

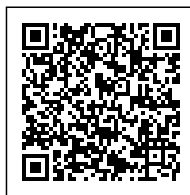
THE LEGAL PROFESSION AND EUROPEAN COMPETITION POLICY, MANUEL CAVALEIRO BRANDÃO

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CCBE President, Manuel Cavaleiro Brandão, has major concerns about the way in which the European Commission is applying competition law principles to the legal profession.

El presidente del CCBE, Manuel Cavaleiro Brandão, plantea su gran preocupación respecto a la forma en la que la Comisión Europea está aplicando los principios de competencia a la profesión jurídica.

En este artículo, cuestiona los intereses puramente económicos tomados como referencia en la Comisión que cree no tienen en cuenta el auténtico propósito y razón de ser de la autorregulación de la profesión. También critica la falta de un análisis tradicional sobre derecho de la competencia en el proyecto de la Comisión ya que su decisión se ha basado en la jurisdicción procedente del Tribunal Europeo de Justicia.

The Council of Bars and Law Societies of Europe (CCBE), which represents over 700,000 lawyers through its member bars, has been following very closely over the last few years the European Commission's activities with regard to competition as it affects the liberal professions.

The way in which the Commission, through the Directorate General Competition, has taken forward its exercise, from 2002 until now, has raised a number of deep concerns amongst national bars, which have been shared by other institutions such as national ministries and the European Parliament.

The Commission's stocktaking exercise in 2002 and 2003, including the study of the Austrian Institute for Advanced Studies, already triggered serious concerns among the legal profession. In the CCBE's view, the Commission's fact-finding showed major weaknesses, which made it inappropriate as a foundation for policy measures.

The follow-up to the Commission's stocktaking, i.e. the Commission's first report on competition and liberal professions of February 2004 and the Commission's progress report of September 2005, have only added to our concerns. The errors which CCBE member bars have pointed out with regard to the Commission's fact-finding have been carried through to the two Commission reports without any attempt by the Commission to correct those mistakes.

As the CCBE has pointed out repeatedly to the Commission, the legal profession is one which serves the administration of justice and the rule of law. The values in its sector are not only economic ones, and [josquotelit is incorrect and simplistic, in our view, to base a review of the legal profession solely on economic terms[/josquote]. By serving a private user or the public sector, the lawyer is ultimately serving the administration of justice.

In the CCBE's view, an economic evaluation has therefore to be complemented by an appreciation of the objectives pursued by professional rules and regulations. Insofar as provisions aim at enhancing access to justice, strengthening consumer rights and guaranteeing high-quality lawyers services, these important concerns in the public interest cannot be sacrificed for deregulation.

We are also concerned by the lack of a traditional competition law analysis in the Commission's work, as is mandated by the case law of the European Court of Justice. Such an analysis would start by an identification of the relevant market, followed by an analysis of the competitive conditions prevailing in the market, and by an analysis of the effect on competition of the rules that have been identified by the Commission as potentially problematic from a competition standpoint.

We remain confident that at a European level, the lawyers Directives provide a model of a liberalised market for professional services in the EU. At national level, national regulators, together with the self-regulatory bodies of the profession, carry out revisions of professional rules on a regular basis in order to keep up with changes and developments within society which affect the legal profession.

The legal profession has been and will continue to be open to reforms, as long as they are subject to the protection of core values and the necessities of the judicial systems of the Member States.