

# A Technological Revolution in 'lawyering'?

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## Abstract

This paper is based on a draft chapter of a book (*Lawyers, Markets and Regulation*) which I am currently writing. *Comments on the argument would be welcomed but the paper **should not be cited** as yet.*

The paper argues that the Legal Services Act 2007 lays down the basis for significant changes in how lawyers and others will provide legal services in England & Wales in the future. At the heart of the Act there is one fundamental change in the institutional infrastructure for the provision of legal services and a confirmation and consolidation of the trend in UK policy towards competitive self-regulation of markets for legal services.

The licensing of Alternative Business Structures (ABSs) owned by non-lawyers to provide legal services has the potential to create a 'technological revolution' in 'lawyering' leading to innovation in not only how legal services are delivered but perhaps in the nature of legal services themselves. Some commentators have argued that ABSs will 'cherry pick' legal services to the detriment of 'High Street' law firms' ability to subsidise the provision of welfare law advice. It is argued here that this argument confuses profits with price. Welfare Law may be currently unprofitable because of the high costs of current suppliers. ABSs have the potential to provide these services at lower cost because of economies of scope and economies of scale. This would make the provision of such services profitable for ABS firms.

The two tier system of regulation inaugurated under LSA 2007 consolidates, strengthens and extends system of competition between regulators introduced by the Administration of Justice Act 1985 and the Courts and Legal Services Act 1990. Under LSA 2007 front-line regulators such as the Solicitors Regulatory Authority, the Bar Standards Board and the Council for Licensed Conveyancers are supervised in carrying out their regulatory activities by the Legal Services Board which is under an obligation to promote competition in the market for legal service.

The paper will further consider why there has not been the predicted revolution in lawyering in the liberalised jurisdictions of Finland and New South Wales

## A Technological Revolution in 'lawyering'?

The Legal Services Act 2007 introduced two major changes with long-run implications for legal service markets. The first is that it greatly extends the scope for regulatory competition. The second is that opening the ownership of law firms to non-lawyers may bring forth a technological revolution in lawyering. This paper examines in detail the implications of these changes. The extension of regulatory competition represents, to a certain extent, continuity with previous attempts to liberalise markets for legal services in the United Kingdom. By creating an overview regulator with the promotion of competition in legal services as a major objective it has given the pursuit of regulatory competition more teeth. However, by opening the ownership of entities providing legal services to non-lawyers it creates the potential for a 'technological revolution in lawyering'. This is likely to result from innovations in service delivery which build on business processes developed in other sectors but which are not easily transferable between firms. It may also result in the development of new legal 'products'. It should be stressed that these regulatory changes and their implications are of wider significance than legal service markets in England & Wales. They give an insight into the limitations of treating competition issues in markets for legal services without considering the drivers of business organisation.

### Regulatory Competition

Stephen (2008) has argued that the regulatory structure underpinning LSA 2007 is a further development of competitive regulation (or regulatory competition) in legal services markets in the UK. Regulatory competition has been proposed as a means of overcoming one of the major deficiencies of self-regulation (Ogus, 1995). In Part 1 of *Lawyers, Markets and Regulation* it has been argued that in markets for legal services a strong case has been made for regulation because of information asymmetry and externalities and, further, that the cost of regulation can be reduced by the profession itself providing the regulation. Self-regulators will be better informed, the costs of adjusting the regulatory system will be less and the regulated might find self-regulation more acceptable<sup>1</sup>. However, under such a system there is the risk that the profession will regulate in its own self-interest and not in the wider (social) interest. Indeed, John Kay (1988) described self-regulation as the ultimate form of regulatory capture.

Regulatory competition has been proposed as a solution to this problem of regulatory monopoly<sup>2</sup>. With more than one regulator both consumers and producers have a choice. Firms or individual professionals will have the choice of different regulators who may offer different schemes in terms of educational requirements, practice rules and ethical standards. They will be able to choose the regulator which most suits their needs both in terms of business operations and value for money. On the other hand, consumers of legal services will have the choice between different forms of provision and differences in the price/quality trade off. No self-regulator will be in a monopoly position which it can exploit to the benefit of the regulated as

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1 See Chapter 3 of *Lawyers, Markets and Regulation*.

2. See Ogus (1995) and below. Ogus uses the term *Competitive Self-Regulation* pp. 102-107.

opposed to clients. If that were to happen consumers of the service will be in a position to switch to providers whose regulator provides a more attractive regulatory regime (at least, for consumers). This competitive tension between regulators will tend to ensure no regulator exploits its position.

