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FOREWORD

This document comprises proceedings in the original languages of a Roundtable on Competition and Regulation in Auditing and Related Professions held by the Competition Committee (Working Party No. 2 on Competition and Regulation) in June 2009.

It is published under the responsibility of the Secretary General of the OECD to bring information on this topic to the attention of a wider audience.

This compilation is one of a series of publications entitled "Competition Policy Roundtables".

PRÉFACE

Ce document rassemble la documentation dans la langue d'origine dans laquelle elle a été soumise, relative à une table ronde sur la Concurrence et la Réglementation de la Profession Comptable qui s'est tenue en juin 2009 dans le cadre du Comité de la concurrence (Groupe de Travail No. 2 sur la Concurrence et la Réglementation).

Il est publié sous la responsabilité du Secrétaire général de l'OCDE, afin de porter à la connaissance d'un large public les éléments d'information qui ont été réunis à cette occasion.

Cette compilation fait partie de la série intitulée "Les tables rondes sur la politique de la concurrence".

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OTHER TITLES
SERIES ROUNDTABLES ON COMPETITION POLICY

1.	Competition Policy and Environment	OCDE/GD(96)22
2.	Failing Firm Defence	OCDE/GD(96)23
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4.	Competition Policy and Efficiency Claims in Horizontal Agreements	OCDE/GD(96)65
5.	The Essential Facilities Concept	OCDE/GD(96)113
6.	Competition in Telecommunications	OCDE/GD(96)114
7.	The Reform of International Satellite Organisations	OCDE/GD(96)123
8.	Abuse of Dominance and Monopolisation	OCDE/GD(96)131
9.	Application of Competition Policy to High Tech Markets	OCDE/GD(97)44
10.	General Cartel Bans: Criteria for Exemption for Small and Medium-sized Enterprises	OCDE/GD(97)53
11.	Competition Issues related to Sports	OCDE/GD(97)128
12.	Application of Competition Policy to the Electricity Sector	OCDE/GD(97)132
13.	Judicial Enforcement of Competition Law	OCDE/GD(97)200
14.	Resale Price Maintenance	OCDE/GD(97)229
15.	Railways: Structure, Regulation and Competition Policy	DAFFE/CLP(98)1
16.	Competition Policy and International Airport Services	DAFFE/CLP(98)3
17.	Enhancing the Role of Competition in the Regulation of Banks	DAFFE/CLP(98)16
18.	Competition Policy and Intellectual Property Rights	DAFFE/CLP(98)18
19.	Competition and Related Regulation Issues in the Insurance Industry	DAFFE/CLP(98)20
20.	Competition Policy and Procurement Markets	DAFFE/CLP(99)3
21.	Regulation and Competition Issues in Broadcasting in the light of Convergence	DAFFE/CLP(99)1
22.	Relationship between Regulators and Competition Authorities	DAFFE/CLP(99)8
23.	Buying Power of Multiproduct Retailers	DAFFE/CLP(99)21
24.	Promoting Competition in Postal Services	DAFFE/CLP(99)22
25.	Oligopoly	DAFFE/CLP(99)25
26.	Airline Mergers and Alliances	DAFFE/CLP(2000)1
27.	Competition in Professional Services	DAFFE/CLP(2000)2
28.	Competition in Local Services	DAFFE/CLP(2000)13
29.	Mergers in Financial Services	DAFFE/CLP(2000)17
30.	Promoting Competition in the Natural Gas Industry	DAFFE/CLP(2000)18
31.	Competition Issues in Electronic Commerce	DAFFE/CLP(2000)32
32.	Competition and Regulation Issues in the Pharmaceutical Industry	DAFFE/CLP(2000)29
33.	Competition Issues in Joint Ventures	DAFFE/CLP(2000)33
34.	Competition Issues in Road Transport	DAFFE/CLP(2001)10

35.	Price Transparency	DAFFE/CLP(2001)22
36.	Competition Policy in Subsidies and State Aid	DAFFE/CLP(2001)24
37.	Portfolio Effects in Conglomerate Mergers	DAFFE/COMP(2002)5
38.	Competition and Regulation Issues in Telecommunications	DAFFE/COMP(2002)6
39.	Merger Review in Emerging High Innovation Markets	DAFFE/COMP(2002)20
40.	Loyalty and Fidelity Discounts and Rebates	DAFFE/COMP(2002)21
41.	Communication by Competition Authorities	DAFFE/COMP(2003)4
42.	Substantive Criteria used for the Assessment of Mergers	DAFFE/COMP(2003)5
43.	Competition Issues in the Electricity Sector	DAFFE/COMP(2003)14
44.	Media Mergers	DAFFE/COMP(2003)16
45.	Universal Service Obligations	DAF/COMP(2010)13
46.	Competition and Regulation in the Water Sector	DAFFE/COMP(2004)20
47.	Regulating Market Activities by Public Sector	DAF/COMP(2004)36
48.	Merger Remedies	DAF/COMP(2004)21
49.	Cartels: Sanctions against Individuals	DAF/COMP(2004)39
50.	Intellectual Property Rights	DAF/COMP(2004)24
51.	Predatory Foreclosure	DAF/COMP(2005)14
52.	Competition and Regulation in Agriculture: Monopsony Buying and Joint Selling	DAF/COMP(2005)44
53.	Enhancing Beneficial Competition in the Health Professions	DAF/COMP(2005)45
54.	Evaluation of the Actions and Resources of Competition Authorities	DAF/COMP(2005)30
55.	Structural Reform in the Rail Industry	DAF/COMP(2005)46
56.	Competition on the Merits	DAF/COMP(2005)27
57.	Resale Below Cost Laws and Regulations	DAF/COMP(2005)43
58.	Barriers to Entry	DAF/COMP(2005)42
59.	Prosecuting Cartels without Direct Evidence of Agreement	DAF/COMP/GF(2006)7
60.	The Impact of Substitute Services on Regulation	DAF/COMP(2006)18
61.	Competition in the Provision of Hospital Services	DAF/COMP(2006)20
62.	Access to key Transport Facilities	DAF/COMP(2006)29
63.	Environmental Regulation and Competition	DAF/COMP(2006)30
64.	Concessions	DAF/COMP/GF(2006)6
65.	Remedies and Sanctions	DAF/COMP(2006)19
66.	Competition in Bidding Markets	DAF/COMP(2006)31
67.	Competition and Efficient Usage of Payment cards	DAF/COMP(2006)32
68.	Vertical mergers	DAF/COMP(2007)21
69.	Competition and Regulation in Retail Banking	DAF/COMP(2006)33
70.	Improving Competition in Real Estate Transactions	DAF/COMP(2007)36
71.	Public Procurement – The Role of Competition Authorities in Promoting Competition	DAF/COMP(2007)34
72.	Competition, Patents and Innovation	DAF/COMP(2007)40
73.	Private Remedies	DAF/COMP(2006)34

74.	Energy Security and Competition Policy	DAF/COMP(2007)35
75.	Plea Bargaining Settlement of Cartel Cases	DAF/COMP(2007)38
76.	Competitive Restrictions in Legal Professions	DAF/COMP(2007)39
77.	Dynamic Efficiencies in Merger Analysis	DAF/COMP(2007)41
78.	Guidance to Business on Monopolisation and Abuse of Dominance	DAF/COMP(2007)43
79.	The Interface between Competition and Consumer Policies	DAF/COMP/GF(2008)10
80.	Facilitating Practices in Oligopolies	DAF/COMP(2008)24
81.	Taxi Services Regulation and Competition	DAF/COMP(2007)42
82.	Techniques and Evidentiary Issues in Proving Dominance/ Monopoly Power	DAF/COMP(2006)35
83.	Managing Complex Merger Cases	DAF/COMP(2007)44
84.	Potential Pro-Competitive and Anti-Competitive Aspects of Trade/Business Associations	DAF/COMP(2007)45
85.	Market Studies	DAF/COMP(2008)34
86.	Land Use Restrictions as Barriers to Entry	DAF/COMP(2008)25
87.	Construction Industry	DAF/COMP(2008)36
88.	Antitrust Issues Involving Minority Shareholding and Interlocking Directorates	DAF/COMP(2008)30
89.	Bundled and Loyalty Discounts and Rebates	DAF/COMP(2008)29
90.	Techniques for Presenting Complex Economic Theories to Judges	DAF/COMP(2008)31
91.	Competition Policy for Vertical Relations in Gasoline Retailing	DAF/COMP(2008)35
92.	Competition and Financial Markets	DAF/COMP(2009)11
93.	Refusals to Deal	DAF/COMP(2007)46
94.	Resale Price Maintenance	DAF/COMP(2008)37
95.	Experience with Direct Settlements in Cartel Cases	DAF/COMP(2008)32
96.	Competition Policy, Industrial Policy and National Champions	DAF/COMP/GF(2009)9
97.	Two-Sided Markets	DAF/COMP(2009)20
98.	Monopsony and Buyer Power	DAF/COMP(2008)38

TABLE OF CONTENTS

EXECUTIVE SUMMARY	7
SYNTHESE	11
BACKGROUND NOTE.....	15
NOTE DE REFERENCE.....	61
CONTRIBUTIONS	
Canada	111
France	117
Greece.....	139
Hungary	147
Italy.....	161
Switzerland	171
Turkey.....	173
United Kingdom	183
United States.....	199
European Commission.....	207
Lithuania.....	211
Romania.....	223
Chinese Taipei	235
EGIAN.....	243
Regulatory Working Group	245
SUMMARY OF DISCUSSION	253
COMPTE RENDU DE LA DISCUSSION	263

EXECUTIVE SUMMARY

By the Secretariat

In light of the written submissions, the background note and the oral discussion, the following points emerge:

(1) *Market developments*

In the late 1980s there were eight major accounting firms that provided few services other than auditing. Since 2003 there have been only four firms that audit the far majority of large public companies and that derive significant portions of income from non-auditing services. Reasons for this consolidation are related to the characteristics of the profession (accounting firms need to be big in order to compete), but also include litigation risks, insurance costs and conflict of interest rules.

In twenty years, half of the Big Eight accounting firms have disappeared from the market, as a result of a series of mergers and one corporate/accountancy scandal involving Arthur Andersen. Competition authorities have investigated some of these mergers in detail. In many jurisdictions the remaining Big Four (PricewaterhouseCoopers, Deloitte Touche Tohmatsu, Ernst & Young and KPMG) are the only significant players in the market for auditing and accounting services for quoted and large companies, where the market share of intermediate accounting networks is small. Geographic markets are considered to be national, because of the existing entry and conduct regulation at national level.

Factors that likely have led to the current market structure include the existence of reputation effects (both positive and negative), liability risks and insurance costs. Accounting firms need to have a 'critical size' in order to provide statutory audits for large clients. More specifically, the U.S. Government Accountability Office found that the mergers between the former Big Eight firms in the 1980s and 1990s can be explained by the following: the need for accounting firms to grow in order to keep up with their clients, taking advantage of economies of scale, expanding industry-specific knowledge and technical expertise, and increasing the capital base in order to spread risk.

The fact that there is concentration does not necessarily mean there is no competition. However, the competition originates from a smaller number of players and focuses on reputation rather than prices. Results found by the U.S. Government Accountability Office in 2008 suggested that the increase in concentration did not lead to higher prices charged by the Big Four. Demand by large clients for auditing services is quite inelastic.

In the EU, in addition to national liability rules (which prevent new players from entering the market), conflict of interest rules on ownership have been identified as a major justification for market concentration. The European Commission launched a public consultation on conflicts of interest and ownership rules in 2008. It was found that obstacles to competition include brand and perception of reputation, expertise of staff, differences among the global reach of firms, and differences in national requirements.

(2) *Promoting competition*

Facilitating the expansion of existing intermediate accountancy networks and the entry of new accounting networks may increase competition in the market for statutory audits.

Following the general presumption that promoting competition is beneficial, the expansion of existing intermediate networks could be encouraged. Mergers proposals between small or intermediate accounting firms should not be frustrated by competition authorities, as such mergers may put pressure on the Big Four. Intermediate accounting firms (such as Grant Thornton International, BDO International, RSM International and Baker Tilly International) can be substantial in size, revenue and breadth of operation with an ability to perform complex audits for clients with wide-ranging international operations.

In addition, promoting entry of new international accountancy networks could be encouraged by allowing both partnerships and unlimited liability joint stock companies (with restrictions that reduce conflicts of interest) in countries where this is not yet allowed. Oxera (2007) found that alternative ownership and management structures, where the control over the audit firms is with external investors (not being auditors) is unlikely to significantly impair auditor independence in practice. Provisions such as Article 3 of the 2006 EU Statutory Audit Directive, which liberalised ownership restrictions over EU audit firms (making it possible for local audit firms to be controlled only by a majority of auditors) are a good move in.

Promoting entry or expansion of accounting networks into the auditing market for quoted and large companies can be beneficial for competition, but will be very difficult to achieve. Most of the large publicly listed companies appear to be unwilling to switch to a non-Big Four auditor, even though some of the accounting firms at the intermediate level have become quite substantial and have already formed international networks.

(3) *Accounting scandals*

Accounting scandals increase liability risks and could lead to a further reduction of competition.

Reputation is an important mechanism to punish low-quality auditing and respond to accountancy scandals. However, these reputational effects can be very strong. Governments should consider the possibility that drastic and unpredictable events, such as the Enron case, may occur again in the future (despite improved regulations and accountancy standards) and could lead to the dismantling of a Big Four or an intermediate accounting firm. In response, governments should be wary of taking actions that may have knock-on effects for an entire firm's reputation. Governments may also consider adapting regulatory restrictions on the ownership structure of accounting firms, in case of such events, to ensure the firm's assets would not necessarily be absorbed only by the largest remaining organization.

Liability claims related to these scandals (big or small) are a cause of concern for accounting firms, when auditors face judicial actions that would penalize these firms far beyond the level of their responsibility. There is a worldwide trend for litigation involving auditing firms. Therefore a liability cap could be considered. On the one hand, a cap would potentially reduce the incentives for auditors to conduct quality work, or limit investors' ability to recoup losses in case of fraud by the auditor. On the other hand, limiting the civil liability of auditors might prevent the dismantling of another accounting firm. It might also take away some of the disincentives for intermediate accounting firms to actively compete for large audit clients. Currently the relative liability risk compared to the reward (the audit fee received) is sometimes excessive. The Regulatory Working Group of the Global Public Policy Committee has suggested to introduce proportional liability combined with a mechanism that limits absolute exposure based on a multiple of the audit fee.

(4) Regulation of the accounting professions: market failure and rent seeking

Regulation of the accountancy professions involves some restrictions on entry and professional conduct. Certain restrictions may be a remedy to market failures and may also be based on distributional or paternalistic motives, but other restrictions may serve private interests rather than the public interest.

To correct information asymmetries between accountants and their clients, and to prevent negative externalities to investors, banks and creditors, some regulation of auditor entry and educational requirements is needed, as is a more general prohibition on false and misleading advertising. Naturally, competition law remains necessary to control cartel-like behavior and abuse of market dominance by (associations of) auditors. Regulation should not go further than is necessary to cure the prevailing market failures.

Self-regulation can be a useful tool in addition to public regulation, but there is a risk of rent-seeking behavior by professionals. In the OECD countries, regulatory frameworks in the market for accounting services range from virtually no oversight to self-regulation to multiple regulators. This regulation differs from country to country and even within a country (for example, in Canada and the U.S.). Also the entities receiving the services are regulated regarding the types of accounting services they are required to have or can select. Solutions for these cross-border inconsistencies include the adoption of international standards to improve mobility, and mutual recognition (and co-operation) between regulatory bodies.

(5) Removing unnecessary restrictions

Some restrictions to competition are unnecessary or disproportionate to achieve public interest goals. Competition law and advocacy can play a major role in this respect.

In many OECD countries there are fewer restrictions in the accounting professions than in other professions. In some countries the authorities already dealt with, for example, minimum prices and advertising restrictions resulting from self-regulation. This is more difficult when such restrictions originate from the law. Authorities then may have to resort to advocacy reports.

Quantitative restrictions to entry, advertising bans and price regulation (including recommended fee scales) restrict competition more than is necessary and should be eliminated. Furthermore, those countries that give accountancy professionals exclusive rights for tax advice and representation should consider whether such restrictions are truly necessary, given that many OECD countries have no such restrictions. Entry regulation and professional standards should be consistent from one jurisdiction to another so as to facilitate mutual reliance.

(6) Accounting standards

The quality of accounting standards and practice are vital elements for well-functioning of markets to evaluate public company performance.

By setting minimum quality standards for accountancy services, negative externalities can be internalized. The move to one global system of accounting standards (International Financial Reporting Standards, International Standards on Auditing) is good for transparency, while it can also reduce costs. However, the current standards may need some revision, particularly in dealing with off-balance sheet vehicles, as these increase information asymmetries.

SYNTHESE

Par le Secrétariat

Les contributions écrites, la note de référence et les discussions orales ont mis en lumière les points suivants :

(1) *Évolutions du marché*

Il existait, à la fin des années 80, huit grands cabinets de vérification comptable ne proposant qu'un petit nombre d'autres services. En 2003, ils n'étaient plus que quatre à contrôler les comptes de la grande majorité des grandes entreprises faisant appel public à l'épargne, tout en tirant une part importante de leurs revenus de ces autres services. Cette concentration peut s'expliquer par les spécificités de la profession (pour être concurrentiels, ces cabinets n'ont d'autre choix que d'être « grands »), mais aussi par les risques de procès, les coûts d'assurance et les règles sur les conflits d'intérêts.

En vingt ans, la moitié des huit grands cabinets comptables ont disparu du marché, à la suite d'une série de fusions et d'un scandale comptable et financier impliquant Arthur Andersen. Les autorités de la concurrence ont mené des enquêtes approfondies sur certaines de ces fusions. Dans de nombreux pays, les quatre grands cabinets restants (PricewaterhouseCoopers, Deloitte Touche Tohmatsu, Ernst & Young et KPMG) sont les seuls acteurs majeurs du marché des services de comptabilité et de vérification pour les grandes entreprises cotées, où la présence de réseaux comptables de taille intermédiaire est marginale. Le marché est essentiellement national, en raison des règles existantes relatives à l'entrée et à la conduite sur le marché au niveau national.

Parmi les facteurs qui sont sans doute à l'origine de la structure de marché actuelle figurent l'existence d'effets de notoriété (positifs et négatifs), les risques de responsabilité et les coûts d'assurance. Les cabinets d'expertise comptable doivent avoir une taille critique pour proposer à des gros clients de procéder au contrôle légal de leurs comptes. Le *Government Accountability Office* [la cour des comptes américaine] a analysé les raisons qui expliquent les fusions entre les huit grands cabinets comptables dans les années 80 et 90 : les cabinets de vérification comptable ont eu besoin de devenir de plus en plus grands pour se maintenir au niveau de leurs clients, ont voulu mettre à profit les économies d'échelle, ont dû renforcer leurs connaissances et compétences techniques spécifiques, et augmenter leur capital pour répartir les risques.

Le phénomène de concentration ne signifie pas qu'il n'y a pas de concurrence. Cela étant, la concurrence émane d'un nombre relativement restreint d'intervenants et porte sur la notoriété plutôt que sur les prix. Selon les conclusions auxquelles est parvenu le *Government Accountability Office* des États-Unis en 2008, la plus grande concentration du marché n'a pas entraîné d'augmentation des tarifs facturés par les quatre grands cabinets (les *Big Four*). La demande de services de vérification comptable par les gros clients est assez inélastique.

Dans l'UE, outre les dispositions nationales en vigueur en matière de responsabilité (qui empêchent de nouveaux acteurs d'entrer sur le marché), les règles de détention du capital visant à prévenir les conflits

d'intérêts expliquent également la concentration de ce marché. La Commission européenne a lancé une consultation publique sur les conflits d'intérêts et les règles de détention du capital en 2008. Au nombre des obstacles à la concurrence figurent l'image de marque et la notoriété apparente des acteurs du marché ; les compétences des équipes ; les différences entre les cabinets en ce qui concerne leur dimension internationale et les diverses dispositions nationales en vigueur.

(2) *Promotion de la concurrence*

Faciliter le développement des réseaux comptables intermédiaires existants et l'entrée de nouveaux réseaux peut accroître la concurrence sur le marché du contrôle légal des comptes.

Conformément au principe général selon lequel promouvoir la concurrence est bénéfique, on pourrait encourager l'expansion des réseaux intermédiaires existants. Les autorités de la concurrence ne doivent pas faire obstacle aux projets de fusion entre sociétés comptables de taille petite ou intermédiaire car ces opérations peuvent faire pression sur les *Big Four*. La taille, le chiffre d'affaires et l'ampleur des activités des cabinets comptables intermédiaires (comme Grant Thornton International, BDO International, RSM International et Baker Tilly International) peuvent être considérables, ce qui leur permet de mener des vérifications complexes pour des clients ayant des activités mondiales très diversifiées.

En outre, l'entrée de nouveaux cabinets comptables internationaux pourrait être favorisée en autorisant les sociétés de personnes et les sociétés par actions à responsabilité illimitée (sous réserve de restrictions qui limitent les conflits d'intérêts) dans les pays où ce n'est pas encore le cas. Oxera (2007) conclut qu'en pratique, des structures alternatives de propriété et de gestion, dans lesquelles le contrôle des cabinets d'audit est confié à des investisseurs extérieurs (qui ne sont pas eux-mêmes auditeurs), n'auraient probablement pas beaucoup d'incidence sur l'indépendance des vérificateurs. Des dispositions telles que l'article 3 de la Directive européenne concernant les contrôles légaux des comptes de 2006, qui a assoupli les restrictions relatives à la propriété des cabinets de vérification comptable dans l'UE (en permettant le contrôle des cabinets d'audit locaux par une majorité des auditeurs), vont dans la bonne direction.

Promouvoir l'entrée ou le développement de réseaux comptables sur le marché de la vérification des grandes entreprises cotées peut être bénéfique à la concurrence, mais sera très difficile à réaliser. La plupart des grandes entreprises cotées en bourse n'ont visiblement pas l'intention de confier le contrôle de leurs comptes à un cabinet autre qu'un des quatre grands, même si certaines sociétés comptables de niveau intermédiaire se sont beaucoup étoffées et ont déjà constitué des réseaux internationaux.

(3) *Scandales comptables*

Les scandales comptables accroissent les risques de responsabilité et peuvent conduire à une nouvelle contraction de la concurrence.

La notoriété est un mécanisme efficace pour sanctionner les vérifications de mauvaise qualité et réagir aux scandales impliquant des cabinets comptables. Néanmoins, ces effets de notoriété peuvent être considérables. Les pouvoirs publics doivent envisager la possibilité que des événements graves et imprévisibles, similaires à l'affaire Enron, se reproduisent à l'avenir (malgré l'amélioration de la réglementation et des normes comptables) et entraînent l'éclatement d'un des quatre grands ou d'un cabinet intermédiaire. Ils doivent se garder de prendre des mesures susceptibles d'avoir des retombées sur la réputation d'un cabinet dans son ensemble. Ils peuvent aussi envisager d'adapter les restrictions réglementaires relatives à la structure de capital des cabinets comptables, dans l'éventualité où de tels événements surviendraient, afin de garantir que les actifs du cabinet ne soient pas forcément absorbés exclusivement par le concurrent le plus grand qui reste sur le marché.

Les plaintes en responsabilité qui peuvent résulter de tels scandales (quelle qu'en soit l'ampleur) sont un motif d'inquiétude pour les cabinets comptables dès lors que leurs associés font l'objet d'actions judiciaires susceptibles d'entraîner pour ces cabinets des préjudices sans commune mesure avec leur responsabilité. On dénombre, dans le monde entier, de plus en plus de procès mettant en cause des cabinets de vérification comptable. Il y a donc lieu d'envisager de plafonner leur responsabilité. Certes, la fixation d'un plafond peut décourager les vérificateurs de faire un travail de qualité, ou limiter la capacité des investisseurs de récupérer le montant de leurs pertes en cas de fraude commise par le vérificateur. Mais d'autre part, limiter la responsabilité civile des vérificateurs peut empêcher le démantèlement d'un cabinet comptable supplémentaire. Cela pourrait aussi supprimer certains des facteurs qui dissuadent les cabinets intermédiaires de mener une concurrence active pour conquérir de grands clients. À l'heure actuelle, le rapport entre le risque relatif de responsabilité et la rétribution (les honoraires perçus) est parfois excessif. Le groupe de travail sur la réglementation du *Global Public Policy Committee* suggère d'introduire un régime de responsabilité proportionnelle assorti d'un mécanisme fondé sur un multiple des honoraires, qui limiterait les risques liés à la responsabilité illimitée.

(4) *Réglementation des professions comptables : défaillance du marché et recherche de rente*

La réglementation des professions comptables comporte certaines restrictions à l'entrée et à la conduite professionnelle. Certaines restrictions peuvent remédier aux défaillances du marché et être inspirées par des motifs paternalistes ou tenant à la répartition, mais d'autres peuvent servir des intérêts privés plutôt que l'intérêt général.

Afin de corriger les asymétries de l'information entre les comptables et leurs clients et empêcher les externalités négatives pour les investisseurs, les banques et les créanciers, il convient de réglementer certains aspects de l'entrée sur le marché et de la formation des vérificateurs, et de généraliser l'interdiction de la publicité mensongère. Bien évidemment, la législation sur la concurrence reste nécessaire pour contrôler les comportements assimilables à des ententes et l'abus de position dominante par des (associations de) vérificateurs. Néanmoins, la réglementation ne doit pas aller plus loin que ce qui est nécessaire pour remédier aux défaillances du marché les plus courantes.

L'autoréglementation peut compléter utilement la réglementation publique, mais peut aussi inciter certains professionnels à adopter un comportement de recherche de rente. Dans les pays de l'OCDE, les régimes réglementaires vont de l'absence quasi totale de contrôle à la présence de plusieurs autorités de tutelle, en passant par l'autoréglementation. Ces régimes varient d'un pays à l'autre, voire au sein d'un même pays (au Canada et aux États-Unis par exemple). Les entités faisant appel à ces services sont en outre soumises à des règles concernant le type de services comptables qu'elles ont l'obligation ou la possibilité de se procurer. Pour remédier à ces incohérences entre les pays, l'adoption de normes internationales qui renforceraient la mobilité d'une part et le principe de reconnaissance mutuelle (et de coopération) entre les régimes de contrôle en vigueur d'autre part feraient partie des solutions.

(5) *Abrogation des restrictions inutiles*

Certaines restrictions à la concurrence sont inutiles ou disproportionnées pour atteindre les objectifs d'une mission d'intérêt public. Le droit de la concurrence et la sensibilisation peuvent jouer un rôle essentiel à cet égard.

Dans de nombreux pays de l'OCDE, les restrictions applicables aux professions comptables sont moins nombreuses que dans d'autres professions. Dans certains pays, par exemple, les autorités ont déjà réglé les problèmes de prix minimums et de restrictions en matière de publicité dus à l'autoréglementation. Cela est plus difficile quand ces restrictions proviennent de la législation. Les autorités sont alors parfois amenées à recourir à des rapports plaidant en faveur d'une abrogation de ces restrictions.

Les restrictions quantitatives à l'entrée, les interdictions de publicité et la réglementation des prix (dont les barèmes d'honoraires recommandés) restreignent inutilement la concurrence et doivent être abrogées. En outre, les pays qui octroient aux professionnels de la comptabilité des droits exclusifs en matière de représentation et de conseil fiscaux doivent se demander si ces restrictions sont vraiment nécessaires, sachant qu'elles sont inexistantes dans de nombreux pays de l'OCDE. Les règles d'entrée et les normes professionnelles doivent être harmonisées d'un pays à l'autre afin de favoriser la confiance mutuelle.

(6) *Normes comptables*

La qualité des normes et des pratiques comptables est essentielle au bon fonctionnement des marchés pour l'évaluation des performances des entreprises faisant appel public à l'épargne.

La fixation de normes minimales de qualité concernant les services comptables permettrait d'internaliser les externalités négatives. L'adoption à l'échelon mondial d'un seul système de normes comptables (normes internationales d'information financière - IFRS, normes de vérification internationales - ISA) est une mesure favorable à la transparence et peut réduire les coûts. Toutefois, il peut être nécessaire de réviser les normes actuelles, notamment pour résoudre le problème posé par les instruments hors bilan qui accroissent l'asymétrie de l'information.

BACKGROUND NOTE*

by the Secretariat

1. Introduction

The services provided by the accounting professions¹ generally include statutory and internal audits, other accountancy services - such as advice on financial controls, due diligence, and insolvency practice - and tax advisory services. Accountants may also participate in a wide range of related business activities, such as business valuation, forensic investigation, strategic planning, sales and marketing, and information technology and human resources management.² In this paper, the focus will be on statutory audits and other accountancy services reserved to one or more branches of the accounting profession.

In all OECD countries, the provision of statutory audits is an exclusive right reserved for ‘public accountants’.³ Exclusive rights may also apply to the provision of some of the other accountancy services mentioned above, but arrangements differ from country to country.⁴

It is particularly important to study the market for statutory audits in more detail. Audit contracts serve a crucial public information role and conflicts of interest abound because such contracts can lead to additional contracts with audit clients.⁵ Perhaps the most fundamental conflict with audits is that accountants are required to provide an independent opinion that may at times not be in the interest of the client who pays them. Finding solutions that enhance independence is of crucial importance for those who rely on audits, such as investors. One solution is for auditing firms to become large with reputations that would be tarnished by poor quality audits. For large accounting firms, the financial loss from tarnished reputations would exceed the gains from performing audits that lack independence.⁶ Hence there is a natural force favoring large accounting firms for audits of public companies. Accounting firms that provide statutory audits are typically classified into two groups: the largest accounting firms – currently the Big

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¹ Including auditors, accountants and tax advisers.

² Competition Bureau (2007), p. 43.

³ The names of these professions differ from country to country. Examples are Certified Public Accountants, Chartered Accountants and Auditors.

⁴ In some countries, for example, the provision of tax advice is an exclusive right that is restricted to a particular profession.

⁵ The US General Accounting Office, which in 2003 surveyed a random sample of public companies from the Fortune 1000 list, found that 149 out of 159 respondents (94 percent) used their auditor for a variety of non-audit services, such as tax-related services and assistance with company debt and equity offerings. GAO (2003b), pp. 9-10.

⁶ The strength of this reputational effect is more pronounced the larger the firm revenue relative to the size of a client’s payments.

Four – and all other accounting firms, which are sometimes referred to as the “second tier” or “fringe” firms.⁷ In this paper the term “intermediate firms” will be used. The Big Four accounting firms are responsible for the vast majority of audits of large, publicly traded companies. For such audits, the market share of the intermediate firms is small. Having said this, there are non-Big Four firms that have substantial capabilities, high revenues and large, international reach.

The number of accounting firms regularly performing audits of large publicly traded companies has declined in recent years. This shrinkage comes from a series of mergers and the demise of Arthur Andersen in the wake of the Enron scandal. The number of large accounting firms now stands at four, a structure similar in some respects to that of the credit rating industry.

Both industries serve a core public policy function. In particular, a sound and efficient financial system relies heavily on the various elements that contribute to a robust financial reporting and auditing framework. Accounting standards and a high-quality audit profession are called upon to ensure the quality of regulatory reports and public disclosures, and thus have been included among the twelve standards identified by the Financial Stability Forum⁸ as conducive to a robust financial infrastructure.

The same framework helps to preserve public confidence in the integrity of financial institutions and markets, through measures such as internal audits, external audits, corporate governance, disclosure and transparency. Shareholders are residual claimants on the value of a company, entitled to what is left over after all other claims have been settled. Being last served entails risk. There is the normal business risk that the firm’s strategy or asset mix will fail to generate an adequate return, as well as the more unusual risk of fraud or other undesirable behavior on the part of management or other company officials. It seems clear in this context why the bankruptcy filing by Enron, the subsequent failure of the Bermuda-based telecom firm Global Crossing, and various other corporate and accountancy scandals⁹ have proved to be such important events. The current financial and economic crisis raises further questions about the performance of reputational intermediaries, including auditors and providers of other accountancy services. All of these factors suggest a need to develop a thorough understanding of the functioning of the accountancy market, including the degree of competition in the accountancy market and the current regulatory framework that applies to the accounting professions¹⁰.

⁷ See, for example, Sullivan (2002), p. 376, and various merger assessments by competition authorities. The term “second tier” does not refer to the quality of service, but to the fact that these firms are (much) smaller in size than the Big Four firms, although some of them are also very large and have global networks.

⁸ The Financial Stability Forum (now Board) was convened in April 1999 to promote international financial stability through information exchange and international co-operation in financial supervision and surveillance. It brings together senior representatives of national financial authorities (e.g. central banks, supervisory authorities and treasury departments), international financial institutions, international regulatory and supervisory groupings, committees of central bank experts and the European Central Bank. See <http://www.fsforum.org>.

⁹ For example, those involving Fannie Mae, Lernout & Hauspie, Parmalat, Worldcom (and Arthur Andersen), Satyam Computers (and PricewaterhouseCoopers), Xerox (and KPMG), and many others.

¹⁰ Previous research into the entry and conduct regulation in professional services markets (such as those for pharmaceutical, legal, and medical services) commissioned or conducted by regulators and competition authorities has shown that this regulation sometimes overly restricts competition. This provides yet another reason for further analysis of the accountancy market. These include OFT (2001), Indecon and London Economics (2003), Paterson, Fink, Ogus et al (2003), Van den Heuvel Rijnders, Lackner and Verkerk (2004), Volkerink, De Bas, Van Gorp and Philipsen (2007), Competition Bureau (2007), and many others. See also OECD (2000), OECD (2005) and OECD (2007).

The focus of this paper is on government regulation and oversight of accounting firms, with a particular focus on competition. This paper is not intended to encourage government investigation of accounting firm behavior for coordinated action or competition law abuses. Nor is the paper intended to focus extensively on the conflicts of interest present in the accounting profession, as these are not directly related to competition but rather to governance. The questions here concern the competitive structure of the auditing sector, whether government or professional regulations unduly restrict entry, and a select review of the effects of accounting standards on market operation.

In Section 2 of this paper, the major accounting firms will be reviewed from a competition perspective. Section 3 discusses entry and conduct rules in the accounting professions - notably those regulating exclusive rights and qualification requirements, advertising, prices, inter-professional cooperation and business types - from an economic perspective. Section 4 subsequently discusses the importance of accountancy standards such as the International Financial Reporting Standards (IFRS) and the U.S. Generally Accepted Accounting Principles (GAAP). Section 5 concludes.

The main points to emerge from this work are the following:

- Mergers and Arthur Andersen's sudden dissolution have reduced the number of major accounting firms to a perilously small number, in which competition may be unduly limited;
- A priority task for governments and regulators would be to facilitate the expansion of the current "intermediate" accountancy networks;
- In addition, a priority task for governments would be to lay the foundations that would promote entry of new accounting firms, for example by permitting private capital to establish new firms and earn profits from them;
- Professional rules are at times excessive and create market power, notably when they include quantitative restrictions to entry, total advertising bans and price regulation;
- The quality of accounting standards and practices are vital elements for well-functioning of markets to evaluate public company performance and need some revision.

2. From the Big Eight to the Big Four

Since 1989 the accountancy sector has been characterized by a series of mergers between the large international accounting organizations. In addition, the 'Enron scandal' in 2001 led to the criminal prosecution and subsequent downfall of Arthur Andersen. As a result of these events, the "Big Eight" accounting and professional services organizations of the late 1980s have been reduced to the "Big Four". In 2009, the following organizations are responsible for the vast majority of the audits for publicly traded companies¹¹ (and many private companies) world-wide:

- PricewaterhouseCoopers

¹¹ GAO (2003a), pp. 20-23, found that the Big Four audited over 78 percent of *all* US public companies and 99 percent of public company annual sales in 2002. GAO (2008), p. 4, found that the Big Four in 2007 audited almost all (98 percent) of the largest public companies. Oxera (2006), p. 65, found that in the UK in 2006 the Big Four audited all but one FTSE 100 companies, and 242 FTSE 250 companies. Smaller listed companies were supplied by both the Big Four and intermediate firms, although the former had significantly higher market shares.

- Deloitte Touche Tohmatsu
- Ernst & Young
- KPMG

Each of these organizations is in fact a network of firms rather than a single entity. That is, the member firms in the network operate under a common name and observe common professional and service standards. At the country level, however, these member firms are bound by the entry and conduct regulations that apply in that particular country.

- PricewaterhouseCoopers (PwC) refers to the network of member firms of PricewaterhouseCoopers International Limited, a UK limited company. Each of these member firms is a separate and independent legal entity. In most OECD countries the member firms operate under the name PwC, but some variations exist. In the Republic of Korea, for example, they are called Samil PwC. In Japan, where PwC has two offices, the Tokyo office is named PwC HRS, whereas the Kyoto office is a co-operating firm named Kyoto Audit Corporation. According to the information presented on its website, PwC provides services in the fields of assurance, tax, human resources, transactions, performance improvement and crisis management.¹² Its world-wide gross revenues for the fiscal year ended 30 June 2008 equalled U.S. \$ 28.2 billion (out of which 13.8 billion was related to assurance), the highest of the Big Four organizations. More than 155,000 people in 153 countries worked for PwC in 2008.¹³
- The co-ordinating entity of Deloitte Touche Tohmatsu (DTT) is a Swiss *Verein*. All the member firms are legally separate and independent entities, operating under the name “Deloitte”, “Deloitte & Touche”, “Deloitte Touche Tohmatsu” or other related names (for example, Deloitte Anjin LLC in the Republic of Korea). In its own words, DTT “provides audit, tax, consulting and financial advisory services to public and private clients spanning multiple industries”. The organization is active in 140 countries and has about 165,000 employees (more than any other of the Big Four). Aggregate revenues of DTT member firms for the fiscal year ended 31 May 2008 totalled U.S. \$ 27.4 billion.¹⁴
- The UK limited company ‘Ernst & Young Global Limited’ is the principal governance entity of the global Ernst & Young organization. In many of the OECD countries (such as the United States, the Republic of Korea, the Netherlands, Sweden and Turkey) its member firms are called Ernst & Young. In some other countries the names are different: for example, in Japan the member firms operate under the name Ernst & Young ShinNihon and in Mexico they are called Mancera. The world-wide revenues of Ernst & Young were 24.5 billion for the fiscal year ending

¹² In relation to the 1998 merger case between Price Waterhouse and Coopers & Lybrand (see Section 2), the parties themselves noted that their core activities were related to statutory audit, other auditing and accounting services, tax advisory and compliance, management consultancy (including information technology, strategic planning and human resources), corporate finance advisory, and insolvency. See European Commission, Case No IV/M.1016 – Price Waterhouse/Coopers & Lybrand, 20 May 1998, p. 2. and p. 4.

¹³ [Http://www.pwc.com](http://www.pwc.com). See also PricewaterhouseCoopers (2008)

¹⁴ [Http://www.deloitte.com](http://www.deloitte.com). See also Deloitte Touche Tohmatsu (2008).

30 June 2008. The number of employees in 2008 was 135,000. The organization presents itself as “a global leader in assurance, tax, transaction and advisory services”.¹⁵

- KPMG International is a Swiss cooperative. Member firms of the KPMG network of independent firms, which are located in more than 140 countries, are affiliated with KPMG International. In Europe, KPMG has recently merged its firms in the UK, Germany and Switzerland, to be joined by its firms in the Netherlands and Spain, making KPMG Europe the largest accounting firm in Europe.¹⁶ According to information presented on its website, KPMG “provides audit, tax and advisory services and industry insight to help organizations negotiate risks and perform in the dynamic and challenging environments in which they do business”. Combined revenues for its member firms, which employed 137,000 people last year, were U.S. \$ 22.7 billion for the fiscal year ended September 30, 2008.¹⁷

In the following subsections, the process of going from eight big accounting firms to four will be analyzed in some more detail, with a focus on competition law analysis when appropriate.

Note though, that while the Big Four are clearly the largest accounting firms, there are others with substantial size and capacity, as explained in Box 1.¹⁸ These may grow into serious challengers to the Big Four for audits of large, publicly traded companies.

Box 1. Large, non-Big Four accounting firms: BDO International and Grant Thornton

There are at least two, and probably more, accounting networks that could potentially be increased in size to challenge the Big Four. For example, the fifth largest accounting network in the world, BDO International, is coordinated by BDO Global Coordination BV, incorporated in the Netherlands and with an office in Belgium. All of its member firms are again independent legal entities in their own countries (for example, BDO CampsObers in the Netherlands, BDO Seidman in the US, BDO Stoy Hayward in the UK, and BDO Kendalls in Australia). The network was founded in Europe in 1963, when accounting firms from the UK, Netherlands, Germany, US and Canada combined their knowledge base to form the Binder Seidman International Group. At 30 September 2008, BDO was active in 110 countries, employing 44,000 people. On its website, the fee income for 2008 is mentioned, which was US\$ 5.15 billion. BDO calls itself “the leading challenger to the largest global accounting networks”. In the Netherlands, BDO is the market leader for businesses in the SME sector. (see <http://www.bdointernational.com>)

Another large accounting network is Grant Thornton International, which is active in over 100 countries. The organisation presents itself as “one of the world's leading organisations of independently owned and managed accounting and consulting firms providing assurance, tax and specialist advisory services to privately held businesses and public interest entities”. That is, all of its member firms are separate national entities, governing themselves and also managing their administrative matters independently. The UK is one of the countries where Grant Thornton is particularly strong. On 1 July, 2007 Grant Thornton UK LLP merged with RSM Robson Rhodes, in a bid to become the UK's fifth-largest accounting and business advisory firm. Also in Japan, Grant Thornton is (according to information presented on its own website) one of the leading audit, accounting, tax and business advisory firms serving the needs of public interest entities and privately held businesses. In the Netherlands, however, Grant Thornton presents itself as “a medium-sized accountancy and advice organisation”, offering “a full range of services for [privately held businesses], medium-sized and small companies as well as specialist services for larger nationally and internationally active enterprises”. (<http://www.gti.org>) The fee income for 2008 was US\$ 4 billion. (See Grant Thornton International (2009))

¹⁵ [Http://www.ey.com](http://www.ey.com). See also Ernst & Young (2008).

¹⁶ KPMG (2009), p. 7.

¹⁷ [Http://www.kpmg.com](http://www.kpmg.com). See also KPMG (2009).

¹⁸ A list of the top 10 international accounting networks/associations by income (2008) can be found at <http://www.worldaccountingintelligence.com>.

2.1 *The Big Eight.*

At the beginning of 1989 there were eight big accounting and professional services organizations:

- Arthur Andersen
- Arthur Young & Co.
- Coopers & Lybrand
- Ernst & Whinney
- Deloitte, Haskins & Sells
- KPMG Peat Marwick
- Price Waterhouse
- Touche Ross

Most of these organizations originated in alliances formed between U.S. and UK accounting firms in the 19th and early 20th centuries, although they generally did not adopt common names until later. They expanded internationally throughout the 20th century by forming local partnerships or by forming alliances with local firms (except Arthur Andersen, which expanded outside of the U.S. by establishing its own offices in other countries). It should be noted that, of course, many mergers took place in the accountancy market also before 1989, but these concerned either mergers between smaller accounting firms or mergers between one of the Big Eight firms and smaller accounting firms.

2.2 *From 8 to 6: The mergers leading to Ernst & Young and Deloitte & Touche*

The first two mergers between Big Eight organizations took place in the same year. In June 1989 Ernst & Whinney merged with Arthur Young to form Ernst & Young. Two months later, Deloitte, Haskins & Sells merged with Touche Ross to form Deloitte & Touche¹⁹. Although the firms involved in these mergers were among the smaller of the Big Eight firms, the mergers significantly increased concentration. In the United States, for example, Ernst & Whinney had 9.2 percent of corporate audit clients in 1988, whereas Arthur Young had 6.6 percent; Deloitte, Haskins and Sells had 7.5 percent; and Touche Ross 6.8 percent.²⁰ A proposed merger between Arthur Andersen and Price Waterhouse was called off in September 1989.²¹

The U.S. General Accounting Office in 2003 presented a list of key factors that spurred consolidation, based on information provided by officials involved in these mergers:²²

¹⁹ In 1993 the organization was officially renamed Deloitte Touche Tohmatsu.

²⁰ Sullivan (2002), p. 376.

²¹ GAO (2003a), p. 11.

²² GAO (2003a), pp. 12-15. The list refers to both the 1989 mergers and the 1998 merger, and is based on interviews with “current and former partners of large public accounting firms involved in past mergers and Department of Justice and Federal Trade Commission officials”.

- Accounting firms felt pressure to expand their operations in order to keep pace with the *growing size and global reach of audit clients*. Mergers are the quickest way to fill gaps in geographic coverage²³;
- Mergers enabled firms to achieve *greater economies of scale* while they were modernizing operations (particularly information technology and training systems). Mergers were critical to the firms' modernization because accounting firms could not raise new capital by issuing securities, because of their partnership structures;
- The growing complexity of client operations prompted *the need for greater industry-specific and technical expertise* (also: offering a broader range of services allows firms to achieve economies of scope)²⁴; and
- Mergers helped firms to *increase or maintain market share* in order to hold their market position among the top tier.

There was resistance in some OECD countries among the member firms of the networks involved in the Deloitte & Touche merger. In the UK, for example, Deloitte, Haskins & Sells merged with Coopers & Lybrand instead. The merged firm was called Coopers & Lybrand Deloitte, while the UK firm of Touche Ross kept its original name. Some years later both UK firms changed their names to match those of their respective international organizations. Another example of a different merger process happened in Australia: the Australian firm of Touche Ross merged with KPMG.

Sullivan (2002) analyzed the two Big Eight mergers of 1989 to test whether they were anticompetitive or efficiency enhancing. She concludes that these mergers resulted in cost reductions that benefited relatively large audit buyers who switched auditors after the mergers. The explanation for this would lie in the fact that the assets of the four merging firms were now combined, making the two merged firms more successful in competing for large audit clients.²⁵ Her analysis is based on the notion that firms select their auditors through competitive bidding - taking into account switching costs - and that the competition for a firm's audit business can therefore be modeled as a "first-price asymmetric auction". This is an auction where the bidder with the lowest price is chosen and where suppliers of audit services have different cost structures. Because the analysis relies solely on client switching data, the results cannot be used to infer how the mergers affected the prices paid by *established* clients (that is, those who did not switch).²⁶

²³ For example, in the 1980s, Ernst & Whinney had an established network in the Pacific Rim countries while Arthur Young did not. Concerning the 1989 merger (see Section 2.3), Price Waterhouse had a network in South America while Coopers & Lybrand's network was in Europe.

²⁴ For example, the Ernst & Whinney and Arthur Young merger brought together two firms that specialized in healthcare and technology, respectively. Similarly, the 1989 Price Waterhouse and Coopers & Lybrand merger brought together two firms that dominated the market for audit services in the energy and gas and telecommunications industries, respectively. For an analysis of the Big Four firms' specialization and market shares per industry in 2002, see GAO (2003a), Appendix IV. As to the Deloitte, Haskins & Sells and Touche Ross merger, a firm with substantial audit and tax consulting operations was brought together with a strong management consulting business.

²⁵ The author (p. 377) refers to a number of studies in other economic sectors, where anticompetitive effects of mergers were found, mostly in the form of higher service prices.

²⁶ It should be noted, moreover, that an analysis of the efficiency effects of mergers is likely to lead to different results if the initial situation is one where only four instead of eight firms are present in the market (as is currently the case).

2.3 *From 6 to 5: The merger leading to PricewaterhouseCoopers*

Before their merger in July 1998, Price Waterhouse and Coopers & Lybrand were two of the smaller Big Six organizations. Nevertheless, their world-wide services included, in addition to auditing and financial reporting, services in areas such as tax, litigation support, corporate finance, human resources and business process outsourcing. The merger between these organizations created the largest professional service network in the world, with estimated worldwide revenues of over \$15 billion in 1998.²⁷

In order to merge their entire global networks (and their member firms), Price Waterhouse and Coopers & Lybrand decided from the outset to proceed by first seeking antitrust clearance in those jurisdictions with the most well-established merger clearance regimes, and only then seeking clearance in the rest of the world.²⁸ These jurisdictions included the United States, the European Union, Canada, Australia, New Zealand, and Switzerland. Kolasky argues that, although each jurisdiction presented different procedural issues²⁹, the *substantive* analysis applied to the case was nearly identical everywhere. That is, all jurisdictions argued that:³⁰

- The principal product market of concern was a market for providing audit and accounting services to large, publicly traded companies;
- Only the Big Six firms could compete effectively in this market; and
- Because of national licensing regimes, geographic markets are national.

Furthermore, there was a focus on particular economic sectors, often including banking and financial services, because of the specialized auditing requirements that apply there. In Europe, for example, the focus was on banking and insurance³¹, as the firms³² that were proposing to merge had particularly strong positions in providing auditing services in those sectors.

The U.S. Department of Justice's Antitrust Division informed the parties on 13 March 2008 that it would not challenge the merger. On the same day the European Commission's Merger Task Force also concluded in its advice to the parties that the merger would not lessen competition (although the formal clearance by the Commission would arrive two months later). The U.S. decision was followed one day later by a clearance from the Competition Bureau in Canada. Also Australia's ACCC, which approved the merger soon afterwards, had apparently waited for guidance from the United States and Europe.³³ The New Zealand Commission had already issued a "no action" letter in November 1997. Switzerland was the last

²⁷ Kolasky (2000), p. 153.

²⁸ Depending on national laws concerning the provision of audit and accounting services, integration in some cases was effected by a formal merger of the relevant firms, whereas in other cases the business and assets of one entity had to be acquired by the other, and in yet other cases the firms were formally dissolved and a new successor firm was created. See European Commission, Case No IV/M.1016 – Price Waterhouse/Coopers & Lybrand, 20 May 1998, p. 2.

²⁹ For a detailed description of the merger clearance process in these jurisdictions, see Kolasky (2000), pp. 154-160.

³⁰ Kolasky (2000), pp. 162-163.

³¹ Case No IV/M.1016 – Price Waterhouse/Coopers & Lybrand, 20 May 1998, p. 5.

³² This includes KPMG and Ernst & Young in addition to Price Waterhouse and Coopers & Lybrand. See below.

³³ Kolasky (2000), p. 159.

one to clear the merger (on 20 April 2008), perhaps also because Deloitte Touche and Arthur Andersen, the only two³⁴ remaining Big Six organizations, were relatively weak in that country.³⁵

On 20 May 1998, the European Commission formally cleared the notified merger between Price Waterhouse and Coopers & Lybrand. This clearance followed a full investigation (phase 2 review), which was – as stated above - centred on the risk of dominance in the market for audit and accounting services to large, publicly traded companies.³⁶ While according to the Commission this market was characterized by many elements conducive to collective dominance, there was no conclusive evidence that this would develop.³⁷ Instead, the Commission argued that “*collective dominance involving more than three or four suppliers is unlikely simply because of the complexity of the interrelationships involved, and the consequent temptation to deviate; such a situation is unstable and untenable in the long term. [...] The current Big Six market for large companies seems to be competitive over time, in that clients do put out tenders, and intra-Big Six switches do occur.*”³⁸ Another important factor in coming to its positive decision was the fact that a second, almost simultaneously proposed, merger between KPMG and Ernst & Young had just been abandoned.

Indeed, around the time of the proposed merger between Price Waterhouse and Coopers & Lybrand, KPMG and Ernst & Young also announced a merger of their networks. It is very well possible that, had these plans not been abandoned shortly afterwards, this might have had an impact on the decisions taken by competition authorities in the PricewaterhouseCoopers case. The Commission was notified on 11 December 1997 of the proposed merger between KPMG and Ernst & Young, and on 5 February 1998 it announced the intention to carry out a detailed investigation of this proposal “in view of the possibility that the merged entity would have high market shares in several EU Member States as regards the provision of auditing and accounting and tax services in a number of industrial and commercial sectors.” The Commission noted explicitly that account had to be taken also of the proposed merger between Price Waterhouse and Coopers & Lybrand. However, because KPMG and Ernst & Young withdrew their merger notification³⁹, no decision was adopted on this case.⁴⁰

At the U.S. hearings for the International Competition Policy Advisory Committee in November 1998, Mr. Kolasky, who had advised Price Waterhouse during the merger proceedings in the United States, again referred to the importance of the fact that the KPMG/Ernst & Young merger proposal had been abandoned. He also stressed some important differences between the U.S. and European markets, commenting that the Price Waterhouse/Coopers & Lybrand merger was instructive “*in the sense that although there was this kind of close coordination, the structure of the markets in Europe and in the United States were quite different. In Europe, because of guild-type restrictions on who can practice public accounting, you really had, you still have national markets. In the United States, of course, we have a much larger national market than any of the individual countries in Europe. And that might have led to*

³⁴ See below.

³⁵ What happened in the other OECD jurisdictions will not be discussed here.

³⁶ It should be noted, however, that in addition to auditing and accountancy, the European Commission also investigated tax advisory and compliance services to large company clients. Case No IV/M.1016 – Price Waterhouse/Coopers & Lybrand, 20 May 1998, p. 5.

³⁷ Global Competition Review, ‘Price-Waterhouse/Coopers & Lybrand’, 1 September 1998.

³⁸ Case No IV/M.1016 – Price Waterhouse/Coopers & Lybrand, 20 May 1998, p. 23

³⁹ Reasons for this include the regulatory obstacles encountered by KPMG and Ernst & Young, especially in Europe.

⁴⁰ Competition Policy Newsletter, ‘KPMG/Ernst & Young’, June 1998, pp. 67-68.

*potentially different results had the Ernst & Young/KPMG merger not dropped by the wayside as we went forward.*⁴¹

2.4 From 5 to 4: The demise of Arthur Andersen

Although the merger that created PricewaterhouseCoopers had been approved in jurisdictions world-wide, it was shown in the previous subsection that this was done on the basis of long investigations, and taking into account the fact that there were still four other major players left. It seems likely that further mergers between the now Big Five firms would have undergone extensive investigation and potential challenge. However, instead of a new merger proposal, something different happened in the accountancy market.

The ‘Enron scandal’ of late 2001 caused the dissolution of Arthur Andersen, the auditors of Enron Corporation. After a series of revelations involving irregular accounting procedures throughout the 1990s, Enron filed for bankruptcy protection in December 2001. It turned out that much of Enron’s profits and revenues resulted from deals with special purpose entities. Many of Enron’s debts and losses were not reported in its financial statements (“off-balance sheet transactions”).⁴² The reputation of Andersen deteriorated considerably when it announced in January 2002 that some staff had shredded documents related to the audits of Enron. The demise of Andersen was sealed two months later, with its criminal indictment for obstruction of justice in the Enron investigation.⁴³ The fact that the U.S. Supreme Court reversed Andersen’s conviction on 31 May 2005⁴⁴, due to “serious flaws in the jury instructions”, did not change the fact that Andersen’s reputation had already been damaged beyond repair and the company dismantled.

Most of Andersen’s country practices around the world were sold to members of (what is now) the Big Four, in particular Ernst & Young and (in the UK) Deloitte Touche Tohmatsu. The American operations of Andersen were sold to various buyers, such as KPMG, Deloitte Touche Tohmatsu, Ernst & Young and Grant Thornton LLP.⁴⁵ PricewaterhouseCoopers also took over offices and staff of Andersen in, for example, Asia.

The European Commission decided not to oppose the notified operations in the following three cases concerning the European mergers involving Andersen:⁴⁶

⁴¹ Statement by W.J. Kolasky (Wilmer, Cutler & Pickering), at the hearings for the International Competition Policy Advisory Committee in Washington, D.C., United States, November 3, 1998, p. 99. Available at <http://www.usdoj.gov/atr/icpac/2232-b.htm>.

⁴² McLean and Elkind (2003).

⁴³ Autore, Billingsley and Schneller (2009), p. 183. See also Krishnamurthy, Zhou and Zhou (2006), who – on the basis of a broad sample of Andersen clients - found that the decline in Andersen’s reputation due to this indictment adversely affected the stock market’s perception of its audit quality. This suggests the presence of negative externalities (see section 3.1 below) on the shareholders of Andersen clients.

⁴⁴ Arthur Andersen LLP v. United States (04-368), 544 U.S. 696 (2005).

⁴⁵ GAO asked 1,085 public companies audited by Andersen in the US, to which auditor they switched (Oct 2001 – Dec 2002). 87 percent switched to a Big Four firm, and only 13 percent to a non-Big Four firm. Ernst & Young attracted the largest number of former Andersen clients, followed by KPMG, Deloitte & Touche, and PricewaterhouseCoopers. The latter, however, tended to attract the largest clients based on average total company asset size. Of the former Andersen clients who switched to a non-Big Four firm, most switched to Grant Thornton or BDO Seidman. GAO (2003a), Appendix III.

⁴⁶ In application of Article 6(1)(b) of Council Regulation No 4064/89 (the old Merger Regulation), later replaced by Merger Regulation 139/2004.

- COMP/M.2810 Deloitte & Touche / Andersen (UK)
- COMP/M.2816 Ernst & Young France / Andersen France
- COMP/M.2824 Ernst & Young / Andersen Germany

The UK merger was notified to the Commission on 29 May 2002, the French one on 1 July 2002, and the German one on 23 July 2002. The French merger in particular attracted regulatory scrutiny, because it created “France’s biggest player on the auditing and accounting market”, according to a statement from DG Competition.⁴⁷ However, this merger was still approved, as there would be no danger of a single firm having a dominant position, taking into account the likelihood that many of Andersen’s existing clients would be lost to commercial conflicts, which would inevitably reduce the merged entity’s market share.

According to the Commission, the relevant product markets in this case were:

- (a) Audit and accounting services to quoted and large companies
- (b) Audit and accounting services to small and medium-sized companies
- (c) Tax advisory and compliance services
- (d) Corporate finance advisory services
- (e) Legal advisory services

However, as the parties’ combined market share would only exceed 15% in the French auditing and accounting services market for quoted and large companies and the French tax advisory services market with an international dimension, the competitive effects assessment – which resulted in the positive decision mentioned above - focused on these two markets only.⁴⁸

Interestingly, the Commission commented in each of the three European merger cases involving Andersen that the reduction from five to four global accounting networks was “inevitable” in the context of the disintegration of the Andersen network in the aftermath of the Enron scandal. It also stated the following: *“the take-over by a new entrant into the now Big Four market (e.g. by one of the second tier firms) would only maintain a viable fifth player if the whole, or at least the majority of the national Andersen entities were taken over by such a newly created competitor. Such an attempt could, if at all, only be successful in a long-term perspective. As quoted and large companies require from their audit and accounting services’ supplier a long-existing audit reputation and an international network, both cannot be reached by a newcomer in the short term.”*⁴⁹

2.5 *The future?*

With competition in the auditing and accounting services market for quoted and large companies limited primarily to four accounting networks, it is highly unlikely that another merger between the Big Four organizations is going to be announced, and it is even less likely that such a proposal would be

⁴⁷ Global Competition Review, ‘Commission clears EY/Andersen French merger’, 13 September 2002.

⁴⁸ COMP/M.2816 Ernst & Young France / Andersen France, 5 September 2002, pp. 6-24.

⁴⁹ COMP/M.2810 Deloitte & Touche / Andersen (UK), 1 July 2002, p. 10.

approved by competition authorities.⁵⁰ Further concentration in the industry could occur, though, through another drastic event, like that with Andersen, that results in the dismantling of one of the four remaining firms. While there does not appear to be any immediate risk of this, regulators should consider the impacts that such an event could have and adjust their behavior and rules accordingly. In particular, priority consideration should be given to ways to maintain the human capital of a firm in distress together in the face of a drastic event. The partnership structure mandated for large accounting firms limits the ability of all accounting firms to raise capital. It may be worth considering allowing at least temporary permission to have outside investors in large accounting firms if that can result in keeping the human assets of a large firm facing a drastic event in place.

Further, according to some competition specialists, mergers between the *smaller* (that is, intermediate) accounting firms should be allowed, as they may put pressure on the big four. Intermediate accounting firms can be substantial in size, revenue and breadth of operation, like Grant Thornton International, BDO International, RSM International and Baker Tilly International, and may have the potential to develop into entities that can compete for the largest audit accounts. As mentioned already, Grant Thornton LLP purchased part of Andersen after its demise. It is important how regulators will view merger proposals involving non-Big Four accounting firms.⁵¹

Promoting entry or expansion of new accounting networks into the auditing and accounting services market for quoted and large companies can be beneficial for competition, but will be very difficult to achieve. Most of the large publicly listed companies appear to be unwilling to switch to a non-Big Four auditor⁵², even though some of the accounting firms at the intermediate level have become quite substantial and have already formed extensive international networks (see Box 1).⁵³ If regulators and competition authorities take the lack of competition in the accountancy services market seriously, therefore, expansion plans of the intermediate networks should be encouraged rather than opposed and regulatory and market barriers impeding such expansion addressed. For example, assessments of any forthcoming merger proposals between these firms should take into account their broader effects on competition in the auditing and accounting services market for quoted and large companies.

⁵⁰ GAO (2003a), p. 16, notes that in the US “*the large company audit market is a tight oligopoly, which is defined as the top four firms accounting for more than 60 percent of the market and other firms facing significant barriers to entry in to the market. In the large public company audit market, the Big 4 now [in 2002/2003] audit over 97 percent of all public companies with sales over \$250 million, and other firms face significant barriers to entry into the market.*” In other countries, market shares for the Big Four were high also: more than 80 percent in Japan, more than 90 percent in the Netherlands and almost 100% in the UK (according to regulatory officials). GAO (2003a), p. 18.

⁵¹ Global Competition Review, ‘Grant Thornton UK LLP is merging with rival RSM Robson Rhodes’, 30 April 2007.

⁵² GAO (2003a), p. 26, presents the results of a 2003 survey among 147 public companies in the US. The far majority of respondents (130 of 147) said that they would not consider using a non-Big Four firm for audit and attest services. A 2007 survey of almost 600 public companies showed again that 86 percent of large public companies in the Fortune 1000 were not likely to use a midsize accounting firm as a new auditor of record. None were likely to use a small accounting firm. GAO (2008), p. 21. See also the quote from the European Commission presented in Section 2.4 above.

⁵³ In 2004, the most sizeable intermediate accounting firms globally were BDO International, Grant Thornton International, RSM International, Moores Rowland International (wound up in 2007) and Baker Tilly International. However, the Big Four had a clear lead in the market in terms of audit revenues and number of staff. See Oxera (2006), pp. 55-57. See <http://www.worldaccountingintelligence.com> for data relating to 2008.

Where a company wishes to use a non-Big Four auditor certain market practices may prevent or discourage it from doing so. Market practice has emerged in some jurisdictions including the US, Germany and the UK, whereby third parties such as lenders, impose covenants on the company which restrict the company's choice of auditor to a Big Four firm or apply more punitive terms and conditions to loan finance where a non-Big Four auditor is appointed.⁵⁴ Such restrictions are not based on a qualitative assessment of the pool of audit firms available and prevent excluded audit firms from competing with the Big Four firms and thus entering or expanding further into the audit market for quoted and large companies. The positive impact of other initiatives which aim to increase the number of suppliers of large international audits is thus impaired by unnecessary buy-side restrictions.

Prior to implementing a package of measures to reduce concentration in the audit market, regulators and competition authorities should seek to ensure that a company's choice of statutory auditor is based on objective criteria related to the quality of an audit firm, and is not impaired by restrictions imposed by third parties which have no basis in audit quality.

GAO (2003) studied the barriers to entry faced by the intermediate firms in competing with the Big Four. Although focusing on the U.S., the results – which also explain *why* the big audit clients do not want to switch to a non-Big Four firm - apply much more broadly.⁵⁵

- (a) Smaller accounting firms generally lack the staff resources, technical expertise and global reach to audit large multinational companies;
- (b) Public companies and markets appear to prefer the Big Four because of their established reputation;
- (c) The increased litigation risk and insurance costs associated with auditing public companies generally create disincentives for smaller firms to actively compete for large clients;
- (d) Raising the capital to expand their existing infrastructure to compete with the Big Four is a challenge for the smaller accounting firms, in part because the partnership structure of accounting firms limits these firms' ability to raise outside capital.

Hypothetically, further mergers between some of the more sizeable intermediate firms would be a way to deal with the entry barriers mentioned in this list, notably no. 1 (in the short run), but perhaps also the others (in the long run). However, this may not be the most likely scenario.

In 2008, GAO published a follow-up report that – among other things - investigated some proposals put forth by academics and business groups to address these entry barriers, notably capping auditors' liability⁵⁶ and creating an office to share technical expertise.⁵⁷ The former deals with entry barrier no. 3

⁵⁴ See, for example, the 26 March 2008 credit agreement for AMEDISYS, INC. and AMEDISYS HOLDING, L.L.C., exhibit 10.1 of AMEDISYS, INC. form 8-K, 1 April 2008 EDGAR filing at <http://www.sec.gov/Archives/edgar/data/896262/000119312508072443/dex101.htm> or the 28 December 2006 credit and guaranty agreement for Coffeyville Resources, LLC and others, exhibit 10.1 of CVR Energy Inc. form S-1/A of Feb 12, 2007 at <http://www.sec.gov/Archives/edgar/data/1376139/000095012307001825/125337a4exv10w1.htm>.

⁵⁵ GAO (2003a), pp. 45-51. These results were confirmed in GAO (2008), p. 5. Similar results were found by Oxera (2007). In addition, expansion of an intermediate firms' market share may be hampered by private covenants imposed through lending agreements that restrict the borrowing company's choice of auditor, or by incorrect knowledge in the market about the audit capabilities of the intermediate firms.

⁵⁶ This option has been discussed – and sometimes introduced – in many jurisdictions. See also the Appendix. The discussion in Europe is presented at: http://ec.europa.eu/internal_market/auditing/liability/index_en.

above, the latter addresses mainly no. 1. However, GAO concluded that none of the proposals they investigated were widely supported. Market participants raised questions about their overall effectiveness, feasibility and benefit. For example, according to some of the academics and others interviewed by GAO, capping auditors' liability would potentially reduce the incentives for auditors to conduct quality work, or it could limit investors' ability to recoup losses they incurred if an auditor was found to have committed fraud.⁵⁸ In Europe, however, the Commission – following an independent study by London Economics (2006) and a public consultation – issued a Recommendation in June 2008 concerning the limitation of the civil liability of auditors.⁵⁹

Addressing the fourth entry barrier mentioned above, a solution could perhaps be found in allowing both partnerships and unlimited liability joint stock companies (in which accountant partners were significant shareholders) to perform auditing and accountancy services.⁶⁰ Gathering together the necessary resources for a new accounting firm would then be more feasible, because private investors could commit large funds to establishing the firm. At the same time, this would enhance the ability of the partners to sell shares at market rates, and it would provide an assurance to large company clients about the validity of the accounting firm. However, appropriate safeguards would be needed to ensure independence and audit quality. Currently many countries (to a greater or lesser extent) regulate the types of business firms that are allowed to perform auditing services, and prohibit outside ownership positions in accounting firms, as will be shown in Section 3.1.2. Even if joint stock companies are not normally permitted for accounting firms, it may be worth considering exceptions when facing the potential dismantlement of a large accounting firm.⁶¹

Some of the scenarios discussed above – allowing the expansion of the existing intermediate networks (if this occurs via the market) and allowing outside investors to set up a new accounting firm – could also prevent a repeat of the events following the Arthur Andersen situation. That is, in the event another Big Four accounting organization would suffer severe distress, for example as a result of deemed criminal liability in its audits⁶², its constituent firms and employees would not necessarily be absorbed by one of the three remaining big organizations.

⁵⁷ Another suggestion was to require one or more of the largest firms to spin off a portion of their operations to create more than four firms with the capacity to audit large public companies. This would, however, reduce their economies of scale and depth of expertise. GAO (2008), p. 54-55.

⁵⁸ GAO (2008), p. 55-56. The same arguments were brought in against a proposal to have regulators or others take enforcement actions only against responsible partners or employees rather than the firm as a whole.

⁵⁹ Official Journal of the European Union, L 162, Vol. 51, 21.06.2008, pp. 39-40. The main purpose of this Recommendation was to encourage the growth of alternative audit firms in a competitive market by reducing some of the risks linked to these audits.

⁶⁰ See also GAO (2008), pp. 59-60, which discusses the proposal to allow outside ownership of accounting firms in order to provide capital to expand their operations. Market participants in the US generally thought that being able to raise capital from outside sources would have little effect on their ability to expand their market share. Shortage of qualified accountants in the labor market rather than limited access to capital was their primary impediment to growth.

⁶¹ Whether conflicts of interest are exaggerated by the presence of external shareholders is an important question that must be addressed. If shareholders have unlimited liability, as with certain underwriting syndicates, the problem of conflicts of interest may be reduced.

⁶² This is not completely unlikely, as currently auditors are braced for a series of lawsuits arising from company collapses in the financial crisis. In the first big case against an auditor arising from the financial crisis, on 1 April 2009 the liquidators of New Century (the collapsed subprime lender from the US) sued KPMG for US\$ 1 billion. In the meantime, the Big Four and some of the intermediate firms are still dealing with many claims from the waves of accounting frauds that were uncovered earlier in the 2000s.

It should be noted, finally, that accounting firms themselves (including the Big Four) take the concerns about the existence of conflicts of interest within their organizational structures seriously. Ernst & Young sold its consulting practices to the French IT services company Cap Gemini in May 2000⁶³ and PricewaterhouseCoopers sold its consultancy business to IBM in October 2002. KPMG formally divested its American consulting activities in January 2000 (this consulting unit was renamed BearingPoint in October 2002), while it sold its consulting units in the UK and in the Netherlands to Atos Origin in August 2002. Only Deloitte and Touche has not divested its management consulting practices.⁶⁴

Box 2. Studies on public accounting firms by U.S. Government Accountability Office

The Sarbanes-Oxley Act of 2002 mandated that the United States Government Accountability Office (GAO) studies: (1) the factors contributing to the mergers between the big accounting firms; (2) the implications of consolidation on competition and client choice, audit fees, audit quality and auditor independence; (3) the impact of consolidation on capital formation; and (4) barriers to entry faced by smaller accounting firms. In 2003 two studies appeared that addressed all of these issues: GAO (2003a) and GAO (2003b).

The findings on (1) and (4) are presented elsewhere in this paper, in Section 2.2 and Section 2.5, respectively. As to (2) and (3), GAO found that the most observable impact of consolidation was on the limited number of auditor alternatives for large companies that require firms with extensive staff resources, industry-specific expertise, geographic coverage and international reputation. Auditor alternatives in many cases were further limited due to potential conflicts of interest, Sarbanes-Oxley requirements (notably those on independence), and/or the need for industry-specific expertise. Existing research on audit fees, quality and independence did not conclusively identify a direct correlation with consolidation. Also, GAO was unable to draw clear linkages between consolidation and capital formation, but did observe potential impacts for some smaller companies seeking to raise capital. However, GAO concluded that past behavior may not be indicative of future behavior, given the unprecedented changes in the audit market.

In 2008 GAO prepared a follow-up report, reviewing the continued concentration in the audit market for large public companies. The report examines: (1) concentration in the market for public company audits; (2) the potential for smaller accounting firms' growth to ease market concentration; and (3) proposals that have been offered by others for easing concentration and the barriers facing smaller firms in expanding their market shares.

As to (1), GAO found that the Big Four continue to audit almost all large public companies in the U.S., while the small public company audit market is much less concentrated. Many large public companies saw their choice of auditor as limited to three or fewer firms. Generally they viewed competition in their audit market as insufficient. Although audit fees rose significantly in recent years, market participants attributed these increases to expanding accounting and auditing requirements and higher costs for accounting personnel rather than market concentration. As to (2), various challenges were found, but most smaller accounting firms appeared not interested in expanding to audit more public companies. Further findings on this and on (3) are presented in Section 2.5 of this paper.

GAO concluded its 2008 report by stating that, given the lack of significant adverse effect of concentration in the current environment and that no clear consensus exists on how to reduce concentration (see Section 2.5), no compelling need for immediate action appears to exist in the U.S.

See Financial Times, 'New Century liquidators sue KPMG for \$1bn', 1 April 2009. See on litigation costs also GAO (2008), pp. 32-33.

⁶³ See also European Commission, COMP/M.2816 – Ernst & Young / Andersen France, 5 September 2002, p. 2, where it is stated that Ernst & Young is "no longer active in the field of business consultancy".

⁶⁴ To some extent these actions were also a result of changes in regulations. For example, the American Securities and Exchange Commission (SEC) in 2001 amended its rules regarding auditor independence. Following the Sarbanes-Oxley Act in 2002, SEC issued new independence rules in March 2003. These placed additional limitations on management consulting and other nonaudit services that firms can provide to their audit clients. See GAO (2003a), pp. 9-10.

Points emerging from this section include:

- In twenty years, half of the Big Eight accounting and professional services organizations have disappeared from the market (as a result of three mergers and one corporate/accountancy scandal)
- Competition authorities have investigated certain mergers that were completed and at least one that was proposed but not consummated;
- The remaining Big Four are in many jurisdictions the only significant players in the market for auditing and accounting services for quoted and large companies, where the market share of the intermediate accounting networks is small;
- The same conclusion does not apply, however, in other markets in which the firms participate (except possibly for tax advisory services);
- It follows from the PricewaterhouseCoopers merger case (and is confirmed in later merger cases) that geographic markets are considered to be national, because of the existing entry and conduct regulation at national level (see Section 3);
- Large, public companies requiring audits consider competition insufficient. However, evidence of harm from the existing concentrated market structure is limited.
- Following the general presumption that promoting competition is beneficial, promoting entry of new international accountancy networks could be encouraged, by:
 - preventing unnecessary restrictions being imposed on companies by third parties (such as lenders), regarding the choice of statutory audit firm;
 - allowing (where possible) the expansion of the existing intermediate networks; and
 - allowing both partnerships and unlimited liability joint stock companies (with restrictions that reduce conflicts of interest) in countries where this is not yet allowed.

3 An economic analysis of regulation in the accountancy professions

In all OECD countries, both entry into the accountancy services market and the conduct of accountancy services providers are regulated. The degree of regulation differs, however, from country to country. Just as with other professions, it is worth examining these regulations to see whether any of them unduly restrict competition.

Two main views of regulation can be found in the law and economics literature: the *public interest* approach and the *private interest* approach. The former looks upon regulation as a possible remedy for market failure. The latter stresses the danger of rent-seeking behavior by special interest groups via lobbying or self-regulation. Both of these approaches are summarized in the Appendix, with a special focus on their application to accountancy services.⁶⁵ The most common forms of regulation that could restrict

⁶⁵ For more elaborate summaries and analyses of the public and private interest approach, see e.g. Posner (1974), Faure et al (1993), Hägg (1997), Den Hertog (2000) and Philipsen (2003). See also OECD (2007).

competition in accountancy will be discussed: quality standards and exclusive rights, quantitative restrictions, advertising restrictions, price regulation and rules on inter-professional co-operation and business structure. Box 3 shows that professional regulations are subject to competition law in a number of jurisdictions. Finally, a short analysis of self-regulation will be presented.

Box 3. Application of competition rules to professions in the US, Canada and Australia

The American Supreme Court decided in the *Goldfarb* case of 1975 (*Goldfarb v Virginia State Bar*, 421 U.S. 773 (1975)) that the language of Section 1 of the Sherman Act contains no exception for professionals who sell their services for money. Kolasky (2006) argues that the applicability of US antitrust law has been confirmed in seven more cases involving ‘the learned professions’. The Supreme Court makes a distinction between price-fixing agreements that are held *per se* illegal and restrictions on advertising that might serve a pro-competitive objective by protecting consumers from false or misleading claims. See also Andrews (2002), pp. 284-285. In Canada, the Competition Act of 1985 is a law of general application, which has also been applied against the professions. (Goldman and Little (1996), pp. 337-338).

In both the US and Canada, states can pass laws that shield sectors of industry from the application of the general rules of competition law. The resulting problems are subsumed under the headings ‘state action defence’ in the US or ‘regulated conduct defence’ in Canada. The Canadian Supreme Court decided in the *Jabour* case that the Law Society of British Columbia’s general mandate to set standards of proper conduct gave it sufficient authority to prohibit lawyers from advertising their services (*Attorney General of Canada v Law Society of British Columbia* [1982] 2 SCR 307). The Competition Bureau, however, has adopted a narrow view of the regulated conduct defence in that it would apply only when the regulated conduct is mandated or required by the regulator and the conduct is contrary to the Competition Act. According to Goldman and Little (2006) the scope of the regulated conduct defence remains unclear. The challenge is to appropriately balance the public interests protected by the Competition Act against the public interest objectives achieved through regulation. In 2007 the Competition Bureau published a report with this title, analyzing the regulation in five professions (including accountants) in more detail.

In Australia, the Trade Practices Act of 1974 initially had little effect on the professions, because of the limited constitutional reach of the Commonwealth government. This changed when the Trade Practices Commission (which later merged into the Australian Consumer Competition and Consumer Commission, ACCC) produced a discussion paper on the impact of professional regulation on competition in 1990, which was followed by a number of specific studies, including one on accountancy in 1992. The Trade Practices Commission found that the degree of regulation was lower than in other professions, but some regulations went further than necessary to serve the public interest (TPC (1992)). Following these reports and recommendations made by the TPC, Australian competition rules could be applied in full to the professions from November 1995. An overview of developments since 1995 is provided in Fels (2006), focusing on the medical professions. The author notes that the ACCC has taken some action against solicitors and estate agents and has found the courts willing to conclude that there had been breaches of the law by these professions.

3.1 Forms of regulation

As explained in the Appendix, some regulatory intervention in the market for accountancy services may be necessary due to information asymmetry and externality problems. In practice we see many different types of regulation of entry and conduct in markets for accountancy services. In this section the most commonly found forms of regulation will be addressed. They include:

- Quality standards and exclusive rights;
- Quantitative restrictions;

- Advertising restrictions;
- Price regulation; and
- Rules on inter-professional co-operation and business structure.

3.1.1 *Regulation of entry*

Entry regulation defines the conditions that have to be fulfilled before one is allowed to practice accountancy. Examples include educational requirements, mandatory registration with a professional association, licensing, and limits to the number of practitioners in the market. These are generally combined with a professional monopoly, that is, exclusive rights to perform certain tasks, such as statutory auditing.

In 2003 compulsory membership in a professional body that monitors and sanctions its members' activities was required for auditors in most of the then fifteen EU Member States, except Finland, Spain and Sweden (Austria, Belgium, Denmark, France, Germany, Ireland, Italy, the Netherlands, Luxembourg, Portugal, and the UK). In all EU Member States, statutory audit is an exclusive right of one or more professional groups, but market entry regulation for other financial services differs from country to country. In Austria, Belgium, France, Germany and Luxembourg the exclusive rights of accountants were much wider than in the other EU countries, because services like non-statutory audits, accounting and bookkeeping (Austria, Belgium) and tax advice and tax representation (Austria, France, Germany) were exclusive rights of the respective professions.⁶⁶ The limited geographic scope of exclusive rights for tax advice and representation suggests that tax advice and representation do not need to be exclusive rights. Careful consideration of this particular exclusivity is merited. Subsequent research into the regulation of accountancy services in ten new EU Member States⁶⁷ conducted by the European Commission, showed that (in 2004) also in those countries membership in the professional association was a prerequisite for providing auditing services.

In the U.S., all jurisdictions (the 50 states, the District of Columbia, Guam, Puerto Rico, and the U.S. Virgin Islands) have laws governing the licensing of certified public accountants, including requirements for education, examination and experience. However, while the use of the title "certified public accountant" in each jurisdiction is restricted to individuals registered with the state regulatory authority, the other licensure requirements are not uniform.⁶⁸

Quality standards and exclusive rights

Entry regulation may lead to an increase in service quality but when the number of accountancy professionals or their mobility in the market is regulated, competition may be restricted significantly.⁶⁹ Leland (1979) and Shaked and Sutton (1981) argued that, if professional groups are allowed to set quality standards themselves, it is likely that they are set too high from the perspective of social welfare.

⁶⁶ See Paterson, Fink, Ogus et al (2003), pp. 33-38, for more details.

⁶⁷ These include four OECD countries: Czech Republic, Hungary, Poland and Slovak Republic.

⁶⁸ GAO (2003a), p. 51.

⁶⁹ Moreover, consumers may lose access to cheaper, low-quality services. Shapiro (1986) more generally discusses the differences between certification and licensing. On substitution effects caused by licensing, see Carroll and Gaston (1981).

Following Friedman and Kuznets (1945), who first raised the question whether institutional barriers to entry lead to supernormal profits⁷⁰, a rather large body of empirical literature has developed on the effects of entry regulation on quality and fees in the professions. Cox and Foster (1990) reviewed several of these studies for the U.S. Federal Trade Commission. They conclude that ‘*while a few studies indicate that higher quality levels may result from business practice restrictions, a majority of the studies finds quality to be unaffected by licensing or business practice restrictions associated with licensing.*’ One of these studies related to accountancy concludes that the effect of licensing restrictions on service quality is neutral.^{71 72}

Bortolotti and Fiorentina (1999) address entry restrictions and quality in the market for Italian accountants in the period 1980-1991. In that market the same service was provided by two distinct professions: the *Commercialisti* and the *Ragionieri*. However, only the *Commercialisti* were required by law to have a university degree.⁷³ There were no further constraints in terms of freedom of settlement and no functional differences between the two professions. The authors’ empirical results indicate clearly that entry by the less-qualified *Ragionieri* and other potential entrants reduced the profitability in the market for *Commercialisti*. An existing institutional barrier to entry, namely the professional examination administered to some extent by incumbent *Commercialisti*, was effective in preserving monopoly rents in the market. The authors conclude that “*this result casts some doubts on the view that professional boards are benevolent institutions who strive to preserve high quality standards of active professionals*”⁷⁴.

In 2003, responding to a questionnaire sent out by the European Commission (see Box 4), a majority of the national accounting associations argued that appropriate entry requirements and qualifications for statutory auditors should be maintained⁷⁵, but they disagreed on whether qualified professionals should also have exclusive rights to offer non-audit services such as accountancy and tax advice. For example, a German association for company accountants argued that there were unnecessarily restrictive regulations for provision of certain non-audit services in Germany, which shielded tax advisors (a protected profession in Germany) from competition with other groups. In the UK, where anyone can practice as a tax adviser,

⁷⁰ They estimated that in the US professionals earned economic rents of between 15 and 110 percent during the period 1929-1936. See OECD (2007), p. 25, where this paper is placed in the context of the private interest approach to regulation.

⁷¹ Young (1987).

⁷² Kleiner and Kurlde (2000) use data on the dental health of incoming Air Force personnel to analyze the effects of varying licensing restrictions among US states. They find that tougher licensing raises prices and profits (measured by hourly earnings per dentist) while it does not improve overall dental health (measured by complaints to dental licensing boards and malpractice premiums). Svorny (2000) also refers to some studies that have shown a positive relation between measures of licensing strictness and either costs, prices or earnings. Pagliero (2005) rejects public interest theory in favor of private interest explanations in a study of professional licensing in the US market for lawyers, using data on exam difficulty, candidate quality, exam results and lawyer salaries. He finds that professional licensing in this market leads to a total welfare loss of more than \$ 3 billion (2002 USD).

⁷³ The *ragionieri* administer a professional examination.

⁷⁴ Bortolotti and Fiorentini (1999), p. 154. Paterson, Fink, Ogus et al (2003) also consider the Italian market for accountants. They note that at the time both the *Commercialisti* and the *Ragionieri* were rather heavily regulated, both regarding market entry and conduct. Their exclusive tasks included statutory audit, tax representation (in proceedings before the Tax Revenue Commissions) and the certification of tax declarations, and acting as trustees nominated by court, including insolvency (an exclusive right shared with lawyers). Furthermore there were various price rules, advertising restrictions (although these had been relaxed), and prohibitions to establish a company of any kind.

