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## **Working Party No. 2 on Competition and Regulation**

### **DISRUPTIVE INNOVATIONS IN LEGAL SERVICES**

-- Summaries of contributions --

**13 June 2016**

*This document reproduces summaries of contributions submitted for Item 3 of the 61st meeting of Working Party 2 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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**DISRUPTIVE INNOVATIONS IN LEGAL SERVICES**  
*-- Summaries of Contributions --*

This document contains summaries of the various written contributions received for the discussion on Disruptive innovations in legal services (61st Working Party 2 meeting, 13 June 2016, item 3). When the authors did not submit their own summary, the OECD Competition Division Secretariat summarised the contribution. Summaries by the OECD Secretariat are indicated by an \*.

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## BULGARIA

The legal profession in Bulgaria is extensively regulated as the national legislation stipulates high quality and quantitative entry requirements, regulates the remuneration of the legal professionals, establishes a ban on advertising, etc.

However, the attorneys in Bulgaria are trying to find new ways for delivery of legal services in response to the introduction of new technologies and the needs of their clients. In compliment to their practices a great number of the law firms in the country are offering online services. Through their internet sites they provide practical information, consultations, generation of wide range of legal documents and online mediation.

Online platforms, which provide ranking and reviews of the law firms in Bulgaria, are rare and they do not provide information of the caseload or financial performance of the attorneys. Probably one of the reasons for this is the ban on advertising, introduced by the Attorney Act. With its Decision No. 353/2005 the Bulgarian Commission on Protection of Competition proposed the removal of this provision as it would favour the consumers.

Due to the nature of the notarial procedures, which usually require face-to-face meetings between the notary and his / her client the provision of online services by the notaries in the country is very limited. In general, the notaries post on their internet sites information with regard to the different notarial procedures; example of documents; calculator of the notary fees.

Some of the provisions of the national legislation, which regulate the provision of legal services, have been assessed by the CPC with regard to their conformity with the competition rules. With its Decision No. 236/26.10.2006 the competition authority made an assessment whether the quantitative restriction of the number of notaries in the country, introduced by the Notaries and Notarial Practice Act is justified. The CPC as well adopted an opinion (Decision No. 353/2005) with regard to a provision of a Draft Law for Amendment of the Attorneys Act, which proposed the introduction of non-exhaustive list of services to be provided exclusively by attorneys.

## CHINESE TAIPEI\*

The Contribution discusses the case of an online legal services platform called LifeLaw. The Taiwan Bar Association (TBA) instructed its members not to offer their services through LifeLaw due to a prohibition on paying brokers for clients (since LifeLaw charged lawyers for access to the platform). The Fair Trade Commission (FTC) ruled that the TBA's Attorney Code of Ethics was subject to competition law, and ordered that a fine be paid for violating prohibitions on concerted actions. This determination was overturned by the Executive Yuan Administrative Appeal Review Committee, which found that the TBA's conduct was consistent with its regulatory authority.

With respect to advocacy, the contribution notes that the FTC recommended the removal of attorney fee recommendations (accepted by the Ministry of Justice and currently being considered in the legislature), limits to the ability of attorneys to practice in areas outside of their local bar association's jurisdiction (currently being considered by the Ministry of Justice) and restriction on advertising attorneys' services. The FTC found that each of these restrictions were unjustifiable limits to competition.

In the future, the contribution notes that, as legal services begin to be provided by businesses that are not law firms, new business models may emerge. These models will nonetheless require the involvement of lawyers, and as such competition issues associated with disruptive innovation in legal services "cannot be separated from discussions on attorney regulations and the role of bar associations." However, the contribution notes that there are difficulties as a result of the "lack of consideration" of competition law by the Ministry of Justice and bar associations, a lack of support among the judiciary and policymakers for the FTC's deregulation proposals, and a rejection of the application of competition law to the regulation of professions.