Anthony Ogus (1995) examines three variants of what he calls competitive self-regulation: unconstrained market competition; independent agency-assisted competition; and ex-ante competition for ex-post monopoly. The third of these categories involves the franchising of the right to operate (particularly natural monopolies) is not appropriate to the legal services industries<sup>3</sup>.

Ogus' analysis treats normal market competition as a form of self-regulation in which producers choose price and quality combinations. Quality is influenced to some extent by industry standards but is ultimately chosen by the management of the producer firm. The result will be a variety of price quality trades off in the market among which consumers can select according to their preferences. However, as Ogus points out where there is an externality these price/quantity combinations will not be socially optimal<sup>4</sup>. Furthermore, there may be difficulty in producers' ability to communicate quality to consumers in an easily comprehensible way. Since price is more easily comprehensible than quality, Ogus argues, this is likely to result in a race to the bottom on price. Ogus (1995) does not consider the role of established brands in communicating quality standards. The ability of branding in overcoming this problem is discussed further below at. Stephen, Love and Paterson (1994) and Stephen and Love (1996) suggest that repeat purchasers (such as banks and building societies) might perform such a function by retaining panels of solicitors who meet their price and quality standards<sup>5</sup>. Some membership organisations have effectively been doing this for a number of years but developments have increased apace with LSA 2007.

The final type of competitive self-regulation identified by Anthony Ogus is independent agency-assisted competition. He considers the possibility of an independent quality rating system akin to hotel and restaurant stars for compliance with various quality standards but regards this as being unnecessarily expensive to achieve where services are heterogeneous and require the supplier to adjust to the specific needs of the purchaser. Ogus considers a number of other possibilities but stresses that there is always the difficulty that consumers need to be able to distinguish the differences in quality across the competing regulators and suggests that recourse to an independent public institution may be necessary. He points to the requirement under CLSA 1990 for self-regulatory bodies to have their regulatory regime approved by designated public agencies<sup>6</sup>. These 'second tier' regulators, it is suggested, should have a dual function. First, they should promote competition

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3. This solution to the natural monopoly problem has its modern origin in Demsetz (1968) who attributes the original of this idea to Chadwick (1859). However, Chadwick's point was that such a franchise system was already in use for railways elsewhere in Europe.

4. See the discussion in Chapter 3 of *Lawyers, Markets and Regulation* on externalities in legal service markets.

5. They also discuss the entry of banks and building societies into the Conveyancing market as suppliers.

6. However it should be noted that the provisions of CLSA 1990 were never commenced.

between the individual regulators. Secondly, they should lay down minimum quality standards to be met by those suppliers approved by the individual regulators. These two functions, *inter alia*, have been given to the Legal Services Board under LSA 2007. The regulatory objectives stipulated in the Act include: the promotion of competition in legal services; and protecting and promoting the interests of consumers<sup>7</sup>. Amongst the duties of the LSB under Part 2 clause 4 of the Act is assisting (individual regulators) in the maintenance and development of standards by the regulators of providers of reserved legal services and their education and training.

These provisions would seem to cover the powers which Ogus suggested for an 'independent public institution' to ensure that competitive self-regulation did not lead to a race to the bottom. However, the powers of the LSB go even further than those envisaged by Anthony Ogus. They include powers under which the LSB itself can become a licensing body for ABSs. This provision is made to ensure that if no approved regulator comes forward with a scheme to license ABSs such providers of legal services will still be possible.

Regulatory competition existed but was relatively muted prior to the passage of LSA 2007. The Administration of Justice Act 1985 (AJA 1985) introduced the Council of Licensed Conveyancers to approve licensed conveyancers to provide conveyancing services in competition with solicitors. As discussed in chapter 6 of *Lawyers, Markets and Regulation*, licensed conveyancers took off rather slowly and in the early 1990s a majority of them were employed by firms of solicitors. Stephen and Love (1996) point out that the limited impact of licensed conveyancers at that time might be due to their only producing a limited range of services and having the same interest as solicitors in maintaining conveyancing prices. Their risks were less diversified than those of solicitors.

LSA 2007 provides a much stronger basis for regulatory competition than existed under AJA 1985 or CLSA 1990.