⁷⁵ At the EU level, these are set out in 8th Company Law Directive (84/253/EEC).

the Chartered Institute of Taxation also suggested that entry rules are not essential for the provision of tax consultancy services. Customers should be free to choose whether or not they want to contract an advisor who is a member of a professional body.⁷⁶

Box 4. The European Commission and the ‘liberal professions’

The Lisbon agenda stated that professional services have an important role to play in improving the competitiveness of the European economy. This led to a large-scale research project on competition in professional services, conducted by the Directorate General for Competition. The first step in the investigation by DG Competition was the publication in January 2003 of an independent study carried out by the Institute for Advanced Studies (IAS) in Vienna (see Paterson, Fink, Ogus et al (2003)). This study includes a schematic overview of the regulation in the then 15 EU Member States for accountants (including tax advisors), architects and engineers, lawyers and notaries, and pharmacists. For each Member State and for each profession, a ‘regulation index’ is computed which indicates the degree of regulation, with a value between 0 and 12. In order to compute the index, weights are assigned to each form of regulation. Despite the inherently subjective process of assigning weights to different forms of regulation, these regulation indices may provide a reasonable indication of the *level* of regulation in EU Member States circa 2003, because a relatively large shift in the weights often leads only to a relatively small change in the value of the index. However, self-regulation was not sufficiently taken into account.

The level of professional regulation differs widely from country to country. Concerning the different professions, IAS observes that most rules can be found in the pharmaceutical profession, while architects and engineers are relatively unregulated. Accounting services and legal services comprise the middle category. Looking at accountants more specifically, the regulation indices vary between 2.8 (Denmark) and 6.3 (Belgium). Next to Denmark, jurisdictions in the low range include the UK (3.0), Ireland (3.0), Sweden (3.3), Spain (3.4) and Finland (3.5). Jurisdictions in the mid range are the Netherlands (4.5), Luxembourg (5.0), Italy (5.1) and Greece (5.1). Countries with the highest regulation indices are - after Belgium - Austria (6.2), Germany (6.1) and France (5.8). Data for Portugal are incomplete.

The IAS study contains an empirical analysis. Because finding suitable data on earnings, prices and costs proved to be impossible, the authors decided to use other, rather crude, indicators in their statistical analysis. The results of the empirical analysis in the IAS study have to be interpreted carefully. For accountancy, IAS concludes that the existence of a relatively high concentration of larger firms “most likely is a result of firms having the scope to merge. This process is [...] associated with high market power, as the volume of services per accounting firm in these countries is without exception high.”

After the publication of the IAS report in 2003 a stocktaking exercise was started. Profession members, their clients and public bodies were all invited to comment on the report by means of a questionnaire. All 246 responses received by the Commission were summarized and made public (see European Commission (2003a)). The majority of the submissions concerned responses by individual profession members or their associations, trying to justify certain forms of regulation, claiming for example that these regulations are ‘necessary to ensure the quality of the services’. Other common justifications for restrictive regulations are rather hazy concepts such as ‘independence’, ‘integrity’ and ‘respect for the profession’s ethical standard’. Concerning accountancy, the Commission received 20 responses on the regulation of accountants and auditors, including 16 from professional organizations. It also received 10 submissions on the regulation of tax consultants. Simultaneously with the summary of responses, the Commission published a second document, which offers an overview of the regulation of accountants, notaries, architects, engineers and pharmacists in the then 15 EU Member States (see European Commission (2003b)). This document is based on the IAS report and additional information obtained from responses to the questionnaire mentioned above.

Following the publication of these two documents, then Commissioner Mario Monti suggested professional associations and individual Member States to review critically the existing (public and self-) regulation and to reform or eliminate rules if need be, especially those concerning price fixing, recommended prices and advertising bans. Rules on business structure and multi-disciplinary practices should, according to Monti, be decided on a case-by-case basis. These messages are also central in the ‘Report on Competition in Professional Services’, published in February

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European Commission (2003a), pp. 4-5.

2004 (see European Commission (2004a)). A follow-up report on competition in professional services was published in September 2005, in which the progress in eliminating restrictive and unjustified rules are discussed for each Member State, including the (then) 10 new EU Member States (see European Commission (2005)). On 12 October 2006 the European Parliament supported the Commission in its efforts to rid the sector of overly restrictive regulation, insofar as such efforts are based on “scientific evidence.” (European Parliament Resolution on follow-up to the report on Competition in Professional Services, 2006/2137(INI)).

Quantitative restrictions

In theory, entry into the accounting market can also be restricted by limiting the number of practitioners allowed to practice the profession. Such quantitative restrictions do not serve to solve either information asymmetry or externality problems, while severely limiting competition. In countries where quantitative restrictions to entry are still present, it would therefore be advisable to discard these rules. Only entry regulation that directly regulates service quality should be maintained, i.e. regulating qualification requirements and certain exclusive rights (notably statutory auditing).

3.1.2 Regulation of conduct

Conduct regulation covers all rules that directly regulate the conduct of accountants. These may range from advertising rules, restrictions on incorporation and inter-professional co-operation, and other restrictions on the exercise of the profession, to price regulation.

Advertising restrictions

Advertising restrictions are common in many professions. Regarding accountancy, Paterson, Fink, Ogus et al (2003) state that in most of the old fifteen EU countries, “only some forms of advertising are forbidden today [2003]. Germany, Spain and arguably France and Belgium still show high regulation in this field.”^{77 78} In Germany, for example, the law at the time stipulated that it was forbidden to engage in advertising that was “contrary to the ethics of the profession”. In a professional ordinance, this was defined rather broadly, by prohibiting the use of commercial methods in advertising, while implying further that advertising is largely forbidden for members of the Chamber of Accountants.⁷⁹ In France, members of the profession were not permitted to publicize prices or conduct commercial advertising via print or other media.⁸⁰ As regards other countries, in Poland tax advisers in 2004 were not allowed to advertise, whereas there were also some comparative advertising restrictions pertaining to accountants. Concerning auditors, all advertising at the time was forbidden in the Czech Republic, while some publicity restrictions existed in Hungary and Poland.⁸¹

In the U.S., for many decades public accountants were not allowed to advertise, solicit clients or participate in a competitive bidding process for clients. The legality of these restrictions was challenged by the U.S. Federal Trade Commission, U.S. Department of Justice and individual professionals through various court actions, beginning in the 1970s. Now the American Institute of Certified Public Accountants

⁷⁷ Paterson, Fink, Ogus et al (2003), p. 39.

⁷⁸ In the Netherlands, for example, practitioners are allowed to use most forms of publicity other than unsolicited direct contacting of potential clients (cold calling).

⁷⁹ Paterson, Fink, Ogus et al (2003), pp. 244-245.

⁸⁰ European Commission (2003b), p. 5.

⁸¹ European Commission (2004b), p. 5.

(AICPA) and the state accountancy boards, which set these restrictions, target only false, misleading, or deceptive advertising, while restrictions on solicitation and competitive bidding have been relaxed.⁸²

In Canada, the Competition Bureau in 2007 found that some accounting designations⁸³ had advertising restrictions that set parameters on firm names and limited the information accountants may put on their business cards, stationery and business signs. Also restrictions on extravagant or self-laudatory advertising and restrictions that limit the media in which advertisements may appear were found. These “do not appear to be necessary to protect consumers.”⁸⁴

While a prohibition on *false and potentially misleading* advertising can easily be justified from a public interest perspective, advertising of *truthful* information regarding price or quality should not be restricted by regulation. After all, advertising bans may increase information problems. As an instrument to prevent quality degradation that results from adverse selection, advertising restrictions are disproportional.⁸⁵ Economists have often analyzed the effects of advertising restrictions for professional services and what happens to fee levels when such restrictions are relaxed.⁸⁶ Stephen & Love (2000), while referring to a review of 17 studies on advertising, conclude that “*the general thrust of this empirical literature is that restrictions on advertising increase the fees charged for the profession’s services and that the more advertising there is the lower the fees.*”⁸⁷

Hay and Knechel (2006) study the effects of advertising and solicitation on audit fees in New Zealand, in order to test the hypothesis that the crisis in auditing may have had its origin in deregulation. After all, deregulation has allowed firms to advertise their services and solicit new clients, which may have encouraged them to become “more commercial” by cutting fees and reducing quality, turning the audit into a commodity.⁸⁸ In New Zealand the removal of restrictions on advertising (1986) and against solicitation of clients (1992) were separated by six years, making it possible to examine the respective effects. The authors find that “*advertising is associated with increases in fees, not decreases, which suggests quality-based advertising and not price-based advertising. The Big 8 audit firms can afford to advertise more, and the evidence shows that they received larger increases in fees after advertising was deregulated. However, large companies have more bargaining power and fee increases were not as large for them. Solicitation*

⁸² GAO (2003a), p. 8.

⁸³ This term refers to the three designations recognized by provincial and territorial statute in Canada: Chartered Accountant, Certified General Accountant and Certified Management Accountant.

⁸⁴ Competition Bureau (2007), p. 53.

⁸⁵ Rubin (2000) and Stephen & Love (2000), pp. 996-997.

⁸⁶ Benham & Benham (1975) published a landmark paper on advertising restrictions concerning the US eyeglasses market. The authors found that prices were significantly higher in state markets with greater professional control on information. The increase in price as a result of advertising restrictions was estimated to be between 25 and 40 per cent. Five years later, Bond et al (1980) found that the average price for certain eye care services in the U.S. was approximately 33 per cent higher in cities where restrictions prevent both advertising and commercial practice.

⁸⁷ Stephen & Love (2000), p. 997. However, the authors also indicate that several of these studies have methodological problems.

⁸⁸ Some support for this view can be found in Maher, Tiessen, Colson and Broman (1992), who found on the basis of data from 1977-1981 that deregulation in the U.S. audit market was followed by lower fees. See also Craswell (1992), who came to a similar result for Australia, using data from 1980-1989.

*appears to have increased competition and resulted in lower audit fees: The big audit firms reduced their fee premiums, and larger clients received greater fee reductions.”*⁸⁹

Accounting associations in Europe have drawn attention to the need for advertising to be trustworthy and in keeping with ethical standards. The European association *Fédération des Experts Comptables Européens* argued that any additional restrictions on advertising would limit communication with clients and hence hamper competition. Others have argued that more restrictive rules are necessary. A French association, for example, suggested that strict advertising rules are necessary in France to protect small firms and to make sure that consumers are not manipulated.⁹⁰

Price regulation

Price regulation exists in various forms. Obviously the most restrictive form of price regulation is price fixing, especially when the government implements it or when it is backed by a professional association. However, other forms of price regulation such as minimum prices, maximum prices, fee schedules and recommended prices may in practice have similar effects. Whereas, in theory, *recommended* prices could reduce transaction costs for clients⁹¹, those clients may also be misled into thinking that the price recommendations are in fact fixed prices.⁹²

With regard to the EU15, the Institute for Advanced Studies noted in 2003 that at the time there were few countries left with rigid price regulation, as a result of deregulation of the accountancy professions. Notably exceptions were Germany (general tariff for tax advisers), Italy (recommended tariffs) and Greece and Portugal (fixed prices for statutory audits).⁹³ A subsequent European Commission report in 2004 confirmed that also in the 10 new EU members no significant price restrictions existed.⁹⁴

In Canada in 2007, only some rules were found that discourage accountants from lowering the quality of their services for the sake of competing on price. Concerning Chartered Accountants (CAs), there was a provision stating that CAs may only perform engagements for a significantly lower fee than what their predecessors charged when qualified members do the work in accordance with professional standards. The Competition Bureau argued that, while this type of restriction may indeed protect the public, “it can discourage price competition and therefore restrict competition by cost-efficient firms”.⁹⁵

An obvious effect of price regulation is that it partly or completely excludes price competition, leaving only competition in quality. As a measure to protect business clients from excessive price competition and low-quality services, price regulation seems inappropriate. Rather we should turn to forms

⁸⁹ Hay and Knechel (2006), p. 2.

⁹⁰ European Commission (2003a), pp. 6-7.

⁹¹ By alleviating the burden of drafting offers and/or negotiating individual fees: OECD (2007), p. 42.

⁹² The European Commission in 2004 imposed a fine of € 100,000 on the Belgian Architects' Association, for having adopted a scale of minimum fees (COMP/38.2549, 24 June 2004). This decision related to a procedure under Article 81 (cartel prohibition) of the EC Treaty. The Belgian Architects' Association decided not to appeal this decision and withdrew its scale of fees.

⁹³ Paterson, Fink, Ogus et al (2003), pp. 39, 222 and 244.; European Commission (2004a), p. 12.

⁹⁴ European Commission (2004b), p. 5.

⁹⁵ Competition Bureau (2007), p. 54. It concerns Rule 204.4(34) of the CA Rules of Professional Conduct and Related Guidelines.

of direct quality regulation, as discussed in Section 3.1.1⁹⁶ Price regulation is not a proportional remedy to the negative externality problem either.⁹⁷

Among accounting associations in Europe, it is generally thought that price regulation (including minimum and maximum prices) is inappropriate for both audit and other accountancy services. However, there is no consensus among those associations as to the question whether recommended prices are needed or acceptable. The European-wide association *Fédération des Experts Comptables Européens*, however, commented in 2003 that “recommended prices hinder competition and are not in the interest of the profession.”⁹⁸

Inter-professional co-operation and business structure

Accounting firms themselves can already be viewed as multi-professional firms, where many conflicts of interest could potentially arise, especially when auditing services are combined with other accountancy and consulting services.⁹⁹ In the U.S., the Sarbanes-Oxley Act of 2002 to some extent limited the possibilities for such conflicts of interest¹⁰⁰, as did the 2006 Directive on Statutory Audits in the EU.¹⁰¹ The concept of multi-disciplinary practices (MDPs), which are composed of accountants and other professionals such as lawyers, goes one step further. In some countries there are prohibitions on such inter-professional co-operation.

⁹⁶ Graf von der Schulenburg (1986) has argued that *in the absence of entry restrictions* fixed prices increase quality, by changing the focus of competition from price to quality.

⁹⁷ In this respect it is interesting to mention a case from Pakistan. In December 2008, the Competition Commission in Pakistan ordered that country’s Institute of Chartered Accountants to withdraw a document fixing minimum fees for accountancy services. It argued that the application of minimum fees would substantially deprive the companies of the ability to make choices based on prices from among the audit firms, and that minimum fees do not prevent unscrupulous auditors from offering poor-quality services: it may even protect them by guaranteeing them a minimum fee. See Global Competition Review, ‘Pakistan blocks accountants’ agreement’, 15 December 2008.

⁹⁸ European Commission (2003a), pp. 5-6. A related question is whether *contingency fees* should be allowed. Clearly, for statutory audits contingency fees should *not* be allowed, in order to safeguard professional independence and the reliability of financial reporting. This argument would probably extend to additional services provided to audit clients. However, whether contingency fees should also be prohibited for other services such as insolvency and corporate finance work is doubtful.

⁹⁹ See also Fox (1999-2000).

¹⁰⁰ The Sarbanes-Oxley Act (SOX) was enacted on July 30, 2002, as a reaction to the many corporate and accounting scandals in the US. It significantly overhauled the oversight and regulation of the US accounting profession, by strengthening corporate governance requirements and improving transparency and accountability, among other things. SOX requires the Securities and Exchange Commission (SEC) to implement rules on requirements to comply with the new law. For example, SOX requires SEC to implement independence rules, which address areas such as prohibited nonaudit services, audit partner rotation, and conflicts of interest. SOX also established the Public Company Accounting Oversight Board to oversee the audit of public companies. GAO (2003a), pp. 2- 5, and GAO (2008), pp. 10-13. Although these rules are indeed necessary and important, they may also further limit the number of accounting firm choices to fewer than three, in case a large public company wants to switch auditors. GAO (2003), p. 30; GAO (2008), pp. 21-22.

¹⁰¹ Directive 2006/43/EC on Statutory Audits of Annual and Consolidated Accounts (the Eighth Company Law Directive). This Directive sets out rules on, inter alia, ownership, independent public oversight, provision of non-audit services, contingent audit fees (which are prohibited) and rotation of key audit partners for audits of public interest entities. For further details see also Oxera (2007).

According to OECD (2007), prohibiting MDPs “is clearly anti-competitive and may cause harm to consumers. [...] By bringing together the know-how of members of different professions within the same partnership professionals can offer ‘full service’ to consumers. The supply of interrelated services may also generate economies of scope. [...] An important further benefit of MDPs is that they allow internal risk spreading. [...] All these benefits may lead to lower prices for consumers. Finally, MDPs may also promote innovation. Easing restrictions on MDPs may provide easier access to capital which may be needed to invest in equipment and infrastructure to improve consumer services.”¹⁰² The Canadian Competition Bureau recommended in 2007 that “regulators should look at ways to allow public accountants to work with non-accountants without jeopardizing the public interest.”¹⁰³

Fox (1999-2000), however, suggests that this issue is much more complicated. According to the author, “the accounting firms have hired thousands of lawyers who leave their law firms on Friday and show up on Monday doing the exact same thing for the exact same clients, but now as employees of the [then] Big 5.”¹⁰⁴ Fox argues that the non-audit work provided by the big accounting firms threatens their independence in conducting the auditing function. One should take into account that professional independence for lawyers – which refers to their independence from the government, other clients and third parties – is a different concept than it is for accountants, who have to be independent from their clients. This makes co-operation difficult.¹⁰⁵

In addition to rules regulating inter-professional co-operation, many countries have rules that regulate the forms of business that are allowed for accountants or the ownership of accounting firms. In the U.S., for example, according to the American Institute of Certified Public Accountants (AICPA), under all states’ laws, certified public accountants must make up the majority ownership of all accounting firms, and other owners must be active participants in the firms.¹⁰⁶ The goal of these rules is to limit the potential for conflicts of interest. However, prohibiting certain types of business structure also makes entry into the accounting market much more difficult for potential competitors of the Big Four accounting networks, as was argued already in Section 2 above. The U.S. General Accounting Office in 2003 found that the partnership structure of most public accounting firms was a factor that limited the ability of those firms to raise capital, in particular for small firms.¹⁰⁷ Policymakers should consider allowing outside stakeholders in exceptional circumstances, such as a drastic event that will lead to the dismantlement of a one of the Big Four firms. Permitting such outside holdings could result in keeping together the human assets of such a firm and avoiding increasing concentration in an already concentrated industry.

The Canadian Competition Bureau (2007) presents an overview of restrictions on business structure and MDPs for its three recognized accounting designations in a number of provinces and territories.¹⁰⁸ These figures reveal a wide range of restrictions. Generally, whereas sole practitioners are mostly allowed, public limited companies are generally forbidden (with some exceptions), and in some cases limited liability partnerships and private companies are also forbidden. The variance in business structure restrictions between provinces led the Bureau to recommend that rules on business structure and ownership that go beyond the minimum necessary to achieve a clearly defined public interest objective should be removed. In addition, it was found that many provinces impose restrictions on who may own accounting

¹⁰² OECD (2007), p. 49.

¹⁰³ Competition Bureau (2007), p. 59.

¹⁰⁴ Fox (1999-2000), p. 1097.

¹⁰⁵ Note, though, that his article was written before the introduction of the Sarbanes-Oxley Act in 2002.

¹⁰⁶ GAO (2008), p. 59.

¹⁰⁷ GAO (2003a), p. 50.

¹⁰⁸ Competition Bureau (2007), pp. 56-58.

practices. For example, when members of an accounting designation wish to set up a professional corporation they must ensure that one or more members own all the voting shares.¹⁰⁹ Regarding MDPs, incorporation was generally forbidden, although in some cases incorporation “with comparable licensed professions” was allowed.

The Institute for Advanced Studies found that in 2003 incorporation was allowed anywhere in the (then) EU15, except in Italy, where accountants were not allowed to incorporate in the form of a limited liability partnership, public limited company, or private company. However, often additional rules applied with regard to ownership, as in the Netherlands, where in the case of a corporation the majority of the owners had to be accountants. In Germany, “all the members of the board, the executives, the partners liable to unlimited extent or the partners had to be accountants”.¹¹⁰ Moreover, beyond Italy, incorporation *with other professions* was forbidden in Austria, Belgium, Germany, Luxembourg (tax advisers) and the Netherlands (lawyers and non-liberal professions).¹¹¹ According to subsequent research by the European Commission in 2004, auditors in the Czech Republic were allowed to form a corporation only with some comparable licensed professions.¹¹² Currently, the 2006 Directive on Statutory Audits requires that in all Member States auditors hold a majority of the voting rights in an audit firm and that a majority of workers control the management board.¹¹³

A number of accounting associations in Europe suggested in 2003 that rules on MDPs involving accountancy professionals are necessary, for example, in order to “organise the relationships between professionals who may not be bound by the same ethical rules on confidentiality, independence or conflicts of interest”. However, none of these associations supports a total prohibition of inter-professional co-operation. Moreover, a Dutch association for tax consultants argued that rules that prohibit Dutch lawyers from co-operating with tax consultants in an MDP are unnecessary and hamper competition: it would be possible to allow inter-professional co-operation without endangering confidentiality and respect for ethical principles. Some accountancy associations have suggested that only rules governing ownership of audit companies are needed. Such ownership rules would be necessary to protect audit companies’ independence and respect for the profession’s ethical standards.¹¹⁴ The *business form* of audit or accountancy companies, however, does not need to be regulated.¹¹⁵

¹⁰⁹ Competition Bureau (2007), p. 59.

¹¹⁰ Paterson, Fink, Ogus et al (2003), p. 233 and p. 245.

¹¹¹ Paterson, Fink, Ogus et al (2003), p. 41. Data for Portugal were not available; and those for Spain could not be verified.

¹¹² European Commission (2004b), pp. 5-6. In other new EU Member States, accountants and auditors can form corporations and partnerships with other accountants and with non-accountants. Whether there were restrictions to the exact types of corporation that are allowed is unclear.

¹¹³ Article 3 of Directive 2006/43/EC. Oxera (2007) analysed the effects of these ownership rules on audit market concentration. Its conclusions are that liberalising these rules, by allowing outside investors to hold audit firms, could indeed help reduce market concentration.

¹¹⁴ Oxera (2007, p. v) found that “there is a perception among some stakeholders that the current ownership restrictions do have a positive influence on independence. However, a closer analysis of the decision-making processes within audit firms indicates that alternative ownership and management structures, where the control over the audit firms is with external investors (non-auditors), are unlikely to significantly impair auditor independence in practice.”

¹¹⁵ European Commission (2003a), pp. 7-8.

Box 5. The Wouters case

In the EU, the Wouters decision (C-309-99) dealt with multi-disciplinary partnerships (MDPs) between accountants and lawyers. In 2002 the European Court of Justice concluded in this case that the specific prohibition on multi-disciplinary partnerships between accountants and lawyers, which was decided by the Dutch Order of Advocates, was necessary in order to ensure the proper practice of the Dutch legal profession. The Court was of the opinion that a lawyer's independence, his or her duty to act in the best interest of the client, and the respect of the rule of professional secrecy would be jeopardized if the lawyer is also a member of a business structure which has to control and certify the accounts of the client. Hence, despite restricting competition, the prohibition of MDPs was considered to be in conformity with the objectives of the Dutch law that gave the Order of Advocates the power to self regulate. See also Andrews (2002), pp. 282-284.

The European Commission later indicated how it would apply the Wouters test in further cases (see European Commission (2004) and OECD (2007, pp. 30-31)). Account must be taken of the objectives of professional regulation, which are connected with public interest goals. It must then be examined whether the anti-competitive effects are inherent in the pursuit of the public interest objectives (the necessity test). Finally, the anticompetitive effects must not go beyond what is necessary in order to ensure the proper practice of the profession (the proportionality test).

3.3 Self-regulation

Another question is whether profession members would be better able to formulate and enforce regulation than public authorities.¹¹⁶ At first sight, self-regulation seems to have some clear advantages. Miller (1985) makes a case for more government reliance on self-regulation.¹¹⁷ He argues that private parties:

- have more or better information on quality and risks than the government, or can get this information at lower costs;
- are less bureaucratic than public regulatory regimes and therefore more flexible, which is especially valuable in dynamic markets where innovation is important and/or where consumer preferences change regularly; and
- are better able to minimize the costs of regulation, including not only enforcement costs but also compliance costs.¹¹⁸

Of these three points the information argument is most accepted in the literature. Indeed, the fact that professional services are experience or credence goods would make it difficult for public authorities to assess the quality of these services or the risks attached to supplying low-quality services. This information

¹¹⁶ A more elaborate analysis of self-regulation is provided in Ogus (1995) and Van den Bergh (2006). In the latter paper two alternative systems are analyzed: co-regulation (which is based on co-operation between the state and self-regulating bodies) and competitive self-regulation.

¹¹⁷ Miller (1985), pp. 897-898.

¹¹⁸ De Bijl and Van Damme (1996), p. 24, add to this that self-regulation will increase the chances of acceptance and observance of conduct rules, because professionals themselves have been involved in the formulation of these rules.

is needed, however, in order to effectively regulate the performance of professional services.¹¹⁹ To regulate effectively the government would have to hire experts, likely members of the regulated profession. Self-regulation will in that case reduce costs because it combines the regulators' and the experts' role into one.¹²⁰

The other two arguments put forward by Miller have been contested on the basis of private interest theory. Self-regulatory bodies may not be sufficiently independent in the case of the professions. Hence there is a risk that self-regulation restricts competition more than necessary and serves private interests rather than the public interest, even when it is directed at improving the quality of professional services.¹²¹ In addition, it has been argued that professional associations lack democratic legitimacy.¹²²

3.4 Evaluation

When analyzing the regulatory framework in the market for accountancy services, both public interest and private interest arguments must be taken into account. Regulation should not go further than is necessary to cure the prevailing market failures. Regulation should serve the public interest rather than private interests.

If information asymmetry in an unregulated accounting market results in quality degradation, and reputation effects would not work sufficiently to overcome this problem¹²³, those forms of regulation should be chosen that least restrict competition. Least restrictive of competition would obviously be simple forms of information regulation such as mandatory information disclosure (for example, the publication of information on websites), passive regulation of advertising (including the prohibition to use misleading advertising) and certification.

However, to disclose information on the quality of accounting services is a complicated matter because, as stated earlier, auditing and accountancy are experience goods or even credence goods. According to some accountancy associations (although there is disagreement on this point) even large business consumers would be unable to correctly assess the quality of accountancy services they receive. Information published on websites or in the media may therefore be too difficult to judge for the average client.

¹¹⁹ See also Dingwall and Fenn (1987), p. 55. However, they draw attention to the underlying assumption that self-regulating agencies do not abuse the monopoly position they obtain when they become regulator. With regard to accountancy, in some countries the professional body does not have a monopoly position. In the UK, for example, there are five accounting associations. See http://web.ifac.org/download/2008_AR_IFAC_Member_Organizations.pdf.

¹²⁰ Curran (1993), p. 61. Gehrig and Jost (1995), p. 311, argue that any analysis of self-regulation has to start from information asymmetries between market participants and the social planner, because otherwise statutory regulation could implement the self-regulatory outcome just as well.

¹²¹ For an economic analysis of self-regulation and its effects on welfare see Leland (1979), Shaked and Sutton (1981), Gehrig and Jost (1995) and Donabedian (1995). See also Graf von der Schulenburg (1986).

¹²² Van den Bergh (2006), pp. 161-162.

¹²³ It has been argued above that (positive and negative) reputation effects to some extent can solve the problem of information asymmetry, but this mechanism does not seem to work perfectly without introducing at least some other forms of quality regulation. Moreover, negative reputation effects may have a severe impact on the market, thereby also creating negative externalities, as shown by the events following the demise of Arthur Andersen.

Certification then provides a better solution to information problems than simple information regulation, under the condition that clients can recognize the value of the particular certificate or special title. However, accountants might be inclined to invest too much in education in order to signal high quality levels.¹²⁴

More restrictive of competition than information regulation and certification are various forms of entry regulation that exclude certain professionals from the market, such as mandatory registration combined with title protection (which may effectively exclude service providers without a title from the market)¹²⁵ and exclusive rights. As stated earlier, such entry regulation may better insure risk-averse consumers against possible harmful consequences of bad services, provided there is a positive relationship between education level and service quality. Unfortunately, such regulation can also be used as an entry barrier by interest groups such as accounting associations, and it may induce consumers to substitute licensed services by cheaper alternatives.

Summing up, the regulation that is aimed at correcting information asymmetries and negative externalities should not only be *justified* in order to address these particular market failures, but it should also be *proportional*.

- To correct information asymmetries between accountants and their clients, and to prevent negative externalities to investors, banks and creditors, some regulation of auditor entry and educational requirements is needed;
- Exclusive rights for tax advice and representation are atypical in OECD jurisdictions and seem excessive. When they exist, they merit review.
- Quantitative restrictions restrict competition more than is necessary;
- Advertising bans restrict competition more than is necessary. However, rules on false and misleading advertising serve a clear public interest goal;
- Price regulation, including recommended fee scales, restricts competition more than is necessary;
- Careful consideration should be given to allowing auditors to work with other professionals;
- Self-regulation can be a useful tool in addition to public regulation, but there is a risk of rent-seeking behavior by professionals;
- Competition law remains necessary to control cartel-like behavior and abuse of market dominance; and
- Reputation is an important mechanism to punish low-quality auditing and respond to accountancy scandals.

¹²⁴ Shapiro (1986), p. 855.

¹²⁵ Examples are Germany and Italy, where there are ‘para-professions’ in accountancy: the *Bilanzbuchhalter* and *Ragionieri*.

4. Accountancy standards and their effects on competition

Accountancy standards such as the International Financial Reporting Standards (IFRS)¹²⁶ and the U.S. Generally Accepted Accounting Principles (GAAP)¹²⁷ may also serve to address some of the problems discussed in the Appendix. Notably, such standards may serve to:

- ameliorate information and transaction costs, by creating a more uniform accounting system;
- internalize negative externalities, by setting minimum quality standards for accounting services;
- increase the reliability and independence of statutory audits.

Of course, all of these potential benefits of accounting standards depend on the actual content of these standards and their application in practice. Considering the many recent corporate and accountancy scandals, one could argue that IFRS, the U.S. GAAP and other standards in their current form are unable to serve these purposes. Moreover, the subprime mortgage crisis and the credit crunch have reinforced the importance of both a more uniform and (much) more reliable accounting system, especially when taking into account the fact that off-balance sheet vehicles have played a key role in promoting the financial crisis. In order to limit the possibilities for accounting fraud, and in order prevent excessive risk-taking behavior by banks and business firms, it seems necessary therefore to improve the current standards and practices for off-balance sheet vehicles.¹²⁸

Another issue of concern has been the role of fair value accounting (or mark-to-market accounting). International accounting standards require assets to be valued according to their current and fair value.¹²⁹ However, because of this fair value accounting, during the market turmoil in the wake of the subprime mortgage crisis banks were required to revalue their holdings almost on a daily basis for assets that had ceased to trade. These daily write-downs to values taken from completely illiquid markets depressed market confidence in financial institutions even more and drove down their share prices. Moreover, fair value accounting is based on the assumption that market prices reflect all available information, which may not be the case if an asset class become unduly disfavored. PricewaterhouseCoopers (2008) disagrees with some commentators who have partly blamed fair value accounting¹³⁰ for the recent turmoil in the financial

¹²⁶ Between 1973 and 2001, many of the standards that are now included in the IFRS were included in the International Accounting Standards (IAS), issued by the board of the International Accounting Standards Committee. In April 2001, these IAS were adopted by the International Accounting Standards Board (IASB), which is now responsible for the development of accounting standards. Although the name IAS is still used, the name of the whole set of standards was changed into International Financial Reporting Standards.

¹²⁷ The Financial Accounting Standards Board (FASB) issues the accounting standards that the Securities and Exchange Commission (SEC) recognizes as GAAP for public companies. In 2008, GAAP consisted of more than 2,000 separate pronouncements issued in various forms by numerous bodies including SEC, FASB, American Institute of Certified Public Accountants (AICPA) and others. GAO (2008), pp. 14-15. In 2008 former SEC Chairman Christopher Cox announced that the U.S. will abandon GAAP, replacing it by IFRS.

¹²⁸ Interestingly, already in 1989 Chadzyska (in an article in the OECD Observer) warned for the risks of excessive risk taking and off-balance sheet transactions, noting that the possible existence of hidden liabilities puts creditors, employees and shareholders at risk.

¹²⁹ IFRS, IAS 39. See also Financial Accounting Standards Board, 'Summary of Statement No. 157: Fair Value Measurements', available at: <http://www.fasb.org/st/summary/stsum157.shtml>.

¹³⁰ Fair values are affected by risk: markets adjust their pricing of assets to reflect the perception of the associated risks. The financial instruments disclosure standard IFRS 7 requires companies to discuss

markets, stating that this accounting method remains the best available method of accounting for often complex financial instruments and that it “makes the impact of market forces on financial performance more transparent”.¹³¹ The adoption of fair value standards, however, requires some adjustments by markets, so PwC argues.

Hellwig (2008), while analyzing the causes of the current financial crisis, discusses the role of mortgage securitization as a mechanism for allocating risks from real estate investments.¹³² Subsequently, he also discusses the role of the asset-backed securities held by structured investment vehicles (SIVs)¹³³, and the interplay of market malfunctioning and fair value accounting and the insufficiency of equity capital at financial institutions, among other factors, to come to the conclusion that “[i]n thinking about regulatory reform, one must [...] go beyond considerations of individual incentives and supervision and pay attention to issues of systemic interdependence and transparency.”¹³⁴ Making a link to off-balance sheet accounting: “distinctions between on-balance sheet and off-balance sheet positions of banks and other financial institutions should be abolished or at least reduced to a bare minimum. One suspects that regulatory acceptance of such distinctions until now may have had more to do with political lobbying and regulatory capture than with any substantive argument about differences in risk exposure.”¹³⁵ This points in the direction of revision of accountancy standards.

It is clear now that the IFRS are becoming the global accounting standards. They are already firmly established in Europe, Australasia and Turkey, and are set to be adopted by further jurisdictions, including Canada, Japan and South Korea by 2011. The U.S. is moving in a similar direction, reducing the differences between the U.S. GAAP and IFRS and allegedly converging on the latter by 2016. The use of a single, universally understood accounting standard would represent a step forward for transparency, not only by making it easier for investors to compare companies’ performance regardless of their regulatory jurisdiction¹³⁶, but hopefully also by making it easier to ‘tighten’ the accounting standards and their world-wide application, limiting the potentially adverse effects of excessive risk-taking and off-balance sheet accounting. In addition, it would reduce costs for multinationals that must now prepare multiple books¹³⁷ and it would facilitate greater mobility of auditors, which in turn might help reduce market concentration as firms will have access to a wider pool of talent and a greater volume of resources.

related risks and their management of them, but volumes of disclosure that appear to meet the letter of this standard can potentially mask the real truth behind the detail. PricewaterhouseCoopers (2008), p. 11.

¹³¹ PricewaterhouseCoopers (2008), p. 11.

¹³² Noting also that excessive real-estate speculation can be a problem in any country. He suggests therefore that rules concerning liability of originators and/or securitizers must be introduced or strengthened. In addition, the role of rating agencies needs to be reconsidered. Hellwig (2008), p. 61.

¹³³ Technically, banks had no recourse to these SIVs, so they could be held off-balance sheet under applicable banking regulation such as the Basel I and Basel II Accords, thereby exempting banks from the requirement to hold capital reserves for outstanding loans. Also, under international accounting standards such as IFRS and U.S. GAAP the sale of a pool of assets (for example subprime mortgages) by a bank to a SIV qualified as a sale.

¹³⁴ Hellwig (2008), p. 1.

¹³⁵ Hellwig (2008), p. 62.

¹³⁶ See also PricewaterhouseCoopers (2008), p. 13. KPMG (2008), p. 4, comments that globalization is driving the need for uniform accounting standards. KPMG (and other accounting firms) in that respect delivers IFRS implementation and accounting conversion services to companies world-wide (its report states that it has done so to more than 1,400 companies globally).

¹³⁷ The Wall Street Journal, ‘Closing the Information GAAP’, 8 September 2008.

This section can be summarized by the following bullet points:

- The quality of accounting standards and practice are vital elements for well-functioning of markets to evaluate public company performance;
- The move to one global system of accounting standards (IFRS) is good for transparency, while it can also reduce costs; and
- The current accounting standards laid down in the IFRS need some revision, notably in dealing with off-balance sheet vehicles, as these increase information asymmetries.

5. Conclusions

The accounting profession provides many services, such as auditing and tax advisory services and representation. An examination of competition policy in this sphere is particularly appropriate because governments grant exclusive rights to the accountancy professions, concentration is high for the auditing of large public companies, and ensuring quality auditing has significant public benefits.

This paper discusses several important issues that concern competition and regulation in the accounting professions, focusing in particular on the market for statutory audits. First, reasons for and effects of the mergers between the former Big Eight (now Big Four) accounting firms are presented. The most important barriers for intermediate accounting firms to enter (or increase their market shares in) the market for audits of large public companies are discussed, as well as selected ways to deal with these barriers. While mergers between Big Four accounting firms appear unlikely, the possibility of a “drastic” event leading to the demise of a Big Four firm do exist.

Entry and conduct regulation in the accountancy professions are discussed from an economic perspective. Some of this regulation appears to restrict competition more than is necessary from a public interest perspective. Finally, accountancy standards and their effect on competition and quality of accounting services are discussed.

The accountancy profession has been relatively neglected by researchers interested in competition policy. This paper identifies select topics of interest. Further work is clearly needed. Nonetheless, a number of points stand out:

- The Big Four organizations are by far the primary providers of auditing and accounting services for quoted and large companies; the market share of the intermediate accounting networks is small in comparison;
- Promoting entry of new international accountancy networks and expansion of existing intermediate networks should be encouraged, by:
 - preventing unnecessary restrictions being imposed on companies by third parties (such as lenders), regarding the choice of statutory audit firm;
 - allowing where possible the expansion of the existing intermediate networks, for example, in case new merger plans between these networks are announced; and
 - allowing both partnerships and considering unlimited liability joint stock companies (under the condition that conflicts of interest are limited);

- Governments should consider the possibility that drastic and unpredicted events may occur in the future that would lead to dismantling of a Big Four or an intermediate accounting firm. In response, governments should consider adapting regulatory restrictions on ownership structure of accounting firms, in case of such events, to ensure the firm's assets can remain united. Also a liability cap could be considered;
- Despite the international reach of the accountancy firms, merger cases have concluded that geographic markets are national, because of the existing entry and conduct regulation;
- Quantitative restrictions to entry, advertising bans and price regulation (including recommended fee scales) restrict competition more than is necessary and should be eliminated;
- Those countries that give accountancy professionals exclusive rights for tax advisory and representation services should consider whether such restrictions are truly necessary, given that many OECD countries have no such restrictions; and
- The quality of accounting standards and practice are vital elements for well-functioning of markets to evaluate public company performance and need revision, particularly related to off-balance sheet accounting of assets.

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APPENDIX

1. The public interest approach

The public interest approach to regulation presents a number of potential grounds for regulatory intervention in a market. They have in common the fact that they are derived from perceived shortcomings of the market system itself to deal with certain problems preventing an economically efficient outcome in a market.¹ The economic literature generally distinguishes between four kinds of market failure:

- information problems;
- externalities;
- the presence of public goods; and
- market power.²

Intervention in the market, either by the government or in the form of self-regulation, may be necessary to cure these market failures. Such intervention could involve liability rules, taxes and subsidies, or some form of regulation, depending on the particular market failure.³ The public interest approach to regulation assumes that any intervention in a market is directed towards gaining an improvement in welfare. However, one has to be careful in choosing the optimal form of regulation, as regulation may generate costs by excessively restricting competition that can outweigh the benefits.

1.1 Information problems

Markets for professional services are often characterized by information asymmetry between professionals and their clients: professionals know more about the quality of the service they provide than their clients. There are several reasons for the existence of this information asymmetry.

- Professional services generally involve application of the professional's human capital in order to judge individual cases.⁴
- Evaluation of the quality of the service itself may be very difficult.⁵

¹ There are other possible justifications for regulation, such as those resulting from distributive purposes or paternalistic arguments. These will not be discussed here, as their relevance to the case study of accountancy is very limited.

² Philipsen (2003), pp. 10-19; Arnold (2006), pp. 705-729; Cooter and Ulen (2007), pp. 43-47.

³ Liability rules can (and often should) be used jointly with regulation. Shavell (1984) discusses four criteria that determine the optimal mix of tort law and regulation as instruments for controlling risky activities: information, insolvency risk, the threat of a liability suit and administrative costs.

⁴ Arruñada (2006), p. 52.

⁵ Ibid.

- The provision of many professional services does not occur on a regular basis (for example, legal services and medical services), so learning by repeat buying and reputation have only limited impact.

Therefore, professional services are said to be ‘experience goods’, the quality of which can only be determined after having consumed or used it, or ‘credence goods’, the quality of which cannot be assessed correctly even after consumption of the good.⁶ The information asymmetry may give rise to quality deterioration resulting from adverse selection.⁷ If clients cannot evaluate the quality of professional services provided by individual professionals, but can only discriminate on price, professionals have no incentives to provide high quality services. Bad professionals will drive those who provide high quality services out of the market and some form of quality regulation might be needed to convert the market outcome of low quality and low price into one characterized by high(er) quality and reasonable price. In addition, information asymmetry between a professional and his client could lead to the ‘moral hazard’ problem of demand generation.⁸

However, when users of professional services are business clients or public sector users rather than individual consumers or households, the information asymmetry problem is likely to be smaller. Big business users and public sector users are often expert users, requiring services that are tailored to their needs. They want flexibility; and contracts with service providers are usually large and complex. Small business users may not have such expertise, but may nevertheless be repeat users of professional services. Therefore one would expect that in markets for professional services such as auditing and accountancy (and also architecture and engineering) the information asymmetry is less severe than in, for example, markets for medical services (pharmacists, physicians).⁹ Nevertheless, some European accountancy associations have argued that, because of information asymmetry, even large business clients would be unable to assess the quality of accountancy services or to decide the appropriate level of quality for their needs. This would then be an argument for some regulation, particularly regarding appropriate entry and qualification requirements.¹⁰

In accountancy, *reputation* can play an important additional role in mitigating information asymmetry problems, in addition to the fact that many clients are repeat users. For many years business clients have relied on the reputation of the (former) Big Eight accountancy firms for their statutory audits and other accountancy work, and in turn investors have relied (to a greater or lesser extent) on the reputation of these auditors when assessing the value of a firm in which they want to invest. In other words: an auditor’s reputation for quality and independence has an impact on perceived audit quality, giving a signal to investors about the reliability of the financial statements of firms who are clients of that particular auditor.

In the light of the recent accountancy and corporate scandals, however, it is clear that reputation effects can also be negative. Krishnamurthy et al (2006), using a sample of former Arthur Andersen clients, show that reputation effects are especially negative when the market perceived also the auditor’s *independence* to be threatened in addition to audit quality. Autore et al (2009) find that the clients of

⁶ Nelson (1970) introduced the concept experience good. Trust goods (later also called ‘trust goods’) are discussed by Darby and Karni (1973).

⁷ See Akerlof (1970).

⁸ This occurs when additional services are provided by the professional, which clients would not have wanted if they were fully informed, or when the professional has an incentive to over-supply quality in order to charge higher prices, even if the client would be better served with a lower quality at a more reasonable price. OECD (2007), p. 21.

⁹ Cf. European Commission (2005), pp. 3-5, Competition Authority (2006), pp. 22-25, and Stephen (2006).

¹⁰ European Commission (2003a), p. 4.

Andersen and the other big auditors that are characterized by higher information uncertainty experienced relatively larger share price declines compared to clients with lower information uncertainty. Hence, the value of an audit is greater when a firm is harder to value.¹¹

1.2 Externalities

A second potential public interest justification for regulation of professional services arises from the presence of externalities.¹² Negative externalities appear if the quality of rendered services is poor and affects third parties. In the area of accountancy, it is obvious that poor auditing may negatively affect investors, banks and creditors of the audited company or even society in general, besides the company itself. Indeed, in the previous subsection it was shown that an audited company's value to some extent depends on the reliability of its audit. Negative reputation effects in the market for accountancy are likely to have an impact on other markets, such as the stock and corporate debt markets.

To cure the problem of negative externalities, we may again need some form of quality regulation and/or liability rules. According to Shavell (1984), regulation can be used instead of or in addition to liability rules if:

- governments have better (access to) information than judges in order to determine the optimal level of care that must be taken to prevent negative externalities;
- there is a risk that the potential defendant (such as a professional who provides poor services leading to negative externalities) will be insolvent to pay for the damage caused by him. In this case, the duty to compensate under tort law does not have sufficient deterrent effect and we need regulation backed by non-monetary sanctions;
- the damage is widespread or there is no clear causal link.

In these cases, liability rules do not have sufficient deterrent effect to prevent negative externalities. Regulation is needed to set standards *ex ante* rather than *ex post*.

At least the second and third of these arguments have some merit in the market for accountancy services, especially when considering statutory audits. The effects of low-quality audits - and accountancy scandals such as the Enron case - on investors, banks and creditors may after all be so widespread that liability rules (and insurance) alone cannot solve this problem. The accounting scandals and escalating litigation involving accounting firms in the early 2000s also resulted in an increase in insurance costs, because insurance companies saw increased risk and uncertainty from insuring firms that audited public companies.¹³ In some countries there is a cap on auditors' liability (or there is a debate on whether to introduce such a cap)¹⁴, which - while helping to deal with the increased litigation risk - could limit the deterrent effect of liability rules.¹⁵

¹¹ This would imply that "higher information uncertainty firms suffer the most when past audits unexpectedly appear to be less reliable than previously thought". Autore et al (2009), p. 183. On reputation effects following the Enron scandal, see also Arruñada (2004).

¹² Negative externalities are costs imposed on third parties; positive externalities are benefits imposed on third parties. See e.g. Cooter and Ulen (2004), pp. 44-46, and Arnold (2004), pp. 707-720. See also Ogus (1994), pp. 18-19; 35-38.

¹³ GAO (2003a), p. 49.

¹⁴ For example, in Germany in 2008 the cap was € 4 million per audit for audits required by law. In the U.S. there is unlimited auditors' liability from a legal point of view, but in fact the assets of the audit firm are

Solutions to the negative externality problem may again be found in regulation of entry and qualification requirements, but also in defining clear accountancy standards (see also section 4) and rules on auditors' independence.

1.3 Public goods

Public goods have two special characteristics that distinguish them from private goods: nonrivalrous consumption and nonexcludability. Because of these characteristics the market may not (or not sufficiently) generate public goods.

The question is whether professional services such as accounting can be considered a public good and whether without regulation there would be an undersupply of such services. It can be argued that statutory audits of companies listed on the stock exchange serve the public interest and therefore generate positive externalities. For example, European accountancy associations have drawn attention to "the role that auditors play in ensuring reliable financial reporting and transparent capital markets"¹⁶. This is a strong point, especially in the light of the current financial crisis and the recent accountancy and corporate scandals. However, this would not justify any other restrictions to competition besides those regulating sufficient access to accountancy services for (potential) clients, a reasonable minimum quality level based on clear accounting standards, and auditors' independence from their clients.¹⁷

1.4 Market power

Market power in the context of the professions can result either from the existence of monopolies (possibly protected by law) and related market structures, or from cartel-like behavior by a group of suppliers. Regulation in the form of competition law is required in order to combat any cartel-like behavior and abuse of dominant positions by, for example, professional associations. Box 3 shows how competition rules have been applied to the professions in the U.S., Canada and Australia, whereas Boxes 4 and 5 give some information about actions taken by the Directorate General for Competition of the European Commission.

limited because of the judgment-proofness problem. See Bigus (2008), p. 1. PricewaterhouseCoopers (2008), p. 3, stresses that potentially disastrous liability claims remain a cause for concern, when auditors face judicial actions that would penalize firms far beyond the level of their responsibility, putting their very existence at risk. The organization is therefore glad to see that a system of proportionate liability has recently been introduced in the UK, and that also the European Commission has recommended reform of auditors' liability. See also the study on auditors' liability rules prepared for the European Commission by London Economics (2006).

¹⁵ Bigus (2008) argues that because of special characteristics of auditors' liability, the potentially negative effects of liability caps are mitigated. Instead, such caps might even induce efficient levels of care taken by auditors. Unlimited liability, on the other hand, would induce auditors to exert excessive care, so he argues. The special characteristics of auditors' liability, which are central to reaching this conclusion, include the importance of reputation effects and vaguely defined accountancy standards (in addition to the definition of the negligence rule and overcompensation). On the former, see also Section A1.1. above; on the latter, see Section 4.

¹⁶ European Commission (2003a), p. 4. With respect to the U.S., GAO (2003a), p. 7, notes that "for over 70 years, the public accounting profession, through its independent audit function, has played a critical role in financial reporting and disclosure, which supports the effective functioning of U.S. capital markets". See also GAO (2008), pp. 6-7.

¹⁷ After all, other professional services also play an important role in the economy (facilitating the good functioning of the judicial system, promoting public health, etc), but price regulation, advertising bans and quantitative restrictions are not solutions to the public good problem of undersupply.

As already indicated above, the auditing and accounting services market for quoted and large companies is now very concentrated, with only four out of the former Big Eight accounting organizations left in the market - in addition to intermediate and smaller accountancy firms that may differ from country to country. The question then is whether there is sufficient competition and variety of services left in the market, and if not, how entry of new accounting firms can be promoted.¹⁸

The problem is, as several authors have shown, that an auditor's reputation and size are considered as very important, which would make it difficult for new (networks of) firms to enter the market.¹⁹

2. The private interest approach

The private interest approach to regulation has developed from public choice theory, capture theory and the 'Chicago' theory of regulation.²⁰ These theories stress the role of interest groups in the formation of regulation. The basic idea of the private interest approach is that interest groups are continually influencing political decisions in order to seek rents for themselves, which is unproductive from a social welfare point of view.²¹ Resources are devoted to capturing a wealth transfer from consumers to producers. Interest groups may have such a powerful influence on politicians that their efforts to obtain regulatory failures override general preferences. Professional associations, such as accounting associations, are generally small relative to the public at large, single-issue oriented and well organized. These are precisely the criteria that are likely to make an interest group successful in lobbying.²²

According to Stigler (1971), regulation is acquired by the industry and is designed and operated entirely for its benefit.²³ Peltzman (1976), who formalized and extended Stigler's model, argues that

¹⁸ Note again, however, that big audit clients do not easily switch auditors. See Section 2.5 above. See also European Commission, Case No IV/M.1016 – Price Waterhouse/Coopers & Lybrand, 20 May 1998, p. 8, where – after having consulted clients of the (then) Big Six in banking and insurance – the Commission noted) that these clients “show a strong reluctance to change their incumbent auditor, due also to the importance they attribute to the factors of trust and confidence, which are built up over long-lasting relationships with their auditor, very often running into decades.”

¹⁹ For example, DeAngelo (1981) in an often-cited paper even argued that audit firm size is a reasonably proxy for audit quality, because big accountancy firms would have more to lose by failing to report a discovered breach in a particular client's records. The reason for this is that audit technology is characterized by significant start-up costs, and incumbent auditors earn client-specific quasi-rents. Arruñada (1999) argues that when firms have a sufficiently diversified client base, they also encourage independence, because the effect of client-specific assets depends on the degree of client diversification. While the author presents this argument in order to support his conclusion that the provision of non-audit services to audit clients should be left to the market, it could also be interpreted as an argument not to interfere in the market altogether, that is, not to intervene if mergers are based on efficiency reasons.

²⁰ For details on these theories, see Philipsen (2003), pp. 23-27.

²¹ Buchanan, Tollison & Tullock (1980) present a selection of leading papers on rent-seeking behavior. Naturally, the danger of rent-seeking behavior arises also in the case of self-regulation.

²² Under the condition that information costs for the public at large (of finding out about the detrimental effects of rent seeking) are large. See Olson (1965).

²³ Stigler (1971), p. 3. He stated that every branch of industry, which is powerful enough to do so, will lobby the government for the erecting of entry barriers such as obligatory training or apprenticeships, product requirements, taxes, import quotas, and so on. Naturally, such rules are favorable to the insiders in a market. Likewise, a prohibition on advertising would lead to a less transparent market where the prices asked can be higher than in a market without advertising bans.

politicians will distribute favors and disfavours among pressure groups and voters in order to maximize their chances of being re-elected. This to some extent weakens the political power of interest groups. Becker (1983) later pointed to the fact that regulation can be the result of competition for political influence among many different interest groups. He unifies the view that governments correct market failures with the view that they favor the politically powerful: both are produced by the competition for political favors.

In order to analyze the extent to which regulation in a particular profession serves private interests rather than the public interest, one should also carry out quantitative analyses. Although there are definitely some indications in the - mostly U.S.-based - empirical literature backing up the rent-seeking hypothesis, there is no real consensus in this literature on the actual incidence and consequence of rent-seeking behavior in the professions. Often lack of data (especially on earnings, but also time-series data on prices and costs) precludes the proper use of statistical and econometric models to assess the effects of restrictive regulation.

²⁴ Posner (1974), pp. 344-347, showed that there is a link between cartel theory and the theory of professional regulation: because cartels are difficult to organize and to monitor, the stability of cartels can be enhanced by regulation.

NOTE DE REFERENCE*

Par le Secrétariat

1. Introduction

Les professions comptables¹ proposent généralement des services d'audit légal et d'audit interne, d'autres services de comptabilité – conseils en matière de contrôle financier, audits d'acquisition (*due diligence*) et services en matière d'insolvabilité – ainsi que des services de conseil fiscal. Les comptables peuvent également prendre part à un vaste éventail d'activités connexes au sein des entreprises : évaluation d'entreprise ; expertise comptable judiciaire ; planification stratégique ; commercialisation et marketing ; gestion des technologies de l'information ; et gestion des ressources humaines.² Cette étude traite essentiellement des services d'audit légal et d'autres services réservés à une ou plusieurs branches de la profession comptable.

Dans tous les pays de l'OCDE, la prestation de services d'audit légal est un droit exclusif réservé aux experts-comptables³. Des droits exclusifs peuvent également s'appliquer à la fourniture de certains autres services mentionnés ci-dessus, selon des modalités toutefois différentes d'un pays à l'autre.⁴

Il importe en particulier d'examiner plus en détail le marché de l'audit légal. Les missions d'audit, qui jouent un rôle important en matière d'information publique, sont à l'origine de nombreux conflits d'intérêts parce qu'elles sont susceptibles de générer d'autres missions auprès des clients⁵. Les conflits d'intérêts associés aux audits tiennent principalement au fait que les comptables doivent fournir une opinion indépendante qui peut être contraire aux intérêts du client qui les rémunère. La recherche de solutions visant à accroître l'indépendance des comptables revêt une grande importance pour des acteurs comme les investisseurs, qui se fient aux audits. La croissance de la taille des cabinets d'audit serait une solution à cet égard, dans la mesure où des prestations médiocres altéreraient leur réputation. Pour un grand cabinet, la perte financière causée par une réputation dégradée dépasserait les gains obtenus en réalisant des audits sans respecter le principe d'indépendance.⁶ On note d'ailleurs que les sociétés faisant appel à l'épargne publique ont largement tendance à confier leurs missions d'audit à de grands cabinets. Les prestataires de

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¹ Notamment celles de commissaire aux comptes, de comptable et de conseil fiscal.

² Bureau de la concurrence (2007), p. 43.

³ La désignation de ces professions change d'un pays à l'autre. On parle par exemple d'expert-comptable agréé, de comptable agréé ou de commissaire aux comptes.

⁴ Dans certains pays, par exemple, la prestation de conseil fiscal est un droit exclusif réservé à une profession particulière.

⁵ Aux États-Unis, le *General Accounting Office* (GAO) a constaté, lors d'une enquête réalisée en 2003 auprès d'un échantillon aléatoire de sociétés faisant appel à l'épargne publique de la liste Fortune 1000, que 149 des 150 entreprises interrogées (soit 94 %) avaient recours à leur auditeur pour une foule de services hors audit, par exemple des services de fiscalité et d'assistance lors de l'émission de titres d'emprunt ou d'actions. GAO (2003b), p. 9-10.

⁶ L'effet sur la réputation est proportionnel au chiffre d'affaires apporté par un client.

services d'audit légal sont habituellement classés en deux groupes, à savoir les quatre grands cabinets (*Big Four*) et l'ensemble des autres cabinets, quelquefois dits « de second rang » ou marginaux.⁷ Dans la présente note, on utilisera la qualificatif d'« intermédiaire ». Les cabinets membres des *Big Four* (autrement dit, des quatre premiers réseaux mondiaux) audient la grande majorité des grandes entreprises faisant appel à l'épargne publique. La part de marché des cabinets intermédiaires pour ce type de missions est faible. Cela dit, certains d'entre eux n'en ont pas moins des capacités appréciables, un chiffre d'affaires important et une grande couverture internationale.

Ces dernières années, le nombre de cabinets qui audient régulièrement les grandes sociétés faisant appel à l'épargne publique a diminué. Cela s'explique par les fusions en cascade intervenues dans le secteur de l'audit et par la disparition du cabinet Arthur Andersen après le scandale Enron. On compte aujourd'hui quatre grands cabinets d'audit, une structure comparable à certains égards à celle du secteur des agences de notation.

Les deux secteurs jouent un rôle essentiel dans l'exercice de la responsabilité publique. En particulier, un système financier sain et efficace est largement tributaire des différentes composantes d'un cadre solide pour les services d'information financière et d'audit. Des normes comptables et une profession d'audit de haut niveau sont indispensables pour assurer la qualité des rapports réglementaires et des informations communiquées et figurent donc parmi les douze critères que le Forum de stabilité financière⁸ considère comme favorisant une infrastructure financière solide.

Un tel cadre contribue à préserver la confiance du public dans l'intégrité des institutions financières et des marchés de capitaux au moyen de dispositifs d'audit interne, d'audit externe, de gouvernance, de communication financière et de transparence. Les actionnaires sont les derniers créanciers de l'entreprise et n'ont droit qu'à ce qui reste lorsque toutes les autres créances ont été réglées. Il y a le risque, normal, que la stratégie ou le dosage des actifs de l'entreprise ne génèrent pas de résultat satisfaisant, et celui, plus rare, de fraude ou de comportement indélicat des dirigeants ou d'autres représentants de l'entreprise. De ce point de vue, on comprend aisément le retentissement qu'ont eu la faillite d'Enron, puis de la société de télécommunications Global Crossing, implantée aux Bermudes, et différents autres scandales ayant mis en cause des entreprises et des cabinets d'audit.⁹ La crise financière et économique qui se déroule soulève d'autres questions sur la performance des intermédiaires jouissant d'une bonne réputation, notamment les auditeurs et les prestataires d'autres services comptables. Tous ces facteurs conduisent à penser qu'il est nécessaire de bien cerner le fonctionnement du marché des services de comptabilité, notamment le degré

⁷ Voir, par exemple, Sullivan (2002), p. 376, et divers examens de fusions effectués par les autorités de la concurrence. L'expression « de second rang » ne fait pas référence à la qualité des prestations, mais au fait que les cabinets sont d'une taille inférieure, voire très inférieure, à celle des « Big Four », même si certains d'entre eux sont aussi très importants et possèdent des réseaux mondiaux.

⁸ Le Forum de stabilité financière (devenu le Conseil de stabilité financière) a été créé en avril 1999 afin de favoriser la stabilité financière internationale par des échanges d'information et la coopération internationale en matière de contrôle et de surveillance des marchés de capitaux. Il rassemble des représentants de haut niveau des autorités financières nationales (banques centrales, autorités de surveillance et ministères des finances), des institutions financières internationales, des organisations internationales de réglementation et de contrôle et des comités d'experts des banques centrales et de la Banque centrale européenne. Voir <http://www.fsforum.org>.

⁹ Par exemple les scandales qui ont touché Fannie Mae, Lernout & Hauspie, Parmalat, Worldcom (et Arthur Andersen), Satyam Computers (et PricewaterhouseCoopers), Xerox (et KPMG), et la liste n'est pas exhaustive.

de concurrence qui y règne et le cadre réglementaire auquel sont actuellement soumises les professions comptables.¹⁰

Le présent document s'intéresse à la réglementation et à la surveillance des cabinets d'audit par les pouvoirs publics, et plus particulièrement à la concurrence qui s'exerce sur ce marché. Son propos n'est pas d'inciter les pouvoirs publics à enquêter sur des pratiques concertées ou de comportement abusif contraires au droit de la concurrence. Il n'entend pas non plus s'attacher longuement aux conflits d'intérêts qui affectent la profession comptable, qui ne relèvent pas directement du domaine de la concurrence mais plutôt de la gouvernance. Ce document s'intéresse plutôt à la structure concurrentielle du secteur de l'audit et à la question de savoir si la réglementation publique ou professionnelle restreignent exagérément l'entrée ; et à certaines incidences des normes comptables sur le fonctionnement du marché.

La section 2 passe en revue les principaux cabinets d'audit sous l'angle de la concurrence. La section 3 examine les règles d'entrée et de conduite applicables aux professions comptables – notamment celles qui concernent les droits exclusifs et les exigences de qualifications ; la publicité ; les prix ; la coopération interprofessionnelle ; et les catégories d'entreprises – d'un point de vue économique. Enfin, la section 4 analyse l'importance des normes comptables internationales IFRS (*International Financial Reporting Standards*) et des normes américaines GAAP (*Generally accepted Accounting Principles*). La section 5 conclut le document.

Voici les principaux points qui se dégagent de la présente étude :

- Les fusions et la disparition soudaine d'Arthur Andersen ont réduit le nombre de grands cabinets d'audit, dont le niveau dangereusement faible risque de restreindre exagérément la concurrence ;
- Les pouvoirs publics et les régulateurs pourraient se fixer comme priorité de faciliter l'expansion des réseaux « intermédiaires » existants ;
- Les pouvoirs publics pourraient avoir pour autre priorité de créer les conditions de base qui faciliteront l'entrée de nouveaux cabinets, par exemple en permettant à des capitaux privés de créer de nouveaux cabinets et à en tirer des bénéfices ;
- Les règles professionnelles, notamment les restrictions quantitatives à l'entrée, l'interdiction de toute publicité et la réglementation des prix, sont parfois excessives et engendrent un pouvoir de marché ;
- La qualité des normes et pratiques comptables est indispensable pour permettre aux marchés de bien évaluer le résultat des sociétés faisant appel à l'épargne publique et demande à être revue.

¹⁰

Des études antérieures commandées ou réalisées par les régulateurs et les autorités de la concurrence sur la réglementation de l'entrée et de la conduite sur les marchés des services professionnels (par exemple, les services pharmaceutiques, juridiques et médicaux) ont montré que ce type de réglementation a parfois pour effet de restreindre exagérément la concurrence. C'est là une raison supplémentaire pour approfondir les travaux sur le marché de la comptabilité. Des travaux y ont été consacrés par l'OFT (2001) ; Indecon et London Economics (2003) ; Paterson, Fink, Ogus *et al.* (2003) ; Van den Heuvel Rijnders, Lackner et Verkerk (2004) ; Volkerink, De Bas, Van Gorp et Philipsen (2007) ; le Bureau de la concurrence (2007), et de nombreux autres auteurs. Voir également OCDE (2000) ; OCDE (2005) ; et OCDE (2007).

2. Les grands cabinets d'audit sont passés de huit à quatre

Depuis 1989, on assiste à une série de fusions entre les grands groupes d'audit internationaux. En outre, le « scandale Enron » survenu en 2001 a conduit à des poursuites pénales à l'encontre d'Arthur Andersen ainsi qu'à sa faillite. À la suite de ces événements, les grands cabinets de services comptables et professionnels, de huit qu'ils étaient à la fin des années 80 (les *Big Eight*) sont aujourd'hui au nombre de quatre (les *Big Four*). En 2009, les cabinets suivants assurent la grande majorité des missions d'audit effectuées pour des sociétés faisant appel à l'épargne publique¹¹ (et de nombreuses sociétés « fermées ») dans le monde entier :

- PricewaterhouseCoopers
- Deloitte Touche Tohmatsu
- Ernst & Young
- KPMG

Chacun de ces groupes est de fait un réseau plutôt qu'une entité unique. En d'autres termes, les cabinets membres du réseau mènent leurs activités sous une raison sociale commune et respectent les mêmes normes professionnelles et de service. Au niveau national, ils doivent toutefois se conformer aux règles d'entrée et de conduite en vigueur dans le pays concerné.

- PricewaterhouseCoopers (PwC) est un réseau de cabinets membres de PricewaterhouseCoopers International Limited, une société anonyme britannique. Chaque cabinet est une entité juridique distincte et indépendante. Dans la plupart des pays de l'OCDE, les cabinets fonctionnent sous la raison sociale PwC, mais il existe des variantes. En Corée, par exemple, ils ont pour raison sociale Samil PwC. Au Japon, où PwC possède deux bureaux, le bureau de Tokyo a pour raison sociale PwC HRS, et celui de Kyoto, Kyoto Audit Corporation. Selon les informations communiquées sur son site web, PwC offre des services dans les domaines de l'assurance, de la fiscalité, des ressources humaines, des transactions, de l'amélioration des résultats et de la gestion de crise.¹² Son chiffre d'affaires brut mondial pour l'exercice clos le 30 juin 2008 s'établit à 28.2 milliards USD (dont 13.8 milliards proviennent de l'assurance), soit le chiffre d'affaires le plus élevé des *Big Four*. En 2008, PwC employait plus de 155 000 personnes dans 153 pays.¹³

¹¹ Le GAO (2003a, p. 20-23) déclare qu'en 2002, les *Big Four* ont audité plus de 78 % de l'ensemble des sociétés américaines faisant appel à l'épargne publique et 99 % de leur chiffre d'affaires annuel. Le GAO (2008, p. 4) estime également qu'en 2007, les *Big Four* ont audité les comptes de pratiquement toutes les grandes sociétés faisant appel à l'épargne publique (98 %). En 2006, au Royaume-Uni, les *Big Four* ont audité les comptes de toutes les sociétés du FTSE 100 sauf une, et de 242 sociétés du FTSE 250 (Oxera 2006, p. 65). Les petites sociétés cotées ont été auditées autant par les *Big Four* que par des cabinets intermédiaires, encore que les *Big Four* détiennent sur ce marché des parts nettement plus importantes.

¹² S'agissant de la fusion intervenue en 1998 entre Price Waterhouse et Coopers & Lybrand (voir section 2), les parties ont-elles-mêmes noté leurs activités principales : audit légal ; autres services d'audit et de comptabilité ; conseil et assistance en fiscalité ; conseil en gestion, y compris dans le domaine des technologies de l'information, des études stratégiques et des ressources humaines ; assistance financière aux entreprises ; et services aux entreprises en difficulté. Voir Commission européenne, affaire n° IV/M.1016 – Price Waterhouse/Coopers & Lybrand, 20 mai 1998, p. 2 et 4.

¹³ <http://www.pwc.com>. Voir également PricewaterhouseCoopers (2008).

- L'entité qui coordonne les activités de Deloitte Touche Tohmatsu (DTT) est un *Verein* (association) suisse. Tous les cabinets membres sont des entités juridiquement distinctes et indépendantes fonctionnant sous la raison sociale « Deloitte », « Deloitte & Touche », « Deloitte Touche Tohmatsu » ou d'autres raisons sociales apparentées (par exemple, Deloitte Anjin LLC en Corée). DTT se définit comme une société offrant des services dans les domaines de l'audit, de la fiscalité, de la consultation et des conseils financiers à des clients des secteurs public et privé dans de nombreux secteurs d'activité. Le groupe est présent dans 140 pays et emploie quelque 165 000 personnes (c'est-à-dire plus que chacun des trois autres grands cabinets). Son chiffre d'affaires global pour l'exercice clos le 31 mai 2008 s'est élevé à 27.4 milliards USD.¹⁴
- Au Royaume-Uni, la société Ernst & Young Global Limited est l'entité principale responsable de la gouvernance du réseau mondial Ernst & Young. Dans de nombreux pays de l'OCDE (par exemple, aux États-Unis, en Corée, aux Pays-Bas, en Suède et en Turquie), les cabinets membres ont pour raison sociale Ernst & Young. Il en va autrement dans certains autres pays : au Japon, par exemple, les cabinets membres ont pour raison sociale Ernst & Young ShinNihon et au Mexique, Mancera. Le chiffre d'affaires mondial d'Ernst & Young pour l'exercice clos le 30 juin 2008 s'est établi à 24.5 milliards USD. En 2008, ce cabinet employait 135 000 personnes. Ernst & Young se présente comme un leader mondial dans les domaines de l'assurance, de la fiscalité, des transactions et des services de conseil.¹⁵
- KPMG International est une coopérative de droit suisse. Les membres du réseau KPMG de cabinets indépendants qui sont implantés dans plus de 140 pays sont associés à KPMG International. En Europe, KPMG a fusionné récemment ses cabinets situés au Royaume-Uni, en Allemagne et en Suisse, auxquels s'associeront ultérieurement les membres implantés aux Pays-Bas et en Espagne, ce qui en fera le plus grand cabinet d'audit d'Europe¹⁶. Sur son site web, KPMG offre des services d'audit, de fiscalité et de conseil ainsi qu'une connaissance des différents secteurs d'activités pour aider les sociétés à maîtriser les risques et à obtenir des résultats dans le contexte dynamique et difficile où elles mènent leurs activités. Pour l'exercice clos le 30 septembre 2008, le chiffre d'affaires global du groupe, qui employait 137 000 personnes l'an dernier, s'est établi à 22.7 milliards USD.¹⁷

Les sous-sections qui suivent présentent, le cas échéant sous l'angle du droit de la concurrence, une analyse plus détaillée du processus au cours duquel le nombre de grands cabinets d'audit est passé de huit à quatre.

Il convient toutefois de noter que même si les *Big Four* sont sans contredit les plus grands cabinets d'audit, il existe d'autres cabinets dont la taille et les moyens ne sont pas négligeables, comme l'explique l'encadré 1.¹⁸ Ces cabinets pourraient bien finir par concurrencer les *Big Four* sur le marché de l'audit des grandes sociétés faisant appel à l'épargne publique.

¹⁴ <http://www.deloitte.com>. Voir également Deloitte Touche Tohmatsu (2008).

¹⁵ <http://www.ey.com>. Voir également Ernst & Young (2008).

¹⁶ KPMG (2009), p. 7.

¹⁷ <http://www.kpmg.com>. Voir également KPMG (2009).

¹⁸ On trouvera sur <http://www.worldaccountingintelligence.com> une liste des 10 plus grands réseaux/groupements comptables internationaux classés par chiffre d'affaires (données de 2008).

Encadré 6. De grands cabinets qui ne font pas partie des *Big Four* : BDO International et Grant Thornton

Au moins deux réseaux, voire davantage, sont susceptibles de progresser et de faire concurrence aux quatre grands réseaux d'audit. C'est le cas de BDO International, cinquième réseau mondial, chapeauté par BDO Global Coordination BV, constitué en société aux Pays-Bas, et qui possède un bureau en Belgique. Tous ses membres sont également des entités juridiques indépendantes dans leur pays d'implantation (par exemple, BDO CampsObers aux Pays-Bas ; BDO Seidman aux États-Unis ; BDO Stoy Hayward au Royaume-Uni ; et BDO Kendalls en Australie). Ce réseau a été créé en Europe en 1963, alors que des cabinets d'experts-comptables provenant du Royaume-Uni, des Pays-Bas, d'Allemagne, des États-Unis et du Canada ont conjugué leur base de connaissances pour former le groupe Binder Seidman International Group. Au 30 septembre 2008, BDO était présent dans 110 pays et employait 44 000 personnes. Son site Internet fait état d'un chiffre d'affaires de 5.15 milliards USD en 2008. BDO se présente comme le principal concurrent des réseaux mondiaux d'audit. Aux Pays-Bas, BDO est le leader du marché des PME. (Voir <http://www.bdointernational.com>.)

Un autre grand réseau d'audit, Grant Thornton International, est présent dans plus de 100 pays. Il se définit comme l'un des principaux groupes mondiaux de cabinets indépendants d'audit et de conseil qui propose des services dans les domaines de l'assurance, de la fiscalité et du conseil spécialisé à des entreprises privées et à des groupes de défense des intérêts du public. Chaque membre est une entité nationale distincte autonome, y compris pour la gestion administrative. Grant Thornton est particulièrement bien implanté au Royaume-Uni. Le 1^{er} juillet 2007, Grant Thornton UK LLP a fusionné avec RSM Robson Rhodes dans le cadre d'une initiative devant lui permettre de devenir le cinquième cabinet d'audit et de conseil aux entreprises du Royaume-Uni. Également présent au Japon, Grant Thornton est (selon son site web) l'un des principaux cabinets d'audit, d'expertise comptable, de conseil fiscal et de conseil aux entreprises répondant aux besoins des groupes de défenses des intérêts du public et des entreprises privées. Aux Pays-Bas, Grant Thornton se définit toutefois comme un cabinet d'audit et de conseil de taille intermédiaire offrant une gamme complète de services aux sociétés « fermées » et aux petites et moyennes entreprises ainsi que des services spécialisés aux grandes entreprises nationales et internationales. (<http://www.gti.org>). En 2008, son chiffre d'affaires s'est élevé à 4 milliards USD. (Voir Grant Thornton International (2009).)

2.1 Les huit grands cabinets (Big Eight)

Début 1989, on recensait huit grands groupes de services comptables et d'autres services professionnels :

- Arthur Andersen
- Arthur Young & Co.
- Coopers & Lybrand
- Ernst & Whinney
- Deloitte, Haskins & Sells
- KPMG Peat Marwick
- Price Waterhouse
- Touche Ross

La plupart de ces groupes sont issus d'alliances formées entre des cabinets américains et britanniques au 19^{ème} siècle et au début du 20^{ème} mais n'ont pas immédiatement adopté de raison sociale commune. Ils

ont poursuivi leur expansion internationale tout au long du 20^{ème} siècle en formant des partenariats locaux ou en nouant des alliances avec des cabinets locaux (sauf Arthur Andersen, dont l'expansion hors des États-Unis a consisté à implanter ses propres bureaux à l'étranger.) Il convient de noter bien sûr que bon nombre de fusions sont également intervenues sur le marché de la comptabilité avant 1989 mais qu'il s'agissait de fusions entre petits cabinets ou entre l'un des huit grands et des petits cabinets.

2.2 *Passage de huit à six grands cabinets : les fusions qui ont abouti à la formation d'Ernst & Young et de Deloitte & Touche*

Les deux premières fusions entre grands cabinets sont survenues la même année. En juin 1989, Ernst & Whinney a fusionné avec Arthur Young pour former Ernst & Young et deux mois plus tard, Deloitte, Haskins & Sells, avec Touche Ross, pour former Deloitte & Touche¹⁹. Même si ces fusions concernaient les plus petits cabinets parmi les huit grands, elles ont sensiblement accru la concentration. En 1988, par exemple, Ernst & Whinney détenait, aux États-Unis, 9.2 % de la clientèle du marché de l'audit d'entreprise ; Arthur Young, 6.6 % ; Deloitte, Haskins et Sells, 7.5 % ; et Touche Ross, 6.8 %.²⁰ En septembre 1989, un projet de fusion entre Arthur Andersen et Price Waterhouse a été annulé.²¹

En 2003, le *General Accounting Office* américain a présenté une liste des principaux facteurs à l'origine des fusions, en se basant sur des informations fournies par des responsables ayant participé à ces opérations.²²

- Les cabinets estimaient nécessaire d'étendre leurs activités afin de s'adapter à la *taille et à l'internationalisation croissantes de la clientèle des services d'audit*. Les fusions constituent le moyen le plus rapide de combler les lacunes de la couverture géographique ;²³
- Les fusions ont permis aux cabinets de réaliser *de plus grandes économies d'échelle* tout en modernisant leurs activités (en particulier dans les technologies de l'information et la formation). Les fusions représentaient une initiative capitale pour assurer la modernisation des cabinets, qui, en tant que sociétés de personnes, ne pouvaient pas lever de capitaux en émettant des titres ;
- La complexité croissante des opérations des clients ont marqué *la nécessité d'une plus grande expertise technique sectorielle* (le fait d'offrir un plus large éventail de services permet également aux cabinets de réaliser des économies de gamme)²⁴ ; et

¹⁹ En 1993, le groupe a officiellement adopté une nouvelle raison sociale : Deloitte Touche Tohmatsu.

²⁰ Sullivan (2002), p. 376.

²¹ GAO (2003a), p. 11.

²² GAO (2003a), p. 12-15. Cette liste concerne les fusions de 1989 et de 1998 et provient d'entretiens réalisés avec des associés anciens et actuels de grands cabinets d'audit faisant appel à l'épargne publique ayant participé aux opérations de fusion et des fonctionnaires du ministère de la Justice et de la *Federal Trade Commission*.

²³ Dans les années 80, par exemple, Ernst & Whinney avait un réseau dans les pays du pourtour du Pacifique mais non Arthur Young. S'agissant de la fusion de 1989 (voir section 2.3), Price Waterhouse avait un réseau en Amérique du Sud et Cooper & Lybrand en possédait un en Europe.

²⁴ Par exemple, la fusion d'Ernst & Whinney et d'Arthur Young a réuni deux cabinets respectivement spécialisés dans la santé et la technologie. De même, en 1989, la fusion de Price Waterhouse et de Coopers & Lybrand concernait deux cabinets qui dominaient le marché des services d'audit dans les domaines de l'énergie et du gaz dans le premier cas et des télécommunications dans le second. Pour une analyse de la spécialisation et des parts de marché des quatre grands cabinets dans les différents domaines d'activité en

- Les fusions ont aidé les cabinets à *accroître ou maintenir leur part de marché* afin de conserver leur place de premier plan.

Dans certains pays de l'OCDE, des cabinets membres des réseaux concernés étaient réticents à participer à la fusion qui a abouti à la création du cabinet Deloitte & Touche. Au Royaume-Uni, par exemple, le cabinet Deloitte, Haskins & Sells a fusionné avec Coopers & Lybrand pour former Coopers & Lybrand Deloitte, et l'antenne britannique de Touche Ross a conservé sa raison sociale initiale. Ces cabinets ont modifié leur raison sociale quelques années plus tard en fonction de celui du groupe international auquel ils appartiennent. En Australie également, la fusion s'est déroulée différemment, le cabinet australien membre de Touche Ross ayant fusionné avec KPMG.

Sullivan (2002) a étudié les deux fusions intervenues en 1989 entre des groupes faisant partie des huit grands cabinets afin de déterminer si elles avaient entraîné des effets dommageables pour la concurrence ou amélioré l'efficacité. Elle constate que ces opérations ont occasionné des réductions de coût, lesquelles ont profité à des clients d'assez grande taille ayant changé de cabinet d'audit après les fusions. Cela s'expliquerait par le fait qu'en combinant leurs actifs, les cabinets qui ont fusionné ont pu concourir plus efficacement pour remporter des marchés auprès de gros clients.²⁵ L'analyse se fonde sur le fait que les entreprises sélectionnent un auditeur par le biais d'appels d'offres – en tenant compte du coût de changement de fournisseur – et que la concurrence qui s'exerce pour obtenir un marché dans le secteur de l'audit peut être modélisée comme étant une « enchère asymétrique au mieux-disant ». Dans ce type d'enchère, le soumissionnaire qui propose le prix le plus bas est choisi et les fournisseurs de services d'audit ont des structures tarifaires différentes. Comme l'analyse repose sur les seules données sur les coûts de changement de fournisseur que doivent assumer les clients, les résultats ne permettent pas d'induire comment les fusions ont affecté les prix payés par les clients *existants* (c'est-à-dire ceux qui n'ont pas changé de fournisseur²⁶).

2.3 *Passage de six à cinq grands cabinets : création de PricewaterhouseCoopers*

Avant leur fusion en juillet 1998, Price Waterhouse et Coopers & Lybrand faisaient partie des plus petits cabinets parmi les six grands. Leurs services internationaux comprenaient toutefois, outre des services d'audit et d'information financière, des services de conseil fiscal, de conseil juridique, d'assistance financière aux entreprises, de ressources humaines et d'externalisation des processus des entreprises. De leur fusion est né le plus grand réseau mondial de services professionnels, qui aurait généré selon les estimations un chiffre d'affaires mondial de plus de 15 milliards USD en 1998.²⁷

Lorsqu'ils ont envisagé la fusion de l'ensemble de leurs réseaux internationaux (et des cabinets membres de ces réseaux), Price Waterhouse et Coopers & Lybrand ont décidé de demander dans un premier temps l'autorisation des autorités compétentes dotées des régimes d'autorisation des fusions les

2002, voir GAO (2003a), annexe IV. La fusion de Deloitte, Haskins & Sells et de Touche Ross a quant à elle uni un cabinet très actif dans les domaines de l'audit et du conseil fiscal et un cabinet fortement spécialisé dans le conseil de gestion.

²⁵ L'auteur (p. 377) renvoie à de nombreux travaux réalisés sur d'autres secteurs de l'économie et attestant des effets défavorables des fusions sur la concurrence dans la majorité des cas, principalement sous forme d'augmentation des prix des services.

²⁶ Il convient également de noter que l'analyse des effets bénéfiques des fusions en termes d'efficacité mènerait sans doute à des résultats différents s'il n'y avait au départ que quatre et non huit cabinets sur le marché (comme c'est aujourd'hui le cas.)

²⁷ Kolasky (2000), p. 153.

mieux établis, et dans un deuxième temps seulement, de solliciter cette autorisation ailleurs dans le monde.²⁸ Les autorités compétentes auxquelles ils se sont d'abord adressés sont celles des États-Unis, de l'Union européenne, du Canada, de l'Australie, de la Nouvelle-Zélande et de la Suisse. Kolasky indique que dans chaque cas, des problèmes de procédures différents se sont posés²⁹, mais que l'analyse *sur le fond* a été sensiblement la même partout, le raisonnement ayant été chaque fois que :³⁰

- Le principal marché de produit concerné était un marché de prestation de services d'audit et d'expertise-comptable auprès de grandes sociétés faisant appel à l'épargne publique ;
- Seuls les six grands cabinets (les *Big Six*) pouvaient exercer une concurrence effective sur ce marché ;
- Du fait de la nature nationale des régimes d'agrément, le marché géographique correspond au marché national.

Les autorités compétentes se sont également intéressées à des secteurs particuliers de l'économie, notamment aux services bancaires et financiers, en raison des exigences spécialisées en matière d'audit qui caractérisent ces secteurs. En Europe, par exemple, l'accent a été mis sur la banque et l'assurance³¹, étant donné que les cabinets³² qui présentaient un projet de fusion étaient particulièrement bien positionnés dans la fourniture de services d'audit dans ces secteurs.

Le 13 mars 2008, la division antitrust du ministère de la Justice des États-Unis a annoncé aux parties intéressées qu'elle ne contesterait pas la fusion notifiée. Le même jour, le comité consultatif de la Commission européenne en matière de concentrations entre entreprises a également conclu dans son avis aux parties que la fusion n'aurait pas pour effet de réduire la concurrence (l'autorisation officielle de la Commission n'a toutefois été donnée que deux mois après.) Le lendemain de l'annonce de la décision des États-Unis, le Bureau de la concurrence du Canada autorisait également la fusion. Il semble par ailleurs que l'ACCC de l'Australie, qui a approuvé la fusion peu après, avait attendu pour le faire les orientations des États-Unis et de l'Europe.³³ La Commission de la concurrence de Nouvelle-Zélande avait déjà indiqué dans une lettre rédigée en novembre 1997 qu'elle ne s'opposerait pas à la fusion. La Suisse a donné son approbation en dernier (le 20 avril 2008), ce qui s'explique sans doute par le fait que Deloitte Touche et Arthur Andersen, les deux seuls groupes³⁴ figurant autrefois parmi les six grands cabinets, étaient relativement faibles dans ce pays.³⁵

²⁸ Selon la législation nationale relative à la prestation de services d'audit et comptables, l'intégration a dans certains cas été effectuée par la fusion officielle des cabinets concernés alors que dans d'autres cas, les activités et les actifs d'une entité ont dû être acquis par l'autre et dans d'autres cas encore, les cabinets ont été officiellement dissous, après quoi un nouveau successeur a été créé. Voir Commission européenne, affaire n° IV/M.1016 – Price Waterhouse/Coopers & Lybrand, 20 mai 1998, p. 2.

