

Highlights from the competition assessment in the sectors of transportation and self-regulated professions

Laws and regulations are key instruments to achieve public-policy objectives, such as consumer protection and public health. When these laws and regulations restrict market forces more than necessary or when they impose unnecessary costs, a comprehensive competition review can help identify restraints and develop alternative, less restrictive policies that still achieve government objectives.

The OECD teamed up with the Portuguese Competition Authority in 2016 to carry out a thorough and independent policy assessment to identify rules and regulations that may hinder the efficient functioning of markets in two sectors:

- **Transportation** - railways, road, maritime transport and ports.
- **Self-regulated professions** - lawyers, solicitors, bailiffs, notaries, engineers, technical engineers, architects, auditors, certified accountants, customs brokers, economists, pharmacists and nutritionists.

The results are presented in an OECD review comprising two volumes (<http://oe.cd/2j8>).

The project took place in five stages. **Stage 1** defined the exact scope of the sectors. A list of 1599 pieces of sector-relevant legislation was collected, 904 for transportation and 695 for self-regulated professions. **Stage 2** screened this legislation using the OECD's Competition Assessment Toolkit to identify potential competition barriers: 485 prima facie restrictions were identified in the transportation sector and 363 in the self-regulated professions. At the same time, an economic overview for each sector was prepared, which contained key indicators such as output, employment and price trends. **Stage 3** investigated policymakers' objectives for each provision. Meetings were held with the relevant authorities and representatives of private associations to reach a better understanding of lawmakers' motivations and objectives. **Stage 4** developed draft recommendations for provisions found to restrict competition, taking into account similar provisions in comparable countries. In-depth qualitative and quantitative analysis was undertaken whenever data were available. **Stage 5** finalised the recommendations: 417 for transportation and 348 for the self-regulated professions. The OECD team held four capacity-building workshops for officials from relevant authorities in the Portuguese administration during this time.

Key Findings and Recommendations

Transportation

A well-functioning transport sector underpins most economic activities and is fundamental for productivity growth. The Portuguese transport sector generated a gross value added of EUR 7.7 billion for the Portuguese economy in 2015, corresponding to 4.3% of GDP. It employed almost 155 000 people, representing around 3% of the entire employed population. The sector also benefitted from the market participation of over 20 000 firms, of which 99.6% were small and medium-sized enterprises.

After examining 904 legal provisions in the transport sector and identifying 485 as being harmful to the economy, the study makes 417 detailed recommendations for change. The full implementation of the recommendations set out in this report could be expected to generate a total positive impact on the Portuguese economy of around **EUR 250 million per year**, equivalent to 0.14% of GDP. In addition to the estimated quantifiable benefits, the cumulative and long-term impact of lifting the restrictions identified will produce long-term effects on employment, productivity and growth.



Road

1. **Abolish all access and price restrictions for the market of long-distance bus routes**, locally known as "express services" and "high-quality services" in accordance with existing secondary legislation which needs to be formally adopted.
2. **Abolish quotas and geographical restrictions for taxis** to increase competition and efficiency and allow taxis to pick up passengers in other municipalities (and thereby charge lower fares for longer trips).
3. **Abolish the 500 metres geographical restriction on the location of driving schools** to allow for free establishment.
4. **Abolish the geographical restrictions on the establishment of vehicle inspection centres** (distance and population requirements; and market share criteria), **abolish the obligation to separate repair services and vehicle inspection** and **introduce a maximum price regime** to promote competition, increase access to services for users and allow for economies of scope for owners of inspection centres.
5. **Abolish the mandatory licensing regime for freight operators** using solely motor vehicles between 2.5 tonnes and 3.5 tonnes in the domestic market.
6. **Abolish minimum capital requirements to start the business** imposed on passenger and freight transportation operators as well as on truck rental operators.



Rail

1. **Fully regulate the legislation applicable to the certification of train drivers** and, in the meantime, ensure that existing legislation is in conformity with the EU legislation and with each other.
2. **Abolish the maximum period of validity for railway licences** and establish the principles and procedures applicable to their revision every five years, in line with the relevant EU legislation.
3. **Bring into force secondary legislation explicitly required to implement legal provisions applicable to the railway sector.** Also, publish the rules, conditions, principles and procedures which guide the intervention of the Authority for Mobility and Transport (AMT) or the Institute for Mobility and Transport (IMT) in the implementation of provisions applicable to the railway sector.



Port and maritime

1. **Broaden the private sector's access to the activities of piloting and towing**, by only enabling port authorities to directly provide the service when there is no market interest by private operators.
2. **Redesign concessions for cargo-handling operations** to promote investment and low tariffs for port users. The length of concessions should be linked to the level of investment incurred by the concessionaire; the awarding criterion should ensure that contracts are awarded to the bidder offering the lowest tariff for port users; the structure of the concession revenues should be composed of a fixed rent for the use of the terminal, while royalties should only be charged to pass through variable costs of the port authority to private operators.
3. **Abolish financial guarantees, minimum capital requirements, and equipment and labour standards** imposed on cargo-handling operators, towing operators and shipping agents in order to promote market entry and operational efficiency.
4. **Open the market for the provision of port labour to temporary work agencies** and eliminate the specific licensing regime of port labour companies, thereby enhancing competition in the supply of port labour to cargo-handling companies.



