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**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
COMPETITION COMMITTEE**

Working Party No. 2 on Competition and Regulation

SUMMARY OF DISCUSSION OF THE ROUNDTABLE ON DISRUPTIVE INNOVATION IN LEGAL SERVICES

13 June 2016

This document is a detailed summary of the discussion held during Item III of the 61st meeting of Working Party No. 2 on Competition and Regulation on 13 June 2016.

More documents related to this discussion can be found at: <http://www.oecd.org/daf/competition/disruptive-innovations-in-legal-services.htm>

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SUMMARY OF DISCUSSION

By the Secretariat

1. The **Chair, Alberto Heimler**, opened up the roundtable with a comment regarding the use of the term “disruptive” when describing innovations such as those affecting legal services. He expressed a preference for the term “creative destruction”, since competition can both disrupt and create, and therefore the term “disruptive” may have an unnecessarily negative connotation. Further, since innovations only become disruptive when they are widespread, the term may have limited value.
2. On the subject of innovation in services, the Chair reminded delegates of the session in December on innovation in the financial sector, noting that one of the conclusions of the session was that regulation should be as open as possible to new innovation.
3. In legal services markets, the Chair noted that existing ways of doing business are under threat, and many questions have arisen with respect to whether regulations should be modified, what the role of bar associations should be, and how lawyers and legal education should adjust.
4. To begin the discussion, the Chair turned to **John McGinnis, the George C. Dix Professor in Constitutional Law at Northwestern University**, to discuss the potential of technology to reshape the markets and redefine the role of lawyers. Professor McGinnis indicated he believed the issue of innovation to be the most important question facing the legal profession. He described the rise of machine intelligence as well as exponential improvements in computational power, software and connectivity, all of which will have implications for legal professions.
5. For example, predictive coding involves using a sample of documents to create algorithms that reduce the need for lawyers to review every relevant document in a case. These innovations have been primarily introduced by firms outside of the legal professions, and clients often wish to make use of these technologies to save costs. Legal research will similarly be dramatically changed, as technology offers improved quality and lower costs to lawyers. Predictive analytics are also being developed which can give clients a more realistic sense of the likelihood of success in a case, particularly in data-rich areas of law such as patent law. Finally, Professor McGinnis noted that the automated preparation of transactional documents, including tools that use legal research to evaluate the appropriateness of individual provisions or those which contact a company’s staff to remind them of contractual obligations, is also growing.
6. More generally, Professor McGinnis stated that the pace of innovation is accelerating, and even activities that are not currently computerised, such as brief writing, could become so in the future. The pattern of adoption of these sorts of innovations follows the model of Clayton Christensen, in that low-end activities are the first to be affected. The impacts of these changes are likely to include the displacement of lawyers in low value-added and simple activities (such as drafting standard legal forms and wills), and at the same time little displacement for lawyers in high-value, complex and fast-changing areas of law. This has been born out in the legal job market, where legal “superstars” succeed, associate salaries are stagnant, and there has been a drop in talent applying to law schools along with a commensurate growth of innovative start-ups in the area. While computers are unlikely to replace trial lawyers, their roles may significantly change, as predictive analytics may lead to fewer cases being heard in courts. As a result,

Professor McGinnis predicted that lawyers will specialise in areas where they are better than computers, including the psychological aspects of client relationships and advice.

7. Professor McGinnis concluded by emphasising the need for regulations to change to embrace innovation. Efforts to prevent what is termed the “unauthorised practice of law”, for example, could be a source of concern, although many innovations have been inputs to legal services and legislators have pushed back on attempts by legal professionals to limit innovations that are substitutes. More importantly in his view, regulations that ensure that only lawyers can obtain income from legal services act as a major roadblock to innovation, and would produce major problems if replicated in other professions such as medicine. This is a particularly important barrier to address to encourage the investment of capital in new innovations, and therefore to improve the accessibility of legal services for low- and middle-income individuals. Legal education should also move away from a “one size fits all” model to better prepare lawyers for this new environment. Professor McGinnis concluded by stating that he is optimistic about future innovations in legal professions, as long as regulations and legal education evolve in order to encourage innovation.

8. The **Chair** noted that the issue of the complementarity and substitutability of traditional legal services with new innovations, as touched on by Professor McGinnis, would be a theme of the discussion. He moved on to ask the **United States** delegation about their contribution, which identifies barriers to accessing the justice system among low- and middle-income American consumers. The Chair asked how excess demand for legal services occurs at the same time as what some consider excessive litigation in the United States, and whether there are particular areas where excess demand manifests itself.