²⁹ Kolasky (2000, p. 154-160) donne une description détaillée du processus d'approbation des fusions dans ces pays.

³⁰ Kolasky (2000), p. 162-163.

³¹ Affaire n° IV/M.1016 – Price Waterhouse/Coopers & Lybrand, 20 mai 1998, p. 5.

³² Soit KPMG et Ernst & Young mais aussi Price Waterhouse et Coopers & Lybrand. Voir ci-après.

³³ Kolasky (2000), p. 159.

³⁴ Voir ci-après.

³⁵ Les décisions rendues dans les autres pays de l'OCDE ne sont pas examinées ici.

Le 20 mai 1998, la Commission européenne a formellement autorisé le projet de fusion notifié par Price Waterhouse et Coopers & Lybrand. Cette autorisation faisait suite à une enquête approfondie (procédure d'examen de phase 2) centrée – on l'a vu ci-dessus – sur le risque de formation de position dominante sur le marché des services d'audit et comptables proposés aux grandes sociétés faisant appel à l'épargne publique.³⁶ Même si, selon la Commission, ce marché était caractérisé par de nombreux éléments susceptibles de conduire à une situation de domination collective, rien ne permettait de conclure que cela se produirait.³⁷ Au contraire, la Commission a estimé : « d'un point de vue général, une domination collective comprenant plus de trois ou quatre fournisseurs est peu probable, du simple fait de la complexité des relations mutuelles qu'elle suppose et de l'incitation qui en découle à s'écarter de cette ligne de conduite ; une telle situation est instable et intenable à long terme. [...] le marché actuel des services aux grandes sociétés clientes des six grands semble être concurrentiel à long terme, puisque les clients publient effectivement des appels d'offres et qu'il arrive vraiment qu'une entreprise change de fournisseur au sein des six grands³⁸. » Un autre facteur important qui a mené à cette décision favorable est qu'un autre projet de fusion, entre KPMG et Ernst & Young, qui avait été notifié à peu près au même moment, venait d'être abandonné.

De fait, Price Waterhouse et Coopers & Lybrand et KPMG et Ernst & Young ont annoncé presque simultanément leurs projets de fusion et il est fort possible que si ces derniers n'avaient pas renoncé peu après à leur projet, la décision des différentes autorités de la concurrence n'aurait pas été la même en ce qui concerne la création de PricewaterhouseCoopers. La Commission a été notifiée le 11 décembre 1997 du projet de fusion entre KPMG et Ernst & Young, et a annoncé le 5 février 1998 son intention de mener une enquête approfondie sur ce projet parce qu'il était possible que l'entité créée détienne d'importantes parts de marché dans plusieurs États membres de l'UE pour la prestation de services d'audit et comptables et de conseil fiscal auprès de plusieurs secteurs industriels et commerciaux. La Commission a noté explicitement qu'il fallait également prendre en compte le projet de fusion entre Price Waterhouse et Coopers & Lybrand. Cependant, aucune décision n'a été rendue relativement à cette affaire³⁹ étant donné que KPMG et Ernst & Young ont retiré leur notification de fusion.⁴⁰

En novembre 1998, lors des audiences de l'*International Competition Policy Advisory Committee* (ICPAC), aux États-Unis, M. Kolasky, qui avait conseillé Price Waterhouse au cours des procédures de fusion aux États-Unis, a mentionné à nouveau que le retrait du projet de fusion de KPMG et Ernst & Young est un facteur qui a eu son importance. Il a attiré l'attention sur certaines différences non négligeables entre les marchés américain et européen et observé que la fusion Price Waterhouse/Coopers & Lybrand était riche d'enseignements « *parce que si la coordination était étroite, la structure des marchés en Europe et aux États-Unis était fort différente. En Europe, en raison des restrictions apparentées à celles qu'imposaient les guildes concernant les personnes autorisées à exercer la profession comptable, il existait et il existe toujours des marchés nationaux. Aux États-Unis, le marché national est bien sûr beaucoup plus vaste que celui de n'importe quel pays d'Europe. Les résultats auraient sans doute été*

³⁶ Notons toutefois que la Commission européenne a enquêté sur les services d'audit et comptables mais aussi sur le conseil et l'assistance en fiscalité proposés aux grandes sociétés. Affaire n° IV/M.1016 – Price Waterhouse/Coopers & Lybrand, 20 mai 1998, p. 5.

³⁷ Global Competition Review, « Price-Waterhouse/Coopers & Lybrand », 1^{er} septembre 1998.

³⁸ Affaire n° IV/M.1016 – Price Waterhouse/Coopers & Lybrand, 20 mai 1998, p. 23

³⁹ En raison notamment des obstacles à caractère réglementaire rencontrés par KPMG et Ernst & Young, en particulier en Europe.

⁴⁰ Competition Policy Newsletter, « KPMG/Ernst & Young », juin 1998, p. 67-68.

différents si le projet d'Ernst & Young et KPMG n'avait pas été abandonné au moment où nous présentions le nôtre.⁴¹ »

2.4 Passage de cinq à quatre grands cabinets : la disparition de Arthur Andersen

La fusion à l'origine de la création de PricewaterhouseCoopers a été autorisée partout dans le monde, mais, on l'a vu, n'est intervenue qu'après de longues enquêtes et il a été tenu compte du fait qu'il y aurait quatre autres grands cabinets. D'autres projets de fusion entre les grands cabinets, dorénavant au nombre de cinq, auraient vraisemblablement déclenché des enquêtes approfondies, voire des contestations. Mais c'est un tout autre événement qui devait marquer le marché de la comptabilité.

Le « scandale Enron » qui a éclaté à la fin de 2001 a entraîné la disparition d'Arthur Andersen, qui était chargé des audits de cette société. En décembre 2001, après une série de révélations concernant des procédures comptables irrégulières tout au long de la décennie 90, Enron a demandé à être placée sous la protection de la loi sur les faillites. Il s'est avéré qu'une grande partie des bénéfices et du chiffre d'affaires d'Enron provenaient de transactions avec des entités à objet particulier. Enron avait omis d'inscrire de nombreuses dettes et pertes dans ses états financiers (« opérations hors-bilan⁴² »). La réputation d'Andersen s'est considérablement détériorée lors de l'annonce en janvier 2002 que certains de ses salariés avaient détruit des documents d'audit d'Enron. Le sort d'Andersen a été scellé deux mois plus tard lorsque ce cabinet a fait l'objet de poursuites pénales pour obstruction à la justice au cours de l'enquête sur l'affaire Enron.⁴³ L'annulation de la condamnation d'Andersen par la Cour suprême des États-Unis, le 31 mai 2005⁴⁴, en raison d'insuffisances graves ayant affecté les instructions fournies au jury, n'a rien changé au fait que la réputation de ce cabinet avait été irrémédiablement entachée, au point d'entraîner sa perte.

La plupart des cabinets que possédait le groupe Andersen partout dans le monde ont été cédés à certains membres des quatre grands cabinets d'aujourd'hui (*Big Four*), notamment à Ernst & Young et (au Royaume-Uni) à Deloitte Touche Tohmatsu. Les activités d'Andersen aux États-Unis ont été cédées à différents acheteurs : KPMG, Deloitte Touche Tohmatsu, Ernst & Young et Grant Thornton LLP.⁴⁵ PricewaterhouseCoopers a également repris les bureaux et le personnel d'Andersen en Asie, entre autres.

⁴¹ Déclaration de W.J. Kolasky (Wilmer, Cutler & Pickering), lors des audiences de l'*International Competition Policy Advisory Committee* à Washington, D.C., États-Unis, le 3 novembre 1998, p. 99. Le compte rendu de ces audiences peut être consulté à l'adresse suivante : <http://www.usdoj.gov/atr/icpac/2232-b.htm>.

⁴² McLean et Elkind (2003).

⁴³ Autore, Billingsley et Schneller (2009), p. 183. Voir aussi Krishnamurthy, Zhou et Zhou (2006), qui – à partir d'un vaste échantillon de clients d'Andersen – constatent que le coup porté à la réputation de ce cabinet à la suite de son inculpation a nui à l'image de ses services d'audit sur les marchés boursiers. Cela semble indiquer la présence d'externalités négatives (voir section 3.1 ci-après) sur les actionnaires des clients d'Andersen.

⁴⁴ Arthur Andersen LLP v. United States (04-368), 544 U.S. 696 (2005).

⁴⁵ Le GAO a demandé à 1 085 sociétés auditées par Andersen aux États-Unis vers quel cabinet d'audit elles s'étaient tournées (octobre 2001 – décembre 2002). Parmi ces sociétés, 87 % ont recours à un des quatre grands cabinets et 13 % seulement à un cabinet qui ne fait pas partie de ce groupe. C'est le cabinet Ernst & Young qui a attiré le plus d'anciens clients d'Andersen, suivi de KPMG, Deloitte & Touche, et PricewaterhouseCoopers. Il semble toutefois que ce dernier ait attiré plus de clients que les autres en termes de taille totale moyenne des actifs des sociétés clientes. Parmi les anciens clients d'Andersen qui n'ont pas opté pour l'un des quatre grands cabinets, la plupart se sont tournés vers Grant Thornton ou BDO Seidman. GAO (2003a), annexe III.

La Commission européenne a décidé de ne pas s'opposer aux opérations notifiées dans les trois affaires suivantes, qui concernent des fusions en Europe :⁴⁶

- COMP/M.2810 Deloitte & Touche / Andersen (Royaume-Uni)
- COMP/M.2816 Ernst & Young France / Andersen France
- COMP/M.2824 Ernst & Young / Andersen Allemagne

Ces projets de fusion ont été notifiés à la Commission en 2002, à savoir le 29 mai dans le cas du Royaume-Uni, le 1^{er} juillet dans celui de la France et le 23 juillet 2002 dans celui de l'Allemagne. Le projet de fusion concernant la France a notamment fait l'objet d'un examen attentif des autorités de réglementation parce qu'il faisait de ce cabinet, aux dires de la Direction générale de la concurrence, le principal acteur sur le marché français des services d'audit et comptables⁴⁷. La fusion a toutefois été autorisée, vu l'absence de risque de formation d'une position dominante unique, puisque l'on pouvait prévoir que bon nombre des clients d'Andersen seraient perdus en raison de différends commerciaux, et que la part de marché de l'entité créée s'en trouverait inévitablement diminuée.

Selon la Commission, les marchés de produits pertinents, dans cette affaire, étaient :

- (b) Les services d'audit et comptables dispensés aux grandes sociétés cotées
- (c) Les services d'audit et comptables dispensés aux PME
- (d) Les services de conseil et d'assistance en fiscalité
- (e) Les services d'assistance financière aux entreprises
- (f) Les services de conseil juridique

Cependant, comme la part de marché combinée des parties ne dépasserait guère plus de 15 % sur le marché français des services d'audit et comptables fournis aux grandes sociétés cotées et des services de conseil en fiscalité ayant une dimension internationale, l'évaluation des effets sur la concurrence qui, on l'a vu, a abouti à une décision favorable, a essentiellement porté sur ces deux marchés.⁴⁸

Fait intéressant, la Commission a indiqué, dans chacune des trois affaires de fusion intervenues en Europe en rapport avec Andersen, que le passage de cinq à quatre réseaux mondiaux d'expertise comptable était inévitable à la suite de la désintégration du réseau Andersen dans le sillage du scandale Enron. La Commission a également affirmé « *qu'un nouvel entrant sur l'actuel marché des quatre grands cabinets (autrement dit un cabinet de taille intermédiaire) ne pourrait devenir un cinquième acteur viable que s'il reprenait la totalité, ou du moins la majorité, des entités détenues par Andersen dans un pays donné. Au mieux, cette initiative ne serait fructueuse qu'à long terme. En effet, les grandes sociétés cotées exigent que leur fournisseur de services d'audit et comptables jouisse d'une réputation établie de longue date dans le*

⁴⁶ En application de l'article 6(1)(b) du Règlement du Conseil n° 4064/89 (ancien règlement sur les concentrations), remplacé subséquemment par le Règlement (CE) n° 139/2004 du Conseil du 20 janvier 2004 relatif au contrôle des concentrations entre entreprises (« le règlement CE sur les concentrations »).

⁴⁷ Global Competition Review, « Commission clears EY/Andersen French merger », 13 septembre 2002.

⁴⁸ COMP/M.2816 Ernst & Young France / Andersen France, 5 septembre 2002, p. 6-24.

*domaine et disposent d'un réseau international, deux conditions qu'un nouvel entrant ne saurait remplir à court terme.*⁴⁹ »

2.5 Comment l'avenir s'annonce-t-il ?

Étant donné que la concurrence qui règne sur le marché des services d'audit et comptables dispensés aux grandes sociétés cotées est principalement limitée à celle que se livrent les quatre premiers réseaux, il est fort peu probable que ceux-ci annoncent une nouvelle fusion, et encore moins que cette fusion soit autorisée par les autorités de la concurrence.⁵⁰ Un événement marquant comme la disparition d'Andersen pourrait toutefois accentuer la concentration s'il se soldait par le démantèlement d'un des quatre grands cabinets encore présents. Bien qu'un tel événement ne risque pas de se produire dans un avenir proche, les régulateurs devraient en étudier les effets éventuels et adapter leur comportement et leurs règles en conséquence. Ils devraient notamment examiner en priorité les moyens qu'il conviendrait de prendre pour préserver le capital humain d'un cabinet qui disparaîtrait de la sorte. La structure d'entreprise des grands cabinets d'audit, qui sont des sociétés de personnes, limite leur capacité de lever des capitaux. Il conviendrait peut-être d'envisager d'autoriser, tout du moins temporairement, des investisseurs extérieurs à prendre des participations dans les grands cabinets d'audit si cela devait permettre de préserver leurs ressources humaines en cas d'événement marquant.

En outre, selon certains spécialistes de la concurrence, les fusions de cabinets intermédiaires devraient être autorisées parce qu'elles pourraient exercer une pression concurrentielle sur les quatre grands cabinets. Les cabinets intermédiaires, dont la taille, le chiffre d'affaires et le champ d'activité sont parfois loin d'être négligeables -- c'est notamment le cas de Grant Thornton, de BDO International, de RSM International et de Baker Tilly International -- pourraient ainsi acquérir l'envergure nécessaire pour remporter des marchés importants. On a vu précédemment que Grant Thornton LLP a acquis une partie du groupe Andersen après sa faillite. Le traitement que réserveront les régulateurs aux projets de fusion entre concurrents des quatre grands cabinets revêtira une grande importance.⁵¹

Le fait de faciliter l'entrée ou l'expansion de nouveaux réseaux de cabinets sur le marché des services d'audit et comptables destinés aux grandes sociétés cotées peut être bénéfique pour la concurrence mais pose d'énormes difficultés. La plupart des grandes sociétés faisant appel à l'épargne publique semblent peu enclines à se tourner vers des concurrents des quatre grands cabinets,⁵² même si certains cabinets

⁴⁹ COMP/M.2810 Deloitte & Touche / Andersen (Royaume-Uni), 1^{er} juillet 2002, p. 10.

⁵⁰ Le GAO (2003a, p. 16) note qu'aux États-Unis, « *le marché de l'audit des grandes sociétés est un oligopole restreint dans le cadre duquel les quatre premiers cabinets représentent plus de 60 % du marché, les autres cabinets étant confrontés à de fortes barrières à l'entrée sur le marché. Sur le marché de l'audit des grandes sociétés faisant appel à l'épargne publique, les quatre grands cabinets [en 2002-03] auditent plus de 97 % de sociétés ayant un chiffre d'affaires de plus de 250 millions USD et les autres cabinets sont confrontés à d'importantes barrières à l'entrée.* » Dans les autres pays, les parts de marché des quatre grands cabinets étaient également élevées puisqu'elles atteignaient plus de 80 % au Japon, 90 % aux Pays-Bas et près de 100 % au Royaume-Uni (selon des fonctionnaires des autorités de réglementation). GAO (2003a), p. 18.

⁵¹ Global Competition Review, « Grant Thornton UK LLP is merging with rival RSM Robson Rhodes », 30 avril 2007.

⁵² Le GAO (2003a, p. 26) présente les résultats d'une enquête réalisée en 2003 auprès de 147 sociétés faisant appel à l'épargne publique aux États-Unis. La grande majorité des interrogées (130 sur 147) ont répondu qu'elles n'envisageraient pas de confier des missions d'audit et d'attestation à un concurrent des quatre grands cabinets. Une enquête menée en 2007 auprès de quelque 600 sociétés faisant appel à l'épargne publique a montré encore que 86 % des sociétés de la liste Fortune 1000 ne changeraient vraisemblablement pas de fournisseur pour faire d'un cabinet de taille moyenne leur cabinet d'audit attitré.

intermédiaires sont de taille non négligeable et ont déjà créé de vastes réseaux internationaux (voir encadré 1.⁵³) Si les régulateurs et les autorités de la concurrence sont préoccupés par l'absence de concurrence sur le marché des services d'audit, ils devraient logiquement encourager le projet d'expansion des réseaux intermédiaires, et non s'y opposer, et s'attaquer aux obstacles réglementaires et liés au marché qui freinent cette expansion. L'évaluation des éventuels projets de fusion entre ces cabinets devrait en conséquence s'étendre à leurs effets sur la concurrence dans les services d'audit et comptables destinés aux grandes sociétés cotées.

Lorsqu'une entreprise souhaite faire appel à un cabinet d'audit autre que l'un des *Big Four*, certaines pratiques en vigueur sur le marché risquent de l'en empêcher ou de l'en dissuader. De telles pratiques existent désormais aux États-Unis, en Allemagne et au Royaume-Uni, où des tierces parties, par exemple les bailleurs de fonds, imposent aux sociétés des clauses qui limitent le choix du cabinet d'audit à l'un des *Big Four* ou se traduisent par l'application de conditions moins favorables en matière de financement par l'emprunt si le cabinet d'audit retenu ne fait pas partie des *Big Four*⁵⁴. Ces restrictions ne reposent pas sur une évaluation qualitative de l'ensemble des cabinets d'audit disponibles et empêchent les cabinets exclus de rivaliser avec les *Big Four* et, par conséquent, de s'implanter ou de se développer davantage sur le marché de l'audit des sociétés cotées et des grandes entreprises. Les effets positifs d'autres initiatives visant à accroître le nombre de prestataires de services d'audit à grande échelle au niveau international s'en trouvent fortement atténués du fait de limitations inutiles sur le plan de la demande.

Avant de prendre une série de mesures pour réduire la concentration sur le marché de l'audit, les régulateurs et les autorités de la concurrence devraient s'attacher à veiller à ce que le choix d'un cabinet d'audit légal par une entreprise soit fondé sur des critères objectifs liés à la qualité des services du cabinet en question, et à ce qu'il ne soit pas altéré par des restrictions, imposées par des tiers, sans rapport avec la qualité des services d'audit.

Le GAO (2003) a examiné les obstacles à l'entrée auxquels sont confrontés les cabinets intermédiaires concurrents des quatre grands cabinets. Bien que l'étude concerne au premier chef les États-Unis, les résultats sont de portée beaucoup plus générale et il y est également expliqué *pourquoi* les gros clients ne souhaitent pas changer de fournisseur et opter pour un concurrent des quatre premiers cabinets.⁵⁵

- (a) De manière générale, ces cabinets ne disposent pas des ressources humaines, de l'expertise technique et de l'envergure mondiale pour auditer les grandes sociétés multinationales ;

Aucune de ces sociétés n'était susceptible de recourir aux services d'un petit cabinet (GAO, 2008, p. 21). Voir aussi l'observation de la Commission à la section 2.4 ci-dessus.

⁵³ En 2004, les principaux cabinets intermédiaires mondiaux étaient BDO International, Grant Thornton International, RSM International, Moores Rowland International (mis en liquidation en 2007) et Baker Tilly International. Les quatre grands cabinets dominant toutefois nettement le marché en termes de chiffre d'affaires et d'effectif. Voir Oxera (2006), p. 55-57. Pour les données de 2008, se reporter à <http://www.wordaccountingintelligence.com>.

⁵⁴ Voir, par exemple, l'accord de crédit du 26 mars 2008 concernant AMEDISYS, INC. et AMEDISYS HOLDING, LLC, appendice 10.1 au formulaire 8-K d'AMEDISYS, INC., archives EDGAR du 1^{er} avril 2008, à l'adresse <http://www.sec.gov/Archives/edgar/data/896262/000119312508072443/dex101.htm>, ou l'accord de crédit et de garantie du 28 décembre 2006 concernant Coffeyville Resources, LLC et autres, appendice 10.1 au formulaire S-1/A de CVR Energy Inc. en date du 12 février 2007, à l'adresse <http://www.sec.gov/Archives/edgar/data/1376139/000095012307001825/125337a4exv10w1.htm>.

⁵⁵ GAO (2003a), p. 45-51. Ces résultats ont été confirmés dans le document GAO (2008), p. 5.

- (b) Les sociétés faisant appel à l'épargne publique et les marchés semblent préférer les quatre grands cabinets en raison de leur réputation bien établie ;
- (c) En général, les coûts plus élevés associés aux risques juridiques et à l'assurance que représente l'audit de sociétés faisant appel à l'épargne publique dissuadent ces cabinets de concurrencer activement les quatre grands cabinets ;
- (d) Ces cabinets peuvent difficilement mobiliser des fonds pour étendre leur infrastructure et concurrencer les quatre grands cabinets du fait que leur constitution en sociétés de personnes restreint leur capacité de faire appel à des capitaux extérieurs.

On peut supposer que d'autres fusions entre certains des principaux cabinets intermédiaires permettraient de surmonter les obstacles à l'entrée mentionnés ci-dessus, et en particulier le premier (à court terme) mais aussi les autres (à long terme). Ce scénario ne fait toutefois pas partie des plus plausibles.

En 2008, le GAO a publié un rapport de suivi qui – entre autres choses – analyse certains projets mis en avant par les spécialistes et des groupes d'entreprises pour traiter ces obstacles à l'entrée, notamment plafonner la responsabilité des auditeurs⁵⁶ et mettre en place un bureau en vue de mettre en commun l'expertise technique⁵⁷. Le plafonnement de la responsabilité des auditeurs traiterait le troisième obstacle évoqué ci-dessus et la création d'un bureau d'expertise remédierait principalement au premier. Le GAO conclut toutefois qu'aucune des propositions examinées ne recueillait un large appui. Les acteurs du marché ont soulevé des questions concernant globalement leur efficacité, leur faisabilité, et leurs avantages. Par exemple, selon certains spécialistes et d'autres personnes interrogées par le GAO, le plafonnement de la responsabilité des auditeurs pourrait réduire les incitations à effectuer un travail de qualité ou limiter la capacité des investisseurs à récupérer leurs pertes en cas de fraude commise par un auditeur⁵⁸. En Europe en revanche, la Commission a, suite à une étude indépendante de London Economics (2006) et à une consultation publique, publié en juin 2008 une Recommandation concernant la limitation de la responsabilité civile des auditeurs.⁵⁹

La solution au quatrième obstacle à l'entrée mentionné ci-dessus serait peut-être d'autoriser tant les sociétés de personnes que les sociétés par actions à responsabilité illimitée (dont les associés du cabinet étaient au départ des actionnaires importants) à fournir des services d'audit et comptables⁶⁰. Il serait dans

⁵⁶ Cette solution a été examinée – et parfois mise en œuvre – dans de nombreux pays. Voir également l'annexe. Les débats ayant eu lieu en Europe sont répercutés sur http://ec.europa.eu/internal_market/auditing/liability/index_en

⁵⁷ Il a également été proposé d'exiger qu'un ou plusieurs grands cabinets scindent une partie de leurs activités afin de créer plus de quatre cabinets capables d'auditer les grandes sociétés faisant appel à l'épargne publique. Cela réduirait toutefois leurs économies d'échelle et leurs domaines de compétence. GAO (2008), p. 54-55.

⁵⁸ Voir également GAO (2008), p. 55-56. Ces arguments ont également été invoqués à l'égard d'une proposition visant à faire en sorte que les régulateurs ou d'autres instances prennent des mesures d'exécution à l'encontre des associés ou des salariés responsables seulement plutôt que de l'ensemble du cabinet.

⁵⁹ Journal officiel de l'Union européenne, L 162, Vol. 51, 21.06.2008, pp 39-40. Cette Recommandation a principalement pour vocation d'encourager le développement d'autres cabinets d'audit sur un marché concurrentiel en réduisant certains des risques liés à ces audits.

⁶⁰ Voir également GAO (2008), p. 59-60. Ce document examine la proposition visant à autoriser des prises de participation d'investisseurs extérieurs dans des cabinets d'audit afin de mobiliser les fonds nécessaires à l'expansion de leurs activités. Les acteurs du marché aux États-Unis étaient généralement d'avis que cela

ce cas plus facile de réunir les ressources nécessaires pour créer un nouveau cabinet d'audit, puisque des investisseurs privés pourraient engager des fonds considérables à cette fin. Cela permettrait également d'améliorer la capacité des associés de céder des actions aux taux du marché et fournirait une assurance aux gros clients quant à la viabilité du cabinet. Des garanties appropriées seraient toutefois nécessaires pour assurer l'indépendance et la qualité de l'audit. Actuellement, de nombreux pays réglementent (plus ou moins) les types d'entreprises qui sont autorisées à fournir des services d'audit et interdisent à des investisseurs extérieurs de prendre des participations dans des cabinets d'audit (voir section 3.1.2.) Même si les sociétés par actions ne sont habituellement pas autorisées à créer un cabinet d'audit, il convient peut-être d'envisager des exceptions à cette règle dans les cas de démantèlement possible d'un grand cabinet d'audit.⁶¹

Certains des scénarios évoqués ci-dessus – permettre l'expansion des réseaux intermédiaires actuellement en place (si cela se produit par l'appel au marché) et permettre à des investisseurs extérieurs de créer un nouveau cabinet d'audit – pourraient également empêcher la disparition d'un cabinet dans des circonstances analogues à celle d'Arthur Andersen. En d'autres termes, si l'un des quatre grands cabinets se trouvait devant de grandes difficultés, par exemple en cas de responsabilité pénale présumée au titre de ses activités d'audit.⁶² les cabinets et les salariés du groupe ne seraient pas nécessairement absorbés par l'un des trois autres groupes.

Notons enfin que les quatre grands cabinets eux-mêmes se préoccupent des conflits d'intérêts qui peuvent surgir au sein de leur structure organisationnelle. En mai 2000, Ernst & Young a cédé ses activités de conseil à la société française de services des technologies de l'information Cap Gemini⁶³ et en octobre 2002, PricewaterhouseCoopers a vendu les siennes à IBM. KPMG a formellement cédé ses activités de conseil aux États-Unis en janvier 2000 (ce service de conseil est maintenant fourni sous la raison sociale BearingPoint en octobre 2002), et, en août 2002, a cédé ses services de conseil au Royaume-Uni et aux Pays-Bas à Atos Origin. Seul Deloitte & Touche a conservé ses activités de conseil en gestion.⁶⁴

aurait peu d'effet sur leur aptitude à accroître leur part de marché. Le principal obstacle à leur croissance était la pénurie de professionnels compétents dans le domaine de l'audit et non l'accès restreint à des capitaux.

⁶¹ Il convient d'aborder une question importante, qui est de savoir si les conflits d'intérêts sont exacerbés par la présence d'actionnaires extérieurs. Si les actionnaires avaient une responsabilité illimitée comme dans certains consortiums financiers, le problème posé par les conflits d'intérêts pourrait être atténué.

⁶² Cette éventualité n'est pas totalement à écarter étant donné qu'actuellement, des cabinets d'audit sont confrontés à une série de poursuites judiciaires subséquentes aux faillites survenues pendant la crise financière. Dans la première affaire visant un auditeur à la suite de la crise financière, le 1^{er} avril 2009, les liquidateurs de New Century (prêteur qui a fait faillite après avoir consenti des crédits *subprime* aux États-Unis) ont intenté une poursuite de 1 milliard USD contre KPMG. Parallèlement, les quatre grands cabinets et quelques cabinets intermédiaires font face à de nombreuses poursuites liées aux fraudes comptables découvertes au début des années 2000. Voir le *Financial Times*, « New Century liquidators sue KPMG for \$1bn », 1^{er} avril 2009. En ce qui concerne les frais juridiques, voir également GAO (2008), p. 32-33.

⁶³ Voir également le document de la Commission européenne COMP/M.2816 – Ernst & Young / Andersen France, 5 septembre 2002, p. 2, dans lequel il est indiqué qu'Ernst & Young n'est plus actif dans le domaine du conseil aux entreprises.

⁶⁴ Dans une certaine mesure, ces poursuites découlaient également des modifications apportées à la réglementation. En 2001, par exemple, l'*American Securities and Exchange Commission* (SEC) a modifié ses règles concernant l'indépendance des auditeurs. Après l'adoption de la loi Sarbanes-Oxley, en 2002, la SEC a publié en mars 2003 de nouvelles règles relatives à l'indépendance des cabinets d'audit. Ces modifications apportent de nouvelles restrictions relativement aux services de conseil en gestion et à d'autres services hors audit que ces cabinets peuvent proposer à leurs clients. Voir GAO (2003a), p. 9-10.

**Encadré 7. Études sur les cabinets d'audit effectuées aux États-Unis
par le *Government Accountability Office (GAO)***

La loi Sarbanes-Oxley de 2002 dispose que le *Government Accountability Office (GAO)* étudie : 1) les facteurs qui contribuent aux fusions entre grands cabinets d'audit ; 2) les incidences des concentrations sur la concurrence et le choix des clients, les honoraires et la qualité des audits, et l'indépendance des auditeurs ; 3) l'impact des concentrations sur la formation de capital ; et 4) les barrières à l'entrée auxquelles se heurtent les petits cabinets d'audit. En 2003, deux études ont abordé l'ensemble de ces questions (voir GAO (2003a) et GAO (2003b)).

Les conclusions auxquelles sont parvenus les auteurs de ces études en ce qui concerne les premier et quatrième points sont respectivement exposées dans les sections Section 2.2 et 2.5 du présent document. S'agissant des deuxième et troisième points, le GAO constate que le principal impact que l'on peut attribuer aux concentrations tient au choix limité qui s'offre aux grandes sociétés qui recherchent des cabinets de grande envergure en termes de ressources humaines, de spécialisation sectorielle, de couverture géographique et de réputation internationale. Dans de nombreux cas, le choix était encore plus restreint en raison des risques de conflits d'intérêts, des exigences de la loi Sarbanes-Oxley (en particulier en ce qui concerne l'indépendance) et/ou des impératifs de spécialisation sectorielle. Les études consacrées aux honoraires d'audit, à la qualité et à l'indépendance des cabinets n'ont pas permis d'établir une relation directe entre ces éléments et les opérations de concentration. De même, le GAO n'a pas pu établir de relations claires entre les opérations de concentration et la formation de capital mais a toutefois observé les impacts possibles de celles-ci sur des petites sociétés cherchant à mobiliser des capitaux. Le GAO a toutefois conclu que le comportement passé ne permet pas de présumer du comportement futur compte tenu des évolutions inédites intervenues sur le marché de l'audit.

En 2008, le GAO a rédigé un rapport de suivi dans lequel il rend compte de l'évolution des concentrations sur le marché de l'audit des grandes sociétés faisant appel à l'épargne publique. Ce rapport examine : 1) les opérations de concentration intervenues sur le marché de l'audit des sociétés faisant appel à l'épargne publique ; 2) la possibilité que la croissance des cabinets d'audit de moindre envergure atténuent la concentration du marché ; et 3) les propositions qui ont été faites par des tiers pour atténuer la concentration et les obstacles auxquels sont confrontés ceux qui souhaitent accroître leur part de marché.

En ce qui concerne le premier point, le GAO montre qu'aux États-Unis, les quatre grands cabinets continuent d'auditer la quasi-totalité des grandes sociétés faisant appel à l'épargne publique tandis que le marché de l'audit des petites sociétés de cette catégorie est beaucoup moins concentré. De nombreuses grandes sociétés faisant appel à l'épargne publique ont vu leur choix de cabinets d'audit se limiter à trois cabinets ou moins. En général, ces sociétés estiment que la concurrence sur le marché de l'audit est insuffisante. Bien que les honoraires d'audit aient progressé considérablement ces dernières années, les acteurs du marché attribuent cette progression aux exigences toujours croissantes imposées aux services d'audit et comptables et aux coûts du personnel comptable plutôt qu'à la concentration du marché. En ce qui concerne le deuxième point, plusieurs problèmes ont été soulignés mais il semble que la plupart des cabinets de moindre envergure ne souhaitent pas étendre leurs activités et auditer davantage de sociétés faisant appel à l'épargne publique. D'autres constatations se rapportant aux deuxième et troisième points sont présentées à la section 2.5.

Le GAO conclut son rapport 2008 en affirmant qu'étant donné que la concentration n'entraîne pas d'effet défavorable important dans le contexte actuel et qu'il n'y a pas de consensus précis sur les moyens à prendre pour la réduire (voir la section 2.5), il ne paraît pas urgent de prendre des mesures immédiates aux États-Unis.

Les points à retenir de la présente section sont les suivants :

- En vingt ans, le nombre de grands cabinets d'audit et de services professionnels est passé de huit à quatre (à la suite de trois fusions et d'un scandale ayant affecté une entreprise et un cabinet d'audit).

- Les autorités de la concurrence ont enquêté sur certaines fusions et au moins un projet de fusion a été abandonné ;
- Les quatre grands cabinets qui restent sont dans de nombreux pays les principaux acteurs sur le marché des services d'audit et d'expertise comptable pour les grandes sociétés cotées tandis que la part de marché des réseaux intermédiaires est faible ;
- Tel n'est toutefois pas le cas sur les autres marchés où les cabinets d'audit sont présents (sauf peut-être en ce qui concerne les services de conseil) ;
- La fusion de PricewaterhouseCoopers (et des fusions subséquentes le confirment) a fait en sorte que les marchés géographiques sont considérés comme étant des marchés nationaux en raison de la réglementation relative à l'entrée et à la conduite en vigueur au niveau national (voir section 3) ;
- Les grandes sociétés faisant appel à l'épargne publique qui doivent être auditées estiment que la concurrence est insuffisante sur le marché de l'audit. Il y a toutefois peu d'éléments tendant à démontrer que l'actuelle structure concentrée du marché entraîne des effets défavorables.
- Suivant l'hypothèse généralement admise selon laquelle favoriser la concurrence a des effets bénéfiques, il conviendrait de faciliter l'entrée de nouveaux réseaux mondiaux par les moyens suivants :
 - éviter les restrictions inutiles imposées aux entreprises par des tiers (tels que les bailleurs de fonds) en ce qui concerne le choix d'un cabinet d'audit légal ;
 - permettre (si possible) l'expansion des réseaux intermédiaires existants ; et
 - dans les pays où cela n'est pas encore le cas, autoriser les sociétés de personnes et les sociétés par actions à responsabilité illimitée (sous réserve de restrictions visant à réduire les conflits d'intérêts).

3 Analyse économique de la réglementation dans les professions comptables

Dans tous les pays de l'OCDE, l'entrée sur le marché des services de comptabilité aussi bien que la conduite de leurs fournisseurs sont réglementées. Le degré de réglementation est toutefois variable d'un pays à l'autre. Comme cela a été fait pour d'autres professions, il est utile d'examiner cette réglementation afin de déterminer si elle a parfois pour effet de restreindre exagérément la concurrence.

Deux grandes approches de la réglementation se dégagent des travaux juridiques et économiques : l'approche fondée sur l'*intérêt général* et l'approche fondée sur l'*intérêt particulier*. L'approche fondée sur l'intérêt général considère la réglementation comme un moyen possible de remédier aux défaillances du marché. L'approche fondée sur l'intérêt particulier insiste sur le danger que présente le comportement de recherche de rente de groupes de défense d'intérêts catégoriels par l'exercice de pressions ou l'autorégulation. On trouvera à l'annexe une synthèse des deux approches et de leur application dans le secteur des services de comptabilité.⁶⁵ Les formes les plus courantes de réglementation qui sont susceptibles de restreindre la concurrence dans ce secteur seront abordées : normes de qualité et droits d'exclusivité, restrictions quantitatives, restrictions relatives à la publicité, réglementation des prix et règles

⁶⁵ Pour des synthèses et des analyses plus complètes des deux approches, voir Posner (1974) ; Faure *et al.* (1993) ; Hägg (1997) ; Den Hertog (2000) et Philipsen (2003). Voir aussi OCDE (2007).

applicables à la coopération interprofessionnelle et à la structure d'entreprise. L'encadré 3 montre que dans de nombreux pays, la réglementation professionnelle est soumise au droit de la concurrence. Suit enfin une brève analyse de l'autoréglementation.

Encadré 8. Application des règles de la concurrence aux professions comptables aux États-Unis, au Canada et en Australie

En 1975, la Cour suprême des États-Unis a décidé, dans l'affaire *Goldfarb* (*Goldfarb v Virginia State Bar*, 421 U.S. 773 (1975)) que le texte de l'article de la loi Sherman ne contient pas d'exceptions pour les membres de professions libérales qui louent leurs services. Kolasky (2006) indique que l'applicabilité de la législation antitrust des États-Unis a été confirmée dans sept autres affaires concernant les « professions intellectuelles ». La Cour suprême établit une distinction entre les ententes sur les prix, qui sont réputées illicites en soi, et les restrictions à la publicité susceptibles d'être bénéfiques à la concurrence en protégeant les consommateurs d'affirmations mensongères ou trompeuses. Voir également Andrews (2002), p. 284-285. Au Canada, la loi sur la concurrence de 1985 est une loi d'application générale qui a été également mise en œuvre à l'encontre des professions. (Goldman et Little (1996), p. 337-338)).

Aux États-Unis et au Canada, les États et provinces peuvent adopter des lois destinées à protéger les secteurs d'activité de l'application des règles générales du droit de la concurrence. Les problèmes qui en résultent relèvent des « moyens de défense fondés sur la doctrine de l'intervention de l'État » aux États-Unis et des « moyens de défense fondés sur une conduite réglementée » au Canada. Dans l'affaire *Jabour*, la Cour suprême du Canada a considéré que le mandat général dont est investie la *Law Society of British Columbia*, en l'occurrence celui de fixer des normes de bonne conduite, lui conférait une légitimité suffisante pour interdire aux avocats de faire de la publicité pour leurs services (*Procureur général du Canada c. Law Society of B.C.*, [1982] 2 R.C.S. 307). Le Bureau de la concurrence a toutefois opté pour une interprétation étroite de la défense fondée sur une conduite réglementée, estimant qu'il ne s'appliquait qu'aux conduites réglementées contraires à la Loi sur la concurrence et résultant d'un mandat ou d'une obligation imposée par l'autorité de réglementation. Selon Goldman et Little (2006), le champ d'application du principe de la défense fondée sur la conduite réglementée demeure peu clair. La difficulté qui se pose tient à la nécessité de bien faire l'arbitrage entre l'intérêt général protégé par la Loi sur la concurrence et les objectifs d'intérêt général atteints par le biais de la réglementation. En 2007, le Bureau de la concurrence a publié un rapport sur ce sujet dans lequel il analyse plus en détail la réglementation de cinq professions (notamment la profession comptable).

En Australie, la *Trade Practices Act* de 1974 n'a eu au départ que peu d'incidences sur les professions en raison de la compétence restreinte conférée par la Constitution au gouvernement fédéral. Cette situation a été modifiée en 1990 lorsque la *Trade Practices Commission* (intégrée par la suite à l'ACCC (*Australian Consumer Competition and Consumer Commission*)) a publié un document d'orientation sur les incidences de la réglementation des professions libérales sur la concurrence. De nombreuses études ont ensuite été consacrées à des thèmes particuliers, notamment à la profession comptable, en 1992. La *Trade Practices Commission* a constaté que le degré de réglementation de la profession comptable était plus faible comparativement à d'autres professions mais que certains règlements sont inutilement restrictifs eu égard à l'intérêt général (TPC (1992)). À la suite des rapports et des recommandations de la TPC, la réglementation australienne sur la concurrence a pu s'appliquer intégralement aux professions à compter de novembre 1995. Fels (2006) effectue un tour d'horizon des changements intervenus depuis 1995, notamment dans les professions médicales. Cet auteur note que l'ACC a intenté des poursuites contre des avocats et des agents immobiliers et que les tribunaux sont disposés à admettre que des membres de ces professions ont enfreint la loi.

3.1 Formes de réglementation

Comme nous l'expliquons dans l'annexe une intervention des autorités de réglementation dans le marché des services de comptabilité peut être nécessaire en raison de problèmes d'asymétrie d'information et d'externalités. Dans la pratique, il existe différents types de réglementation de l'entrée et de la conduite sur ce marché. Cette section aborde les formes de réglementation les plus courantes :

- Normes de qualité et droits d'exclusivité ;

- Restrictions quantitatives ;
- Restrictions visant la publicité ;
- Réglementation des prix ; et
- Règles applicables à la coopération interprofessionnelle et à la structure d'entreprise.

3.1.1 Réglementation de l'entrée

La réglementation de l'entrée définit les conditions qu'il faut remplir pour exercer la profession comptable. Ces conditions concernent par exemple la formation nécessaire, l'adhésion à une association professionnelle, l'octroi d'autorisations et les limitations concernant le nombre de praticiens sur le marché. Ces conditions sont généralement associées à un monopole professionnel, c'est-à-dire à des droits exclusifs d'exécuter certaines tâches, par exemple l'audit légal.

En 2003, l'adhésion obligatoire à un organisme professionnel qui contrôle et sanctionne les activités de ses membres a été exigée pour les auditeurs dans la plupart des 15 États alors membres de l'UE (l'Allemagne, l'Autriche, la Belgique, le Danemark, la France, l'Irlande, l'Italie, le Luxembourg, les Pays-Bas, le Portugal et le Royaume-Uni), sauf l'Espagne, la Finlande et la Suède. Dans tous les États membres de l'UE, l'audit légal est un droit exclusif d'un ou plusieurs groupes professionnels mais la réglementation de l'entrée sur le marché pour la prestation d'autres services financiers varie d'un pays à l'autre. En Allemagne, en Autriche, en Belgique en France et au Luxembourg, les droits exclusifs des comptables étaient beaucoup plus étendus que dans les autres pays de l'UE du fait que les services d'audit autre que l'audit légal, d'expertise comptable et de tenue de livres (en Autriche et en Belgique) et de conseil fiscal et de représentation fiscale (en Allemagne, en Autriche et en France) correspondaient à des droits exclusifs des professions concernées.⁶⁶ La couverture géographique limitée des droits exclusifs en matière de conseil fiscal et de représentation fiscale donne à penser qu'il n'est pas nécessaire que ces services bénéficient de droits exclusifs. Les droits exclusifs accordés aux prestataires de ces services méritent en particulier un examen attentif. Une étude subséquente menée par la Commission européenne sur la réglementation des services comptables dans dix nouveaux États membres de l'UE⁶⁷ montre que dans ces pays (en 2004), l'adhésion à l'association professionnelle est une condition préalable à la prestation de services d'audit.

Aux États-Unis, tous les territoires (les 50 États, le District de Columbia, Guam, Porto Rico et les Îles Vierges américaines) sont dotés d'une législation régissant la délivrance d'une autorisation aux experts-comptables agréés, y compris les conditions concernant les qualifications, les examens et l'expérience. Si l'utilisation du titre d'expert-comptable agréé dans chaque territoire soit réservée aux personnes inscrites auprès de l'autorité compétente, les autres exigences qui s'appliquent à l'obtention d'une autorisation ne sont pas uniformes.⁶⁸

Normes de qualité et droits exclusifs

La réglementation de l'entrée peut favoriser l'amélioration de la qualité du service mais celle du nombre de professionnels comptables ou de leur mobilité sur le marché risque de restreindre

⁶⁶ Pour plus de détails, voir Paterson, Fink, Ogus *et al.* (2003), p. 33-38.

⁶⁷ Soit les quatre pays suivants membres de l'OCDE : la Hongrie, la Pologne, la République slovaque et la République tchèque.

⁶⁸ GAO (2003a), p. 51.

considérablement la concurrence.⁶⁹ Leland (1979), de même que Shaked et Sutton (1981), ont affirmé que lorsque les groupes professionnels sont autorisés à fixer eux-mêmes les normes de qualité, celles-ci risquent d'être trop strictes du point de vue du bien-être social.

À la suite de Friedman et Kuznets (1945), qui les premiers ont cherché à savoir si les obstacles institutionnels à l'entrée induisent des bénéfices exceptionnels,⁷⁰ de nombreux auteurs d'études fondées sur l'observation ont abordé les effets de la réglementation à l'entrée sur la qualité et les honoraires des professions concernées. Cox et Foster (1990) ont passé en revue plusieurs de ces études pour le compte de la *Federal Trade Commission*, aux États-Unis : « *si quelques études indiquent que les restrictions de l'activité des entreprises sont susceptibles de favoriser des niveaux élevés de qualité, la majorité constate que les restrictions visant les autorisations professionnelles et les activités qu'elles couvrent n'ont pas d'incidence sur la qualité.* » Une étude consacrée aux services comptables conclut que les restrictions visant l'octroi d'une autorisation n'influent pas sur la qualité du service.^{71 72}

Bortolotti et Fiorentina (1999) étudient les restrictions visant l'entrée et la qualité sur le marché italien des services comptables entre 1980 et 1991. Sur ce marché, le même service était assuré par deux professions distinctes, les *commercialisti* (diplômés en sciences économiques) et les *ragionieri* (comptables). Seuls les *commercialisti* étaient toutefois tenus par la loi d'être titulaires d'un diplôme universitaire.⁷³ Il n'y avait entre les deux professions pas d'autres contraintes liées à la liberté d'implantation géographique ni de différences fonctionnelles. Les données factuelles obtenues par les auteurs indiquent clairement que l'entrée sur le marché des *ragionieri*, moins diplômés, et d'autres entrants potentiels, réduisait la rentabilité du marché pour les *commercialisti*. Une barrière institutionnelle à l'entrée, en l'occurrence un examen professionnel géré dans une certaine mesure par les *commercialisti* en place, a permis de préserver les rentes monopolistiques sur ce marché. Les auteurs concluent : « *ce résultat remet quelque peu en question l'idée selon laquelle les ordres professionnels sont des institutions*

⁶⁹ En outre, les consommateurs risquent de ne plus avoir accès à des services moins chers de faible qualité. Shapiro (1986) traite plus généralement les différences entre l'octroi de certificats et d'autorisations. Les effets de substitution induits par les restrictions applicables aux autorisations sont abordés par Carroll et Gaston (1981).

⁷⁰ Selon ces auteurs, les professionnels américains ont obtenu, entre 1929 et 1936, des rentes économiques allant de 15 à 110 %. Le document OCDE (2007), p. 25, situe cette étude dans le contexte de l'approche de la réglementation fondée sur l'intérêt particulier.

⁷¹ Young (1987).

⁷² Kleiner et Kurdle (2000) utilisent des données sur la santé dentaire du personnel nouvellement recruté par l'Armée de l'air pour analyser les effets des diverses restrictions en matière d'octroi d'autorisation appliquées à travers les États-Unis. Ces auteurs constatent que des règles plus strictes en matière d'autorisation font monter les prix et les bénéfices (mesurés en fonction des gains horaires des dentistes) sans pour autant améliorer la santé dentaire globale (mesurée par les plaintes déposées auprès de l'ordre des chirurgiens-dentistes et les primes d'assurance en responsabilité professionnelle). Svorny (2000) mentionne également certaines études qui ont mis en évidence une relation directe entre les mesures de la sévérité en matière d'autorisation et les coûts, les prix ou les gains. Dans une étude consacrée à l'octroi d'une autorisation professionnelle sur le marché américain des avocats, Pagliero (2005) rejette la théorie de la réglementation fondée sur les intérêts particuliers en se fondant sur des données sur la difficulté des examens, la qualité des candidats, les résultats d'examens et la rémunération des avocats. Il constate que l'autorisation professionnelle, sur ce marché, conduit à une perte de bien-être totale de plus de 3 milliards USD (dollars de 2002).

⁷³ Les *ragionieri* passent un examen professionnel.

*bienveillantes qui cherchent à préserver une exigence de normes de qualité élevées auprès des professionnels actifs.*⁷⁴ »

En 2003, la majorité des associations comptables nationales qui ont répondu à un questionnaire adressé par la Commission européenne (voir encadré 4) ont affirmé que des conditions appropriées concernant l'entrée et les qualifications doivent être maintenues pour les auditeurs légaux,⁷⁵ mais n'étaient pas unanimes sur le point de savoir si les professionnels compétents doivent également bénéficier de droits exclusifs pour offrir des services autres que d'audit, par exemple des services d'expertise comptable et de conseil fiscal. Une association allemande de comptables d'entreprise a estimé qu'en Allemagne, la prestation de certains services autres que d'audit fait l'objet d'une réglementation excessive qui protège les conseillers fiscaux (profession protégée en Allemagne) de la concurrence d'autres groupes. Au Royaume-Uni, où la profession de conseil fiscal est ouverte à tous, le *Chartered Institute of Taxation* a également avancé que des règles d'entrée n'étaient pas essentielles dans le cas de la prestation de services de conseil fiscal. Les clients devraient avoir la possibilité de décider eux-mêmes s'ils veulent ou non recourir aux services d'un conseiller qui est membre d'un corps professionnel.⁷⁶

Encadré 9. La Commission européenne et les « professions libérales »

L'Agenda de Lisbonne déclare que les services professionnels sont appelés à jouer un rôle très important dans l'amélioration de la compétitivité de l'économie européenne. Un projet de recherche à grande échelle sur la concurrence dans les services professionnels a donc été engagé sous la direction de la Direction générale de la concurrence. La première étape de l'enquête a été marquée par la publication, en janvier 2003, d'une étude indépendante de l'*Institute for Advanced Studies* (IAS) de Vienne (voir Paterson, Fink, Ogus *et al.* (2003)). Cette étude trace un portrait schématique de la réglementation applicable, dans les 15 États membres de l'UE à l'époque, aux experts-comptables (y compris aux conseillers fiscaux), aux architectes et ingénieurs, aux avocats et notaires et aux pharmaciens. Pour chaque État membre et chaque profession, un indicateur de la réglementation est calculé et indique le degré de réglementation sur une échelle comprise entre 0 et 12. Pour effectuer ce calcul, chaque forme de réglementation est affectée d'un coefficient de pondération. Malgré le caractère intrinsèquement subjectif du processus de pondération, les indicateurs de la réglementation donnent une idée assez juste du *niveau* de réglementation dans les États membres de l'UE vers 2003, du fait qu'une modification relativement importante des coefficients de pondération n'entraîne souvent qu'une légère modification de la valeur de l'indicateur. L'autoréglementation n'a toutefois pas été suffisamment prise en compte.

Le niveau de réglementation des professions varie considérablement d'un pays à l'autre. Parmi les différentes professions examinées, l'IAS note que la plupart des règles concernent la profession de pharmacien et que les professions d'architecte et d'ingénieur sont relativement peu réglementées. Les services comptables et juridiques se situent dans la catégorie intermédiaire. Dans le cas particulier des comptables, les indicateurs de la réglementation oscillent entre 2.8 (Danemark) et 6.3 (Belgique). Outre le Danemark, les pays de la tranche inférieure sont notamment le Royaume-Uni (3.0), l'Irlande (3.0), la Suède (3.3), l'Espagne (3.4) et la Finlande (3.5). Les pays de la tranche

⁷⁴ Bortolotti et Fiorentini (1999), p. 154. Paterson, Fink, Ogus *et al.* (2003) se sont également penchés sur le marché italien des experts-comptables. Ils notent qu'à l'époque, les *commercialisti* comme les *ragionieri* étaient soumis à une réglementation plutôt stricte visant l'entrée et la conduite. Les tâches qui leur étaient exclusivement réservées étaient l'audit légal, la représentation fiscale (dans le cadre des procédures se déroulant devant les autorités fiscales) et la certification des déclarations de revenu, et le rôle de mandataire désigné par le tribunal, notamment en cas d'insolvabilité (un droit exclusif partagé avec les avocats). S'appliquaient également différents règlements concernant les prix, des restrictions visant la publicité (encore que ces dernières aient été assouplies) et l'interdiction de se constituer en société sous quelque forme que ce soit.

⁷⁵ Au niveau de l'UE, ces règles sont énoncées dans la Huitième directive « droit des sociétés » (84/253/CEE).

⁷⁶ Commission européenne (2003a), p. 4-5.

intermédiaire sont les Pays-Bas (4.5), le Luxembourg (5.0), l'Italie (5.1) et la Grèce (5.1). Les pays ayant les indicateurs les plus élevés sont - après la Belgique - l'Autriche (6.2), l'Allemagne (6.1) et la France (5.8). Les données sur le Portugal sont incomplètes.

L'étude de l'IAS contient une analyse fondée sur des données factuelles. Comme il s'est révélé impossible de recueillir des données sur les gains, les prix et les coûts, les auteurs ont décidé de recourir à d'autres indicateurs, assez approximatifs, pour mener leur étude statistique. Les résultats de l'analyse factuelle doivent être interprétés avec prudence. En ce qui concerne les services comptables, l'IAS parvient à la conclusion que la concentration assez forte des grands cabinets « est fort probablement due au fait qu'ils ont l'envergure voulue pour fusionner. Ce processus est [...] associé à un pouvoir de marché important vu le volume important de services proposés par les différents cabinets, sans exception. »

La publication du rapport de l'IAS, en 2003, a été suivie d'un état des lieux. Les membres des professions concernées, leurs clients et les organismes publics ont tous été invités à exprimer leur avis sur le rapport en répondant à un questionnaire. Une synthèse des 246 réponses reçues a été établie et diffusée (Voir Commission européenne, 2003a.) La majorité des réponses émanait d'associations professionnelles ou de leurs membres qui cherchaient à justifier certaines formes de réglementation, en faisant valoir par exemple qu'elles sont « nécessaires pour assurer la qualité des services ». La réglementation restrictive est souvent justifiée par des principes d'« indépendance », d'« intégrité », et de « respect pour la norme éthique de la profession ». En ce qui concerne les services comptables, la Commission a reçu vingt réponses sur la réglementation applicable aux comptables et auditeurs, dont seize provenaient d'organismes professionnels. Elle a également reçu dix exposés sur la réglementation des conseillers fiscaux. Parallèlement à la synthèse des réponses, la Commission a publié un autre document qui passe en revue la réglementation applicable aux comptables, notaires, architectes, ingénieurs et pharmaciens dans les 15 États alors membres de l'UE (voir Commission européenne, 2003b.) Ce document s'inspire du rapport de l'IAS et des renseignements complémentaires contenus dans les réponses au questionnaire déjà mentionné.

Après la publication de ces deux documents, Mario Monti, alors Commissaire européen à la concurrence, a proposé que les associations professionnelles et les différents États membres revoient attentivement les pratiques de réglementation et d'autorégulation et procèdent aux réformes ou suppressions nécessaires, en particulier en matière de fixation des prix, de prix recommandés et d'interdiction de la publicité. Mario Monti a ajouté que la réglementation relative à la structure des entreprises et aux activités pluridisciplinaires devait être décidée au cas par cas. Ces messages sont également au cœur du Rapport sur la concurrence dans le secteur des professions libérales publié en février 2004 (voir Commission européenne, 2004a.) En septembre 2005, un rapport de suivi a été publié sur la concurrence dans le secteur des professions libérales. Ce rapport exposait les progrès réalisés par chaque État de l'UE, y compris les dix nouveaux États membres, sur la voie de la suppression des règles restrictives et injustifiées (voir Commission européenne, 2005.) Le 12 octobre 2006, le Parlement européen a appuyé les efforts basés sur des constatations étayées « scientifiquement » engagés par la Commission pour supprimer la réglementation exagérément restrictive dans ce secteur. (Résolution du Parlement européen sur le suivi du rapport sur la concurrence dans le secteur des professions libérales, 2006/2137(INI)).

Restrictions quantitatives

En principe, il est également possible de restreindre l'accès au marché des services de comptabilité en limitant le nombre de praticiens autorisés à exercer la profession. Ces restrictions quantitatives ne permettent pas de remédier aux problèmes d'asymétrie d'information ou d'externalités et limitent considérablement la concurrence. Il serait en conséquence indiqué de les supprimer dans les pays où elles subsistent. Seules devraient être conservées les règles d'accès qui concernent directement la qualité du service, c'est-à-dire les règles de qualifications professionnelles et certains droits exclusifs (notamment en matière d'audit légal).

3.1.2 Réglementation de la conduite

La réglementation de la conduite est l'ensemble de règles qui s'appliquent directement à la conduite des comptables : règles visant la publicité, restrictions relatives à la constitution en société et à la coopération interprofessionnelle, autres restrictions concernant l'exercice de la profession ou encore réglementation des prix.

Restrictions visant la publicité

Les restrictions visant la publicité sont courantes dans bon nombre de professions. En ce qui concerne la profession comptable, Paterson, Fink, Ogus *et al.* (2003) indiquent que dans la plupart des 15 pays membres de l'UE à l'époque, « seules certaines formes de publicités sont interdites aujourd'hui [2003] ». L'Allemagne, l'Espagne et, semble-t-il, la France et la Belgique, appliquent toujours une réglementation stricte dans ce domaine.^{77 78} En Allemagne, par exemple, la législation interdisait alors la publicité « contraire à l'éthique de la profession ». Un décret professionnel interdisait en gros les pratiques de commercialisation associées à la publicité, semblant impliquer en outre que la publicité était dans une large mesure interdite aux membres de l'Ordre des comptables⁷⁹. En France, les membres de la profession n'étaient pas autorisés à faire de la publicité sur les prix ou à mener des campagnes de publicité dans les médias écrits ou autres⁸⁰. Dans d'autres pays, en Pologne, par exemple, les conseillers fiscaux, en 2004, n'étaient pas autorisés à faire de la publicité et les comptables étaient soumis à certaines restrictions en matière de publicité comparative. Les auditeurs avaient interdiction totale de recourir à la publicité en République tchèque mais le pouvaient sous réserve de certaines restrictions en Hongrie et en Pologne.⁸¹

Aux États-Unis, les experts-comptables ont eu pendant de nombreuses décennies interdiction de faire de la publicité, de démarcher des clients ou de participer à des procédures d'appels d'offres pour remporter des marchés. À compter du début des années 1970, la *Federal Trade Commission*, le ministère de la Justice et certains professionnels ont contesté la légalité de ces restrictions dans le cadre de nombreuses actions en justice. Aujourd'hui, l'*American Institute of Certified Public Accountants* (AICPA) et l'Ordre des comptables des différents États, qui fixent ces restrictions, s'intéressent essentiellement à la publicité mensongère trompeuse et frauduleuse, les restrictions visant le démarchage et la participation aux appels d'offres ayant été assouplies.⁸²

En 2007, le Bureau de la concurrence du Canada a constaté que certaines professions comptables⁸³ avaient imposé des restrictions à la publicité en fixant des critères applicables aux dénominations sociales et en limitant l'information que les comptables peuvent inscrire sur leur carte de visite, leur papeterie et leur enseigne. Des restrictions visent également la publicité exagérée ou flatteuse et les supports médiatiques

⁷⁷ Paterson, Fink, Ogus *et al.* (2003), p. 39.

⁷⁸ Aux Pays-Bas, par exemple, les professionnels sont autorisés à recourir à la plupart des formes de publicité autres que le contact direct et non sollicité de clients potentiels (démarchage).

⁷⁹ Paterson, Fink, Ogus *et al.* (2003), p. 244-245.

⁸⁰ Commission européenne (2003b), p. 5.

⁸¹ Commission européenne (2004b), p. 5.

⁸² GAO (2003a), p. 8.

⁸³ Ce terme renvoie à trois désignations reconnues par une législation provinciale ou territoriale au Canada : comptable agréé, comptable général licencié et comptable en management accrédité.

pouvant être utilisés pour la publicité. Ces restrictions « ne sont peut-être pas nécessaires pour protéger les consommateurs.⁸⁴ »

Même si l'interdiction de la *publicité mensongère et potentiellement trompeuse* peut se justifier aisément du point de vue de l'intérêt général, la réglementation ne doit pas restreindre la publicité qui véhicule des informations *véridiques* sur le prix ou la qualité. En effet, l'interdiction de la publicité risque d'accentuer les problèmes d'information. Le recours à des restrictions visant la publicité pour empêcher la détérioration de la qualité qui résulte de la sélection adverse est une mesure disproportionnée.⁸⁵ Les économistes ont mené de nombreuses études sur les effets des restrictions à la publicité dans le secteur des services professionnels et sur ce qu'il advient des niveaux des honoraires lorsque ces restrictions sont assouplies.⁸⁶ Stephen et Love (2000), en se fondant sur 17 études sur la publicité, estiment que « *ce qui ressort en général de ces travaux empiriques est que les restrictions à la publicité font augmenter les honoraires facturés pour les services professionnels et que plus il y a de publicité, moins les honoraires sont élevés.*⁸⁷ »

Hay et Knechel (2006) étudient les effets de la publicité et du démarchage sur les honoraires d'audit en Nouvelle-Zélande afin de vérifier l'hypothèse selon laquelle la crise de l'audit résulte de la déréglementation. En effet, la déréglementation a autorisé les cabinets d'audit à annoncer leurs services et à démarcher de nouveaux clients, ce qui les a peut-être incités à adopter une attitude plus « commerciale » et à réduire leurs honoraires, transformant ainsi l'audit en marchandise.⁸⁸ En Nouvelle-Zélande, il s'est écoulé un intervalle de six ans entre la suppression des restrictions à la publicité (1986) et celle des restrictions au démarchage (1992), ce qui permet d'étudier les effets de chaque initiative. Les auteurs notent : « *la publicité est associée à une augmentation et non pas à une diminution des honoraires, ce qui laisse à penser qu'elle est axée sur la qualité et non sur les prix. Les huit grands cabinets d'audit peuvent se permettre de faire plus de publicité et les données montrent que leurs honoraires ont davantage augmenté après la déréglementation de la publicité. Les grandes sociétés jouissent toutefois d'un pouvoir de négociation supérieur et ont été moins touchées par l'augmentation des honoraires. Il semble que le démarchage ait intensifié la concurrence et entraîné une diminution des honoraires d'audit : les grands cabinets ont réduit leurs honoraires et les gros clients ont bénéficié d'une plus forte minoration des honoraires.*⁸⁹ »

En Europe, les associations comptables ont attiré l'attention sur le fait qu'il est nécessaire que la publicité soit fiable et conforme aux normes éthiques. La *Fédération des experts comptables européens* a affirmé que toute restriction supplémentaire à la publicité limiterait la communication avec les clients et

⁸⁴ Bureau de la concurrence (2007), p. 53.

⁸⁵ Rubin (2000) ; Stephen et Love (2000), p. 996-997.

⁸⁶ Benham et Benham (1975) ont publié une étude qui a fait date sur les restrictions à la publicité sur le marché américain des lunettes. Ils ont constaté que les prix étaient largement plus élevés dans les États où s'exerçait un contrôle plus grand sur l'information diffusée sur la profession. D'après les estimations, les restrictions à la publicité ont entraîné une hausse des prix de 25 à 40 %. Cinq ans plus tard, Bond *et al.* (1980) ont montré que le prix moyen de certains services d'optique aux États-Unis était de 33 % supérieur dans les villes interdisant la publicité et les pratiques de commercialisation connexes.

⁸⁷ Stephen et Love (2000), p. 997. Ces auteurs signalent toutefois que plusieurs études présentent des problèmes méthodologiques.

⁸⁸ C'est un point de vue que partagent Maher, Tiessen, Colson et Broman (1992). À partir de données couvrant la période 1977-1981, ces auteurs observent que la déréglementation intervenue sur le marché de l'audit a entraîné une baisse des honoraires aux États-Unis. Voir également Craswell (1992), qui parvient au même résultat en étudiant des données pour la période 1980-1989 en Australie.

⁸⁹ Hay et Knechel (2006), p. 2.

constituerait en conséquence une entrave à la concurrence. D'autres associations ont fait valoir qu'il faudrait fixer des règles plus restrictives. Par exemple, une association française a estimé que la publicité devait obéir à des règles strictes pour protéger les petits cabinets et garantir que les consommateurs ne soient pas manipulés.⁹⁰ »

Réglementation des prix

La réglementation des prix prend des formes variées. La forme de réglementation des prix la plus restrictive est bien sûr la fixation des prix, en particulier lorsque c'est l'État qui la met en œuvre ou lorsqu'elle est appuyée par une association professionnelle. La réglementation des prix sous forme de prix minimums, de prix maximums, de barèmes de prix et de prix recommandés peut toutefois avoir des effets comparables dans la pratique. Bien qu'en principe les prix *recommandés* puissent réduire les coûts de transaction des clients,⁹¹ ces derniers peuvent être induits en erreur et croire à tort qu'il s'agit de fait de prix fixes.⁹²

En ce qui concerne l'UE à 15, l'*Institute for Advanced Studies* a observé qu'en 2003, rares étaient les pays qui appliquaient encore une réglementation stricte des prix, une conséquence de la déréglementation des professions comptables. Faisaient notamment exception l'Allemagne (imposition d'un barème général pour les conseillers fiscaux), l'Italie (barèmes recommandés) et la Grèce et le Portugal (prix fixes pour l'audit légal⁹³). Un rapport subséquent publié par la Commission européenne (2004) confirme qu'il n'existait pas non plus de restrictions sévères sur les prix dans les dix nouveaux États membres de l'UE.⁹⁴

Au Canada, on n'a recensé en 2007 que très peu de règles susceptibles de dissuader les comptables de diminuer la qualité des services pour pratiquer la concurrence par les prix. Une disposition fait interdiction aux comptables agréés d'exiger des honoraires qui sont largement inférieurs à ceux qu'exigeaient les membres qu'ils remplacent, sauf si les missions sont effectuées par des membres qualifiés conformément aux normes professionnelles. Le Bureau de la concurrence a estimé que même si la volonté de protéger le public peut justifier ce type de restrictions, « celles-ci peuvent nuire à la concurrence par les prix et empêcher ainsi les cabinets qui réussissent le mieux à réduire leurs coûts de livrer une saine concurrence.⁹⁵ »

Un effet manifeste de la réglementation des prix est qu'elle supprime en tout ou en partie la concurrence par les prix et qu'il ne subsiste alors que la concurrence par la qualité. La réglementation des prix paraît peu indiquée pour protéger les clients d'une concurrence par les prix excessive et de la piètre qualité des services. Les formes de réglementation directe de la qualité mentionnées à la section 3.1.1

⁹⁰ Commission européenne (2003a), p. 6-7.

⁹¹ En allégeant la charge de travail liée à la préparation des offres et/ou à la négociation d'honoraires individuels. OCDE (2007), p. 42.

⁹² En 2004, la Commission européenne a imposé une amende de 100 000 EUR à l'Ordre des architectes de Belgique pour avoir adopté un barème d'honoraires minimums (COMP/38.2549, 24 juin 2004). Cette décision a été rendue dans le cadre d'une procédure au titre de l'article 81 du Traité CE (interdiction des ententes). L'Ordre des architectes de Belgique a décidé de ne pas faire appel de cette décision et retiré son barème d'honoraires.

⁹³ Paterson, Fink, Ogun *et al.* (2003), p. 39, 222 et 244 ; Commission européenne (2004a), p. 12.

⁹⁴ Commission européenne (2004b), p. 5.

⁹⁵ Bureau de la concurrence (2007), p. 54. Il s'agit de la règle 204.4(34), *Code de déontologie des CA et règles connexes*.

seraient préférables.⁹⁶ La réglementation des prix n'est pas non plus une solution proportionnée au problème des externalités négatives.⁹⁷

En Europe, les associations comptables estiment généralement que la réglementation des prix (notamment l'imposition de prix minimums et maximums) n'est pas adaptée aux services d'audit et aux autres services comptables. Il n'existe toutefois pas de consensus entre ces associations sur le point de savoir si les prix recommandés sont nécessaires ou acceptables. La *Fédération des experts comptables européens* a toutefois observé en 2003 que les prix recommandés entravent la concurrence et sont contraires à l'intérêt de la profession.⁹⁸ »

Coopération interprofessionnelle et structure d'entreprise

On peut d'ores et déjà considérer les cabinets d'audit eux-mêmes comme des entreprises multiprofessionnelles au sein desquelles de nombreux conflits d'intérêts sont susceptibles de se présenter, en particulier lorsque les services d'audit s'accompagnent d'autres services comptables et de conseil⁹⁹. Aux États-Unis, la loi Sarbanes-Oxley de 2002 a dans une certaine mesure limité les possibilités que surgissent ce type de conflits d'intérêts,¹⁰⁰ comme l'a fait en 2006 la Directive de l'UE concernant les contrôles légaux des comptes.¹⁰¹ Le concept de cabinets multidisciplinaires formés par des comptables et d'autres

⁹⁶ Graf von der Schulenburg (1986) a soutenu qu'en l'absence de restriction à l'entrée, les prix fixes améliorent la qualité en suscitant un passage de la concurrence par les prix à la concurrence par la qualité.

⁹⁷ Mentionnons à ce sujet une affaire survenue au Pakistan : en décembre 2008, la Commission de la concurrence du Pakistan a ordonné que l'Institut des comptables agréés retire un document fixant des honoraires minimums pour les services comptables. Selon la Commission, les honoraires minimums priveraient largement les sociétés de la capacité de choisir un cabinet d'audit en fonction des prix et n'empêchent pas des auditeurs indelicats d'offrir des services de qualité médiocre : ils risquent même de les protéger en leur garantissant des honoraires minimums. Voir *Global Competition Review*, « Pakistan blocks accountants' agreement », 15 décembre 2008.

⁹⁸ Commission européenne (2003a), p. 5-6. Une question connexe consiste à déterminer l'opportunité d'autoriser des *honoraires subordonnés aux résultats*. Il apparaît clairement que dans le cas de l'audit légal, ce mode de rémunération ne devrait pas être autorisé afin de préserver l'indépendance professionnelle et la fiabilité de l'information financière. Cet argument peut également être étendu à d'autres services fournis aux clients des cabinets d'audit. Il n'est toutefois pas certain que les honoraires subordonnés aux résultats doivent également être interdits dans d'autres cas, par exemple pour les services en matière d'insolvabilité et l'assistance financière aux entreprises.

⁹⁹ Voir également Fox (1999-2000).

¹⁰⁰ La loi Sarbanes-Oxley (SOX) a été adoptée le 30 juillet 2002 en réaction aux nombreux scandales qui ont affecté des entreprises et des cabinets d'audit aux États-Unis. Ce texte a accru considérablement le contrôle et la réglementation de la profession comptable dans ce pays en renforçant les règles de gouvernance et en améliorant la transparence et l'obligation de compte, entre autres. La loi Sarbanes-Oxley exige que la *Securities and Exchange Commission* (SEC) mette en œuvre des règles concernant les conditions de mise en conformité avec la nouvelle législation. La SEC doit appliquer des règles relatives à l'indépendance s'agissant de l'interdiction de fournir des services hors audit, la rotation des associés des cabinets d'audit et les conflits d'intérêts. La loi Sarbanes-Oxley a également mis en place un organisme chargé de contrôler les audits des sociétés faisant appel à l'épargne publique (*Public Company Accounting Oversight Board*). GAO (2003a), p. 2- 5 ; et GAO (2008), p. 10-13. Bien que ces règles soient véritablement nécessaires et utiles, il se pourrait qu'elles ramènent à moins de trois le nombre de cabinets d'audit entre lesquels, par exemple, une grande société faisant appel à l'épargne publique qui souhaite changer de fournisseur pourrait effectuer un choix. GAO (2003), p. 30 ; GAO (2008), p. 21-22.

¹⁰¹ Directive 2006/43/CE du Parlement européen et du Conseil du 17 mai 2006 concernant les contrôles légaux des comptes annuels et des comptes consolidés (Huitième Directive sur le droit des sociétés). Cette Directive édicte des règles concernant en particulier l'actionnariat, la supervision publique indépendante, la

professionnels, par exemple des avocats, constitue une étape supplémentaire dans ce sens. Certains pays interdisent ce type de coopération interprofessionnelle.

Selon l'OCDE (2007), l'interdiction des cabinets multidisciplinaires « est de toute évidence anticoncurrentielle et peut être préjudiciable au consommateur. [...] Regrouper le savoir-faire de praticiens appartenant à des professions différentes dans le cadre d'une même entité permet d'offrir un « service complet ». Par ailleurs, la fourniture de services en lien les uns avec les autres est parfois à l'origine d'économies de gamme. [...] En outre, les cabinets multidisciplinaires présentent également l'intérêt notable de permettre une répartition interne des risques. [...] Tous ces avantages sont susceptibles de s'accompagner d'une baisse des prix pour les consommateurs. Enfin, les partenariats multidisciplinaires peuvent également promouvoir l'innovation. Assouplir les règles restrictives dans ce domaine pourrait faciliter l'accès aux capitaux nécessaires, le cas échéant, pour investir dans des équipements et infrastructures destinés à améliorer la qualité des services¹⁰². » En 2007, le Bureau de la concurrence du Canada a recommandé que les autorités de réglementation cherchent des moyens de permettre aux experts-comptables de travailler avec les membres d'autres professions que cela nuise à l'intérêt public.¹⁰³

Fox (1999-2000) émet toutefois l'avis que ce problème est beaucoup plus complexe qu'il n'y paraît. Selon lui, les « cabinets comptables ont recruté des milliers d'avocats qui quittent leur cabinet juridique le vendredi pour se retrouver le lundi à faire exactement la même chose pour les mêmes clients, mais cette fois-ci en tant que salariés d'un des cinq grands cabinets [de l'époque].¹⁰⁴ » Fox estime que les prestations hors audit fournies par les grands cabinets mettent à mal l'indépendance de leur fonction d'audit. Il faut prendre en compte le fait que le concept d'indépendance professionnelle des avocats – qui renvoie à l'indépendance par rapport à l'État, à d'autres clients et à des tierces parties – diffère de celui de l'indépendance professionnelle des comptables, définie par rapport à leurs clients. Cela complique la coopération interprofessionnelle.¹⁰⁵

En plus des règles applicables à la coopération interprofessionnelles, de nombreux pays sont dotés de règles concernant les formes d'entreprises que les comptables sont autorisés à constituer ou la propriété des cabinets d'audit. Aux États-Unis, par exemple, l'*American Institute of Certified Public Accountants* (AICPA), indique qu'en vertu de la législation adoptée par les États, tous les cabinets d'experts-comptables doivent être détenus en majorité par des experts-comptables agréés et que les autres propriétaires doivent participer activement à leurs activités.¹⁰⁶ Ces règles ont pour but de limiter les possibilités de conflits d'intérêts. Cependant, l'interdiction de certains types de structures d'entreprise rend également l'entrée sur le marché plus difficile pour d'éventuels concurrents des quatre grands réseaux d'audit, comme on l'a déjà mentionné à la section 2 ci-dessus. En 2003, le *General Accounting Office* des États-Unis a constaté que le statut de société de personnes de la plupart des cabinets d'audit était un facteur qui limitait la capacité de mobiliser des capitaux de ces cabinets, en particulier des petits cabinets.¹⁰⁷ Les décideurs devraient envisager d'autoriser la présence de parties prenantes extérieures dans des circonstances exceptionnelles, par exemple si un événement marquant risque d'entraîner la disparition d'un des quatre grands cabinets. La

fourniture de services autres que d'audit, le caractère conditionnel des honoraires d'audit (lequel est interdit) et la rotation des associés principaux contrôlant les comptes des entités d'intérêt public. Pour plus de détails, se reporter aussi à Oxera (2007).

¹⁰² OCDE (2007), p. 49.

¹⁰³ Bureau de la concurrence (2007), p. 59.

¹⁰⁴ Fox (1999-2000), p. 1097.

¹⁰⁵ Il convient toutefois de noter que cet article a été rédigé avant l'adoption de la loi Sarbanes-Oxley en 2002.

¹⁰⁶ GAO (2008), p. 59.

¹⁰⁷ GAO (2003a), p. 50.

participation d'acteurs extérieurs permettrait de conserver les ressources humaines du cabinet et éviterait d'accentuer la concentration dans un secteur où celle-ci est déjà importante.

Le Bureau de la concurrence du Canada (2007) présente un tour d'horizon des restrictions de la structure et de la pluridisciplinarité imposées aux trois titres professionnels comptables reconnus dans un certain nombre de provinces et de territoires.¹⁰⁸ Ces données révèlent un vaste éventail de restrictions. De manière générale, les praticiens exerçant seuls sont autorisés et les sociétés faisant appel à l'épargne publique sont interdites (encore qu'il y ait certaines exceptions), et dans certains cas les sociétés de personnes à responsabilité limitée et les sociétés « fermées » sont également interdites. L'écart entre les restrictions relatives à la structure qui existent dans les provinces a conduit le Bureau à recommander la suppression des règles applicables à la structure des cabinets et à la participation qui vont au-delà du minimum nécessaire pour réaliser un objectif d'intérêt général clairement défini. Il a également été constaté que de nombreuses provinces imposent des restrictions concernant la propriété des cabinets d'experts-comptables. Par exemple, lorsque des membres d'une désignation comptable souhaitent créer une société professionnelle, ils doivent s'assurer qu'un ou plusieurs membres détiennent la totalité des actions avec droit de vote.¹⁰⁹ En ce qui concerne les cabinets multidisciplinaires, la constitution en société leur est en général interdite, bien que dans certains cas la constitution en société avec « certaines professions accréditées de nature comparable » soit autorisée.

L'*Institute for Advanced Studies* a constaté qu'en 2003, la constitution en société était autorisée partout dans les 15 pays de l'UE sauf en Italie, où les comptables ne pouvaient constituer une société de personnes à responsabilité limitée, une société faisant appel à l'épargne publique ou une société « fermée ». L'IAS a toutefois remarqué que d'autres règles s'appliquaient souvent en matière de propriété, par exemple aux Pays-Bas où la majorité des propriétaires d'une société devait être constituée de comptables. En Allemagne, « tous les membres du conseil d'administration, les dirigeants, les associés dont la responsabilité est engagée de manière illimitée ou les associés devaient être comptables¹¹⁰. » En outre, la constitution en société avec des membres d'autres professions était interdite en Italie mais également en Allemagne, en Autriche, en Belgique, au Luxembourg (conseillers fiscaux) et aux Pays-Bas (avocats et professions non libérales.¹¹¹) Une autre étude réalisée subséquentement par la Commission européenne (en 2004) montre qu'en République tchèque, les auditeurs sont autorisés à constituer une société avec des membres de professions agréées comparables.¹¹² Actuellement, la Directive de 2006 concernant les contrôles légaux des comptes annuels et des comptes consolidés impose que dans tous les pays Membres, les auditeurs détiennent la majorité des droits de vote d'un cabinet d'audit et qu'une majorité de cabinets d'audit ou de personnes physiques agréés contrôle l'organe d'administration ou de direction.¹¹³

¹⁰⁸ Bureau de la concurrence (2007), p. 56-58.

¹⁰⁹ Bureau de la concurrence (2007), p. 59.

¹¹⁰ Paterson, Fink, Ogus *et al.* (2003), p. 233 et p. 245.

¹¹¹ Paterson, Fink, Ogus *et al.* (2003), p. 41. Les données concernant le Portugal n'étaient pas disponibles et celles sur l'Espagne n'ont pu être vérifiées.

¹¹² Commission européenne (2004b), p. 5-6. Dans d'autres nouveaux États membres de l'UE, les comptables et auditeurs peuvent constituer des sociétés anonymes et des sociétés de personnes avec d'autres comptables ou avec des personnes qui ne sont pas comptables. On ne sait pas au juste s'il existait des restrictions portant sur le type particulier de société pouvant être constituée.

¹¹³ Article 3 de la Directive 2006/43/CE. Oxera (2007) a analysé les conséquences de ces règles d'actionnariat sur la concentration du marché de l'audit. Il a conclu qu'une libéralisation de ces règles, notamment en autorisant des investisseurs extérieurs à détenir des cabinets d'audit, pourrait contribuer à réduire la concentration du marché.

En Europe, de nombreuses associations comptables ont déclaré en 2003 que les règles applicables aux cabinets multidisciplinaires comportant des professionnels comptables sont nécessaires, par exemple afin d'organiser les rapports entre professionnels qui ne sont pas nécessairement soumis aux mêmes règles éthiques en matière de confidentialité, d'indépendance ou de conflit d'intérêts. Cependant aucune de ces associations n'est en faveur de l'interdiction totale de la coopération interprofessionnelle. Aux Pays-Bas, une association de conseillers fiscaux a également fait valoir que les règles interdisant aux avocats de coopérer avec des conseillers fiscaux dans un cabinet multidisciplinaire sont inutiles et entravent la concurrence : il serait possible d'autoriser la coopération interprofessionnelle sans compromettre la confidentialité et le respect des principes déontologiques. Pour certaines associations comptables, seules les règles applicables à la propriété des cabinets d'audit sont nécessaires, pour assurer l'indépendance des cabinets et le respect des normes déontologiques de la profession.¹¹⁴ La forme d'entreprise des cabinets d'audit ou d'expertise comptable n'a toutefois pas à être réglementée.¹¹⁵

Encadré 10. L'affaire Wouters

Dans l'UE, la décision rendue dans l'affaire Wouters (C-309-99) portait sur les collaborations intégrées entre avocats et experts-comptables. En 2002, la Cour de justice des Communautés européennes a jugé que l'interdiction de coopération interprofessionnelle entre avocats et comptables qu'avait décidée l'Ordre des avocats des Pays-Bas était nécessaire au bon exercice de la profession d'avocat aux Pays-Bas. La Cour a estimé que le fait qu'un avocat soit également membre d'une structure professionnelle chargée de contrôler et de vérifier les comptes d'un client pouvait mettre en péril son indépendance, son devoir d'agir dans l'intérêt de son client et le respect du secret professionnel. En conséquence, même si l'interdiction des collaborations intégrées restreignait la concurrence, elle a été considérée comme étant conforme aux objectifs du droit néerlandais qui donne à l'ordre des avocats le pouvoir de s'autoréglementer. Voir également Andrews (2002), p. 282-284.

La Commission européenne a précisé par la suite comment elle entend appliquer les critères définis dans l'arrêt *Wouters* (voir Commission européenne (2004) et OCDE (2007, p. 30-31)). Il faut tenir compte des objectifs de la réglementation professionnelle qui sont liés à des objectifs d'intérêt général. Il convient ensuite d'examiner si les effets restrictifs de la concurrence sont inhérents à la poursuite des objectifs d'intérêt général (critère de nécessité). Enfin, les restrictions de concurrence ne peuvent aller au-delà de ce qui est nécessaire pour garantir le bon exercice de la profession (critère de proportionnalité).

