

## II

(Acts whose publication is not obligatory)

## COMMISSION

## COMMISSION DECISION

of 24 June 2004

relating to a proceeding pursuant to Article 81 of the EC Treaty concerning case COMP/A.38549 —  
Belgian Architects' Association

(notified under document number C(2004) 2180)

(Only the Dutch text is authentic)

(2005/8/EC)

On 24 June 2004, the Commission adopted a decision relating to a proceeding under Article 81 of the EC Treaty. In accordance with the provisions of Article 30 of Regulation 1/2003, the Commission herewith publishes the names of the parties and the main content of the decision, including any penalties imposed. In doing so, it has regard to the legitimate interest of the undertakings in the protection of their business secrets. A non-confidential version of the full text of the decision can be found in the authentic language of the case (NL) and in the Commission's working languages (FR, EN, DE) on DG COMP's website at [http://europa.eu.int/comm/competition/index\\_en.html](http://europa.eu.int/comm/competition/index_en.html).

## BACKGROUND

- (1) The European Council meeting in Lisbon in March 2000 approved a programme of economic reform aimed at making the EU the most competitive and dynamic knowledge-based economy in the world by 2010. In improving the competitiveness of the European economy there is an important part to be played by professional services.
- (2) The Decision on the scale of minimum fees drawn up by the Belgian Architects' Association is in line with the Commission's overall policy towards services in general and professional services in particular. This is reflected in the proposals for Directives on services<sup>(1)</sup> and on professional qualifications<sup>(2)</sup>, and the Commission communication on competition in professional services<sup>(3)</sup>. In this communication the Commission acknowledged that some regulation in the sector of professional services may be justified, for instance to reduce the asymmetry of information between customers and service providers. It however expressed its belief that in some cases more pro-competitive mechanisms than those which presently exist can and should be used.
- (3) Professional services are usually characterised by a high level of regulation, in the form of either state regulation or self-regulation by professional bodies. Some of this regulation is potentially restrictive, the five main categories being (i) price fixing, (ii) recommended prices, (iii) advertising regulations, (iv) entry requirements and reserved rights, and (v) regulations governing business structure and multi-disciplinary practices.
- <sup>(1)</sup> Proposal for a Directive of the European Parliament and of the Council on services in the internal market, COM(2004) 2.
- <sup>(2)</sup> Amended proposal for a Directive of the European Parliament and of the Council on the recognition of professional qualifications (presented by the Commission pursuant to Article 250(2) of the EC Treaty), COM(2004) 317.
- <sup>(3)</sup> Report on Competition in Professional Services, COM(2004) 83.

(4) Like fixed prices, recommended prices too have a significant negative impact on competition. They can facilitate coordination of prices between service providers. They can mislead consumers as to the price levels that might be reasonable. It is true, at least in theory, that they can provide consumers with useful information about the average costs of services, but there are alternative methods of providing price information of this kind. For example, the publication of historical or survey-based price information by independent parties (such as a consumer organisation) might provide a more trustworthy price guide for consumers, which distorts competition to a lesser extent.

(5) At the initiative of the domestic competition authorities, recommended prices for architectural services have already been ended in Finland, in France, and in the United Kingdom.

#### SUMMARY

(6) A scale of minimum fees was adopted by the National Council of the Belgian Architects' Association in 1967, and has been amended several times since; the most recent amendment, in June 2002, describes it as a 'guideline' (*indicatief/leidraad*). The scale lays down the minimum fees due to an architect for services performed in independent practice in Belgium.

(7) On 3 November 2003 the Commission sent the Association a statement of objections. The Association submitted its observations within the time allowed, and a hearing took place on 9 February 2004.

(8) In the Decision the Commission sets out the evidence relating to the decision to establish the fee scale, the legal context, and the conduct of the Association that has satisfied the Commission that the decision to establish the scale is a decision of an association of undertakings which has the restriction of competition

as its object. This is despite the fact that the Association has described the scale as a 'guideline', and despite the fact that not all architects have treated it as compulsory.

(9) The evidence indicating that the scale sought to restrict competition includes the intentionally rule-making tone of the title and of the recitals in the preamble, and the fact that for 18 years the Association drew up and circulated a standard contract in which the only option for determining fees was a reference to the scale.

(10) In order to find that Article 81(1) of the EC Treaty has been infringed, it is enough that the Commission should show that the decision establishing the scale had the restriction of competition as its object, but the Decision also sets out evidence showing that the scale was applied at least to some extent.

(11) According to the *Wouters* case-law<sup>(1)</sup> of the Court of Justice, a decision by an association of undertakings does not infringe Article 81(1) of the EC Treaty when, despite the effects restrictive of competition that are inherent in it, it is necessary for the proper practice of the profession, as organised in the Member State concerned. The Commission takes the view that the establishment of a (recommended) minimum fee scale by the Architects' Association cannot be considered as necessary in order to ensure the proper practice of the architect's profession.

(12) After receiving the statement of objections the Association withdrew the scale of fees and took the steps necessary to publicise the fact. The Commission concludes that the infringement has now come to an end. It also sets out the reasons why it takes the view that it should impose a fine of EUR 100 000.

(13) On 14 June 2004 the Advisory Committee unanimously endorsed the draft Decision. On 21 June it unanimously approved the fine proposed. The Advisory Committee had been informed of the Hearing Officer's observations on the proceedings.

<sup>(1)</sup> Case C-309/99 *Wouters* [2002] ECR I-1577.