Port and maritime (continued)

5. **Reduce the cost and administrative burden of obtaining a Pilot Exemption Certificate (PEC)** and open access to the piloting profession by abolishing entry restrictions not related to safety, in order to improve the competitiveness of piloting services in ports.
6. **Implement an alternative model of public service obligations for cabotage in the Portuguese islands**, based on general principles that promote efficiency of the public services, transparency and minimise distortions to competition.

Self-regulated professions

In Portugal, self-regulated professions employed around 144 000 people (roughly 3% of total employment), and generated a gross value added of almost EUR 4.1 billion, or 2.3% of GDP, in 2016. In terms of services rendered to enterprises, they accounted for around EUR 13.2 billion.

Self-regulated professions play a role in the economy which far exceeds their share of value-added and employment. For example, professional services make key contributions to firms in the form of knowledge intensive services. When self-regulated professions are subject to overly restrictive entry restrictions or onerous rules for conducting their business, a lack of competitive pressure may induce them to charge above-market prices, provide sub-optimal services, and fail to adapt to market changes and innovation. The unnecessary costs, time wasted and overly complicated procedures can result in a negative impact on society as a whole.

The access to and exercise of self-regulated professions in Portugal remains restricted even though some improvements have been made. This OECD review provides detailed policy options to either mitigate or eliminate regulatory barriers, including those that constrain the ability of professionals to compete (e.g. by imposing exercise conditions); treat competitors differently (e.g. by favouring specific categories of professionals); or, facilitate co-ordination among competitors (e.g. by imposing the same prices for certain acts).

After examining about 700 pieces of legislation and identifying 363 provisions that are harming competition, 348 recommendations for change were made. If the recommendations are implemented in full, the total positive impact on the Portuguese economy is estimated to be around **EUR 130 million per year**, equivalent to 0.07% of GDP. In addition to the directly quantifiable benefits, the multiplier and long-term effects on the Portuguese economy will produce positive long-term effects on employment, productivity and growth.



Self-regulated professions



1. **Separate the regulatory function from the representative function for self-regulated professional associations. This could be either through the creation of an over-arching independent supervisory body by sector or trade – or through the creation of a supervisory body within the current professional orders** with the necessary “Chinese walls”. The supervisory body would take on the main regulation of the profession such as regulating access to the profession, the upholding of standards and similar functions.
2. **The supervisory body will include not only representative of the profession but also high-profile and experienced individuals** from other regulators or organisations, representatives of consumer organisations and academia. The introduction of independent oversight will encourage better regulation of the sector, and create more incentives to innovate, to the benefit of clients.
3. **Open certain professions to individuals with a different education than a university degree in their profession.** Candidates may be required to take a postgraduate degree in their desired profession or a conversion course, and should undergo the same on-the-job training as others, including passing the relevant exams administered by professional associations. This will open access to people with different backgrounds, allowing for more diversity in the profession and in the services offered, as well as more innovation.



Self-regulated professions (continued)



4. **The authorities should abolish certain reserved activities within the technical professions (e.g. for engineers, technical engineers and architects) and replace them with output-focused regulation, such as quality standards for building works or materials, as is already the case in many jurisdictions in the European Union. Current strict entry requirements already guarantee that only qualified individuals may perform the work.**
5. **Open up current regulatory restrictions on the reserved activities that may lead to the exclusion of alternative online services, among others.** Online provision of services, especially in standardised form, such as testaments, not necessarily linked to the provision of services by a professional individual (e.g. use of artificial intelligence and database services), may allow for consumers to have easier, speedier and cheaper access to professional services.
6. **Partnership, ownership and management of professional firms should be open to individuals outside the profession and multidisciplinary firms should be allowed.** The creation of such "alternative business structures" will enable different forms of business models to emerge within the market to cater for the demand of multidisciplinary services.
7. **The establishment criteria (quotas and territorial limitations) for notaries should be abolished to allow for competition between notarial offices.** As an alternative, a technical study should reassess the demand for notarial services (in urban areas, on the coast, in touristic areas) and the viability of notarial offices. Based on this study, areas of free establishment should be created where demand and economic activity are high. Access would remain controlled in weakly populated areas to ensure the viability of notarial offices.
8. **Remove the newly introduced requirement of a having a university degree for customs brokers** to allow for easier access to the profession to those who may meet all other criteria including moral and financial criteria.

Competition Assessment Reviews and the OECD Competition Assessment Toolkit

OECD Competition Assessment Reviews present an analysis of regulatory restrictions on competition in the countries reviewed and make specific policy recommendations for reform. They help governments eliminate barriers to competition while identifying less restrictive measures that still achieve government policy objectives.

Using the OECD Competition Assessment Toolkit to structure the analysis, the regulations in sectors identified as targets for reform – such as construction, gas, media, liberal professions, pharmaceuticals, retailing, tourism and transport – are systematically reviewed one by one for any restriction to competition.

The resulting recommendations allow governments to introduce more competition into the economy and foster long-lasting growth.

Mexico (2018), Greece (2017, 2013) and Romania (2016) have already undergone similar reviews.

Access all reviews and the toolkit at oe.cd/cat