### **Technological revolution**

The technological revolution discussed here goes beyond that discussed by writers such as Richard Susskind (2010) (who focus on the use of IT and commoditisation) to encompass what it is that lawyers do and the nature of the services which they provide. It goes to the heart of what is a legal service. This has been implicitly defined until now as being what a lawyer does for you and what a lawyer does for you is pretty much the same whichever lawyer does it. This paper examines what factors have led to this situation and why there is potential for this to change dramatically as a result of LSA 2007.

Gillian Hadfield (2008) has argued that there has been an absence of innovation in the nature and provision of legal services in the USA because of the strict control which the American Bar Association has maintained over the provision of legal services, legal education and the forms of organisation through which lawyers' services are provided. She has pointed out that this has meant that the education of attorneys in the USA has been very similar across law schools and states and that the organizations in which attorneys in private practice work are dominated by, and largely composed of, other attorneys with similar educational backgrounds and experience.

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7. LSA 2007, Part 1 clause 1 (e) and (d).

The consequence of this is that there has been limited innovation in the nature and form of legal services. This virtual absence of product or organisational innovation is almost unique to the legal services industry. Consequently, the observed business organisations in which these lawyers practise cannot be seen as the optimal form since regulation has curtailed the forms of business organisation permitted.

This has affected not only the way in which legal services are provided but the nature of legal 'products' themselves. Bruce Kobayashi and Larry Ribstein (2011) argue that the absence of property rights over legal information combined with the nature of lawyer regulatory and ethical regimes has led to a personalised form of legal service which has become increasingly costly. They describe the absence of property rights over legal information as 'legal exceptionalism'. Kobayashi and Ribstein suggest that increased intellectual property rights could lead to the production of legal information products and the development of a more competitive market which, by raising quality, would reduce the need for regulation.

The stringent control of the legal profession in the US may not have been replicated to the same extent in the UK and Europe over the last 25 years but it was very similar before that. Since the mid-1980s there have been strenuous attempts to liberalise legal service markets in the UK<sup>8</sup>. In many mainland European jurisdictions it is still largely the case. Since the signing of the Lisbon Treaty, the European Commission has made strenuous efforts to liberalise the regulatory regime for lawyers (and other professionals)<sup>9</sup>. However, this has been resisted by many national bar associations and lawyers' representative bodies and by the Council of European Bars and Law Societies (CCBE). The Legal Services Act 2007 provides a framework which would permit the emergence of new forms of business organisation for lawyers in England & Wales which may bring about change in the nature and form of services provided by lawyers and law firms. This paper examines how both the conduct of 'lawyering' and the 'regulation' of legal services are likely change as a consequence of LSA 2007.

## The 'technology' of lawyering

A central argument of this paper is that the restrictions on the organisational form and ownership of law firms have meant that they have been unable to acquire access to organisational and production technologies which would have improved the services which they provide to their clients. The term technology is used here in the broad sense used by economists: the techniques by which inputs are transformed into outputs. It includes, but is not exclusively about, the use of information technology by law firms. Traditionally economists have used the term 'production function' to describe the transformation of inputs into outputs. However this conjures up the idea of transforming physical inputs into physical output<sup>10</sup>. 'Technology' is used here as short hand for the way in which organisations combine physical capital, human capital, physical inputs, service routines and standards and branding to

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8. See discussion in Chapter 5 of *Lawyers, Markets and Regulation* on the Thatcher government's reforms under Lord Mackay's Lord Chancellorship and the subsequent reforms. See also Abel (2003).

9. See the discussion of deregulation in chapter 5 of *Lawyers, Markets and Regulation*.

10. See, for example, Hay and Morris (1991) pp. 27-37.

generate a physical product or a multi-dimensional service. In the case of legal services the 'output' is not restricted to the legal 'outcome' but also includes the client's satisfaction or dissatisfaction with the service provided by the lawyer or law firm i.e. service characteristics. This definition includes 'organisational technology' as well as production technology. A difference in technology in this sense goes beyond a different mix of inputs. It involves a different way of combining inputs. Indeed the outputs from one technology may differ (in characteristics rather than quantity) from those of another technology.

Stephen (2002) has used such differences in technology to explain the mergers which took place between Anglo-Saxon<sup>11</sup> law firms and German law firms in the early years of the 21<sup>st</sup> century. Anglo-Saxon law firms had developed a superior technology as a consequence of evolving in a more competitive legal jurisdiction than their German counterparts. This had led to the adoption of a more corporate-like business model<sup>12</sup>. This superior technology gave them a competitive advantage over German firms. However, German firms had jurisdiction-specific knowledge and reputation. Anglo-Saxon firms were thus only able to exploit their superior technology in Germany through merger with German firms. This indeed took place. Put another way, Anglo-Saxon law firms could only overcome the disadvantages of limited local knowledge and reputation because of their superior technology.