The contribution concludes by stating: "The key to making a breakthrough in the FTC's law enforcement is the concurrence between the Attorney Regulation Act and competition law, while pursuing a balance between the self-discipline, professionalism, and independence of professionals, such as attorneys, and effective competition... After actively co-ordinating with the legislature and the [Ministry of Justice]... the FTC has seen the rights and responsibilities of both parties become clearly defined, and has also seen signs of gradual deregulation. In the future, the FTC will continue to examine legal service-related laws and policies, the market structure, the situation regarding competition, and other social and economic changes in Chinese Taipei, and will suitably advocate a competition policy with the [Ministry of Justice] and the bar associations. The FTC will also suggest that the regulatory authority or bar associations establish an information disclosure platform for professionals such as attorneys to eliminate the information asymmetry between attorneys and the general public. This will increase the accessibility of legal services to the general public and facilitate effective competition between attorneys with respect to service quality."

**FINLAND**

The legal service market is characterised by conservative business models and services in Finland. However, new law and technology firms have provided interesting services. The outsourcing of legal services is not widespread, but it may become a trend in the future. Digitalisation also proceeds in the public sector and will affect lawyers' work. Thus far, regulation has not been a barrier to new innovations in the legal service market. The legal service markets are likely to change: it is expected that new disruptive innovations will be launched in the future. Legislators should consider whether the way legislation is written could be improved so that machine intelligence would better interpret it. In order to create more startups, legal technology should be taken into account in education.

## FRANCE

Disruptive innovations in communication technologies have appeared in France in the sector of services provided by the regulated legal professions. They are of two types: legal professionals have started to use new tools available to them to promote a broader access to their services; they are also confronted with truly disruptive innovations from new players breaking from their traditional methods of operating, and sometimes in contradiction with the applicable regulatory framework.

In this context, a pressure is exerted on the existing regulatory framework, which has recently been subject to a number of reforms.

The *Autorité* firstly delivered recommendations on 9 January 2015 at the request of the Government, examining from the perspective of their competitive impact the regulations applicable to legal professions in terms of scope of missions, fees, conditions of establishment and methods of exercise. On completion of this analysis, the *Autorité* issued 80 proposals, among which the revision of fee regulations based on the costs of the services provided and the calculation of a so-called "reasonable" remuneration, and the establishment of the principle of regulated freedom to practice.

The *Autorité*'s recommendations helped clarify the debate that was ongoing on a Government bill which became the Law of 6 August 2015 for growth, business and equal opportunities ("The Macron Law", after the Economy Minister). This law, which intended to free up business activities in several sectors of the economy, introduced a number of reforms in the legal professions. Enlargement of territorial jurisdiction of bailiffs and qualified lawyers, freedom of establishment regulated and gradually implemented on the basis of a "zoning" carried out by the *Autorité*, introduction of an occupational age limit, a fee structure methodology taking into account the costs related to each individual service and a "reasonable" remuneration of the labour and capital invested – combined with margins of flexibility (notably discounts), more flexibility in inter-professional services... These are all likely to allow for rather more significant competition in these regulated legal professions.

## UNITED-KINGDOM

*The CMA is currently undertaking a market study into the provision of legal services in England and Wales. This paper focuses on those areas of the legal services sector within the scope of that market study. It does not pre-empt or represent any interim or final findings resulting from that study.*

The CMA is currently undertaking a market study into legal services in England and Wales. Interim findings will be published in July 2016 with a final report expected to be published in December 2016. This affects what we can say as well as the extent of the evidence available to us at this point in our market study. It also means that the paper is focussed on those areas of law relevant for individuals or small businesses as that matches the scope of our market study. We give details on our market study and the framework of sector-specific regulation of legal services in the UK.

The evidence we have seen suggests that there may be less innovation in the legal sector than in other sectors. While we have seen a range of innovations taking place in the sector, uptake of these innovations by legal service providers and consumers is limited. The level of innovation seems to vary depending on the nature of the legal service with less complex, more commoditised, higher volume and more competitive areas of law appearing to be more amenable to innovation.