3.3 Autoréglementation

Une autre question qui se pose consiste à savoir si les membres d'une profession sont mieux à même que les pouvoirs publics d'élaborer et de mettre en œuvre la réglementation.¹¹⁶ De prime abord,

¹¹⁴ Oxera (2007, p. v) conclut que « certaines parties prenantes ont le sentiment que les restrictions actuelles en matière d'actionnaire ont de fait une influence positive sur l'indépendance. Cependant, si l'on analyse de plus près les procédures de prise de décisions dans les cabinets d'audit, on s'aperçoit montrent que d'autres structures d'actionariat et de direction dans lesquelles le contrôle des cabinets d'audit serait exercé par des investisseurs extérieurs (non auditeurs) ne risquent guère, dans la pratique, d'entraver de manière significative l'indépendance des auditeurs. »

¹¹⁵ Commission européenne (2003a), p. 7-8.

¹¹⁶ Ogus (1995) et Van den Bergh (2006) étudient l'autoréglementation plus en détail. Ce dernier analyse deux systèmes possibles : la réglementation conjointe (fondée sur la coopération entre les pouvoirs publics et les organismes d'autoréglementation) et l'autoréglementation concurrentielle.

l'autoréglementation présente des avantages indéniables. Miller (1985) justifie le recours accru à l'autoréglementation.¹¹⁷ Il fait valoir que les acteurs du secteur privé :

- possèdent des informations plus détaillées ou plus pertinentes sur les risques et la qualité que les pouvoirs publics, ou peuvent les obtenir à moindre coût ;
- fonctionnent de manière moins complexe que les régimes de réglementation publics et sont en conséquence plus souples, qualité particulièrement appréciable sur des marchés dynamiques où l'innovation est importante et où les préférences des consommateurs changent régulièrement ; et
- permettent davantage de réduire au minimum le coût de la réglementation, tant du point de vue de la mise en œuvre que de la mise en conformité.¹¹⁸

De ces trois arguments, c'est le premier qui est privilégié dans les publications. De fait, comme les services professionnels sont des biens d'expérience ou de confiance, les pouvoirs publics pourraient difficilement évaluer leur qualité ou les risques associés à la prestation de services de mauvaise qualité. Ces informations sont toutefois nécessaires pour assurer la réglementation effective du fonctionnement des services professionnels.¹¹⁹ Pour que la réglementation soit effective, il faudrait que les pouvoirs publics fassent appel à des spécialistes, sans doute des membres de la profession réglementée. L'autoréglementation réduira donc les coûts parce qu'elle réunit les rôles de régulateur et de spécialiste.¹²⁰

Les deux autres arguments avancés par Miller ont été critiqués du point de vue de la théorie de l'intérêt particulier. Dans les services professionnels, les organismes d'autoréglementation ne seraient peut-être pas assez indépendants. L'autoréglementation risque en conséquence de restreindre exagérément la concurrence et de servir l'intérêt particulier plutôt que l'intérêt général, même lorsqu'elle aspire à améliorer la qualité des services professionnels.¹²¹ D'aucuns ont objecté enfin que les associations professionnelles n'ont pas de légitimité démocratique.¹²²

3.4 *Évaluation*

L'analyse du cadre réglementaire des services de comptabilité nécessite que l'on prenne en compte l'intérêt général et l'intérêt particulier. La réglementation ne doit pas déployer plus d'efforts qu'il n'est

¹¹⁷ Miller (1985), p. 897-898.

¹¹⁸ De Bijl et Van Damme (1996), p. 24, ajoutent que l'autoréglementation accroît les chances de voir les règles de conduite acceptées et respectées parce que les professionnels eux-mêmes ont été associés à leur élaboration.

¹¹⁹ Voir également Dingwall et Fenn (1987), p. 55. Ces auteurs attirent toutefois l'attention sur l'hypothèse sous-jacente que les organismes d'autoréglementation n'abusent pas de la situation de monopole qu'ils acquièrent du fait de leur mission de régulateurs. En ce qui concerne la comptabilité, dans certains pays, les organismes professionnels ne sont pas en situation de monopole. Au Royaume-Uni par exemple, il existe cinq organismes pour la profession comptable. Voir http://www.web.ifac.org/download/2008_AR_IFAC_Member_Organisations.pdf

¹²⁰ Curran (1993, p. 61) et Gehrig et Jost (1995, p. 31) estiment que l'étude de l'autoréglementation doit commencer par l'analyse des asymétries d'information entre les acteurs du marché et le planificateur social, sans quoi la réglementation officielle pourrait tout aussi bien aboutir au même résultat.

¹²¹ Pour une analyse économique de l'autoréglementation et de ses effets sur le bien-être, voir Leland (1979) ; Shaked et Sutton (1981) ; Gehrig et Jost (1995) ; et Donabedian (1995). Voir également Graf von der Schulenburg (1986).

¹²² Van den Bergh (2006), p. 161-162.

nécessaire pour remédier aux défaillances du marché. En outre, elle doit servir l'intérêt général et non l'intérêt particulier.

Lorsque l'asymétrie d'information sur un marché de services de comptabilité non réglementé provoque une baisse de la qualité et que les effets sur la réputation ne suffisent pas à remédier à ce problème,¹²³ il faut choisir des formes de réglementation simples et présentant le moins de risques possible pour la concurrence : divulgation obligatoire d'informations (par exemple, la publication d'informations sur un site web), réglementation passive de la publicité (notamment, interdiction de recourir à la publicité trompeuse) et certification.

La divulgation d'informations sur la qualité des services de comptabilité est toutefois compliquée parce que comme on l'a vu, ces services sont des biens d'expérience, voire de confiance. Selon certaines associations comptables (il n'y a pas d'unanimité sur ce point), les grandes entreprises elles-mêmes seraient incapables d'évaluer correctement la qualité des services comptables qui leur sont fournis. Les informations publiées sur les sites web ou dans les médias sont donc peut-être trop difficiles à évaluer pour un client moyen.

La certification permet en conséquence mieux que la simple réglementation de l'information de remédier aux problèmes d'information, pour autant que les clients puissent reconnaître la valeur d'un certificat ou d'un titre donné. Les comptables pourraient cependant avoir tendance à trop investir dans la formation pour démontrer des niveaux de qualité élevés.¹²⁴

Différentes formes de réglementation de l'accès qui excluent certains professionnels du marché, par exemple l'inscription obligatoire combinée à la protection du titre (qui peuvent effectivement exclure les fournisseurs de services qui ne sont pas titulaires d'un titre délivré par le marché)¹²⁵ et les droits exclusifs, restreignent davantage la concurrence que la réglementation de l'information et la certification. On a vu que ces formes de réglementation de l'accès protègent parfois plus efficacement les consommateurs ayant une aversion pour les risques d'éventuels effets dommageables des services de mauvaise qualité, pour autant qu'il y ait une relation directe entre le niveau de formation et la qualité du service. Malheureusement, cette forme de réglementation peut aussi être utilisée comme barrière à l'entrée par des groupes d'intérêts catégoriels comme que les associations comptables et inciter les consommateurs à remplacer les services de professionnels agréés par des services moins chers.

En résumé, la réglementation qui vise à corriger les asymétries d'information et les externalités négatives ne devrait pas seulement être *justifiée* pour traiter ces défaillances particulières du marché, mais également, être *proportionnée*.

- Pour remédier aux asymétries d'information entre les comptables et leurs clients et pour empêcher les externalités négatives pour les investisseurs, les banques et les créanciers, il faudrait adopter une réglementation concernant l'accès des auditeurs au marché et leurs qualifications.

¹²³ Nous avons déjà souligné que les effets (positifs et négatifs) sur la réputation peuvent jusqu'à un certain point remédier au problème de l'asymétrie d'information, mais ce mécanisme ne semble pas fonctionner parfaitement en l'absence de certaines autres formes de réglementation de la qualité. De même, les effets négatifs sur la réputation peuvent avoir un fort impact sur le marché et, partant, engendrer des externalités négatives, comme on l'a vu après la disparition du cabinet Arthur Andersen.

¹²⁴ Shapiro (1986), p. 855.

¹²⁵ Par exemple, les professions « paracomptables » de *Bilanzbuchhalter* en Allemagne et de *ragionieri* en Italie.

- Les droits exclusifs en matière de conseil fiscal et de représentation fiscale sont peu répandus dans les pays membres de l'OCDE et paraissent excessifs. Il serait bon qu'ils fassent l'objet d'un examen dans les pays où ils existent.
- Les restrictions quantitatives limitent la concurrence plus qu'il n'est nécessaire ;
- L'interdiction de la publicité restreint la concurrence plus qu'il n'est nécessaire. Les règles relatives à la publicité fausse et trompeuse contribuent toutefois à atteindre un objectif évident d'intérêt général ;
- La réglementation des prix, notamment les barèmes d'honoraires recommandés, restreignent exagérément la concurrence ;
- Il faudrait examiner attentivement la possibilité d'autoriser les auditeurs à coopérer avec d'autres professionnels ;
- L'autoréglementation peut être un moyen utile de compléter la réglementation publique mais présente un risque de comportement de recherche de rente de la part des professionnels ;
- Le droit de la concurrence demeure nécessaire pour contrôler les comportements d'entente et l'abus de position dominante ; et
- La perte de réputation est un mécanisme non négligeable de sanction des services d'audit de mauvaise qualité et des scandales comptables.

4. Les normes comptables et leurs effets sur la concurrence

Les normes comptables internationales IFRS (*International Financial Reporting Standards*¹²⁶) et américaines GAAP (*Generally Accepted Accounting Principles* (GAAP)¹²⁷) peuvent également permettre de traiter certains problèmes abordés à l'annexe, en particulier :

- améliorer les coûts d'information et de transaction en créant un système comptable plus uniforme ;
- internaliser les externalités négatives en fixant des normes minimales de qualité pour les services de comptabilité ;

¹²⁶ Entre 1973 et 2001, bon nombre de normes qui font aujourd'hui partie des normes comptables internationales IFRS (*International Financial Reporting Standards*) figuraient dans les normes internationales IAS (*International Accounting Standards*) émises par l'IASC (*International Accounting Standard Committee*). En avril 2001, les normes IAS ont été adoptées par l'IASB (*International Accounting Standards Board*), maintenant chargé de l'élaboration des normes comptables internationales. On parle encore des normes IAS, mais celles-ci ont été remplacées par les normes IFRS.

¹²⁷ Le *Financial Accounting Standards Board* (FASB) publie les normes comptables que la SEC (*Securities and Exchange Commission*) reconnaît comme étant les principes comptables généralement admis ou GAAP (*Generally Accepted Accounting Principles*) pour les sociétés faisant appel à l'épargne publique. En 2008, les GAAP représentaient plus de 2 000 règles publiées sous diverses formes par de nombreux organismes, notamment la SEC, le FASB, l'AICPA (*American Institute of Certified Public Accountants*), etc. GAO (2008), p. 14-15. En 2008, l'ancien président de la SEC, Christopher Cox, a annoncé que les États-Unis remplaceraient les GAAP par les normes IFRS.

- améliorer la fiabilité et l'indépendance de l'audit légal.

Certes, tous les avantages précités des normes comptables sont fonction de leur contenu effectif et de leur application dans la pratique. Vu les récents scandales mettant en cause des entreprises et des cabinets d'audit, on pourrait objecter que les IFRS, les GAAP et les autres normes en vigueur ne permettent pas sous leur forme actuelle d'atteindre ces objectifs. En outre, la crise des crédits hypothécaires *subprime* et la compression du crédit ont accentué l'importance d'un système comptable plus uniforme et (beaucoup) plus fiable, compte tenu notamment du fait que les instruments hors-bilan ont tenu un rôle clé dans l'éclatement de la crise financière. Pour limiter les risques de fraude comptable et empêcher les banques et les sociétés de prendre des risques excessifs, il paraît donc nécessaire d'améliorer les normes et pratiques actuelles en matière d'instruments hors bilan.¹²⁸

Le rôle de la comptabilisation à la juste valeur (ou comptabilisation au prix du marché) pose également problème. Les normes comptables internationales demandent que les actifs soient évalués selon leur juste valeur courante.¹²⁹ Cependant, en raison de cette exigence, les banques, durant la tourmente qui s'est emparée des marchés dans le sillage de la crise des crédits hypothécaires *subprime*, étaient contraintes de réévaluer sur une base quasi-quotidienne des actifs qui n'étaient plus échangés. Ces dépréciations quotidiennes des valeurs induites par des marchés complètement illiquides ont entamé encore davantage la confiance dans les institutions financières et fait baisser le cours de leurs actions. En outre, la comptabilisation au prix du marché est fondée sur l'hypothèse selon laquelle les prix du marché reflètent toutes les informations disponibles, ce qui n'est pas nécessairement le cas si une classe d'actifs devient exagérément mal perçue. PricewaterhouseCoopers (2008) ne partage pas l'avis de certains commentateurs qui ont en partie incriminé la comptabilisation des actifs financiers en juste valeur¹³⁰ pour son rôle dans la récente crise des marchés financiers, affirmant que cette méthode comptable demeure la meilleure dont on dispose pour des instruments financiers complexes et « rend l'impact des forces du marché sur le résultat financier plus transparent.¹³¹ » PwC estime que l'adoption des normes de comptabilité en juste valeur nécessite toutefois certains ajustements de la part des marchés.

Dans une étude consacrée aux causes de la crise financière, Hellwig (2008) examine le rôle de la titrisation des crédits hypothécaires comme mécanisme de répartition des risques des placements immobiliers.¹³² Il s'intéresse ensuite au rôle des titres adossés à des actifs détenus par des instruments d'investissement structurés,¹³³ et aux effets conjugués du dysfonctionnement du marché et de la

¹²⁸ Fait intéressant, dès 1989, Chadzynska (dans un article paru dans l'Observateur de l'OCDE) donnait l'alerte sur les dangers de la prise de risques excessive et des opérations hors bilan et notait que l'existence possible de passifs camouflés représente un risque pour les créanciers, les salariés et les actionnaires.

¹²⁹ IFRS, IAS 39. Voir également *Financial Accounting Standards Board*, « Summary of Statement No. 157: Fair Value Measurements » sur le site suivant : <http://www.fasb.org/st/summary/stsum157.shtml>.

¹³⁰ La juste valeur est affectée par le risque : les marchés ajustent leur évaluation des actifs de manière à ce qu'elle reflète la perception des risques qui s'y rattachent. La norme IFRS 7 (Instruments financiers : instruments à fournir) demande que les sociétés examinent les risques associés et leur gestion mais les volumes d'information qui semblent correspondre à la lettre de cette norme peuvent masquer la réalité dissimulée dans les détails. PricewaterhouseCoopers (2008), p. 11.

¹³¹ PricewaterhouseCoopers (2008), p. 11.

¹³² L'auteur note également que la spéculation immobilière excessive peut constituer un problème dans n'importe quel pays. Il propose donc d'introduire des règles concernant la responsabilité des initiateurs des opérations de titrisation ou de renforcer celles qui sont en vigueur. Le rôle des agences de notations doit également être réexaminé. Hellwig (2008), p. 61.

¹³³ Techniquement, les banques n'utilisaient pas ces instruments d'investissement structurés, qui pouvaient donc être inscrits hors bilan en vertu de la réglementation bancaire applicable comme celle des Accords

comptabilité en juste valeur et de l'insuffisance des fonds propres des institutions financières, entre autres facteurs, et parvient à la conclusion suivante : « *lorsque l'on envisage une réforme de la réglementation, il faut [...] aller au-delà des considérations associées aux incitations individuelles et à la supervision et s'attacher aux problèmes d'interdépendance et de transparence systémique.*¹³⁴ » Il aborde la question de la comptabilisation hors bilan : « *les distinctions que l'on fait entre les positions de bilan et hors bilan des banques et des autres institutions financières devraient être supprimées ou tout au moins réduites à un minimum. On peut soupçonner que l'acceptation réglementaire de ces distinctions, jusqu'à présent, résulte davantage de pressions politiques et de la capture de la réglementation que d'une justification liée aux différences d'exposition au risque.*¹³⁵ » Cela nous amène à parler de la révision des normes comptables.

Il est maintenant manifeste que les normes IFRS sont sur le point de devenir les normes comptables internationales. Elles sont déjà solidement implantées en Europe, en Australasie et en Turquie et différents autres pays, notamment le Canada, le Japon et la Corée du Sud, prévoient de les adopter d'ici à 2011. Les États-Unis évoluent sensiblement dans la même direction puisqu'ils atténuent les différences entre leurs normes GAAP et les normes IFRS, qu'ils auront sans doute adoptées pour 2016. L'utilisation d'une norme comptable universellement comprise représenterait une étape supplémentaire sur la voie de la transparence, non seulement parce qu'il serait ainsi plus facile pour les investisseurs de comparer la performance des sociétés, quel que soit leur cadre réglementaire de référence,¹³⁶ mais aussi, peut-on espérer parce qu'elle faciliterait le « resserrement » des normes comptables et leur application à l'échelle mondiale, limitant ainsi les possibles effets défavorables de la prise de risque excessive et de la comptabilisation hors bilan. Les coûts que devraient acquitter les multinationales qui doivent établir de nombreux jeux de comptes s'en trouveraient également diminués.¹³⁷

Cette section peut se résumer comme suit :

- La qualité des normes et pratiques comptables est indispensable pour permettre aux marchés de bien évaluer le résultat des sociétés faisant appel à l'épargne publique ;
- L'adoption d'un système de normes comptables internationales (IFRS) favorise la transparence et peut également réduire les coûts ; et
- Les normes IFRS actuelles doivent être révisées, notamment en ce qui concerne le traitement des instruments financiers hors bilan, qui font augmenter les asymétries d'information.

Bâle I et Bâle II, ce qui les exemptait de l'obligation de constituer des réserves de fonds propres pour les prêts non remboursés. En outre, les normes comptables internationales IFRS et les normes américaines GAAP autorisaient les banques à comptabiliser comme une vente la cession d'actifs groupés, par exemple des créances hypothécaires *subprime*, à un instrument d'investissement structuré.

¹³⁴ Hellwig (2008), p. 1.

¹³⁵ Hellwig (2008), p. 62.

¹³⁶ Voir également PricewaterhouseCoopers (2008), p. 13. KPMG (2008, p. 4) observe que la mondialisation rend nécessaire l'adoption de normes comptables uniformes. KPMG et les trois autres grands cabinets proposent d'ailleurs des services de mise en œuvre des normes IFRS et de conversion de systèmes comptables à des sociétés implantées partout dans le monde (KPMG indique dans son rapport avoir fourni ce type de services à plus de 1 400 sociétés dans le monde entier.)

¹³⁷ The Wall Street Journal, « Closing the Information GAAP », 8 septembre 2008.

5. Conclusions

La profession comptable propose de nombreux services : audit, conseil fiscal et représentation fiscale. L'examen de la politique de la concurrence dans ce secteur est particulièrement indiqué pour trois raisons : les pouvoirs publics accordent des droits exclusifs aux professions comptables ; la concentration est importante dans le secteur de l'audit des grandes sociétés faisant appel à l'épargne publique ; et il est dans l'intérêt général de veiller à la qualité des services d'audit.

Le présent document examine plusieurs problèmes non négligeables associés à la concurrence et à la réglementation des professions comptables et s'intéresse en particulier au marché de l'audit légal. Dans un premier temps, il explique les fusions intervenues entre les huit grands cabinets (qui ne sont plus que quatre, les *Big Four*) ainsi que leurs conséquences. Il se penche ensuite sur les principaux obstacles qui empêchent les cabinets intermédiaires d'entrer sur le marché de l'audit des grandes sociétés faisant appel à l'épargne publique (ou d'y accroître leur part de marché) et évoque un certain nombre de moyens qui pourraient être mis en œuvre pour les atténuer. Bien qu'une fusion entre les quatre grands cabinets d'audit paraisse peu probable, on ne peut écarter la possibilité qu'un événement « marquant » entraîne la disparition de l'un d'entre eux.

La réglementation de l'entrée et de la conduite dans les professions comptables est examinée sous l'angle économique. Il semble que la réglementation ait parfois pour effet de restreindre la concurrence plus que ne le nécessiterait l'intérêt général. L'étude aborde enfin les normes comptables et leur effet sur la concurrence et la qualité des services de comptabilité.

Les spécialistes de la politique de la concurrence ont mené relativement peu de travaux sur la profession comptable. Le présent document énumère un certain nombre de thèmes présentant un intérêt, mais il va de soi que la réflexion devra être approfondie. Voici néanmoins certains points qui se dégagent de notre étude :

- Les quatre grands réseaux sont de loin les principaux prestataires de services d'audit et comptables auprès des grandes sociétés cotées ; la part de marché des réseaux intermédiaires est faible en comparaison de la leur ;
- Il convient d'encourager l'entrée de nouveaux réseaux mondiaux d'audit, par exemple en faisant en sorte :
 - d'éviter les restrictions inutiles imposées aux entreprises par des tiers (tels que les bailleurs de fonds) en ce qui concerne le choix d'un cabinet d'audit légal ;
 - d'autoriser, dans la mesure du possible, l'extension des réseaux intermédiaires existants si de nouveaux projets de fusion auxquels ils sont parties sont annoncés ; et
 - d'autoriser les sociétés de personnes et d'envisager d'autoriser les sociétés par actions à responsabilité illimitée (à condition de restreindre les conflits d'intérêts). Les pouvoirs publics devraient prendre en compte la possibilité qu'un événement marquant et imprévu entraîne la disparition d'un des quatre grands cabinets. Ils devraient donc envisager d'adapter les restrictions imposées par la réglementation relativement à la structure de propriété des cabinets d'audit afin d'éviter la dispersion des actifs.
- Les pouvoirs publics devraient envisager la possibilité que des événements spectaculaires et imprévus puissent à l'avenir conduire à la disparition de l'un des quatre grands réseaux, ou d'un cabinet intermédiaire. Face à cette possibilité, les pouvoirs publics devraient envisager d'adapter

les restrictions réglementant la structure d'actionnariat des cabinets comptables, en cas de survenue d'un tel événement, afin que les actifs du cabinet puissent être préservés. De la même façon, on pourrait envisager de limiter la responsabilité ;

- Malgré la dimension internationale des cabinets d'audit, il ressort des décisions rendues dans les affaires de fusion que leurs marchés géographiques sont nationaux en raison de la réglementation relative à l'entrée et à la conduite ;
- Les restrictions quantitatives à l'entrée, l'interdiction de la publicité et la réglementation des prix (notamment les barèmes d'honoraires recommandés) restreignent indûment la concurrence et devraient être supprimées ;
- Les pays qui accordent aux professionnels comptables des droits exclusifs au titre des services de conseil fiscal et de représentation fiscale devraient déterminer si cette forme de restriction est véritablement nécessaire compte tenu du fait que de nombreux pays de l'OCDE ne l'imposent pas ; enfin,
- La qualité des normes et pratiques comptables est indispensable pour permettre aux marchés de bien évaluer le résultat des sociétés faisant appel à l'épargne publique ; les normes et pratiques comptables doivent être revues, en particulier celles qui concernent la comptabilisation des actifs hors bilan.

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ANNEXE

1. L'approche de la réglementation fondée sur l'intérêt général

Du point de vue de l'intérêt général, un certain nombre de raisons peuvent justifier l'intervention d'un organisme de réglementation sur un marché. Cette intervention vise à répondre à des défaillances perçues du système de marché lui-même et à traiter certains problèmes d'efficacité économique.¹ Les études économiques distinguent en général quatre types de défaillances du marché :

- les problèmes d'information ;
- les externalités ;
- la présence de biens publics ; et
- le pouvoir de marché.²

L'intervention sur le marché, que ce soit à travers la réglementation ou l'autorégulation, est parfois nécessaire pour corriger les défaillances du marché. Elle peut se traduire par l'imposition de règles de responsabilité, de taxes et de subventions, ou d'une forme de réglementation adaptée à une défaillance particulière.³ La réglementation dictée par l'intérêt général pose comme principe que toute intervention sur un marché a pour but d'améliorer le bien-être. Il faut toutefois retenir la forme optimale de réglementation. En effet, la réglementation qui restreint exagérément la concurrence peut engendrer des coûts qui excèdent ses avantages.

1.1 Problèmes d'information

Les marchés de services professionnels se caractérisent souvent par une asymétrie d'information entre les professionnels et leurs clients : les professionnels sont mieux renseignés que leurs clients sur la qualité du service qu'ils fournissent. Plusieurs raisons expliquent l'asymétrie d'information.

- Les prestataires de services professionnels utilisent habituellement leur capital humain pour apprécier différentes situations.⁴

¹ La réglementation peut également être motivée par des objectifs redistributifs ou par un certain paternalisme qui n'entrent pas dans notre propos en raison de leur lien très limité avec l'étude des services de comptabilité.

² Philipsen (2003), p. 10-19 ; Arnold (2006), p. 705-729 ; Cooter et Ulen (2007), p. 43-47.

³ Les règles de responsabilité peuvent (et souvent, devraient) être utilisées de concert avec la réglementation. Shavell (1984) examine quatre critères qui déterminent la combinaison optimale du droit de la responsabilité civile et de la réglementation pour contrôler les activités à risques : l'information, le risque d'insolvabilité, la menace d'actions en responsabilité civile et les coûts administratifs.

⁴ Arruñada (2006), p. 52.

- L'évaluation de la qualité même du service peut se révéler très ardue.⁵
- La prestation de nombreux services professionnels (de services juridiques et médicaux, par exemple) n'est pas régulière, de sorte que l'apprentissage par le jeu des achats répétés et par la réputation n'a qu'un impact restreint.

En conséquence, les services professionnels sont dits « biens d'expérience », à savoir que leur qualité ne peut être déterminée qu'après consommation ou utilisation - ou encore « biens de croyance », puisque leur qualité ne peut être évaluée correctement, même après consommation.⁶ L'asymétrie d'information peut entraîner une détérioration de la qualité tenant à la sélection adverse.⁷ Lorsque les clients ne sont pas en mesure d'évaluer la qualité des services fournis par certains professionnels et ne peuvent que se fonder sur les prix, les professionnels n'ont pas d'incitations à offrir une qualité élevée. Les professionnels médiocres évincent alors ceux qui proposent des services de qualité élevée, ce qui peut justifier le recours à une certaine forme de réglementation de la qualité pour remédier à la dégradation qui s'ensuit sur le marché et remplacer des services de faible qualité à bas prix par des services de qualité élevée ou plus élevée à prix raisonnable. L'asymétrie d'information entre un professionnel et son client peut également susciter un problème d'« aléa moral » soulevé par la demande induite par le fournisseur.⁸

Le problème d'asymétrie d'information devrait se poser avec moins d'acuité dans le cas des clients autres que les consommateurs ou les ménages, à savoir les entreprises ou le secteur public. Cette clientèle spécialisée qui exige des services adaptés à ses besoins est source de marchés généralement caractérisés par leur envergure et leur complexité. Même si elles ne possèdent pas nécessairement des connaissances spécialisées, les petites entreprises peuvent acheter des services professionnels de façon répétée. On pourrait en conséquence s'attendre à ce que sur des marchés de services professionnels comme l'audit et la comptabilité (mais aussi l'architecture et l'ingénierie), l'asymétrie d'information soit moins prononcée que sur ceux des services médicaux (pharmacie, médecine), par exemple.⁹ Certaines associations comptables européennes ont toutefois objecté qu'en raison de l'asymétrie d'information, même les grandes entreprises seraient incapables d'évaluer la qualité des services comptables ou de décider du niveau de qualité correspondant à leurs besoins. Ce serait là un argument en faveur de la réglementation concernant notamment l'imposition d'exigences appropriées en matière d'entrée et de qualifications.¹⁰

Dans le domaine de la comptabilité, la *réputation* peut jouer un rôle supplémentaire non négligeable en atténuant les problèmes d'asymétrie d'information, compte tenu par ailleurs que bon nombre de clients effectuent des achats répétés. Pendant de nombreuses années, certaines entreprises se sont fiées à la réputation des huit grands cabinets d'audit (les *Big Eight*) pour leurs prestations d'audit légal et d'autres services comptables. C'est également ce qu'ont fait (plus ou moins largement) les investisseurs en confiant à ces cabinets l'évaluation de la valeur des entreprises dans lesquelles ils souhaitaient investir. Autrement dit, la réputation de qualité et d'indépendance d'un auditeur a une incidence sur la qualité prêtée à l'audit et

⁵ Ibid.

⁶ C'est Nelson (1970) qui a introduit le concept de bien d'expérience. Darby et Karny (1973) ont pour leur part traité des biens de croyance.

⁷ Voir Akerlof (1970).

⁸ C'est ce qui se produit lorsque le professionnel fournit des services supplémentaires que le client n'aurait pas demandé s'il avait été entièrement informé ou lorsque le professionnel est incité à fournir une qualité excessive pour pouvoir appliquer des tarifs plus élevés même si un service de moindre qualité à un prix plus raisonnable servirait mieux les intérêts du client. OCDE (2007).

⁹ Commission européenne (2005), p. 3-5 ; Competition Authority (2006), p. 22-25 ; et Stephen (2006).

¹⁰ Commission européenne (2003a), p. 4.

donne aux investisseurs un signal sur la fiabilité des états financiers des entreprises qui ont recours à ses services.

Les scandales qui ont touché des cabinets d'audit et des entreprises montrent bien toutefois que les effets de réputation sont parfois défavorables. À partir d'un échantillon d'anciens clients d'Arthur Andersen, Krishnamurthy *et al.* (2006) montrent que les effets de réputation sont particulièrement négatifs lorsque le marché perçoit qu'outre la qualité de ses audits, l'*indépendance* d'un cabinet est affectée. Autore *et al.* (2009) constatent que parmi les entreprises clientes d'Andersen et d'autres grands cabinets d'audit, ce sont celles dont l'information présentait la plus forte incertitude qui ont vu le prix de leurs actions chuter le plus. L'audit a en conséquence d'autant plus d'utilité que l'évaluation d'une entreprise est difficile.¹¹

1.2 Externalités

La réglementation des services professionnels dictée par l'intérêt général peut aussi se justifier par la présence d'externalités ;¹² c'est-à-dire lorsque la médiocrité des services affecte des tierces parties. Dans le domaine de la comptabilité, il est évident que des services d'audit médiocres peuvent nuire à l'entreprise auditée, mais aussi aux investisseurs, aux banques et aux créanciers de cette entreprise, voire à la société dans son ensemble. De fait, on a vu dans la sous-section précédente la valeur d'une entreprise auditée est fonction dans une certaine mesure de la fiabilité de son audit. Le tort porté à la réputation sur le marché de la comptabilité peut se répercuter sur d'autres marchés comme ceux des actions et des titres d'emprunt.

Le problème des externalités négatives peut également être traité en recourant à une certaine forme de réglementation de la qualité et/ou de règles de responsabilité. Selon Shavell (1984), la réglementation peut se substituer aux règles de responsabilité ou les compléter lorsque :

- les pouvoirs publics, plus que les juges, disposent d'informations plus pertinentes ou d'un meilleur accès à ces informations pour déterminer le niveau optimal de précautions qu'il convient de prendre pour éviter les externalités négatives ;
- il existe un risque que le défendeur éventuel (par exemple, un professionnel dont les services médiocres engendrent des externalités négatives) soit insolvable et ne soit donc pas en mesure de réparer les dommages qu'il a causés. Dans ce cas, l'obligation de verser un dédommagement en vertu du droit de la responsabilité civile n'est pas suffisamment dissuasive et il faut donc disposer d'une réglementation appuyée sur des sanctions non monétaires ;
- le dommage a un caractère général, ou le lien de cause à effet ne peut être établi.

Dans ces cas, les règles de responsabilité n'ont pas d'effet dissuasif suffisant pour éviter les externalités négatives. Il faut recourir à la réglementation pour fixer des normes *ex ante*, et non *ex post*.

Parmi les arguments présentés ci-dessus, les deux derniers au moins sont valables s'agissant du marché des services de comptabilité, en particulier d'audit légal. Les audits de mauvaise qualité – et les scandales comptables qui ont entaché l'entreprise Enron – ont au bout du compte de si graves

¹¹ Cela voudrait dire que ce sont les entreprises « qui présentent l'information caractérisée par la plus forte incertitude qui ont le plus à perdre lorsque les audits réalisés par le passé paraissent soudainement moins fiables qu'on ne l'avait cru. » Autore *et al.* (2009), p. 183. Au sujet des effets de réputation du scandale Enron, voir également Arruñada (2004).

¹² Les externalités négatives s'entendent des coûts imposés aux tierces parties et les externalités positives, des avantages dont elles bénéficient. Voir par exemple Cooter et Ulen (2004), p. 44-46, et Arnold (2004), p. 707-720. Voir également Ogus (1994), p. 18-19 ; 35-38.

répercussions sur les investisseurs, les banques et les créanciers que les règles de responsabilité (et d'assurance) ne suffisent pas à résoudre le problème. Les scandales comptables et la série de litiges auxquels ont été parties certains cabinets d'audit au début des années 2000 ont également entraîné une augmentation des coûts d'assurance, les assureurs estimant que les cabinets effectuant l'audit de sociétés faisant appel à l'épargne publique présentaient un risque et une incertitude accrus.¹³ Certains pays plafonnent la responsabilité des auditeurs (ou ont amorcé un débat sur l'opportunité de le faire)¹⁴, ce qui – tout en permettant de remédier à l'augmentation du risque de litige – pourrait limiter l'effet dissuasif des règles de responsabilité.¹⁵

Dans ce cas également, le problème des externalités négatives pourrait être traité par la réglementation et des exigences de qualifications ainsi que par la définition de normes comptables claires (voir également la section 4) et de règles concernant l'indépendance des auditeurs.

1.3 *Biens publics*

Les biens publics ont deux caractéristiques particulières qui les distinguent des biens privés : la consommation non concurrente et la non-exclusivité. Ces caractéristiques font que le marché ne peut générer des biens publics (ou ne peut du moins le faire qu'en quantité insuffisante).

La question qui se pose est de savoir si des services professionnels comme la comptabilité peuvent être considérés comme biens publics et si l'absence de réglementation entraînerait une offre insuffisante de ce type de services. On peut avancer que l'audit légal de sociétés cotées sert l'intérêt général et peut en conséquence générer des externalités positives. Par exemple, des associations comptables européennes ont attiré l'attention sur le « rôle tenu par les auditeurs en vue d'assurer la fiabilité de l'information financière et la transparence des marchés de capitaux.¹⁶ » Il s'agit d'un argument de poids, compte tenu en particulier

¹³ GAO (2003a), p. 49.

¹⁴ Par exemple, en 2008, en Allemagne, le plafond était fixé à 4 millions EUR par audit pour l'audit légal. Aux États-Unis, la responsabilité des auditeurs est juridiquement illimitée mais en réalité, les actifs des cabinets sont limités en raison du problème que pose la possibilité d'échapper aux sanctions. Voir Bigus (2008), p. 1. Cet auteur mentionne qu'à la même époque, l'Australie et le Royaume-Uni étudiaient la possibilité d'introduire un plafond tandis que l'Allemagne envisageait de renforcer la responsabilité des auditeurs. PricewaterhouseCoopers (2008, p. 3), souligne que les actions en responsabilité civile susceptibles d'entraîner une situation désastreuse demeurent une source de préoccupation, par exemple lorsque les auditeurs sont confrontés à des poursuites pouvant aboutir à des sanctions qui dépasseraient largement leur niveau de responsabilité, au risque de menacer leur existence même. Ce groupe salue en conséquence l'introduction récente d'un système de responsabilité proportionnelle au Royaume-Uni et la recommandation de l'Union européenne en faveur d'une réforme du système de responsabilité des auditeurs. Voir également l'étude sur les règles applicables à la responsabilité des auditeurs préparée pour la Commission européenne par London Economics (2006).

¹⁵ Bigus (2008) soutient qu'en raison des caractéristiques particulières de la responsabilité des auditeurs, les possibles effets défavorables des plafonds de responsabilité sont modérés. Il estime au contraire que ces plafonds inciteraient les auditeurs à manifester un degré de prudence efficient alors que le principe de la responsabilité illimitée leur ferait prendre des précautions excessives. Les éléments caractéristiques de la responsabilité des auditeurs, qui occupent une place primordiale dans la conclusion de Bigus, sont notamment l'importance des effets de réputation et le manque de précision des normes comptables (qui s'ajoutent à la définition de la règle de négligence et de la rémunération excessive.) En ce qui concerne les premier et dernier points, voir également les sections A1.1 et 4 respectivement.

¹⁶ Commission européenne (2003a), p. 4. Aux États-Unis, le GAO (2003a, p. 7) note que « pendant plus de 70 ans, la profession d'expert-comptable, par le biais de sa fonction d'audit distincte, a pris une part non négligeable dans l'information et la communication financières qui sous-tendent le fonctionnement efficace des marchés financiers américains. » Voir également GAO (2008), p. 6-7.

de la crise financière en cours et des scandales qui ont récemment affecté des cabinets d'audit et des entreprises. Il ne saurait toutefois justifier que d'autres restrictions de concurrence viennent s'ajouter à la réglementation relative à l'accès suffisant des clients (potentiels) aux services comptables, au niveau minimum de qualité fondé sur des normes comptables claires et à l'indépendance des auditeurs vis-à-vis de leurs clients.¹⁷

1.4 *Pouvoir de marché*

Dans le contexte des services professionnels, le pouvoir de marché peut résulter soit de l'existence de monopoles (parfois protégés par la législation) et de structures de marché connexes, soit du comportement d'un groupe de fournisseurs assimilable à une entente. Les règles du droit de la concurrence sont nécessaires pour lutter contre les pratiques d'entente et d'abus de position dominante mises en œuvre par exemple par des associations professionnelles. L'encadré 3 illustre l'application de ces règles à l'égard des professions aux États-Unis, au Canada et en Australie et les encadrés 4 et 5 apportent des précisions sur les mesures prises par la Direction générale de la concurrence de la Commission européenne.

On a vu que le marché des services d'audit et comptables pour les grandes sociétés cotées est aujourd'hui très concentré et qu'il ne reste que quatre des huit grands cabinets – auxquels s'ajoutent des cabinets d'audit de petite ou moyenne envergure selon les pays. On peut donc se demander si le degré de concurrence et l'éventail de services offerts sont suffisants et, dans la négative, comment s'y prendre pour favoriser l'entrée de nouveaux cabinets sur ce marché.¹⁸

Comme l'ont constaté plusieurs auteurs, le problème qui se pose tient à la très grande importance attachée à la réputation et à la taille d'un cabinet d'audit, ce qui compliquerait l'entrée de nouveaux (réseaux de) cabinets sur le marché.¹⁹

¹⁷ Au bout du compte, d'autres services professionnels jouent un rôle important dans l'économie (parce qu'ils facilitent le bon fonctionnement du système juridique, favorisent la santé publique, etc.), mais la réglementation des prix, l'interdiction de la publicité et les restrictions quantitatives ne sont pas des solutions au problème de bien public associé à l'insuffisance de l'offre.

¹⁸ Notons toutefois encore que les gros clients des services d'audit ne changent pas facilement de fournisseur. Voir la section 2.5 ci-dessus. Voir également Commission européenne, affaire n° IV/M.1016 – Price Waterhouse/Coopers & Lybrand, 20 mai 1998, p. 8, : dans le cadre d'une enquête menée auprès de clients des grands cabinets (à l'époque où on en comptait six), la Commission a noté que ceux-ci étaient très réticents à changer d'auditeur attiré en raison de l'importance qu'ils accordaient à des facteurs tels que la confiance, résultant de relations de longue date, remontant dans certains cas à des décennies, avec le cabinet d'audit.

¹⁹ Par exemple, DeAngelo (1981), dans une étude souvent citée, a même fait valoir que la taille du cabinet d'audit se substitue raisonnablement à la qualité de l'audit, étant donné que les grands cabinets auraient plus à perdre de la non-déclaration d'une anomalie qu'ils auraient découverte dans les comptes d'un client donné. Cela s'explique par le fait que la technologie de l'audit se caractérise par des coûts de démarrage importants et que les auditeurs en place détiennent des quasi-rentes grâce à certains clients. Arruñada (1999) soutient que lorsque les cabinets possèdent une clientèle suffisamment diversifiée, ils encouragent également l'indépendance parce que l'effet des actifs spécialisés de la clientèle est fonction de sa diversification. Bien que cet argument amène l'auteur à conclure que la prestation de services autres que d'audit à des clients d'audit doit être laissée au marché, il peut également être interprété comme une justification de l'absence d'intervention sur le marché, par exemple dans les affaires de fusions motivées par un souci d'efficacité.

2. L'approche de la réglementation fondée sur l'intérêt particulier

L'approche fondée sur l'intérêt particulier est issue de la théorie du choix public, de la théorie de la capture et de la théorie de la réglementation (École de Chicago²⁰). Ces théories soulignent le rôle des groupes d'intérêts dans la formation de la réglementation. L'idée qui sous-tend l'approche fondée sur l'intérêt particulier est que les groupes d'intérêts cherchent continuellement à influencer les décisions politiques afin d'obtenir des rentes pour eux-mêmes, ce qui est improductif du point de vue du bien-être social.²¹ Les ressources sont affectées à la recherche d'un transfert de richesse des consommateurs vers les producteurs. Les groupes d'intérêts peuvent avoir une telle influence sur les responsables politiques que les efforts qu'ils déploient pour provoquer des défaillances de la réglementation priment sur les priorités générales. Les associations professionnelles, par exemple les associations comptables, sont habituellement de petite taille par rapport à l'ensemble de la population, axées sur un domaine particulier et bien organisées. Ce sont précisément ces atouts qui peuvent favoriser le succès des manœuvres d'un groupe de pression.²²

Selon Stigler (1971), l'industrie capture la réglementation, qui est élaborée et mise en œuvre à son seul avantage.²³ ²⁴ Peltzman (1976), qui a formalisé et étendu le modèle de Stigler, soutient que les responsables politiques répartissent des avantages et des inconvénients entre les groupes de pression et les électeurs pour optimiser leurs chances d'être réélus. Cela affaiblit jusqu'à un certain point le pouvoir politique des groupes d'intérêts. Becker (1983) a ensuite souligné que la réglementation peut résulter de la concurrence que se livrent différents groupes d'intérêts pour avoir une influence politique. Il estime que les pouvoirs publics corrigent les défaillances du marché et favorisent dans un même temps ceux qui sont politiquement puissants : dans les deux cas, leur action résulte de la concurrence exercée pour obtenir des avantages politiques.

Pour savoir dans quelle mesure la réglementation d'une profession sert l'intérêt particulier plutôt que l'intérêt général, il faudrait également mener des analyses quantitatives. Si certaines études empiriques – surtout aux États-Unis – appuient l'hypothèse selon laquelle il y aurait un comportement de recherche de rente dans les professions, il ne s'en dégage pas de véritable consensus sur l'existence effective de ce comportement et sur ses conséquences. Il arrive souvent que le manque de données (en particulier de données sur les gains, mais aussi de données sur les prix et les coûts provenant de séries chronologiques) empêche l'utilisation adéquate des modèles statistiques et économétriques pour évaluer les effets de la réglementation restrictive de concurrence.

²⁰ Pour plus de détails sur ces théories, voir Philipsen (2003), p. 23-27.

²¹ Buchanan, Tollison et Tullock (1980) présentent un éventail d'études de premier plan sur le comportement de recherche de rente. Il va de soi que le risque de comportement de recherche de rente se pose également dans le cas de l'autoréglementation.

²² À la condition que les coûts d'information du public en général (pour trouver les effets défavorables sur la recherche de rente) soient importants. Voir Olson (1965).

²³ Stigler (1971), p. 3. Cet auteur indique que chaque branche d'activité suffisamment puissante pour le faire exercera des pressions auprès des pouvoirs publics en faveur de la création de barrières à l'entrée : formation ou apprentissage obligatoires ; exigences applicables aux produits ; taxes ; quotas à l'importation, etc. Ces barrières sont naturellement favorables aux initiés présents sur un marché. De même, l'interdiction de la publicité sur un marché diminuerait la transparence et les prix demandés risqueraient d'être plus élevés que si cette interdiction n'avait pas cours.

²⁴ Posner (1974), p. 344-347, a montré l'existence d'un lien entre la théorie des cartels et la théorie de la réglementation professionnelle : du fait que les cartels sont difficiles à organiser et à surveiller, il peut arriver que la réglementation ait pour effet de les rendre plus stables.

CANADA

Accountants measure, disclose and provide assurances in relation to financial information to ensure managers, investors, tax authorities and others have reliable financial information. In Canada, accountants participate in a wide range of business activities, such as tax preparation, auditing, financial planning, business valuation, forensic investigation, financial management and information technology. Some accountants are also responsible for ensuring corporate accountability and helping organizations achieve their long-term competitive advantage.

There is a distinction between public accountants and other types of accountants. Generally, a public accountant conducts independent audits or reviews of a firm's financial statements to ensure that they are correct, fair, complete, reasonable and reliable to third parties¹. These services contrast with those provided by other accountants, who usually act as internal auditors or management consultants.

In 2007, the Competition Bureau of Canada (the "Bureau") published a report on self-regulated professions in Canada, entitled *Self-regulated Professions, balancing competition and regulation*². The report examined the effects of regulation on competition in five self-regulated professions, namely, accountants, lawyers, optometrists, pharmacists and real estate agents. The information contained in this paper is based on the findings of this report.

1. Concentration in the market

The major accountancy firms operating in Canada are affiliated with the Big Four accounting firms Price Waterhouse Coopers, Deloitte Touche Tohmatsu, Ernst & Young and KPMG. Much smaller second tier firms, including Grant Thornton and BDO Dunwoody, also operate in Canada. Together, these firms represent over 90 percent of the market share of public accounting in Canada.

The most recent merger between major accountancy firms occurred in 2002 and involved the acquisition by Deloitte Touche Tohmatsu of assets from Arthur Andersen. This matter was reviewed by the Bureau's Mergers Branch but was not challenged based on a lack of evidence that the transaction had resulted or was likely to result in a substantial lessening or prevention of competition in Canada.

The geographic market for accounting services in Canada varies based on the client and the services requested. For example, the market for audit services requested by large businesses and provided by major public accounting firms is often national or international. On the other hand, the market for tax preparation requested by small businesses or individuals and provided by smaller accounting firms would be more limited.

Those factors affecting the demand for accountants include fluctuations in the business cycle; changes in legislation affecting tax and audit policy; new regulation (whether implemented by the profession itself or mandated by law); and changes in per capita wealth. While there are no significant regulatory hurdles,

¹ The precise definition of *public accounting* varies across Canada. This description is taken from *Ontario's Public Accounting Act*, 2004, S.O. 2004, c. 8, s.2(1).

² *Self-regulated Professions, balancing competition and regulation*, Competition Bureau, 2007, www.competitionbureau.gc.ca.

reputation and the ability to service international customers across different political borders can act as significant obstacles when establishing a new firm in this market.

2. Regulation of entry

While there are numerous accounting designations worldwide, only three are generally recognized by provincial and territorial statute in Canada: Chartered Accountant (CA), Certified General Accountant (CGA) and Certified Management Accountant (CMA).

The members of these designations are represented at the national level by the Canadian Institute of Chartered Accountants (CICA), the Certified General Accountants Association of Canada (CGA-Canada) and the Society of Management Accountants of Canada (CMA Canada). These organizations conduct research, advocate for the profession and develop educational programs and examinations³.

2.1 Quality standard and entry

While there are generally no legal restrictions on who may practice accounting in Canada, all accountants are subject to the rules and regulations of their respective designations. To become a designated accountant in Canada, such as a CA, CGA or CMA, an individual must have a University Degree. In addition, the provincial and territorial accounting organizations require some amount of professional education. Professional education programs range in length depending on the designation and the province or territory. Individuals wishing to obtain an accountancy designation in Canada must also pass an examination, either to gain entry into a professional training course or to successfully complete it. The length and content of the examinations vary for each accounting designation and examinations may be repeated.

Work experience is also required. Generally, candidates must accumulate two to three years of accounting experience, or experience in a related field, before obtaining their designation. The length and nature of the work experience required varies by designation, province and territory. The standards outlined above for education, training and experience are established by accounting organizations. Provincial and territorial law gives the professional organizations the power to govern the profession in that jurisdiction.

Foreign accountants who wish to register as CAs, CMAs or CGAs in Canada are also subject to examination, education and experience requirements. Such requirements will depend on whether the individual is an existing member of a recognized foreign accounting body.

CICA's International Qualifications Appraisal Board (IQAB) assesses the admission standards of foreign accounting bodies and recommends to the provincial and territorial CA organizations whether and under what conditions members may be designated as Canadian CAs. Regardless of which foreign accounting body they belong to, all foreign accountants wishing to be designated as Canadian CAs must pass the CA Reciprocity Examination and may be required to complete additional practical training.

Members of foreign accounting bodies with standards and requirements similar to those of CGA-Canada who wish to register in Canada, must be members in good standing of those bodies and have

³ The CICA and the provincial and territorial accounting organizations jointly developed the CA qualifying evaluation, known as the Uniform Evaluation. Similarly, CGA-Canada developed the CGA Program of Professional Studies, which comprises an educational program and the Professional Applications and Competence Evaluations. CMA Canada developed the CMA entrance examination, Strategic Leadership Program and other accreditation programs.

achieved their designation by passing the required examinations (rather than through mutual recognition or otherwise). All applicants must complete studies equivalent to the CGA educational requirements; pass two or three examinations; meet a minimum requirement for professional experience; and meet degree requirements, unless certified in their home country prior to 1998.

In December 2006, CGA-Canada and the Association of Chartered Certified (ACCA) signed a global mutual recognition agreement. This agreement gives qualified members the opportunity to become members of both designations, provided they meet initial admission requirements. As a result, members of both designations benefit from enhanced international recognition and mobility.

There are over 150 professional accounting bodies that belong to the International Federation of Accountants. Members may be eligible for accelerated entry into the CMA designation in Canada through the Professional Advance Standing Program. Applicants wishing to join the CMA designation may be eligible for various exemptions, based on their academic history, other professional studies as well as work experience.

2.2 *Exclusive rights*

There is considerable overlap in the services provided by accountants with the CA, CGA and CMA designations. Furthermore, as most accounting services in Canada are not regulated, service providers such as bookkeepers, certified financial planners and tax attorneys may provide services that overlap with those provided by accountants. These other service providers may face varying levels of regulation. For example, lawyers are more regulated than bookkeepers, who generally do not have to be members of the Canadian Bookkeepers Association in order to provide their services.

Provincial and territorial law gives a professional organization the power to govern the profession in that jurisdiction for each designation. For example, the Institute of Chartered Accountants of British Columbia may make bylaws on the following:

- standards of professional conduct, competency or proficiency for students or a class of members;
- qualifications and procedures for admission as a member, election as a fellow or enrolment as a student;
- investigations and practice reviews;
- insurance against professional liability claims; and
- authorization of members to provide public accounting services through limited liability partnerships.

Public accounting is regulated in some provinces and not all accounting designations are permitted to offer the full extent of these related services. This has been challenged by a number of accounting groups in Canada, particularly in the province of Quebec. The Quebec provincial legislation allows only CGAs and CMAs to practice public accounting in limited circumstances⁴. The CGAs of New Brunswick challenged Quebec's restrictions on public accounting, alleging that Quebec law and regulation restricted interprovincial mobility of workers, thus contravening Chapter 7 of the Agreement on Internal Trade⁵. The

⁴ *Chartered Accountants Act*, R.S.Q., c. C-48, s 24.

⁵ *Report of the Article 1716 Panel Concerning a Dispute by the Certified General Accountants Association of New Brunswick with Quebec regarding Quebec's Measures Restricting Access to the Practice of Public*

complaint also alleged that Quebec's regulations on the licensing, certification and registration of accountants from other jurisdictions do not principally relate to those individuals' competence to practice public accounting, as required by the agreement⁶.

The panel who reviewed the complaint reported that “public accounting measures that restrict access to the practice of public accounting by non-CA accountants recognized in other jurisdictions as qualified to practice public accounting have impaired internal trade and have caused injury”⁷. In October 2005, the Quebec government made a public commitment to work with all three accounting designations to resolve this conflict and on December 14, 2006, tabled draft legislation to allow CGAs and CMAs to practice the full extent of public accounting in Quebec. The draft legislation did not proceed any further due to elections held in March 2007. However, on November 13, 2007, the Quebec government tabled new draft legislation, which was passed in December 2008. The industry continues to wait on the approval of this legislation, until which time neither CGAs nor CMAs can practice the full scope of public accounting.

In Ontario, the November 2005 coming into effect of the *Public Accounting Act, 2004* has allowed CGAs and CMAs to practice public accounting. This legislation is the result of the work of a 2001 panel established under the provisions of the Agreement on Internal Trade to consider a complaint by the CGAs of Manitoba. The panel found that Ontario's public accountant licensing system operated as a barrier to mobility because it effectively prevented qualified CGA who practiced public accounting in other jurisdictions from being licensed in Ontario.

3. Regulation of conduct

3.1 Advertising restrictions

There are no advertising restrictions specific to accountancy services in Canada. However, each accounting designation has its own set of advertising restrictions. There are many similarities among them, including, in most cases, provisions forbidding the following:

- false or misleading advertising;
- declarations that cannot be substantiated; and
- soliciting for engagements in a persistent, coercive or harassing manner.

Other types of advertising restrictions exist, such as those that set parameters on firm names and limit the information accountants may put on their business cards, stationery and business signs. There are also

Accounting, August 19, 2005, www.aitaci.ca/en/dispute/1_eng.pdf, p. 3. Chapter 7 of the Agreement on Internal Trade includes a series of obligations intended to ensure that workers qualified to work in one province or territory have access to employment opportunities in any other part of the country. Labour mobility barriers typically affect the approximately 15 to 20 percent of the workforce employed in regulated professions and trades. These barriers are rooted in provincial and territorial differences in the definitions of various occupations and the qualifications for entering the professions. Under the Agreement, regulators must comply with Chapter 7 obligations by April 1, 2009. Regulators must compare their occupational standards and, where a high level of commonality is found to exist, agree to recognize workers already qualified in another province without any additional assessments, testing or training. When any significant differences are found, regulators must reconcile or accommodate them, to minimize their impact on workers.

⁶ Ibid.

⁷ Ibid, p. 23.

restrictions on extravagant or self-laudatory advertising and restrictions that limit the media in which advertisements may appear⁸.

3.2 *Price regulation*

In Canada, prices for accounting services are freely negotiated and the Government is not involved in setting prices. There is no price setting mechanisms other than competition in the market. However, there are some rules limiting specific pricing practices which tend to vary by accounting designation rather than by province and territory. Some rules were put in place to discourage accountants from lowering the quality of their services for the sake of competing on price. This is the case with Rule 204.4(34) of the *CA Rules of Professional Conduct and Related Guidelines*, which states that accountants may perform engagements for a significantly lower fee than that charged by their predecessors only when qualified members do the work in accordance with professional standards.

In its 2007 study on self-regulated professions⁹, the Bureau found that while this type of restriction may be justified on the grounds that it protects the public interest, cost-efficient firms may restrict competition based on price. Eventually, such a restriction could lead to members of the profession charging the highest price recorded in the market, which ultimately results in less price competition. Given these effects on competition, it is important for regulators to consider whether there are other policy responses that would protect the public but do less harm to competition.

3.3 *Business structure*

There are various restrictions on business structure in a number of Canadian provinces and territories. A notable set of restrictions relate to the business structure of firms providing professional accounting services. This includes rules about who may form public limited companies, limited liability partnerships, private companies and multidisciplinary partnerships. For example, limited liability partnerships are only forbidden for CAs in Newfoundland and Labrador, while public limited companies are generally forbidden for CAs in all provinces, except Quebec. In addition, many provinces impose restrictions on who may own accounting practices. In Manitoba, when members of an accounting designation wish to set up a professional corporation, they must ensure that one or more members own all of the voting shares¹⁰.

The CICA states that restrictions on business structure maintain the proper balance between protecting public accountants against liability (except when they commit negligent or wrongful acts or omissions) and protecting the public interest. Specifically, restricting multidisciplinary partnerships enables CA organizations to discipline member firms for misconduct, whereas they would not necessarily be allowed to discipline the members of another profession in a multidisciplinary firm¹¹.

From a competition standpoint, placing restrictions on a firm's business structure does not allow it to profit from the possible efficiencies that stem from being a multidisciplinary firm. These restrictions can also discourage the entry of new accountants into the market and may act to protect higher cost firms from competition from newer, more cost-efficient firms.

⁸ Interpretation of Rule 217 of the CA Rules.

⁹ Ibid, supranote 2.

¹⁰ See, for example, Society of Management Accountants of Saskatchewan, Bylaws, Bylaw 10.02(b); Institute of Chartered Accountants of Ontario, Bylaws, Bylaw 308(1); Manitoba, *Certified General Accountants Act*, C.C.S.M. c. C46, s. 11.3(1)(d).

¹¹ CICA, consultation submission, July 4, 2007.

4. Institutional framework of self-regulation

4.1 *Application of competition law*

In Canada, accountancy services are covered by the prohibitions of anti-competitive practices in competition law. There has been no recent enforcement action regarding accountants under Canada's *Competition Act*. As previously mentioned, the Bureau examined the accountancy profession as part of its 2007 study on self-regulated professions¹².

4.2 *Regulatory oversight*

Each professional accountancy association is responsible for the investigation and disciplining of complaints against its respective members. Provincial and territorial law gives each association the power to govern its profession in that jurisdiction.

There is no national independent regulatory authority for the accountancy profession. However, in some provinces, the professions have appointed an independent arbitrator. For example, such an independent arbitrator oversees the entire accountancy profession in the province of Quebec. In addition, the provincial governments of Ontario, Quebec, Nova Scotia and Newfoundland and Labrador have appointed independent regulatory authorities to oversee auditors. Furthermore, the Canadian Public Accountability Board oversees the auditing of reporting issuers.

In Ontario, qualification standards set by the professions are subject to approval by a body of the Ontario government.

4.3 *Accounting standards*

In 2011, Canada will adopt the International Financial Reporting Standards (IFRS) for publicly accountable entities.

5. Conclusion

The professions in general, including the accountancy profession, currently faces a situation that is rich with opportunities to benefit from increased competition. The study on self-regulated professions conducted by the Bureau is only a starting point; there is ongoing work for regulators to do. The Bureau anticipates to review whether the professions have addressed the recommendations found in its study in 2010.

¹² Ibid, supranote 2.

FRANCE

1. Concentration in the market

1.1 Which are the major accountancy firms in your country? Are these firms affiliated with the “Big Four” accountancy firms (PricewaterhouseCoopers, Deloitte Touche Tohmatsu, Ernst & Young, and KPMG)? Do you have information about the market shares in your country of each of these companies as regards the provision of statutory audits for publicly traded companies and private companies?

Les autorités nationales et communautaires de la concurrence ont souligné dans l'ensemble des décisions adoptées dans le secteur de l'audit et l'expertise comptable que le marché de la prestation de ces services aux grandes entreprises et aux sociétés cotées se caractérisait par un degré élevé de concentration. En effet les quatre grands cabinets (« Big Four » : Ernst & Young, PWC, KPMG et Deloitte) apparaissent comme les seuls en mesure de répondre aux exigences d'une grande entreprise et d'une société cotée. Le marché de l'audit légal des grands comptes est désormais assuré par quelques opérateurs (les Big Four + Mazars). Ces cinq réseaux détiennent 85 % des mandats SBF 120 et 97 % de ceux du CAC 40.

La Commission européenne (décision M 1016 du 20-05-98, Price Watherhouse/Coopers) considère que les activités des cabinets d'audit et d'expertise comptable recouvrent six marchés de services distincts : le marché des services de conseil en gestion, le marché des services de conseil et d'assistance financière aux entreprises, le marché des services de conseil et d'assistance en fiscalité, le marché des services de conseil aux entreprises en difficulté, le marché des services d'audit et d'expertise comptable aux grandes entreprises et aux sociétés cotées.

Dans sa décision Ernst & Young / Andersen France (5 septembre 2002), la Commission européenne a souligné les difficultés rencontrées pour calculer les parts de marché des différents opérateurs actifs sur le marché de l'audit et l'expertise comptable aux grandes entreprises et aux sociétés cotées.

Le secteur global de l'audit et de l'expertise comptable est une profession à plusieurs facettes : d'un côté les leaders (les big four) qui visent essentiellement la clientèle des grands comptes. De l'autre côté les « petits » cabinets, dont l'offre est exclusivement destinée au PME ou aux TPE. Et au milieu des poids moyens qui peuvent rencontrer des difficultés.

1.2 Is there any information as to the market shares of accountancy firms in your country regarding other accountancy services such as financial advice, internal audits or tax advice?

L'étude « XERFI » sur le marché des activités comptables de février 2008 établit le constat suivant :

- Tenue et surveillance de comptabilité (Conseil fiscal) 66,4 % du marché
- Commissariat aux comptes 25,7 % du marché
- Conseil et analyse en comptabilité/audit financier 4,9 % du marché
- Centres de gestion agréés 3 % du marché

Pour un chiffre d'affaires global de 12,647 milliards d'euros. La tenue et la surveillance de la comptabilité sont à l'origine de l'essentiel des revenus de la profession.

1.3 *Have there been any recent mergers between accountancy firms in your country? Has there been any involvement in these mergers by a National Competition Authority or public regulator? If so, please describe.*

L'année 2006 a vu le rapprochement de Deloitte (jusqu'ici numéro 4 français) et de BDO Marque Gendrot (n°6), en 2007 Deloitte s'est rapproché de Constantin et Associés.

En 2005 KPMG avait renforcé ses positions en intégrant un des deux poids lourds de l'époque, Salustro Reydel.

Le ministère de l'Économie et les services des concentrations de la DGCCRF ont eu à connaître de ces affaires.

1.4 *If increased entry would be desired, how could new major accountancy firms develop? Are there any regulatory hurdles to the creation of new firms?*

Aujourd'hui, les cabinets de commissaires aux comptes de taille moyenne qui souhaiteraient se tourner vers les sociétés cotées se heurtent en premier lieu à un déficit de notoriété et de moyens qui conduisent les entreprises à ne pas les choisir.

La promotion de règles d'indépendance claires, comme la rotation des mandats, ainsi que le co-commissariat apparaissent de nature à favoriser un décloisonnement du marché et permettre à des cabinets de taille moyenne d'accéder à des mandats auprès de grandes sociétés.

2. Regulation of entry

2.1 *Quality standards and entry*

2.1.1 *Is a university degree required to practice as an auditor/accountant in your country? Does the requirement of an accountancy degree depend on the type of services provided (for example, providing statutory audits, financial advice, or tax advice)?*

Les conditions de diplôme :

- La formation pour l'expertise-comptable se déroule en trois étapes, chacune validée par un diplôme correspondant à des différents niveaux de qualification sur le marché du travail :
 - (a) Les différentes épreuves :
 - le diplôme de comptabilité et de gestion (DCG) niveau licence;
 - le diplôme supérieur de comptabilité et de gestion (DSCG) niveau master;
 - après le stage professionnel de trois ans, le diplôme d'expertise-comptable (DEC).

1. Le stage professionnel

Il dure 3 ans à temps complet, et est organisé par les Conseils régionaux de l'Ordre. Toutefois, sur décision du conseil régional de l'ordre et sous réserve de certaines conditions, la durée du

stage peut être diminuée d'une ou deux années et il peut s'effectuer à temps partiel. Par ailleurs le stage est accompli en France auprès d'une personne physique ou morale membre de l'ordre des experts comptables, sous la responsabilité d'un maître de stage agréé par le conseil régional de l'ordre. Les experts comptables stagiaires ne sont pas membres de l'Ordre mais sont soumis à sa surveillance et à son contrôle disciplinaire.

Le stage consiste dans l'exécution de travaux professionnels complétés par des actions de formation dont le contenu, l'organisation et les modalités de mise en œuvre sont arrêtés par le conseil supérieur de l'ordre des experts-comptables.

- Pour les commissaires aux comptes :

Les exigences requises en matière de qualification et de formations professionnelles pour l'inscription sur la liste des commissaires aux comptes sont les suivantes :

- soit avoir subi avec succès les épreuves du certificat d'aptitude aux fonctions de commissaires aux comptes après l'accomplissement d'un stage professionnel de trois ans jugé satisfaisant, chez une personne agréée par un Etat membre de la communauté européenne pour exercer le contrôle légal des comptes. Le candidat au certificat d'aptitude aux fonctions de commissaire aux comptes doit être titulaire d'un diplôme de l'enseignement supérieur ou être diplômé d'une école dont la liste est fixée par arrêté. Ces écoles et diplômes sanctionnent au minimum la réussite à un examen de niveau licence. Une réforme actuellement à l'étude projette d'exiger comme niveau minimum le grade de master.
- soit être titulaire du diplôme d'expertise comptable (ils représentent plus de 90 % de la profession), à condition que les 2/3 du stage aient été accomplis chez un commissaire aux comptes ou chez un contrôleur légal de l'Union européenne habilité à cet effet.

2.1.2 Is additional training required to practice as an accountant? If yes, for which profession (for example, Certified Public Accountant, Chartered Accountant, Auditor, Tax Advisor)? Who decides the content and form of this additional training: the State or the regulated profession? How long does the additional training last? Is there a concluding examination? Does the government play a role in overseeing the establishment of entry standards or the number of training places available? Is the examination selective? Can the examination be repeated?

Comme mentionné plus haut, un stage est obligatoire dans les deux professions. Il est d'une durée de 3 ans pour les experts comptables et les commissaires aux comptes. Le contenu du stage des experts-comptables est défini par le ministère de l'enseignement supérieur et de la recherche (le décret n° 81536 du 12 mai 1981 relatif au diplôme d'expertise comptable sera prochainement abrogé et remplacé par un nouveau décret). Un examen final sanctionne le stage par une soutenance de mémoire, notamment. Dans la mesure où un programme est défini par le ministère de l'enseignement supérieur (arrêté), le gouvernement établit les contenus et les programmes de révisions des connaissances. Il n'y a pas de nombre de stagiaires défini à l'avance, il convient d'obtenir une moyenne de 10/20. Dans ce sens une sélection est réelle. On peut reporter les notes obtenues dans la mesure où elles sont supérieures à la moyenne, si le candidat n'a pas obtenu la moyenne générale, ceci pendant 8 sessions (4 années)

Un nouveau décret est en cours de publication, pour se mettre en conformité avec les normes européennes LMD.

Pour les commissaires aux comptes, les conditions de déroulement du stage sont fixées par le ministre de la justice (arrêté). Le stage est effectué sous le contrôle du conseil régional de la compagnie régionale

des commissaires aux comptes dont relève le stagiaire. Le président du conseil régional, au vu du rapport du maître de stage et des observations écrites du contrôleur de stage, établit un certificat portant ses appréciations sur le déroulement du stage, précisant si celui-ci est jugé satisfaisant. Les textes ne fixent pas un nombre maximal de stagiaire par an. Pendant l'exécution de son stage, le stagiaire doit suivre les actions de formation organisées par le Conseil régional. A l'issue de son stage, le stagiaire se présente aux épreuves du certificat d'aptitude aux fonctions de commissaire aux comptes, dont le programme et les modalités sont définis par le ministre de la justice. Si celui-ci ne fonctionne pas comme un concours, seule la moyenne de 10/20 étant requise, il constitue toutefois un examen sélectif, le taux de réussite se situant aux alentours de 30% des candidats.

2.1.3 Are there requirements relating to on-going education for any of the accountancy professions in your country? If yes, who sets the quality standards to be reached and how is it assessed whether professionals satisfy the quality requirements?

La formation continue est obligatoire pour ces professions (Code de déontologie, « obligation de mettre à jours ses connaissances ») décret n° 2007-1387- du 27 septembre 2007. Pour les commissaires aux comptes cette obligation est prévue à l'article R. 822-61 du code de commerce.

Un contrôle qualité des membres de l'ordre et notamment de cette formation continue est effectué par l'Ordre des Experts Comptables. Ces dispositions sont prévues dans le Règlement intérieur de la profession. En effet depuis 1993, l'Ordre des experts comptables a mis en place des normes spécifiques et un contrôle qualité expressément distinct de l'ISO 9001. Le contrôle a pour but de s'assurer de l'adéquation des travaux du membre de l'ordre et du fonctionnement de son cabinet à l'ensemble des normes et règles en vigueur, compte tenu des usages de la profession.

Pour les commissaires aux comptes, la nature et la durée des activités susceptibles d'être validées au titre de la formation continue sont déterminées par le ministre de la justice (arrêté). Un comité scientifique (réunissant des professionnels et des personnalités extérieures à la profession) placé auprès de la compagnie nationale des commissaires aux comptes est chargé de l'homologation des formations proposées en fonction des exigences posées par l'arrêté. Le code de commerce (article L. 822-4) prévoit en outre que toute personne inscrite sur la liste des commissaires aux comptes qui n'a pas exercé ces fonctions pendant trois ans est tenue de suivre une formation continue particulière avant d'accepter une mission.

2.1.4 Is registration, a license or membership of a professional body required to practice as an accountant (for example, as a Certified Public Accountant, Chartered Accountant, Auditor or Tax Advisor)? Which professional self-regulatory bodies exist in your country?

Selon les dispositions de l'article 3 de l'ordonnance de 1945 portant institution de l'ordre des experts comptables et réglementant le titre et la profession d'expert comptable « Nul ne peut porter le titre d'expert comptable, ni en exercer la profession, s'il n'est inscrit au tableau de l'ordre ».

Ainsi, l'inscription au tableau de l'Ordre des experts-comptables est obligatoire pour les experts-comptables exerçant sous forme d'entreprise individuelle, et s'effectue auprès du Conseil régional du lieu de situation du cabinet.

Les experts-comptables sont également admis à constituer, pour exercer leur profession, des sociétés anonymes, des sociétés par actions simplifiées qui doivent être inscrites au tableau de l'ordre.

Enfin, l'activité d'expertise comptable peut être exercée au sein d'associations de gestion et de comptabilité qui ne sont pas membres de l'ordre des experts-comptables.

L'inscription est facultative lorsque l'expert-comptable est salarié d'un membre de l'Ordre ou d'une société d'expertise-comptable.

Tout expert-comptable, quelle que soit la forme sous laquelle il exerce, doit justifier d'une couverture d'assurance de responsabilité civile professionnelle.

En ce qui concerne les commissaires aux comptes, les dispositions de l'article L.822-1 du code de commerce subordonnent l'exercice de la profession de commissaire aux comptes à l'inscription sur une liste dont la tenue est assurée par une commission spéciale (la commission régionale d'inscription), dont les décisions sont susceptibles de recours devant l'autorité publique indépendante que constitue le Haut Conseil du commissariat aux comptes. La Commission vérifie que le commissaire aux comptes sollicitant son inscription, présente les conditions de moralité et d'honorabilité fixées par la loi, ainsi que celles relatives à la formation et aux qualifications professionnelles. Elle veille également à la mise à jour régulière de cette liste. Les commissaires aux comptes inscrits sont tenus de prêter serment.

En France il existe

- pour les experts comptables, un Ordre des experts comptables, il est organisé en un Conseil supérieur et 23 Conseils Régionaux ;
- pour les commissaires aux comptes, la profession est organisée en compagnies (régionales et nationale). La Compagnie Nationale des commissaires aux comptes est chargée de représenter la profession auprès des pouvoirs publics. La loi de sécurité financière (LSF) du 1er août 2003 a placé la profession de commissaire aux comptes sous le contrôle d'un Haut Conseil du Commissariat aux Comptes (H3C) institué auprès du Garde de Sceaux. Le H3C est présidé par un membre de la Cour de Cassation et a pour mission d'assurer la surveillance et la discipline de la profession et de veiller au respect de la déontologie et de l'indépendance de ses membres. A ce titre, il examine les normes qui sont applicables à la profession et il est en charge de la promotion des bonnes pratiques professionnelles.

2.1.5 *Are there quantitative limits (for example, relating to demographic or territorial criteria) regarding the entry into the accountancy profession(s) in your country? If yes, for which professions and/or accountancy services?*

Il n'existe pas de numerus clausus pour ces professions.

2.1.6 *For countries outside the EU (for which specific European legislation applies), please also discuss whether there are any barriers for establishment by foreign accountants. Are foreign accountants allowed to provide services? Is establishment or provision of services subject to specific conditions?*

L'article 27 de l'ordonnance de 1945 portant institution de l'ordre des experts comptables et réglementant le titre et la profession d'expert comptable prévoit que « Peut être autorisé à s'inscrire au tableau de l'ordre en qualité d'expert-comptable tout ressortissant d'un État qui n'est pas membre de la Communauté européenne ni partie à l'accord sur l'Espace économique européen à condition qu'il soit titulaire, soit du diplôme français d'expertise comptable, soit d'un diplôme jugé de même niveau et, dans ce cas, qu'il ait subi avec succès un examen d'aptitude tel que prévu à l'article 26 ».

L'autorisation est accordée, sous réserve de réciprocité, après avis du conseil supérieur de l'ordre, par décision du ministre chargé de l'économie en accord avec le ministre des affaires étrangères.

Ces dispositions sont applicables aux ressortissants d'un État membre de la Communauté européenne ou partie à l'accord sur l'Espace économique européen titulaire d'un diplôme permettant l'exercice de la profession, délivré par un pays tiers.

En ce qui concerne la libre prestation de services, l'article 26-1 (ordonnance de 1945) dispose que :

« La profession d'expert-comptable peut être exercée en France de façon temporaire et occasionnelle par tout ressortissant d'un État membre de la Communauté européenne ou d'un autre État partie à l'accord sur l'Espace économique européen, sous réserve :

1° D'être légalement établi, à titre permanent, dans l'un de ces États pour exercer l'activité d'expert-comptable ;

2° Lorsque cette profession ou la formation y conduisant ne sont pas réglementées dans l'État d'établissement, d'y avoir en outre exercé cette profession pendant au moins deux ans au cours des dix années qui précèdent la prestation d'expertise comptable qu'il entend réaliser en France. »

La prestation d'expertise comptable est effectuée sous le titre professionnel de l'État d'établissement lorsqu'un tel titre existe dans cet État. Ce titre est indiqué dans la langue officielle de l'État d'établissement. Dans les cas où ce titre professionnel n'existe pas dans l'État d'établissement, le prestataire fait mention de son diplôme ou titre de formation dans la langue officielle de cet État. L'exécution de cette prestation d'expertise comptable est subordonnée à une déclaration écrite auprès du Conseil supérieur de l'ordre des experts-comptables préalable à la première prestation. La déclaration écrite précise les couvertures d'assurance ou autres moyens de protection personnelle ou collective concernant la responsabilité professionnelle de ce prestataire. Cette déclaration est réitérée en cas de changement matériel dans les éléments de la déclaration et renouvelée chaque année si le prestataire envisage d'exercer cette activité au cours de l'année concernée.

Les dispositions de l'article L. 822-1-1 du code de commerce prévoient l'inscription sur la liste des commissaires aux comptes, des professionnels d'un autre Etat partie à l'accord sur l'espace économique européen ou d'un Etat étranger, sous réserve de réciprocité. Cette inscription n'est possible que si le demandeur satisfait aux exigences d'honorabilité prévues pour les nationaux, ainsi qu'à des conditions spécifiques relatives aux qualifications professionnelles. Au titre de la formation, les candidats à l'inscription doivent être titulaires d'un diplôme ou d'un titre jugé de même niveau que le certificat d'aptitude aux fonctions de commissaire aux comptes ou du diplôme d'expertise comptable. Ils doivent, en outre, bénéficier d'une expérience professionnelle de trois ans dans le domaine du contrôle légal des comptes. Ils subissent enfin une épreuve d'aptitude.

Une procédure d'inscription spécifique est également prévue pour les commissaires aux comptes agréés par des pays tiers qui certifient les comptes annuels ou les comptes consolidés de personnes ou d'entités n'ayant pas leur siège dans un Etat membre de la Communauté européenne ou dans un Etat partie à l'espace économique européen mais émettant des titres admis à la négociation sur un marché réglementé en France. Cette procédure d'inscription conditionne la validité en France des rapports de certification signés par ces professionnels, sans leur conférer pour autant le droit de conduire des missions de contrôle légal des comptes auprès de personnes ou entités ayant leur siège sur le territoire français. Des dérogations à cette inscription sont cependant prévues pour les auditeurs des pays qui présentent des systèmes de supervision publique de qualité équivalente aux structures de contrôle mises en place au sein de l'Union européenne.

Ces dispositions résultent de la transposition de la directive 2006/43/CE du 17 mai 2006, qui définit les règles applicables à l'audit légal des comptes au sein des Etats membres de l'Union européenne.

2.1.7 *If your country is considering changes in the near future that affect the answers to the above questions, please give a brief overview of the envisaged changes.*

En matière de libre prestation de service, la transposition de la directive services pourrait amener des simplifications de régimes d'autorisation.

2.2 **Exclusive rights**

2.2.1 *Do regulated accountancy professions enjoy exclusive rights? Please specify which rights and indicate the regulated accountancy profession which performs these reserved tasks. The following division may be helpful in answering this question: i) providing statutory audits to publicly traded companies; ii) providing statutory audits to private companies; iii) other accountancy services, such as internal audit, insolvency, corporate finance work, due diligence, etc.; iv) tax advice*

Le champ d'exercice professionnel des experts comptables comprend des missions relevant de la compétence exclusive de la profession, ces missions sont les suivantes :

- Attester la régularité et la sincérité des bilans et comptes de résultat ;
- Tenir, centraliser, ouvrir, arrêter, surveiller, redresser et consolider les comptabilités des entreprises et organismes auxquels il n'est pas lié par un contrat de travail

Les activités des commissaires aux comptes relevant de leur compétence exclusive peuvent être réparties en trois catégories :

- La mission de certification des comptes qui s'identifie à l'audit des comptes au sens strict (comptes annuels et consolidés),
- Les vérifications et informations spécifiques, où l'intervention du commissaire aux comptes est requise par la loi. Elles comprennent :
 - le contrôle des documents remis aux actionnaires (rapport de gestion, rapport sur le rapport du président du conseil d'administration ou de surveillance, rapport sur le contrôle interne, etc...),
 - le contrôle des documents relatifs à la prévention des difficultés des entreprises,
 - le contrôle des conventions réglementées,
 - des contrôles divers : égalité entre actionnaires, prise de participation et de contrôle, communication des irrégularités et des inexactitudes à l'assemblée.
- Les autres interventions définies par une réglementation particulière, qui résultent de la prise en compte par le législateur des risques attachés à certaines opérations, ou à des circonstances particulières ou enfin liées aux caractéristiques de certaines missions. Elles correspondent à la prise en compte croissante par le législateur du caractère d'utilité publique de la mission de commissaire aux comptes. Elles comprennent notamment des interventions consécutives à des

faits survenant dans l'entité, tels que la révélation de faits délictueux ou le déclenchement de la procédure d'alerte (lorsqu'il existe de faits de nature à compromettre la continuité d'exploitation de l'entreprise). Elles peuvent également être liées à des interventions propres à certaines entités ou consécutives à des opérations spécifiques au sein de la société.

La nomination d'un commissaire aux comptes résulte soit d'une obligation légale liée au statut de l'entité contrôlée (ex : sociétés anonymes, société en commandite par actions, établissements de crédit, sociétés d'assurance, organismes de sécurité sociale), soit d'un dépassement de seuils fixés par le législateur pour un type d'entité donnée (sociétés en nom collectif, sociétés à responsabilité limitée, sociétés par actions simplifiées, associations recevant des subventions publiques, mutuelles etc...), soit d'une décision volontaire des associés lorsqu'il n'existe pas d'obligation légale de nomination.

A titre d'exemple les sociétés à responsabilité limitée, les sociétés en commandite simple et les sociétés en nom collectif sont tenues de désigner un commissaire aux comptes en cas de franchissement de deux des seuils suivants :

- Plus de 50 salariés
- Un chiffre d'affaires supérieur à 3,1 millions d'euros
- Au total un bilan supérieur à 1,55 millions d'euros

2.2.2 *Have exclusive rights associated with the accountancy professions ever been reviewed?*

Ces données sont inchangées depuis la création de ces professions.

2.2.3 *If your country is considering changes in the near future, which affect the answers to the above questions, please give a brief overview of the envisaged changes and reasons for them.*

Aucun changement n'est envisagé pour l'instant dans ce domaine.

3. Regulation of conduct

3.1 Advertising restrictions

3.1.1 *Is advertising allowed subject to the same constraints as in any other business (prohibition of misleading advertising contained in fair trade laws)?*

Pour répondre aux exigences communautaires, la publicité personnelle n'est plus interdite aux membres de l'Ordre (ordonnance N° 45-2138 du 19 septembre 1945, art 23 modifié en 2004). Selon le code de déontologie, les membres de l'Ordre ne peuvent effectuer toute démarche non sollicitée en vue de proposer leurs services à des tiers. Leur participation à des colloques, séminaires ou autres manifestations universitaires ou scientifiques est autorisée dans la mesure où ils ne se livrent pas à cette occasion, à des actes assimilables au démarchage. Les actions de promotions leur sont permises dans la mesure où ils procurent au public une information utile.

Les moyens auxquels il est recouru à cet effet sont mis en œuvre avec discrétion, de façon à ne pas porter atteinte à l'indépendance et à l'honneur de la profession, pas plus qu'aux règles du secret professionnel à la loyauté envers les clients et les autres membres de la profession. Ces modes de communication doivent être exempts de tout élément comparatif.

En ce qui concerne les commissaires aux comptes, l'article 36 du code de déontologie inscrit dans le décret du 16 novembre 2005 est ainsi rédigé :

« Il est interdit aux commissaires aux comptes d'effectuer toute démarche non sollicitée en vue de proposer leurs services à des tiers. Leur participation à des colloques, séminaires ou autres manifestations universitaires ou scientifiques est autorisée dans la mesure où ils ne se livrent pas à cette occasion, à des actes assimilables au démarchage »

Les restrictions en matière de publicité entre ces deux professions sont ainsi très semblables.

3.1.2 *Does the state restrict advertising with respect to accountancy services? If yes, specify the restrictions and the services to which they apply.*

Le code de déontologie des experts-comptables est négocié avec les organismes représentatifs de la profession et fait l'objet d'un décret en Conseil d'État. Le code de déontologie des commissaires aux comptes est également approuvé par décret en Conseil d'Etat, pris après avis du Haut Conseil du commissariat aux comptes et pour les dispositions s'appliquant aux commissaires aux comptes intervenant auprès des personnes et des entités faisant appel public à l'épargne après avis de l'Autorité des marchés financiers.

Les règles mentionnées ci dessus sont valables pour tous les services comptables.

3.1.3 *Do the regulatory bodies restrict advertising? If yes, specify the restrictions and the services to which they apply.*

Le démarchage et la publicité comparative sont interdits dans ces deux professions.

3.1.4 *If there are advertising restrictions, please specify their contents. The following questions may be indicative: Is there a total advertising ban, excluding only name plates, official registers and phone books? Can special expertise be advertised? Can the fee level be advertised? Is comparative advertising allowed? Are there other restrictions, for example related to the ethical standards of the profession?*

L'article 37 du code de déontologie de la profession des commissaires aux comptes définit quant à lui, les mesures suivantes :

La publicité est permise au commissaire aux comptes dans la mesure où elle procure au public une nécessaire information. Les moyens auxquels il est recouru à cet effet sont mis en œuvre avec discrétion, de façon à ne pas porter atteinte à l'indépendance, à la dignité et à l'honneur de la profession, pas plus qu'aux règles du secret professionnel, à la loyauté envers les clients et les autres membres de la profession.

Les commissaires aux comptes peuvent utiliser le titre de commissaire aux comptes et le faire suivre de l'indication de la compagnie régionale dont ils sont membres.

Lorsqu'il présente son activité professionnelle à des tiers, par quelque moyen que ce soit, le commissaire aux comptes ne doit adopter aucune forme d'expression qui soit de nature à compromettre la dignité de sa fonction ou l'image de la profession.