9. The **United States** provided some information from the Department of Justice’s Office for Access to Justice, which was created in 2010 to address what is considered to be a crisis of legal system accessibility in the US for low- and middle-income individuals. In the United States, the Legal Services Corporation provides funding for the approximately 63 million households with an annual income below 125% of the federal poverty guideline (approximately \$30,000 for a family of 4). The US delegate noted that there is only 1 legal aid lawyer for every 6,415 people living in poverty in the United States, meaning these lawyers are subject to a significant burden. In areas such as family law (divorce, custody disputes, etc.), barriers to accessing legal services are particularly acute, with an estimated 70-90% of individuals representing themselves in such disputes. In criminal law, the government is required to provide representation for those who cannot afford it, but the case load is very heavy for these lawyers (500-900 felony cases and over 2,000 misdemeanour cases in some instances). Other examples of barriers to access to justice include domestic violence, where fewer than 1 in 5 low-income victims of domestic violence ever obtain access to a lawyer, and debt collection. With respect to the latter area, the US Delegate noted the example of the State of Maine, where 99% of represented victims in debt collection cases won their cases, but only 1-8% of low-income fraud victims had access to lawyers, suggesting their ability to obtain restitution for fraud is limited.

10. The **Chair** noted that technology may have a role in addressing these issues, including providing information and services that may have been previously inaccessible to low-income individuals. He then turned to the subject of the activities that are exclusively reserved for lawyers – raising the example of the medical professions, where many tasks that were previously exclusive to doctors are now being performed by paramedical or other professions. The Chair asked the United States about the discussion in its contribution regarding the link between having qualified lawyers and competence as well as trust. Specifically, the Chair asked how legal advice could be provided without trust and whether there are opportunities for paraprofessionals to enter the market.

11. The **United States** responded that the Federal Trade Commission (“FTC”) and Department of Justice (“DoJ”) have undertaken a significant amount of advocacy in the area of legal services, which are

regulated at the State level. Regulations typically involve the definition of what constitutes the practice of law, and prohibitions on the unauthorised practice of law. The US Delegate indicated that these prohibitions are sometimes too broad, meaning that consumers will not benefit from competition, choices and innovation from non-lawyers. Generally, the US agencies have recommended regulatory definitions of the practice of law that fit two conditions: the practice of law should be (1) limited to activities requiring specialised legal knowledge and training such that an implicit relationship of authority or of representation of authority and competence to practice law exists and (2) restricted to an area where there is some type of attorney-client relationship - i.e., where there is a reliance from the client on the lawyer and a relationship of trust. Areas where such a relationship of trust would not exist would include presiding over alternative dispute resolution and teaching law in universities.

12. The United States continued by mentioning a joint FTC/DoJ advocacy letter in favour of a bill in North Carolina that excludes interactive websites generating legal documents from the definition of the practice of law. In particular, the letter notes that such websites can: be more cost effective for consumers, exert downward pricing pressure on licensed attorneys, promote more efficient and convenient provision of legal services and address barriers to accessing legal services. The delegate also described the ability of paraprofessionals to represent clients before many federal and state agencies (in administrative proceedings rather than representing clients in court or FTC proceedings), including non-lawyer patent specialists appearing before the US Patent and Trademark Office and non-lawyer accounting technology specialists appearing before the Internal Revenue Service. Further, real-estate agents can provide quasi-legal services, and non-lawyer representatives in immigration proceedings are also recognised, provided that it is clear that these professionals are not providing legal advice based on legal competence and that no authorised professional legal service is being provided.

13. The **Chair** posed a final question to the United States on the subject of deceptive advertising prohibitions. He inquired whether deceptive advertising rules are sufficient to protect consumers from fraud, given consumers are not in a position to evaluate exactly what legal services they require, or whether they may require the services of an authorised lawyer at least initially.

14. The **United States** responded that the FTC has advocated in favour of truthful, non-deceptive advertising of legal services as a tool to promote competition, noting that restrictions on attorney advertising and non-deceptive commercial speech have been struck down by the Supreme Court. Despite the growth of attorney matching, reviewing and ranking services, the delegate noted that comparing lawyers and their services remains challenging (particularly before paying lawyers significant amounts of money). The delegate also noted that a number of surveys have shown many consumers are unable to afford to hire a lawyer, or they avoid hiring one, trying instead to deal with their situations themselves, even when they understand they may benefit from attorney advice. On the question of consumer awareness, the delegate noted legislation passed in Texas, where the sale of software that prepared family law documents was permitted on the condition that clear and conspicuous disclosure was provided that such products are not a substitute for attorney advice. This was the only legislation of which the delegate was aware that contained such a requirement. The delegate indicated that the FTC advocates for policies that promote truthful, non-deceptive information in the marketplace, and recognises that narrowly tailored disclosures may be appropriate in some cases for products and services relating to legal issues. However, the delegate stated that it is important to note that principles on unfairness, deception and truthful non-deceptive advertising are as applicable to legal services as they are to other parts of the economy.

