

LIDC

2003-2004 - QUESTIONS

1. Anti-trust matters

International Reporter

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Do professional organizations in charge of the drafting or the control of the rules concerning the practice of liberal professions have to comply with anti-trust regulations? If it is the case, are they exempted or do they have to enjoy exemption ?

In certain countries, professional organizations consider that they should be free from the implementation of anti-trust law either because of their activity and even though their members have to comply with anti-trust regulations or by virtue of the deontological powers conferred upon them.

The question here is to list the existing rules and case law in order to decide on the development opportunity or the refinement of the existing or requisite regulations in this field.

Suggestion of sub matters to look into:

- Which liberal professions are dependant upon a professional organization in your country?
- Which kind of powers do professional organizations hold (settling authorizations, advertising, price fixing, dispute resolution with clients) ?
- Do professional organizations hold powers relating to the maintenance of public order or public interest ?
- Can decisions taken by professional organizations be appealed in front of ordinary courts and how ?

- Are professional organizations considered or to be considered like associations of enterprises under anti-trust regulations?
- Are there court decisions in your country applying anti-trust principles to professional organizations ?
- Are there in your country legal or de facto exemptions to the enforcement of anti-trust regulations to professional organizations. In such case how are they justified?

2. Unfair Competition

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What are the advantages and drawbacks of the existence of a specific procedure of cessation of unfair competition practices ? Is it advisable to introduce/harmonize such a procedure ? What should be the conditions and consequences?

In a number of countries it is possible to order the cessation of unfair competition practices. From one country to the other the conditions differ either because of the nature of the decision (interim or on the merits), or according to the conditions of jurisdiction or admissibility of the legal action (for example status of the plaintiff's competitor or pre-requisite of recurrence of the illegal practice), the scope of the remedies (like the prohibition of the practice under constraint or granting of damages, including or not the procedural costs as well as the lawyer's fees). This issue of the cessation of unfair competition practices is all the more important when the practices cover several countries. The issue requires a description of the advantages and drawbacks of the existing systems on the basis of a series of practical cases and if possible to set forth a number of recommendations to increase the efficiency of the judge's intervention.

Suggestion of sub matters to look into:

- Is there in your country a specific procedure which enables judges to order the cessation of unfair competition practices ?
- If it does exist which behaviors fall under the procedure (infringements to any kind of regulations even not commercial, like the non compliance with tax regulations) ?
- In this case what are the characteristics of this procedure (interim or on the merits, requirements, processing speed, possibility of appeal) and the measures likely to be taken ?
- What are the advantages and drawbacks of the existing procedure ?
- In the absence of a specific procedure, how is it possible to obtain the cessation of unfair competition practices ? Under which conditions ? What are the advantages and drawbacks ?
- Is it advisable to bring about a specific procedure ?

3. Anti-trust regulations v. intellectual property or unfair commercial practices

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Can the exercise of copyrights or related rights, especially by copyright collection societies constitute an abuse of a dominant position? If it is the case, up to what extent and under which circumstances ?

Several court decisions (e.a ECJ, Magill) have pointed out the correlation between the two bodies of rules. The analysis may differ depending if the exercise of these rights is individual

or collective and in the latter situation by virtue of a membership or a legal obligation to join a collective system.

It could be useful to list all the arguments that have been put forward to set up the balance if it is possible.

Suggestion of sub matters to look into:

- Are there in your country specific legal measures on this matter as well as on the specific issue of societies specialized in the collection of copyright or neighboring rights ?
- What are the existing or advisable criteria to establish a balance of interest between the conflicting rights ?
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4. Fundamental problems

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To what extent and under which conditions can the enforcement of criminal sentences to individuals and their possible application to companies, or the exercise of such a policy can increase the efficiency of competition law ?

Even if in a number of countries criminal law is only applicable to individuals whereas companies or their representatives are exempted from its scope, an extension of its applicability has been noticed in several countries.

Moreover the enforcement of criminal sanctions for infringement of competition rules in order to increase its efficiency has to be considered with regard to its opportunity as well as the awareness of judges specialized in criminal matters on economic law concepts and vice-versa. It is particularly important to search if there are quantitative or qualitative studies on the efficiency of the implementation of economic regulations through criminal sanctions and if it is possible to draw certain conclusions.

Suggestion of sub matters to look into:

- Do companies have to comply with the criminal law of your country and how ?
- Are there any cases of implementation of criminal sanctions to competition law infringements ? Towards individuals ? Companies ?
- In this case which kind of sanctions are applicable and under which conditions ? Have they proven to be efficient ?