Les autres formes de communication sont autorisées sous réserve :

- que l'expression en soit décente et empreinte de retenue ;

- que leur contenu ne comporte aucune inexactitude ni ne soit susceptible d'induire le public en erreur ;
- qu'elles soient exemptes de tout élément comparatif.

3.1.5 *If your country is considering changes in the near future that affect the answers to the above questions, please give a brief overview of the envisaged changes and the reasons for them.*

3.2 **Price regulation**

3.2.1 *Are prices freely negotiated?*

Art 24 de l'ordonnance 45-2138 du 19 septembre 1945 (experts comptables)

« Les membres de l'Ordre reçoivent, pour tous les travaux entrant dans leurs attributions, des honoraires qui sont exclusifs de toute autre rémunération, même indirecte, d'un tiers, à quelque titre que ce soit. Ces honoraires doivent être équitables et constituer la juste rémunération du travail fourni comme du service rendu. Leur montant est convenu librement avec les clients sous réserve des règles et éléments de tarification qui pourraient être établis par le ministère de l'économie et des finances, après avis du conseil supérieur de l'ordre et de l'application de la législation sur les prix. Ils ne peuvent en aucun cas être calculés d'après les résultats financiers obtenus par les clients ».

Le montant des honoraires est convenu librement avec les clients. La lettre de mission définit les droits et les obligations des parties ainsi que les modalités de facturation. Il fait référence le cas échéant aux normes professionnelles.

Les honoraires des commissaires aux comptes sont à la charge de la personne ou de l'entité contrôlée. La rémunération résulte de la mise en œuvre d'un programme de travail écrit qui doit être soumis à l'entité contrôlée. Le code de commerce (article R. 823-12) définit un barème permettant d'approcher le nombre de vacations horaires nécessaires à la mise en œuvre du programme de travail dans l'entité contrôlée en fonction d'indicateurs financiers. Les honoraires du commissaire aux comptes sont ensuite calculés en opérant la multiplication du nombre de vacations horaires ainsi définies par un taux horaire fixé d'un commun accord entre le commissaire et la personne ou l'entité contrôlée.

La rémunération des commissaires aux comptes doit en outre respecter les principes suivants définis par le code de déontologie de la profession :

- La rémunération du commissaire aux comptes est en rapport avec l'importance des diligences à mettre en œuvre, compte tenu de la taille, de la nature et de la complexité des activités de la personne ou de l'entité dont les comptes sont certifiés.
- Le commissaire aux comptes ne peut accepter un niveau d'honoraires qui risque de compromettre la qualité de ses travaux.
- Une disproportion entre le montant des honoraires perçus et l'importance des diligences à accomplir affecte l'indépendance et l'objectivité du commissaire aux comptes.

3.2.2 *Does the government set prices? If yes, indicate for which services (for example, statutory audits for publicly traded companies). Also specify whether these are maximum prices, minimum prices or fixed prices. How does the government pay for auditing services it uses?*

Les prix sont libres dans ce secteur.

3.2.3 *Do the self-regulatory bodies set prices? If yes, specify whether these are maximum prices, minimum prices or fixed prices and for which services. Is use made of recommended prices?*

Non

3.2.4 *Specify the criteria upon which the price can be based: number of hours worked, complexity of the audit, contingency fees, etc*

Les honoraires du commissaire aux comptes sont déterminés de manière suivante :

- les honoraires du Commissaire aux Comptes sont réglementés par décret et par le Code de Déontologie de la profession.

Ils dépendent :

- Du nombre d'heures nécessaires à la bonne exécution de la mission dans le respect de fourchettes définies par décret,
- Du barème horaire pratiqué par chaque cabinet.

Les honoraires du Commissaire aux Comptes sont à la charge de la société qu'il contrôle.

Le Commissaire aux Comptes doit faire une proposition d'honoraires chaque année à son client en lui communiquant une lettre de mission. L'objectif de la lettre de mission est de détailler les modalités de l'intervention et d'établir une relation de confiance et de transparence entre le Commissaire aux Comptes et son client.

Adaptation de la rémunération à la complexité des travaux - La rémunération du Commissaire aux Comptes doit être en rapport avec l'importance des diligences à mettre en œuvre, compte tenu de la taille, de la nature et de la complexité des activités de la personne ou de l'entité dont les comptes sont certifiés. Le Commissaire aux Comptes ne peut accepter un niveau d'honoraires risquant de compromettre la qualité de ses travaux.

Un barème des heures de travail - Ainsi, le programme de travail, qui définit la nature et l'étendue des diligences estimées nécessaires compte tenu des prescriptions légales et des normes d'exercice professionnel, doit indiquer le nombre d'heures de travail affectées à la mission de contrôle et les honoraires correspondants (décret n °69-810 du 12 août 1969, art. 119, désormais codifié aux articles R-823-8 et suivant du code de commerce). A ce titre, il existe un barème réglementaire en nombre d'heures, applicable aux PME industrielles et commerciales. Les diligences estimées nécessaires à l'exécution du programme de travail ont été fixées en fonction du total du bilan (montant net) de l'entité, augmenté du montant des produits d'exploitation et des produits financiers, hors TVA. La "fourchette" du nombre d'heures de travail est établie selon les chiffres exposés ci-contre.

Ce barème d'honoraires réglementaire ne concerne pas le travail supplémentaire que le commissaire aux comptes pourrait effectuer dans le cadre d'une procédure d'alerte (article R . 823-13) ni la mission de certification des comptes consolidés, ni les missions temporaires confiées par la société contrôlée à la

demande d'une autorité publique (article R. 823-16). A notre sens, ce barème doit s'appliquer à la certification des comptes sociaux, aux vérifications et informations spécifiques prévues dans le cadre général de cette mission.

Le barème d'honoraires offre une certaine souplesse, dans la mesure où il existe une variation des heures à effectuer pour chaque seuil et qu'il est possible d'y déroger (article R. 823-14). Ainsi, la partie la plus diligente, l'entreprise ou le commissaire aux comptes peut saisir le Président de la Compagnie compétente afin de bénéficier d'une dérogation, sous réserve qu'elle puisse justifier les motifs de cette demande. En pratique, c'est le Commissaire aux comptes qui en général effectue cette démarche. Le Président doit se prononcer sur son accord ou son refus dans les quinze jours de la demande.

Une fixation libre du tarif des vacations horaires - Le montant de la vacation horaire est déterminé d'un commun accord entre le commissaire aux comptes et la personne contrôlée, préalablement à l'exercice de la mission (Article R.823-15). Toutefois, l'article 33 du Code de Déontologie interdit toute forme de rémunération proportionnelle ou conditionnelle. Les honoraires, qui doivent être payés par l'entreprise, sont donc négociés entre les parties ; le tarif horaire dépend généralement de la taille et de la renommée de la société d'audit, de sa situation géographique ainsi que de la difficulté technique de la mission. En pratique, les tarifs oscillent entre 100 et 200 € de l'heure, en général, la région parisienne et les grandes métropoles régionales pratiquent des prix plus élevés que la moyenne nationale.

Modalités de facturation - Normalement, les honoraires négociés ne comprennent pas les frais de déplacement et de séjour engagés par les commissaires aux comptes dans l'exercice de leur mission. En tant que débours, ces frais doivent être remboursés par l'entité contrôlée au vu des justificatifs (billets de train ou d'avion, notes d'hôtels...) produits par le Commissaire aux Comptes (Article R. 823-15). C'est pourquoi, les factures d'honoraires indiquent sur une ligne à part ces frais. S'agissant d'une prestation de services, les honoraires deviennent exigibles au moment de l'achèvement des travaux, matérialisé par la remise du rapport général. Dans la pratique, il est d'usage courant que le Commissaire aux Comptes facture des demandes d'acomptes sur honoraires au cours de l'exercice contrôlé, justifiées par la permanence de sa mission et l'avancement des travaux d'audit.

3.2.5 *If your country is considering changes in the near future that affect the answers to the above questions, please give a brief overview of the envisaged changes and the reasons for them.*

3.3 *Inter-professional co-operation and business structure*

3.3.1 *Is the formation of multi-disciplinary partnerships allowed? Are accountants allowed to incorporate? If yes, are there any restrictions with respect to the legal form of incorporation (for example limited liability partnership, public limited company)?*

Exercice de la profession d'expert comptable

Pour exercer leur profession, les experts-comptables peuvent constituer une société anonyme (SA), une société par actions simplifiée (SAS) ou une société à responsabilité limitée (SARL) qui doit répondre à des conditions très particulières (voir ci-dessous).

L'activité d'expertise-comptable peut également être exercée au sein de sociétés civiles et d'associations de gestion et de comptabilité. Les experts-comptables peuvent également constituer des sociétés de participations d'expertise-comptable. Celles-ci ont pour objet exclusif la détention de parts ou d'actions de SA, de SARL ou de SAS. Dans tous les cas de figure, une immatriculation auprès du Centre de Formalités des Entreprises (CFE) est nécessaire. Si l'expert-comptable opte pour l'entreprise individuelle, l'immatriculation se fait alors auprès du CFE de l'URSSAF.

Lorsque l'activité est exercée sous forme de société commerciale, il lui appartient de s'immatriculer auprès du Registre du commerce et des Sociétés (RCS).

Lorsque l'activité est exercée sous forme de société d'exercice libéral (SEL), l'immatriculation se fait auprès du greffe du tribunal de commerce.

En ce qui concerne les SEL (Sociétés d'exercice libéral) le montant des capitaux extérieurs pourra, suite à l'adoption de la loi LME du 4 août 2008, être détenu à hauteur de 49 % (au lieu de 25 %) par toute personne physique ou morale tierce.

(a) Exercice sous forme de sociétés commerciales

Les sociétés commerciales dont l'objet social est l'expertise-comptable doivent répondre à des conditions spécifiques relatives à la détention du capital et à la qualité des dirigeants.

1. Dans une SARL

- Les experts-comptables doivent, directement ou indirectement, détenir une part du capital et des droits de vote égale au moins aux trois-quarts du capital social ;
- le ou les gérants doivent être des experts-comptables associés de la société.

2. Dans une SA

- Les experts comptables doivent, directement ou indirectement, détenir une part du capital et des droits de vote égale au moins aux deux-tiers du capital social ;
- l'appel public à l'épargne est autorisé pour les titres excluant l'accès même différé ou conditionnel au capital ;
- les statuts doivent subordonner l'admission de tout nouvel actionnaire à l'agrément préalable du conseil d'administration ou du conseil de surveillance ;
- le président du conseil d'administration ou du conseil de surveillance, les directeurs généraux ou les membres du directoire ainsi que la moitié au moins des administrateurs ou des membres du conseil de surveillance doivent être des experts-comptables membres de la société.

3. Dans une SAS

- Les experts comptables doivent, directement ou indirectement, détenir une part du capital et des droits de vote égale au moins aux deux-tiers ;
- le président de la SAS doit être un expert-comptable membre de la société.

(b) Exercice sous forme de société civile : modalités particulières

Les experts-comptables peuvent constituer entre eux une société civile s'ils répondent à deux conditions :

- tous les associés doivent être individuellement membres de l'Ordre ;

- la société ainsi constituée doit être reconnue comme pouvant exercer la profession d'expert-comptable par le Conseil de l'Ordre et être inscrite au tableau.

(c) Exercice sous forme d'association de gestion et de comptabilité

L'article 5 de l'ordonnance n° 2004-279 du 25 mars 2004 portant simplification et adaptation des conditions d'exercice de certaines activités professionnelles a modifié l'ordonnance de 1945 afin de permettre l'exercice de l'activité d'expertise comptable sous forme associative au sein d'associations de gestion et de comptabilité (AGC).

Ces associations de gestion et de comptabilités régies par la loi de 1901 peuvent :

- soit avoir été créées à cet effet ;
- soit être issues de la transformation des centres de gestion agréés et habilités.

Ces associations sont créées à l'initiative des Chambres de commerce, des Chambres de métiers, des Chambres d'agriculture ou d'organisations professionnelles d'industriels, de commerçants, d'artisans ou d'agriculteurs. Les ressources de ces associations sont constituées, d'une part, par des cotisations et des rémunérations versées par les adhérents et, d'autre part, par des subventions publiques.

Exercice de la profession pour les commissaires aux comptes

Ils peuvent exercer individuellement ou sous forme de sociétés de commissaires aux comptes. « Deux ou plusieurs commissaires aux comptes peuvent constituer une société civile professionnelle, pour l'exercice commun de leur profession ».

La société constituée a l'obligation de s'inscrire sur la liste établie pour le ressort de la cour d'appel dans lequel elle a son siège.

Elles peuvent aussi prendre une autre forme, de société à responsabilité limitée ou de société anonyme, pour l'essentiel.

« Toute personne physique ou morale peut détenir un quart au plus des sociétés mentionnées au titre Ier de la loi n° 90-1258 du 31 décembre 1990 relative à l'exercice sous forme de sociétés des professions libérales soumises à un statut législatif ou réglementaire ou dont le titre est protégé ».

Le législateur a laissé une grande latitude aux commissaires aux comptes pour le cadre d'exercice juridique de leurs fonctions. L'article L. 822-9 alinéa 1 du code de commerce prévoit ainsi que les fonctions de commissaire aux comptes sont exercées par des personnes physiques ou des sociétés constituées entre elles sous quelque forme que ce soit. Ce principe trouve toutefois une limite dès lors que l'exercice de la profession de commissaire aux comptes est incompatible avec toute activité commerciale. Certaines formes juridiques sont ainsi exclues puisqu'elles font acquérir à leurs associés le statut de commerçant du seul fait de leur participation à la société.

Si un commissaire aux comptes peut être actionnaire ou associé dans plusieurs sociétés de commissaire aux comptes, il ne peut en principe exercer cette activité que dans une seule société (article L. 822-9 alinéa 3 du code de commerce). Il en résulte que le représentant légal de la société et le cosignataire ne peuvent signer des rapports que dans une seule société de commissaires aux comptes. Par dérogation, l'activité de commissaire aux comptes peut intervenir simultanément au sein de deux sociétés lorsque, soit

la première société de commissaire aux comptes détient plus de la moitié du capital social de la seconde, soit les associés des deux entités sont communs aux deux sociétés pour au moins la moitié d'entre eux.

3.3.2 *Do accounting firms provide consulting services? If so, of what type? Are there conflicts of interest with other professions (for example, lawyers) that may be necessary to avoid?*

Pour des raisons éthiques évidentes, ces professions ne peuvent mener de front des missions de conseil et de commissariat aux comptes pour la même entreprise. Si ces groupes avaient anticipé cette évolution, ils ne pensaient pas que la notion de conseil serait étendue au conseil « juridique et fiscal ».

Certains cabinets restent convaincus que la pluridisciplinarité répond à une attente de leurs clients.

Le conseil détaché de la fonction de contrôle peut être une opportunité d'une nouvelle clientèle pour les autres professions comptables et juridiques.

La pluridisciplinarité n'en appelle pas moins des réserves importantes au regard des règles visant à préserver l'indépendance des auditeurs par une séparation claire des fonctions de conseil et d'audit.

Le critère général retenu par le législateur pour caractériser les situations de dépendance est la prise d'intérêt auprès de la personne dont le commissaire aux comptes est chargé de certifier les comptes, ou de certaines sociétés qui lui sont apparentées. Ce principe posé, l'article L-822-11 du code de commerce et les articles 26 à 30 du nouveau code de déontologie de la profession de commissaire aux comptes visent plus spécifiquement :

- l'existence de liens personnels, financiers et professionnels, concomitants ou antérieurs à la mission de commissaire aux comptes, incompatibles avec la mise en œuvre de celle-ci ;
- la fourniture de conseil ou autre prestation de service par le commissaire aux comptes ;
- la fourniture de conseil ou autre prestation de service par un membre du réseau. Le code de déontologie des commissaires aux comptes précise en particulier les situations dans lesquelles leur indépendance est affectée lorsqu'ils appartiennent à un réseau pluridisciplinaire, national ou international, dont les membres ont un intérêt commun, par la fourniture de prestations de services à une personne contrôlée ou qui contrôle, la personne morale dont ce commissaire aux comptes certifie les comptes.

Le code de déontologie précise les éléments suivants (article 10, 22 et 23):

- Article 10 1

Il est interdit au commissaire aux comptes de fournir à la personne ou à l'entité dont il certifie les comptes, ou aux personnes ou entités qui la contrôlent ou qui sont contrôlées par elle au sens des I et II de l'article L. 233-3 du code de commerce, tout conseil ou toute prestation de services n'entrant pas dans les diligences directement liées à la mission de commissaire aux comptes, telles qu'elles sont définies par les normes d'exercice professionnel.

A ce titre, il lui est interdit de procéder, au bénéfice, à l'intention ou à la demande de la personne ou de l'entité dont il certifie les comptes :

1° A toute prestation de nature à le mettre dans la position d'avoir à se prononcer dans sa mission de certification sur des documents, des évaluations ou des prises de position qu'il aurait contribué à élaborer ;

2° *A la réalisation de tout acte de gestion ou d'administration, directement ou par substitution aux dirigeants ;*

3° *Au recrutement de personnel ;*

4° *A la rédaction des actes ou à la tenue du secrétariat juridique ;*

5° *Au maniement ou séquestre de fonds ;*

6° *A la tenue de la comptabilité, à la préparation et à l'établissement des comptes, à l'élaboration d'une information ou d'une communication financière ;*

7° *A une mission de commissariat aux apports et à la fusion ;*

8° *A la mise en place des mesures de contrôle interne ;*

9° *A des évaluations, actuarielles ou non, d'éléments destinés à faire partie des comptes ou de l'information financière, en dehors de sa mission légale ;*

10° *Comme participant, à toute prise de décision, dans le cadre de missions de conception ou de mise en place de systèmes d'information financière ;*

11° *A la fourniture de toute prestation de service, notamment de conseil en matière juridique, financière, fiscale ou relative aux modalités de financement ;*

12° *A la prise en charge, même partielle, d'une prestation d'externalisation ;*

13° *A la défense des intérêts des dirigeants ou à toute action pour leur compte dans le cadre de la négociation ou de la recherche de partenaires pour des opérations sur le capital ou de recherche de financement ;*

14° *A la représentation des personnes mentionnées à l'alinéa premier et de leurs dirigeants devant toute juridiction, ou à toute mission d'expertise dans un contentieux dans lequel ces personnes seraient impliquées.*

Enfin la loi du 1er août 2003 a retenu pour les entités faisant appel public à l'épargne ou qui font appel à la générosité publique, un système de « rotation des signataires » destiné à éviter que la même personne ne se pérennise dans les fonctions du contrôle légal.

- Article 22 - Appartenance à un réseau

Préalablement à toute acceptation d'une mission de certification des comptes et au cours de son mandat, le commissaire aux comptes doit pouvoir justifier qu'il appartient ou non à un réseau pluridisciplinaire, national ou international, dont les membres ont un intérêt économique commun.

Le commissaire aux comptes doit pouvoir justifier qu'il a procédé à l'analyse de la situation.

Constituent des indices de son appartenance à un tel réseau :

- Une direction ou une coordination communes au niveau national ou international ;

- Tout mécanisme conduisant à un partage des revenus ou des résultats ou à des transferts de rémunération ou de coûts en France ou à l'étranger ;
- La possibilité de commissions versées en rétribution d'apports d'affaires ;
- Une dénomination ou un signe distinctif communs ;
- Une clientèle habituelle commune ;
- L'édition ou l'usage de documents destinés au public présentant le réseau ou chacun de ses membres et faisant mention de compétences pluridisciplinaires ;
- L'élaboration ou le développement d'outils techniques communs.

Toutefois, ne constituent pas de tels indices l'élaboration ou le développement d'outils techniques communs lorsqu'ils s'inscrivent dans le cadre d'une association technique ayant pour unique objet l'élaboration ou le développement de ces outils, le partage de connaissances ou l'échange d'expériences.

En cas de doute sur son appartenance à un réseau, le commissaire aux comptes saisit pour avis le Haut Conseil du commissariat aux comptes.

- Article 23 - Fourniture de prestations de services par un membre du réseau à la personne dont les comptes sont certifiés

En cas de fourniture de prestations de services par un membre du réseau à une personne ou entité dont les comptes sont certifiés par le commissaire aux comptes, ce dernier s'assure, à tout moment, que cette prestation est directement liée à la mission de commissaire aux comptes.

Le commissaire aux comptes doit pouvoir justifier qu'il a procédé à l'analyse de la situation.

En cas de doute, le commissaire aux comptes saisit, pour avis, le Haut Conseil du commissariat aux comptes.

3.3.3 *Is the ownership and reimbursement structure of accounting firms transparent? To the extent that accounting firms have a major public role to protect investors, are potential conflicts of interest sufficiently revealed? Does competition have an impact on potential conflicts of interest?*

En application des dispositions de la directive 2006/43/CE relative au contrôle légal des comptes annuels et des comptes consolidés, les commissaires aux comptes désignés auprès de personnes ou d'entités faisant appel public à l'épargne ou auprès d'établissements de crédit publient sur leur site internet, dans les trois mois suivant la clôture de l'exercice, un rapport de transparence incluant notamment :

- Une description de la forme juridique et, le cas échéant, du capital de leur structure d'exercice professionnel ;
- Le cas échéant, une description du réseau auquel ils appartiennent indiquant notamment sa forme juridique et son organisation ;

- Une description du système interne de contrôle de qualité accompagné, le cas échéant, d'une déclaration de l'organe d'administration ou de direction concernant l'efficacité de son fonctionnement ;
- La date du dernier contrôle mentionné à l'article R. 821-26 ;
- La liste des personnes ou entités mentionnées au premier alinéa pour lesquelles le cabinet a effectué une mission de contrôle légal des comptes au cours de l'exercice écoulé ;
- Une déclaration concernant les pratiques d'indépendance mises en place au sein du cabinet confirmant qu'une vérification interne de cette indépendance a été effectuée ;
- Une déclaration relative à la politique suivie par le cabinet en matière de formation continue, attestant notamment le respect des dispositions de l'article L. 822-4 et de l'article R. 822-61 ;
- L'ensemble des informations financières pertinentes permettant d'apprécier l'activité du cabinet, notamment le chiffre d'affaires total, le montant global des honoraires perçus au titre des missions de contrôle légal des comptes et le montant global des honoraires perçus au titre des prestations de services non directement liées à des missions de contrôle légal des comptes.

Le rapport de transparence des sociétés de commissaires aux comptes désignés auprès des personnes mentionnées au premier alinéa comprend en outre :

- Une description des organes de direction, d'administration et de surveillance de leur structure d'exercice professionnel, avec l'indication de leurs modalités d'organisation et de fonctionnement ;
- Des informations sur les bases de rémunération des associés.

Ces dispositions figurent à l'article R. 823-21 du code de commerce.

La configuration actuelle du marché de l'audit est source de contraintes pour les entreprises à dimension internationale. La concentration mise en évidence est en effet de nature à susciter des difficultés pour une entreprise désireuse de changer d'auditeur ou obligée de le faire en raison de la règle de rotation des mandats prévue par la directive. Ces entreprises peuvent ainsi se trouver contraintes de faire appel à l'auditeur de leur concurrent direct.

Plusieurs pistes peuvent être explorées, toutes allant dans le sens d'un accroissement de la qualité des audits et des garanties à offrir en terme d'indépendance des cabinets :

- L'extension de la procédure du co-commissariat :

Cette exigence a déjà montré son effet moteur sur la déconcentration. En effet, en France, la nomination de deux commissaires aux comptes dans certaines sociétés, a permis l'émergence d'importants cabinets nationaux.

Compte tenu, du très faible nombre d'acteurs existant actuellement pour les sociétés cotées, le co-commissariat qui s'applique précisément à ce type d'entités (entreprises publiant des comptes consolidés et certains établissements de crédit) est de nature à permettre à des cabinets d'audit de taille moyenne d'accéder à ce marché restreint.

- Le développement des règles relatives à l'indépendance :

Tout comme le co-commissariat, le développement, notamment au niveau européen, des règles relatives à l'indépendance (délai de rotation, de viduité ou ayant trait au régime des incompatibilités) conjugué avec un contrôle strict des autorités de supervision nationales et des instances judiciaires européennes, est de nature à favoriser l'émergence de cabinets de taille moyenne.

En revanche, l'abaissement du niveau de responsabilité des auditeurs va à l'encontre de l'objectif recherché de qualité des audits et ne saurait constituer un axe d'évolution du système.

- 3.3.4 *If your country is considering changes in the near future, which affect the answers to the above questions, please give a brief overview of the envisaged changes and the reasons for them.*

4. Institutional framework of self-regulation

4.1 Application of competition law

- 4.1.1 *Are rules enacted by self-regulatory bodies (on advertising, prices and business structure) covered by the prohibitions of anti-competitive practices in competition law?*

Les professions libérales sont soumises aux règles du droit commun de la concurrence, étant considérées par une jurisprudence constante comme exerçant une activité économique, même si leur singularité par rapport aux professions commerciales est prise en compte.

Le Conseil de la Concurrence (désormais Autorité de la Concurrence) a eu l'occasion de se prononcer à plusieurs reprises sur ce point tant dans le cadre de procédures consultatives que de décisions contentieuses.

Les ordres professionnels sont considérés, dans leur ensemble comme des associations d'entreprises soumises aux règles nationales et communautaires de la concurrence.

- 4.1.2 *Is there an exemption for (certain types of) self-regulatory rules which are considered necessary for the proper practice of the accountancy profession?*

Il n'existe pas de régime d'exemption dans le cadre de ces professions.

- 4.1.3 *Which have been the main effects of competition law enforcement (for example, removal of fixed prices and advertising restrictions)?*

Les règles concernant la publicité ont fait l'objet d'assouplissements ces dernières années.

La réforme autorisant les commissaires aux comptes à faire de la publicité, dans une certaine limite (le démarchage et la publicité comparative demeure interdite) est intervenue en 2005.

Pour ce qui concerne les experts-comptables, la réforme autorisant la publicité étant intervenue en 2007, il est sans doute trop tôt pour en évaluer la portée. Cependant, on a pu constater que cette réforme a déjà conduit de nombreux cabinets à lancer très rapidement des campagnes de communication d'envergure pour mieux faire connaître leurs services

4.1.4 *If your country is considering changes in the near future that affect the answers to the above questions, please give a brief overview of the envisaged changes and the reasons for them.*

En ce qui concerne le secteur des experts comptables, les exigences de la directive services en matière de pluridisciplinarité et de structures d'entreprise, amèneront peut être cette profession à ouvrir le capital de ces entreprises et à modifier les règles des participations financières et droit de vote.

S'agissant des commissaires aux comptes, la transposition de la directive 2006/43/CE relative au contrôle légal des comptes annuels et des comptes consolidés a conduit le législateur français à assouplir les règles de détention de capital en fixant des seuils exprimés en droit de vote et non plus en capital. L'article L. 822-9 du code de commerce fixe les règles suivantes :

« Les trois quarts des droits de vote des sociétés de commissaires aux comptes sont détenus par des commissaires aux comptes ou des sociétés de commissaires aux comptes inscrits sur la liste prévue à l'article L.822-1 ou des professionnels régulièrement agréés dans un autre État membre de la Communauté européenne pour l'exercice du contrôle légal des comptes. Lorsqu'une société de commissaires aux comptes a une participation dans le capital d'une autre société de commissaires aux comptes, les actionnaires ou associés non commissaires aux comptes ne peuvent détenir plus d'un quart de l'ensemble des droits de vote des deux sociétés. »

4.2 **Regulatory oversight**

4.2.1 *Are decisions of self-regulatory bodies subject to approval by the State? If yes, which kind of decisions and who is the supervisory authority (competent Minister)?*

Les différents codes de déontologie de ces professions font l'objet d'un décret pris en Conseil d'État, et initialement élaborés par leurs ministres de tutelle. (Ministère de l'Économie pour les experts comptables et Chancellerie pour les commissaires aux comptes)

L'avis de l'Autorité des marchés financiers (AMF) pour les commissaires aux comptes est obligatoire, ainsi que celui du Haut Conseil du Commissariat aux comptes (H3C).

Pour les commissaires aux comptes, il convient de relever que la compagnie nationale des commissaires aux comptes ne dispose d'aucun pouvoir réglementaire. Elle dispose seulement d'un pouvoir d'initiative sur certains textes, principalement pour l'élaboration des normes d'exercice professionnel. Celles-ci sont ensuite systématiquement soumises à l'avis du Haut Conseil du commissariat aux comptes et éventuellement de l'autorité des marchés financiers puis homologuées par voie d'arrêté par le ministre de la justice.

4.2.2 *Are decisions by self-regulatory bodies subject to antitrust scrutiny?*

Les ordres professionnels sont considérés, dans leur ensemble, comme des associations d'entreprises soumises aux règles nationales et communautaires de la concurrence.

4.2.3 *Is there an independent Complaints Office which handles malpractice cases? Or is the imposition of sanctions for malpractice left to ordinary courts (tort liability) and the self-regulatory body (disciplinary sanctions, eventually including expulsion)?*

L'Ordre des experts comptables ou des structures auprès de l'ordre présidées par un magistrat, sont compétents, pour recevoir les plaintes relatives à cette profession. Ces décisions sont attaquables devant les juridictions administratives.

S'agissant des litiges civils en lien avec l'exercice des fonctions de commissaires aux comptes (responsabilité civile du commissaire aux comptes, litige sur le paiement des honoraires etc...), ils sont examinés par les juridictions de droit commun statuant en matière civile.

Les actions disciplinaires menées contre les commissaires aux comptes sont examinées par une juridiction spécialisée (la chambre régionale d'inscription, constituée en chambre régionale de discipline). Les appels de ces décisions sont examinés par le Haut Conseil du commissariat aux comptes, décisions elles-mêmes susceptible d'un pourvoi en cassation devant le Conseil d'Etat.

Les sanctions disciplinaires susceptibles d'être prononcées sont les suivantes : avertissement, blâme, interdiction temporaire pour une durée n'excédant pas cinq ans, radiation de la liste.

Le contentieux relatif à l'inscription des commissaires aux comptes sur la liste d'exercice ainsi que celui relatif à la fixation du nombre d'heures de travail nécessaire à l'exercice de la mission du commissaire aux comptes relèvent également d'une juridiction spécialisée (commission régionale d'inscription). Leurs décisions sont également susceptibles de recours.

4.2.4 *Is there an independent Regulatory Authority for the accountancy professions?*

Depuis la loi sur la sécurité financière de 2003, il a été créé une instance nationale de contrôle, le Haut Conseil du Commissariat aux Comptes. Le législateur l'a investi de deux missions essentielles :

- Assurer la surveillance de la profession
- Veiller au respect de la déontologie et notamment de l'indépendance des commissaires aux comptes.

Pour l'accomplissement de cette mission le H3C est chargé :

- D'organiser les contrôles de l'activité des professionnels
- D'émettre un avis sur le code de déontologie de la profession
- D'émettre un avis sur les normes d'exercice professionnel
- D'identifier et de promouvoir les bonnes pratiques professionnelles
- De définir et superviser les orientations et le cadre des contrôles périodiques

Il est également investi de compétence de jugement, il est l'organe d'appel des chambres régionales en matière disciplinaire et d'inscription.

Le Haut conseil est composé de 12 membres, notamment de 3 magistrats issus de la Cour de Cassation, de la Cour des comptes, et de l'ordre judiciaire, le Président de l'Autorité des Marchés financiers. Un commissaire du gouvernement, désignée par le Garde des Sceaux, siège auprès du H3C, il a une voix consultative.

L'Autorité des marchés financiers, la Commission bancaire et l'Autorité de contrôle des assurances et des mutuelles peuvent être amenées à faire des inspections, des contrôles périodiques ou occasionnels.

4.2.5 *If your country is considering changes in the near future that affect the answers to the above questions, please give a brief overview of the envisaged changes and the reasons for them. Apart from professional standards of ethics and company reputation, are there any government laws or regulations that enhance incentives to provide full and complete auditing conclusions?*

Outre les dispositions du code de commerce, le code de déontologie de la profession fixe des règles encadrant la mission d'audit.

5. Accounting standards

5.1 *Which specific accounting standards apply in your country? Do these rules differ substantially from the International Financial Reporting Standards (IFRS) or the Generally Accepted Accounting Principles? If yes, are there plans to reduce these differences?*

L'adoption des normes IFRS est obligatoire en France depuis 2005 pour les comptes consolidés des sociétés cotées.

5.2 *Who is involved in drafting and enforcing these accounting standards? Is there any public intervention or are these standards a result of self-regulation by professional bodies?*

La création de l'Autorité des normes comptables (ANC) réforme le processus de normalisation comptable.

Les compétences du Conseil national de la comptabilité (CNC) et du Comité de la réglementation comptable (CRC) sont fusionnées dans un organe unique, l'ANC. Le CRC était jusqu'alors chargé d'établir des normes comptables uniformisées, par voie de règlements homologués par arrêtés ministériels, en prenant en considération les avis et recommandations du CNC, organe consultatif rattaché au ministère de l'Économie.

La création d'un organe unique vise également à doter la France d'une institution capable de peser dans les débats internationaux, particulièrement ceux relatifs aux normes comptables internationales (IFRS, International Financial Reporting Standards) élaborés par l'IASB (International Accounting Standards Board).

Les membres du Conseil national de la comptabilité et du Comité de la réglementation comptable sont maintenus en fonction jusqu'à la première réunion de l'Autorité des normes comptables. Un décret devra déterminer les modalités de fonctionnement de l'ANC. (*Ord. n° 2009-79 du 22 janvier 2009 créant l'Autorité des normes comptables*).

GREECE

1. Concentration in the market

A general overview of the Hellenic market for the accounting profession indicates that it is composed of six major players and about 19 other smaller accountancy firms¹. The major accountancy firms operating in the Hellenic market are the following²:

- SOL S.A. (Associated Certified Public Accountants) is a Greek Société Anonyme of Certified Public Accountants-Auditors, which emerges as the leading accountancy firm in the Hellenic market with a turnover of €44.92 million in 2007 and €43.13 million in 2006;
- PriceWaterhouseCoopers S.A. follows with a turnover of €28.46 million in 2007 and €26.50 million in 2006;
- next comes Deloitte & Touche S.A. with a turnover of €22.84 million in 2007 and €19.23 million in 2006;
- Ernst & Young S.A. follows with a turnover of €21.39 million in 2007 and €18.56 million in 2006;
- KPMG Certified Auditors S.A. is next with a turnover of €18.68 million in 2007 and €16.81 million in 2006;
- Grant Thornton S.A. follows with a turnover of €12.66 million in 2007 and €11.09 million in 2006.

Of the above firms, the following are affiliated with the “Big Four” accountancy firms:

- PriceWaterhouseCoopers SA is part of a network of member firms, connected through membership in PricewaterhouseCoopers International Limited (PwCIL), a UK membership-based company;
- Deloitte & Touche SA is part of the network of Deloitte Touche Tohmatsu member firms;
- Ernst & Young SA is part of the network of Ernst & Young member firms;
- KPMG Certified Auditors SA is a member firm of the KPMG network of independent member firms affiliated with KPMG International, a Swiss cooperative.

¹ According to data from the SOL S.A. website:
<http://www.solae.gr/company/index.cfm?BA7464799B84D9973E56CCBABD3F741F>

² Based on data by HELLASTAT S.A. (Hellenic Company for Statistical and Financial Information) as compiled by newspaper “NAYTEMBORIKI” according to the latter’s website:
http://www.naftemporiki.gr/news/static/09/01/19/att_1618090.pdf

In recent years there is no record of mergers between accountancy firms having taken place in Greece with the involvement of the Hellenic Competition Commission (hereinafter referred to as the “HCC”) or of a public regulator.

2. Regulation of entry

2.1 *Quality standards and entry*

2.1.1 *Professional licensing*

Articles 4-11 of Law 3693/2008³ set the legal framework for the licensing of Certified Public Accountants-Auditors in Greece. According to articles 6, 7 and 10 of Law 3693/2008 the following conditions must be met cumulatively in order for a candidate to obtain the license to practice as a Certified Public Accountant-Auditor: i. successful completion of secondary education; ii. successful completion of professional examinations; and iii. practical training of at least three years for university and technological school graduates and six years in other cases. The practical training in question basically includes participation in mandatory audits and must be undertaken for a minimum of two years under the supervision of a Certified Public Accountant-Auditor, who has obtained a professional license in any member-state. The professional examinations undertaken by candidates are held on a broad range of subjects outlined by Law 3693/2008 (article 8), which are to be further specified by way of a decision issued by the “Accounting and Auditing Standardization Committee” (AASC)⁴ according to the progress in the filed of auditing.

Law 3693/2008 (article 11) mandates participation of Certified Public Auditors in on-going education programs -in order for them to maintain their professional license. Such programs shall be organized by bodies within the country or abroad. Any training method is deemed acceptable. Duration and adequacy of the programs in question, as well as adequacy of the organizing bodies, shall be determined by way of a decision issued by AASC.

2.1.2 *Supervisory Bodies – Legal framework*

The AASC

Law 3148/2003⁵ has established the “Accounting and Auditing Standardization Committee” (AASC), a public law legal entity, for the purposes of ensuring transparency in business operations with the application of accounting standardization and of safeguarding quality of audits. AASC is subject to the supervision of the Minister of Economy and Finance. Its president is appointed following parliamentary consent, one of its Vice-Presidents is nominated by the Economic Chamber of Greece, of which he/she is a member, while the remaining members of the Board of Directors⁶ are nominated by the Bank of Greece, the Hellenic Capital Market Commission, the Hellenic Industry Association and the Certified Public Accountants-Auditors Association (SOEL⁷). The competences of AASC⁸ include:

³ Government Gazette Issue A’ 174/25.08.2008 - Law 3693/2008 has implemented Directive 2006/43/EC on mandatory audits of annual and unified accounts.

⁴ See section 2.1.2.i. below.

⁵ Government Gazette Issue A’136/05.06.2003.

⁶ The seven-member Board of Directors comprises of the President, two Vice-Presidents and four other members (article 1 of Law 3148/2003).

⁷ See section 2.1.2.ii. below.

- administering opinions to the Minister of Economy and Finance on matters of accounting standardization, including accounts of the public sector and of peripheral administration, and submitting proposals to the Minister of Economy and Finance on matters of accounting and auditing standardization, international accounting and auditing standards, general accounting principles, accounting principles pertaining to particular business sectors, as well as harmonization of Hellenic accounting and auditing standards with European Union Law and international standards;
- quality control of mandatory audits;
- supervision of SOEL in relevance to compliance with the rules of professional conduct of its members. The range of the supervision in question shall be determined by Presidential Decree;
- evaluation of the findings of SOEL's audits;
- enactment of a code of conduct for auditors and accountancy firms following proposals by SOEL and supervision of compliance to the rules therein;
- collaboration with the Committee for money laundering provided for by article 7 of Law 2331/1995⁹ in cases involving auditors and accountancy firms.

The AASC shall keep an electronic Public Registry (Auditors' Registry) of Certified Public Accountants-Auditors and licensed accountancy/auditing firms, which shall be accessible to the public. The AASC shall issue a decision assigning the procedural issues of keeping the Registry in question to a competent professional body¹⁰.

SOEL

Presidential Decree 226/1992¹¹ has established the "Certified Public Accountants-Auditors Association" (hereinafter referred to as "SOEL"), which operates as a public law legal entity. SOEL comprises of independent professional accountants/auditors, who are registered in a special Registry¹² and perform their duties according to the provisions of Presidential Decree 226/1992 and other relevant statutes¹³. A separate section of the above Registry is allocated to auditing firms and joint ventures of at least two Certified Public Accountants-Auditors. The purpose for the establishment of SOEL is ensuring the conduct of audits on any type of public and private organizations or businesses regardless of their legal type of incorporation (e.g. foundation, corporation or any other type of private or public law legal entity) by persons with advanced professional qualifications, who perform their duties with transparency and a sense of responsibility, so as to ensure the validity and credibility of the findings of audits according to internationally recognized auditing standards and the conditions set out by national and community law. For the above purposes Certified Auditors enjoy personal and functional independence and are subject to the conditions and responsibilities specified within the Presidential Decree in question. Promoting the

⁸ Article 2 of Law 3148/2003.

⁹ Law 2331/1995, Government Gazette Issue A' 173/24.08.1995.

¹⁰ Article 13 of Law 3693/2008.

¹¹ Presidential Decree 226/1992, Government Gazette Issue A' 120/14.06.1992.

¹² See section 2.1.2.iii. below.

¹³ Article 1 of Presidential Decree 226/1992.

scientific field of accounting and auditing is also included among the purposes served by SOEL¹⁴. SOEL is governed by a seven-member Supervisory Council¹⁵, the members of which are elected by its General Assembly¹⁶.

SOEL's members include Certified Public Auditors, Assistant Certified Public Auditors, Probationary Certified Public Auditors and Trainee Certified Public Auditors. Certified Public Auditors enjoy full privileges, they are subject to the full range of obligations of SOEL membership and perform the tasks pertaining to audits freely and at their own responsibility. Assistant, Probationary and Trainee Certified Public Auditors assist the Certified Public Auditors in the performance of their duties acting under the name and on behalf of a certain Certified Public Auditor, who is held accountable for their actions.

The situation at present

The AASC has been established as the Supervisory Body for the auditing profession in the Hellenic market. In practice, although its Board of Directors has been appointed, procedures have not yet been finalized, in order for it to operate to its full extent. During this transitional period, SOEL will continue to operate as the Supervisory Body for the auditing profession in Greece and will continue to keep the Auditors' Registry, a responsibility, which will subsequently be passed on to the AASC.

2.1.3 *Accountants from countries outside the EU*

The AASC (SOEL during the transitional period) may grant a professional license to practice in the Hellenic territory to Certified Public Accountants-Auditors licensed in third (non EU-member) countries on the condition of reciprocity, if it deems that the requirements set out for obtaining a license in Greece are met (education, professional examinations, practical training, ongoing education). In order to obtain the above license, candidates must successfully complete professional examinations in Greek on a subject matter relevant to the Greek legal and regulatory regime on mandatory audits and employment of licensed auditors¹⁷.

2.2 *Exclusive rights*

According to article 3 of Presidential Decree 226/1992 it falls within the exclusive competence of Certified Public Auditors to perform regular audits of financial management and financial statements of:

- public law legal entities, with the exclusion of municipalities and communities;
- private law legal entities, which serve a public purpose or a purpose of public interest and obtain grants from the state or enjoy special privileges on the basis of special legal provisions or following legislative authorization;
- banks, insurance companies, finance-portfolio companies, mutual funds companies, leasing companies and associations of cooperatives;

¹⁴ Article 2 of Presidential Decree 226/1992.

¹⁵ Articles 6 and 8 of Presidential Decree 226/1992.

¹⁶ Article 7 of Presidential Decree 226/1992.

¹⁷ Articles 40, 4-6, 11 and 12 Law 3693/2008.

- sociétés anonymes, limited liability companies, limited partnerships by shares and joint ventures thereof, where two of the following three criteria apply¹⁸: i. balance exceeding €2,500,000; ii. net turnover exceeding €5,000,000; iii. personnel employed within the financial year in question exceeding 50 persons; e) unified accounts (financial statements) of associated enterprises;
- sociétés anonymes, the shares of which are listed on the Stock Exchange, as well as sociétés anonymes, the share capital of which has in whole or in part been undertaken via public offering; and
- companies, organizations and activities in general, which -according to specific legal provisions- are subject to mandatory audit by Certified Public Auditors.

The exclusive competence of Certified Public Auditors furthermore includes administering expert opinions on matters of financial administration or on the financial situation of any natural or legal entity of public or private law, of a joint venture, of a special account or of assets, in cases, where accounting expertise is required in the context of court hearings. In cases where the legislation in force considers commercial records as evidence, the Court may order -in lieu of display of the records- the audit and endorsement of the records in question by a Certified Public Auditor either ex officio or following petition of either party.

3. Regulation of conduct

3.1 Business structure

Certified Public Auditors' Firms may be established as legal entities regardless of their form of incorporation or as entities without legal personality, provided they have been licensed according to Law 3693/2008 or Directive 43/2006¹⁹ of the European Parliament and the European Council of May 17th 2006²⁰.

3.2 Price regulation

The pricing method of auditors' services is determined by article 18 of Presidential Decree 226/1992. The article specifies that remuneration for performing an audit shall not exceed 1/10th of the audited company's or joint venture's aggregate revenue during the preceding 12 month financial year. The revenue in question is computed by multiplying the maximum allowed annual activity of Certified Public Auditors and their assistants with the going hourly rate of the auditing company or joint venture. Decisions of SOEL's Supervisory Council issued annually determine the minimum hours needed to complete the audit of each undertaking or category of undertakings performed by licensed auditors. The criteria taken into account are the circumstances of audit and the time required based on previous experience of SOEL members' audits in a particular or similar type of undertaking, the type of business activity of the firm in question, its aggregate revenue and turnover and the number of personnel employed. The aforementioned data as well as the minimum average unified hourly rate of a Certified Public Auditor and his/her Assistants is available on request to all auditors' firms or joint ventures.

Each auditors' firm or joint venture may freely decide upon an increased hourly rate, provided the said decision shall be notified to SOEL's Supervisory Council and shall be applicable in the case of all

¹⁸ Article 42a § 6 of Law 2190/1920 as amended by article 52 of Law 3604/2007.

¹⁹ EE L 157 of 09.06.2006.

²⁰ Article 2 of Law 3693/2008.

audits to be performed following the notification. If the minimum hours computed by SOEL's Supervisory Council need to be exceeded, this shall be allowed only following approval of the audited undertaking.

In the case where it comes to the attention of SOEL's Supervisory Council that an audited undertaking has been charged less than the minimum going remuneration rate, SOEL's Disciplinary Board may impose a fine on the auditors' firm or joint venture involved. Non-compliance with the above decision may lead to a temporary write-off (for up to one year) of its administration's members from the Certified Public Auditors' Registry.

3.3 *Auditors' independence safeguards*

When organizing their business structure, Certified Public Auditors or Auditors' Firms must take into account that they are obligated to ensure their independence from the undertakings audited²¹. Auditors bear the burden of proof that they perform their duties in a manner, which safeguards transparency and independence.

The basic criterion set in determining independence is non participation of a Certified Public Auditor or Auditors' Firm in any way –directly or indirectly- in the decision making process of the audited undertaking regarding matters linked to its business activities. A Certified Public Auditor or Auditors' Firm is obligated to refuse to audit an undertaking, where there exists between the undertaking in question and the Auditor, the Auditors' Firm or the network, of which the Auditor is a member, a professional or other type of relationship, which would lead an informed, impartial and prudent third party to the conclusion that the independence of the Auditor or Auditors' Firm is in jeopardy. Relationships, which may raise concerns of jeopardizing independence, in particular involve the provision of additional non-auditing services.

Where independence is jeopardized by circumstances of self-auditing, own interests, attorney status, familiarity, intimidation, breach of confidence during the audit, the Auditor or Auditors' Firm may take appropriate measures to contain the risk of undermining independence to a tolerable degree. Where this is not possible, the Auditor or Auditors' Firm shall be obligated to refuse to perform the audit. In the case of public interest entities it is mandatory for the Auditor or Auditors' Firm to refuse to provided services, where circumstances of self-auditing or own interests exist.

A Certified Public Auditor or Auditors' Firm may present in writing to the AASC the facts of any case, which raise concerns of posing a risk to independence, so that the AASC may deliver a non-binding opinion and offer guidance on the matter.

Certified Public Auditors or Auditors' Firms are generally required to outline in detail on the records kept during audits performed of any circumstances posing a risk to independence and of the measures taken to mitigate such a risk.

Any action or omission of a shareholder, partner, proprietor, member of the administration or of the supervisory body of an Auditors' Firm jeopardizing independence, where the audit is performed on account of the firm in question, shall lead to the revocation of its license for a period of at least six (6) months²².

²¹ Article 20 of Law 3693/2008.

²² Article 22 of Law 3693/2008.

3.4 *Disciplinary action*

Disciplinary action against a Certified Public Auditor or an Assistant, Probationary or Trainee Certified Public Auditor may be taken by SOEL's Disciplinary Board, before which the Auditor in question is brought following a decision of SOEL's Supervisory Council. Sanctions range from: a) reproach; b) a fine of up to €2,935; c) temporary license suspension for up to 6 months; to d) a permanent license suspension²³.

However upon completion of the transitional period to the full operation of the AASC, Auditors shall be brought before the Disciplinary Board following a decision of the AASC's Board of Directors or of SOEL's Supervisory Council. The Disciplinary Board shall deliver its decision on the possible infringement of legislation pertaining to the auditing profession and of the Code of Conduct. In this case sanctions to be imposed shall include: a) a recommendation; b) reproach; c) a fine of up to €50,000; d) temporary suspension of the professional license for a period of up to 1 year; e) permanent deletion from the Auditors' Registry²⁴.

4. **Accounting standards**²⁵

Sociétés Anonymes listed on the stock exchange, as well as banking and financial institutions, which have been incorporated as Sociétés Anonymes, are under the obligation to apply International Accounting Standards, as provided for under Regulation (EC) 1606/2002 of the European Council and the European Parliament of July 19th 2002, as of financial years beginning after December 31st 2004. Non-listed banking and financial institutions shall begin applying the above standards as of financial years beginning after December 31st 2006.

5. **Competition law**

In conclusion it should be noted that the Hellenic market for accounting/auditing services is highly regulated. This is particularly evident in aspects analysed above, such as professional licensing, minimum remuneration, disciplinary action, supervisory bodies, business structure, accounting standards and auditors' independence safeguards, which are regulated by provisions of national or community law.

In general terms, the auditing/accounting profession in Greece is performed within a liberalized market. In this context it may raise competition concerns, especially in matters of licensing and pricing, which would require the application of Law 703/1977²⁶ (or of Articles 81, 82 EC Treaty). However, up to the present point circumstances have not presented themselves requiring the intervention of the Hellenic Competition Commission in relevant cases.

²³ Article 20 of Presidential Decree 226/1992.

²⁴ Article 6 of Law 3148/2003.

²⁵ Articles 134, 142 and 143 of Law 2190/1920.

²⁶ Law 703/1977 (Government Gazette Issue A' 278/26.09.1977) is the Hellenic Competition Act.

HUNGARY

In Hungary, the following major categories of accountancy services may be distinguished for the purposes of this questionnaire: first, services which are carried out by registered accountants; second, those which are delivered by chartered certified auditors (hereinafter: auditors)¹; third, tax advising, which is closely linked to the prior services. As, from the perspective of competition policy, only the chartered certified auditors seem to pose concerns, the present contribution will mainly deal with this category.

The Act on Accounting² and the Act on Auditors³ contain the majority of rules applicable to auditing services. The latter aims to be in accordance with the relevant EC Directive.⁴

As far as the rules applicable to auditors are concerned, the following sets of norms may be identified: first, laws enacted by the State and, second, self-governing rules constituted by the Chamber.

1. Concentration in the market

1.1 *Which are the major accountancy firms in your country? Are these firms affiliated with the “Big Four” accountancy firms (PricewaterhouseCoopers, Deloitte Touche Tohmatsu, Ernst & Young, and KPMG)?*

Do you have information about the market shares in your country of each of these companies as regards the provision of statutory audits for publicly traded companies and private companies? Is there any information as to the market shares of accountancy firms in your country regarding other accountancy services such as financial advice, internal audits or tax advice?

Have there been any recent mergers between accountancy firms in your country? Has there been any involvement in these mergers by a National Competition Authority or public regulator? If so, please describe.

¹ It should also be mentioned that the Act LXXV of 2007 on Auditors defines “*professional services other than statutory audits required by law*”. These services may be provided by auditors, however, they do not enjoy exclusivity in these fields: (i) advisory services and assessment of the operation of economic entities; (ii) expert activities in the fields of finance, taxation and accounting, relevant data processing and organizational matters related to the foundation, transformation, termination without succession, regular operation, management and information systems of economic entities, preparation of expert opinions, including consultation and the activities of auditors in judicial proceedings- under the conditions set out in specific other legislation -; (iii) professional training, advanced training, conducting examinations in accountancy, controlling, finances and auditing; (iv) bookkeeping services (see Section 3 Subsection 2 of Act C on Accounting).

² See Act C of 2000 on Accounting.

³ See Act LXXV of 2007 on Auditors.

⁴ See Directive 2006/43/EC of the European Parliament and of the Council of 17 May 2006 on statutory audits of annual accounts and consolidated accounts. In several matters a certain margin of appreciation is provided for the Member States as how to implement the Directive.

If increased entry would be desired, how could new major accountancy firms develop? Are there any regulatory hurdles to the creation of new firms?

All of the “Big Four” accountancy firms (PWC, Deloitte, Ernst & Young and KPMG) are active in Hungary. In most of the cases the Hungarian affiliation of a multinational firm takes the services of the respective Hungarian branch of one of the “Big Four” which the parent company has chosen to audit its books.⁵

In 2007 the “Big Four’s combined annual revenue was ca. 46% of the total revenue of accountancy in Hungary. The same indicator was ca. 9% for the “top 5-25” auditing firms and ca. 45% in the case of the small ones. For the companies in all these categories less than half (ca. 45%) of the revenue comes from auditing and a little bit more than half (ca. 55%) stems from services other than auditing (e.g. financial advice, controlling).

Due to the financial crisis, it has been reported that a significant number of companies is likely to switch from the “Big Four” to other auditing firms in order to save costs. Now, the auditing of the books of 2008 is still ongoing, therefore this change is expected to happen when the agreements about auditing the books of 2009 will be negotiated. However, companies listed on the stock exchange are not likely to switch from the “Big Four”. As for the smaller auditing companies, they are also expected to envisage difficulties, because, during the economic crisis, many of their clients are being / have been driven out of the market.

There have not been any mergers on the Hungarian market recently which were notified to the Hungarian Competition Authority (hereinafter: GVH).

As for *establishing* an accountancy firm, general rules relating to the foundation of all businesses apply.⁶ The same principle is applicable for individuals who would like to provide services as private entrepreneurs.⁷ However, particular rules concerning qualifications, registration etc. must be respected in order to be eligible to *provide* accountancy services (see below).

2. Regulation of entry

2.1 Quality standards and entry

2.1.1 Is a university degree required to practice as an auditor/accountant in your country? Does the requirement of an accountancy degree depend on the type of services provided (for example, providing statutory audits, financial advice, or tax advice)?

Is additional training required to practice as an accountant? If yes, for which profession (for example, Certified Public Accountant, Chartered Accountant, Auditor, Tax Advisor)? Who decides the content and form of this additional training: the State or the regulated profession? How long does the additional training last? Is there a concluding examination? Does the government play a role in overseeing the establishment of entry standards or the number of training places available? Is the examination selective? Can the examination be repeated?

⁵ It should also be noted that, according to the Act on Accounting, if an auditor or an audit firm has not been commissioned to review the company’s consolidated annual report, then auditing the consolidated annual report is to be carried out by the auditor or the audit firm of the parent company. This provision is especially relevant for Hungary as there are many multinational firms which have daughter companies here.

⁶ See Act IV of 2006 on Business Associations.

⁷ See Act V of 1990 on Private Entrepreneurs.

Are there requirements relating to on-going education for any of the accountancy professions in your country? If yes, who sets the quality standards to be reached and how is it assessed whether professionals satisfy the quality requirements?

Is registration, a license or membership of a professional body required to practice as an accountant (for example, as a Certified Public Accountant, Chartered Accountant, Auditor or Tax Advisor)? Which professional self-regulatory bodies exist in your country?

Are there quantitative limits (for example, relating to demographic or territorial criteria) regarding the entry into the accountancy profession(s) in your country? If yes, for which professions and/or accountancy services?

For countries outside the EU (for which specific European legislation applies), please also discuss whether there are any barriers for establishment by foreign accountants. Are foreign accountants allowed to provide services? Is establishment or provision of services subject to specific conditions?

If your country is considering changes in the near future that affect the answers to the above questions, please give a brief overview of the envisaged changes.

There are no quantitative limits, either geographic or any other, for the entry of auditors / registered accountants / tax advisers onto the markets. However, as it will be explained below, registration is necessary for providing these services.⁸

2.1.2 Registered accountant

The bacheloret (secondary school leaving certificate) is required in order to be eligible to start a training program which may be finished by taking an examination. Passing the examination as well as minimum three years of experience in the field of accountancy, finances or controlling is necessary for being eligible to practice as a registered accountant. It must however be added that only those who are enrolled in the Ministry of Finance's registry may provide services as registered accountants.⁹

2.1.3 Chartered certified auditor

The qualification as a chartered certified statutory auditor is a state-certified degree of higher education provided outside the school system.¹⁰ Any institution of adult education may hold such training programs provided that it is accredited by the Chamber.¹¹ In order to be admitted to a chartered certified auditors' training program, the candidate must (i) have a certificate of higher education; (ii) have the necessary qualification as a chartered accountant; (iii) have at least one year of professional experience. The training program's duration is four years, which must be followed by a three-year practical training as an auditor-candidate on the side of a practicing auditor who is member of the Chamber. Subsequently, an aptitude test must be passed in order to be eligible to demand the registration of membership in the

⁸ For registered accountants and tax advisers: in the Ministry of Finance's registry; for auditors: in the Chamber's registry.

⁹ See Section 151 Subsection 5 of Act C of 2000 on Accounting. It should be noted that, if the entry requirements are met by the candidate, the Ministry of Finance must register him/her.

¹⁰ See Section 79 Subsection 1 of Act LXXV of 2007 on Auditors.

¹¹ See Section 81 of Act LXXV of 2007 on Auditors.

Chamber.¹² If the entry requirements are met by the candidate, the Chamber must register him/her. Membership is of relevance as only the Chamber's members may provide auditing services.¹³

Within the category of chartered certified auditors a further division may be identified: the statutory audits of certain economic entities may only be carried out by *qualified* registered statutory auditors or audit firms.¹⁴ This *professional qualification* may be obtained from the Chamber by fulfilling certain requirements defined in the Act on Auditors (e.g. individuals must make proof of professional experience; audit firms must have at least one registered statutory auditor with the appropriate qualification, who carries out statutory audits in the name and on behalf of the audit firm; also, these audit firms must provide guarantees that the registered statutory auditor – who carries out statutory audits of an business entity (in the name and on behalf of the audit firm) and for whom the professional qualification in question is mandatory – has the appropriate professional qualification).¹⁵

It should also be mentioned that the Act on Accounting provides a strong protection for statutory auditors by stipulating that they may only be dismissed where there are proper grounds. Divergence of opinions on accounting treatments or audit procedures may not be considered to be proper grounds for dismissal.¹⁶

2.1.4 *Tax adviser / certified tax expert*

In order to be admitted to the tax advisors' training program, the candidate must possess a certificate of higher education as well as one year of professional experience in, for example, the field of finance. As far as the enrollment to the certified tax experts' training program is concerned, the candidate must have a tax advisory certificate as well as five years of practical training. Those who intend to practice as a tax adviser / certified tax expert must be enrolled in the registry of the Ministry of Finance.¹⁷

2.2 *Exclusive rights*

2.2.1 *Do regulated accountancy professions enjoy exclusive rights? Please specify which rights and indicate the regulated accountancy profession which performs these reserved tasks. The following division may be helpful in answering this question:*

- (d) *providing statutory audits to publicly traded companies;*
- (e) *providing statutory audits to private companies;*
- (f) *other accountancy services, such as internal audit, insolvency, corporate finance work, due diligence, etc.;*
- (g) *tax advice.*

¹² See Section 104 of Act LXXV of 2007 on Auditors.

¹³ See Section 10 Subsection 1 and Section 34 Subsection 1 of Act LXXV of 2007 on Auditors.

¹⁴ See Section 49 Subsection 1 of Act LXXV of 2007 on Auditors.

¹⁵ See Section 50 of Act LXXV of 2007 on Auditors.

¹⁶ See Section 155/A of Act C on Auditing.

¹⁷ It should be noted that, if the entry requirements are met by the candidate, the Ministry of Finance must register him/her.

Have exclusive rights associated with the accountancy professions ever been reviewed?

If your country is considering changes in the near future, which affect the answers to the above questions, please give a brief overview of the envisaged changes and reasons for them.

As it has been mentioned above, only those individuals who are admitted to the Chamber may engage in carrying out statutory audits required by law in Hungary.¹⁸ Similarly, only those business entities may provide statutory audits in Hungary, which are authorized to do so by the Chamber.¹⁹ (Statutory audit required by law includes the following: (i) for business entities, review of the annual accounts specified in the Accounting Act, certification of its compliance with the regulations, its reliability and authenticity in the interest of providing a true and fair view of the business entity's assets and liabilities, financial position and profit or loss; (ii) carrying out the statutory evaluation, review, assessment and certification required upon the business entity's foundation, transformation and termination without succession; (iii) all other duties conferred upon auditors by law.)²⁰

A further field of exclusivity is provided by the Act on Auditors, which stipulates that only *qualified* registered statutory auditors²¹ may conduct the statutory audits of certain economic entities²² (e.g. financial institutions, insurance companies).

Those who are participating in the quality assurance of the statutory audit of a business entity that may only be audited by a qualified registered statutory auditor or audit firm, must also be qualified as registered statutory auditors. In such cases, the quality controller in question may only participate in the quality control procedures three years after the requisite qualification was obtained.²³

As far as registered accountants and tax advisers / certified tax experts are concerned, as mentioned above, only those who have the necessary qualifications and who are enrolled in the Ministry of Finance's registry may provide such services.

¹⁸ See Section 10 Subsection 1 of Act LXXV of 2007 on Auditors. See also the Act on Accounting, which stipulates that, when an audit is compulsory, the company must commission a registered auditor or audit firm to review the undertaking's annual report or simplified annual report on the financial year from the point of view of legitimacy and authenticity. These tasks may only be carried out by an auditor (audit firm) who is registered by the Chamber (see Section 155 Subsections 6-7 of Act C on Accounting).

¹⁹ See Section 34 Subsection 1 of Act LXXV of 2007 on Auditors. The requirement of authorisation is of course closely linked to the Chamber's admittance of individuals as a business entity may only receive authorisation from the Chamber if it has a registered statutory auditor or auditors in its employ to carry out audits required in its name and on its behalf (see Section 35 of Act LXXV of 2007 on Auditors).

²⁰ See Section 3 Subsection 1 of Act C of 2000 on Accounting.

²¹ For the particularity of this category of auditors see answer in paragraph 12.

²² See Section 49 of Act LXXV of 2007 on Auditors.

²³ See Section 160 Subsection 2 of Act LXXV of 2007 on Auditors.

3. Regulation of conduct

3.1 Advertising restrictions

3.1.1 *Is advertising allowed subject to the same constraints as in any other business (prohibition of misleading advertising contained in fair trade laws)?*

Does the state restrict advertising with respect to accountancy services? If yes, specify the restrictions and the services to which they apply.

Do the regulatory bodies restrict advertising? If yes, specify the restrictions and the services to which they apply.

If there are advertising restrictions, please specify their contents. The following questions may be indicative: Is there a total advertising ban, excluding only name plates, official registers and phone books? Can special expertise be advertised? Can the fee level be advertised? Is comparative advertising allowed? Are there other restrictions, for example related to the ethical standards of the profession?

If your country is considering changes in the near future that affect the answers to the above questions, please give a brief overview of the envisaged changes and the reasons for them.

General rules on advertising – like the prohibition of misleading advertisements – are applicable to registered accountants, auditors and tax advisers (i.e. no specific legislation is applicable for these professions): As the GVH's cases principally concern the advertising restrictions of the Chamber's Code of Ethics, these issues will be dealt with below.²⁴

3.2 Price regulation

3.2.1 *Are prices freely negotiated? Does the government set prices? If yes, indicate for which services (for example, statutory audits for publicly traded companies). Also specify whether these are maximum prices, minimum prices or fixed prices. How does the government pay for auditing services it uses?*

Do the self-regulatory bodies set prices? If yes, specify whether these are maximum prices, minimum prices or fixed prices and for which services. Is use made of recommended prices?

Specify the criteria upon which the price can be based: number of hours worked, complexity of the audit, contingency fees, etc.

If your country is considering changes in the near future that affect the answers to the above questions, please give a brief overview of the envisaged changes and the reasons for them.

According to the Act on Auditors, registered statutory auditors “are entitled to appropriate remuneration”.²⁵ The fees for statutory audits may be negotiated freely (between provider and client).²⁶ Further issues are discussed below in the section concerning competition law enforcement.²⁷

²⁴ See Chapter 4.1.

²⁵ See Section 54 Subsection 1 of Act LXXV of 2007 on Auditors.

²⁶ See Section 54 Subsection 1 of Act LXXV of 2007 on Auditors.

3.3 *Inter-professional co-operation and business structure*

3.3.1 *Is the formation of multi-disciplinary partnerships allowed? Are accountants allowed to incorporate? If yes, are there any restrictions with respect to the legal form of incorporation (for example limited liability partnership, public limited company)?*

Do accounting firms provide consulting services? If so, of what type? Are there conflicts of interest with other professions (for example, lawyers) that may be necessary to avoid?

Is the ownership and reimbursement structure of accounting firms transparent? To the extent that accounting firms have a major public role to protect investors, are potential conflicts of interest sufficiently revealed? Does competition have an impact on potential conflicts of interest?

If your country is considering changes in the near future, which affect the answers to the above questions, please give a brief overview of the envisaged changes and the reasons for them.

As a principle, the Act on Auditors stipulates that registered statutory auditors „may not engage in any activity outside the realm of statutory audits that is or could be an affront to their prestige, integrity and objectivity, independence or good repute, and that is therefore incompatible with their professional activities and function.”²⁸ Incompatibility with auditing activities (audit function) means the provision of any professional auditing service and the performance of any activity that is unrelated to these professional auditing services if it interferes with the ability of the registered statutory auditor to maintain good audit quality when carrying out statutory audits.²⁹

As far as the definition of incompatibility is concerned, the Act on Auditors provides wide margin of appreciation for the Chamber’s statutes as well as for its’ code of ethics (CE).³⁰ According to the Chamber’s CE, it must be defined in each case individually whether the other types of services, which are provided by the auditor (audit firm) are compatible with auditing activities (audit function).³¹

The Act on Auditing also adds that the concurrent provision of different professional services does not in itself impede the integrity, objectivity or independence of auditing.³²

In order to determine whether the CE’s provisions concerning incompatibility have been respected, disciplinary proceedings may be conducted by the Chamber’s Disciplinary Committee against the auditor.³³ The decision of the Disciplinary Committee may be appealed to the Presidency of the Chamber. The latter’s decision may be reviewed by the administrative court.³⁴

It must be added that, according to the Act on Attorneys at Law³⁵, only attorneys are entitled, unless otherwise stipulated by law, to regularly provide legal counsel in return for remuneration.³⁶ This means

²⁷ See Chapter 4.1.

²⁸ See Section 53 of Act LXXV of 2007 on Auditors.

²⁹ See Section 53 Subsection 1 of Act LXXV of 2007 on Auditors.

³⁰ See Section 53 Subsection 4 of Act LXXV of 2007 on Auditors.

³¹ See Section B Subsection 4 of the Chamber’s CE.

³² See Section 53 Subsection 2 of Act LXXV of 2007 on Auditors.

³³ See Section 176 Subsection 1 of Act LXXV of 2007 on Auditors.

³⁴ See Section 178 Subsection 1 of Act LXXV of 2007 on Auditors.

³⁵ See Act XI of 1998 on Attorneys at Law.

that where the service of an auditing firm amounts to legal counselling, a lawyer will have to be solicited to provide these services. There is indeed cooperation between auditing firms and lawyers, however, not within the same business structure (e.g. PWC has a cooperation agreement with a law firm).

4. Institutional framework of self-regulation

4.1 Application of competition law.

4.1.1 Are rules enacted by self-regulatory bodies (on advertising, prices and business structure) covered by the prohibitions of anti-competitive practices in competition law?

Is there an exemption for (certain types of) self-regulatory rules which are considered necessary for the proper practice of the accountancy profession?

Which have been the main effects of competition law enforcement (for example, removal of fixed prices and advertising restrictions)?

If your country is considering changes in the near future that affect the answers to the above questions, please give a brief overview of the envisaged changes and the reasons for them.

The GVH's³⁷ first case against the Chamber was initiated in 1998³⁸. In its decision the GVH established that several provisions of the Chamber's CE were contrary to the Competition Act's prohibition of agreements restricting competition. The GVH established that the CE's provision prohibiting the members to make price offers that are significantly lower than those recommended by the Chamber is unlawful under the Competition Act. The GVH also ruled that the CE's mere reference to the Chamber's price recommendations, which were not yet issued by the Chamber, constituted an infringement within the meaning of the Competition Act (i.e. the CE's given provision was considered to be illegal in spite of the fact that the Chamber had not in effect issued any price recommendations towards its members).

Furthermore, the GVH established that certain provisions in the CE concerning the advertisement by auditors also infringed the Competition Act. The GVH considered advertisements as an effective mean to foster competition, therefore, the following rules were held to be unlawful:

- full prohibition of comparison with other competitors and that of persuasion in advertisements;
- restriction on what the auditor may indicate on his/her name plate, letter heading;
- full prohibition of information on prices in advertisements;
- full prohibition of praising the promptness and quality of the service;
- in case of an auditor's publication in a periodical or journal only his/her name and affiliation may be indicated, however, this may not be used for advertisement purposes;

³⁶ See Section 5 Subsection 2 of the Act XI of 1998 on Attorneys at Law.

³⁷ It should be noted that decisions are made by the Competition Council acting as the decision-making body within the GVH.

³⁸ See GVH's decision Vj-148/1998.

- full prohibition of organising events for the purpose of acquiring clients – at events organised for other professionals the auditor must refrain from advertising and praising its own business.

However, the GVH held that the CE's provision, which prohibited the auditors to make references to being "well connected" (e.g. to public authorities) does not violate the Competition Act. Such a statement by a firm is by its nature misleading as public authorities must be neutral and independent by law.

Also, the GVH found that CE's prohibition of auditors' statements that arouse unreasonable expectations does not infringe the Competition Act either. The reason for this is that such an assertion qualifies by itself as misleading within the meaning of the Competition Act because the firm's services are praised on unrealistic grounds.

For those CE provisions which were held to violate the Competition Act, the GVH saw no reason to apply the Competition Act's rules on exemption.³⁹ The GVH stated that the prohibition of advertisements is capable of hindering efficient firms that provide high quality services to transmit information about themselves towards potential customers. This does not serve the improvement of competitiveness on the market, because it impedes the communication of differences in terms of quality, price and other features. The application of minimum prices is capable, first, to drive small market players out of the market and, second, to obstruct entry, as the companies are *de facto* prohibited to compete on the price.

The GVH forbade the continuation of the application of those CE provisions which violated the Competition Act and imposed a fine of HUF 5 million (ca. EUR 20,000) onto the Chamber.

The GVH's decision was upheld on appeal by the Metropolitan Court of Budapest, however, the amount of the fine was reduced. Subsequently, the judgement at first instance was upheld by the Supreme Court of Hungary.

As a consequence, the Chamber indeed modified certain provisions in its CE, however, the competition concerns articulated in the previous case⁴⁰ remained substantially the same. That is why the GVH launched a new case against the Chamber for similar reasons as above⁴¹. Therefore, the *ratio decidendi* of this GVH decision was similar as in the previous proceedings.

The Chamber, in the course of the proceedings, decided to bring its CE's provisions fully in line with the requirements of the previous GVH decision, therefore, no fine was imposed.⁴²

4.1.2 Further competition law issues

Despite these cases against the Chamber, there still remain some competition law concerns of the above type. *In concreto*:

- According to the Act on Auditors, the Chamber may publish recommendations about the *principles* and *main considerations* of setting the fees for statutory audits.⁴³ The GVH has learnt that the Chamber now attempts to interpret this as an empowerment to issue *detailed recommendations* on prices.

³⁹ See Section 17 of the Competition Act (equivalent of Art. 81 (3) EC Treaty).

⁴⁰ See GVH's decision Vj-148/1998.

⁴¹ See GVH's decision Vj-16/2005.

⁴² The GVH's decision was not appealed.

⁴³ See Section 54 Subsection 6 of Act LXXV of 2007 on Auditors.

- A further problem in the legislation concerning fees is posed by the Act on Public Procurement which stipulates that the professional associations competent for the sector in question must frequently inform the Advisory Committee for Public Contracts concerning the level of wages as well as the cost of materials and equipment that are considered reasonable for the given sector.⁴⁴ The GVH is concerned that professional associations, like the Chamber of Auditors, may interpret this provision as an empowerment to issue guidance on fees.

4.2 *Regulatory oversight*

4.2.1 *Are decisions of self-regulatory bodies subject to approval by the State? If yes, which kind of decisions and who is the supervisory authority (competent Minister)?*

Are decisions by self-regulatory bodies subject to antitrust scrutiny?

Is there an independent Complaints Office which handles malpractice cases? Or is the imposition of sanctions for malpractice left to ordinary courts (tort liability) and the self-regulatory body (disciplinary sanctions, eventually including expulsion)?

Is there an independent Regulatory Authority for the accountancy professions?

If your country is considering changes in the near future that affect the answers to the above questions, please give a brief overview of the envisaged changes and the reasons for them.

Apart from professional standards of ethics and company reputation, are there any government laws or regulations that enhance incentives to provide full and complete auditing conclusions?

There are two types of oversights of the activities of statutory auditors:

- The Public Oversight Committee for Auditors is a consultative body, which takes part in ensuring that statutory audits are conducted under transparent, controlled and prudent conditions in order to ensure properly the public-interest function of auditing.⁴⁵
- The legal supervision, exercised by the minister of finance, is carried out in order to monitor whether the Chamber's statutes and other rules of self-governance are in conformity with the various laws.⁴⁶

Public oversight by the Public Oversight Committee for Auditors

Public oversight is carried out by the Public Oversight Committee for Auditors (hereinafter: Committee) In order to secure the objectivity and independence of the system the majority of the Committee's members must be, during their membership, non-practicing auditors.⁴⁷

⁴⁴ See Section 86 Subsection 8 of the Act CXXIX of 2003 on Public Procurement.

⁴⁵ See Section 184 Subsection 2 of Act LXXV of 2007 on Auditors.

⁴⁶ See Sections 198-200 of Act LXXV of 2007 on Auditors.

⁴⁷ See Section 191 of Act LXXV of 2007 on Auditors.

The Committee monitors and evaluates:

- the procedures for the granting of authorizations to carry out statutory audits, the records and registers of the Chamber;
- the drafting and approval of Hungarian national accounting standards adopted by the Chamber, the code of ethics of the Chamber and the national standards relating to quality control set up by the Chamber;
- the functioning of the system of continuous professional training and that of the quality assurance system adopted by the Chamber;
- the disciplinary proceedings of the Chamber; and
- cooperation with the competent authorities of third countries.

Furthermore, the Committee may issue recommendations towards the minister regarding new legislation or specific measures.⁴⁸ Also, the Committee, at the minister's request, issues opinions on the draft bills of legislation affecting statutory audits.⁴⁹

The Committee, if noticing any situation where the interests of entities audited by statutory auditors are jeopardized, must

- present recommendations to the Chamber or the minister concerning potential solutions to eliminate situations where the interests of entities audited by statutory auditors are jeopardized;
- initiate proceedings at the Chamber's relevant bodies;
- initiate, towards the minister, legal supervision proceedings.

The minister's legal supervision

Legal supervision is carried out by the minister of finance. The minister monitors whether the Chamber's statutes and other rules of self-governance are in conformity with the law and whether the resolutions adopted by the bodies of the Chamber violate any laws, any statutes of the Chamber or any other rules of self-governance. Also, the minister carries out the supervision of the implementation of the chartered certified auditors' training programs and the examination procedures.⁵⁰

In case the minister finds any irregularities regarding the Chamber's statutes and other rules of self-governance, the president of the Chamber is requested by the minister to restore compliance with the law within thirty days following the date of the finding of the said irregularities. If the legality of operations of the Chamber cannot be restored in another manner, the minister must initiate an action before the court within thirty days following the date when the irregularity is detected. The court may:

- reverse any unlawful resolution adopted by the body of the Chamber and may order the adoption of a new resolution;

⁴⁸ See Section 189 of Act LXXV of 2007 on Auditors.

⁴⁹ See Section 197 of Act LXXV of 2007 on Auditors.

⁵⁰ See Section 199 of Act LXXV of 2007 on Auditors.

- suspend the operation of the bodies and officers of the Chamber and appoint a supervisory commissioner to manage the Chamber during the period of suspension.⁵¹

As for the relationship between the minister's legal supervision and the GVH's competition law enforcement, the minister's legal supervision does not affect cases in which court or administrative proceedings (such as those exercised by the GVH) may otherwise be initiated.⁵² In practice, this means that the GVH may, provided that the legal requirements set by the Competition Act⁵³ are present, launch a case when the Chamber acts without legal empowerment or goes beyond the scope of this empowerment.⁵⁴

4.2.2 *Malpractice cases*

According to the Act on Auditors an auditor may only become a member of the Chamber, and may thus provide auditing services, if it has concluded a liability insurance contract.⁵⁵

Registered statutory auditors are subject to disciplinary liability in accordance with the relevant provisions of the Act on Auditors in their activities for carrying out statutory audits (professional liability). Moreover, the auditors are subject to liability in accordance with the relevant provisions of the Civil Code for damages caused in connection with carrying out statutory audits (financial liability). The financial liability of a registered statutory auditor engaged in carrying out statutory audits in the name and on behalf of an audit firm *vis-à-vis* the audit firm is governed by the contract concluded between the registered statutory auditor and the audit firm.⁵⁶

5. Accounting standards

5.1 *Which specific accounting standards apply in your country? Do these rules differ substantially from the International Financial Reporting Standards (IFRS) or the Generally Accepted Accounting Principles? If yes, are there plans to reduce these differences?*

Who is involved in drafting and enforcing these accounting standards? Is there any public intervention or are these standards a result of self-regulation by professional bodies?

The accounting standards applicable by members of the Chamber are in harmony with the requirements set by international standards and with those set by the legislation of the European Union.⁵⁷

According to the Act on Auditors, the Chamber is responsible for drawing up and regularly updating the national standards for audits, advisory services, assurance services, and other related services, as well

⁵¹ See Section 198 Subsection 4 of Act LXXV of 2007 on Auditors.

⁵² See Section 198 Subsection 4 of Act LXXV of 2007 on Auditors.

⁵³ See Section 70 Subsection 1 of the Competition Act according to which the GVH must issue an order opening an investigation upon observation of an activity, conduct or situation which may violate the provisions of the Competition Act, provided that the GVH has the power to proceed in the case and the proceeding is necessary to safeguard the public interest.

⁵⁴ It should be noted that the GVH's competences only cover the Chamber's „general” rules (i.e. code of ethics, statutes), thus the Chamber's individual decisions are exceptionally subject to antitrust scrutiny (for example if they reflect the general behaviour of the Chamber).

⁵⁵ See Section 11 Subsection 1(g) of Act LXXV of 2007 on Auditors.

⁵⁶ See Section 60 of Act LXXV of 2007 on Auditors.

⁵⁷ See Section 116(f) of Act LXXV of 2007 on Auditors.

as internal quality control.⁵⁸ It is considered to be a disciplinary infraction if the auditor does not provide, from professional deficiencies or willful or gross negligence, professional services that are in compliance with the relevant statutory provisions and the national standards set by the Chamber.

Within the Chamber, the Committee of Experts is in charge of arranging these standards⁵⁹, which is subsequently adopted via the Presidency's decision.⁶⁰

There are three types of oversights of the above standards:

- The Public Oversight Committee for Auditors is responsible for monitoring and evaluating the drafting and approval of the Hungarian national accounting standards and the national standards relating to quality control.
- The Chamber's Quality Control Committee functions as an internal body of the Chamber and therefore monitors and evaluates that the Hungarian national accounting standards and the national standards relating to internal quality control are given effect.⁶¹
- The Chamber's Committee of Experts also monitors these standards' application in practice.⁶²

⁵⁸ See Section 4 Subsection 5(b) of Act LXXV of 2007 on Auditors.

⁵⁹ See Section 138 Subsection 1(b) of Act LXXV of 2007 on Auditors.

⁶⁰ See Section 11 Subsection 1(g) of Act LXXV of 2007 on Auditors and Section 116(f) of Act LXXV of 2007 on Auditors.

⁶¹ See Section 150 and Section 152 Subsection 1(b) of Act LXXV of 2007 on Auditors.

⁶² See Section 138 Subsection 1(b) of Act LXXV of 2007 on Auditors.

ITALY

1. Introduction

The services provided by the accounting professions in Italy cover a very wide area including auditing, accounting services and tax advisory services.

The contribution will firstly analyse regulation of the accountancy professions, where important changes have been introduced in the last few years.

The second part of the contribution will focus on the auditing market, that is characterized, in Italy, as in other countries by a significant degree of regulation reflecting the complex issues involved.

Finally a case assessed by the Italian Competition Authority involving audit firms is presented.

2. Accountancy professions

2.1 *Regulatory framework*

The regulation of the accounting professions has undergone several changes in the last few years. Traditionally in Italy, within the accounting profession, there were two professional figures: *Dottori Commercialisti* and *Ragionieri e Periti Commerciali*, belonging to two different professional associations. The *Ragionieri* primarily served smaller companies or individuals while *Commercialisti* were typically advisers of medium larger companies.

The regulation of the Italian accountancy profession has been completely reformed by the legislative decree n. 139 of 28 June 2005. Following the provisions of the law, there is now only an accountancy profession, distinguished into two levels which differ for the scope and complexity of professional activities. The new professional body resulting from the reform law is the *Consiglio Nazionale dei Dottori Commercialisti e degli Esperti Contabili* (CNDCEC), which is the competent authority and the only professional body of accountants in Italy, effectively operating since the beginning of 2008. The profession, which is subject to the general supervision of the Ministry of Justice, has been reformed with regard to the following aspects: scope of professional activity and incompatibilities; requirements to access the professional role; disciplinary sanctions and governance and organizational structure of the professional body. Rules concerning fees and advertising have been affected by the liberalisation measures on professional services of law of 4 August 2006, n. 248.

2.1.1 *General regulation and reserved activities*

The profession of *Dottore Commercialista* and *Esperto Contabile* in Italy is conceived as a global economic juridical profession in which auditing is only one of the different professional activities. The areas of activity expressly identified in the new law are: business administration, corporate law, finance and taxation. These areas involve activities such as administration of companies and entrusted assets, membership of audit committees, accounting services, tax filing, tax assurance services, audit of financial statement and related services, depository of formal documents with electronic signature.

The use of the professional title for the provision of professional services is reserved to registered members, although most of the professional activities are not legally reserved. The functional title for audit activity is “revisore contabile” and can only be used by persons registered in the special role, as explained in the dedicated paragraph. Until 2007, the two professional titles attributed to the regulated professions in the accountancy field, were: *Dottore Commercialista* (Doctor in commerce); *Ragioniere e Perito Commerciale* (Accountant and commercial estimator). From 2008, following the reform, both professionals can be registered in the same role either as *Dottore Commercialista (Section A)* or *Esperto Contabile (Section B)*¹.

Some activities are reserved to registered members in Section A: audit and assurance engagement for access to public or community funds; business evaluations; assistance and representation in tax matters; insolvency engagements from public or judicial authorities; financial analysis related to listed companies; capital adequacy evaluation; executive and judiciary sales; management consulting to public entities; business plan certification for access to public funds monitoring and tutorship for public funds granted to enterprises. For many of these activities, however, accountants enrolled in Section A (commercialisti) compete with other professionals, such as lawyers.

The largest share of professional activities is addressed to SMEs, through the provision of a range of consultancy services to the client, where the interdisciplinary character of the assignment is a crucial element.