15. The **Chair** turned to Finland to provide a comment on the project to digitalise the court system in that country. He asked whether the delegate from Finland believes there are complementarities to digitalisation on both sides of the legal system, and whether the digital reading of laws may alter the way those laws are drafted.

16. **Finland** described the IPAF databank project, which is an electronic service for pre-trial investigation, prosecutors and court lawyers. The delegate noted that the pre-trial system provides all relevant material in electronic form in one place (eliminating the need to copy, mail or file papers) and allows document exchange between lawyers and clients in both civil and criminal cases. The databank will include all judicial proceedings, from initiation to closing, and records for important cases can be sent to the national archives. The delegate noted that the system will be ready in 2018, and that both lawyers and courts must together take innovative steps to benefit the legal community, clients and society as a whole.

17. **John McGinnis** expressed the view that one of the most important issues in terms of digitalisation of the judicial system is ensuring that the entirety of proceedings is available in machine-readable form. This could be considered a public good, and would enable analytics to become more widely available. Predicting the outcome of litigation at the early stages using such analytics could, for example, reduce costs by encouraging convergence toward a settlement. Professor McGinnis indicated that he considers such technologies an important fruit of innovation, and noted that governments can help their development by making all litigation data as transparent as possible.

18. The **Chair** then turned to **Caroline Wallace, Director of Strategy of the UK Legal Services Board** to describe the regulatory structure for legal professions in the UK and how the Legal Services Board believes innovation will affect the legal profession.

19. **Caroline Wallace** began by noting that the UK Legal Services Board (“LSB”) is an oversight body for legal services in England and Wales, and is independent of government and the profession. The most significant recent milestone in legal services regulation in the UK was the passage of the Legal Services Act in 2007, although there were waves of deregulation of professions prior to this (real estate conveyancing, granting solicitors the right of audience before courts, etc.). The Act followed a competition review of legal services in 2003, and the Clementi Review in 2004 which investigated the mishandling of cases related to compensation for asbestos-related cancer. The Review found that there was a collapse in confidence of self-regulation of legal services, partially due to the issues regarding asbestos compensation cases. In addition, Ms. Wallace noted that the Clementi Review found there were regulatory failures in handling complaints from consumers about lawyers, specifically that complaints took a long time to be reviewed and they were not dealt with in a satisfactory manner. Finally, the Clementi Review also highlighted anticompetitive restrictions in the profession, as identified by the UK Office of Fair Trading. As a result, the Legal Services Act was passed and in 2009 the LSB was created.

20. Ms. Wallace noted that there are 6 reserved activities that can only be undertaken by people authorised under the Legal Services Act, which are quite limited but quite important. These are: the right of audience and advocacy in front of a court, the right to conduct litigation, instrument activities which relate largely to conveyancing of property, probate and notarial activities and the administration of oaths. Ms. Wallace continued by describing the regulatory structure of the legal professions in the UK, which are partially liberalised and are overseen by several regulators. The LSB is responsible for attaining consistency among these regulators. This is particularly important given that some of the “sister” regulators that the LSB oversees are sub-committees or dependencies of the professions they oversee (e.g. some have the mandate to ensure a “strong” legal profession, which reflect historical relationships and competing interests).

21. **Caroline Wallace** described how, with liberalisation, there has been a rapid growth in the legal services market, including a near doubling in value since 1997. Alternative business structures have also grown in recent years - there are about 10,000 firms regulated by the solicitor’s regulator, which has been a relatively static number, but there are now also approximately 500 alternative business structures which, although they only represent about 3% of all authorised firms, punch above their weight in terms of their share of turnover (11%).

22. Ms. Wallace emphasised the fact that there continue to be unmet legal needs in the UK. For example, in a study of over 8,000 adults who experienced approximately 17,000 legal issues, about 18% who could have benefitted from legal advice did nothing. Further, 46% of legal issues encountered by individuals were dealt with by the individuals on their own, or with the help of family or friends without professional guidance, often as a result of assumptions about the cost of advice. The LSB has estimated that the value of unmet demand for services by small- and medium-sized businesses is about £9 billion or about 30% of the current market. Ms. Wallace noted that this research and a wide range of additional research is available on the LSB's website.

