With regard to the right to be heard, the following observations can be made on the draft decision.

On 3 November 2003, following an own-initiative investigation, the Commission sent a statement of objections to the Belgian Architects’ Association. The statement of objections argued that the setting of scales of fixed or recommended minimum fees was contrary to the rules on competition.

The Association was given access to the file on 2 December 2003.

The Association was allowed ten weeks to reply to the statement of objections. It submitted comments within that time.

The Association considered that its rights of defence had not been fully respected in the proceedings because it had not had access to a document that the directorate-general for Competition had classified ‘confidential’.

Upon examination it became clear that this document would have made it possible to identify a person who had supplied information to the Commission.

It had thus been classified ‘confidential’ quite rightly, given the duty of confidentiality that rests on the Commission in such cases.

The anonymity of a person who supplies information must be respected if that person so requests and may otherwise be open to reprisals (Court of Justice in Case 143/85 Adams v Commission, paragraphs 34 ff).

The Association exercised its right to defend itself orally, at a hearing that took place on 9 February 2004.

The draft Commission Decision does not raise any fresh objections additional to those in the statement of objections previously addressed to the Association.

I consider, therefore, that the parties’ right to be heard has been respected.


Serge DURANDE