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

Working Party No. 2 on Competition and Regulation

EXECUTIVE SUMMARY OF THE ROUNDTABLE ON DISRUPTIVE INNOVATION IN LEGAL SERVICES

13 June 2016

This Executive Summary by the OECD Secretariat contains the key findings from the discussions 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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EXECUTIVE SUMMARY

*By the Secretariat**

1. The Roundtable on Disruptive Innovations in Legal Services discussed the way that current legal professional regulations are being (i) challenged by new innovations and (ii) potentially standing in the way of further innovation. The Chairman, Alberto Heimler, opened the session by noting that the current trend of innovation in legal services markets could be described as “creative destruction”, in the sense that it is creating a completely new market reality and set of services. The discussion revolved around seven core themes.

1. There are significant barriers to the accessibility and affordability of legal services, which mean that many low- and middle-income households as well as small businesses do not obtain the legal services they may need

2. The United States described challenges to the affordability of legal services among low- and middle-income households. In particular, many individuals are forced to represent themselves in family proceedings, while in criminal cases (where attorney representation is guaranteed by the constitution) legal aid receives relatively little funding considering the number of households who are eligible, and legal aid lawyers have very heavy caseloads. Charley Moore, Founder and CEO of Rocket Lawyer, echoed these views with additional survey data on barriers to the accessibility of legal services for individuals and small businesses.

3. Caroline Wallace, Director of Strategy of the UK Legal Services Board described a similar situation of unmet legal needs in the UK. For instance, almost one in five individuals responding to a recent survey could have benefitted from legal advice but did not obtain it, and almost half of legal issues reported in the survey were dealt with by individuals themselves or with friends and family, without legal advice. The Legal Services Board has also estimated that the value of unmet demand for services by small- and medium-sized businesses in the UK is about GBP 9 billion (British pounds) or about 30% of the current market.

4. In addition, Louis Degos, President of the Prospective Commission of the French Conseil National des Barreaux noted the insufficiency of legal aid funding, and how law firms are no longer able to cross-subsidise services for individuals and small businesses (such as divorce appellate litigation) with fees from large corporate clients, meaning that providing affordable legal services for the latter will be a growing challenge.

* This Executive Summary does not necessarily represent the consensus view of the Competition Committee. It does, however, encapsulate key points from the discussion at the roundtable, the delegates’ written submissions, and the Secretariat’s background paper.

2. Several new innovations are enabling low-cost legal services, digital access to legal services as well as legal records, and information about the quality of legal professionals

5. There is a wide range of recent innovations in legal services. John McGinnis, the George C. Dix Professor in Constitutional Law at Northwestern University, described how improving technology and processing power is changing the legal profession. In particular, these developments have created new opportunities for online document preparation tools and analytics such as case outcome prediction tools. There is also potential for automation to affect less standardised activities such as brief-writing.

6. Finland described a project underway to digitise court proceedings, allowing documents to be electronically filed, shared and archived, which could be a significant opportunity for automated legal analytics services. Professor McGinnis noted that such efforts toward digitalisation of the court system could be a major contributor to innovation and should be considered a public good.

7. Charley Moore, founder and CEO of Rocket Lawyer, described how technological innovation is at the core of new low-cost service offerings, and how legal document and advice platforms rely on scale, which can only be achieved with the trust of consumers.

8. Pierre Aïdan, Co-founder of Legalstart, described how, in response to surveys indicating that a large majority of consumers have difficulty finding information on lawyer quality, platforms for providing feedback on legal services have been developed. He indicated that it may help young lawyers and notaries establish a business, by allowing them to build up favourable reviews and gain the trust of prospective clients.

3. The likely impact of these innovations will vary significantly among areas of law, legal systems, legal professions and individual services

John McGinnis expressed the view that standardised forms of law will be most affected by automation, and that predictive analytics may also reduce the demand for litigation by facilitating settlement negotiations. On the other hand, he opined that complex and fast-changing areas of law are unlikely to be automated in the near future. As a result, there will be a continuing emergence of legal “superstar” firms while other areas of the profession (real estate and will-writing, for instance), will shrink.

Louis Degos described significant differences in the range of innovations that would be relevant in civil law systems compared to common law systems. He observed that his French clients spend proportionately less on legal services than British or American clients, and that because there is no concept of precedent, predictive case analytics are not relevant in civil law systems.

4. The legal professions and regulators have sometimes been resistant to change in response to new innovations

9. There is some resistance to innovation among elements of the legal professions. Pierre Aïdan indicated that in France, the government has been open to hearing from legal services innovators, but French bar associations and lawyers unions have remained opposed to certain new ways of delivering legal services. Charley Moore noted that dealing with regulation and litigation imposes costs that are effectively a “tax” on new innovation, which can only be paid by well-funded start-ups that have attained scale. As a result, small firms with new innovations are less able to enter the market.

10. Some of the resistance to change may reflect the benefits certain professionals derive from the status quo. For example, Caroline Wallace noted that the list of reserved activities in the UK is based not on risk but on the historical granting of exclusive rights, which could mean there is over-regulation of some services and under-regulation of others.