23. Further, Ms. Wallace noted that unmet demand is bad for both consumers and lawyers, particularly when lawyers are struggling with the amount of change occurring in their profession. To address the situation, in Ms. Wallace's view, lawyers will have to change the way they do business. Alternative business structures ("ABS"), for example, are business models that allow investment ownership and management by non-lawyers. The LSB's research shows conclusively that ABS firms are better at first-tier complaint handling from clients than traditional law firms and there is no association between ABS firms and poorer ethical standards or quality. Also, there is evidence that ABS firms are more productive when looked at in terms of turnover per fee earner. Ms. Wallace indicated that there is a tremendous variety of ABS business models emerging in England and Wales, with some significant developments in terms of consumer offerings. For example, large accountancy firms such as KPMG, Ernst and Young, and PwC are all making inroads into the legal market. In-house legal units from large companies are also becoming ABS firms so that they can offer legal services to the public. BT Law (BT being the largest telecom provider in the UK) is one example. They have expertise in complaints handling, liability complaints and employment law which they are offering to the public. Another development identified by Ms. Wallace is the growing number of university law schools becoming ABS firms so that they can offer legal services to the public as part of their students' education.

24. In response to a question from the Chair regarding whether there are any transparency issues, such as conflicts of interest, with ABS firms such as BT Law, Ms. Wallace noted that ABS firms are still regulated. In fact, the regulatory process for becoming an ABS is quite significant and could, in Ms. Wallace's view, be simplified – regulation and legislation are the two most commonly-identified barriers to further innovation. Nonetheless, ABS firms have generated a significant degree of new innovative approaches – the LSB has found that ABS firms are 13-15% more likely to introduce new legal services than other types of regulated solicitors firms.

25. Ms. Wallace expressed the view that ABSs would likely not be permitted to exist under a pure self-regulatory scheme, given law societies and bar councils were strongly opposed to these changes. In addition, she noted that concerns about quality, ethics and lack of independence do not appear to have borne out in practice.

26. Looking ahead, Ms. Wallace noted that the LSB would like to see consumers shop around more, and that unmet needs remain a significant challenge, especially with the short supply of public funding for legal aid. Further independence of legal professional regulators from the profession was also identified by Ms. Wallace as a change that could further open up the professions to innovation. The list of reserved activities in the UK also merits further analysis, as it is based not on risk but on historical granting of exclusive rights, leading to over-regulation of some services that may not require it and under-regulation of other services, such as will-writing. Finally, Ms. Wallace mentioned that the current regulatory framework could contribute to an uneven playing field between professionals providing some of the reserved services (which subjects them to the entire range of professional regulations) and those providing only non-regulated services.

27. The **Chair** turned to the delegation from the **United Kingdom**, which he noted is currently undertaking a market study of legal services. He asked the UK to elaborate on the issues and questions raised by the study with respect to innovation in legal services.

28. The **United Kingdom** noted that the Competition and Markets Authority (“CMA”) is undertaking a market study to examine the features in the market that affect how competition operates. Because interim findings will not be published until July, the delegate was limited in the range of detail that could be provided on the progress of the study. Generally, the delegate did indicate that innovation is an important indicator of how well competition is working in the sector, and the potential future evolution of competition as well. While there is a wide range of innovations being introduced into the market, the uptake of those innovations is limited, suggesting that they will not truly become disruptive until they become widespread. Two primary themes in the study that were identified by the delegate were (1) the role of regulation, and whether it extends beyond simply protecting consumers and (2) whether consumers are able to engage in the market to drive the incentive of firms to innovate, because if consumers are not able to make sound purchasing decisions, firms will not have an incentive to innovate.

29. The Chair asked the UK whether the market study will lead to direct changes in legislation or a proposal for changes. The UK delegation responded that the remedies in a market study are quite limited, but there will be an option in July to refer the matter to a market investigation, which is a second phase where remedies can be much stronger. The CMA will be setting out in July whether it thinks this is an appropriate step to take, with an awareness of whether any remedies proposed by the investigation would be able to resolve the issues identified.

30. The **Chair** then turned to **Charley Moore, Founder and CEO of Rocket Lawyer**, to discuss the practical questions his company faced and the question of consumer protection with respect to online platforms.

31. **Charley Moore** began by noting that he is a lawyer, and that, in his view, the innovation in legal services is primarily an “access to justice issue.” In particular, while wealthy individuals can hire lawyers, middle class households and small businesses can’t get the legal help they need. Further, legal aid systems are underfunded or non-existent, creating significant issues for low-income individuals. Mr. Moore noted that innovations which tend to leave behind a changed market could be more appropriately termed “revolutionary” rather than “disruptive.”