The same mode of analysis is also used by Stephen (2002) to explain the inroads made in the German legal service market by accounting and consulting firms. The latter firms had developed a more efficient business model in the less heavily regulated accounting and consulting markets. Since the German jurisdiction permitted MDPs involving lawyers and accountants the international accounting firms were able to merge with German law firms and capture a significant share of the corporate legal service market.

Stephen (2002) reported that in 2001 a majority of the largest legal practices in Germany were either Anglo-Saxon law firms or the legal arms of international accounting firms.

The technology used by the Anglo-Saxon law firms may have proved to be superior to that used by German legal practices because it was developed in a more competitive legal environment. However, it is still the outcome of what has been a relatively restricted competitive process. Legal practices have been restricted to the partnership form (although now with limited liability and taking a corporate form). This may have resulted in constraints on growth of law firms because it limits their ability to raise capital. More significantly since ownership has been restricted to lawyers not

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11. The term Anglo-Saxon law firm is used here to indicate English and American law firms.

12. See, for example, the discussion of the changing nature of London's 'magic circle' firms contained in Galanter and Roberts (2008). Although they describe the impetus for the move of these firms into Europe as being the stagnant UK commercial law market, the argument presented here is that the firm-specific advantage that made such entry possible is derived from the transformation of these firms 'from the modern 'professional' firm shape to the 'neo-modern' market-oriented firm' in the 1990s as described by Galanter and Roberts. (2008, p. 170). That transformation was such that 'In the last decade of the [20<sup>th</sup>] century, firms came to look and behave much more like international businesses' (p. 168).

only is the pool of potential owners/investors restricted to those with legal qualifications it also excludes access to potentially superior technologies developed in other service industries. These can only be acquired through merger since they are implicit in business processes and routines. Some of this may be tacit knowledge but some may be in the form of a 'playbook' or organisational manual etc. This is why merger is the most likely means by which this technology is transferred from one organisation to another.

As Stephen (2002) points out in discussing mergers between Anglo-Saxon law firms and German law firms, transferring business organisational technology other than by merger leaves the transferor firm open to opportunistic behaviour. A similar issue is likely to arise between a law firm and a consumer-facing service provider with a developed business model. The law firm, even if it wished to, could not acquire the organisational knowledge necessary to transform itself into an efficient consumer service provider because that knowledge only exists tacitly in such organisations. It cannot be transferred through a licensing scheme or through franchising. It can only be effectively acquired through merger. Until the passage of LSA 2007 such mergers were not possible in UK jurisdictions.

The preceding argument, in summary, is that law firms in most jurisdictions have only had access to a limited range of technologies by which to provide legal services because their ownership structures have been restricted by law or professional regulation to exclude investment (and ownership) by non-lawyers. The opening up of law firm ownership to such outside investors will give law firms access to proprietary business technologies which will enhance the level of service received by clients of such externally owned law firms. Sir David Clementi was quite explicit about this in his report when he said that 'new investors might bring not just new investment but fresh ideas about how legal services might be provided in consumer friendly ways', Clementi (2004, p. 115). However, the argument advanced here goes beyond legal service providers operating in more 'consumer friendly ways' to encompass service product innovations which might transform the nature and availability of the legal 'product' itself.

However, this argument may not be applicable to all law firms. As the discussion of the Anglo-Saxon model above and 'magic circle' firms at fn 4 suggests large international law firms would appear to have developed a superior business model suitable to their market. These law firms are still partnerships without non-lawyer owners yet they look and behave like international businesses (Galanter and Roberts, 2008, p. 168). It may be surmised that the degree of competition in their markets and the sophisticated demands of their clients is what has generated their very different business model. However, Gillian Hadfield's (2008) argument goes beyond innovation in business format to cover innovation in 'legal product'.

## **Issues for regulatory competition and the technological revolution**

The preceding sections of this paper have demonstrated the intellectual ideas at the core of two of the more innovative provisions of LSA 2007. This section deals with some criticisms of these innovations and seeks to demonstrate the way in which they mutually support each other.

