

Previous Exams for JUR1310 and JUR5310 - EC Competition Law

Autumn 2009

In the EU Member State, Utopia, most dentists are self-employed or employed with private health-care institutions. In 2005, the authorities established a "National Council for Dentists", whose members were appointed by the trade association, the "Dental Club". The main task of the Council was to develop quality standards for dentists, but following a price increase on dentist services in 2008, the Council was asked by the authorities to develop common tariff recommendations. The tariffs were not made binding upon the dentists, but strongly recommended by the authorities.

A private clinic, Dent-o-Fix, refused to participate in the Council, and lodged a complaint with the European Commission. The Commission initiated proceedings against the Utopian Authorities as well as the dentists who participated in the Council. According to the Commission, the Utopian Authorities had infringed Articles 3(1) g), 10 and 81 of the EC Treaty. The Commission also claimed that the dentists had infringed Article 81. The dentists argued that they were not undertakings in the sense of Article 81, that trade between Member States was not affected in a relevant manner, that the price discussions were not anti-competitive as the initiative had come about in response to price increases, and that they in any case had been compelled by the Utopian authorities to participate in the Council.

Question A: Discuss whether the Utopian authorities infringe the EC Treaty.

Question B: Discuss whether the dentists infringe Article 81.

As a response to its complaint, Dent-O-Fix was expelled from the Dental Club. As a consequence, Dent-O-Fix lost access to the database DentalID (a central registry of patients, which was operated in cooperation with the Health Authorities). As well, Dental Express, the sole certified laboratory for dental analysis in the Utopian market, refused to provide services to Dent-O-Fix.

Dent-O-Fix argued that such refusal amounted to an abuse of dominant position both on the part of the Dental Club as well as Dental Express. As regards access to DentalID, Dent-O-Fix argued that it was essential for the provision of proper services and that the data could not be obtained elsewhere. As regards the laboratory services, Dent-O-Fix admitted that it could obtain the same analyses from laboratories in other Member States, though at a considerably higher price and consequently that it would suffer from a serious competitive disadvantage. Setting up its own laboratory would not be profitable.

The Dental Club argued that the provision of data was not an economic activity, as it was provided free of charge to its members. Further, it argued that it was not abusing a dominant position, as the freedom of contract encompassed the right to refuse to deal with non-members. Dental Express argued that its services were not indispensable to Dent-O-Fix, and that the refusal to deal thus did not amount to an abuse.

Question C: Discuss whether Dental Express and/or the Dental Club have abused a dominant position.

Question D: Give account of the legal remedies available to Dent-O-Fix.

Please answer all questions. Questions A, B and C count 30 % each, question D counts 10 %.

Enclosure: Excerpts from the EC treaty