32. Upon founding Rocket Lawyer, which has more than 14 million registered users, Mr. Moore indicated that the degree of latent demand for legal services became clear, including users around the world who needed US legal documents. For instance, in surveys conducted by Rocket Lawyer, 56% of small businesses that responded reported delaying obtaining legal services or handling legal issues themselves, generally as a result of cost (38%), complexity (35%) or uncertainty about who to ask (10%).

33. Rocket Lawyer is an online platform that provides a range of legal agreements including business incorporation and employment agreements, as well as optional legal advice, in all 50 US states as well as England. Clients include individuals as well as lawyers, who can create customised legal documents from a computer or mobile device. For example, lawyers may use Rocket Lawyer’s will-writing tool to provide a will for a client.

34. Mr. Moore noted that the technological innovation underlies platforms like Rocketlawyer, and that quality is achieved through high volume. The business has worked with regulators in the US, including a pilot project with the American Bar Association which was controversial and involved member attorneys providing advice through a simple “questions and answers” platform. Since legal services are regulated on

a state level, Rocket Lawyer has had a mixed experience, with some bar associations welcoming platforms like it (California and Florida) and others being opposed (Pennsylvania).

35. Mr. Moore indicated that the volume of Rocket Lawyer users is due to the ease with which individuals can obtain legal advice for low prices. Individuals can, for instance, obtain advice by asking a 600 character question of a lawyer, who can answer it in their spare time from a mobile advice, at a cost to the consumer of as low as USD40. Legal documents available on Rocket Lawyer include free documents and premium documents that come with additional legal advice for USD5 or more. Businesses have also begun to offer Rocket Lawyer as a benefit of employment.

36. The **Chair** continued by inviting BIAC to provide its perspective, including on the ability of innovations to reduce market power by expanding the accessibility of information (e.g. the elimination of the advantage of large firm's law libraries).

37. The delegate representing **BIAC** noted that almost everyone, whether in business or private matters, has a need for lawyers at some point in their lives. The delegate noted that there is a difference in the impact of innovation between large corporations, who have in-house counsel and can handle the market themselves, and small businesses as well as individual consumers. In addition, the delegate noted that large law firms will need to adapt and spearhead innovation if they are to remain viable. Finally, the delegate noted that there is a key role for competition agencies to ensure that regulators strike the right balance and avoid over-regulation of the sector.

38. **John McGinnis** noted that the power and profitability of large law firms is likely not to change in the near future because much of the technology that is being introduced is most useful at the low end of the market. Machine learning, for example, is only ready to replace lawyers at the low-end level of services currently. To the extent that innovation is having an impact on legal services at the higher end, where matters tend to be complex, high-stakes and involve ambiguity, it will serve mainly as a compliment to traditional legal services rather than a replacement (at least in the next decade or two).

39. The **Chair** then asked **Pierre Aïdan, Co-founder of Legalstart** to share his experience dealing with current regulatory frameworks, his view on responding to some of the challenges in the legal profession, and his thoughts on the question of whether new services are compliments or substitutes to existing legal services firms.

40. **Pierre Aïdan** began by noting that the underlying issues in terms of innovation and regulation are similar in France to those in the US. Legalstart is relatively new in France but, like Rocket Lawyer, was established as a response to demand among small businesses for low-cost ways to address their legal needs. The platform consists of software that allows businesses to automatically generate legal documents (such as an employment contract) and deal with paperwork (e.g. file a request for a court order for the payment of business debt). Its current share of the French incorporation business is approximately 5%.

41. In addition, Mr. Aïdan noted the results of a recent survey by OpinionWay, which found that more than 85% of French consumers find it very difficult to find relevant information on lawyers. As a result, Legalstart has started a new service that allows consumers to access feedback on lawyers.

42. Mr. Aïdan continued by opining that France is not in fact hostile to innovative legal services. The French government is, in his view, open to solutions to improving access to legal services, and Legalstart have been invited to the government's working group on simplifying French business processes, as well as to present their views to the French Department of Justice. However, French bar associations and the lawyer's union have had an ambivalent response to legal innovations according to Mr. Aïdan - lawyers in France are becoming more and more aware of the importance of digital solutions in their profession but a

number of them remain opposed to new ways of delivering legal services to consumers. However, there are in his view no major regulatory obstacles as long as no legal advice is provided, and relationships between innovators and French lawyers have been positive. For instance, Legalstart interacts with the Paris Bar Association through their incubator, a think tank on legal innovation, and have signed a partnership with the French notaries to develop a software program for incorporation. Conversely, with respect to lawyer reviews, there has been strong opposition from the bar associations and unions, including a recent court decision in Paris that introduced restrictions to the availability of reviews.