2.1.2 Entry requirements

There are no quantitative restrictions on entry in the accountancy profession. There are, however, regulatory requirements on qualitative characteristics of the professionals. In details, the two levels of membership require two different university degrees. For registering in Section B, *Esperti Contabili* – applicants must achieve at least a three year degree in economics and business administration, while for enrolling in Section A, *Dottori Commercialisti*, applicants must achieve at least an five year degree in economics and business administration. After completing the academic degree, a three years training period in a professional firm is required². Those who have undertaken the 5 years university degree may start the training on the fourth year of university. The training has to be performed under the supervision of a *Dottore Commercialista* or an *Esperto Contabile*, who has been registered for at least five years. The training program is based on theoretical and practical knowledge and skills that have to be acquired during the three years. Trainees are also subject to the ethical rules established in the profession’s code of conduct.

After the three year training candidates are admitted to a State examination which is different for the two sections as to the level of difficulty, and the inclusion of tax litigation for section A applicants³.

2.1.3 Regulation on conduct

The National Council (*Consiglio Nazionale dei Dottori Commercialisti e degli Esperti Contabili*) has an overall representation of the members, at a national and international level; it oversees the activities of the local branches (*Ordini*) and enacts various regulations and recommendations, including the

¹ Professionals holding the title of *Ragioniere e Perito Commerciale* by the end of 2007 have been included in Section A of the register, with the title of *Ragioniere Commercialista*.

² The requirement of a training period was introduced in 1992 with Law n. 206/92 for the Commercialisti and Law n. 183/92 for the Ragionieri.

³ Candidates are tested on subjects such as accounting, auditing, business administration of industrial, commercial and financial sector, financial analysis and professional techniques, IT knowledge, civil law, corporate law, insolvency procedures, tax law, labour law, procedural civil law.

professional code of conduct. The 140 local branches are territorially competent for supervising the behaviour of accountants and have disciplinary powers over their members.

The code of conduct contains the rules of the disciplinary procedure for professionals in breach of the code. The code of conduct states the incompatibilities with some other professions, such as notary, journalist, with commercial entrepreneurial activity and with financial intermediation.

Fees

Until the recent regulatory reform of the law of 4 August 2006, n. 248⁴ liberalizing fees for professional services, a law dating back to the early fifties (DPR n. 1067 and 1068/1953) provided that fees for accountancy services had to be established in a Presidential Decree on proposal of the Ministry of Justice, in agreement with the Ministry of Industry and the Ministry of Treasury, after consultation with the professional National Council. The last Presidential Decree regulating the fees was that of 1994 (DPR n. 645/1994), containing maximum and minimum fees for each service. The decree stated also that the minimum fee was binding, although it also stated that in the actual determination of the fee the characteristics and value of the provided service had to be taken into account. The code of conduct of the Commercialisti and Ragionieri contained provisions explicitly recalling DPR n. 645/1994 and stated that the regulated fee had to be considered a guarantee of the service's quality.

In August 2006, important changes regarding liberal professions were introduced by the so called liberalisation package, enacted by the law of 4 August 2006, n. 248. This law amended several pre-existing provisions, introducing pro-competitive changes in different sectors. In particular, article 2 eliminated minimum tariff requirements and advertising restrictions for professional services⁵. Professional associations were required to amend their codes of conduct by the end of January 2007, in order to comply with the new provisions.

In January 2007 the Italian Competition Authority opened a general inquiry in order to analyse the changes in self regulation and to assess whether all restrictions on competition had been eliminated. The Authority thoroughly examined the codes of conduct of a number of professions and held meetings with representatives of the professional bodies. The inquiry was concluded in January 2009⁶. The Authority ascertained that even in the new code of conduct (approved after the unification of the two professional bodies of the Commercialisti and Ragionieri) the provision of article 25 of the code still contained indications that, if interpreted restrictively, implied that minimum tariff could not be derogated. After the indications of the Authority the National Council finally amended the code which now states that "the professional fees, freely determined by the parties, must be proportionate to the significance of the provided service, its technical content, the required effort and the difficulty, taking into account the result and economic or non economic advantages obtained by the client".

⁴ Law of 4 August 2006, n. 248. Urgent Provisions regarding economic and social development, the control and rationalization of public expenditure, interventions in the fields of public revenue and repression of tax evasion.

⁵ The new provisions mirror to a large extent the opinions drafted over the past years by the Italian Competition Authority in its advocacy reports and sector inquiries, addressing some of the main competition issues arising from sectoral regulations.

⁶ Italian Competition Authority, IC34, Il settore degli ordini professionali, decisio n, 19435 of 15 January, 2009, Bulletin n. 9/2009.

Advertising

Although no provision on advertising concerning accountants was provided by the law, a ban on advertising was explicitly contained in the professional code of conduct. Moreover, in 2001, the National Council had diffused a document to the members of the professional association clarifying that billboards, flyers, sending email, post or fax messages indiscriminately and soliciting visits or phone calls was forbidden. After the coming into force of law of 4 August 2006, n. 248, the code of conduct had to be modified in order to eliminate these restrictions. In the recent inquiry on the professional codes of conduct the Authority examined the new code and found that some of its provisions still conveyed the idea that there were restrictions on the content of advertisements and that the National Council had some right to supervise the content. The provision on advertising was restated following the suggestions of the Authority.

3. Auditing

3.1 Regulatory framework

In Italy the provision of auditing is thoroughly regulated, in order to ensure and guarantee that the audit is undertaken correctly, in consideration of the implications that auditing has on the protection of investors.

3.1.1 Entry requirements

Regulation identifies three categories of subjects that can provide audit services, and even though they partially overlap, these three categories are characterized by different professional qualifications and are subject to different regimes of control.

Registered Auditors

The regulation concerning the subjects providing auditing is set in Legislative Decree n. 88/1992, that enforced the EU Directive on auditing⁷. The Decree established the Register of Auditors (*Registro dei Revisori Contabili*) and set the rules for enrolment in the Register that is formally under the competency of the Ministry of Justice and is managed by the CNDEC (National Council of the Accountancy Profession).

For individuals the requirements to register as auditor (*revisore contabile*) are: a three-year university degree, three year training and passing the qualifying exam, which is held on a yearly basis⁸. Audit firms can take both the form of partnership and company, but auditing must be the sole legal business purpose and the majority of partners or the majority of the interests in limited partnership must be held by individuals registered in the Register of Auditors.

Auditing of listed companies

Special rules apply for auditing of the financial statements of listed firms. In 1975 DPR n. 136/75 introduced mandatory auditing for listed companies, subsequently extended to other subjects (such as financial intermediaries or insurance companies). The regulation was reformed with Legislative Decree n. 58 /1998 (Consolidated Law on Finance pursuant to Articles 8 and 21 of Law no. 52 of 6 February 1996),

⁷ EU Directive 84/253/CEE concerning the authorization of the persons who are in charge with the statutory audit of the accounts.

⁸ The qualification of *Dottore Commercialista or Esperto Contabile* directly allows to be registered as auditor.

introducing more stringent controls for listed companies⁹. Other controls were introduced in December 2005 with the bill containing “Dispositions on savings protection and for financial markets regulation” partially modified by Legislative Decree n. 303/06 of 29 December 2006, after the Enron and the Parmalat financial scandals.

In particular, audit firms for listed companies must register in a special Register held by CONSOB (the public Authority responsible for regulating the Italian securities market). CONSOB verifies that audit firms applying to the special Register satisfy the requirements referred to in Legislative Decree 88/1992 and the requirement of technical adequacy. Audit firms constituted abroad may be entered in the Register if they satisfy these requirements. Moreover, audit firms must possess an adequate guarantee provided by banks, insurance companies or intermediaries entered in the special register referred to in Article 107 of the Consolidated Law on Banking or have taken out an insurance policy against civil liability for professional negligence or errors, including a guarantee for employees’ breach of duty, to cover the risks deriving from their auditing activity.

CONSOB supervises the organization and the activity of the auditing firms entered in the special register to verify their independence and technical adequacy. Regulations issued by Consob outline requirements relating to professional independence, integrity, objectivity, professional competence and due care, confidentiality and relations between auditors. Consob periodically, and at least every three years, implements quality controls on auditing companies registered in the special register.

There is a mandatory rotation rule for auditing of listed companies: the duration of a single audit appointment is three year and the same audit firm can be re-appointed only twice (for a total of nine years).

Trust firms authorized by law n. 39/1966

Finally, there is a third category of subjects which may operate in the auditing market: trust firms authorized by law n. 39/1966. These are firms providing different professional services, in particular administration of assets for third parties, organization and auditing of firms and representation of stockholders. These firms are subject to an authorization and supervision by the Ministry of Economic Development and do not need to be registered in the Registro dei Revisori Contabili. They can not provide financial or consultancy services.

3.1.2 Corporate Governance and internal controls

In Italy statutory audits on accounting documents are carried out in different ways, depending on the system of corporate governance that the firm has implemented. The first type, named *Collegio Sindacale*, does not carry out a full audit, but monitors the proper administration of the entity and its compliance with laws and regulations. The result of this monitoring activity is summarised in a report enclosed with the financial statements.

The second type of audit is performed by full auditors (individuals or audit firms) authorised to carry out full audits. In 1998, Legislative Decree n. 58/98 extended requirements of external auditing for listed companies. A further change was determined by the reform of Italian commercial law in 2003. This reform came into effect on 1 January 2004 and, in some cases, offers the possibility to appoint a full auditor

⁹ The objectives of the law were a) the safeguarding of faith in the financial system; b) the protection of investors; c) the stability and correct operation of the financial system; d) competitiveness of the financial system; e) the observance of financial provisions. Section VI, articles 155-165 of the Decree are dedicated to audit firms. The Decree is implemented by CONSOB Regulation n. 11971 of 1999.

(individual or audit firm) instead of the *Collegio Sindacale*. It is the single company who can choose whether or not to engage an individual auditor or an audit firm instead of the *Collegio Sindacale*.

For stock corporations, under the current legislation, there are three alternative models:

- For firms borrowing from equity markets the audit must be carried out by an audit firm listed in the Register of Revisori Contabili that is also registered in the CONSOB (Regulatory Body for Italian Stock Exchange) Roll;
- For firms which do not borrow from equity market and have to present consolidated financial statements the control must be carried out by a registered auditor (either an individual or an audit firm);
- For firms that do not borrow and do not have to prepare consolidated financial statements control can be also exercised by Collegio Sindacale composed of individual auditors enrolled in the Register.

Market structure of the Italian auditing market

As outlined in the previous paragraph, there are three different subjects that may provide auditing services in Italy:

- Individuals and companies registered as *revisori contabili* in accordance with Legislative Decree n. 88/1992, that enforced the EU Directive on auditing. In 2008 there were 408 firms enrolled in the Register¹⁰. As to the form of organization adopted by the firms 70% were limited companies and 7% stocking companies¹¹, while the others were organized in some form of partnership.
- Audit firms registered in the special Register held by Consob, which are the only ones authorized to audit of listed companies. In 2008 there were 22 firms registered with Consob.
- Audit firms authorised by law n. 39/1966. In 2008 there were 230 of these firms reporting auditing as their business purpose. However, these firms are mainly specialised in other services and auditing represents only a very limited share of their revenues (around 1%)¹².

In terms of demand, the Italian auditing services market can be divided into two parts:

- Demand for auditing services due to legal requirements (mandatory auditing client segment) which can be further divided into: a) *Revisione legale* (Legal auditing): the most relevant entities that are subject to this kind of auditing are companies listed in Italy or in other EU countries, Italian companies controlled by listed companies and insurance companies; b) *Revisione obbligatoria* (Obligatory audits): required for companies by particular laws (e.g. companies that obtain grants from the Italian State, broadcasting networks (TV or Radio) and cooperatives).
- Demand for auditing services due to reasons other than legal obligations (voluntary auditing client segment).

¹⁰ No data are available for individuals registered in the Registro dei revisori contabili.

¹¹ SDA Bocconi, Rapporto di Ricerca, Il mercato della revisione contabile in Italia, March 2009.

¹² Data provided by the Ministry of Economic Development reported in SDA Bocconi, Rapporto di Ricerca, Il mercato della revisione contabile in Italia, March 2009.

In 2007 the total revenues in the auditing market in Italy amounted to 1.052 million euro¹³. These data, which were the only available ones, also include accounting services provided by audit firms. Mandatory auditing represents about 50% of these revenues (auditing of listed companies 12,1% and auditing of other companies 37,1%), voluntary auditing 36,6% and accountancy services 14,3%.

Although there are numerous subjects providing audit services, the market seem to be, as in other countries, rather concentrated. The firms registered in the special Register held by CONSOB accounted, in 2005, for about 90% of the total revenues¹⁴.

The market shares of audit firms in the Italian market are reported in the following table.

Market Shares of Audit Firms in Italy

Audit Firm	2004	2005	2006
Pricewaterhousecoopers	26,4	25,3	26,1
Reconta Ernst & Young	16,7	15,9	16,7
KPMG	14,4	14,6	15,6
Deloitte & Touche	14,4	16,8	14,1
Mazars	1,4	1,8	2,4
Others	26,7	25,6	25,1
TOTAL	100	100	100

Source: Databank, February 2008

The market is concentrated and can be described as an oligopoly followed by a competitive fringe. The first four firms (the Big Four), accounted, in 2006, for 72,5% of the market (72,6% in 2005) with the fifth firm, Mazars holding a much smaller share (2,4%) and with other firms following with shares of 1% or less. The shares of the Big Four seem to be rather stable over time.

Reputation and integration in an international network can provide an explanation of this market structure.

¹³ Source: Databank, Market Structure and Trend, Z21-Società di revisione, February 2008.

¹⁴ SDA Bocconi, Rapporto di Ricerca, Il mercato della revisione contabile in Italia, March 2009.

Box 11. Italian Competition Authority – Case Assirevi/Società di revisione¹⁵

In January 2000 the Authority completed an investigation the national auditors association, Associazione Nazionale Revisori Contabili (Assirevi) and the major auditing companies, which had co-ordinated their tariffs and hourly rates, agreed not to compete for clients that were already served by other companies, and co-ordinated their participation in tendering procedures. The agreements affected the statutory corporate audit services market and the voluntary audit services market, on which the Big Six held a market share, respectively, of 86 percent and 74 percent.

The investigation concerned virtually every aspect of competition between the auditing firms.

The firms' association Assirevi had circulated, until 1995, an annual benchmark audit fee and working hours table according to the size and the sector of activity of the client firms. The agreement also laid down a system to be followed when acquiring new clients in order to protect the market positions of each firm, restricting any form of competition in relation to each audit firm's "client portfolio". The auditing firms were able to agree on how to respond to requests for discounts from client companies, and to establish in advance the firm that would be awarded auditing contracts, in many cases making competitive tendering a mere formality. The investigation showed that co-ordinated behaviour had affected public tenders and contracts with the public sector as well. The Authority considered that all these forms of co-ordination fell within the scope of the ban on agreements restricting competition, since they were likely to influence the conduct of the individual firms in formulating their bids, and to limit the adoption by the same firms of autonomous pricing policies and strategies to attract clients. It also appeared that the various types of agreements found in the inquiry could be traced back to an anti-competitive strategy that could be imputed primarily to the six major auditing firms. The investigation resulted in fines totalling 4.5 billion lire for Arthur Andersen, KPMG, Coopers & Lybrand, Price Waterhouse, Reconta Ernst & Young and Deloitte & Touche.

¹⁵ Italian Competition Authority, *Case I-266 Assirevi/Società di revisione*, decision n. 7979, of 28 January 2000, published in Bulletin n. 4/00.

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SWITZERLAND

1. Introduction

The liberal professions are traditionally subject to light government regulation in Switzerland. This statement is also valid for the accounting professions and reflected by the OECD's indicator of product market regulation: According to the indicator, Switzerland's regulation in the accounting sector was the least restrictive of all OECD countries in 1996 and in 2003, and ranked number 3 in 2008¹.

While Switzerland remains one of the most liberal countries in the accounting professions, the indicator correctly reflects a reform that was put into place at the end of 2005 and introduced more regulation, most notably the creation of a regulatory authority. The reform was a reaction to a public discussion that requested more transparency and better corporate governance standards. Another element in the process was an international trend towards more regulation in the sector (e.g. Sarbanes-Oxley Act in the US) after the Enron case.

2. Concentration in the market

In 2002, when Ernst&Young (EY) took over Arthur Andersen, the Competition Commission published rough market shares of the big four in the market for large clients. According to the figures of that time, PWC was the largest firm in the market, with a share of 30-40%, followed by EY (20-30%), KPMG (10-20%) and Deloitte (under 10%). It was estimated that others had a market share of 10-20%. Besides the "Big 4", a lot of small firms provide accounting services. Most of them specialize on small and medium businesses. While the switching costs for customers are estimated to be important specifically for large companies, the barriers to entry are relatively low in the Swiss market.

3. Quality standards and entry

With rare exemptions, there is no special degree required to provide financial advice or tax advice in Switzerland. Those markets are free and open.

As far as statutory audits are concerned, the required degree depends on the characteristics of the audited company:

- Regular statutory audits are required for public stock companies and for companies that exceed a pre-defined size. The limit is exceeded if – for example – the annual revenue of a company exceeds CHF 20 million (equivalent to around EUR 13 million) and at the same time the company employs more than 50 employees (FTE).

Regular statutory audits must be led by *registered auditors with proven expertise*: They must either possess a university diploma or one of the several diploma listed in the law. Usually, the latter diploma require some years of education, but not at university level. In addition, *registered auditors with proven expertise* must have practical experience; its length depends on the diploma

¹ Source: Conway, P. and G. Nicoletti (2006), "Product market regulation in non-manufacturing sectors: measurement and highlights", OECD Economics Department Working Paper.

they possess. For example, “Diplomierte Wirtschaftsprüfer” do not have to prove practical experience, whereas University graduates without further diploma require twelve years of practical experience.

As far as audits of publicly traded companies are concerned, an additional requirement applies: They can only be audited by *registered auditing companies*. At least one fifth of their employees involved in audits must be *registered auditors with proven expertise* as defined above.

- Companies not falling under the criteria as defined above are only subject to simplified statutory audits. Simplified statutory audits have to be led by *registered auditors*. *Registered auditors* have to possess one of the various diploma listed in the law (not necessarily a university diploma) and at least one year of practical experience.

Registration and supervision of *registered auditors* as well as of *registered auditors with special expertise* is ensured by a regulatory authority. In addition to the diploma requirements, registration is subject to standards of independence. There are no quantitative limits to the number of registrations. There are neither further requirements regarding licenses or memberships in professional bodies. The law specifies that registered auditing companies must ensure on-going education of their employees.

Foreign diploma that are comparable to Swiss diploma as listed in the law will be recognized if reciprocity is granted, as it is the case for the EU.

4. Regulation of conduct

Conduct regulation is particularly liberal in Switzerland: There are no legal restrictions on advertising. There are no legal restrictions on prices. Recommended price ranges are published by the smaller one of two competing business associations, but to our knowledge, prices are freely negotiated. There are no specific restrictions on the form of business. Incorporation is allowed. Multi-disciplinary work is not generally excluded. Still, the legal standards of independence must be ensured. Among them is the requirement that auditors of a company must not be involved in the accounting of the same company. They must neither supply other services that imply the risk that an auditor would audit his own work.

5. Institutional framework

The rules defined above are implemented and supervised by the regulatory authority. There are no exemptions or special rules as far as competition law is concerned. With the exception of the international merger cases, there have been no competition law cases in the sector.

As the sector has been traditionally very lightly regulated, we have no data or studies on the effects of liberalization or deregulation in the sector. Rather on the contrary, there were fears that the relatively light regulation introduced at the end of 2005 in reaction to international developments would raise the cost of auditing for businesses.

TURKEY

1. Concentration in the Market

The Competition Authority does not have detailed information on the market shares of firms operating in different services related to accountancy.

In one decision¹ involving merger between a firm operating under the licence of Andersen which lost many customers due to problems faced by Andersen globally and another firm operating under the licence of Ernst&Young to establish a new firm that would operate under the licence of Ernst&Young post-merger, the Competition Board mentioned that there were 34 undertakings offering general accountancy and financial consultancy services in the field of banking whereas there were 80 undertakings offering the same services in the capital market according to the lists of Banking Regulation and Supervision Agency and the Capital Markets Board in addition to other undertakings operating in the relevant markets covering services of general accountancy and financial consultancy. However, market shares of the merging parties could not be obtained as there were no data on the market shares in the relevant markets. As the combined turnover of the merging parties was below the threshold, the transaction was not subject to authorization of the Competition Board.

Similar to the first decision, in another decision² of the Competition Board involving merger between a firm operating under the licence of Andersen and another firm operating under the licence of Ernst&Young to establish a new firm that would operate under the licence of Ernst&Young post-merger, market shares of the merging parties could not be obtained due to absence of data on market shares in the relevant market for services of sworn-in certified public accountancy including full certification and financial consultancy. The combined turnover of the merging parties was again below the threshold and the Competition Board was of the opinion that their combined market share was also below the threshold of 25% as there were 200 firms of sworn-in certified public accountancy and 2,000 sworn-in certified public accountants. It was decided that the transaction was not subject to authorization of the Competition Board based on the combined turnover of the merging parties in the relevant market.

According to annual report of Union of Chambers of Certified Public Accountants and Sworn-in Certified Public Accountants of Turkey (TÜRMOB), there are 43,820 certified public accountants, 28,907 certified general accountants and 3,840 sworn-in certified public accountants in Turkey as of end of 2008.

2. Regulation of Entry

2.1 *Quality Standards and Entry – Exclusive Rights*

The main legislation on accountancy is the Law No. 3568 of Certified Public Accountancy and Sworn-in Certified Public Accountancy (Law No. 3568). The relevant legislation provides for the definitions of the subjects of both the Certified Public Accountancy and Sworn-in Public Accountancy. According to Article 2A of Law No. 3568, the subjects of the profession of Certified Public Accountancy

¹ *Aktif Analiz/Önce Mali Müşavirlik*, dated 18.7.2002 and numbered 02-44/520-215.

² *Erdikler/Denver*, dated 8.8.2002 and numbered 02-47/590-242.

comprise the following services rendered to enterprises and business concerns owned by real and legal persons:

- (a) To keep books; prepare the balance sheets, profit and loss statements, tax returns and other relevant documents in compliance with generally accepted accounting principles and the provisions of the relevant legislation,
- (b) To establish and improve accounting systems, to regulate administration, accounting, finance, financial legislation and to perform the jobs related to their applications and to provide advisory services in the related fields.
- (c) Based on the relevant documents on issues specified in (b) above, to perform investigations, analyses and audit, to present written opinions regarding financial statements and tax returns, to prepare reports and similar documents, to perform arbitration, expertise and similar services.

Persons, who perform the activities mentioned above independent from a business entity, are defined as Certified Public Accountants.

The subjects of the profession of Sworn-in Certified Public Accountancy include those cited in (b) and (c) above as well as the application of certification.³ Sworn-in Certified Public Accountants can not keep books related to accounting, cannot establish an accounting office and cannot become partners to the accounting offices already established.⁴

According to Article 3 of the Law No. 3568, employment of the titles of Certified Public Accountant, and Sworn-in Certified Public Accountant by individuals legally unauthorized, and the employment of titles, signs and symbols simulating the said professional titles, or likely to cause erroneous identification, are prohibited. The Chambers of Certified Public Accountants and Sworn-in Certified Public Accountants (the Chambers) are required to inform the Public Prosecutor, should they become aware of any such violations. Those Chambers and the concerned individuals will be notified on the results of the investigation to be carried out by the Public Prosecutor.

The Law No. 3568 provides for general⁵ as well as special conditions to become Certified Public Accountants and Sworn-in Certified Public Accountants.

³ Article 12 of the Law No. 3568 is as follows:

“Sworn-in Certified Public Accountants certify the compliance of the financial statements and tax returns prepared by individuals and entities and the enterprises and establishments thereof, with the provisions specified in the legislations, accounting principles and the accounting standards, and further certify that the accounts have been inspected in accordance with the auditing standards.

The documents to be certified by sworn-in Certified Public Accountants, subjects of certification and the rules and principles applicable to certification are determined by the regulations issued by the Ministry of Finance, by taking into consideration the types of liabilities of the individuals or entities, fields of business and turnovers, foreign currency generating transactions, imports and exports, types and amounts of investments and the offices to which these documents will be submitted. ...”

⁴ See Article 2(B)(2) of the Law No. 3568.

⁵ According to Article 4 of the Law No. 3568, general conditions are as follows:

- To be a citizen of the Republic of Turkey (provisions for foreign Certified Public Accountants remain reserved).
- To be competent in exercising the civil rights.

The special conditions⁶ of Certified Public Accountants are as follows:

- (a) To have at least a B.A. degree in law, economics, business administration, accounting, banking, public administration and political science from a Turkish university, or from foreign universities offering degrees equivalent to their Turkish counter parts, on the condition that this equivalence is ratified by the Higher Education Committee, or to hold a post-graduate degree in one of the disciplines mentioned above, following an undergraduate degree received in a different branch.
- (b) To complete a practical training (internship) period of at least three years.
- (c) To pass the examination for Certified Public Accountants.⁷
- (d) To receive a license as a Certified Public Accountant.

To be eligible for practical training, the candidates must be successful in the entrance exam to practical training and complete the education programme of the Education and Training Center founded by TÜRMOB.⁸ The Education and Training Center prepares compulsory training programmes including theoretical and practical aspects for each year of the practical training. It also prepares the necessary measures to ensure that practical training is supervised, and conducted regularly and in a disciplined way. The Chambers have to ensure that practical training is conducted according to measures prepared by Education and Training Center. TÜRMOB, Education and Training Center and the Chambers can supervise the execution of practical training on-site. Moreover, Boards of Directors of Chambers have to send a report on practical training programmes and relevant practices to the Education and Training Center each year. The examination for Certified Public Accountants is conducted in written by TÜRMOB.⁹

Individuals who are citizens of the countries which have officially codified the profession of Certified Public Accountancy may, under the condition of reciprocity, be authorized to render the services relevant to the rights they have acquired in their own countries, that are included within the scope of Article 2 of the

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- Not to be deprived of public rights.
 - Not to be sentenced to one or more years of imprisonment for intentional offence ... and not to be sentenced for offences against state security, offences against Constitutional order and the functioning of this order, offences against national defense, offences against secrets of the state and espionage, embezzlement, official corruption, bribery, theft, swindling, fraud, breach of confidence, fraudulent bankruptcy, bid rigging, corruption in performance of an obligation, laundering the value of assets gained via an offense or smuggling, irrespective of being granted amnesty.
 - Not to be penalized by expulsion from the government service consequent to an investigation.
 - Not to possess conditions incompatible with the honour and dignity of the profession.

⁶ See Article 5 of the Law No. 3568.

⁷ According to Article 9(2) of the Regulation on Exam for Sworn-in Certified Public Accountancy and Certified Public Accountancy, in order to take the exam for Certified Public Accountants, the candidate must have completed the practical training and got the pass mark of 60 out of 100 from the practical training assessment of the member of the profession that is responsible for the candidate.

⁸ See details for the practical training in the Regulation on Practical training for Certified Public Accountancy and Certified General Accountancy.

⁹ Article 7(2) of the Law No. 3568 provides that “The examination commission consists of 7 members. Two of these members represent the Ministry of Finance. Three of the members are selected among five candidates proposed by the Higher Education Council, and the remaining two are selected by the Ministry of Finance among the four candidates proposed by the Union.”

Law No. 3568, upon the proposal of the Ministry of Finance, by the approval of the Prime Minister provided that they possess the conditions required of Turkish Certified Public Accountants.¹⁰

There are also special conditions¹¹ to become a Sworn-in Certified Public Accountant that are as follows,

- (a) At least ten years of experience as a Certified Public Accountant,
- (b) To pass the Sworn-in Certified Public Accountant examination,
- (c) To receive a license for practicing sworn-in certified public accountancy.

The examination for Sworn-in Certified Public Accountant is conducted in written by TÜRMOB.¹² The Ministry of Finance is authorised to take the necessary measures to ensure that the examination is fair, impartial and compliant with the legislation.¹³

Those who fail the examination for Certified Public Accountants can take 4 exams within the two years as of the date the results are announced whereas the number of exams in which unsuccessful Sworn-in Certified Public Accountants may take is 3 within the same time frame.¹⁴

It should be mentioned that Law No. 3568 does not provide for quantitative limits regarding entry into the professions of Certified Public Accountancy and Sworn-in Certified Public Accountancy.

Chambers of Certified Public Accountants and Sworn-in Certified Public Accountants are established separately.¹⁵ The Chambers are professional organizations regarded as legal entities with the qualities of

¹⁰ See Article 8 of the Law No. 3568.

¹¹ See Article 9 of the Law No. 3568.

¹² According to Article 10(2) of the Law No. 3568, the Examination Commission is composed of seven members one of which is the Chairman. The Chairman and the members of the Examination Commission are selected by the Ministry of Finance, four among tax auditors of the Ministry of Finance, one among two candidates proposed by the Higher Education Council, and two among four candidates proposed by TÜRMOB. According the Article 10(4) of the Law No. 3668, the procedures of the work of the examination commission, subjects of the examination and other principles and procedures related to the examination are determined by a regulation to be issued by TÜRMOB having taken the assent of the Ministry of Finance.

¹³ See Article 10(1) of the Law No. 3568.

¹⁴ See Article 21 of the Regulation on the Examination for Sworn-in Certified Public Accountancy and Certified Public Accountancy. According to the Article; the exams concern only the topics that the participants fail. In case the participants do not take the exams within the two-year period, they can not take exams for another two years. Following the second two-year period, exams covering all the topics may be taken. See more details concerning the exams in Regulation on the Exam for Sworn-in Certified Public Accountancy and Certified Public Accountancy.

¹⁵ See Article 14(1) of the Law No. 3568. The Article provides that these Chambers are established for the objectives of meeting the needs of the members of the profession, facilitating their professional activities, providing the development of the profession in compliance with common benefits, maintaining professional discipline and ethics, and providing the prevalence of honesty and mutual confidence among the members of the profession and in their relations between the entrepreneurs. According to Article 15(1) of the Law No. 3568, a Chamber is established in cities where there are at least 250 members of the relevant profession and in counties where there are 250 members of the profession. The Chambers are named with the city or the county they are situated. According to annual report of TÜRMOB, there are 70

public institutions. Those who are not members of the Chambers can not involve in professional activities.¹⁶ Those who violate this rule shall be sentenced to judicial fines up to 100 days provided that the conduct does not constitute an offence that requires a heavier penalty.¹⁷ Organs of the Chambers are the General Assembly, Board of Directors, Disciplinary Board and the Supervisory Board. General Assembly is the highest organ of the Chamber and is formed by the participation of all the members of the profession registered to the Chamber. Among the duties of the General Assembly are to make proposal to TÜRMOB on the adoption of professional decisions which would have a binding effect among the Certified Public Accountants and Sworn-in Certified Public Accountants, and to determine membership fees for the prospective members of the Chambers and annual fees for the registered members, and the days on which such charges become due.¹⁸

TÜRMOB is established upon the participation of all the Chambers.¹⁹ TÜRMOB is a professional body having the qualitative characteristic of a public institution, having a legal personality. TÜRMOB is authorised to determine the professional rules that should be complied with and to prepare the regulations that will be issued in compliance with the Law No. 3568.²⁰ TÜRMOB is also composed of General Assembly, Board of Directors, Disciplinary Board and the Supervisory Board. The General Assembly of TÜRMOB is entitled to take professional decisions that must be complied with by the Certified Public Accountants and Sworn-in Certified Public Accountants.²¹ Board of Directors of TÜRMOB is authorised to submit for approval of the Ministry of Finance the entrance fee and annual membership fees as well as

Chambers of Certified Public Accountants and 8 Chambers of Sworn-in Certified Public Accountants in Turkey as of end of 2008.

¹⁶ See Article 15(4) of the Law No. 3568.

¹⁷ See Article 49(2) of the Law No. 3568.

¹⁸ See Article 19(1)(e) and (h) of the Law No. 3568.

¹⁹ See Article 28 of the Law No. 3568.

²⁰ See Article 29(1)(d) and (e) of the Law No. 3568. Article 50 provides which issues will be organized in compliance with the regulations to be issued. These are, *inter alia*,

- operating methods and principles regarding Certified Public Accountancy and Sworn-in Certified Public Accountancy;
- working methods of the examination commission to be established in compliance with Article 7 entitled “Examination for Certified Public Accountancy”, the basic principles of the examination process, subjects of the examination, training methods, training period and other relevant issues regarding the training to be received under Certified Public Accountant or Sworn-in Certified Public Accountants;
- procedures regarding the certification transactions of Sworn-in Certified Public Accountants;
- bestowal of license and the employment of titles;
- membership fees;
- basics to be taken up in determining the fees of consultancy and accountancy;
- the competent authority to adopt the necessary resolutions regarding disciplinary investigations, competent authorities imposing disciplinary penalties, methods and conditions applicable to the objections raised against the disciplinary penalties, and other issues related to discipline;
- methods and principles regarding evaluation and examination boards, of whom should such boards consist of and the starting date and place of the work;

Except for the one regulating the final issue, all the regulations shall be prepared by TÜRMOB and published in the Official Gazette, following the approval by the Ministry of Finance. The regulation on the final issue will be issued by the Ministry of Finance.

²¹ See Article 33(1)(f) of the Law No. 3568.

fees for courses for professional training and practical training recommended by the Chambers, conduct the examinations that are required by the Law No. 3568, grant the professional licences.²² Moreover, Board of Directors of TÜRMOB is also entitled to improve professional standards and, within this context, establish and improve professional ethical standards, auditing standards, professional training standards and quality assurance standards compatible with international standards.²³

According to the Law No. 3568, it is compulsory for Certified Public Accountants and Sworn-in Certified Public Accountants to attend professional development and training seminars in order to continue their professional activities actually.²⁴

Ministry of Finance is authorized to supervise the organs of the Chambers and TÜRMOB to determine whether or not the said organs have performed their duties and their financial operations in compliance with the provisions of the law.²⁵

3. Regulation of Conduct

3.1 Advertising Restrictions

Certified Public Accountants and Sworn-in Certified Public Accountants can not involve in advertisement to acquire work and can not use any title except for their professional titles in their name plates or printed papers.²⁶ Those who violate this rule shall be sentenced to judicial fines up to 100 days provided that the conduct does not constitute an offence that requires a heavier penalty.²⁷

Professional and academic titles, communication numbers, mailing addresses, internet addresses and email addresses written on name plates, business cards, reports and similar papers do not qualify as advertisements.²⁸ Telephone directories may also include names, surnames, mail address, telephone and facsimile numbers, internet and email addresses provided that they are in the professions section and arranged in alphabetical order with no phrase, symbol etc distinguishing Certified Public Accountants and Sworn-in Certified Public Accountants from other professions.²⁹ Websites may also be constructed to include similar information.³⁰ Informative brochures including autobiographies can be printed provided

²² See Article 36(1)(e), (g), and (h) of the Law No. 3568.

²³ See Article 23(1)(j) of the Regulation for the Union of Chambers of Certified Public Accountants and Sworn-in Certified Public Accountants of Turkey.

²⁴ See Article 44 of the Law No. 3568.

²⁵ See Article 41(1) of the Law No. 3568.

²⁶ See Article 45(5) of the Law No. 3568.

²⁷ See Article 49(2) of the Law No. 3568.

²⁸ See Article 45(2) of the Regulation on the Working Procedures and Principles of Certified General Accountants, Certified Public Accountants and Sworn-in Certified Public Accountants.

²⁹ See Article 17 of the Regulation on Unfair Competition and Prohibition of Advertisement regarding Professions of Certified General Accountancy, Certified Public Accountancy and Sworn-in Certified Public Accountancy.

³⁰ See Article 22 of the Regulation on Unfair Competition and Prohibition of Advertisement regarding Professions of Certified General Accountancy, Certified Public Accountancy and Sworn-in Certified Public Accountancy.

that they are not published via printed, verbal and visual media and do not include information on past and actual customers.³¹

Non-compliance with prohibition of advertisement is subject to reproach.³²

False comparisons with the services offered by other members of the professions of Certified Public Accountancy and Sworn-in Certified Public Accountancy should not be made.³³

3.2 *Price Regulation*

Law No. 3568 provides that fee represents the amount that is equivalent to the services performed by members of the professions of Certified Public Accountancy and Sworn-in Certified Public Accountancy the minimum basis of which is determined via a tariff.³⁴ Accepting work below the minimum fee specified in the tariff is prohibited and acting otherwise shall be the subject of a disciplinary punishment.³⁵

Board of Directors of each Chamber prepares a tariff indicating the fees to be charged in return for the works and transactions to be performed by Certified Public Accountants and Sworn-in Certified Public Accountants to gain effectiveness as of January of each year and forwards the said tariff to TÜRMOB.³⁶

Board of Directors of TÜRMOB determines the groups that include various Chambers by taking into consideration the proposals submitted by the Board of Directors of the Chambers concerned, prepares the tariffs applicable to each of the groups, and forwards them to the Ministry of Finance.³⁷ Ministry of Finance approves the tariff forwarded by the Board of Directors of TÜRMOB in its original form, or following the appropriate amendments.³⁸ The tariffs gain effectiveness as of the date of their publication in the Official Gazette.³⁹ The provision of the current tariff remains in force until the new tariff is approved.⁴⁰

³¹ See Article 45(4) of the Regulation on the Working Procedures and Principles of Certified General Accountants, Certified Public Accountants and Sworn-in Certified Public Accountants.

³² See Article 6(1)(f) of the Discipline Regulation of the Certified General Accountants, Certified Public Accountants and Sworn-in Certified Public Accountants. According to Article 4, discipline penalties are listed as warning, reproach, temporary suspension of professional activities, annulment of the “sworn-in” title, and expulsion from the profession. According to Article 7(1)(a), recurrence of an action or behaviour that is punishable by reproach within a period of three years is among the cases that the penalty of temporary suspension of professional activities for a period of not less than six months and not more than one year is applicable. Moreover, according to Article 9(1)(a), after being penalized by temporary suspension of professional activities two times within a period of five years, committing the same act that is punishable by the said penalty is among the cases that expulsion from the profession is applicable.

³³ See Article 45(1)(b) of the Regulation on Ethical Principles to be followed by Certified General Accountants, Certified Public Accountants and Sworn-in Certified Public Accountants in performing their Professional Activities.

³⁴ See Article 46(1).

³⁵ See Article 46(2) of Law No. 3568.

³⁶ See Article 46(3).

³⁷ See Article 46(4) of the Law No. 3568. Article 36(1)(f) of the Law No. 3568 also lists preparing and submitting for approval of the Ministry of Finance the minimum fee tariff after taking into account the opinions of the Chambers among the duties of the Board of Directors of TÜRMOB.

³⁸ See Article 46(5) of the Law No. 3568.

³⁹ See Article 46(5) of the Law No. 3568.

Accepting fee below those determined in the tariff is subject to reproach.⁴¹ Moreover, it is also considered as unfair competition and prohibited to accept fee below those determined in the tariff or no fee at all.⁴²

Fee above the minimum amount in the tariff can freely be determined among the parties.⁴³

3.3 *Inter-professional Co-operation and Business Structure*

Certified Public Accountants by using their title, and Sworn-in Certified Public Accountants by using their title and the authorization for certification, may not serve real and legal personalities and may not be employed in their offices on the basis of contract for purposes of performing the works specified in Article 2 of the Law No. 3568, may not become involved in commercial enterprises and may not perform deeds that contradict the honour and dignity of the profession.⁴⁴

More than one members of the profession of Certified Public Accountancy or Sworn-in Certified Public Accountancy may associate their works in the form of a partnership office or a company.⁴⁵ The operations carried out in these offices as such are not deemed as commercial activities.⁴⁶ In the case of this performance of the operations under a company, the penal responsibility to occur from any operation shall be attributed to the person who has performed the operation under question.⁴⁷ Partnership offices or companies can only be established by members of the profession who have the same professional titles and can not involve in business other than the field of their activity as described in the Law No. 3568.⁴⁸

⁴⁰ See Article 46(6) of the Law No. 3568.

⁴¹ See Article 6(1)(g) of the Discipline Regulation of the Certified General Accountants, Certified Public Accountants and Sworn-in Certified Public Accountants. See the explanations in footnote 32 for other discipline penalties that are relevant in this context.

⁴² See Article 7(1)(a) of the Regulation on Unfair Competition and Prohibition of Advertisement regarding Professions of Certified General Accountancy, Certified Public Accountancy and Sworn-in Certified Public Accountancy. According to Article 40 of the Regulation on Ethical Principles to be followed by Certified General Accountants, Certified Public Accountants and Sworn-in Certified Public Accountants in performing their Professional Activities: “The member of the profession may request a fee he regards appropriate for the service he provides. It is not per se immoral of a member of the profession to request a lower fee than another member of the profession. Nevertheless, threats against compliance with basic ethical principles may occur due to the level of the fee requested. For instance, in case requesting extremely low fees for a particular service complicates the performance, by the member of the profession, of the service according to proper technical and professional standards, threats related to personal interest towards professional capacity and prudence principle may occur. Therefore, the members of the profession are free to determine appropriate levels of fees for the services they provide; however, the fees shall not be below the minimum fee level determined and announced by TÜRMOB.”

⁴³ See Article 46 of Regulation on the Working Procedures and Principles of Certified General Accountants, Certified Public Accountants and Sworn-in Certified Public Accountants.

⁴⁴ See Article 45(1) of the Law No. 3568.

⁴⁵ See Article 45(4) of the Law No. 3568. According to Circular of TÜRMOB No. 1996/2 regarding a compulsory professional decision, companies may be limited company, incorporated company or limited partnership company.

⁴⁶ See Article 45(4) of the Law No. 3568.

⁴⁷ See Article 45(4) of the Law No. 3568.

⁴⁸ See Article 30(2)(b) and (c) of the Regulation on the Working Procedures and Principles of Certified General Accountants, Certified Public Accountants and Sworn-in Certified Public Accountants.

4. Institutional Framework of Self-regulation

4.1 Application of Competition Law

The Competition Board, in one of its decisions,⁴⁹ where it was alleged that fixing the minimum fee levels by TÜRMOB violated Act No. 4054 on the Protection of Competition (the Competition Act), decided that no proceedings could be initiated under the Competition Act as Law No. 3568 authorised TÜRMOB to fix the minimum fee level. However, as the relevant provision of Law No. 3568 authorising TÜRMOB to fix the minimum fee level is in conflict with the Competition Act, the Competition Board, in order to institute competition, also decided to use its advocacy powers before the Grand National Assembly of Turkey, the Prime Ministry and the Ministry of Industry and Trade with a request for necessary legislative amendments. Moreover, the Competition Board also mentioned that possible requests for exemption of publication of minimum fee tariffs by the professional associations could be assessed under the relevant rules of the Competition Act following the necessary legislative amendments.

4.2 Regulatory Oversight

As provided above, Ministry of Finance is generally authorized to supervise the organs of the Chambers and TÜRMOB to determine whether they have performed their duties in line with the provisions of the law. Moreover, it is also mentioned above that certain conduct such as minimum fee tariffs prepared by TÜRMOB is subject to approval by the Ministry of Finance.

In the area of accountancy, Turkish Accounting Standards Board (TASB) was established as an independent regulatory authority on December 15, 1999 and started its activities on March 7, 2002.

TASB was established as a public legal entity with administrative and financial autonomy, in order to develop and adopt national accounting standards for presenting audited financial statements in a relevant, correct, reliable, balanced, comparable and understandable manner and to determine and publish national accounting standards, which shall be applied for public interest⁵⁰.

TASB is composed of nine members from (one from each); Ministry of Finance, Ministry of Industry and Trade, Council of Higher Education, Undersecretariat of Treasury, Capital Markets Board (CMB), Banking Regulation and Supervision Agency (BRSA), The Union of Chambers and Commodity Exchanges of Turkey (TOBB), TÜRMOB (1 Certified Public Accountant and 1 Sworn-in Certified Public Accountant).

5. Accounting standards

Currently, TASB is setting Turkish Accounting/Financial Reporting Standards (TAS/TFRSs) which are in full compliance with the International Financial Reporting Standards (IFRSs).

For banks, leasing, factoring and financing companies; BRSA has already put Turkish Accounting Standards into practice as of 01.11.2006.

For insurance, reinsurance companies and pension companies; the Undersecretariat of Treasury has promulgated the Turkish Accounting Standards being effective from the date of 01.01.2008.

⁴⁹ TÜRMOB, dated 13.11.2003 and numbered 03-73/876 (e)-378.

⁵⁰ See Supplementary Article 1 of the Capital Market Law, dated 15.12.1999 and numbered 2499.

Similarly, in April 2008, CMB has put into practice TAS/TFRSs for listed companies and capital market institutions.

On the other hand, the most important step to provide uniformity for implementation in the accountancy field is the enactment of the “Draft Turkish Commercial Code (TCC)”.

That is, according to Article 88 of the Draft TCC, TASB is defined as the sole authority on issuing accounting and financial reporting standards and it will be equipped with the necessary authority to publish accounting standards in line with the relevant EU acquis. Moreover, according to this Draft TCC, TASB will be granted with the ability to establish special or exceptional standards for different types of entities and sectors in which case those implementing such special or exceptional standards shall disclose this situation in their financial statement footnotes.

With the enactment of Draft TCC, TAS/TFRSs will become obligatory for big companies, companies whose capital instruments are traded on stock exchanges and other organized markets, portfolio management companies and other companies which are included in consolidation, as well.

TASB is the only authority and has autonomy in drafting the accounting standards. In doing so, TASB uses the official translation procedure agreed together with the International Accounting Standards Board (IASB).

Using this official procedure, TASB has already adopted 64 accounting/financial reporting standards (including Interpretations) so far, which are in full compliance with the IAS/IFRSs. All of them have been translated into Turkish after getting the opinions of different accounting interest groups (such as experienced auditors - mainly from big four and other international accounting firms, users - such as banks, preparers of the financial statements based on IAS/IFRSs, and academicians from various Institutes).

With regard to the enforcement mechanism, the relevant authorities have the responsibility to follow up and ensure the proper application of the Standards. That is, BRSA uses its authority for banks and similar financial institutions, Undersecretariat of Treasury for insurance companies, and finally CMB for listed companies.

UNITED KINGDOM

1. Introduction: UK regulatory and competition oversight

In 2004, following a review of the accountancy and audit sector after the failure of Enron, the Financial Reporting Council (FRC)¹ was given powers under the Companies (Audit, Inspection and Community Enterprise) Act 2004 (Companies Act)² to ensure that it was better able to act as the UK's independent regulator responsible for promoting confidence in corporate governance and reporting. The FRC sets standards for corporate reporting and actuarial practice and monitors and enforces accounting and auditing standards. It also oversees the regulatory activities of the professional accountancy bodies and operates independent disciplinary arrangements for public interest cases involving accountants and actuaries. Since 2004 it has taken the lead in ensuring that choice remains in the sector and has been granted further powers by the Government to enable it to fulfil its functions.

UK merger regulation, which is set out in the Enterprise Act 2002, is applied by the Office of Fair Trading (OFT)³, the UK's national competition authority, and the Competition Commission (CC)⁴. The OFT and the CC have not investigated mergers in the accountancy and audit sector since the European Commission allowed the consolidation in 1998 creating the Big Four- PricewaterhouseCoopers, Deloitte Touche Tohmatsu, Ernst & Young, and KPMG- (see paragraphs 8-10 below).

The OFT also enforces the UK Competition Act 1998 and Articles 81 and 82 of the EC Treaty which contain prohibitions against anti-competitive agreements and abusive practice by a dominant undertaking. Rules enacted by self-regulatory bodies fall under the Competition Act 1998 where they have the object or effect of preventing, restricting, distorting competition. There is no exemption for any type of self-regulatory rule in the accountancy or auditing profession. A previous exemption was removed in 2004 as a result of EC modernisation of competition law.

Following the coming into force of the Act in March 2000, the OFT conducted an in-depth review of the accountancy profession as part of the OFT's 2001 review on *Competition in Professions*.⁵ In particular, the OFT considered whether restrictions on competition contained within professional rules existed and it

¹ <http://www.frc.org.uk/about/>.

² *Companies (Audit, Inspection and Community Enterprise) Act 2004*.

³ <http://www.offt.gov.uk/about/>.

⁴ The CC is one of the independent public bodies which help ensure healthy competition between companies in the UK for the benefit of companies, customers and the economy. It investigates and address issues of concern in three areas: mergers - when larger companies will gain more than 25% market share and where a merger appears likely to lead to a substantial lessening of competition in one or more markets in the UK; markets - when it appears that competition may be being prevented, distorted or restricted in a particular market; regulated sectors where aspects of the regulatory system may not be operating effectively or to address certain categories of dispute between regulators and regulated companies. Its enquiries are always initiated following a concern referred to it by another authority, usually the OFT. For further information see [http://www.competition-commission.org.uk/about_us/index.htm].

⁵ OFT 328, *Competition in Professions*, March 2001 [<http://www.offt.gov.uk/news/press/2002/21-02>].

identified a number of rules that may unnecessarily restrict competition in the profession. Following the publication of the review the accountancy bodies concerned voluntarily removed all restrictions identified by the OFT within their professional rules in question, with the exception of certain restrictions which require amendments at EU-level.⁶ This is discussed in further detail in the remainder of this paper.

In a government report in 2003 *Co-ordinating Group on Audit and Accounting issues: Final Report 2003* the OFT stated that it had conducted a preliminary inquiry into whether, given the then market structure, there were competition problems in the sector.⁷ It stated that it had found no evidence to suggest that firms had acted to prevent, restrict or distort competition contrary to the Competition Act 1998 (nor had the OFT received complaints that they may have been doing so). The position has remained unchanged since then and, as a result, there has been no competition intervention from the OFT. However, the OFT continues to monitor the sector, investigates allegations of anti-competitive behaviour and examines the competition implications that may arise from regulatory proposals.

2. Concentration in the market

A list of the major firms (with one or more publicly traded audit clients) is at Annex A. The most significant accountancy firms in the UK are affiliated with the Big Four. Annex B provides details of the relative market share of the Big Four and others in respect of statutory audits. Audits of the largest companies are almost all carried out by one of the Big Four firms. The Big Four audit 100% of the FTSE100 and over 90% of the FTSE250.⁸ Mid-tier firms have a larger share of the audit market for smaller listed companies, particularly those traded on the AIM (the Alternative Investment Market).⁹

The market shares of accountancy firms in the UK regarding other accountancy services such as financial advice, internal audits or tax advice are provided in Annex C.

2.1 Mergers involving major accountancy firms

The UK has a voluntary merger notification system and mergers can be notified to the OFT for clearance¹⁰. The OFT does not investigate all transactions which become known. In addition, the OFT has the power to investigate a merger even if it has not been notified to it. The assessment of mergers in the UK is conducted as a two-phase process, giving distinct but interrelated roles to the OFT and the CC. At Phase 1 the OFT assesses whether the merger has resulted or may be expected to result in a substantial lessening of competition (SLC)¹¹. If it considers this is the case it must refer the merger to the CC¹²;

⁶ See paragraphs 32 onwards.

⁷ <http://www.berr.gov.uk/files/file20380.pdf>.

⁸ The FTSE 100 and FTSE 250 are the 100 and 250 most highly capitalised UK companies listed on the London Stock Exchange. The index began on 3 January 1984 as joint venture between the Financial Times and the London Stock Exchange.

⁹ AIM is the London Stock Exchange's international market for smaller growing companies. It was launched in 1995 [<http://www.londonstockexchange.com/>].

¹⁰ Merger Notices, *Enterprise Act 2002*, section 96.

¹¹ Duty to make references, *Enterprise Act 2002*, section 22.

¹² There are a limited number of cases where the OFT has discretion not to refer a case to the CC, including where the OFT believes that the merger delivers countervailing customer benefits that outweigh the expected SLC, where the OFT accepts undertakings from one or more of the parties in lieu of a reference to the CC that the OFT believes will remedy the expected SLC or where the OFT believes the market(s) concerned is (are) not of sufficient importance to justify making a reference (the 'de minimis' exception).

otherwise the merger is cleared. At Phase 2, the CC decides whether a merger has resulted, or may be expected to result in an SLC.

The most recent merger involving major accountancy firms in the UK was that of Grant Thornton and Robson Rhodes in July 2007. Major transactions prior to this included Arthur Andersen and Deloitte in 2002 and the Price Waterhouse/Coopers & Lybrand merger in 1998. The OFT considered in 2002 whether to conduct a market study to look at how to address competition concerns following the Enron affair and subsequent collapse of Andersen.¹³ However, in view of the changing market structure the review and clearance by the European Commission of the acquisition by Deloitte & Touche of Andersen UK and the various reviews that the market was being subjected to at the time, the OFT decided that no further action was necessary.¹⁴

Since 2002 merger transactions have involved merging parties with relatively small market shares in markets with many other firms providing similar services to the same customer group.

2.2 Market entry

The FRC, along with the Department for Business, Enterprise and Regulatory Reform (BERR) (formerly the Department of Trade and Industry (DTI)), has carried out extensive consultations on increased entry and how new major accountancy firms could develop.¹⁵

There are no significant regulatory hurdles to the creation of new audit firms, although the requirement for such firms to be controlled by individuals with the recognised professional qualification in audit limits their opportunity to raise capital and may serve to inhibit their growth. In addition, such a firm may face further regulatory hurdles in breaking into the FTSE250 audit market. UK Ethical Standards state that fees from one client should not exceed 10% of an audit firm's revenue. In addition, they currently require rotation of a listed company's audit partner after five years (although this requirement is under review). It is possible that these regulatory restrictions may impair the ability of a new firm to break into the audit market for the largest companies.¹⁶

3. Regulation of entry

3.1 Quality standards and entry

3.1.1 Higher education

A university degree is not required to practice as an auditor or accountant, although most auditors and accountants do hold degrees. The audit or accountancy qualification is restricted to those individuals who have attained university entrance level qualifications, although those individuals do not need to have gone on to attend university or to obtain a degree.

¹³ See the section below on the current application of competition law and, in particular, Footnote 33 in respect of market studies and references to the CC.

¹⁴ OFT press notice September 2002 [http://www.oft.gov.uk/news/press/2002/pn_79-02].

¹⁵ FRC: *Choice in the UK Audit Market: Final Report of the Market Participants Group*, October 2007 [<http://www.frc.org.uk/press/pub1420.html>]; *Choice in the UK Audit Market: Progress Report and Further Consultation*, May 2008 [<http://www.frc.org.uk/about/auditchoice.cfm>]; and, *Choice in the UK Audit Market: Second Progress Report*, November 2008 [<http://www.frc.org.uk/publications/pub1777.html>].

¹⁶ Oxera, *Competition and Choice in the UK Audit Market*, April 2006, section 6.2 for an analysis of regulatory and other issues affecting potential market entrants [<http://www.frc.org.uk/press/pub1083.html>].

A specific accountancy or business degree is not required for the type of services offered (for example, providing statutory audits, financial advice, or tax advice). Feedback from a number of respondents to the FRC's consultation document, *Promoting Audit Quality* commented that the UK profession benefits from allowing graduates from all disciplines to enter the profession.¹⁷

3.1.2 Additional training

The term 'accountant' itself is not a reserved occupation in the UK and anyone may practise as an accountant, regardless of the training s/he has or has not received. Use of the term accountant is therefore not limited to persons holding a specific qualification or having completed specific training.

However, anyone wishing to practise as a statutory auditor is required to undertake specific training. Accountants wishing to become members of one of the professional bodies which make up the Consultative Committee of Accountancy Bodies (CCAB) are required to undertake entrance examinations and ongoing continuous professional development post-qualification. Specific training is required to practise as a statutory auditor and/or to call oneself a 'Chartered Accountant' or 'Chartered Certified Accountant'.

The content and form of training to become an auditor is based on the requirements of legislation as outlined in the Companies Act. The rules to implement these requirements have been determined by the six Recognised Qualifying Bodies (RQBs)¹⁸ in conjunction with the Secretary of State¹⁹. The RQBs are:

- Association of Chartered Certified Accountants (ACCA)
- Association of International Accountants (AIA)
- Chartered Institute of Public Finance & Accountancy (CIPFA)
- Institute of Chartered Accountants in England & Wales (ICAEW)
- Institute of Chartered Accountants in Ireland (ICAI)
- Institute of Chartered Accountants of Scotland (ICAS)

The RQBs, and the training they offer, are supervised by the Professional Oversight Board (POB), an operating body of the FRC.²⁰ The POB has a statutory duty to perform this supervision.

¹⁷ FRC, *Feedback Paper: Promoting Audit Quality*, October 2007, paragraph 5.14 [<http://www.frc.org.uk/press/pub1418.html>].

¹⁸ An RQB is a body recognised in the UK to offer an audit qualification.

¹⁹ The term Secretary of State is generic. However, it is custom and practice that the Secretary of State for the Department of Business, Enterprise and Regulatory Reform (BERR) (formerly the Department of Trade and Industry (DTI)) takes on this role.

²⁰ The POB contributes to the achievement of the FRC's own fundamental aim of supporting investor, market and public confidence in the financial and governance stewardship of listed and other entities by: independent oversight of the regulation of the auditing profession by the recognised supervisory and qualifying bodies; monitoring the quality of the auditing function in relation to economically significant entities; independent oversight of the regulation of the accountancy profession by the professional accountancy bodies; and, independent oversight of the regulation of the actuarial profession by the

The recognised professional qualification in audit is restricted to persons who have completed at least three years' practical training of which (a) a part is spent being trained in statutory audit work and (b) a substantial part is spent being trained in statutory audit work or work similar to statutory audit work.

The exact amounts of training within statutory audit work vary across the RQBs. Five RQBs base the training requirement on the time during qualification whilst the remaining body currently bases the practical experience on post-qualification experience. In addition to practical training, all RQBs require students to sit a number of written examinations. Therefore the exact duration of training may vary depending upon factors such as the RQB's own policies, the type of study undertaken (full-time or part-time) and whether the student holds a relevant degree. Most students obtain a 'training contract' with an accountancy firm in order to allow them access to relevant practical training.

All RQBs require students to sit a concluding examination, although the format of the final examination is different at all RQBs. Legislation dictates the entry requirements for the recognised professional qualification. This is stipulated in the Companies Act. The POB monitors the RQBs' systems and procedures to ensure that these meet the requirements stated in the Act.

The number of training places available is largely market-driven. Legislation dictates that the entrance requirement for training for the recognised professional qualification for audit is restricted to individuals who have attained university entrance level qualifications. In addition, a number of RQBs require students to be employed within a training contract before undertaking the final examination. RQBs also state that students must have successfully passed certain examinations prior to attempting others. The retaking of an examination is permitted in accordance with the RQBs' own policies and at the discretion of the student's employer.

3.1.3 *Ongoing education*

Upon admission to membership the accountancy bodies require individuals to undertake Continuing Professional Development (CPD). This is a requirement for all Recognised Supervisory Bodies (RSBs) set out within the Companies Act. The RSBs register and supervise audit firms and those authorised to sign audit reports in the UK. The RSBs in the UK are:

- Association of Authorised Public Accountants (AAPA)
- Association of Chartered Certified Accountants (ACCA)
- Institute of Chartered Accountants in England & Wales (ICAEW)
- Institute of Chartered Accountants in Ireland (ICAI)
- Institute of Chartered Accountants of Scotland (ICAS)

All RSBs are subject to recognition and continued oversight by the POB and are members of International Federation of Accountants (IFAC). As a result all members, even those not working within a regulated area, must undertake some form of CPD. All bodies require their members to consider their development needs and what CPD they need to undertake in order to competently perform their role. In addition, one RSB dictates a minimum number of hours of CPD which members must undertake and one

professional actuarial bodies and promoting high quality actuarial work. For further information see [<http://www.frc.org.uk/pob/about/>].

other offers individuals the opportunity to follow an output-based approach, an input-based approach (stipulating a minimum number of hours) or a combination of the two.

In relation to audit, the Companies Act states that an RSB must have rules and practices designed to ensure that the people eligible for appointment as a statutory auditor continue to maintain an appropriate level of competence in the conduct of statutory audits.

3.1.4 Licensing and entry

An individual wishing to practise as a statutory auditor must be licensed by one of the RSBs. Additionally, a firm wishing to so practise must be controlled by a majority of individuals who are members of one or more RSB. The term 'accountant' is not a reserved occupation and there are no restrictions on its use, but an individual wishing to practise as a 'Chartered Accountant' needs to be a member of a chartered body.

The RSBs function as self-regulatory bodies. They are overseen by the POB. Other bodies exist which require certain standards of competence from their members. Such membership rights do not create an entitlement to conduct statutory audits.

There are no quantitative limits (for example, relating to demographic or territorial criteria) regarding the entry into the accountancy profession(s) in the UK.

Provided that they are in compliance with standard UK immigration laws, there are no barriers to non-EU nationals practising as accountants, as opposed to auditors. In accordance with the EU Statutory Audit Directive,²¹ non-EU accountants wishing to practise as auditors need to hold an accountancy qualification which is recognised to be equivalent to the UK professional qualification in audit. Currently, only the qualifications of the Australian and Canadian Chartered Accountancy bodies are so recognised. EU qualified auditors are permitted to practise audit in the UK if they pass an aptitude test demonstrating that they have adequate knowledge of UK laws and regulations as they relate to audit. Any non-UK accountant wishing to practise as an auditor would also need to be licensed and subject to supervision by an RSB. Accountants providing a service to clients are required to comply with relevant ethical and independence requirements to maintain their competence and to demonstrate fitness and propriety.

3.2 Exclusive rights

Regulated accountancy professions enjoy exclusive rights in respect of:

- Statutory audits (for public and private companies) which may only be carried out by individuals or firms registered with one of the RSBs.
- Certain insolvency work which may only be carried out by registered Insolvency Practitioners (IPs). IPs must either be members of a recognised professional body (one of the accountancy RSBs, the Insolvency Practitioners Association or the Law Society/Law Society of Scotland) or licensed directly by the UK government.

Regulated accountancy professions do not enjoy exclusive rights over other accountancy services (tax advice, internal audit, corporate finance, due diligence work and the like).

²¹ *Directive 2006/43/EC (Statutory Audit Directive).*

The OFT reviewed the exclusive rights associated with the accountancy professions in 2001.²² It recommended a relaxation of the rules which require firms carrying out statutory audits to be controlled by members of one or more of the RSBs. However, as this conflicted with the then Eighth Company Law Directive,²³ change would firstly have been required at a European level.

3.2.1 *Future Change*

In 2007 the FRC published its report *Choice in the UK Audit Market*. Amongst other things this recommended that consideration be given to the possibility of changes to audit firm ownership rules.²⁴ This report was followed up in March 2008 by a consultation document discussing the issues around changes to the ownership rules. As change in this area would need to be at a European level the FRC is awaiting an update from the EC on this issue.²⁵

4. **Regulation of Conduct**

4.1 *Advertising restrictions*

Advertising is allowed to the same constraints as in any other business and not restricted by the UK Government but there are additional ethical requirements. The RSBs issue ethical guidance on advertising to their members. At a minimum this guidance follows the IFAC Code of Ethics.

Although, in most respects accountants are permitted to advertise their services in the same way as any other business, some of the RSBs specifically identify a potential self-interest threat if marketing of professional services is inconsistent with the overriding principle of professional behaviour. In addition, some RSBs remind their members to take particular care when making comparative claims and to ensure that such claims are as specific as possible. For example, a claim to be 'the largest firm' is too vague and unlikely to be verifiable. In such circumstances the advertiser should instead state the way in which it is the largest (for example, 'the most partners and staff in the UK' or 'largest number of UK listed audit clients').²⁶

Some RSBs caution against comparative advertising of fees on the grounds that, due to the complex ways in which individual accountants set their fees, it is difficult to comply with 250.2 of the IFAC Code (which prohibits an accountant from making 'disparaging references to unsubstantiated comparisons to the work of another') when doing so.²⁷

As a result of the OFT's 2001 report *Competition in Professions*, the ACCA and the Association of Accounting Technicians made modifications to their rulebook and guidelines respectively and the ICAEW modified its code of conduct to remove the prohibition on comparative fee advertising, although some

²² OFT 328, *Competition in Professions*, March 2001.

²³ *Eighth Company Law Directive* (Directive 84/253/EC).

²⁴ FRC, *Choice in the UK Audit Market: Final Report of the Market Participants Group*, October 2007, pages 18-19 [<http://www.frc.org.uk/press/pub1420.html>].

²⁵ FRC, *Choice in the UK Audit Market: Progress Report and Further Consultation*, May 2008, pages 6-10 [<http://www.frc.org.uk/about/auditchoice.cfm>].

²⁶ ICAEW, *ICAEW Code of Ethics*, paragraph 250.2 [www.icaew.com].

²⁷ See Footnote 26.

RSBs continue to advise members that it is difficult to advertise in such a way and remain compliant with IFAC Code 250.2.²⁸

Besides removing restrictions on advertising fees, the OFT's 2001 review *Competition in Professions*²⁹ led to the removal of the profession's prohibition on cold-calling potential clients and the relaxation of a rule prohibiting accountants from receiving payment for referrals.

4.2 Price regulation

Prices are freely negotiated subject to ethical and regulatory restrictions. Neither the UK Government or self-regulatory bodies set prices.

Auditors in the UK must comply with Auditing Practices Board (APB) Ethical Standards, as well as local legal requirements and other applicable independence rules, for example SEC (Securities and Exchange Commission) rules in the case of US registrants. Amongst other things, these rules prohibit contingent fees in respect of audit and other assurance services and impose restrictions on the acceptance of commission payments from product providers in the case of investment business.

For the audit services the UK Government uses, fees for audit and other services are freely negotiated between the UK Government and the firm in question subject to the ethical and regulatory restrictions. The fees are paid from the Government's own budget, raised from tax revenues and the like.

4.3 Inter-professional co-operation and business structure

The formation of multi-disciplinary partnerships is allowed. However, the requirement for statutory auditors to be controlled by a majority of audit qualified individuals limits their adoption in practice. In addition, some other professions, notably lawyers, are reluctant to allow their members to form or join such partnerships.

Accountants and auditors may incorporate as a limited liability partnership (LLP), private limited company or public limited company (PLC). However, due to independence issues and restrictions on ownership, even those firms incorporated as PLCs are currently unable to raise significant equity capital.

Accounting firms offer a variety of consulting services, including (but not limited to) strategy consulting, environmental/sustainability reviews and large-scale information technology development and implementation projects. In all cases firms offering such services are required to comply with applicable independence rules, which may limit the provision of certain consultancy services to audit clients.

4.3.1 Conflict of interest

To avoid conflicts of interest, auditors in the UK are required to comply with the Ethical Standards, which are set by the APB, an operating body of the FRC. Where applicable, there is also a requirement to comply with professional bodies' guidance and the City Code in respect of mergers and acquisitions.³⁰

²⁸ OFT 385, *Competition in Professions: Progress Statement*, April 2002, paragraphs 3.3 – 3.5 [http://www.offt.gov.uk/shared_offt/reports/professional_bodies/oft385.pdf].

²⁹ See Footnote 22. It should also be noted that one of the recommendations was that the exemption under schedule 4 of the *Competition Act* 1998 should be removed.

³⁰ The City Code on Takeovers and Mergers governs how takeover bids and mergers in the UK are carried out. It is drawn up by, and is primarily enforced by, the Takeover Panel [<http://www.thetakeoverpanel.org.uk/>].

Additionally, other professions, such as lawyers, have their own ethical codes with which they are required to comply.

The domination of the market for the audit of the largest companies by the Big Four firms creates the potential for conflicts of interest. Auditors are subject to independence restrictions on providing many types of non-audit services to their audit clients. This may leave the largest companies with a very limited choice of firm for other services, increasing the likelihood of a conflict of interest developing. This potential is one of the reasons that the FRC is attempting to increase competition and choice in the audit market.³¹

4.3.2 *Transparency*

The ownership of firms, regardless of their structure, ought to be transparent. The names of partners in traditional partnerships and LLPs, as well as the names of shareholders in the case of a private company or PLC, are a matter of public record. Many of the larger firms now publish annual reports and/or transparency reports in accordance with EU legislation, including figures such as average profit per partner. There is no requirement for firms to provide remuneration details for individual partners.

The POB requires auditors of public interest entities to publish annual transparency reports. These reports require details of internal governance, quality control and independence systems and procedures.

4.3.3 *Future change*

The FRC's ongoing project aimed at increasing competition and choice in the audit market includes fifteen recommendations: key aims are to improve guidance on audit committees, best practice and voluntary codes of practice. The FRC currently publishes six monthly updates including progress on the implementation of these recommendations.³²

5. **Institutional framework of self-regulation**

5.1 *Application of competition law*

Rules enacted by self-regulatory bodies fall under the Competition Act 1998 where they have the object or effect of preventing, restricting, distorting competition.³³

In the UK there is no exemption for any type of self-regulatory rule in the accountancy or auditing profession. A previous exemption was removed in 2004 as a result of EC modernisation of competition law.³⁴

³¹ FRC, *Choice in the UK Audit Market* and its subsequent progress reports [<http://www.frc.org.uk/about/auditchoice.cfm>].

³² See Footnote 31.

³³ It should also be noted that the OFT can carry out 'market studies' (see http://www.of.gov.uk/advice_and_resources/resource_base/market-studies/) as part of its functions under section 5 of the *Enterprise Act 2002* as well as make 'market investigation references' to address competition concerns (see http://www.of.gov.uk/advice_and_resources/resource_base/references/) under Market Investigations, *Enterprise Act 2002*, Part 4, section 131.

³⁴ Unlike Article 81 Schedule 4 paragraph 18 of the *Competition Act 1998* excluded the professional rules of the accountancy and auditing professions from the Chapter I prohibition. This provision was repealed on 1 April 2004.

5.2 *Regulatory oversight*

The RQBs and RSBs are subject to statutory oversight by the POB. Any changes the bodies make in terms of the regulatory responsibilities must be discussed and agreed with the POB. Furthermore, any amendments to the Chartered bodies' bylaws must be approved by the Privy Council.³⁵ The POB has been delegated powers by the Secretary of State to supervise and monitor the individual RQBs and RSBs.

The RQBs and RSBs are covered by competition law which is enforced in the UK by the OFT.

5.2.1 *Malpractice*

The majority of disciplinary cases are heard by the individual RSB. If a complainant is unhappy with the way in which a complaint has been administered or handled by an RSB, the individual can contact the POB who will review the case to ensure that the body has followed its complaints handling arrangements appropriately.

In addition, the FRC operates the Accountancy & Actuarial Disciplinary Board (AADB), a body which is independent of the profession. The individual RSBs have the ability to refer cases to the AADB if they are deemed high profile or public interest. The AADB is also empowered to 'call in' cases of its choosing.

5.2.2 *Independent Regulation*

The FRC, together with its operating bodies, acts as the profession's independent regulator. Additionally, firms which provide investment business services are separately regulated by the Financial Services Authority (FSA) in respect of that work only.³⁶

Auditors in the UK are required to comply with the Ethical Standards, which are set by the APB. These standards act as an incentive to provide full and complete auditing conclusions.

6. **Accounting Standards**

Financial Reporting Standards (FRSs) issued by the Accounting Standards Board (ASB), an operating body of the FRC apply in the UK. FRSs are formulated with due regard to international developments. An FRS contains a section explaining how it relates to the International Accounting Standard (IAS) dealing with the same topic. In most cases, compliance with an FRS automatically ensures compliance with the relevant IAS. Where this is not the case, unlisted companies should follow the ASB's accounting standard. In accordance with EU legislation, all listed companies in the UK have been required to use IFRS since 2005.³⁷ FRSs are drafted and issued by the ASB. It is the ASB's policy to consult widely with relevant

³⁵ The Privy Council is the mechanism through which interdepartmental agreement is reached on those items of Government business which, for historical or other reasons, fall to Ministers as Privy Counsellors rather than as Departmental Ministers. This includes much business under the Royal Prerogative, including the affairs of Chartered bodies, as well as statutory areas where an Act of Parliament has given an order-making power to the Privy Council.

³⁶ The FSA is an independent body that regulates the financial services industry in the UK under the *Financial Services and Markets Act 2000* [<http://www.fsa.gov.uk/>].

³⁷ See ASB, *Inside Track*, January 2005. [<http://www.frc.org.uk/images/uploaded/documents/insidetrack/it42.pdf>] and also [<http://www.frc.org.uk/asb/technical/standards/accounting.cfm>].

stakeholders prior to the development of new FRSs. Compliance with these standards is enforced and monitored by the FRC and its operating bodies.

The ASB was given its mandate to set accounting standards by the UK Government under section 256(1) Companies Act 1985 (as amended by section 464 Companies Act 2006).

ANNEX A

ACCOUNTANCY FIRMS WITH ONE OR MORE LISTED COMPANY AUDIT CLIENT

As at the end of 2007, the following UK accountancy firms reported auditing one or more clients with publicly traded securities. This includes companies listed on the Alternative Investment Market (AIM).

Armstrong Watson	Jeffreys Henry
Baker Tilley	Kingston Smith
BDO Stoy Hayward	KPMG
Begbies Chettle Agar	Macintyre Hudson
Chantrey Vellacott	Mazars
Chiene & Tait	Menzies
CLB Littlejohn Frazer	Moore Stephens
Deloitte	Nexia Smith & Williamson Audit
Ernst & Young	PKF (UK)
Grant Thornton	PricewaterhouseCoopers
Haysmacintyre	RSM Bentley Jennison
HLB Vantis Audit	Saffery Champness
Horwarth Clark Whitehill	Scott Moncrieff
HW Group	Tenon Audit
James Cowper	UHY Hacker Young

ANNEX B

MARKET SHARE OF THE LARGEST FIRMS

The figures quoted are as at May 2008 for main market listed companies and the end of 2007 for companies listed on the AIM and unlisted audit clients.

Detailed statistics on the audits of private companies are difficult to obtain. The statistics given are based on figures reported by the firms for audit clients generally as well as private companies. As a result it is likely that they include entities such as charities and building societies.

1. Listed companies

Firm	FTSE100	FTSE250	Other listed*	AIM
Deloitte	21	74	115	86
Ernst & Young	15	38	120	21
KMPG	21	45	123	113
PricewaterhouseCoopers	38	61	130	141
Total Big Four % **	99%	90%	71%	32%
BDO Stoy Hayward	0	3	23	146
Grant Thornton	0	5	72	217
Baker Tilly	0	0	20	108
PKF	0	0	29	53
Others	0	0	55	253

* Includes entities with listed debt as well as those with listed equity

** The figures do not include companies incorporated in the Channel Islands and those companies with shares which were suspended at the time of compiling this list. As a result, the figures for the FTSE100 and FTSE250 add up to slightly less than their respective numbers.

2. Other entities

Name of firm	Market share
Ernst & Young	5%
KPMG	15%
Deloitte	15%
PricewaterhouseCoopers	19%
Total Big Four %	54%
Grant Thornton	8%
BDO Stoy Hayward	6%
Baker Tilly	6%
PKF (UK)	3%
UHY Hacker Young	1%
Scott Moncrieff	<0.5%
Others	22%

ANNEX C

COMPARISON OF FEE INCOME FOR NON-AUDIT SERVICES

Information has been obtained from a selection of the larger firms regarding their fee income for non-audit work carried out for audit and non-audit clients. Some of this income will relate to non-accountancy services such as management consulting.

Name of firm	Fee income – non-audit services to audit clients (£m)	Fee income – non-audit services to non-audit clients (£m)	Total fee income for non-audit services	Market share
PricewaterhouseCoopers	431	1081	1512	25%
KPMG	264	920	1184	19%
Deloitte	255	1208	1463	24%
Ernst & Young	166	728	894	15%
BDO Stoy Hayward	56	133	189	3%
Grant Thornton	40	193	233	4%
Baker Tilly	95	33	128	2%
PKF (UK)	35	42	77	1%
Mazars	9	37	46	1%
Horwarth Clark Whitehill	10	12	22	<1%
Others	61	283	344	6%
<i>Total</i>	<i>1422</i>	<i>4670</i>	<i>6092</i>	

ANNEX D

FURTHER REFERENCES AND ADDITIONAL BACKGROUND MATERIAL

1. The FRC and its operating bodies

See the FRC website generally and in particular for the activities and publications of the Professional Oversight Board, the Accounting Standards Board and the Auditing Practices Board [www.frc.org.uk]

2. Competition and choice in the audit market

There are a number of documents detailing the issues around competition and choice in the large companies' audit market, together with recommendations for increasing choice in this sector. Full details can be found on the FRC website [<http://www.frc.org.uk/about/auditchoice.cfm>]

3. Professional bodies

The individual RSBs and RQBs publish details of their entrance requirements, examination and training policies and ethical requirements on their own websites. The addresses are given below:

- *Association of Chartered Certified Accountants (ACCA)* [<http://www.accaglobal.com/>]. The Association of Authorised Public Accountants is now a wholly-owned subsidiary of the ACCA.
- *Association of International Accountants (AIA)* [<http://www.aiaworldwide.com/>]
- *Chartered Institute of Public Finance & Accountancy (CIPFA)* [<http://www.cipfa.org.uk>]
- *Institute of Chartered Accountants in England & Wales (ICAEW)* [<http://www.icaew.com/>]
- *Institute of Chartered Accountants in Ireland (ICAI)* [<http://www.icaei.ie/>]
- *Institute of Chartered Accountants of Scotland (ICAS)* [<http://www.icas.org.uk/>]
- *Consultative Committee of Accountancy Bodies (CCAB)*. The major professional accountancy bodies formed the CCAB in 1974. The CCAB provides a collaborative forum for its members on subjects such as training, regulation and ethics [<http://www.ccab.org.uk/>].

UNITED STATES

1. Overview

Prior to 1989, there were eight major accounting firms in the U.S.¹. These firms provided few services other than auditing. Beginning with the 1989 merger of Ernst & Whinney with Arthur Young to form Ernst & Young and the merger of Deloitte, Haskins & Sells with Touche Ross to form Deloitte & Touche that same year, the industry experienced a period of substantial consolidation. In 1998, Price Waterhouse joined forces with Coopers & Lybrand to form Pricewaterhouse Coopers. Finally, in 2002, Arthur Andersen was dissolved in the wake of the accounting scandal at the heart of the collapse of Enron, leaving the U.S. accounting industry with four major firms (known informally as the “Big Four,” or, somewhat more creatively, as the “Final Four.”): Ernst & Young, KPMG, Pricewaterhouse Coopers, and Deloitte Touche. Together, in 2003, the Big Four audited over 78% of all U.S. public companies by firm count; by revenues, they audited 99% of the annual sales of public companies².

During this period of consolidation, the largest firms moved from being mostly auditing firms to deriving a significant portion of revenues from non-auditing consulting services³. The trend reversed in the early part of the 21st century as firms and legislators grew nervous about the threat these symbiotic arrangements posed to the integrity of audits. The Sarbanes-Oxley Act of 2002, discussed below, instituted a number of new regulations in the industry, including limits on the non-audit services that the Big 4 could provide to their audit clients. Management consulting services fell dramatically as legislation took effect; three of the Big 4 divested a significant portion of that business to independent spin-offs or to non-auditing companies⁴. Because of these shifts in the industry, by 2008, 53.5% of accounting services firms' revenue was derived from the auditing segment, while advisory services comprised 21.1% by revenue⁵. In yet another swing of the pendulum, some accounting firms (notably, Deloitte) have increasingly begun to offer non-auditing consultancy services to companies that are not audit clients⁶.

The Big 4 accounting firms are all active globally, although they have separately-run affiliates in each country; local affiliates are well-versed in local accounting requirements, which are widely divergent. The stated motivations of proposed and consummated mergers were to increase global reach⁷ and to take advantage of the economies of scope available to firms large enough to implement the massive technology

¹ The “Big 8” firms were: Arthur Andersen, Arthur Young & Co., Coopers & Lybrand, Ernst & Whinney, Deloitte, Haskins & Sells, Peat Marwich Mitchell, Price Waterhouse, and Touche Ross.

² See: U.S. General Accounting Office, “Public Accounting Firms: Mandated Study on Consolidation and Competition”, Report GAO-03-864, July 2003 [hereinafter, “GAO 2003 Report”].

³ In 1975, auditing services comprised about 70% of the Big 8's total revenues, while management consulting services contributed about 11%. In 1998, consulting services were about 45% of revenues, and auditing services were just over 30%. See: GAO 2003 Report.

⁴ Deloitte retained its consulting group.

⁵ “Accountancy in the United States: Industry Report” *Datamonitor USA*, September 2008.

⁶ Byrnes, Nanette, “Consulting Pays Off for Accountants Again,” *Business Week Online*, August 21, 2007.

⁷ In response to the increased globalization of their clients.

upgrades that would allow vastly improved data collection and analysis. Moreover, combining one or more of the Big 8 could allow a more efficient use of labor and also enable firms economically to develop significant staff expertise in specific industries.

Table 1. Top 10 Accounting Firms, by Size

Firm	Revenue (\$m)	Employees	Offices	SEC Clients
<i>Deloitte</i>	9,849.0	32,483	101	1,264
<i>Pricewaterhouse Coopers</i>	8,362.0	24,692	75	1,193
<i>Ernst & Young</i>	7,561.0	22,477	90	1,631
<i>KPMG</i>	5,357.0	16,879	89	1,033
RSM McGladrey	1,467.6	6,128	100	159
Grant Thornton	1,195.0	4,438	52	361
BDO Seidman	659.0	2,406	37	345
CBIZ & Mayer Hoffman McCann	500.7	2,329	33	27
Crowe Group	492.6	1,749	23	107
BKD	353.9	1,553	27	48

Source : Public Accounting Report's 2008 Top 100 (August 2008)

2. Industry participants

As is clear from Table 1, there is a significant gap between the Big 4 and the next-largest firms, by both revenue and employment. In fact, the revenue of the 5th through 10th largest firms combined is less than that of the smallest of the Big 4 (KPMG). Note also that the number of SEC firms served by accountants outside the Big 4 is dramatically lower as well. This supports the claim that large public companies have a strong preference for the skills, or at least the imprimatur, of Big 4 auditors on their mandatory financial reports. This could be a signal to investors regarding the quality of the firm⁸.

Another reason for a preference for a larger firm is the larger capital base that these firms offer. Auditors and firms are jointly liable for mistakes and omissions in financial disclosures; because of asymmetrical information and the sheer magnitude of the exposure, large auditors often choose to self-insure these risks. Such liability may be too large for a smaller firm to adequately insure itself and prohibitively expensive for it to insure through a third party.

Finally, firms view staff capacity and technical expertise as being very important when choosing an auditor; firms widely perceive the capabilities of smaller firms to be inadequate relative to the Big 4 firms in these areas⁹. In a GAO (2008) survey of a random sample of public Fortune 1000 companies, 86% of respondents stated that they were not likely to use a non-Big 4 firm for auditing services, indicating that smaller firms would have a difficult time expanding into the Big 4¹⁰.

⁸ This may be especially important for mid-size firms.

⁹ A single large client might need hundreds of the auditors' employees to be available during an audit. Accounting firms themselves also cite the lack of availability of qualified employees as one of the most significant hurdles to firm expansion.

¹⁰ See: U.S. Government Accountability Office, "Audits of Public Companies: Continued Concentration in Audit Market for Large Public Companies Does Not Call for Immediate Action," Report GAO-08-163, January 2008 [hereinafter, "GAO 2008 Report"].

The dissolution of Arthur Andersen in 2002 provides an interesting case study and test of some of these claims. 87% of Arthur Andersen's clients (by count) switched to a Big 4 firm. The likelihood that a client switched to a Big 4 firm was increasing in asset size. The clients that switched to Big 4 auditors had average assets of \$2.5 billion, while the average asset size of the firms switching to non-Big 4 firms was significantly smaller, at \$309 million¹¹.