The paper surveys innovations in the four areas referenced by the OECD secretariat background namely online service delivery; ranking and review information; the unbundling of services; and automation. In addition we look at organisational innovations including alternative business structures.

Finally, we consider the factors that might act as barriers to greater innovation. Amongst these potential factors are ones that are under consideration in our market study. If consumers are unable to drive effective competition through making informed purchasing decisions, providers of legal services may not have strong incentives to innovate. Innovation may also be affected by regulations if they go beyond what is necessary to protect consumers and, as a consequence, restrict the ability of incumbents or new entrants to innovate in the market.

## UNITED STATES

The Agencies believe that consumers generally benefit from competition among lawyers, and between lawyers and non-lawyers, in the provision of certain legal-related services. The Agencies have recommended that consumers should be able to choose among lawyers and non-lawyers, unless it is clear that specialized legal training is required. The Agencies recognize, however, that licensing requirements and scope-of-practice policies can have valid consumer protection justifications.

The Agencies have generally recommended that regulatory frameworks for legal services allow new and innovative forms of competition to enter the marketplace unless regulation is necessary to achieve some countervailing pro-competitive or pro-consumer benefit, such as protecting the public from significant harm.

Regulation of new products and services relating to legal services should therefore focus primarily on deterring unfair or deceptive advertising and marketing practices, and addressing other consumer protection issues such as privacy, data security, or identity theft. The Agencies have generally recommended that any restrictions be narrowly drawn so that consumers may still receive the benefits of “disruptive” innovations in the legal services marketplace.

**BIAC\***

BIAC's contribution notes that the needs of large firms can be distinguished from individuals and SMEs. Large firms often have legal counsel that "tend to have all the information needed on quality and costs to make an informed choice with regard to the legal services they require." For SMEs and individuals, however, the assessment of legal services quality can be difficult, and so regulations, such as minimum education requirements, have been established to protect consumers. Another issue that is particularly relevant for individuals and SMEs is the fact that cost can be a barrier to accessing legal services. In recent years, new legal service business models have emerged to address this barrier.

The contribution goes on to describe the significant current innovations in legal services, noting they have come from both large established firms using new technologies (including firms that place in-house lawyers in temporary or part-time secondments with clients, and companies combining law and business advice) and new businesses offering unbundled services or new business models. Specific examples cited by BIAC include several firms in the US that provide cheap and easy access to legal documents, although, this type of offering may be of less use to large corporations and SMEs. In the UK, the contribution notes that [lexoo.co.uk](http://lexoo.co.uk) is an online platform for obtaining quotes for services from pre-screened solicitors. It meets the needs of small businesses whose needs are not catered to by large firms, and makes use of the supply of competent lawyers who can serve clients remotely. "This business is not a law firm and doesn't itself offer legal services, but it does improve the accessibility and affordability of legal services, at least for small businesses."

While some regulation in legal services markets is justified, BIAC states that others can represent unjustified restrictions on competition, including fixed prices (which eradicate or seriously reduce the benefits of competition), recommended prices (which can facilitate coordination among service providers), advertising restrictions, entry restrictions, reserved rights, regulations governing business structure and restrictions on multidisciplinary practices (such as integrated accounting and law firms). More generally, the contribution notes that regulation can, as an unintended consequence, slow down innovation, which should be considered.

BIAC's contribution notes that, "despite some initial resistance, it is now widely accepted that professional bodies are subject to competition law." It points to the criteria used in Europe for evaluating restrictions to competition following the Wouters decision; namely, (i) the objectives of professional regulation (ii) whether anti-competitive effects are inherent in the pursuit of the public interest objectives (the necessity test) and; (iii) whether the anticompetitive effects go beyond what is necessary in order to ensure the proper practice of the profession (the proportionality test). The contribution goes on to note that "over time, many competition authorities have investigated professional bodies charged with the supervision of the legal services sector for matters such as minimum fees or bans on advertising."