43. In closing, Mr. Aidan stated that there is no doubt that regulation of the legal profession is needed to protect consumers. However, in order to promote a competitive legal marketplace in France Mr. Aidan believes that restrictions on innovative services should be adopted only in 2 cases: if there is evidence of actual consumer harm or if they involve qualified lawyers acting contrary to their professional obligations. For example, he believes that consumers should be able to give fair feedback on lawyers, but Mr. Aidan agrees that the specific nature of the legal profession, such as attorney-client privilege should be taken into consideration. More generally, he stated the view that Legalstart's operations should not be subject to the supervision or prior authorisation of bar associations - such a proposal was introduced in January 2016 but was rejected by the French government. Such a measure would, in Mr. Aidan's view, constitute an unreasonable restraint on competition, especially at a time where bar associations are offering legal services through their own platforms. Finally, Mr. Aidan expressed the view that new rules about lawyer involvement in online platforms, including with respect to subcontracting, and client-attorney privilege, could further promote innovation and competition in the market. In conclusion, Mr. Aidan stated that French consumers would benefit from competition between lawyers and non-lawyers for legal-related services.

44. The **Chair** then invited the French delegation to discuss the report on legal professions prepared by the Autorité de concurrence ("Autorité"), the types of alternative notarial service delivery models mentioned by Mr. Aidan and the issue of discounts for notarial services that was dealt with recently.

45. **France** noted that the regulation of legal professions is primarily motivated by information failures in terms of the nature and extent of the professional's expertise. However, in the notarial profession, the delegate noted that tariffs are also regulated, which forms in essence a legal monopoly. The Autorité considered the extent of the monopoly granted to regulated professionals, which services should be subject to regulated tariffs and how tariffs should be set, as well as the broader question of what objective is achieved from tariff regulation in terms of the public interest. In the case of notaries, the regulation of tariffs is designed to ensure accessibility and comparability of service levels across the country, which means that a minimum level of revenue is guaranteed to notaries in exchange for an obligation to provide the services that are requested of them. There is also an equalisation element to the fees charged to ensure that services are accessible to all consumers, in that some tariffs are set on an ad valorem basis (i.e. based on the obligation or asset that is the subject of the contract). That means that, in some cases, the tariff may be quite high, and in excess of the costs associated with the transaction, but is meant to compensate for other transactions. This is reflective of a general policy principle that the Autorité did not contest.

46. However, the delegate noted that the Autorité did examine in 2014 the way tariffs were set and the leeway notaries should have in setting their tariffs. At the same time, a draft bill (sometimes referred to as the "loi Macron") was being considered that touched on tariff regulation in professional services. The Autorité published an opinion in January 2015 that contributed to the public discussion on the subject, with some of its proposals being included in the final law that was adopted in August 2015. These measures included permitting discounts, although the law limits the discounts to levels that may not have the desired pro-competitive effect of encouraging new entry into the market. In addition, a provision that provided a discount to fellow notaries was eliminated in the law, as recommended by the Autorité on equity grounds.

47. The Chair asked the French delegation about the extent of competition among notaries, given that there is a monopoly by the profession but the possibility of competition within it, particularly given the number of notaries that are licensed in certain jurisdictions. The French delegation responded by noting that, while the Autorité sought discounts larger than 10% (the limit placed on discounts for certain services), there were other significant changes to the entry conditions for the profession. In particular, it encourages the ability of notaries to enter a market, so while there is a high density of notaries in some regions, younger and newly-qualified notaries are able to establish themselves in the market. Unfortunately, because price competition is limited due to the discount ceilings, competition must occur on other dimensions, such as on quality.

48. The **Chair** continued by asking **Bulgaria** about a potential unnecessary restriction to competition in the form of requirements for lawyers to have an office in order to enter the legal services market.

49. **Bulgaria** responded by explaining that the requirement does not require the lawyer to deliver services exclusively within their office, and that in fact many lawyers in Bulgaria are providing their services online. As a result, the competition authority has not made the assessment that this is a major restriction on market entry.

50. Next, the **Chair** asked **Chinese Taipei** to comment on a case involving an online legal service firm called Life Law. Life Law was a web-based legal service platform, and was paid a fee by lawyers who offered their services through the site. The bar association believed that this arrangement violated professional standards, which prohibit the payment of commissions to third parties, and therefore instructed lawyers not to offer their services through the site. The Fair Trade Commission considered the action of the bar a violation of the competition act, the bar appealed and the court of appeal annulled the Fair Trade Commission's ruling, on the grounds that the bar had the power to intervene in issues of ethics. Because this case involves a contrast between antitrust law and ethical codes, the Chair asked why this case was not brought before the Supreme Court.

