number of additional professions regarding the interface between competition and regulation.

Progress has been made toward the removal of unnecessary restrictions on competition in a number of the areas identified in the Professions Study.

One area in which substantial progress has occurred is the mobility of professionals between provinces and territories ("inter-provincial mobility"). A key development relates to 2009 amendments to the Labour Mobility provisions of the Agreement on Internal Trade, Chapter 7. Under the amended provisions, any worker certified for an occupation by a regulatory authority of one province or territory is generally entitled to be certified for that occupation, upon application to the relevant regulatory authority in any other province or territory. While provinces and territories are still able to adopt their own occupational standards, they have agreed to examine their standards with the objective of reducing and eliminating barriers to labour mobility and, when changing or creating a new standard, to adopt common provincial standards or standards that are conducive to labour mobility to the extent feasible. Any exception to labour mobility must be clearly justified as necessary to achieve a legitimate objective, (e.g. (for example), health or safety), must be approved by the relevant provincial or territorial government, must not be more restrictive than necessary, and must not be a disguised restriction to labour mobility. Subject to the exceptions noted below, all professions examined in the Professions Study are in compliance with, or are implementing measures to comply with, the amended provisions of the Agreement on Internal Trade.

A remaining exception to inter-provincial professional mobility is in the field of public accounting. The province of Ontario maintains that material differences exist among the provinces and territories with respect to the competencies and standards established for licensing or authorization to practice public accounting. In general, Certified General Accountants (CGAs) and Certified Management Accountants (CMAs) from all provinces are considered not to be qualified to practise public accounting in Ontario. Chartered accountants that are permitted to provide public accounting services in other parts of Canada may be permitted to provide these services in Ontario; however, they must be individually assessed by the Institute of Chartered Accountants of Ontario to ensure that they meet the requirements for practising public accounting in Ontario.
The provision of legal services is another area in which exceptions to inter-provincial mobility remain. Owing to basic differences between the legal system of Quebec, which has a Civil law foundation, and the systems of other provinces, which are common law based, lawyers licensed in Quebec are generally not entitled to practise in other provinces, while lawyers from other provinces are generally not entitled to practise in Quebec. Despite the underlying differences in legal systems, some progress has been made following the release of the Professions Study to promote inter-provincial mobility for lawyers. In 2008, Quebec enacted a regulation allowing lawyers in good standing from another province or territory to obtain a "special Canadian legal advisor permit." This permit allows lawyers from other parts of Canada to provide legal advice on matters involving the law of the province or territory in which they are licensed, matters under federal jurisdiction, and matters involving public international law. In March 2010, the law societies of all Canadian common-law jurisdictions and the Barreau du Québec signed the Quebec Mobility Agreement (the "QMA"). Under the QMA (Quebec Mobility Agreement), the law societies of the other provinces and territories agreed to enter into an arrangement with the Barreau du Québec to enable its members to exercise mobility on a reciprocal basis.

Since the release of the Professions Study, there have also been significant pro-competitive developments concerning restrictions on the marketing and advertising of accounting and legal services. Freedom to advertise and to promote accounting services is being enhanced by amendments made in 2009 to the advertising provisions in the Canadian Institute for Chartered Accountants’ Model Rules for Professional Conduct. Significant changes have also been made to the professional rules for the marketing of legal services. In October 2009, the Federation of Law Societies of Canada established marketing rules in its Model Code of Professional Conduct taking into consideration recommendations made in the Professions Study.

Since 2007, significant progress toward the elimination of restrictions on competition has also been made in the following areas:

- Practice restrictions on optometrists have been, or are in the process of being, reduced in British Columbia, Ontario, Nova Scotia and Prince Edward Island, to give optometrists new authority to prescribe pharmaceuticals for eye conditions that they are qualified to treat;

- Opticians in British Columbia have been given authority to perform eye tests on individuals, subject to them being certified to perform the tests, and to the implementation of a screening process to identify persons requiring more in-depth assessment by an optometrist; and
A number of provinces are in the process of creating pharmacy technician designations that would allow pharmacy technicians to perform dispensing tasks currently reserved for pharmacists.

While significant progress has been made in the past three years toward reviewing and eliminating unnecessary barriers to competition in the professions covered in the Professions Study, it is also evident that more can be done by the professions themselves, as well as the respective government authorities, to strike the right balance between competition and regulation. The level of consideration that self-regulating professional bodies give to competition issues in the development and review of their regulations is not always as comprehensive as it should be. As well, in a number of cases where no advances were made, self-regulating professional bodies were able to, and did, point to restrictions governed by current legislation or statutory regulations. Any amendment of these restrictions would have to be done by the respective government authority and, as such, would require their engagement.

Finally, the competitive impact of professional restrictions often depends on the manner in which they are interpreted and enforced. Restrictions that appear to be designed to protect the public interest may be applied in a manner that unnecessarily restricts competition. While an examination of the interpretation and enforcement of professional restrictions was beyond the scope of the Professions Study, to ensure that Canadians have access to innovative, low-cost and high-quality professional services, it is essential that self-regulating professions and the respective government authorities ensure that professional restrictions are developed and applied in a manner that favours competition.

Conclusion

Access to innovative, low cost and high-quality professional services is important for the welfare of all Canadians. Competition among members of professions and, to the extent feasible, between professions, is an important driver for the supply of these services. Accordingly, any restrictions on the competitive supply of professional services should be avoided unless they are clearly required to achieve a legitimate public policy objective.

The Bureau's Professions Study examined regulatory restrictions on five self-regulating professions to identify, and raise awareness of, regulations that may be restricting competition more than justifiably. While certain self-regulating professional bodies have made significant progress in reviewing the regulations identified in the Professions Study and, in some cases, amended the regulations or rules to eliminate unnecessary
restrictions on competition, much work remains to be done. To obtain the full benefits of competition, it is essential that self-regulating professional bodies, and the respective government authorities, continue to review and assess professional regulation to ensure that the right balance for all Canadians is struck between competition and regulation.

Footnotes

1 Available at http://www.competitionbureau.gc.ca/eic/site/cb–bc.nsf/eng/02523.html (02523.html).

2 Ibid at p. (page) 14.

3 The revised Labour Mobility provisions of the Agreement on Internal Trade and a full list of exceptions can be obtained at http://www.ait–aci.ca/index_en/labour.htm.

4 Public accountants conduct independent audits or reviews of financial statements that are relied on by third parties, such as potential investors.


6 Exceptions to the Labour Mobility provisions of the Agreement on Internal Trade pertaining to lawyers can be obtained under each jurisdiction’s list of exceptions available at http://www.ait–aci.ca/index_en/labour.htm.
See c. B-1, r. 8, Regulation Respecting the Issuance of Special Permits of the Barreau du Québec, available at
http://www2.publicationsduquebec.gouv.qc.ca/dynamicSearch/telecharge.php?type=2&file=%2F%2FB_1%2FB1R8_A.htm

The Quebec Mobility Agreement can be obtained at
http://flsc.ca/canadian-law-societies-sign-new-mobility-agreement/
(http://flsc.ca/canadian-law-societies-sign-new-mobility-agreement/).

Date modified:
2015-11-05