3. The effect of consolidation on competition in the industry

In studies of the shift from the Big 8 to the Big 6, researchers have generally found that the efficiency gains realized by Ernst & Young and Deloitte Touche in their 1989 mergers appeared to dominate market power effects from the mergers. For example, audit price adjusted by the dollar value of assets audited declined steadily from the period 1990 through 1996, consistent with a more competitive industry¹². Moreover, measures of input costs also indicate efficiency gains. Over this period, both the number of offices and the number of professional staff relative to total assets audited declined at a greater rate at the merged firms than at the non-merged Big 6 accounting firms¹³.

Based on such evidence, several studies have concluded that, despite the industry's increased concentration, there is little or no reason to suspect a reduction in price competition. Similarly, audit quality does not seem to have been much affected by consolidation. However, most studies note that it is very difficult to determine whether the price of audit services has risen in excess of the cost of providing services. Auditing requirements have changed considerably, especially as a result of Sarbanes-Oxley, and it is difficult to isolate the effects of these changes from an exercise of market power. Moreover, the quality of an audit is largely unobservable without a significant amount of effort¹⁴. There is not even agreement regarding what constitutes a "good" audit; certainly the auditor has a different perspective from mid-level management of the firm being audited. That said, none of the available, imperfect measures indicate the existence of a competitive problem.

The GAO 2003 Report analyzed whether the high market shares of the Big 4 could be consistent with price competition¹⁵. To do this, market shares were simulated by assuming that clients simply choose the firm with the lowest price; firms are thus homogeneous with respect to quality, expertise and reputation. This simple simulation yields market shares very close to what was actually observed; this is consistent with the hypothesis that the tight oligopoly structure of the accounting industry allows price competition. A 1998 study by Doogar and Easley reached a similar conclusion, using similar methodology¹⁶.

¹¹ See Appendix III of the GAO 2003 Report. This number is somewhat skewed by a single large firm that switched to a non-major; 75% of those that chose a non-Big 4 firm had less than \$100m in assets. By contrast, 71% of companies that moved to a Big 4 company exceeded that threshold.

¹² See Susan Ivancevich and Asghar Zardkoohi, "An Exploratory Analysis of the 1989 Accounting Firm Megamergers," *Accounting Horizons*, 14:4 (2000).

¹³ Relative to the dollar value of audited assets, the number of offices declined by 66% at the merged firms, versus 36% at other Big 6 firms. Professional staff fell 40% at Ernst & Young and Deloitte Touche; non-merging Big 6 firms decreased their staff count by 24%.

¹⁴ That is, a duplication of the audit itself. Merely establishing empirically whether the Big 4 perform higher-quality audits than other firms is also quite difficult.

¹⁵ See: GAO 2003 Report.

¹⁶ Rajib Doogar and Robert Easley, "Concentration without Differentiation: A New Look at the Determinants of Audit Market Concentration," *Journal of Accounting and Economics* 25(1998) 235-253.

Additionally, a 2008 report published by the GAO finds that the increase in concentration of the audit services industry has not significantly affected the audit fees for large public companies¹⁷, who are arguably the most at risk for price increases because of their reluctance or inability to use mid-size accounting firms. Looking beyond the very largest companies, which may well view the Big 4 as their only economical alternatives, smaller and/or private companies are likely to be able to take advantage of the significant amount of competition that exists below the Big 4¹⁸.

Although the largest corporations can nominally choose from at least four large audit services companies, in practice their choices are often more limited. Certain industries tend to heavily favor particular auditors; as either a cause or a consequence, these firms develop a depth of industry-specific expertise unmatched by rivals, and the preference for a particular auditor is reinforced. Other firms may not have adequate staff with the requisite expertise to take on more clients. Examples of industries for which auditing services are particularly concentrated are: agriculture, utilities and educational services, all of which have an industry HHI in excess of 3500¹⁹. Moreover, some firms may be unavailable due to conflict of interest considerations or because of regulatory requirements meant to assure auditors' independence. The limits Sarbanes-Oxley Act places on the consulting services that auditing firms can provide to their audit clients may serve to make the market for auditing services somewhat less competitive than it would be otherwise²⁰.

4. The prospects for further consolidation or expansion

There has been some concern that the remaining four accounting firms face a moral hazard problem resulting from the perception (either real or unfounded) that the U.S. government would not tolerate a reduction in the current number of market participants from four to three²¹. As a result, the Big 4 may be willing to take on more risk than may be prudent, convinced that the government will step in to save them in the event that a low-probability, high-cost event occurs.

The perception that the U.S. government may take the position that further consolidation in the Big 4, either through merger or failure, is unacceptable is partly grounded in the treatment of illegalities at KPMG in 2005. KPMG admitted to advising wealthy clients in the establishment of fraudulent tax structures. Rather than criminally investigating the company²², which could have triggered a collapse, the government prosecuted individual employees for their own wrongdoing. Eventually, however, most of the criminal charges against the individuals at KPMG were dropped²³. Thus, market participants may not take

¹⁷ Defined as public companies with revenues in excess of \$1 billion.

¹⁸ The Big 4 audit 98% of the public firms with revenues of more than \$1 billion. By contrast, firms outside the Big 4 serve nearly 80% of companies with revenues of less than \$100 million. See: GAO 2008 Report.

¹⁹ See: GAO 2008 Report.

²⁰ According to the GAO 2008 Report, 96% of large companies use one of the Big 4 companies for non-audit services, which could effectively reduce their choice of auditor to no more than three.

²¹ See, for example, Lawrence Cunningham, "Too Big to Fail: Moral Hazard in Auditing and the Need to Restructure the Industry Before it Unravels," Boston College Law School Legal Studies Research Paper No. 108, September 2006.

²² To avoid indictment, KPMG settled a federal investigation by paying a fine of \$456m. See, "Two Ex-KPMG Managers Sentenced Over Tax Shelters," *The New York Times*, April 1, 2009.

²³ Of the 19 criminal indictments resulting from the case, 13 were dismissed without appeal, 2 pleaded guilty, 3 were tried and sentenced and 1 was acquitted. *Ibid.*, and Lynnley Browning, "Prosecutors Pass on Chance to Revive Tax Shelter Case," *The New York Times*, December 1, 2008.

the threat of enforcement especially seriously²⁴. Moreover, it is believed that at least one proposed merger in the industry was abandoned during the late 1990s because the Antitrust Division expressed an unwillingness to allow the industry to consolidate from five to four²⁵.

Firm failure may be especially likely in the current economic environment, as there is evidence that investors tend to sue firms and their auditors more often in times of economic downturns²⁶. If the Big 4's costs increase substantially because of litigation expenses, it could lead to the failure of one or more accountancy firms. Failure could result either from the direct monetary costs of lawsuits or from damage to a firm's reputation sufficient to cause a mass exodus of clients - a major factor in the collapse of Arthur Andersen.

Despite the risk of further consolidation among the Big 4, it may be possible for smaller firms to break into the top tier in the longer term. Although it is difficult to make predictions about the long-term future structure of the industry, small and mid-tier accounting firms are increasingly gaining clients relative to the Big 4, especially small and mid-sized clients²⁷. Indeed, the share of firms with \$100 - \$500 million in revenues audited by the Big 4 fell from 90% to 71% between 2002 and 2006²⁸. Moreover, the second tier of accounting firms have been merging with one another to overcome some of the hurdles in serving the largest firms²⁹. If these trends continue, the result could be a firm strong enough to one day challenge the Big 4's high share of the auditing services of the largest companies.

5. The Sarbanes-Oxley Act of 2002 and current issues in accounting

One of the most important recent developments in the accounting field occurred with the passage of the Sarbanes-Oxley Act in 2002. In response to a number of corporate and accounting scandals around the turn of the century³⁰, the Act was intended to shore up investor confidence in publicly-traded companies. Sarbanes-Oxley introduced a number of new regulations designed to provide financial transparency to capital markets with respect to publicly-traded companies. The legislation increased financial reporting requirements, strengthened internal control structures and detailed the responsibilities of firm audit committees. It sought to ensure auditing independence and integrity by placing limits on the non-auditing activities that auditors could perform for their clients, and by requiring the rotation of managing audit partners³¹ after five consecutive years in the service of a given client³².

In addition to these internal firm rules and regulations, the Act established the Public Company Accounting Oversight Board (PCAOB) to monitor accounting firms' activities and enforce compliance. The PCAOB is a private-sector nonprofit that is responsible to the SEC, which approves the PCAOB's

²⁴ See Cunningham (2006), *supra*, at n.21.

²⁵ See: Antitrust Division, U.S. Department of Justice, Annual Report, 1999, available at: <http://www.usdoj.gov/atr/public/4523.pdf>.

²⁶ See: GAO 2008 Report.

²⁷ That is, less than \$500 million in annual revenues. See: Bill Carlino, "The Audit Order Changeth," *Accounting Today*, January 26-February 10, 2008.

²⁸ See: GAO 2008 Report.

²⁹ See: Philip Smith, "Mid Tier Could Shrink by a Fifth," *Accountancy Magazine*, June 2008.

³⁰ For example, Enron, Tyco and WorldCom.

³¹ Note, this is not a requirement to switch auditing firms; rather the individual partners in charge of conducting the audit must be rotated.

³² See: GAO 2008 Report.

proposed rules for accounting firms³³. The PCAOB provides guidance to accountancy firms and essentially audits the auditors, with the goal of providing an external source of information regarding audit quality.

There is little doubt that the additional requirements of Sarbanes-Oxley have increased auditing costs for publicly-traded firms³⁴. In addition to there simply being more work to do, reporting requirements have become increasingly complex and technical. The oversight by PCAOB also increases auditing costs, as it takes time and effort to prepare for a PCAOB inspection. Implementation of Sarbanes-Oxley has occurred gradually, with full implementation achieved in December of 2008. By comparing firms that have adopted the new rules to firms not yet subject to the enhanced requirements (and controlling for other factors), a 2008 GAO study found that Sarbanes-Oxley requirements increased the firms' auditing bills by approximately 45%.

There remains a considerable amount of debate regarding whether the industry's reputation has recovered from the scandals of the late 20th century and whether the firms are today providing truly independent, high-quality auditing services. Having just reached full implementation in December 2008, Sarbanes-Oxley's progress toward that goal is still being evaluated.

In addition to Sarbanes-Oxley, several proposals have been made to deal with the industry's independence, further consolidation and moral hazard issues. To deal with auditor independence and integrity, for example, some have suggested that it may be useful to create audit-only firms or implement a mandatory rotation of accounting firms³⁵. However, this would be at the expense of significant disruption and monetary cost. Moral hazard, some claim, could be addressed by putting a financial statement insurer between the auditor and the client. Because it would be liable for the quality of the audit, the insurer would have a clear interest in enforcing rigorous audit standards and practices at the accounting firm to mitigate risk. A strategy to maintain at least four major competitors might be to hold individual auditors criminally responsible for their misconduct. This would allow the government to punish bad behavior without putting the entire firm at risk of failure. Many proposals have also been made to reverse concentration in the industry; however, as discussed above, these find little support based on the available evidence of the effects owing from consolidation over the past two decades.

6. Past DOJ and FTC enforcement and advocacy

Over the years, the Department of Justice and Federal Trade Commission have brought a number of enforcement actions and engaged in competition advocacy in an effort to promote competition in the profession. As noted in our submission to the June 1999 roundtable,

In 1997, FTC staff opposed a proposed rule by the Washington legislature that would require candidates for Certified Public Accountant status to earn at least 150 semester hours of undergraduate academic credit. Economic analysis indicated that such a rule would raise the educational entry requirements for CPA licensure and in turn would likely increase costs of entry and raise prices to consumers of CPA services. The comments also noted there was no persuasive evidence that the net effect of the proposal would be beneficial to consumers.

In 1990, the Commission charged the American Institute of Certified Public Accountants, the dominant professional association in the accounting field, with restricting truthful, non-deceptive

³³ *Ibid.*

³⁴ That is, the misconduct of accounting firms has led to an increase in the demand for their services.

³⁵ Recall that Sarbanes-Oxley requires auditor rotation, not firm rotation.

*advertising by prohibiting members from making truthful claims in self-laudatory or comparative advertisements, or using truthful testimonials. It also alleged that the association restricted members' efforts to solicit clients directly and by referrals. The consent order bars the association from prohibiting its members from engaging in these practices*³⁶.

The DOJ was involved in reviewing the major accounting firm mergers of the late 1980s and late 1990s. In the 1980s, the DOJ threatened to sue the West Virginia Board of Public Accountancy and sued Louisiana's State Board of CPAs over their advertising and solicitation bans. In the 1970s, the DOJ successfully sued the American Institute of Certified Public Accountants and the Texas State Board of Public Accountancy for their competitive bidding bans.

The state action doctrine exempts certain anticompetitive actions of state licensing boards from antitrust scrutiny. The DOJ's suit against the State Board of CPAs of Louisiana was dismissed on state action grounds in 1987³⁷. More recently, in *Earles v. State Bd. of Certified Public Accountants of Louisiana*³⁸, a private antitrust action, the court held that a board established by the state to regulate the accounting profession was exempt from a claim based on the federal antitrust laws because the board was acting pursuant to a state policy to displace competition with regulation that was clearly articulated and affirmatively expressed. The broad statutory grant of authority to the board to "adopt and enforce all rules and regulations, bylaws, and rules of professional conduct as the board may deem necessary and proper to regulate the practice of public accounting" included, according to the court, "the power to adopt rules that may have anticompetitive effects." The challenged rules prohibited CPAs from accepting commissions and engaging in the practice of "incompatible" professions; plaintiffs were CPAs who also wished to practice concurrently as securities brokers.

Accountants have at times also been subject to law enforcement actions as a result of their direct participation in anticompetitive conduct. In *U.S. v. Federation of Surgeons and Specialists, Inc.*,³⁹ for example, the DOJ in 1999 sued and obtained a consent decree that prohibited a federation of surgeons and specialists and its accounting and consulting firm from negotiating with managed care plans jointly on behalf of otherwise competing member physicians to obtain higher fees for their services. The firm acted as the negotiating agent for the federation.

³⁶ American Institute of Certified Public Accountants, 113 F.T.C. 698 (1990).

³⁷ *U.S. v. State Bd. of Certified Public Accountants of Louisiana*, 1987 WL 7905 (E.D.La.).

³⁸ 139 F.3d 1033 (5th Cir.), cert. denied, 525 U.S. 982 (1998).

³⁹ 1999 WL 1210842 (M.D.Fla.).

EUROPEAN COMMISSION

The aim of this paper is to update the participants on the major developments in the European Union in the field of statutory audit. This does not cover regulation in the area of accounting.

1. The directive on statutory audit

The regulation of statutory auditors has recently been subject to fundamental reforms. The most prominent feature is that the public expected safeguards to enhance the quality of audits after major corporate scandals, such as Enron. The US reacted with the Sarbanes Oxley Act, the EU by overhauling the Directive from 1984 and introducing a much more comprehensive legal instrument.

The Directive on Statutory Audits (Directive 2006/43/EC¹) was adopted in May 2006. It replaced the former Directive from 1984. The deadline for the transposition of the Directive by the Member States was June 2008.

The new Directive aims at reinforcing and harmonising the statutory audit function throughout the EU and at enhancing the quality of statutory audits. It sets out principles for independent public oversight in all the Member States: statutory auditors are therefore no longer subject to self regulation but to oversight which is independent from the profession (Article 32 of the Directive). The Directive introduces a further requirement for regular external inspections of auditors: public oversight bodies of Member States should have ultimate responsibility for quality assurance controls (Article 29 of the Directive).

Moreover, sound and harmonised principles of independence applicable to all statutory auditors throughout the EU have been defined, including rules regarding conflicts of interests, rules on provision of non audit services (Article 22), prohibition of contingent audit fees (Article 25) as well as rotation of key audit partners for audits of public interest entities (Article 42).

The Directive also clarifies the approval, registration and professional qualification requirements of statutory auditors and audit firms (Articles 3 to 20 of the Directive).

Finally, the Directive establishes a framework for co-operation with third countries and recognition of non EU auditors (Articles 44, 45, 46 and 47 of the Directive). Around 60 third countries are concerned by this new framework on co-operation.

In addition to the Statutory Audit Directive, specific actions are being undertaken by the European Commission in order to deal with the issue of the audit market concentration.

2. Actions aiming at changing the audit market

2.1 Recommendation on limitation of auditors' liability

Article 31 of the Directive on Statutory Audit invited the Commission to examine the impact of the current national liability rules for carrying out statutory audits on European capital markets.

¹ OJ L 157, 9.6.2006, p. 87.

In January 2007, the Commission Services launched a public consultation process to ascertain whether there is a need to reform auditors' liability and to examine possible ways forward for reforming auditor liability rules in the Member States². The consultation was based on a study on the economic impact of auditors' liability regimes conducted by London Economics³ and published in October 2006.

In June 2008, the European Commission issued a Recommendation⁴ concerning the limitation of auditors' civil liability for audits of listed companies. Its main purpose was to encourage the growth of alternative audit firms in a competitive market by reducing risks linked to such audits. A detailed impact assessment⁵ set out the reasoning behind the recommendation.

2.2 Study on the ownership rules that apply to audit firms and their consequences on audit market concentration

In October 2007, DG MARKT published a study performed by a consultancy firm Oxera, which analyses whether changes to the ownership rules of audit firms might help increase the number of international players in the audit market⁶.

The study examined the effects of Article 3 of the Statutory Audit Directive which requires that auditors hold a majority of the voting rights in an audit firm and that majority of auditors control the management board. The Oxera study analyses possibilities to develop an alternative ownership model where audit firms could be held by external investors. The Oxera study suggests that liberalising these requirements could help reduce market concentration.

The annex to the study also provides details of the rules currently applicable in the Member States regarding the legal forms of audit firms allowed.

The key conclusions of the study are:

- For the smaller audit firms, important investments might be necessary over years in order to expand and to enter the international audit market.
- Existing ownership structures may be estimated to increase audit firms' cost of raising capital by perhaps as much as 10%.
- Nevertheless, restrictions on access to capital appear to represent only one of several potential barriers to entry. There are other barriers which also play an important role: reputation, the need for international coverage, international management structures, and liability risk.
- Even if regulation no longer prescribes ownership rules for auditors, there may also be good reasons for audit firms to stick to their current ownership structures: such as need to retain their human capital.

² See: http://ec.europa.eu/internal_market/auditing/liability/index_en.htm.

³ See: http://ec.europa.eu/internal_market/auditing/liability/index_en.htm.

⁴ OJ L 162, 21.06.2008 p.39.

⁵ See: http://ec.europa.eu/internal_market/auditing/liability/index_en.htm.

⁶ See http://ec.europa.eu/internal_market/auditing/market/index_en.htm.

- From the regulatory point of view, existing ownership structures have been justified by the need to protect the independence of audit firms. However, conflicts of interest could be dealt with through the establishment of other appropriate safeguards.

2.3 *Consultation on possible ways forward for opening up the audit market in the EU*

In November 2008, DG MARKT launched a public consultation on possible ways forward for opening up the audit market in the EU, in particular by addressing the "Big Four" phenomenon⁷. The consultation was based on the study performed by Oxera.

The consultation puts forward two options for which catalysts should be put in place to change the current oligopoly on the audit market: 1) deregulation of the capitalisation of audit firms and 2) other catalysts related to human capital of audit firms, fragmentation of legislation, barriers existing on the demand side.

The Commission services intend to publish a summary report on the outcome of the consultation by mid July.

⁷ See: http://ec.europa.eu/internal_market/auditing/market/index_en.htm.

LITHUANIA

NB. English version of the Law on Audit is available here: http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=335883.

1. Concentration in the market

1.1 *Which are the major accountancy firms in your country? Are these firms affiliated with the “Big Four” accountancy firms (PricewaterhouseCoopers, Deloitte Touche Tohmatsu, Ernst & Young, and KPMG)? Do you have information about the market shares in your country of each of these companies as regards the provision of statutory audits for publicly traded companies and private companies?*

As provided for in the “Review of the Audit Market 2008”, published by the Chamber of Auditors, in 2008 in Lithuania have been 403 certified auditors, and 201 audit firms. However, there is no official statistics regarding the major audit firms or the shares that are held by the major audit firms. The unofficial statistics on the major audit firms (considering the annual revenue) are the following: 1. “*Ernst & Young Baltic*”, UAB (the acronym for “private company”), 2. “*PricewaterhouseCoopers*”, UAB, 3. “*Deloitte Lietuva*”, UAB, 4. “*KPMG Baltics*”, UAB.

Having in mind the number of certified auditors that work in audit firms, the biggest ones are also the audit firms that belong to the networks of the “Big Four” accountancy firms – “*KPMG Baltics*”, UAB has 10 auditors, “*Ernst & Young Baltic*”, UAB has 9, “*PricewaterhouseCoopers*”, UAB – 6 and “*Deloitte Lietuva*”, UAB – 4. There are also several other audit firms in the audit services market that have approximately 3-4 auditors therein, both national firms or belonging to the international networks.

In 2008 in Lithuania there have been 13% of all auditors that were providing their services as individual enterprises (sole proprietorships), 2% - as members in general partnerships or limited partnerships, and 52% of auditors – in private companies.

1.2 *Is there any information as to the market shares of accountancy firms in your country regarding other accountancy services such as financial advice, internal audits or tax advice?*

No, there is no such information, even for statistical purpose.

1.3 *Have there been any recent mergers between accountancy firms in your country? Has there been any involvement in these mergers by a National Competition Authority or public regulator? If so, please describe.*

No, recently there have been no any mergers concerning the accountancy firms.

1.4 *If increased entry would be desired, how could new major accountancy firms develop? Are there any regulatory hurdles to the creation of new firms?*

In order to create a new auditors firm, several following requirements must be fulfilled (as provided for in Art.17 of the Law on Audit):

- The firm may start its auditing activities only after having been entered in the list of audit firms on the decision of the Chamber of Auditors. Entered in the list of audit firms may be the entity registered in the Republic of Lithuania and audit firms of the member states which have established branches in the Republic of Lithuania and other audit firms of member states which wish to carry out audits according to the procedure established by legal acts of the Republic of Lithuania.
- In order to be entered in the list of audit firms, the firm shall submit the following documents:
 - an application containing the following particulars: name, registered number, names and surnames of the registered office, telephone, full names and addresses of partners, the voting rights of each partner, the numbers of certificates which show the granting of the auditor's name and other particulars established in paragraph 2 of Article 24 of this Law which are necessary for entering in the list of audit firms. When registering the audit firm of a member state which has a branch in the Republic of Lithuania, the data concerning the member state auditors and the branch shall be additionally submitted;
 - a copy of the statutes or other document of incorporation specifying the firm's objectives. When registering an audit firm of a member state, which has a branch in the Republic of Lithuania, a copy of the statutes of the branch and the data of the registration of the audit firm in the member state shall be additionally submitted;
 - documents which show that the firm has taken out insurance against civil liability according to the procedure established in Article 20 of the Law on Audit (i.e. general civil liability insurance must amount to at least LTL 100,000; compulsory civil liability insurance must amount to at least LTL 100,000 per one insured event; when the object of compulsory civil liability insurance is civil liability of the audit firm for damage which would have been caused to the contractor and/or third persons when carrying out audits in public interest entities, the minimum annual sum of civil liability insurance must amount to at least LTL 200,000 per one insured event).

2. Regulation of entry

2.1 *Quality standards and entry*

2.1.1 *Is a university degree required to practice as an auditor/accountant in your country? Does the requirement of an accountancy degree depend on the type of services provided (for example, providing statutory audits, financial advice, or tax advice)?*

Yes, in order to practice as an auditor in Lithuania, a university degree is obligatorily required.

To engage in professional accountant activity, a person must have a university degree or a so called "college" degree, as used to be in the old system of education (such requirement is provided for in the Regulation of assessment of professional accountant). However, the practice is that only a university degree has been accepted recently.

2.1.2 *Is additional training required to practice as an accountant? If yes, for which profession (for example, Certified Public Accountant, Chartered Accountant, Auditor, Tax Advisor)? Who decides the content and form of this additional training: the State or the regulated profession? How long does the additional training last? Is there a concluding examination? Does the government play a role in overseeing the establishment of entry standards or the number of training places available? Is the examination selective? Can the examination be repeated?*

In Lithuania the regulation is that a person seeking to establish himself or work as an auditor, must have a practice of at least 3 years as an assistant of an auditor in an audit firm. During this period a special mandatory training is provided for all the auditor's assistants, with differentiation as regards the length of the practice as an assistant, but with no exceptions concerning the field of activity they are engaged in.

The program of training, content and form thereof is decided upon by the self regulatory body – the Chamber of Auditors (the Regulation of the training of Auditor's Assistant is drafted in accordance with the laws regulating auditors' activities, and is issued by the Chamber).

The auditor's assistant must undergo a course of training of no less than 50 hours during one year, until he gets the title of an auditor. At the end of each year no examination is required to pass, the auditor's assistants must only submit to the Chamber of Auditors a report on the subjects learned. Only a final auditors qualification examination exists, which is regarded as an entry standard to the profession. Upon the failure, the auditor's assistant can repeat an attempt to pass such examinations only after 6 months. The number of repeated attempts is not limited.

2.1.3 *Are there requirements relating to on-going education for any of the accountancy professions in your country? If yes, who sets the quality standards to be reached and how is it assessed whether professionals satisfy the quality requirements?*

Yes, according to the Law on Audit, the auditor must continually develop his professional qualification in the auditors professional courses (each three consecutive years hear not less than 120 hours of courses or attend equivalent courses of development the professional qualifications).

The requirements of qualification's development courses of auditors (thematic division of mandatory hours, etc.) are established by the Chamber of Auditors in coordination thereof with the Authority of Audit and Accounting (supervision authority, implementing the quality assurance of the audit carried out by auditors and audit firms).

The qualification's development courses of auditors must be organized so as to ensure for the auditors the strengthening of theoretical knowledge and its application in practice according to the programmes prepared and agreed in writing with the Authority of Audit and Accounting.

2.1.4 *Is registration, a license or membership of a professional body required to practice as an accountant (for example, as a Certified Public Accountant, Chartered Accountant, Auditor or Tax Advisor)? Which professional self-regulatory bodies exist in your country?*

As it is provided for in the Law on Audit, persons having the auditor's certificate and entered in the list of auditors shall be members of the Chamber of Auditors. This provision applies only to national auditors, i.e. auditors coming from member states or non-member states are excluded from its scope. Therefore, although a membership in the Chamber is not regarded as an entry requirement, it is inevitable in order to practice as an auditor.

In Lithuania there exists one self-regulatory body, i.e. the Chamber of Auditors. As mentioned above, it comprises of all the auditors, having a certificate. The Chamber is divided into several internal committees, commissions, and a court of auditor's honour.

2.1.5 *Are there quantitative limits (for example, relating to demographic or territorial criteria) regarding the entry into the accountancy profession(s) in your country? If yes, for which professions and/or accountancy services?*

No, there are no any formal restrictions or quotas regarding the number of auditors.

2.1.6 *For countries outside the EU (for which specific European legislation applies), please also discuss whether there are any barriers for establishment by foreign accountants. Are foreign accountants allowed to provide services? Is establishment or provision of services subject to specific conditions?*

Foreign auditors, i.e. those from the countries outside the EU, are allowed to provide their services in Lithuania. However, their activity herein is subject to some additional requirements as compared to national or EU auditors.

For auditors coming from foreign countries, same requirements, as set up for EU auditors (Art.15), are required, as well as some additional requirements, as provided for in the Law on Audit, Art. 16. In general, a foreign auditor must fulfil the following conditions:

- The title of the auditor shall be granted to foreign auditors who have been granted the right to carry out audit by competent authorities of the state on the decision of the Authority of Audit and Accounting upon submission of the documents issued by the competent authority of the state which was the first to grant the right to carry out audit, whereby the right to carry out audit in a state is demonstrated and whereby it is demonstrated that the right has not been suspended or cancelled, and after they pass the knowledge tests.
- The aptitude tests shall be taken according to the established procedure in State language in the areas of:
 - - legal acts regulating preparation of annual and consolidated financial statements,
 - - legal acts regulating audit and auditors' activities,
 - - company law,
 - - the law of insolvency and similar procedures,
 - - tax laws,
 - - civil and commercial law,
 - - social-security law and law of employment.
- The requirement to demonstrate that he satisfies the requirements:
 - knows the state language;

- holds a university degree;
- is of good repute;
- has worked in the audit firm and/or in the audit firm of a member state for at least 3 years as an auditor's assistant and if, at the time of submitting the application to be granted the title of the auditor, the person was no longer working in the audit firm, the work in the audit firm as auditor's assistant was completed at least 3 years before submission of the application, and also has passed qualification examinations in the areas specified in the relevant articles of the Law on Audit and has appropriate theoretical knowledge in the areas provided in relevant paragraphs of the Law on Audit.

2.1.7 *If your country is considering changes in the near future that affect the answers to the above questions, please give a brief overview of the envisaged changes.*

N/A.

2.2 ***Exclusive rights***

2.2.1 *Do regulated accountancy professions enjoy exclusive rights? Please specify which rights and indicate the regulated accountancy profession which performs these reserved tasks. The following division may be helpful in answering this question:*

- providing statutory audits to publicly traded companies;
- providing statutory audits to private companies;
- other accountancy services, such as internal audit, insolvency, corporate finance work, due diligence, etc.
- tax advice

As it is provided in the Law on Audit, the auditors are vested with competence to operate all the abovementioned functions, with no divisions or exceptions.

2.2.2 *Have exclusive rights associated with the accountancy professions ever been reviewed?*

N/A.

2.2.3 *If your country is considering changes in the near future, which affect the answers to the above questions, please give a brief overview of the envisaged changes and reasons for them.*

N/A.

3. Regulation of conduct

3.1 Advertising restrictions

3.1.1 Is advertising allowed subject to the same constraints as in any other business (prohibition of misleading advertising contained in fair trade laws)?

Yes, the auditors are allowed to advertise their services in Lithuania, and advertisement is not subject to any special or peculiar restrictions, except for the same constraints as in any other field of activity. However, a general imperative of the auditors' activities – to comply with the requirements of general ethics and morality principles, is applied herewith.

3.1.2 Does the state restrict advertising with respect to accountancy services? If yes, specify the restrictions and the services to which they apply.

No, except with basic requirements for any kind of advertising to comply with principles of ethics, morality and provisions of law.

3.1.3 Do the regulatory bodies restrict advertising? If yes, specify the restrictions and the services to which they apply.

No.

3.1.4 If there are advertising restrictions, please specify their contents. The following questions may be indicative: Is there a total advertising ban, excluding only name plates, official registers and phone books? Can special expertise be advertised? Can the fee level be advertised? Is comparative advertising allowed? Are there other restrictions, for example related to the ethical standards of the profession?

The advertising is not prohibited in general, on the other hand, speaking about comparative advertising, it should be mentioned that any auditor, when carrying out his exercise, is prohibited from convincing his customer of his advantages and supremacy as compared to other auditors. As it is established in auditing practice, the ethical standards must be complied with when advertising, although there is no any direct provision in the relevant laws.

3.1.5 If your country is considering changes in the near future that affect the answers to the above questions, please give a brief overview of the envisaged changes and the reasons for them.

N/A.

3.2 Price regulation

3.2.1 Are prices freely negotiated?

The Law on Audit does not speak much about negotiation of prices. In Art.7 it is provided that:

- The scope of the audit fee must ensure that the audit would be carried out according to principles of professional ethics and requirements of international auditing standards.
- The audit fee must be set in the audit contract and no contingent conditions which may affect the amount of the fee for the carrying out of the audit may be set in the contract.

- The audit fee shall not be affected by the fee paid for non-audit services provided by the audit firm carrying out other activities established in sub-paragraphs 2 and 3 of paragraph 1 of Article 29 of this Law (i.e. to provide assurance and other related services and to engage in other activities which do not contradict the principles of ethics set in the Code of Ethics for Professional Accountants).

At present the prices for auditing services are negotiated freely, however, the Chamber of Auditors in 2004 had issued a recommendation for minimum prices that should be charged for the provision of services for the audit of the European Union structural funds. After the investigation carried out by the Competition Council, the Recommendation was declared as infringing Art.5 of the Law on Competition (prohibition of agreements), see Question 4.1.3.

3.2.2 *Does the government set prices? If yes, indicate for which services (for example, statutory audits for publicly traded companies). Also specify whether these are maximum prices, minimum prices or fixed prices. How does the government pay for auditing services it uses?*

The Government does not regulate prices for the provision of audit services.

When the audit concerns the Government and its other institutions, the audit is carried out by the National Audit Office of Lithuania, in accordance with the Law on National Audit Office. Additionally, in some occasions audit in the governmental structures can be carried out by private audit firms, under the provisions of charity agreements.

3.2.3 *Do the self-regulatory bodies set prices? If yes, specify whether these are maximum prices, minimum prices or fixed prices and for which services. Is use made of recommended prices?*

As mentioned above, in 2004 the Chamber of Auditors issued a Recommendation for minimum prices that should be changed for the provision of audit services of the European Union structural funds, which is declared to infringe the Law on Competition.

See Question 4.1.3.

3.2.4 *Specify the criteria upon which the price can be based: number of hours worked, complexity of the audit, contingency fees, etc.*

The only criteria on prices mentioned in the Law on Audit are provided for in Art. 7. As already stated, the article foresees that the scope of the audit fee must ensure that the audit would be carried out according to principles of professional ethics and requirements of international auditing standards, and that the audit fee must be set in the audit contract and no contingent conditions which may affect the amount of the fee for the carrying out of the audit may be set in the contract.

We assume that the abovementioned criteria, i.e. number of hours worked, complexity of the audit, contingency fees are also relevant when determining the audit price.

3.2.5 *If your country is considering changes in the near future that affect the answers to the above questions, please give a brief overview of the envisaged changes and the reasons for them.*

N/A.

3.3 *Inter-professional co-operation and business structure*

3.3.1 Is the formation of multi-disciplinary partnerships allowed? Are accountants allowed to incorporate? If yes, are there any restrictions with respect to the legal form of incorporation (for example limited liability partnership, public limited company)?

Yes, in Lithuania the auditors are allowed to incorporate. In general, as provided for in the Law on Audit, the auditors (audit firms) can operate in one of the following legal forms:

- individual enterprises (sole proprietorships);
- general partnerships;
- limited partnerships;
- private companies.

3.3.2 Do accounting firms provide consulting services? If so, of what type? Are there conflicts of interest with other professions (for example, lawyers) that may be necessary to avoid?

Yes, the accounting firms are allowed to provide consulting services. Art. 29 of Law on Audit foresees that the audit firms shall have the right to engage in the following activities:

- to carry out the audit;
- to provide assurance and other related services;
- to engage in other activities which do not contradict the principles of ethics set in the Code of Ethics for Professional Accountants.

Therefore, the audit firms provide various services other than audit – business advisory, business risk, financial services risk management, finance and accounting advisory services, actuarial services and other.

As regards the conflict of interests with lawyers or other professionals, we assume that there can occur a possible overlap of the services provided. However, no such conflict has occurred yet, neither there are any provisions in the applicable laws regarding the possible solution of such a conflict.

3.3.3 If your country is considering changes in the near future, which affect the answers to the above questions, please give a brief overview of the envisaged changes and the reasons for them.

N/A.

4. Institutional framework of self-regulation

4.1 *Application of competition law*

4.1.1 Are rules enacted by self-regulatory bodies (on advertising, prices and business structure) covered by the prohibitions of anti-competitive practices in competition law?

Yes, any rules, enacted by the self-regulatory body of the auditors, i.e. the Chamber of Auditors, are covered by the prohibitions of anti-competitive practices.

4.1.2 *Is there an exemption for (certain types of) self-regulatory rules which are considered necessary for the proper practice of the accountancy profession?*

No, there are no any exemptions mentioned.

4.1.3 *Which have been the main effects of competition law enforcement (for example, removal of fixed prices and advertising restrictions)?*

The major intervention with the competition law enforcement by the Competition Council into the audit services market has been the removal of fixed recommendable prices.

The short summary of the case:

In 2004, the Chamber of Auditors had issued a recommendation for minimum prices that should be charged for the provision of services for the audit of the European Union structural funds. The Recommendation stipulated the audit price as a certain percentage of the projects, which were divided into several categories (according to their price) and the percentage set therefore. Moreover, in 2006 the Chamber of Auditors issued two recommendable documents, in which a minimum hourly tariff of provision of audit services and provisions on working time had been established in detail.

As the investigation, carried out by the Competition Council, foreclosed, the recommendations could have been applied not only in cases when the audit concerned the European Union structural funds, but also to the audits on financial accountability.

The recommendation and other documents were found to be infringing the Law on Competition by various aspects. First of all, neither the Law on Audit, nor the Statute of the Chamber of Auditors established a right or a duty for the Chamber to regulate or influence in any other possible way the prices charged for the provision of audit services (as mentioned therein, the Law on Audit provides for the free negotiation of prices). The Recommendation could have been treated as a binding document, due to the fact that the Chamber of Auditors in its meetings used to consider the situations, when the prices offered by the audit firms in bid riggings, were low, and required to explain the substantiation of them. Moreover, the regulation provided for therein was detailed and precise, the dissemination of the recommendation was very wide, as each auditor could reach it in the official website of the Chamber of Auditors, and speaking about two other documents – the auditors had been informed of them via e-mails. Having regard to the abovementioned aspects, the recommendation had been considered as of the binding nature.

The Competition Council found the Recommendation and two other documents to be infringing the Law on Competition, Art. 5 (prohibition of agreements restricting competition), since such regulation allows the auditors to coordinate their behaviour (setting the price level) on the market, causes the obstacles for new auditors to enter the market, as well as does not motivate the auditors to provide their services as efficiently as possible, compete as regards the prices or improve the quality of their services.

The resolution of the Competition Council, founding the infringement of the Law on Competition, was appealed by the unsuccessful party. However, the court of first instance (Vilnius Regional Administrative Court) upheld the position of the Competition Council without any reservation, and the court of cassation (the Supreme Administrative Court of Lithuania) only reduced the fine imposed on the Chamber of Auditors as some procedural concerns of the investigation were established, without repealing the substance of the resolution of the Competition Council.

See the press release: http://www.konkuren.lt/en/index.php?show=news_view&pr_id=440.

4.1.4 *If your country is considering changes in the near future that affect the answers to the above questions, please give a brief overview of the envisaged changes and the reasons for them.*

N/A.

4.2 **Regulatory oversight**

4.2.1 *Are decisions of self-regulatory bodies subject to approval by the State? If yes, which kind of decisions and who is the supervisory authority (competent Minister)?*

No, the decisions enacted by the self-regulatory body are not subject to any approvals.

4.2.2 *Are decisions by self-regulatory bodies subject to antitrust scrutiny?*

Yes, such decisions are subject to the antitrust regulation with no exceptions.

4.2.3 *Is there an independent Complaints Office which handles malpractice cases? Or is the imposition of sanctions for malpractice left to ordinary courts (tort liability) and the self-regulatory body (disciplinary sanctions, eventually including expulsion)?*

In Lithuania, the malpractice of the auditors is handled in an ordinary way – the auditors, in case of malpractice, shall be liable according to the provisions of the laws (the Law on Audit, the Civil Code or other, depending upon the case). There is no any independent Complaints Office, and only in certain cases the self-regulatory body can impose disciplinary or other sanctions.

As it is provided in the Law on Audit, the Auditors' Court of Honour shall be entitled to bring disciplinary action against the auditor on the proposal of the Chamber of Auditors and, upon hearing it, impose penalties for non-compliance with the Code of Ethics of Professional Accountants and certain duties and methodologies set in the Law on Audit. The Auditors' Court of Honour shall have the right to impose the following penalties:

- a warning;
- a reprimand with an official publication thereof in the list of auditors.

4.2.4 *Is there an independent Regulatory Authority for the accountancy professions?*

As regards the auditors, only two authorities are mentioned in the Law on Audit concerning the auditors, i.e. already mentioned Chamber of Auditors and the Authority of Audit and Accounting. The Chamber of Auditors has some regulatory functions, for example, setting various methodologies, preparing auditing standards and others. No any independent Regulatory Authority as such exists.

4.2.5 *If your country is considering changes in the near future that affect the answers to the above questions, please give a brief overview of the envisaged changes and the reasons for them.*

N/A.

4.2.6 *Apart from professional standards of ethics and company reputation, are there any government laws or regulations that enhance incentives to provide full and complete auditing conclusions?*

No, there are no such laws, neither regulations as mentioned above.

5. Accounting standards

5.1 *Which specific accounting standards apply in your country? Do these rules differ substantially from the International Financial Reporting Standards (IFRS) or the Generally Accepted Accounting Principles? If yes, are there plans to reduce these differences?*

Currently in Lithuania nationally enacted Business Accounting Standards (VAS) apply, which is in general a simplified version of the IFRS. Some major companies or banks apply the IFRS in their business.

The goal is to achieve that each company in its business applied the IFRS, however, the majority of them still is under the guidance of VAS.

5.2 *Who is involved in drafting and enforcing these accounting standards? Is there any public intervention or are these standards a result of self-regulation by professional bodies?*

The Authority of Audit and Accounting has enacted the Business Accounting Standards. More information, as well as the Standards themselves, can be found here: <http://www.aat.lt/index.php?id=85>.

ROMANIA

1. Introduction

Insofar the Romanian Competition Council¹ focused more its attention on the liberal side of the accountancy profession, mainly since the liberal professions sector represented an important share of its advocacy and enforcement activities in recent years.

Moreover, no recent mergers between accountancy firms took place in Romania. Therefore for RCC the availability of information related to the activity, market shares and concentration of accountancy firms in Romania was limited.

This is why the focus of this contribution will be more on professional accountants and auditors as liberal professionals and less on “other” accountancy services. Accountancy companies need to fulfill certain specific requirements related to shareholding in order to operate on the Romanian market; however since all such requirements boil down to the regulatory framework of the accounting profession, same rules of access, conduct and supervision apply.

2. Concentration in the market

The financial consultancy market in Romania is currently priced at about 250 - 300 million Euros a year, according to estimates of various players on this market.

Accountancy firms in Romania include local member firms of international audit firm networks, including the “Big Four” as well as strictly local firms and sole practitioners.

The particular characteristics of the Romanian economy led to a continuous increase in demand for accounting services. Main factors for such increase were the development of the bond market, big privatization projects such as Sidex Galati, Banca Comerciala Romana (Romanian Commercial Bank) or SNP Petrom and the swift growth over the past 3-4 years of the state-owned or private Romanian companies' interest in the services offered by consultancy companies. Therefore in recent years other top 25 international accounting firms entered the market (ScotCompany, Nexia, BDO Conti, RSM Hemmelrath etc) and local firms saw also major increases in their turnover. Even with the global financial crisis affecting also the national economy, one might nonetheless declare that “there is still place for everybody”.

3. Regulation of entry

3.1 Professional associations

The Romanian accounting profession is coordinated by two bodies with primary roles in regulating services performed by accounting professionals:

- the Body of Expert² and Licensed³ Accountants of Romania (CECCAR);

¹ For brevity purposes, in this paper the Romanian Competition Council is referred to as RCC.

- the Chamber of Financial Auditors of Romania (CFAR);

Besides these two public interest bodies there are also several professional associations active on this market:

- Romanian National Association of Evaluators (ANEVAR);
- Romanian National Union of Practitioners in Insolvency (UNPIR);
- Chamber of Tax Advisors (CCF).

CECCAR is the oldest professional body, created in the interwar period (1921) by an ordinance of King Ferdinand of Romania, and recreated in 1992⁴. The bodies that administrate this profession at global and European levels – the International Federation of Accountants (IFAC) and the European Federation of Certified Accountants (FEE), have accepted CECCAR's membership in 1996. As of 31 May 2008, CECCAR has the following structure:

- active members – 30,311 (out of which 11,732 freelancers)
 - expert accountants – 17,705;
 - licensed accountants – 7,203;
 - foreign capital companies or joint ventures - 57;
 - Romanian capital companies – 5,346;
- inactive members – 18,886.

The actual emergence and development of financial audit in Romania started in 1990, as a necessity in the transition to a market economy. During this period certain bodies from the interwar period were re-established, such as the Financial Guard and the Court of Auditors, and new ones were set up, taking on the obligation to issue regulations on financial audit and to monitor their proper application, such as the Chamber of Financial Auditors of Romania. This moment underlined the beginning of audit development in a natural direction, in order to line up economic life to the international context.

In 1999, the Ministry of Finance, together with consultants from the Institute of Chartered Accountants of Scotland, decided⁵ that financial statements shall be audited by financial auditors. In these circumstances, in 1999 the Chamber of Financial Auditors of Romania (CAFR) was established, marking an important moment in the development of the financial auditor profession. CAFR's main goal is to organize, coordinate and authorize, on behalf of the state, the conduct of financial auditing, ensuring an independent exertion of this profession, according to law and to the functioning regulations. In 2000, with the support of the Institute of Chartered Accountants of Scotland and with technical assistance from the Know-How Fund, CAFR published the Standards on Auditing and the Code of Ethics in financial audit, by full assimilation of IFAC regulations.

² Certified Public Accountants.

³ Chartered Accountants.

⁴ Government Ordinance No. 65/1994, approved by Law No. 42/1995.

⁵ Government Emergency Ordinance no. 75/1999 on financial audit.

An important moment in the regulation of the audit activity is Emergency Ordinance no. 90/ 2008, which transposes into domestic law the EC Directive on statutory audit. This ordinance sets the entities of public interest which are required to perform statutory audits. Under EO 90/2008 the Romanian Chamber of Auditors continues to be the body responsible for establish auditing standards in Romania and to monitor the profession in relation to membership and qualification standards, including establishment of examinations and membership criteria, ongoing training programs, ethical standards and quality review procedures. EO 90/2008 includes a requirement that International Standards on Auditing, as translated into Romanian, will be the Romanian national auditing standards and includes additional requirements for public interest entities and the statutory audit of public interest entities. It also establishes the Council for Public Oversight of Statutory Audit Activity, consisting of CAFR, CECCAR, the Ministry of Public Finance and a representative of AFER.

The two professional bodies, CECCAR and CFAR share almost 90% of their members. Moreover, in 2006 they concluded a cooperation agreement that ensures coordination in activities and actions relating to the accounting profession in Romania.

The Romanian National Association of Evaluators - ANEVAR – was founded in 1992, as a professional independent non-profit association, acting in public interest and promoting valuation methods and techniques through specific means. Currently, the association has over 5,500 official members and 248 associated companies. Its activity develops in 40 territorial centers and 11 centers in Bucharest. The main areas in which ANEVAR acts are:

- company valuation,
- real estate valuation,
- valuation of movable assets,
- valuation of financial assets,

The Chamber of Tax Advisors (CCF) is made up of tax consultants, active and inactive members, enrolled in the Register of tax consultants and tax consultancy companies. The Chamber of Tax Advisors provides access to the profession of tax consultant; it authorizes, organizes and coordinates tax assistance activities. CCF has 509 members, out of which 296 companies.

The Romanian National Union of Practitioners in Insolvency (UNPIR) was established in 1999, when the Union's first Congress took place. According to the law⁶, the Union is a juridical person of public utility, independent and non-profit, consisting of practitioners in reorganization and liquidation – judicial administrators and liquidators.

3.2 *Quality standards and entry*

Expert accountants are legal or natural persons professionally qualified to verify and ascertain the way a company's economical-financial and accountancy activity is run by its managing bodies, to monitor the management of the companies and to check the legality of the balance sheet and the profit and loss

⁶ Law No. 505/2002 and Law no. 254/2007 for the approval of G.O. no. 86/2006 on organization of the activity of insolvency practitioners and by the Organization and Functioning Regulation approved by order of the Ministry of Justice.

account. Expert accountants supervise the activity of licensed accountants and their endorsement validates financial statements prepared by licensed accountants.

Licensed accountants are legal or natural persons competent to keep accounting records and prepare accounting statements of companies under the supervision of an expert accountant.

In Romania the professional accountant (i.e. expert or licensed) is a natural or legal person with an economic university degree that acquired this title in accordance with the provisions of the law⁷ and the Regulation on the organization and functioning of CECCAR.

The status of professional accountant is acquired by passing through certain professional stages within the professional body: an admission exam, followed by a professional practice period of 3 years and another specialty exam when the practice period is over.

Licensed accountants that are active CECCAR members for at least 2 years may undergo an intensive 6 months practice period, and therefore may participate to the specialty exam for the expert accountant license only 6 months after passing the expert accountant admission exam.

Professional accountants are not being employed by the economic undertaking. They work independently, by concluding a contract, and receive a fee in exchange for their services. However, independence does not exclude a civil and penal responsibility towards the contracting company.

Financial auditors have similar entry requirements as professional accountants, under the supervision of the respective professional body (CFAR).

Foreign professionals that intend to provide accounting services in Romania need to pass an exam for professional recognition in front of the respective professional body.

3.3 *Exclusive rights*

Providing accounting services to the public is regulated in Romania. Those services may be provided only by expert and licensed accountants – members of CECCAR. CECCAR membership is therefore mandatory for all professional accountants in this country.

There are two complementary audit systems in Romania.

All entities meeting specific size requirements and public interest entities are required to be audited in accordance with International Standards on Auditing (ISAs) as approved by the Chamber of Financial Auditors of Romania (CFAR). The financial auditor issues a report, which as indicated in the Company Law is addressed to the shareholders (or equivalent) at the Annual General Meeting of Shareholders. Matters to be included in the Report of the financial auditor are indicated in MoF Order 1752/2005, as well as in the Romanian national auditing standards and Company Law. Statutory audit services may only be provided by financial auditors, members of Chamber of Financial Auditors of Romania.

Entities not subject to statutory audits may choose to have audits performed by censors following Professional Standards developed by CECCAR, unless ancillary legislation, such as the company law, compels them otherwise. These standards, the assessment notes, are "harmonized," but not identical, with ISA.

⁷ G.O. no.65/1994 on the organization of the professional accounting activity with subsequent amendments and completions, republished in 2008.

The appended table⁸ presents market access in various accounting services, qualifying the service as:

- Subject to free consumer choice, with no restrictions on market access and therefore choice of service providers. (Referred to as FCC - free consumer choice)
- Subject to market access restrictions which reserve service provision to other professionals and thereby to the exclusion of professional accountants. (Referred to as ROP - reserved to other professionals);
- Subject to market access restrictions which reserve service provision to the members of different professions among which professional accountants are included. (Referred to as SOP - shared with other professionals);
- Subject to market access restrictions which reserve service provision to professionally qualified accountants, to the exclusion of all others. (Restricted to professionally qualified accountants);

4. Regulation of conduct

4.1 Professional ethics

The fundamental principles of professional ethics for professional accountants, as presented in CECCAR's internal Code of Ethics, are: integrity, objectivity, professional competence and due services, confidentiality and professional behavior.

Integrity means that a professional accountant should be straightforward and honest in all professional and business relationships. He should not be associated with reports, returns, communications or other information when it is presumed that the information: contains false or misleading material statements, contains statements or information supplied recklessly, omits or obscures information where such omission would be misleading.

A professional accountant must behave objectively; he should not allow bias, conflicts of interest or undue influence of others to override professional or business judgments. A professional accountant may be exposed to situations that may impair objectivity. Relationships that bias or unduly influence the professional judgment of the professional accountant should be avoided.

A professional accountant has a continuous duty to maintain professional knowledge and skill at the level required to ensure that a client or employer receives competent professional service based on current developments in practice, legislation and techniques and should act diligently and in accordance with applicable technical and professional standards when providing professional services.

A professional accountant should respect the confidentiality of information acquired as a result of professional and business relationships and should not disclose any such information to third parties without proper and specific authority unless there is a legal or professional right or duty to disclose. Confidential information acquired as a result of professional and business relationships should not be used for the personal advantage of the professional accountant or third parties.

A professional accountant must have a professional behavior, in compliance with relevant laws and regulations and should avoid any action that discredits the profession.

⁸ According to data for Romania included in the FEE survey "Provision of Accountancy, Audit and Related Services in Europe - A Survey on Market Access Rules".

4.2 Advertising restrictions

Advertising restrictions for professional accountants are also stated in CECCAR's Code of Ethics. Similar restrictions apply for auditors.

CECCAR members may only make use of titles and diplomas issued by education institutions licensed by the Education Ministry.

Any type of personal advertising for professional accountants is strictly forbidden. Members of CECCAR may post at their offices or residences a plate stating their name, professional qualification - licensed or expert accountant - and a mention of their respective CECCAR branch, excluding any indication with commercial or advertising character.

Announcements are allowed in the following circumstances:

- press announcements provided that no ethical rules are infringed and also provided that they are austere and informative; they respect an appropriate form for each publication;
- insertion in local press of notifications informing the public with regard to the first opening of a practice or a change of address;
- insertion in annual books, telephone directories, company catalogues, etc. are authorized provided that they are limited to indicating the necessary information to the user in order to be able to contact the practice.

The following types of advertising are strictly forbidden:

- personal insertions in news-papers, in professional publications or others, by letters, posters, circular letters, advertising, cinema, TV, radio – broadcasting and, in general, all advertising procedures, when they provide comparisons with others members or, by their method of presentation, prejudice in any way to other members;
- a business proposal, when it grants any discounts to the fees, commissions or any other advantages, or when it makes use of any political mandate, administrative mission or position.

A consultancy firm may offer potential customers a list of services offered. It may also distribute presentation flyers or brochures to students or trainees applying for open positions within the firm. The flyer may only contain information regarding the history of the company, ethics and behavioural standards, services rendered, customers portfolio, recruitment, training and professional excellence programmes for employees.

CECCAR Council may authorise any type of collective advertising deemed useful in the interest of the profession.

4.3 Price regulation

The general legal framework governing the accounting professionals⁹ does not have any specific provision regarding fees and tariffs for accounting services. As a result, the level of fees is freely set in

⁹ G.O no 65/1994.

accordance with the customer, and may vary with the level of expertise of the professional and the time required to perform a specific service.

However, the professional body was always concerned about the need to self-regulate this aspect. Main reasons offered by the professional body to justify such actions were related to discouragement of informal sector, appropriate level of quality for services provided etc. Apart for provisions that address specific and legitimate considerations, presented below, that do not have potential anticompetitive effects, in several occasions certain recommendations or draft regulations issued by CECCAR did prompt a reaction from the competition authority.¹⁰

Professional accountants may only receive fees provided for in contractual clauses or fixed by the judicial body in demand of the respective service.

Fees may not be substituted with payments in kind, gifts or other advantages. In principle, acceptance of gifts, hospitality or undue advantages constitutes a threat for the independence of the accountant. Moreover, fees should not be contingent upon the result or the findings of the service rendered.

Fees are paid monthly, upon completion of work contracted or at the end of the financial period/fiscal year. Advanced payments are permitted if provided for in the contract.

5. Institutional framework of self-regulation

5.1 *Application of competition law*

The Romanian Competition Law applies to all undertakings and has no exemptions for professional services. National antitrust rules forbid agreements to fix prices, limit access on the market or divide the market. Also, collective dominance may emerge within a professional association, since the respective bodies impose rules such as the ones presented in the example below that obviously are/may be damaging to the consumers' interest.

Within the scope of the specific rules, members of a liberal profession meet in the framework of a professional association and debate, exchange information and agree upon certain issues, including issues such as tariffs that should be set on an individual basis. Although controversies existed whether professionals in this field should be considered undertakings and therefore treated as such, under the scope of antitrust rules, currently in most cases, including the accounting profession, the situation is clear.

In 2000, CECCAR requested RCC's point of view on a Regulation "regarding fees, tariffs and criteria for reimbursement of expenses for professional services rendered by expert and licensed accountants and the approval of the professional tariff". RCC stated that "CECCAR has the legal obligation not to adopt and implement this regulation, since its provisions concertedly and directly fix tariffs for accounting services and therefore infringe the provisions of art 5 (1) of Competition Law¹¹". CECCAR complied and the respective anticompetitive provisions were excluded from the draft.

¹⁰ See section 4.1 of this paper.

¹¹ "Any express or tacit agreements between undertakings or associations of undertakings, any decisions by associations of undertakings and any concerted practices, which have as their object or may have as their effect the restriction, prevention or distortion of competition on the Romanian market or on a part of it, shall be prohibited, especially those aimed at:
a) concerted fixing, directly or indirectly, of the selling or purchase prices, tariffs, rebates, markups, as well as any other terms of trading;"

In February 2009 CECCAR issued a Decision that approves the Regulation determining criteria and modalities to set tariffs, fees and compensations due to professional accountants and accountancy firms, members of CECCAR. The Regulation states that “since certain minimum quality criteria and conditions for services rendered need to be satisfied, tariffs are minimal”. The regulation set minimum limits, maximum limits and fixed amounts for reimbursements, tariffs and fees due to expert accountants, licensed accountants and accountancy firms, members of CECCAR. In practice, this regulation imposed tariffs for all services rendered by accounting professionals: provisions and other accounting estimates, evaluations and opinions, censorship, administration and arbitrator missions, corporate operations, financial consultancy, management and liquidation of companies etc.

Subsequently, RCC opened an investigation regarding a possible infringement of art. 5(1) of Competition Law and art.81(1) EC by CECCAR on the market of accountancy services.

During the investigation, dawn raids took place at CECCAR headquarters and the premises of several CECCAR local branches. Documents and other evidences collected during the dawn raids are currently analyzed by the investigation team as part of the ongoing investigation.

5.2 Regulatory oversight. Sanctions

The Ministry of Public Finances is the public administration authority responsible with the elaboration and implementation of norms and regulations in the field of accounting, including the chart of accounts, financial statement samples and records to be produced and maintained. It also maintains a supervisory role within CECCAR by participating with a representative in CECCAR meeting. This participation has though a consultative and informative character, as the MFP representative does not have veto rights; in cases where concerns that CECCAR decisions might infringe legal provisions are identified, MFP may take legal actions in administrative courts.

In certain specific sectors, public sector regulators - the National Bank of Romania, the National Securities Committee and the Insurance Oversight Committee - develop, according to the law specific accounting regulations complying with the European directives, applicable to entities that they regulates and oversight.

The accounting market is however mostly self-regulated by the respective professional associations.

In accordance with the EEC methodology for professional services quality control, starting with 2002 the quality audit¹² of CECCAR members services switched from peer control to specialized CECCAR staff control combined with submitting “Annual reports” on quality audit results. Quality audit is performed for all firms and independent professional accountant registered in the CECCAR Table. The objective of quality audit is to ensure the compliance of all Body members with the professional standards established by the Body for each activity, accounting service or type of work realized. It has three main aspects: structural, technical and compliance.

In practicing their profession, professional accountants and auditors are liable from the disciplinary, administrative, civil and penal point of view, according to the law. The imposition of sanctions for malpractice is left to ordinary courts whereas the self-regulatory bodies apply disciplinary sanctions.

¹² Quality audit refers to a set of actions undertaken by CECCAR for reviewing the organization and operation of a private practice and for considering its application of professional regulations issued by the Body.

The infringements, according to which disciplinary sanctions are applied, are established by the organizational and operational regulations of the respective professional bodies. The disciplinary sanctions that may be applied, depending on the gravity of infringement, are: censure; written warning; suspension of certain rights, including the right to practice; interdiction of the right to practice and exclusion from the professional body.

6. Accounting standards

After the fall of communism in December 1989, Romania underwent a number of drastic economic and accounting reforms that reflected more western business principles. Romania's opening towards the West generated also a gradual harmonization in business regulations, the introduction of new management techniques and, in particular, a reform of accounting practices and principles.

The accounting reforms ensued in two major steps. In 1993-1994 an accounting system based on the French code law model was first implemented which was then followed by a system of "Anglo-Saxon" inspired reformations beginning in 1999 and culminating in the adoption of International Financial Accounting Standards (IFRS) in 2005¹³ for consolidated financial statements of listed companies. The "conformité et régularité" specific to the French accounting system was highly valued by Romanian accountants and the information relevance perspective of Anglo-Saxon accounting has induced some controversy.

Between 2001 and 2005, small and medium enterprises (SMEs) applied an accounting system based on the 4th European Directive. Large enterprises had to apply OMFP 94/2001, where they were supposed to apply IFRS even in individual company accounts, and also present financial statements in accordance with the 4th European Directive.

For 2007, only listed companies applied IFRS and only for consolidated financial statements. In 2008, the companies that applied IFRS were mostly insurance companies, public interest and other national companies.

The Romanian fiscal and prudential base, however, is still based on Romanian Generally Accepted Accounting Principles (Romanian GAAP) regardless of which accounting standards companies use for the preparation of their financial statements. Consequently, these companies need to understand the similarities and differences between IFRS and Romanian GAAP.

Romanian banking and non-banking financial institutions must use IFRS instead of Romanian GAAP for the preparation of their consolidated financial statements. In recent years, the two systems have moved closer together, reflecting an improvement of regulation in Romania, and better corporate governance among Romanian banks. This also follows the global trend to coordinate national standards with IFRS. However, some differences between the two systems still exist.

A KPMG study¹⁴ showed that "the differences between the Romanian GAAP applicable to banks (National Bank of Romania Order no. 5/2005 with subsequent amendments) and IFRS have an impact of less than $\pm 5\%$ on either profit or equity, the differences related to the impairment of financial instruments being the most significant. These are issues of most importance to the banking and financial services sector due to variations in impairment methodologies under the two reporting frameworks. But is 5% significant? We believe the answer lies in the hands of stakeholders as any amount then, may be significant." It is

¹³ Date of Romania's accession to the EU.

¹⁴ KPMG Survey of Romanian Banks' Use of International Financial Reporting Standards compared with Romanian Accounting Standards "Is 5% significant?".

DAF/COMP(2009)19

obvious that Romanian legislation has brought national standards closer to IFRS each year and full harmonization may eventually become possible.

ANNEX – Market access to accounting services in Romania

Category of service	Specific service								
1.Outsourced accounting engagements	Statutory books and records	Management books and records	IT implementation	Preparation and compilation of accounting documents	Preparation of periodic financial statements	Organization of accounting systems and related internal control			
2.Audit and assurance engagements	SOP Statutory audit of historical financial statements	SOP Voluntary audits of historical financial statements	FCC Reviews of historical financial information	FCC Report on mergers (3 rd and 6 th EC Directive)	FCC Audit of contributions in kind (2 nd EC Directive)	FCC Forensic audits and other litigation services	Operational audits	Reports on internal control	
3.Tax services	RPA Preparing tax returns for individuals	RPA Preparing tax returns for organizations	RPA Tax planning for individuals	RPA Tax planning for organizations	RPA Submission tax declaration - individuals	SOP Submission tax declaration - organizations	SOP Representation before tax authorities	SOP Representation before courts in tax matters	
4.Consulting and advisory engagements	FCC Reports on factual findings	FCC Analyses of accounts and financial statements	FCC Consulting on accounting procedures	FCC Consulting with respect to organization of accounting systems	FCC Expert witness - accounting, assurance and related services				
5.Financial services	SOP Advice on M&A	FCC Business valuations	FCC Financial due diligence	FCC Investment analysis	FCC Financial planning	FCC Debt restructuring and recapitalization	FCC Portfolio management	FCC Trusteeship	
6.Legal advice	FCC Preparation of legal documents - individuals	FCC Preparation of legal documents for companies	FCC Administrative and legal support - general assembly	FCC Advice on company law	FCC Assistance in legal action				
	ROP	ROP	FCC	ROP	SOP				

CHINESE TAIPEI

1. Introduction

In preparing the present submission, the Fair Trade Commission (hereinafter “the FTC”) consulted with the competent authority, the Financial Supervisory Commission (hereinafter “the FSC”), which is responsible for the enforcement of the Certified Public Accountant Act, the Securities and Exchange Act, and other financial regulations. The latest amendments to the Certified Public Accountant Act were made in December 2007, with the key issues in the amendments encompassing the supervision of CPA practices, the organization and responsibility of accountancy firms, the independence of the CPA, the improvement in the quality of CPA practices, the organization and self-regulation, disciplinary sanctions as well as penalties imposed by the CPA associations. All of these amendments were designed to enhance practices within the accountancy profession.

This paper will illustrate the issues related to the concentration in the accountancy firms market, the regulation of entry (e.g., regulations on market entry, and exclusive rights), regulation of conduct (e.g., advertising restrictions, price regulation, and inter-professional co-operation between lawyers and CPAs), self-regulation (the application of competition law, and how to regulate services provided by accounting professionals), and Chinese Taipei’s accounting standards. Chinese Taipei will introduce policy positions, laws and regulations, and law enforcement activities.

2. Concentration in the Market

The major accountancy firms in Chinese Taipei are PricewaterhouseCoopers, Deloitte & Touche, Ernst & Young, and KPMG. These firms are also member firms of the “Big Four” international accountancy firms. The four major accountancy firms provide approximately 84% attestation of the financial reports of public companies in Chinese Taipei, of which 33% is attested by Deloitte & Touche, 20% by KPMG, 19% by PricewaterhouseCoopers, and 12% by Ernst & Young.

Deloitte Touche Tohmatsu (Chinese Taipei) was established on June 1, 2003 in a merger between Deloitte & Touche Taiwan (D&TT) and T N Soong & Co; the new firm was called Deloitte & Touche (D&T). Pursuant to the law, the new firm needed to file an application with the competent authority, the FSC, for review. On the other hand, KPMG merged with the Chinese Taipei member firm of Coopers & Lybrand on January 1, 1999; the new accountancy firm was named KPMG (Chinese Taipei).

Affected by the 2002 Enron Case, the Andersen Worldwide Organization, of which the US Arthur Andersen accounting firm is its member, was dissolved; its member accountancy firms fled worldwide. In 1985, Deloitte & Touche Taiwan (D&TT) was the member firm of the Andersen Worldwide Organization in Chinese Taipei; thus, it planned to merge with T N Soong & Co to establish the new Deloitte & Touche (D&T). Deloitte & Touche (D&T) became the largest domestic accountancy firm, and it is the only member firm of Deloitte Touche Tohmatsu in Chinese Taipei.

Pursuant to Article 11 of the Fair Trade Act, if any merger falls within any of the following circumstances, a notification shall be made to the FTC prior to the completion of the merger: (1) as a result of the merger the enterprise(s) will have one-third of the market share; (2) one of the enterprises in the merger has one-fourth of the market share; or (3) sales for the preceding fiscal year of one of the enterprises in the merger exceed the threshold amount publicly announced by the central competent authority.

In April 2003, the FTC decided that, after the above-mentioned merger, the new firm had a 42.1% market share in the attestation services for public companies. However, after the dissolution of the Andersen Worldwide Organization, in order to sustain its business, Deloitte & Touche Taiwan (D&TT) had to join another international CPA organization. This merger was not meant to restrict market competition, and the trading counterparts of the merged parties (attestation clients) still had a certain degree of market power in this industry; the clients were highly free to select accountancy firms and had the countervailing power against the merged accountancy firms; therefore, market competition was not impaired. Generally speaking, the overall economic benefits outweighed the disadvantages resulting from the competitive restraint; thus, pursuant to Paragraph 1, Article 12 of the Fair Trade Act, the merger was not prohibited.

Pursuant to Article 20 of the Certified Public Accountant Act, a CPA may act individually in establishing a single-person CPA firm, or two or more CPAs may act together either as co-located practitioners in organizing a co-location CPA firm or as partners in organizing a joint CPA firm, to engage in CPA practice. In addition, according to Articles 24 to 26 of the same Act, CPAs may establish an incorporated CPA firm to engage in CPA practice after applying to the competent authority for approval of registration. Currently, there are no incorporated CPA firms in practice.

According to the FSC's survey on CPA firm services, at the end of the year 2007, among the 854 CPA firms in practice, 123 firms had a total of 170 branches (one branch: 91 firms; two branches: 23 firms; three branches: 4 firms; four branches: 4 firms; five branches: 1 firm); in total, there were 1,024 business locations. There were 607 single-person CPA firms, about 71.1%, and 247 firms with two or more CPAs in the joint practice (partnership), about 28.9%. Recently, the trend in the numbers of single-person CPA firms over the past four years has shown a slight increase annually.

3. Regulation of Entry

3.1 *Quality Standards and Entry*

According to Article 5 of the Certified Public Accountant Act, a citizen of Chinese Taipei who has passed the CPA examination, holds a CPA certificate, and possesses the qualifications of a CPA may practice as a CPA. To successfully pass the exam, candidates need to pass each and all tested subjects. According to the Regulations for the Senior Examination for Professional and Technical Personnel, except for those who are disqualified for the examination pursuant to Paragraph 1, Article 8 of the Professionals and Technologists Examinations Act and Paragraph 1, Article 6 of the Certified Public Accountant Act, there are no regulations requiring a university degree, nor are there limitations on the number of qualifications granted.

The criteria for CPA practice registration in Chinese Taipei are, first, that one has to have at least two years of experience as an assistant in attestation work at a CPA firm; or, second, one has to have completed pre-professional training. To balance the above two criteria, make the pre-professional training more effective, and improve the quality of CPA practices, the FSC issued the Regulations for CPA Pre-professional Training and Continuing Professional Education. The CPA

pre-professional training is divided into two parts, namely, the courses and practical training. The courses shall be no less than 160 hours, and the required subjects shall be no less than 120 hours. As for the practical training, one must have at least one year of experience as an assistant in attestation work at a CPA firm or be proven to have other equivalent work experience.

To effectively advance the quality of CPA practice, the Regulations for CPA Pre-professional Training and Continuing Professional Education stipulates the minimum course hours per year and the total course hours of CPA continuing professional education. As for CPAs who audit and attest the financial reports of public companies, since their practices involve the public interest and are more influential, their minimum course hours per year for the CPA continuing professional education shall be doubled.

The National Federation of CPAs Associations shall regulate the educational institutions and the scope of CPAs' continuing professional education programs and report on this to the FSC. The course hours of CPAs continuing professional education shall be reported to and registered at the National Federation of CPAs Associations before the end of next January in a database. If a CPA fails to meet the continuing professional education requirement, the National Federation of CPAs Associations will notify the CPAs to make up for the required attendance within a specific period of time. If the required attendance has not been made up within the time period, the National Federation of CPAs Associations will notify the FSC to suspend the CPA from CPA practice. If the required attendance is not made up within one year of the date of suspension, the registration for practice will become void or will be revoked.

A foreign national may take a CPA examination in accordance with the law of Chinese Taipei. A foreign national who passes the examination and obtains a CPA certificate shall obtain permission from the FSC before engaging in a CPA practice in Chinese Taipei. In addition, a foreign national who has received permission to engage in a CPA practice in Chinese Taipei shall comply with the CPA-related laws of the Chinese Taipei and the articles of association of the appropriate CPA association.

3.2 *Exclusive Rights*

Pursuant to Article 37 of the Securities and Exchange Act, permission from the Competent Authority is required for a certified public accountant to audit and certify the financial reports of public companies. In addition, pursuant to Paragraph 2, Article 20 of the Company Act, where the amount of equity capital of a company exceeds a certain amount as specified by the central competent authority (companies with more than NT\$ 30 million of paid-in capital), the company shall first have its financial statements audited and certified by a certified public accountant pursuant to the auditing and certification rules as prescribed by the central competent authority.

4. *Regulation of Conduct*

4.1 *Advertising Restrictions and Price Regulation*

Article 10 of the Certified Public Accountant Act stipulates: (Paragraph 1) A CPA may collect reasonable remuneration for service provided, at a rate agreed upon with the client. (Paragraph 2) When deciding on the amount or rate of remuneration, a CPA shall give overall consideration to manpower and time requirements as well as the degree of risk involved in a given case, and may not use improper means to solicit business. (Paragraph 3) Rules governing the matters to be taken into overall consideration and the improper means referred to in the preceding paragraph shall be drafted by each CPA association and filed with the competent authority for

review and approval. The same applies in the event of an amendment. This article authorizes the CPA association to consider the factors for the amount or rate of remuneration. (As advised by the FTC, the current Certified Public Accountant Act has abolished the rules regarding the organizational charters of CPA associations that are required to specify the criteria pertaining to remuneration along with the maximum limits. This issue will be further explained in the following paragraphs).

In addition, Subparagraph 10, Paragraph 1, Article 46 of the Certified Public Accountant Act stipulates that a CPA may not advertise for promotional purposes that are not related to the commencement of business, office relocation, a merger, accepting client engagements, or the introduction of the CPA firm. In addition, based on materials issued by the International Federation of Accountants (IFAC), the Professional Ethics Committee of the National Federation of CPAs Associations issued the Statements on Professional Ethics for guiding members on their accounting practices. For example, CPAs may not use false advertisements to promote businesses or other improper means to solicit businesses; and, in regard to the remuneration, CPAs may not use improper means to cut prices to solicit business.

4.2 *Inter-professional Co-operation and Business Structure*

Article 15 of the Certified Public Accountant Act stipulates that CPA firms are classified into four types including a single-person CPA firm, a co-location CPA firm, a joint CPA firm, and an incorporated CPA firm. Besides, Articles 21 and 24 stipulate that, only CPA may establish a CPA firm. The laws do not regulate whether different professions, such as lawyers and CPAs, may establish inter-professional co-operations.

Article 39 of the Certified Public Accountant Act stipulates that a CPA may perform professional services related to accounting system design, management or tax consultancy. Article 47 stipulates that the CPA providing management consulting or other non-attestation services that affect his or her independence may not contract to perform attestation on financial reports.

According to Subparagraph 4, Paragraph 1, Article 10 of the Regulations Governing Information to be Published in Annual Reports of Public Companies, the conditions where a company shall disclose information on CPA professional fees include the following: (1) When non-audit fees paid to the certified public accountant, to the accounting firm of the certified public accountant, and/or to any affiliated enterprise of such accounting firm are one quarter or more of the audit fees paid thereto, the amounts of both audit and non-audit fees as well as the details of the non-audit services shall be disclosed. (2) When the company changes its accounting firm and the audit fees paid for the fiscal year in which such change took place are lower than those for the previous year, the amounts of the audit fees before and after the change and the reasons shall be disclosed. (3) When the audit fees paid for the current year are lower than those for the previous fiscal year by 15 percent or more, the reduction in the amount of audit fees, reduction percentage, and reason(s) therefor shall be disclosed. In addition, according to Subparagraph 6, Paragraph 1, Article 10 of the same Regulations, the corporate governance report shall include where the company's chairperson, general manager, or any managerial officer in charge of finance or accounting matters has in the most recent year held a position at the accounting firm of its certified public accountant or at an affiliated enterprise of such accounting firm, the name and position of the person, and the period during which the position was held, shall be disclosed.

5. Institutional Framework of Self-regulation

5.1 Application of Competition Law

Before the 2007 amendment, Subparagraph 6, Article 34 of the Certified Public Accountant Act originally read, “the articles of associations of a provincial or municipal CPA associations shall expressly set forth the following items: 6. specify the criteria pertaining to remuneration along with the maximum limits for CPA services.” As a result, the CPA associations of Taiwan Province, Taipei City, and Kaohsiung City all established a unified remuneration standard for members, and the standard proposal had to be submitted for the regulator’s approval. Since professionals cannot practice without membership in their own trade associations, the remuneration standard stipulated in the trade associations’ charters in fact decreased significantly, and equally important, even eliminated the possibility of price competition in the service market.

Since the remuneration standard is authorized by the law and has existed for quite a long time, to avoid the potential conflict in jurisdictions and uncertainty over laws, the FTC decided to consult with the competent authority, the Ministry of Finance (now this issue is regulated by the FSC) pursuant to Paragraph 2, Article 9 of the Fair Trade Act, before taking any formal actions against the CPA associations.

In 1999, the FTC met with the Ministry of Finance to discuss whether the fee standard in the trade association charter for accountants was in violation of the Fair Trade Act. Soon thereafter, the FTC concluded that enterprises may seek trading opportunities with a favorable price, quantity, quality, service, or other conditions, as this conforms to the legislative objective of the Fair Trade Act. The unified remuneration standard that was set in the articles of association of the CPA association restricted the CPA’s freedom to determine the prices of products or services. The CPA association had undoubtedly been engaging in concerted actions in violation of Article 14 of the Fair Trade Act. As a result, the FTC forwarded its formal opinions to the regulator as well as the CPA association to explain its position in its implementation of the Fair Trade Act. The FTC advised the Ministry of Finance to amend the relevant laws and required that the trade association delete all provisions for setting remuneration standards within a year.

By the end of the one-year period, the Ministry of Finance informed the FTC that it had requested the Securities & Futures Commission to amend the Certified Public Accountant Act, with the FTC’s previous opinions being incorporated. The CPA associations requested that their own members not continue following the regulations regarding the remuneration standard in December 2000 and January 2001, respectively. After the 2007 amendment, the Certified Public Accountant Act deleted the criteria pertaining to remuneration along with the maximum limits for CPA services.

Some have said that professional services provided by CPAs have a spillover effect. For example, an improper audit report may seriously damage the interests of creditors and the investing public, not only affecting the service providers and buyers (the companies). As a result, if a minimum remuneration standard does not exist, the buyers (the companies) will simply have an incentive to go for a lower price but have no incentive to seek quality. In fact, this effect could be internalized. If the company wants to raise more debt or sell more shares, it needs a CPA who is trusted by the creditors and the investing public; in other words, a CPA that provides quality service rather than offers a low price. As for the statement that “a fixed remuneration will guarantee the service quality,” it is unclear whether there is a causal relationship between the two. More and more empirical studies point out that after the standard for CPA remuneration is lifted,

there is actually an increase in competition in the auditing market. On the other hand, brand reputation and the extent of industry specialization can sustain an auditor's market share in the competition environment. The market trading order is not distorted or in disarray due to a certain level of cut-price competition.

Pursuant to Subparagraph 9 and 10, Article 46 of the Certified Public Accountant Act, "a CPA may not engage in the following conduct: ... 9. Solicit business by improper means. 10. Advertise for promotional purposes not related to commencement of business, office relocation, merger, accepting client engagements, or introduction of the CPA firm." Advertisements play an important role in major economic activities. Through publishing advertisements, information related to new products, services, and providers can be introduced to customers and get the attention of the public, and it can also encourage innovation and new entrants. If the advertisements for professional services are harshly restricted, the general public will have no information on where to get professional services or how to determine the fee. Thus, in principle, the relevant governmental agencies cannot impose unreasonable restrictions on advertisements for professional services. Meanwhile, in order to protect the public interest, professionals shall comply with the relevant regulations not to engage in false, misleading or deceptive advertisements.

5.2 *Regulatory Oversight*

According to Article 3 of the Certified Public Accountant Act, the competent authority under this Act is the FSC. The FSC is an independent commission. In order to enhance CPA responsibility, Article 63 of the same Act stipulates that where a CPA shall be subject to disciplinary proceedings, the competent authority with the relevant jurisdiction, the national federation, or an interested party may report the pertinent facts and evidence to or forward the matter to the CPA Discipline Committee and petition the latter to take disciplinary action.

In addition, Article 53 of the Certified Public Accountant Act stipulates that the competent authority for civic organizations, the Ministry of the Interior, shall serve as the competent authority for CPA associations. However, the entities forming the membership thereof shall operate under the direction and supervision of the competent authority for CPAs as set out in Article 3.

Besides the Certified Public Accountant Act, CPAs shall also comply with the Statements of Auditing Standards, the Statements on Professional Ethics, the Criteria Governing Approval for Auditing and Certification of Financial Reports of Public Companies by Certified Public Accountants, the Regulations Governing Auditing and Certification of Financial Statements by Certified Public Accountants, and relevant laws and regulations stipulated by the competent authorities. The FSC and its affiliated institutions (e.g. the Taiwan Stock Exchange Corporation, and the GreTai Securities Market) also randomly check the audit working papers regularly or ad hoc, in order to enhance the supervision of CPA practices.

The fact that industrial competent authorities allow professional self-regulatory organizations to set remuneration standard does not prove that such activity is necessary for the quality guarantee. Regardless of whether the mandatory or discretionary remuneration standard set by self-regulatory organizations is required by law or is self-imposed, it impedes competition and is against the public interest. Thus, if the price regulation imposed by self-regulatory organizations restricts competition, it shall be subject to antitrust scrutiny.

In July 1997, the CPA Association of Taipei City requested that certain CPAs undertake not to certify financial reports for some specific clients, because the remuneration the CPAs charged the publicly-owned enterprises for financial attestation services was lower than the minimum remuneration regulated by the CPA association. It was said that CPAs were requested to issue a letter of undertaking in exchange for not being disciplined. After investigation, the FTC concluded that the CPA Association of Taipei City restricted the enterprises from engaging in price competition in the relevant market, which was likely to impede competition. As a result, it violated Subparagraph 4, Article 19 of the Fair Trade Act.

6. Accounting Standards

Currently, Chinese Taipei applies a set of its own Statements of Accounting Standards. In order to decrease companies' costs of raising funds in the international market and to provide more accountable financial information to investors, the FSC has always promoted the bridging of domestic accounting standards with International Financial Reporting Standards (IFRS). Since 1999, Chinese Taipei's accounting standards have been stipulated or modified according to the IFRS. Generally speaking, there are no substantial differences between the domestic accounting standards and the IFRS. In the future, Chinese Taipei will continue to pay close attention to developments in the IFRS in order to bring its accounting standards into line with the international standards.

As for the accounting standards in Chinese Taipei, the Financial Accounting Standards Committee of the Accounting Research and Development Foundation is in charge of the stipulation, modification, and interpretation of our Statements of Financial Accounting Standards. The accounting standards they issue are considered to be the Chinese Taipei's Generally Accepted Accounting Principles. The commissioners of the Financial Accounting Standards Committee come from industry, government, and academia. The twelve commissioners consist of six from academia, four CPAs, one representative from the FSC, and one representative from the Ministry of Economic Affairs.

EGIAN

1. Introduction

EGIAN welcomes the roundtable on issues related to Competition and Regulation, including choice, which are vitally important from a public interest perspective and for the future of the accountancy profession.

EGIAN's membership is made up of 21 global organisations which offer audit, accounting and business advisory services. The combined turnover of the members is US\$ 34 billion.

2. Our overall views

We believe there is a strong need for action on issues related to competition and choice with regard to the statutory audit of listed companies in OECD countries.

In a truly competitive market the statutory audits of listed companies should be subject to re-tendering at regular intervals with full and fair competition between firms qualified to undertake them. In the UK, for example, the audits of the top 250 listed companies have been tendered in the past only, on average, every 35 years. It should be noted that the public/government sector is obliged to tender for audit assignments on a regular basis. The result, at the national and the international levels, is that the spread of work goes much wider than the largest four firms.

A review is needed of how to ensure regular tendering and full and fair competition when audits are subject to tender in the various OECD countries having regard to the different approaches adopted in relation to the appointment and reappointment of statutory auditors in different countries, regarding, for example, the length of the term of appointment and how the auditor is chosen.

We believe there is currently a far higher degree of concentration than is necessary, or indeed warranted, amongst the largest four firms with regards to the audit of listed companies and that this is primarily caused by demand side considerations.

If, as would be perfectly feasible today, a far higher proportion of the audits of listed companies were undertaken by firms other than the largest four firms, this would create a more healthily competitive market, and in line with general expectations regarding more competitive markets, such a market would be likely to be more innovative and more responsive to the needs of the primary users of the audits of listed companies, namely the shareholders in those companies.

We note that there seems to be a less high degree of concentration with regards to the audit of public interest entities in at least some OECD countries and consider a careful study should be undertaken to better understand why this is so and whether any lessons can be learnt from the public sector where, as noted above, regular tendering takes place.

We believe it would be helpful to understand better the full nature of the links between listed companies and their auditors: these would include circumstances where members of the board

and, especially the audit committee, had been employed by or were partners in the respective audit firms. The nature and extent of non-audit services provided by the auditor and the role of the audit committee in approving these services should also be examined.

It would be helpful to have a better understanding of the knowledge of firms, other than the largest four firms, possessed by board members of, and institutional investors in, leading listed companies. Consideration should also be given as to how this could be improved. In this context, the proposed issuance of the Audit Firm Governance Code in the United Kingdom is worthy of consideration.