51. **Chinese Taipei** noted that this case was the first case regarding legal services that was considered by the Fair Trade Commission. At the time of the Life Law case, the Fair Trade Commission was part of the government cabinet, and so was obligated to follow cabinet instructions. The case was brought before the administrative appeal review committee, who made a final decision in the matter. However, following institutional changes in 2013, the Fair Trade Commission is now independent from cabinet, and appeals of its decisions will now follow administrative litigation processes (including appeals being heard by the Supreme Court after the Administrative High Court).

52. The **Chair** then invited **Louis Degos, President of the Prospective Commission of the French Conseil National des Barreaux** to comment on the Life Law case as well as provide his general views on the discussion.

53. **Louis Degos** responded by noting that online platforms have been introduced in France, but the approach adopted by these platforms is to require payment for services (including client communication tools and intermediation services). This ensures that the platforms are not exclusively providing brokerage services, and therefore have not yet been challenged by legal professional bodies.

54. Mr. Degos continued by making some general comments in response to the discussion. First, he stated that economic rules are not the same as legal rules – there is no difference in economics around the world, but the law and legal system are completely different across borders, and so the business of lawyers as well as the place of lawyers in society is completely different as well. This also has impacts on the inter-jurisdictional mobility of lawyers.

55. Secondly, Mr. Degos noted that in the two major types of legal systems (common law and civil code), the business of lawyers is not at all the same. For example, Mr. Degos described a survey of his clients before the financial clients in which US clients reported spending 6-8% of their total expenses on legal services, while UK clients indicated they spent 3-4% and French clients indicated they spent 0.2%-0.5%. So the economic terms of the industry are also different among systems, as are the opportunities for disruptive innovators. For example, in civil law countries, innovators must compete with both lawyers and in-house counsel, as well as regulated monopolies in countries like France (notaries, bailiffs, registrars). On the other hand, there are some typical tools in common law countries, such as discovery systems, which have no equivalent in civil code jurisdictions (since there is no discovery process, for example). Further, since there is no precedent in civil code systems, the use of software that uses precedent to predict case outcomes is not relevant.

56. Mr. Degos then discussed the impact of certain specific innovations that have been introduced in France. With respect to e-lawyering, he indicated that lawyers providing online services should be considered separately from non-lawyers providing e-lawyering services, since there is no regulatory problem with lawyers doing so. For example, he noted that the National Bar Association would be introducing an intermediation platform to connect clients with lawyers and therefore to overcome some information asymmetries. Further, Mr. Degos noted that there are certain non-regulated areas where those who are not lawyers can freely compete with lawyers.

57. On the subject of lawyer ranking, Mr. Degos noted that the Paris Court of Appeal has ruled that comparisons among lawyers is prohibited, so clients are permitted to express a general view of whether a service was acceptable or not, but cannot compare one lawyer with another. Mr. Degos expressed the view that such comparison sites are not a major source of concern, as they are not always well-positioned to help consumers select the best service provider (he used the example of online travel review sites, which may not identify the best restaurants in a city like Paris).

58. In addition, Mr. Degos noted that with service bundling, some lawyers are starting to contemplate new needs and offer some multidisciplinary services in France, such as those combining the services of accountants, lawyers and notaries.

59. With respect to automation, Mr. Degos emphasised his view that in civil law systems, computers are less well-positioned to replace lawyers, as cases involve considering the construction and interpretation of rules rather than the use of precedent. Predictive analytics are therefore limited, but there are developments in some fields such as divorce cases or injury compensation. Further, Mr. Degos made a comparison of law and medicine, characterising both surgery and court pleadings as activities that should not be “do it yourself” in nature. Next, he mentioned the issue of ethics, and opined that machines lack ethical rules (such as an awareness of conflicts of interest). As a result, while commoditised work may be appropriate for computers, there is a place for a lawyer where cases require confidentiality and confidence with the client.

60. Mr. Degos also expressed concerns about the risk of supplier-induced demand being more pronounced with the delivery of legal services by non-lawyers, since despite the “democratisation of knowledge”, the complexity of the legal system has remained, meaning that consumers are still vulnerable and therefore best protected by ethical obligations on the part of lawyers.

61. In closing, Mr. Degos mentioned the issue of access to justice. He noted that, when he began practising law, his manager indicated to him that “the rich will pay for the poor”, but this is no longer the reality in today’s environment. At the same time, legal aid systems are not sufficient, and they are required for small firms to be able to defend low-income clients. He mentioned the example of big corporate law cases in effect subsidising divorce appeal cases (which individual clients would not be able to afford),

indicating that an erosion of revenue from corporate law would negatively impact individual consumers. Finally, Mr. Degos raised third-party funding, predicting that in 10-20 years, 40-50% of his clients may be financed by a third party. This raises questions, since the clients of a lawyer may not be those financing a service rather than those who the service concerns, which would be a major problem.

