RESTRAINT OF TRADE?
Discriminatory control of CME courses could violate EU competition law

by Paul McGinn

National ophthalmology associations could be prohibited from imposing continuing medical education requirements on their members if such requirements interfere with the free market provision of CME by other ophthalmology groups, under a ruling from the EU’s highest court.

In its decision, the European Court of Justice ruled that EU law precludes a professional association from imposing on its members a system of compulsory training that eliminates competition or lays down conditions that discriminate against competing providers of continuing education courses.

“Even if a professional association is mandated by national law to provide compulsory continuing education to its members, it is not immune to the effects of competition law, the court also held.”

In particular, the OTOC regulation specified that of the 35 required hours, each accountant must complete 12 so-called “institutional” training hours to keep them abreast of legislative initiatives and amendments and of questions of ethical and professional conduct. That training could be provided only by the OTOC.

Professional training

The remaining hours of continuing education were known as “professional” training, which consisted of study sessions on various accountancy topics. Under the regulation, the OTOC provided professional training courses but also held the sole power to register other bodies to provide professional training courses for chartered accountants and to approve or reject proposed professional training sessions by those registered bodies.

In May of 2010, the Portuguese Competition Authority found that the OTOC’s regulation distorted competition for the market of compulsory training for chartered accountants throughout the country, which was in breach of EU law.

OTOC appealed the decision to the Lisbon Court of Appeal. That court, in turn, requested the European Court of Justice to rule whether EU competition law applied to professional associations.

In its judgment, delivered at the end of February, The Court of Justice found that EU competition law does apply to professional associations, and OTOC attracts no immunity from competition law even if it has a legal obligation to provide compulsory continuing education programmes.

The Court of Justice also found that by restricting the provision of one type of continuing education to itself and controlling those bodies that provided the other type of continuing education, the OTOC was imposing discriminatory conditions on any competitors of the association.

The Court of Justice, however, did not decide whether the conduct of OTOC was illegal but rather sent back the case to the Portuguese appeals court to determine whether there was any objective justification for such discrimination after analysing the effects of the OTOC’s conduct on the provision of continuing education to accountants in Portugal.

In particular, the Portuguese court will have to determine whether the fact that chartered accountants are required to earn a minimum of 12 institutional training credits per year from OTOC and to obtain professional training credits only from bodies approved by OTOC constitutes an illegal restraint of competition.

From the Archive

SARS crisis curbs ophthalmic surgery as hospitals shut down

Ophthalmic surgery has been severely curtailed in Toronto, Ontario as Canadian health authorities attempt to deal with the worst outbreak of Severe Acute Respiratory Syndrome (SARS) so far reported outside Asia.

Near the end of March, all hospitals in the greater Toronto area were ordered to suspend non-essential services, including non-urgent ophthalmic procedures. Shortly afterwards, the World Health Organisation (WHO) took the unprecedented step of advising the public against travelling to Toronto because of the SARS outbreak, but a week later lifted the travel advisory because the situation there has improved.

The WHO also issued travel advisories for Guangdong Province, Hong Kong Special Administrative Region, Beijing and Shanxi Province – all in China.

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