We are strongly opposed to the imposition of anti-competitive covenants in bank loan agreements which we understand happens in certain instances restricting the choice of auditor to a very limited number of firms even though others may have all the capabilities necessary to undertake the audit.

We note that one of the few OECD countries without a very high degree of concentration is France where a system of “joint audit” is mandatory for listed companies. Consideration should be given as to whether there would be merit in introducing a joint auditor rule in other countries in certain circumstances.

On the supply side, we are not opposed to measures enabling firms to be majority owned by external providers of outside capital but would note that it is already possible for outside owners to provide a substantial minority share of the total capital in the firm and that this possibility has not been taken advantage of in the case of any large firm, network or alliance. Moreover, if a majority of the capital of a firm were to be externally owned, it would be important for there to be effective safeguards relating to the reputation and independence of the firm which would need to address who could have majority ownership and the relation between the owners and the auditors in the firm.

We believe the introduction of proportionate liability, replacing joint and several liability in those jurisdictions where the latter prevails, would be both fairer and may be a positive factor in creating a more level playing field between firms in the listed company audit market. Caution would be needed, however, before introducing absolute caps on liability to ensure that they did not just favour the four largest firms if they were unduly high.

We note that there has been discussion of how to improve competition and choice in the audit market for some years now by reference to the introduction of market-based reforms and that these have not yielded any significant improvements. It may be therefore necessary now to consider alternative approaches.

REGULATORY WORKING GROUP

The Regulatory Working Group (“RWG”) of the Global Public Policy Committee is pleased to contribute to the OECD’s Working Party No. 2 on Competition and Regulation (“the Working Party”) in connection with its review of competition and regulation in accountancy. The RWG brings together senior partners from the world’s six largest networks of accounting firms (i.e. BDO, Deloitte, Ernst & Young, Grant Thornton, KPMG and PricewaterhouseCoopers) to discuss professional regulatory and legislative issues that contribute to the efficient functioning of global capital markets.

This note seeks to provide some tangible examples of issues that may represent barriers to market access or affect the competitiveness of the accountancy sector. We acknowledge that not all of these countries are current members of the OECD although some have indicated an interest in becoming members. For issues in those countries that do not fall into either category, the identified barriers are purely for informational purposes.

We have identified examples of regulations and other matters which may represent barriers to market entry or have an effect on competitiveness under each of the five sub-headings identified by the OECD Secretariat, namely:

- Quality standards and exclusive rights
- Quantitative restrictions
- Advertising restrictions
- Price regulation
- Rules on inter-professional co-operation and business structures

We have also included a separate heading of “Other Issues” to the extent that a regulation or market practice represents a barrier to market access or affects competitiveness but does not sit comfortably under one of the afore-mentioned headings.

1. Quality standards and exclusive rights

1.1 Application of International Standards

One of the goals of the audit profession is to help safeguard the integrity of the capital markets and the wider corporate community through the provision of high-quality audits and the promotion of transparent financial reporting for the benefit of investors across the globe.

Given the significant proportion of listed company audits that are performed by the six largest networks, we are strong supporters of the global adoption of International Financial Reporting Standards (“IFRS”), International Standards on Auditing (“ISA”) and the Independence section of the Code of Ethics for Professional Accountants issued by the International Ethics

Standards Board for Accountants (“IESBA”). We believe global convergence to international standards brings significant benefits to investors including greater transparency in financial reporting and greater consistency in audit quality and independence whilst at the same time eliminating duplication and overlap in auditing and independence requirements from one country to the next. The proliferation of national standards creates unnecessary complexity in the marketplace and can act as a barrier to entry for smaller audit firms that do not have the geographical scale of the larger firms.

However, there is a concern amongst smaller firms that the adoption of these international standards will result in a disproportionate increase in their costs and put them at a competitive disadvantage when compared to the largest networks who can take advantage of economies of scale.

For audits of smaller listed and unlisted companies, the application of ISAs can be tailored to fit the nature of the audit engagement being performed due to the scaleable nature of ISAs and the scope they allow for the application of professional judgement to the relevant audit risk. Accordingly, if ISAs are adopted as national standards to apply to all audits, audit firms will need to develop policies, audit methodologies and training programs based on only one set of standards rather than on two or more sets of standards. Thus, adoption of ISAs may in fact be beneficial rather than detrimental to smaller firms so their concerns are largely unfounded.

However, it is true to say that some auditor independence rules (notably partner rotation requirements for audits of Public Interest Entities) will disadvantage the very smallest audit firms with limited numbers of partners.

1.2 Restrictions on training for a foreign accountancy qualification

In a few countries it is not possible for foreign professional bodies to provide training to local accountants with a desire to obtain a professional qualification from that foreign professional body.

In India, the professional Institute of Chartered Accountants has forbidden established professional bodies from the USA and UK from providing training services to Indian nationals.

2. Quantitative restrictions

2.1 Restrictions on the number of partners, audits per partner and sector-specific audits

In India, audit firms may have no more than 20 audit partners (although recent steps have been taken to eliminate this rule). In addition, no audit partner may perform more than 30 audits. In certain sectors, the number of audits is further restricted. For example, the total number of insurance company audits that an Indian firm can perform is limited to 2. The total number of bank audits is limited to 5.

There are also restrictions on the number of trainees an Indian audit firm can employ although these have recently been relaxed.

In the Ivory Coast, limits on the number of audit engagements per partner are being discussed as a way to enlarge the client portfolios of smaller audit firms. However, these are not yet in local law.

In Morocco, local professional rules fix the minimum percentage of the total hours on an audit engagement that must be spent by the audit partner. This has the effect of limiting the number of engagements an audit partner can perform.

All of the above restrictions are premised on audit quality but, in reality, insufficient regard is paid to their real effect on audit quality. They also interfere with the operation of the free market and are used to artificially allocate audit work across a larger pool of individual auditors than might be naturally selected by the market.

2.2 *Compulsory joint audits*

A limited number of countries have introduced a legal requirement for certain companies to have two separate statutory auditors.

We believe that joint audits are more costly than sole audits because, inevitably, there is a degree of duplication of audit work since both audit firms need to retain their own set of audit working papers to substantiate their opinion on the financial statements.

In situations where there is a significant difference in size between the two auditors, the large firms (which are most exposed from a liability standpoint) will often feel it necessary to repeat elements of the work of a much smaller audit firm, especially in higher risk areas. This also increases costs.

The most vocal proponents for joint audits are found in France. Other countries with a joint audit requirement include Algeria, Morocco, the Ivory Coast and Tunisia reflecting a French influence. In these countries the joint audit requirement applies to companies listed on the local stock exchange but is also, in some cases, extended to private banks and insurance companies. Joint audits are also required for large banks in the Congo and Saudi Arabia and required for listed company audits in Kuwait.

2.3 *Artificial time restrictions for audit engagements*

1. In Slovenia, there is a requirement that at least 15% of the time spent on an audit must be carried out by the certified auditor who signs the financial statements, 60% of the time by assistants with more than two years experience and a maximum of 25% of the time by other personnel. Recent proposals from the Slovenian Public Oversight Board are suggesting minimum hours for audits as well as a limit on the number of audits per partner.

2.4 *Standard and publicly disclosed charge-out rates*

In Greece, there are similar requirements as in Slovenia in that an audit partner should account for at least 20% of total audit hours. However, in addition, there is a standard average charge-out rate per audit firm per hour which is determined by each firm each year.

3. *Advertising restrictions*

3.1 *Restrictions on the use of the network name*

In Algeria and India, most statutory audit firms with an international affiliation are unable to use their international network names. Turkey has restrictions on the use of the international network name on printed materials, publications and the like.

3.2 Other advertising restrictions

There are general prohibitions on advertising at least in the following countries - Ghana, India, Kenya, Nigeria, Pakistan, Rwanda, Tanzania, Turkey and Uganda.

In other countries, there are some restrictions on statutory auditors advertising for audit services such as France and the Czech Republic. However, as these apply to all participants in the market, they are not seen by local practitioners as limiting competition.

4. Price regulation

We are not aware of any cases where the fees for statutory audits are set by law or regulation although, as noted above, some countries require the disclosure of average charge out rates.

5. Rules on inter-professional co-operation and business structures

5.1 Access to the profession

In every Member State of the EU, entry to the accounting profession (and the ability to perform statutory audits) is regulated by law. The EU Statutory Audit Directive 2006/43/EC (“the Directive”) seeks to provide minimum harmonisation, inter alia, of educational qualifications, examinations of professional competence and theoretical knowledge, practical training requirements and continuing professional education across the EU.

We believe that the public interest role performed by statutory auditors warrants a degree of control over entry to the profession and the setting of appropriate standards for those already admitted to the profession. However, it is important to ensure that these rules and standards are consistent from one jurisdiction to another so as to facilitate mutual reliance. The absence of such reliance can result in the erection of further barriers to market entry and competition.

We welcomed moves by the European Commission in Article 3 of the Directive to liberalise ownership restrictions over EU audit firms. Before adoption of the Directive, many Member States required local audit firms to be owned, exclusively, by locally qualified auditors. Following implementation of the Directive, it has become possible for a local audit firm to be controlled by a majority (i.e., 50% plus 1) of auditors qualified anywhere in the European Union.

This said, we are aware that some Member States have implemented stricter requirements. For example, in France, 75% of the voting rights of an audit firm and 75% of the members of its management body must be statutory auditors registered in France. Similar requirements exist in Slovenia and Lithuania. This could be viewed as overly restrictive.

6. Other issues

6.1 Contractual restrictions on using audit firms outside the Big 4

In certain countries including the USA, UK, Germany, Spain and Finland we have encountered clauses or requirements in contractual agreements between companies and their banks or underwriters that state that only the Big 4 audit firms can provide audit services to the company. In some cases, higher interest rates will be applied if these clauses are breached.

These contractual limitations can distort the market for audit services by excluding certain audit firms from competing in this market segment even if these firms have the necessary size,

sector-specific skills and geographical coverage to perform the audit in question. Such clauses could also create the perception that only the largest audit firms have the necessary attributes to audit financial services companies or large corporations, thereby potentially limiting competition.

Stakeholders should consider appropriate market-based solutions to address the impact that these contractual clauses may have on competition

6.2 *Short partner rotation periods*

Most countries have come to a consensus that periodic rotation of the lead engagement partner together with a limited number of other partners who play a substantial role in the audit is the most effective way of enhancing auditor independence without undermining audit quality. The normal rotation period is seven years (as required by the EU Statutory Audit Directive for auditors of Public Interest Entities). In addition, there are “cooling-off” requirements that prevent an audit partner from returning to the audit engagement until after a specified period, usually two years.

The advantage of partner rotation is that it addresses perceived independence concerns associated with over familiarity with senior management whilst retaining the cumulative knowledge of an audit client within the audit firm. This has a positive impact on audit quality.

However, some countries have adopted partner rotation periods that are significantly shorter than seven years and/or applied the partner rotation requirement to all statutory audits. In Greece, the lead audit partner must rotate after four years and cannot return until a three-year “cooling off” period has passed. Very short partner rotation periods have an adverse and disproportionately large effect on smaller audit firms with a limited number of partners. The impact of short partner rotation periods on smaller audit firms is no different to forcing the entire audit firm to resign from the audit (see Section (b) below).

In Italy, in addition to nine year audit firm rotation, the lead audit partner must rotate after six years. This is particularly difficult since the incoming lead audit partner will only have a maximum of three years on the engagement.

In Lithuania, an audit opinion must be signed by both the lead audit partner responsible for the audit and the head of the audit firm. As the result of its interpretation of the EU 8th Directive, Lithuania requires both the lead audit partner and the head of the audit firm to rotate every five years for Public Interest Entities and seven years for other companies. This creates significant practical problems for the management of Lithuanian audit firms.

In South Africa, the lead audit partner is required to rotate after five years on every statutory audit. This is particularly challenging for smaller audit firms with a limited number of partners and staff.

In Turkey, in addition to mandatory audit firm rotation, both the lead audit partner and the entire audit team are required to rotate every five years for the audits of banks and insurance companies.

In Spain, there is a requirement for the entire engagement team to rotate every seven years on audits of Public Interest Entities.

In Bolivia, in addition to six-year mandatory audit firm rotation, the individuals that comprise the audit engagement team are required to rotate after three years of continuous audit service. If it is not possible to rotate the entire team, then the audit firm has to resign.

6.3 *Mandatory audit firm rotation*

A number of countries require the statutory audit firm to rotate after a predefined period. Proponents of audit firm rotation believe that periodic rotation improves auditor independence by reducing the risk that an auditor becomes too familiar with the senior management of an audit client with a consequent reduction of his or her objectivity. Some proponents also claim that mandatory audit firm rotation reduces concentration and opens up opportunities for smaller audit firms to secure audits of clients previously served by larger firms.

However, most academic experience and empirical data shows that mandatory audit firm rotation increases audit costs, undermines audit quality and actually increases concentration in the audit market. Experience in Italy, one of the few countries that has had a firm rotation requirement for listed companies for over 30 years, shows that on average audits tend to rotate from smaller firms to larger firms rather than the other way around. The Italian rotation requirement applies to all listed company audits and is currently for a nine-year period.

Other countries that currently require audit firm rotation include Turkey (seven to eight years for public companies, banks, insurance and energy sector companies), Poland (five years for insurance companies), Angola (for banks), Morocco (six years for banks), Muscat (four years for listed companies), Qatar (five years for listed companies), Saudi Arabia (five years for listed companies), Uganda (four years for banks and insurance companies), Tunisia (five years for all audits) Belarus (three years for banks), Bolivia (six years for banks and financial entities and three years for insurance and reinsurance entities), Ecuador (five years for banks, insurance and finance companies) and Paraguay (three years for banks, insurance and listed companies).

6.4 *Unlimited auditor liability*

One of the most significant barriers that prevents smaller audit firms from entering the larger listed company audit market is unlimited auditor liability. Many larger listed companies can have market capitalisations measured in tens of billions of US dollars. In the event of a sudden fall in their share price any resulting litigation invariably targets the auditor for professional negligence and the amounts claimed can be significant. As a result, smaller audit firms are deterred from entering or expanding their presence in the larger listed company audit market.

The European Commission expressly identified this challenge in its Recommendation to limit auditor liability (C (2008) 2274) of 5 June 2008. In this Recommendation the European Commission stated “since unlimited joint and several liability may deter audit firms and networks from entering the international audit market for listed companies in the Community, there is little prospect of new audit networks emerging which are in a position to conduct statutory audits of such companies”.

To put this exposure into context, a study for the European Commission on auditor liability identified a total of 68 outstanding matters against the six largest firms in the EU at 31 October 2005 in excess of \$10 million and with an aggregate exposure of \$14 billion. Data collected at 31 March 2009, on an identical basis to the 2005 data, shows a total of 116 outstanding matters in excess of \$10 million and with an aggregate exposure of \$28 billion. The volume of claims and monetary exposure to these claims has doubled in less than four years.

Similar data submitted to a study for the US Treasury in 2007 indicated an aggregated exposure against the six largest audit firms in the USA of \$140 billion. This is approximately 37 times their aggregate capital.

Until such time as reasonable limits are applied to auditor liability, it is unlikely that the middle-tier audit firms will be keen to audit the very largest listed companies. To enter this market further exposes these firms to the risk of significant litigation and places their future survival at risk. Our preferred solution is proportionate liability combined with a mechanism that limits absolute exposure based on a multiple of the audit fee. This provides the flexibility to allow liability limitations to extend to smaller audit firms since fixed caps, whilst easier to apply, could favour larger audit firms at the expense of smaller firms.

6.5 *Extra-territorial application of independence codes*

A number of countries, notably France, Italy and the USA, have Codes or Rules governing auditor independence that apply to audit firms in foreign countries. The effect of such codes is to prevent audit firms in third countries from providing services in their home countries that are permitted by local law. Extra-territorial application of independence rules considerably increases the complexity of performing cross-border audit work and is another barrier that smaller audit firms must overcome. The cost of monitoring and complying with such independence rules is, for them, disproportionately large when compared to the largest networks of audit firms.

6.6 *Audit firm registration*

There is a general requirement in an increasing number of countries, notably the EU Member States, Japan, Canada, South Africa, Switzerland and the United States, for statutory auditors and audit firms to register with their local independent oversight authorities. To the extent that an audit firm has a domestic audit client with shares listed on a regulated exchange in a foreign country, that audit firm may also be required to register in that foreign country.

We support the basic principle of audit firm registration. In theory, there is no reason why the act of registration should be a problem for any audit firm. However, if the registration process becomes overly complex it can, inadvertently, act as a barrier to wider competition. Registration can also create some real challenges where audit firms have to register in foreign countries particularly when their domestic laws conflict with the laws of the foreign country in which they have to register.

The act of registration for foreign firms can be extremely time-consuming when the process becomes overly complex. More importantly, the registration requirement can lead to concentration in the market for audit services because smaller audit firms with just one or two local clients with shares registered in a foreign jurisdiction elect to resign as auditors rather than incur the cost of foreign registration and the administrative burden and financial costs of remaining registered.

Conversely, some audit firms have felt it necessary to register with a foreign oversight body even though they had no audit clients with shares registered in that country. This was a defensive move in the event that they were asked to propose on an audit of such an entity in the future.

The absence of such a foreign registration would almost certainly rule out that audit firm from being in a position to propose for an audit of a domestic company with shares registered in that foreign country given the amount of time needed to process a registration application.

6.7 *Audit firm inspection by foreign regulators*

The act of registration referred to in section (f) above also requires an audit firm, inter alia, to accept (subject to any local legal impediments) inspections in their home country by a foreign

inspector and this raises the possibility that registered firms may be subject to multiple and overlapping inspection regimes. This is currently the case for non-US audit firms that are registered with the PCAOB in the US and, absent a political solution (e.g. mutual recognition of home country oversight regimes), could be expanded to a significant number of audit firms around the world.

Subjecting audit firms to multiple inspections (i.e., once by their home regulator and again by one or more foreign regulators) is costly. It also acts as a strong disincentive to smaller audit firms to wish to propose for the audits of companies with listings on regulated exchanges of a foreign country. If national audit oversight authorities were prepared to place reliance on the inspections performed by their foreign counterparts around the world, much of these problems could be overcome.

6.8 *Unreasonable reporting deadlines*

The new audit law in Kazakhstan, which came into effect on 9 March 2009, requires auditors to meet specific deadlines set by the financial sector regulator for filing their statutory audit opinions. However, there are no equivalent obligations on companies to prepare their financial statements by a specified date. This can result in an audit firm being unable to comply with its legal obligations, through no fault of its own, when a company fails to prepare its financial statements and submit them for audit in a timely manner.

SUMMARY OF DISCUSSION

The Chair, Alberto Heimler, pointed out that according to many commentators accounting standards have had some influence on the evolution of the economic crisis. Also there has been some discussion in recent years on the widespread use of fair value accounting and its impact on the financial crisis. These were some of the reasons for deciding to have a roundtable discussion on accounting. Most country submissions, however, did not take up these issues thoroughly.

Working Party 2 dealt with the professions a number of times, most recently in 2005 when there was a roundtable on the health professions and in 2007 when there was a roundtable on the legal professions. What characterises the accounting profession, however, is that it is the only profession where there are issues of genuine market power. The Big Four exist only in accounting, more precisely, in auditing services. Nothing comparable can be found in other professions (except perhaps for notaries, but there the market power follows mainly from entry regulation). What is so special about auditing that all over the world 70 - 90 % of the market belongs to the Big Four firms? Is it something structural in the market for auditors or is it just by chance that we have these very concentrated market structures? A number of submissions dealt with this, notably those of the United States and the European Commission. These submissions will be discussed first.

After that, the issue of conflict of interest, and in particular the fact that an auditing firm cannot be owned by commercial interests, will be addressed. Some submissions have suggested that ownership rules may be an additional reason for high concentration.

All other points that will be addressed today are much more standard: barriers to entry, restrictions on advertising, and price regulation. These restrictions exist to varying degrees in the different jurisdictions, but generally there are less restrictions than in other professions. The Chair suggests that a reason for this could be that market power already originates from the concentrated market structure, and there is not much need for additional restrictive regulation.

Market developments

The Chair noted that the U.S. submission addresses the reasons for the concentrated market structure, while also providing an assessment of the degree of market power that is actually exercised in the U.S. market. According to this submission, in the late 1980s there were eight major accounting firms that provided few services other than auditing. By 2003 there were only four firms that audited 99% of large public companies and that derived significant portions of income from non-auditing services. The Chair asked the U.S. delegation whether this consolidation can be explained by some sort of leverage from auditing services to consulting or by the characteristics of the auditing profession such as reputation and liability insurance.

A delegate from the United States explained that the answer is not related to leverage, but to characteristics of the profession itself. Reasons for consolidation were analyzed by the U.S. Government Accountability Office. The main reasons were that accounting firms (1) needed to grow in order to keep up with their clients; (2) wanted to take advantage of economies of scale, for example to handle large amounts of data; (3) had to expand industry-specific knowledge and

technical expertise; and (4) had to increase the capital base to spread risk. Accounting firms need to be big in order to compete. As an example: when Arthur Andersen left the market in 2002, 87% of its clients went to the Big Four firms. The bigger the client, the more chance there was of going to a Big Four firm.

The Chair noted that in the EU, Article 31 of the Directive on Statutory Audit identifies national liability rules as one of the major justifications for market concentration. A public consultation on the role played by national liability rules was launched in January 2007 and a recommendation was issued in June 2008. In addition, the European Commission identified conflict of interest rules on ownership as an additional justification for concentration. A public consultation on conflicts of interest was launched in November 2008. A summary report will be published in July 2009. The Chair asked the EC delegation whether it could anticipate some of the results of this consultation. Further, he asked what are the most common justifications for the strong concentration in European audit services: national liability rules, ownership rules, or something else?

A delegate from the European Commission stated that the 2006 Directive replaced a directive from 1984, in order to enhance confidence in the market after Enron and other scandals. The 2006 Directive calls for independent public oversight instead of self-regulation, including possible sanctions. Also there are rules on independence and ownership. The EC recommendation on liability was adopted in June 2008, after a study by London Economics. Liability risks prevent new players from entering the market and are a factor for concentration. The consultation on ownership rules (conflicts of interest) followed a study by Oxera. The public consultation addressed the current regulation of ownership and other possible catalysts that the EC could deal with in order to prevent further concentration. Obstacles to access to the international audit market include: brand and perception of reputation; expertise of staff; differences among the international reach of firms; and differences in national requirements, preventing accounting networks to integrate further.

The Chair asked whether there is a year by which Member States have to comply with the provision on independent public oversight.

In response, the European Commission stated that the deadline for transposition of the Directive was June 2008. Now it has been transposed in 21 Member State. Nevertheless, the majority of the remaining Member States already has the public oversight in place.

The Chair turned back to the United States. A 2008 report, published by the U.S. Government Accountability Office, suggests that the increase in concentration of the audit services industry has not significantly affected the audit fees for large public companies. These big clients are most at risk for price increases because of their reluctance or inability to use midsize accounting firms. This may be true, but what is the price charged by the smaller competitors? Is it significantly lower than that charged by the big four?

A delegate from the United States noted that price competition is not the main issue. Large company clients choose Big Four firms because these firms have the necessary resources and industrial experience. A 2003 report from the Government Accountability Office highlights the differences between Big Four and second-tier firms. Big audit clients do not switch to a smaller firm because of lack of resources, reputation, the fact that litigation and insurance costs act as a barrier to entry for smaller firms, and because raising capital is a challenge for smaller accounting firms.

General discussion

The Chair invited Mike Starr to give a short presentation. Mr. Starr is the Chief Operating Officer of Grant Thornton International (GTI) and Chairman of the Regulatory Working Group of the Global Public Policy Committee. This committee is comprised of senior partners from the six largest global accounting networks. As an introduction, Mr Starr presented some background information concerning GTI. Considering that GTI is a large organisation with member firms worldwide, he suggested the term 'second tier firms' is misleading and inappropriate.

He noted that the market is complex. Regulatory frameworks range from virtually no oversight to self-regulation to multiple regulators. This regulation differs from country to country and even within a country. For example, in the U.S. there is no national license, but CPAs are licensed in each state. Also the entities receiving the services are regulated regarding the types of accounting services they are required to have or can select. As a result, sometimes GTI cannot be used. Regulatory requirements cover both individual accountants in private and public sectors (auditors, preparers, directors) and accounting firms (partner numbers and qualification, licensing and names).

Solutions for these inconsistencies across borders include the adoption of international standards to improve mobility and expand the pool of professional accounting talent, and mutual recognition between oversight regimes. As regards the former, Mr Starr stresses the importance of the convergence of educational standards and entry and licensing requirements, the International Financial Reporting Standards, the application of auditing/assurance standards (ISAs) in every country, and ethics including independence and provision of non-audit services to audit clients. As regards the second, he noted that when independent regulators do not recognize each other, competition is limited. There should be more co-operation between regulatory bodies.

Mr. Starr subsequently noted that, although concentration is a fact, there is still competition. Moreover, the concentration is limited to a very small segment of the market for audits of publicly traded companies. Concentration has arisen out of a variety of market needs and regulatory actions. For example, liability issues were of importance for GTI in attracting only 20% of their then size of people from the former Arthur Andersen network. More generally, exposure to unlimited liability can pose a barrier to entry and could cause further consolidation in the larger public company audit market. Solutions include a system of proportional liability with an appropriate cap and prudential supervision especially with regard to extra territorial impacts of proposed enforcement actions. GTI would welcome efforts by regulators and market participants to encourage greater participation in discussions, but often they are excluded. As to the statistic mentioned earlier by the U.S. delegation: former Arthur Andersen clients mostly switched to one of the Big Four firms because they followed the accounting partners who themselves often moved to Big Four firms.

Market-based solutions to concentration could include audit firms outside the Big Four communicating their capabilities and target markets; regulators publicizing the audit capabilities of non-Big Four firms; audit committees being more attuned to capabilities; and investors and other influencers being more encouraging to companies to engage non-Big Four firms. Mr. Starr observed that size does not equate to quality, although accounting firms need to have a 'critical size' in order to audit some of the largest international companies. Outside of the Big Four, there are other accounting firms with global networks and high quality of services.

With regard to the need for other 'public interest' regulation, Mr Starr noted that indeed information asymmetries between accounting professionals, clients and market participants

should be addressed. However, some parts of the regulatory structures are not in the public interest and are acting as barriers, for example rules on pricing, advertising, and the number of partners. He suggested a need for market-based solutions. Market confidence and audit quality are critical success factors.

The Chair invited the next speaker, Nicolas de Paillerets of France Telecom. Mr. De Paillerets noted that he represents a buyer of audit services. France Telecom recently finished a bidding procedure for the next six years of auditing. Furthermore, France Telecom recently participated in an EC consultation on audit firms' control structures. He pointed out that he is not an expert in regulation or competition. He suggested that when choosing an auditor, price is not a distinctive element, but global reach & competence are. Therefore France Telecom looks for Big Four firms. According to French regulation, two audit firms are needed. Quality criteria that impact auditor's choice by the audit committee include independence (capacity to challenge the management), the industry competence of the audit firm, and the capacity of the lead partner to interact properly with local offices (global reach).

Subsequently, Mr. De Paillerets commented on the necessity of various forms of regulation. As to entry regulation, although quality standards are potential barriers, there is a need for international auditing standards (ISAs) subject to appropriate oversight & endorsement mechanisms of the standard setting. Also the need for public oversight is obvious, but there must be co-operation between the various supervising bodies. Exclusive rights should be limited to attest work and the legal environment that applies in a particular country, i.e. the 'public role' given to accountants (such as preparing tax returns or equality between shareholders etc.). He warned that a full liberalisation of capital ownership rules may not deliver the expected results, if there are no safeguards for independence or because of a higher legal risk perceived on attest work vs. non audit services.

With regard to market conduct regulation, a prohibition of contingent fees is justified in order to maintain independence. Advertising restrictions are not in the public interest. Generally, there is little competition on fees levels : In the telecom industry annual audit fees vary between 0.05 and 0.1% of revenues; the limitations on providing non-audit services to audit clients have facilitated an increase in audit prices, but within acceptable limits; although interesting, the required publication of audit fees by listed companies, may have an adverse effect on competition on fees.

Moving on to the institutional framework of professional oversight, again the need for co-ordination among regulatory bodies is stressed : There is still a risk of an uncoordinated approach to penalties that may lead to a reduction in the number of market players as was experienced with the Andersen case (penalising firms instead of the individuals involved in an audit). It is equally important to find the right balance between (rules on) independence and the prevention of conflicts of interest: if there is a consensus that auditing and consulting services should not be combined for an audit client, regulatory overkill must be avoided (for ex. in France there is a cooling-off period of two years)..

Finally the application of competition law is mentioned In short, a distinction must be made between local markets (SMEs, SOHOs) and the global market. At the global level, there indeed are a limited number of players and the question may be whether those players unduly leverage this situation to extend their share of the local markets. Perhaps it would also be interesting to analyse whether in other geographic areas new organisations are emerging, for example in China and India, and whether this could affect competition.

The Chair asked Mr. Starr about the size of the liability risk for auditing firms. **Mr. Starr** explained that this risk varies from jurisdiction to jurisdiction. In many countries, there is still unlimited liability, such as in the U.S.. The relative liability risk compared to the reward (the audit fee received) is sometimes out of control. Moreover, there is a worldwide trend for litigation involving auditing firms: there are collective actions in Europe, class actions in Asia, and large lawsuits in Australia. Unlimited liability is a clear barrier to entry.

Entry restrictions

Moving on to entry restrictions, the Chair observed that in order to practice as an accountant, in all countries a number of steps are required. First, a university degree; then some years of training; and finally the passing of an exam. No country has a *numerus clausus*. In Canada the authorisation to operate as a Certified Accountant is granted at the provincial level, which is similar to the situation in the U.S.. In Europe, the principle of mutual recognition is enshrined in the Treaty and in secondary legislation. Can the Canadian delegation explain the system in place in Canada and the role of the federal government? And what is the difference between the three different accounting designations? Can they co-exist in the same province?

A delegate from Canada stated that with regard to the three accounting designations, there is a lot of overlap. Reference is made to a 2007 study by the Competition Bureau. Chartered Accountants work in all fields of business and finance, both in the private and the public sector. Certified General Accountants are professionals with expertise in a number of fields such as finance and taxation. Certified Management Accountants are a bit different. They apply a blend of expertise in accounting, management and strategy, and are hired by organisations for strategic planning and management or to optimise performance. There is not only overlap between these three designations, but also with bookkeepers, financial planners and tax attorneys. All three designations can co-exist in each province. The only exception is public accounting (auditing), which can be regulated differently by provinces, allowing only particular designations to do this. There are court cases that challenge this, as it would be anti-competitive.

In Canada, laws concerning professions, and particularly the accounting profession, are made by the provinces and the territories. They make the laws allowing the creation of associations that will then govern the professions. The federal government does not have a role to play in the regulation of laws regarding the accounting professions.

Conduct restrictions

Moving on to conduct restrictions, the Chair noted that in some jurisdictions recommended prices and prohibitions of advertising continue. There are no general interest justifications for such restrictions. In Romania advertising by accountants is prohibited. The first question to the Romanian delegation is whether this is a general legal prohibition valid for all professions or a prohibition that is enforced by the professional associations themselves. As for prices, in 2000 the Body of Expert and Licensed Accountants of Romania (CECCAR) requested the Romanian Competition Council (RCC) to provide its point of view regarding a regulation on fees, tariffs and criteria for reimbursement. The RCC did not grant the requested exemption. However in 2009 CECCAR approved the regulation. An investigation by the RCC is now ongoing. What happened from 2000 to 2009?

A delegate from Romania stated that Romanian competition law applies to all undertakings, including liberal professions. The answer to the first question is that advertising restrictions are still in place, as well as in all the legal professions. In accounting, these restrictions are established

through internal regulations issued by CECCAR. Personal advertising is forbidden and the scope of advertising by consultancy firms is limited to the distribution of flyers and brochures. There is no general legal prohibition.

The answer to the second question is that indeed, in 2000 CECCAR requested RCC's point of view on a regulation regarding fees, tariffs and criteria for reimbursement. The RCC succeeded in convincing CECCAR not to adopt this regulation. However, in 2009 CECCAR adopted a (different) regulation on fees, tariffs and reimbursement, because all this time it had been very concerned about the need to self-regulate fees. This time, CECCAR avoided going to the RCC, but published a Decision approving this regulation directly. An investigation by the RCC is not finished yet.

The Chair noted that in Turkey a minimum fee regulation is in place, and that the Competition Board advocated for its elimination. Was this advocacy report public and how did the government and newspapers react? What happened afterwards? Why did the Competition Board have to declare that after the legislation would be amended, possible requests for exemption of publication of minimum fees could be assessed by the Competition Board itself?

A delegate from Turkey stated that there is no advocacy report including detailed analyses of the accountancy market. A list of legislation that conflicts with the Competition Act was sent to the Prime Ministry as part of a long-term project of the Turkish Competition Authority to address anti-competitive legislation. There has been no response from the Prime Ministry yet. With regard to the last question: it was aimed to inform the professional associations that any possible requests for exemption to fix minimum fee tariffs have to be assessed under the exemption rules by the Competition Board.

The Chair moved on to Lithuania, where there are no legal restrictions to entry and conduct in the accounting profession. However, the Chamber of Auditors recommended prices that should be charged for the provision of services for the audit of the European Union structural funds. The Competition Council rightly intervened. Although the case is rather straightforward, it is interesting to know why accountants recommended only this type of fees. Why structural funds? Another question is whether the fine imposed on the Chamber of Auditors was based on the market turnover of the accounting firms involved or on the turnover of the association?

A delegate from Lithuania confirmed that there is no government regulation, only regulation issued by the Chamber of Auditors. This creates room for anti-competitive behaviour, as happened in Lithuania. The case dealt with recommended prices for auditing services, although in fact they were fixed prices. As to why they were only related to EU structural funds, the accession to the EU created a new demand for the audits of these big-money projects. The Chamber of Auditors took the initiative to set prices. The fine was imposed on the Chamber instead of on the individual firms. According to the Competition Council this was easier than punishing individual audit firms, of which there are more than 200. Indirectly, auditing firms are punished also, because the Chamber operates on its members' fees. The amount of the fine was based on the turnover/revenues of the Chamber of Auditors.

Regulatory oversight

The Chair observed that in most countries entry requirements, conflict of interest and ethical issues are set by the law and are administered by the professional association, under the surveillance of a ministry or the securities oversight bodies. In the UK, auditing is regulated by an independent authority: the professional oversight board (POB). The POB monitors audit quality

and reviews the regulatory activities of the professional accountancy bodies, including education, training, continuing professional development, standards, ethical matters professional conduct and discipline, registration and monitoring, including making recommendations on how these activities might be improved. Are the professional accountancy bodies that the POB supervises public or private? And how do you ensure that the POB is not captured by the profession it regulates, because probably the supervision has to be performed by accountants?

A delegate from the United Kingdom's Office of Fair Trading (OFT) stated that the current framework allows for both self-regulation and external regulation by the POB of the Financial Reporting Council (FRC). The FRC was given power by the UK government following Enron's collapse. The oversight structure encourages the self-regulatory bodies to operate efficiently, while retaining the advantages of self-regulation: less bureaucratic, more flexible, cost advantages and specialised knowledge. The FRC sets rules relating to auditing professions, but day-to-day regulation and administration is carried out by the professional bodies under the supervision of the POB. The OFT may use its tools if there are competition concerns.

A delegate from the FRC answered the more specific questions posed by the Chair. In the UK, the POB is not controlled by accountants, although accountants are involved in the monitoring of individual audits and some of them are in the FRC board. The chair of this board, however, is a barrister, and there are other members. The accounting bodies are private, subject to licensing from the state.

The Chair asked if this situation is specific for accounting.

The United Kingdom delegation responded by stating that the legal profession has a similar structure.

The Chair noted that in the last paragraph of the Swiss report reference is made to a regulatory authority. Is this an authority at the central or at the cantonal level and what exactly are its duties? How do you ensure free movement of professionals within Switzerland?

A delegate from Switzerland stated that in many liberal professions there is cantonal regulation, but not for auditors and accountants. There is a national authority that checks auditors' compliance with quality and educational standards, registers auditors, and can impose the sanction of erasing an auditor from the list. Also free movement is arranged through national regulation. On other aspects regulation is very liberal. There were fears that the new regulatory authority (which was a reaction to the Enron case and developments such as the Sarbanes-Oxley Act in the U.S.) would create higher costs for business.

The Chair stated that in France, the statutory auditors' fees are regulated by decree and by the code of ethics. There is also a regulated standard regarding the number of hours to be spent on a mission. Mr. Heimler wonders why the Council has not yet intervened to regulate the number of hours and to make it common to all professionals.

A delegate from France observed that the Commercial code states that it is possible to set a range of hours, according to the turnover of the audited company, which is quite broad. The aim is to maintain a certain quality of service and to meet the requirements of such a service.

If the Council has not yet made a decree because it was adopted in 1969, before the creation of the Conseil de la concurrence. Later, there have been modifications but the Conseil de la concurrence was never consulted about it.

Moreover, there have never been any complaints regarding this particular provision. The reason for this is probably because the range of hours is a guarantee of a certain quality of service and does not prevent statutory auditors and audited companies to freely set the hourly fee. Moreover, the working programme must be approved by the audited entity. If a company wants to lower the number of hours, they can obtain a derogation, as indicated by the Commercial code (there were 3000 derogations in the Paris area in 2008).

The Chair observed that the Hungarian Competition Authority (GVH) in a case against the Chamber of Chartered Accountants considered the rules that prohibited advertising incompatible with the Competition Act. Are there now provisions in the code of ethics of the accounting profession that may limit advertisement? Do accountants in Hungary advertise? As for recommended prices, according to the Act on Auditors they are allowed. Which actions can the GVH take to block price recommendations?

A delegate from Hungary stated that the provisions in the Code of Ethics of the Chamber of Auditors (which is a private body) are now in line with requirements set out by past competition enforcement. For example, the following rules were held to be unlawful: a full prohibition on praising the promptness and quality of service, restrictions on what the auditor may indicate on the name plate, a full prohibition of information on prices in advertisements, and a full prohibition of comparison with competitors. Another rule, which prohibited auditors from making references to being well connected to public authorities, did not violate the Competition Act according to the GVH. The reason is that such a statement is by its nature misleading. A similar reasoning was applied to the rule that prohibited auditors from making statements that arouse unreasonable expectations. There is no information on the advertising actually done by auditors.

Price recommendations are not allowed in Hungary, but there is a problem in the legislation (Act on Auditors), namely that the Chamber may issue principles and main considerations of setting the fees for statutory audits. The GVH put forward proposals to abolish this provision. The Chamber now intends to publish an internal document on price recommendations, but the GVH is of the opinion that this goes beyond the empowerment of the legislation. It will carry out competition advocacy in order to convince the Chamber not to publish this recommendation. In the past there were similar cases against other Chambers.

The Chair moved on to Chinese Taipei, where the Certified Public Accountant Act restricts advertising to basic information. The submission by Chinese Taipei rightly states that advertisement should be disciplined by the rules on misleading advertisement and should not be restricted further. But what has the Fair Trade Commission (FTC) done in this respect? Similarly the CPA Act suggests that fees for accounting services need to be reasonable. What does this mean? Was this provision ever enforced against *low* fees?

A delegate from Chinese Taipei stated that Article 46 of the CPA Act provides that a CPA may not advertise for promotional purposes that are not related to the commencement of business, office relocation, a merger, accepting client engagements, or the introduction of the CPA firm. In practice, there are, for example, advertisements celebrating the opening of new offices, or obituaries mourning the death of senior partners. As a competition agency, the Fair Trade Commission (FTC) is of the opinion that false advertising could be corrected by competition and by the Competition Act. However, the FTC has done little in this area, partly because of opposition by the Financial Supervisory Commission (FSC).

With regard to prices, there has been some progress. Before the amendments to the CPA Act in December 2007, the Act included recommended prices from the association of CPAs. In the

revised CPA Act, this provision was abolished. However, the association incorporated “reasonable” prices. The FSC was authorised to review this schedule. Although this is not totally satisfactory as far as the FTC is concerned, it has to take one step at a time in its promotion of competition.

The Chair noted that it is now almost three years ago that minimum fees and advertisement restrictions were liberalised in Italy. In January 2009 the Italian Competition Authority concluded a general inquiry that was launched in 2007 in order to analyse the changes in self-regulation and to assess whether all restrictions on competition had indeed been eliminated. The Authority ascertained that even the new code of conduct still contained indications that implied that minimum tariff were still in place. After the indications of the Authority, the National Council finally amended the code. Why did the Authority not open a formal proceeding? And what was the situation with the other professions?

A delegate from Italy explained that a general inquiry is an efficient use of limited resources. The reform of the liberal professions in Italy affected a large number of professions: 13 professional associations were involved. Therefore the idea was first to have a more general overview. Reactions differed, with some associations implementing reform and others resisting application of the reform proposals. As to accounting, minimum fees were not explicitly introduced, but fees should not be so low as to be “dishonourable”. The Authority’s efforts were succesful in some professions, such as accounting. After some meetings with the association of accountants they agreed to change the provisions regarding fees and advertising in the code of conduct. In some cases the Authority did intervene directly, however. In May 2009 the Authority opened two formal investigations into the associations of psychologists and geologists because they introduced binding fees in their codes.

General discussion and conclusions

The Chair opened the floor for a general discussion. A delegate from Ireland observed that virtually all discussions dealt with audits. What about other accountancy services, such as tax advice and insolvency practice? In Ireland there is a pressure for statutory reservation of the title of ‘accountant’. The relevant ministry proposes to legislate to reserve the title to people with certain qualifications, but the Competition Authority has publicly commented against this. The usual answer the Competition Authority gets is that such title protection would be in the consumer’s interest, but that answer comes from the accountants themselves. The Chair commented by stating that when OTC drugs were liberalised in Italy, the pharmacists themselves were against it, allegedly to ‘defend the public interest’.

A delegate from Chinese Taipei mentioned that their experience in consultations with CPAs is that they always propose some justification for regulation, such as a ‘race to the bottom’ argument (adverse selection). As a competition agency, one has to stand firm on promoting the idea of competition. According to the Chair, this confirms that there is always a debate between competition and other objectives, such as consumer interests and health.

As there were no other comments from the floor, the Chair presented conclusions from the roundtable discussion. He noted the accounting profession indeed is characterised by a peculiar market structure, which is different from other professions. The discussion made clear that there are no global (across-the-border) economies of scale to be gained. Factors that likely have led to the current market structure include the existence of reputation effects, liability risks and insurance markets. Accounting firms need to have a critical mass in order to provide statutory audits for large clients. The fact that there is concentration does not mean there is no competition.

However, the competition originates from a smaller number of players and focuses on reputation rather than prices. The results found by the U.S. Government Accountability Office suggested that the increase in concentration did not lead to higher prices charged by the Big Four. Demand by the large clients for auditing services is quite inelastic.

As regards other restrictions to competition, in many countries there are fewer in the accounting professions than in other professions. In some countries the authorities already dealt with, for example, minimum prices and advertising restrictions resulting from self-regulation. Sometimes this is more difficult, notably when such restrictions originate from the law. Authorities then may have to resort to advocacy reports. But these are more general issues, relating also to other professional services.

As regards the structure of regulation, in each country different institutions are involved. We may need some convergence here, for example on educational standards, auditing standards, and ethical codes.

COMPTE RENDU DE LA DISCUSSION

Le Président, Alberto Heimler, souligne que, selon de nombreux commentateurs, les normes comptables ont eu une certaine influence sur l'évolution de la crise économique. L'utilisation répandue de la méthode de la juste valeur et son impact sur la crise financière ont fait l'objet de discussions ces dernières années. Ces raisons expliquent en partie la décision d'organiser une table ronde sur les activités comptables. Dans leurs contributions, la plupart des pays ne sont toutefois pas entrés dans le détail lorsqu'ils ont abordé ces questions.

Le Groupe de travail n° 2 s'est intéressé aux professions libérales à plusieurs reprises, en dernier lieu en 2005, lors de la table ronde sur les professionnels de la santé et, en 2007, lors de la table ronde consacrée aux professions juridiques. Ce qui caractérise cependant les professions comptables, c'est qu'elles sont les seules à poser des problèmes liés à un réel pouvoir de marché. Les « quatre grands cabinets » (les *Big Four*) n'existent que dans ces professions et plus précisément dans les services de vérification comptable. On ne trouve rien de comparable dans les autres professions libérales (sauf peut-être pour ce qui est des notaires, mais leur pouvoir de marché est principalement lié aux règles d'entrée sur le marché). Qu'est-ce que les services de vérification comptable ont-ils de si particulier qui puisse expliquer que, dans le monde entier, quatre grands cabinets se partagent 70 à 90 % du marché ? S'agit-il d'une caractéristique structurelle de ce marché ou bien la forte concentration de ses structures de marché est-elle simplement le résultat du hasard ? Un certain nombre de contributions, notamment celle des États-Unis et de la Commission européenne, se sont intéressées à cette question. Ces contributions seront examinées en premier.

Nous traiterons ensuite de la question des conflits d'intérêts et en particulier du fait que les cabinets de vérification comptable ne peuvent être contrôlés par des intérêts commerciaux. Certaines contributions laissent entendre que les règles de détention du capital peuvent être l'une des autres raisons expliquant la forte concentration de ce marché.

Tous les autres points qui seront traités aujourd'hui sont bien plus habituels : obstacles à l'entrée, restrictions en matière de publicité et réglementation des prix. Ces restrictions existent à des degrés divers dans les différents pays, mais elles sont généralement moins nombreuses que dans les autres professions. Selon le Président, cela peut s'expliquer par le fait que la structure concentrée du marché engendre déjà un pouvoir de marché et que, de ce fait, une réglementation restrictive n'est guère nécessaire.

Évolutions du marché

Le Président fait remarquer que la contribution des États-Unis examine les raisons de la concentration de la structure du marché, tout en évaluant le pouvoir de marché réellement exercé aux États-Unis. Selon la contribution américaine, il existait, à la fin des années 80, huit grands cabinets de vérification comptable ne proposant qu'un petit nombre d'autres services. En 2003, il n'était plus que quatre à contrôler les comptes de 99 % des grandes entreprises faisant appel public à l'épargne, tout en tirant une part importante de leurs revenus de ces autres services. Le Président demande à la délégation américaine si cette concentration peut s'expliquer par le fait que le poids des services de vérification comptable profite, d'une façon ou d'une autre, aux

activités de conseil ou bien par les spécificités des professions comptables que sont, par exemple, la notoriété ou l'assurance responsabilité.

Un délégué des États-Unis explique que la réponse n'est pas liée au poids des activités de vérification comptable, mais bien aux spécificités mêmes de la profession. Le *Government Accountability Office* [la cour des comptes américaine] a analysé les raisons de cette concentration. Elle s'explique principalement par le fait que les cabinets de vérification comptable (1) ont eu besoin de devenir de plus en plus grands pour se maintenir au niveau de leurs clients ; (2) ont voulu mettre à profit les économies d'échelle, pour traiter, par exemple, d'importantes quantités de données ; (3) ont dû renforcer leurs connaissances et compétences techniques spécifiques ; (4) ont dû augmenter leur capital pour répartir les risques. Pour être concurrentiels, ces cabinets n'ont d'autre choix que d'être « grands ». À titre d'exemple, quand Arthur Andersen a disparu du marché en 2002, 87 % de ses clients sont allés rejoindre les quatre grands. Plus le client était important, plus il était susceptible d'aller frapper à la porte de l'un des quatre leaders.

Le Président note que, dans l'Union européenne, l'article 31 de la Directive européenne concernant les contrôles légaux des comptes annuels et des comptes consolidés observe que les dispositions nationales en vigueur en matière de responsabilité sont l'une des principales explications de la concentration du marché. Une consultation publique sur l'incidence de ces dispositions a été lancée en janvier 2007 et une recommandation à ce sujet a été diffusée en juin 2008. De surcroît, la Commission européenne constate que les règles de détention du capital visant à prévenir les conflits d'intérêts expliquent également la concentration de ce marché. Une consultation publique sur les conflits d'intérêts a été lancée en novembre 2008. Un rapport de synthèse sera publié en juillet 2009. Le Président demande à la délégation de la Commission européenne si elle peut anticiper certains résultats de cette consultation. Il lui demande en outre quelles raisons sont le plus souvent avancées pour expliquer la forte concentration des services de vérification comptable en Europe – les dispositions nationales en vigueur en matière de responsabilité, les règles de détention du capital ou d'autres raisons encore ?

Selon un délégué de la Commission européenne, la Directive de 2006 a remplacé une directive de 1984 en vue de renforcer la confiance dans le marché après l'affaire Enron et d'autres scandales. La Directive de 2006 exige la mise en place d'un contrôle public indépendant, ainsi que d'éventuelles sanctions, en lieu et place du régime d'autoréglementation. Elle contient également des dispositions relatives à l'indépendance des professions comptables et à la détention du capital. La recommandation de la Commission européenne sur la limitation de la responsabilité civile des contrôleurs légaux des comptes et des commissaires aux comptes a été adoptée en juin 2008, après une étude réalisée par le cabinet de conseil London Economics. Les risques de responsabilité empêchent l'entrée sur le marché de nouveaux intervenants et sont un facteur de concentration. La consultation menée sur les règles de détention du capital (conflits d'intérêts) a fait suite à une étude réalisée par le cabinet de conseil Oxera. La consultation publique a porté sur les règles de détention du capital en vigueur et sur les autres facteurs auxquels la Commission européenne pourrait s'intéresser en vue d'empêcher un surcroît de concentration. Au nombre des obstacles à l'accès au marché du contrôle des comptes figurent l'image de marque et la notoriété apparente des acteurs du marché ; les compétences des équipes ; les différences entre les cabinets en ce qui concerne leur dimension internationale et les diverses dispositions nationales en vigueur empêchant une intégration supplémentaire des réseaux de services d'expertise comptable.

Le Président demande si les États membres sont tenus de se conformer à la disposition relative au contrôle public avant une date butoir (année).

La Commission européenne répond que le délai de transposition de la Directive était fixé à juin 2008. La directive est désormais transposée dans le droit de 21 États membres. Néanmoins, la majorité des autres États membres sont déjà dotés d'un dispositif de contrôle public.

Le Président revient aux États-Unis. Un rapport publié en 2008 par le *Government Accountability Office* donne à penser que la plus grande concentration du secteur des services de vérification comptable n'a pas eu d'incidence significative sur les honoraires payés par les grandes entreprises cotées. Ces grands clients sont plus exposés aux augmentations de prix du fait qu'ils sont peu enclins ou ne sont pas en mesure de faire appel aux « petits » cabinets. Cela est sans doute vrai, mais quels sont les tarifs pratiqués par ces « petits » cabinets concurrents ? Sont-ils nettement moins élevés que ceux facturés par les quatre grands ?

Un délégué des États-Unis fait remarquer que la concurrence sur les prix n'est pas la question principale. Les grandes entreprises clientes choisissent les quatre grands car ces cabinets disposent des ressources et des compétences sectorielles nécessaires. Un rapport publié en 2003 par le *Government Accountability Office* met en évidence les différences entre les quatre grands et les cabinets de second rang. Les grandes entreprises clientes ne se tournent pas vers les cabinets plus petits du fait de leur déficit de moyens et de notoriété, du fait que les coûts des procès et d'assurance font obstacle à leur entrée sur le marché des petits cabinets et que ceux-ci ont du mal à lever des capitaux.

Discussion générale

Le Président invite M. Mike Starr à faire un exposé succinct. M. Starr est Directeur général de Grant Thornton International (GTI) et Président du groupe de travail sur la réglementation du *Global Public Policy Committee*, comité composé d'associés *senior* des six plus grands réseaux internationaux. En guise d'introduction, M. Starr présente certaines informations de référence sur GTI. Sachant que GTI est une grande entreprise présente dans le monde entier, le terme de « cabinet de second rang » est, selon M. Starr, trompeur et inadéquat.

Il fait remarquer que le marché est complexe. Les régimes réglementaires vont de l'absence quasi totale de contrôle à la présence de plusieurs autorités de tutelle, en passant par l'autoréglementation. Ces régimes varient d'un pays à l'autre, voire au sein d'un même pays. Ainsi, aux États-Unis, il n'existe pas d'agrément délivré à l'échelon national et le titre de *Certified Public Accountant* [expert-comptable] fait l'objet d'un agrément au niveau de chaque État. Les entités faisant appel à ces services sont en outre soumises à des règles concernant le type de services comptables qu'elles ont l'obligation ou la possibilité de se procurer. De ce fait, il leur est parfois impossible de faire appel à GTI. Les dispositions réglementaires couvrent à la fois les comptables exerçant sous forme d'entreprise individuelle dans le secteur public et privé (vérificateurs, préparateurs de comptes, administrateurs) et les cabinets d'expertise comptable (nombre d'associés et qualification, agrément et dénominations).

Pour remédier à ces incohérences entre les pays, l'adoption de normes internationales qui renforceraient la mobilité et le développement d'un vivier de professionnels de la comptabilité d'une part et le principe de reconnaissance mutuelle entre les régimes de contrôle en vigueur d'autre part feraient partie des solutions. Pour ce qui est du premier point, M. Starr souligne l'importance de la convergence des normes de formation et des règles d'agrément et d'entrée sur le marché, des *International Financial Reporting Standards*, de l'application des normes de vérification/certification des comptes (ISA) dans chaque pays et des règles de déontologie relatives notamment à l'indépendance des professionnels et à la fourniture de services autres que la vérification comptable aux clients des cabinets d'audit. Pour ce qui est du second point, M.

Starr fait remarquer que l'absence de reconnaissance mutuelle entre les autorités de tutelle indépendantes limite la concurrence. Il faudrait donc qu'il y ait plus de coopération entre les autorités de tutelle.

M. Starr fait ensuite remarquer que si la concentration du marché est indiscutable, la concurrence s'exerce néanmoins. De plus, la concentration se limite à un tout petit segment du marché, celui du contrôle des comptes des entreprises faisant appel public à l'épargne. Elle est le résultat de divers besoins du marché et mesures réglementaires. Ainsi, les questions de responsabilité ont joué un rôle dans le fait que GTI n'ait attiré que 20 % des clients de l'ancien réseau d'Arthur Andersen correspondant à sa taille d'alors. Plus généralement, les risques liés à la responsabilité illimitée peuvent créer un obstacle à l'entrée sur le marché et pourrait occasionner une concentration encore plus grande du marché de la vérification des comptes des grandes entreprises. L'introduction d'un régime de responsabilité proportionnelle assorti d'un plafond approprié et la surveillance prudentielle des effets extraterritoriaux des mesures prises pour mettre en œuvre les dispositions qu'il propose pourraient être des solutions. GTI se féliciterait d'apprendre que les autorités de tutelle et les intervenants du marché s'efforcent de favoriser une meilleure participation aux discussions, mais en est souvent exclu. Pour revenir au pourcentage cité par la délégation américaine : les clients d'Arthur Andersen se sont en majorité tournés vers l'un des quatre grands cabinets car ils ont suivi les associés d'Arthur Andersen qui ont eux-mêmes généralement rejoint les quatre leaders.

Pour remédier à la concentration, on pourrait envisager des solutions venant du marché lui-même ; par exemple les cabinets de vérification comptable, en dehors des quatre grands, pourraient faire connaître leurs capacités et les marchés qu'ils ciblent ; les autorités de tutelle pourraient assurer la publicité des capacités de vérification de ces cabinets, les comités d'audit pourraient être plus au fait de ces capacités et les investisseurs et autres personnes d'influence pourraient inciter davantage les entreprises à faire appel à des cabinets autres que les quatre leaders . M. Starr observe que la taille n'est pas toujours un gage de qualité, même si les cabinets de vérification comptable sont tenus d'avoir une « taille critique » pour contrôler les comptes de certaines des plus grandes entreprises internationales. En dehors des quatre grands, il existe d'autres cabinets dotés de réseaux mondiaux et proposant des services de grande qualité.

En ce qui concerne la nécessité d'appliquer d'autres règles « d'intérêt public », M. Starr fait remarquer qu'il convient effectivement de s'intéresser aux asymétries de l'information entre les professions comptables, leurs clients et les participants du marché. Pour autant, certains aspects des régimes réglementaires sont contraires à l'intérêt public et constituent un obstacle, comme les règles en matière de fixation des prix, de publicité ou relatives au nombre d'associés. Selon M. Starr, il faut que le marché apporte de lui-même des solutions. La confiance dans le marché et la qualité des vérifications comptables sont des facteurs essentiels de réussite.

Le Président invite l'intervenant suivant, Nicolas de Paillerets, de France Telecom, à prendre la parole. M. de Paillerets fait remarquer qu'il intervient en tant que représentant d'un client de services de vérification comptable. France Telecom a récemment mené à son terme un appel à candidatures pour un mandat couvrant les six prochaines années. De plus, France Telecom a récemment pris part à une consultation de la Commission européenne sur les structures de contrôle des cabinets de vérification comptable. Il souligne qu'il n'est pas un spécialiste de la réglementation ou de la concurrence. D'après lui, lors du choix d'un cabinet, le prix n'est pas un élément distinctif, alors que la dimension internationale du cabinet en est un. C'est pourquoi France Telecom fait appel aux quatre grands. D'après la réglementation française, deux cabinets de vérification comptable sont nécessaires. Au nombre des critères qualitatifs ayant une incidence sur le choix du cabinet figurent l'indépendance (aptitude à contester le point de vue de la société),

les compétences sectorielles du cabinet et la capacité de l'associé chargé de la mission à interagir comme il convient avec les responsables en poste dans les différents pays (dimension internationale).

M. de Paillerets fait ensuite des observations sur le fait que diverses formes de réglementation sont nécessaires. Pour ce qui est des règles d'entrée sur le marché, même si les normes de qualité peuvent constituer un obstacle, l'application de normes internationales de révision des comptes (normes ISA, sous réserve de mécanismes appropriés de surveillance et d'approbation de la formulation des normes) est indispensable. La nécessité du contrôle public est également incontestable, mais il doit y avoir coopération entre les divers organismes de contrôle. Les droits exclusifs d'exercice de la profession doivent se limiter au travail de certification et aux conditions juridiques en vigueur dans un pays donné, autrement dit à la « mission d'intérêt public » dévolue aux experts-comptables (comme la préparation des déclarations d'impôt ou la vérification du traitement équitable des actionnaires, etc.). Il prévient qu'une libéralisation complète des règles de détention du capital pourrait ne pas avoir les effets attendus, s'il n'existe pas de mesures garantissant l'indépendance de la profession ou s'il y a un sentiment d'accroissement du risque juridique inhérent au travail de certification des cabinets de vérification comptable par rapport à leurs autres services.

En ce qui concerne les règles relatives à la conduite sur le marché, l'interdiction des honoraires éventuels est justifiée pour garantir l'indépendance. Les restrictions à l'encontre de la publicité ne servent pas l'intérêt public. En règle générale, la concurrence ne s'exerce guère sur les honoraires. Dans le secteur des télécommunications, les honoraires annuels de vérification des comptes représentent de 0.05 % à 0.1 % du chiffre d'affaires des entreprises contrôlées. Les règles limitant la prestation d'autres services aux clients bénéficiant des services de vérification des comptes ont favorisé une augmentation des tarifs des activités de vérification, mais dans des proportions acceptables, même si on notera que l'obligation de rendre publics ces honoraires pour les sociétés cotées a pu avoir un effet négatif sur la concurrence dans ce domaine.

Abordant la question du cadre institutionnel de contrôle des professions comptables, M. de Paillerets souligne, lui aussi, la nécessité d'une coordination entre les autorités de tutelle. Le risque demeure d'une absence de coordination de l'approche concernant les sanctions pouvant aboutir à une réduction du nombre d'intervenants comme on l'a vu avec l'affaire Andersen (on sanctionne les cabinets internationaux plutôt que les personnes physiques ayant pris part à la mission d'audit). Il importe également de trouver un juste équilibre entre l'indépendance (les règles d'indépendance) et la prévention des conflits d'intérêts : si l'on s'accorde à penser les services de vérification des comptes et services de conseil pour un client d'un cabinet doivent être dissociés, il convient d'éviter un excès de réglementation (par exemple, en France, une période de transition de deux ans est prévue).

Enfin, M. de Paillerets évoque l'application du droit de la concurrence. En somme, il convient de faire une distinction entre les marchés locaux (PME, microentreprises) et le marché mondial. À l'échelon mondial, on compte effectivement un nombre limité d'intervenants et on peut se demander si ces intervenants profitent indument de cette situation en raison de leur part des marchés locaux. Il serait peut-être intéressant d'examiner si de nouveaux cabinets voient le jour dans d'autres régions du monde, comme la Chine et l'Inde, par exemple, et si cela peut avoir un impact sur la concurrence.

Le Président interroge M. Starr sur l'ampleur des risques de responsabilité pour les cabinets de vérification des comptes. M. Starr explique que ces risques ne sont pas les mêmes d'un pays à l'autre. De nombreux pays, comme les Etats-Unis, appliquent toujours un régime de

responsabilité illimitée. Le rapport entre le risque relatif de responsabilité et la rétribution (les honoraires perçus) est parfois sans commune mesure. De plus, on dénombre, dans le monde entier, de plus en plus de différends mettant en cause des cabinets de vérification comptable : recours collectifs en Europe, « *class actions* » en Asie, et grands procès en Australie. La responsabilité illimitée constitue clairement un obstacle à l'entrée.

Restrictions à l'entrée sur le marché

Abordant la question des restrictions à l'entrée sur le marché, le Président observe que, dans tous les pays, il faut franchir un certain nombre d'étapes pour avoir le droit d'exercer comme comptable : tout d'abord, un diplôme universitaire, puis plusieurs années de formation et enfin le passage d'un examen. Aucun pays n'a de *numerus clausus*. Au Canada, l'autorisation d'exercer la profession d'expert-comptable est délivrée par les provinces et la situation est similaire aux États-Unis. En Europe, le principe de reconnaissance mutuelle est ancré dans le Traité et dans la législation secondaire. La délégation canadienne peut-elle expliquer le dispositif en place au Canada et le rôle de l'administration fédérale ? Quelle est la différence entre les trois désignations professionnelles existantes ? Ces dénominations peuvent-elles coexister dans une même province ?

Pour ce qui est des trois désignations professionnelles, un délégué du Canada précise qu'elles se recoupent en grande partie. Il mentionne une étude menée en 2007 par le Bureau de la concurrence du Canada. Les *comptables agréés* travaillent dans tous les domaines commerciaux et financiers, à la fois dans le secteur public et dans le secteur privé. Les *comptables généraux accrédités* sont des professionnels ayant des compétences dans un certain nombre de domaines particuliers, comme la finance et la fiscalité. Les *comptables en management accrédités* sont un peu différents. Ils présentent un mélange de compétences dans le domaine de la comptabilité, de la gestion et de la stratégie et les entreprises font appel à eux pour la planification ou la gestion stratégique ou pour optimiser leurs performances. Ces trois désignations ne sont pas les seules à se recouper. Elles recouperent également celles des aides-comptables, des planificateurs financiers et des avocats fiscalistes. Ces trois qualifications peuvent toutes coexister dans une même province. La comptabilité publique (la vérification des comptes publics) qui peut faire l'objet d'une réglementation différente selon les provinces est la seule exception. Elle ne peut être exercée que par une catégorie particulière de professionnels. Cet état de fait, considéré comme anticoncurrentiel, est contesté devant la justice.

Au Canada, le droit relatif aux professions libérales et notamment aux professions comptables relève des provinces et territoires. Les provinces et territoires promulguent les lois portant création des associations qui régiront ensuite ces professions. L'administration fédérale ne joue aucun rôle concernant les règles de droit applicables aux professions comptables.

Restrictions en matière de conduite des professionnels

Abordant la question des restrictions en matière de conduite, le Président relève que dans certains pays, la pratique des prix recommandés et les interdictions en matière de publicité perdurent. Ces restrictions ne sont nullement justifiées par l'intérêt général. En Roumanie, les experts-comptables n'ont pas le droit de faire de la publicité. Le Président demande tout d'abord à la délégation roumaine s'il existe une interdiction légale d'ordre général applicable à toutes les professions libérales ou si ce sont les associations professionnelles elles-mêmes qui se chargent d'appliquer l'interdiction. En ce qui concerne les tarifs, en 2000, le Conseil des experts-comptables et des comptables agréés de Roumanie (CECCAR) a sollicité l'avis du Conseil roumain de la concurrence (CRC) sur la réglementation relative aux honoraires, aux tarifs et aux

critères de remboursement. Le CRCn'a pas accordé la dérogation demandée. Pourtant, en 2009, le CECCAR a approuvé la réglementation. Une enquête du RCC est désormais en cours. Que s'est-il produit entre 2000 et 2009 ?

Un délégué de Roumanie précise que le droit roumain de la concurrence s'applique à toutes les entreprises, y compris aux professions libérales. Il répond à la première question en indiquant que des restrictions en matière de publicité sont toujours en vigueur et s'appliquent aussi à toutes les professions juridiques. Pour les professions comptables, ces restrictions sont établies par le biais de règles internes diffusés par le CECCAR. La publicité personnelle est interdite et le champ de la publicité des cabinets de conseil se limite à la diffusion de dépliants et de brochures. Il n'existe pas d'interdiction légale générale.

À la deuxième question, le délégué répond qu'en 2000, le CECCAR a sollicité l'avis du CRC sur la réglementation des honoraires, tarifs et critères de remboursement. Le CRC a alors réussi à convaincre le CECCAR de ne pas adopter cette réglementation. Cependant, en 2009, le CECCAR a adopté une réglementation (différente) concernant les honoraires, tarifs et critères de remboursement. En effet, durant toute la période intermédiaire, la nécessité d'une autoréglementation des honoraires a été pour le CECCAR un sujet de grande préoccupation. Cette fois-ci, le CECCAR n'a pas fait appel au CRC, mais a rendu publique une décision approuvant directement cette réglementation. L'enquête du CRC à ce sujet n'est pas encore terminée.

Le Président constate qu'en Turquie, une disposition relative aux honoraires minimums est en vigueur et que le Conseil de la concurrence a plaidé en faveur de son abrogation. Le Conseil de la concurrence a-t-il rendu public un rapport favorable à cette abrogation ? Quelles ont été les réactions des pouvoirs publics et de la presse ? Que s'est-il passé ensuite ? Pourquoi le Conseil de la concurrence a-t-il eu besoin de déclarer qu'après modification de la disposition légale concernée, il examinerait lui-même les éventuelles demandes de dérogation à la règle de publication des honoraires minimums ?

Selon un délégué de Turquie, aucun rapport en faveur de l'abrogation contenant des analyses détaillées du marché de la vérification des comptes n'a été publié. Une liste de textes législatifs contraires à la Loi sur la concurrence a été adressée au Premier ministre dans le cadre d'un projet à long terme de l'autorité turque de la concurrence qui entend s'attaquer aux dispositions légales anticoncurrentielles. Le Premier ministre n'a pas encore réagi. Pour ce qui est de la dernière question, il s'agit d'informer les associations professionnelles que les éventuelles demandes de dérogation aux honoraires minimums doivent être examinées par le Conseil de la concurrence, conformément aux règles de dérogation applicables.

Le Président se tourne vers la Lituanie, où il n'existe, pour les professions comptables, aucune restriction légale à l'entrée ni en matière de conduite sur le marché. Cependant, la Chambre des commissaires aux comptes a recommandé d'appliquer certains tarifs précis en cas de prestation de services de vérification comptable portant sur les fonds structurels de l'Union européenne. Le Conseil de la concurrence a pris les mesures qui s'imposaient. Même si l'affaire est plutôt simple, il est intéressant de se demander pourquoi les comptables n'ont recommandé que ce type d'honoraires. Pourquoi les fonds structurels étaient-ils les seuls visés ? On peut aussi se demander si la sanction pécuniaire imposée à la Chambre des commissaires aux comptes a été calculée en fonction du chiffre d'affaires des cabinets d'expertise comptable concernés ou en fonction du chiffre d'affaires de la Chambre ?

Un délégué de Lituanie confirme qu'il n'existe pas de réglementation émanant des pouvoirs publics, mais seulement une réglementation édictée par la Chambre des commissaires aux

comptes. Cela laisse de la marge à l'exercice de comportements anticoncurrentiels, comme cela a été le cas en Lituanie. L'affaire portait sur les prix recommandés pour la prestation services de vérification comptable, même si dans les faits, il s'agissait bien de prix fixés. Pour ce qui est de savoir pourquoi ces prix ne sont applicables qu'aux fonds structurels de l'UE, l'explication est que l'adhésion du pays à l'Union européenne a créé une nouvelle demande liée à la vérification comptable de ces projets financièrement considérables. La Chambre des commissaires aux comptes a pris l'initiative de fixer les prix. La sanction pécuniaire a été imposée à la Chambre des commissaires aux comptes et non aux cabinets impliqués. Selon le Conseil de la concurrence, il était plus simple de la sanctionner que de sanctionner les cabinets de vérification comptable concernés, sachant qu'ils étaient plus de 200. Les cabinets sont aussi indirectement sanctionnés car la Chambre des commissaires aux comptes finance son activité grâce aux cotisations de ses membres. Le montant de l'amende a été calculé en fonction du chiffre d'affaires de la Chambre des commissaires aux comptes.

Contrôle prévu par la réglementation

Le Président fait remarquer que, dans la plupart des pays, les conditions d'entrée sur le marché, les conflits d'intérêts et les questions de déontologie sont définis par la législation et gérés par les associations professionnelles, sous la tutelle d'un ministère ou de l'organisme de surveillance des valeurs mobilières. Au Royaume-Uni, les activités de vérification comptable sont réglementées par une autorité indépendante : le *professional oversight board* (POB), le conseil de surveillance professionnelle. Le POB contrôle la qualité des vérifications comptables et examine les activités des instances professionnelles en matière de réglementation, notamment dans les domaines de la formation initiale, des stages, de la formation continue, des normes, de la déontologie, de la conduite professionnelle et de la discipline, de l'enregistrement et du contrôle et il formule en particulier des recommandations sur les moyens d'améliorer ces activités. Les instances professionnelles que contrôle le POB sont-elles publiques ou privées ? Comment vous assurez-vous que le POB n'est pas pris en otage par la profession qu'il réglemente, car ce sont sans doute des comptables qui exercent le contrôle ?

Selon un délégué de l'*Office of Fair Trading* (OFT), l'autorité de la concurrence britannique, le dispositif actuel permet à la fois une autoréglementation et une réglementation extérieure par le POB du *Financial Reporting Council* (FRC), le conseil de réglementation de la communication financière. Le FRC s'est vu conférer des pouvoirs par le gouvernement britannique après l'effondrement d'Enron. Cette structure de surveillance encourage les organismes d'autoréglementation à fonctionner efficacement, tout en conservant les avantages de l'autoréglementation : moins bureaucratiques, plus flexibles, ils présentent des avantages en termes de coûts et ont des connaissances spécialisées. Le FRC établit des règles relatives aux professions comptables, mais leur réglementation et leur administration quotidiennes relèvent des instances professionnelles, sous la supervision du POB. L'OFT peut utiliser ses outils quand des problèmes de concurrence se présentent.

Un délégué du FRC répond aux questions plus spécifiques posées par le Président. Au Royaume-Uni, le POB n'est pas contrôlé par des comptables, même si des comptables participent au contrôle des missions de vérification comptable et si certains d'entre eux siègent au conseil d'administration du FRC. Le président de ce conseil est cependant un avocat et il y a d'autres membres. Les organismes comptables sont privés et soumis à un agrément de l'État.

Le Président demande si cette situation est spécifique au domaine comptable.

La délégation du Royaume-Uni répond que les juristes sont dotés d'une structure comparable.

Le Président souligne que le dernier paragraphe de la contribution de la Suisse fait référence à un organisme de tutelle. S'agit-il d'un organisme à l'échelon central ou cantonal et quelles sont précisément ses fonctions ? Comment assurez-vous la libre circulation des professionnels en Suisse ?

Un délégué de la Suisse précise que de nombreuses professions libérales sont soumis à une réglementation cantonale, mais que ce n'est pas le cas des commissaires aux comptes et des comptables. Une autorité nationale vérifie que les commissaires aux comptes se conforment aux normes de qualité et de formation, les inscrit sur un registre et peut sanctionner un commissaire aux comptes en le radiant du registre. La libre circulation est aussi prévue par une réglementation nationale. Pour d'autres aspects, la réglementation est très souple. La création du nouvel organisme de tutelle (en réaction à l'affaire Enron et à certaines évolutions telles que la loi Sarbanes-Oxley aux États-Unis) a fait craindre une augmentation des coûts pour les entreprises.

Le Président souligne qu'en France, les honoraires des commissaires aux comptes sont réglementés par décret et par le code de déontologie. En outre, une norme réglemente le nombre de vacations horaires à consacrer à une mission. M. Heimler se demande pourquoi le Conseil de la concurrence n'est pas encore intervenu pour réglementer le nombre de vacations horaires ou pour étendre cette démarche à tous les professionnels.

Un délégué de la France fait remarquer qu'aux termes du code de commerce, il est possible de définir, en fonction du chiffre d'affaires de la société contrôlée, un nombre de vacations horaires qui est assez large. L'objectif est de maintenir une certaine qualité de services et de satisfaire aux exigences que la mission requiert.

Si le Conseil de la concurrence n'a pas préparé de décret, c'est que le décret a été adopté en 1969, avant sa création. Des modifications y ont été apportées ultérieurement, mais le Conseil de la concurrence n'a jamais été consulté à ce sujet.

De plus, cette disposition particulière n'a jamais fait l'objet d'une plainte. Cela vient sans doute du fait que les vacations horaires sont la garantie d'une certaine qualité de service et n'empêchent pas les commissaires aux comptes et les sociétés contrôlées de fixer librement le montant horaire des honoraires. De plus, le programme de travail doit être approuvé par l'entité contrôlée. Si l'entreprise souhaite diminuer le nombre de vacations horaires, elle peut obtenir une dérogation, comme le précise le code de commerce (3000 dérogations ont été accordées dans la région parisienne en 2008).

Le Président constate que l'Autorité hongroise de la concurrence (GVH) a considéré, dans une affaire intentée contre la Chambre des experts comptables agréés, que les règles interdisant la publicité sont incompatibles avec la Loi sur la concurrence. Existe-t-il actuellement des dispositions dans le code de déontologie de la profession comptable qui sont susceptibles de restreindre la publicité ? Les comptables peuvent-ils faire de la publicité en Hongrie ? Pour ce qui est des prix recommandés, ils sont autorisés d'après vertu de la Loi sur les commissaires aux comptes. Quelles initiatives le GVH peut-il prendre pour empêcher les recommandations sur les prix ?

Un délégué de la Hongrie affirme que les dispositions du code de déontologie de la Chambre des commissaires aux comptes (qui est une instance privée) sont désormais conformes aux

exigences définies par des décisions antérieures d'application du droit de la concurrence. Par exemple, les règles suivantes ont été jugées contraires à la législation : l'interdiction totale de vanter la rapidité et la qualité des services, les restrictions relatives aux mentions qu'un commissaire aux comptes est autorisé à faire figurer sur sa plaque, l'interdiction totale de fournir des précisions sur les prix dans les publicités et l'interdiction totale de tout élément de comparaison avec les concurrents. Le GVH a estimé par ailleurs qu'une autre règle, qui interdit aux commissaires aux comptes de mentionner qu'ils disposent de bonnes relations dans les instances publiques, n'est pas contraire à la Loi sur la concurrence. Cela vient du fait qu'une telle déclaration est par nature trompeuse. Le même raisonnement a été appliqué à la règle interdisant aux commissaires aux comptes de faire des déclarations pouvant susciter des attentes déraisonnables. On ne dispose d'aucune information sur la publicité effectivement faite par les commissaires aux comptes.

Les recommandations sur les prix ne sont pas autorisées en Hongrie, mais la législation (Loi sur les commissaires aux comptes) pose un problème, car elle prévoit que la Chambre peut publier des principes et des considérations essentielles concernant les honoraires pratiqués pour le contrôle légal des comptes. Le GVH a soumis des propositions afin d'abolir cette disposition. La Chambre a désormais l'intention de publier un document interne portant sur les recommandations en matière de prix, mais le GVH estime que cela va au-delà des prérogatives accordées par la législation. Il va invoquer les règles de la concurrence pour convaincre la Chambre de ne pas publier cette recommandation. Par le passé, des cas de ce type se sont présentés à l'encontre d'autres Chambres.

Le Président en vient à Taipei, où la Loi sur les experts comptables agréés limite la publicité aux informations élémentaires. Le rapport présenté par Taipei souligne qu'il faut soumettre la publicité aux règles relatives à la publicité mensongère et ne pas imposer d'autres restrictions. Comment la *Fair Trade Commission* (FTC), le conseil de la concurrence a-t-elle agi à cet égard ? De même, la Loi sur les experts comptables agréés suggère que les honoraires facturés pour les services comptables doivent être raisonnables. Qu'est-ce que cela signifie ? Cette disposition a-t-elle jamais été appliquée pour contester des honoraires *trop peu élevés* ?

Selon un délégué de Taipei, l'article 46 de la Loi sur les experts comptables prévoit qu'un expert comptable ne doit pas faire de publicité à des fins promotionnelles qui ne soit pas liée au démarrage d'une activité, au déménagement de bureaux, à une fusion, à l'acceptation de nouveaux engagements vis-à-vis de clients ou à la présentation de son cabinet d'experts comptables. En pratique, les publicités concernent, par exemple, l'annonce de l'ouverture de nouveaux bureaux ou du décès d'un associé. En tant qu'autorité de la concurrence, la *Fair Trade Commission* (FTC) est d'avis qu'une publicité inexacte peut être corrigée par la concurrence et par la Loi sur la concurrence. Cela étant, la FTC a été peu active dans ce domaine, notamment parce que la *Financial Supervisory Commission* (FSC), le conseil de surveillance du secteur financier, s'y est opposée.

En ce qui concerne les prix, certains progrès ont été réalisés. Avant les modifications apportées à la Loi sur les experts comptables en décembre 2007, la loi comportait des prix recommandés par l'ordre des experts comptables. Dans la Loi sur les experts comptables modifiée, cette disposition a été abolie. Toutefois, l'ordre a inclus des prix « raisonnables ». La FSC a été autorisée à réexaminer ce barème. Bien que ce ne soit pas entièrement satisfaisant du point de vue de la FTC, cet organisme doit procéder par étape pour promouvoir la concurrence.

Le Président note que cela fait maintenant bientôt trois ans que l'Italie a libéralisé les honoraires minimums et les restrictions de la concurrence. En janvier 2009, l'Autorité italienne de

la concurrence a mené à son terme une enquête à caractère général lancée en 2007 pour analyser les changements concernant l'autoréglementation et évaluer si toutes les restrictions de la concurrence ont été bel et bien éliminées. L'Autorité a reconnu que le nouveau code de conduite contenait encore des indications sous-entendant qu'un tarif minimum était encore en place. Après les précisions données par l'Autorité, le Conseil national a fini par modifier le code. Pourquoi l'Autorité n'a-t-elle pas engagé de procédure officielle ? Et quelle est la situation concernant les autres professions ?

Un délégué de l'Italie explique qu'une enquête à caractère général permet d'utiliser efficacement les ressources limitées. La réforme des professions libérales en Italie a porté sur un grand nombre de professions : 13 associations professionnelles ont été concernées. L'idée était donc tout d'abord d'avoir une vue d'ensemble. Les réactions étaient différentes, certaines associations mettant en œuvre la réforme et d'autres résistant à son application. Pour ce qui est des professions comptables, des honoraires minimums n'ont pas été explicitement mis en place, mais les honoraires ne doivent pas être si peu élevés qu'ils en sont « déshonorants ». Les efforts de l'Autorité ont été couronnés de succès pour certaines professions, notamment les professions comptables. Après quelques réunions avec l'association des comptables, ces derniers ont accepté de modifier les dispositions concernant les honoraires et la publicité dans leur code de conduite. Dans certains cas, l'Autorité n'est toutefois pas intervenue directement. En mai 2009, l'Autorité a ouvert deux enquêtes officielles, l'une sur l'association des psychologues et l'autre sur l'association des géologues qui avaient toutes deux mis en place, dans leur code, des honoraires contraignants.

Discussion générale et conclusions

Le Président s'adresse aux participants pour ouvrir le débat. Un délégué de l'Irlande fait remarquer que presque toutes les discussions ont porté sur les activités de vérification comptable. Qu'en est-il des autres services comptables, comme le conseil fiscal et les pratiques en cas d'insolvabilité ? En Irlande, des pressions sont exercées pour réglementer le titre de « comptable ». Le ministère concerné propose de légiférer pour réserver ce titre à des personnes ayant certaines qualifications, mais la *Competition Authority*, l'autorité de la concurrence, s'y est déclarée opposée publiquement. La réponse habituelle de la *Competition Authority* est qu'une telle protection pour un titre serait dans l'intérêt des consommateurs mais qu'il appartient aux comptables d'en décider par eux-mêmes. Le Président fait remarquer que, lorsque l'Italie a libéralisé le marché des médicaments, les pharmaciens eux-mêmes y étaient opposés, prétendument pour « défendre l'intérêt public ».

Un délégué de Taipei signale que, d'après l'expérience des consultations avec des experts comptables, ces derniers avancent toujours une justification ou une autre en faveur de la réglementation, comme l'argument de la « course vers le moins-disant » (antisélection). En tant qu'autorité de la concurrence, il faut rester ferme pour promouvoir l'idée de la concurrence. Selon le Président, cela confirme qu'il y a toujours un débat entre la concurrence et d'autres objectifs, comme l'intérêt des consommateurs et la santé.

Les participants n'ajoutant aucun autre commentaire, le Président présente les conclusions de la table ronde. Il souligne que les professions comptables se caractérisent effectivement par une structure de marché singulière, ce qui les différencie des autres professions libérales. Il ressort clairement de la discussion qu'aucune économie d'échelle (transnationale) ne peut être réalisée. Parmi les facteurs qui sont sans doute à l'origine de la structure de marché actuelle figurent l'existence d'effets de notoriété, les risques de responsabilité et les marchés de l'assurance. Les cabinets d'expertise comptable doivent avoir une taille critique pour proposer à des gros clients de

procéder au contrôle légal de leurs comptes. Le phénomène de concentration ne signifie pas qu'il n'y a pas de concurrence. Cela étant, la concurrence émane d'un nombre relativement restreint d'intervenants et porte sur la notoriété plutôt que sur les prix. Selon les conclusions auxquelles est parvenu le *Government Accountability Office* des États-Unis, la plus grande concentration du marché n'a pas entraîné d'augmentation des tarifs facturés par les quatre grands cabinets (les *Big Four*). La demande de services de vérification comptable par les gros clients est assez inélastique.

En ce qui concerne les autres restrictions de la concurrence, dans de nombreux pays, elles sont moins fréquentes que dans les autres professions. Dans certains pays, par exemple, les autorités ont déjà réglé les problèmes de prix minimums et de restrictions en matière de publicité dus à l'autoréglementation. Parfois, cela est plus difficile, notamment quand ces restrictions proviennent de la législation. Les autorités sont alors parfois amenées à recourir à des rapports plaidant en faveur d'une abrogation de ces restrictions. Mais il s'agit en l'occurrence de questions plus générales, qui concernent aussi d'autres services professionnels.

Pour ce qui est de la structure de réglementation, différentes institutions sont concernées dans chaque pays. Une convergence sera peut-être nécessaire à cet égard, pour ce qui est, par exemple, des normes de formation, des normes de vérification comptable et des codes de déontologie.