62. Ania Thiemann of the OECD Secretariat asked the panellists and delegation from France about the potential conflict between opening up the French market to notaries and restrictions on online ranking. Specifically, she indicated that there would be a challenge for new entrants if they were unable to build up a reputation through online review platforms.

63. Pierre Aïdan responded by expressing the view that it is fair for clients to express a view about the quality of services they have received from lawyers. Further, he agreed that it would be easier for young lawyers to become established and encourage growth in their client base if they can get positive reviews from clients on the quality of their services.

64. France responded by noting that the Autorité has not yet expressed a view on the question of lawyer rankings, which was before the Cour de cassation in France. On the subject of young professionals accessing a market, the delegate mentioned that liberalising notary tariff regulations would be positive, as it would allow young notaries to initially offer discounts to attract business, and to pass on the advantages of more efficient processes to their consumers.

65. Charley Moore expressed support for the idea of encouraging competition among notaries. He also indicated that preventing the publishing of review information would be very challenging in practice. He noted that, in his experience, consumers really care about getting quality legal services at a price they can afford. They are less interested in where bad lawyers are, but are really looking for platforms that they can trust to provide high-quality services.

66. Mr. Moore continued by opining that consumers need transparency and services that bring costs down. However, he noted that platforms can only achieve scale (which reduces costs) when they are well-funded, since there are many costs, in terms of challenging regulation and undertaking litigation, that are incurred by legal services innovators. Mr. Moore characterised these costs as a tax, and indicated that regulators should not impede the progress of innovations that consumers have clearly chosen “with their pocket-books.” Strict regulatory measures would make it difficult for start-ups to innovate and respond to the demands of consumers.

67. Pierre Aïdan agreed with Mr. Moore, and indicated that clarity regarding the likely regulatory response to new innovations is also important.

68. Ireland noted that legislation was enacted in December 2015 in that jurisdiction to establish an independent legal services regulatory authority, which will take over regulation from self-regulatory bodies. The delegate noted that the Secretariat paper would be useful for this exercise and asked what follow-up would result from the session.

69. The Chair noted that an executive summary of the session would be prepared, along with some suggestions from the secretariat, and that any decisions on future work would be up to the Committee and Working Party.

70. John McGinnis expressed the view that regulatory reform in England and Wales with respect to alternative business structures is important to consider given the dynamic effect this will have on all regulations in place. He indicated that lawyers often constitute a very skilled interest group that is not always in favour of innovation, since competition would reduce its market share. Once a new market structure is introduced that allows more parties to earn income from legal services, it will break down

interest groups, making the parochial concerns of a particular profession less important (as has been seen, in his view, with hospital corporations in the medical profession). He emphasised the importance of dynamism that permits new companies to provide legal services, since it will serve as an important counterweight as well as improve regulation.

71. The Chair noted that there is very important advocacy work for competition authorities to undertake, including advocacy in favour of legislative change such as the enabling of alternative business structures discussed by Mr. McGinnis

72. James Mancini of the OECD Secretariat closed with a summary of the issues discussed. He noted that there are some very good reasons for legal services to be regulated, including market failures, externalities that could introduce instability into the legal system and some fundamental policy goals as well (such as legal aid systems to promote greater access). Because these objectives and individual regulatory provisions are not always aligned, he indicated that a holistic perspective may be needed when contemplating regulatory reform.

73. He noted that one of the basic foundations of regulatory frameworks is the exclusivity granted to legal professionals, and that the precise definition of this exclusivity is becoming less clear with new innovations. As a result, any regulatory reform may need to consider the balance of obligations and benefits in legal professional frameworks.

74. Other regulatory provisions are also under challenge, in his view, such as quantitative entry restrictions (including geographic restrictions), which are being loosened in France and which are less and less relevant in an age where services can be obtained online.

75. Mr. Mancini observed that there are also questions about the level of qualifications needed from all legal professionals, and whether different levels of certification, or the use of para-professionals, should be expanded.

76. In addition, the introduction of independent oversight over professional self-regulators in England and Wales as well as Ireland, represents in his view recognition of the potential for conflicts of interest in current regulatory structures.

77. Finally, Mr. Mancini noted that new consumer protection issues may arise from new offerings, particularly if there is a transition away from extensive legal services regulation toward a reliance on consumer protection and truth in advertising regulations. For instance, questions such as attorney-client privilege may not necessarily be addressed by consumer protection regulation alone.