## ***Cherry-picking***

As discussed in *Lawyers, Markets and Regulation*, some critics of Sir David Clementi's proposals and LSA 2007 argued that non-lawyer owners of providers of legal services would 'cherry pick' the profitable legal services. They would not be interested in areas of the law such as welfare law and housing law<sup>13</sup>. By cherry picking the profitable areas, it was suggested that ABSs would remove the profitable areas of High Street work which legal aid lawyers use to cross subsidise these less profitable areas. However, these critics seem to be confusing profit with price in this respect. Although the fees firms can charge may be limited by the incomes of the potential clients or by low legal aid fees they are only unprofitable if the firms' costs are high relative to that fee. It is possible that an ABS with a national network and the ability to reap economies of scale from in-house expertise in welfare and housing law might be able to make low-price areas of legal advice more profitable than existing legal aid suppliers can. For example, a national supermarket chain or bank might be able to use non-qualified staff to gather details from clients at branch locations and to transmit this information electronically to specialist lawyers or advisors at central locations. These lawyers being specialists in these particular areas of law will be able to deal with these issues more expeditiously and more effectively and thus at lower cost than a High Street (non-specialist) firm.

It is worth noting that the record of High Street solicitors in providing accurate legal advice on social welfare law is not particularly good. A study of advice given by generalist and specialist solicitors on social welfare and housing law in England & Wales to model clients showed that in a significant number of cases the advice given by generalists would have been detrimental to the client's interests (Moorhead and Sherr, 2003).

The problem faced by High Street firms is that their lawyers may get to deal with relatively few cases in these areas and thus may be unfamiliar with the law. This clearly raises the costs of dealing with such cases. However, a national provider benefiting from economies of scope in using branch premises which exist for other services and having centralised expertise in these areas is likely to face lower costs. The expertise will be enhanced by dealing with a much larger volume of cases in this field than a typical High Street solicitor.

A consequence of the above two factors might be that such work will be more profitable to ABS firms than 'High Street' firms and that the advice given is likely to be less damaging to the clients' interests. The ABS firm will be benefiting from economies of scope, economies of scale and economies of expertise. Some might argue that such a process amounts to commoditisation of legal advice to suit the business model of the ABS firm. However, it might be a cost effective means by which to raise the quality of such advice.

## ***Service characteristics and competitive self-regulation***

The issue of commoditisation is seen by some commentators as a negative consequence of LSA 2007 which will result in reduced fees for lawyers (Boon, 2011,

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13. See, Joint Committee on the Draft Legal Services Bill (2006a) at paragraphs 301-304 and Joint Committee on the Draft Legal Services Bill (2006b) at Q 217, 256, 267 and Ev. 52 and 60.



p. 203). Commoditisation is seen by many in the legal profession as antithetical to quality legal service and contributing to a de-professionalisation of them. The implication is that each individual client requires a service which is idiosyncratic to him or her. If legal services are rendered in such a personalised/idiosyncratic manner the cost of providing them rises and it may, indeed, become so high that the potential client will not be able to afford it. Restricting legal services to such a personalised (gold-plated) level may have the effect of denying the potential client access to the legal service entirely. This type of approach to service may, paradoxically, contribute to unmet legal need. Lawyer representative bodies and pressure groups often give the impression that they would rather clients received no solution to their legal problem than a less than 'perfect' solution. In other words there can be no trade off between the service provided and price. This is the consequence of the line taken by lawyer representative bodies that there can be no variation in the standard of service provided by their members and that all of their members provide the same level of competence and service in all areas of the law. Such a standpoint flies in the face of the benefits of specialisation.

The idea that there can only be one level of service may explain why some legal policymakers have difficulty with the concept of competitive regulation. For them regulation implies that all suppliers supply the same service and competitive regulation can only mean a race to the bottom<sup>14</sup>. However, differences in the regulatory framework of suppliers may result in competition in terms of the characteristics of the service which they provide. In some ways this lies at the heart of the differentiation in service provided by barristers and solicitors, particularly since the advent of solicitor-advocates.<sup>15</sup> The different training, forms of practice organisation and ethical norms of barristers as compared to solicitors have implicit in them a difference in characteristics of legal advice and representation provided.

Similarly, since the passage of the Administration of Justice Act 1985 both solicitors and licensed conveyancers have been permitted to provide conveyancing services for gain. Not only do the training of solicitors and licensed conveyancers differ, practise rules, for example governing acting for both sides in a property transaction also differ. There has been no suggestion that conveyances carried out by licensed conveyancers are less reliable than those undertaken by solicitors. In fact in many instances when a firm of solicitors is doing the conveyancing the actual work will be done by a licensed conveyancer who is an employee of the solicitors firm.