5. There is an important role for competition authorities to play in advocating in favour of legal service innovations

11. Several authorities described efforts undertaken to advocate for competition and legal service innovation. France described the Autorité de Concurrence's advocacy in favour of legislative change to the rules governing legal professions, for example in the area of permitting discounts to regulated notarial tariffs. Legislation that loosened restrictions on new notary entry, although by less than recommended by the Autorité, will benefit consumers and new entrants. In particular, it could allow young notaries to initially offer discounts to attract business, and to pass on the advantages of more efficient processes to their consumers

12. The United Kingdom described the Competition and Markets Authority's current market study on legal services. Two primary themes in the study that were identified by the delegate were (i) the role of regulation, and whether it extends beyond simply protecting consumers; and (ii) whether consumers are able to engage in the market to drive the incentive of firms to innovate.

13. The United States indicated that unauthorised practice of law prohibitions can often be too wide, depriving consumers of the benefit of competition, choice and innovation from service providers outside of the legal profession. To this end, the Federal Trade Commission and Department of Justice have engaged in competition advocacy, as evidenced for example in a joint letter in favour of permitting online legal document platforms to operate in North Carolina.

14. In addition to advocacy efforts, Chinese Taipei described a case in which enforcement actions were undertaken against a bar association that sought to prohibit lawyers from offering their services via an online platform. This decision was overturned prior to the competition authority gaining independence from the government.

6. The independence of legal services regulators may be essential to encourage pro-innovation regulatory frameworks

15. Caroline Wallace described legislative changes made in England and Wales to subject legal professional self-regulation to independent oversight. She also described how reforms permitting alternative business models have produced new business models which exhibit a greater degree of innovation than traditional firms. For example, large accountancy firms have begun offering legal services, and the in-house counsel of a major telecommunications firm is now offering complaint handling services. Ms. Wallace expressed the view that the opening of the market to alternative business structures may not have been possible under a purely self-regulatory system.

16. Professor McGinnis expressed concern that self-regulatory enforcement of unauthorised practice of law rules could be used to hamper innovation, and therefore to prevent under-served segments of the population from accessing legal services. He indicated that self-regulated professions such as lawyers could constitute a very skilled interest group that is not always in favour of innovation, since competition would reduce their market share. Permitting market structures that allow more parties to earn income from legal services would reduce the influence of interest groups, making the parochial concerns of a particular profession less important.

7. Consumer protection issues remain important and relevant to legal services provided by those outside the profession

17. On the subject of consumer protection, the United States noted that some state jurisdictions have permitted online legal platforms on the condition that there is clear disclosure that certain services do not constitute the advice of a legal professional. More generally, though, the United States emphasised that principles on unfairness, deception and truthful, non-deceptive advertising are applicable to legal services as they are to other parts of the economy.

18. Louis Degos expressed concerns about the risk of supplier-induced demand being more pronounced with the delivery of legal services by non-lawyers. In particular, despite the “democratisation of knowledge”, the legal system remains highly complex, meaning that consumers are still vulnerable and therefore best protected by ethical obligations on the part of lawyers. He also expressed the view that lawyer ranking sites could be of limited use for consumers, and that ethical rules (for example, confidentiality) in the current regulatory system are a benefit that would not be offered by unregulated legal services.

19. Pierre Aidan expressed the view that additional restrictions on innovative services should be adopted only in two cases: if there is evidence of actual consumer harm or if they involve qualified lawyers acting contrary to their professional obligations. The US agencies have recommended regulatory definitions of the practice of law that fit two conditions: the practice of law should be (i) 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 (ii) 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.

8. Considering the points noted above and those raised in the Secretariat Background Paper, the Secretariat has identified some issues for competition authorities to consider, and potentially study further:

1. **Professional self-regulatory bodies** may not be well-suited to determine the optimal regulatory response to new innovations coming from outside the profession. Independent oversight may, as a result, be required.
2. **Comprehensive regulatory reform** in the legal professions may be required in order to promote competition and rebalance the benefits and obligations of legal professional recognition. Such an exercise should consider the following:
 - The existence of market failures that motivated legal services regulations should be re-assessed. For example, standardised “do-it-yourself” product offerings may generate positive externalities for the legal system by increasing predictability, but complex algorithms using legal proceedings may expose consumers to new information asymmetries.
 - The range of activities that are exclusive to legal professionals may need to be narrowed and clarified. Multiple levels of professional certifications, such as the use of paraprofessional designations, can be considered for many reserved activities. In addition, exclusive rights reflecting historical treatment rather than market failures should be removed.
 - The scope of exclusivity should also be assessed in light of the ability of consumers to access information on the service they are procuring, and specifically their ability to overcome information asymmetries with reviews or other forms of trust outside of the regulatory framework (including standard consumer protection laws).
 - The feasibility of legal professional restrictions and requirements to provide legal aid should be considered in light of changes to the scope of exclusivity.
 - The risk of supplier-induced demand in the current system should be weighed against the risk in a system where non-professionals provide more services, and therefore competition is more intense.
 - Regulatory reform should avoid creating two parallel systems in which offering one regulated service would subject a market participant’s entire business to legal professional regulation. Such a system would create an artificial barrier between regulated and unregulated legal service firms and would be a disincentive to multidisciplinary service offerings.