The fear of a race to the bottom expressed in evidence to the Joint Committee on the Legal Services Bill is dealt with in LSA 2007, as anticipated by Ogus (1995), through the setting down of minimum standards to be adhered to by any body seeking to regulate suppliers of reserved legal services or to license ABSs. These are set out in the regulatory objectives and principles contained in the Act.

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14. As noted by Ogus (1995).

15. Introduced by the Courts and Legal Services Act 1990, a solicitor-advocate is a solicitor who has obtained a Higher Courts Qualification issued by the Law Society and by which is entitled to plead in designated higher courts in criminal or civil proceedings or both.

16. Reported in Smedley (2011).

However, the creation of licensed conveyancers did not have a major impact in the market for conveyancing services, particularly in the early years following the passage of AJA 1985. Subsequently the number of licensed conveyancers has grown but as argued earlier the lack of diversification in legal markets makes the activity very sensitive to business cycles in the housing market. The Council of Licensed Conveyancers sought to widen the range of legal services markets served by its regulatees by applying to become a licensing body for probate practitioners. This status was granted in 2008. In 2011 only around 5% of licensed conveyancers were also licensed as probate practitioners<sup>16</sup>.

CLC has sought to further widen the legal service markets in which those it regulates practice by applying to the LSB to become an approved regulator in the fields of litigation and advocacy. At the time of writing a decision by the LSB is awaited. However, the Lord Chief Justice has advised against granting the application. Were approval of the CLC's application to regulate practitioners in the areas of litigation and advocacy obtained, competitive self-regulation would be strengthened in England & Wales. It would have important implications not only for licensed conveyancers who would (after further qualification) be able to challenge the monopoly of solicitors in litigation but it would increase the regulatory options for ABSs wishing to operate in that reserved service. In the absence of a second licensing body there is the potential for the SRA to blunt the impact which ABSs could have on innovation in the provision of litigation services – it is likely to regulate towards characteristics of solicitors firms than to encourage a move towards other characteristics.

### ***Brand name capital in legal services***

Earlier in this paper it was argued that the intellectual origins of the system of competitive self-regulation implicit in LSA 2007 can be seen in Ogus (1995). Anthony Ogus proposed a system of self-regulated professions overseen by a public body whose role was to ensure that a floor was set in order that competitive self-regulation did not result in a race to the bottom. Furthermore, Ogus argued that market competition could not be relied upon as a system of self-regulation in markets for legal services because of the asymmetry of information between professionals and clients. The credence characteristic of the services provided means that clients are unable to judge 'quality' resulting in competition being only possible over price. In the absence of an external regulator this is likely to result in a 'race to the bottom'.

Ogus (1995) does recognise in a footnote that 'The problem is partly alleviated by suppliers over time accumulating the consumers' trust in their reputation and brand name [...] but this is of no value in one-off transactions'. The implication of the subsequent discussion is that in the markets on which the paper focuses 'one-off transactions' are typical. This is a reasonable approximation to the conditions in markets for personal legal services. However, the potential entry of ABS firms into the market for legal services as a consequence of LSA 2007 changes this situation. If, as is hoped, firms with significant experience and reputation from providing consumer focussed services in other markets enter personal legal service markets as ABSs their brand name and reputation from these other markets is likely to carry over to legal service markets.

Large multi-market organisations such as supermarkets, banks and membership organisations which have developed reputations for reliability, service

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quality and value for money in one market have an incentive to expand into other markets where they may generate additional returns to their investment in their brand name. There is a well-developed literature on the economics of business organisation with a number of streams going back to those initiated by Edith Penrose (1959) which developed into the resource-based theories of the firm and by Ronald Coase (1937) and Oliver Williamson (1975) which developed into transaction cost theories of the firm. This literature suggests not only why firms will seek to gain benefits from their reputations in other markets but also how they may be constrained from the temptation to behave opportunistically in 'one shot markets'. Andrew Griffiths (2011) has recently drawn on this literature to understand more fully the role of trademarks for business organisations.

A consumer service organisation which has developed a strong brand image and reputation in one market will wish to avoid diluting that image by providing low 'quality' service in any new market into which it expands. Thus a supermarket or bank with a brand associated with providing good service to consumers and a reputation for value-for-money which moves into legal services through its ownership of an ABS runs the risk of diminishing the value of its brand if it provides inadequate or faulty advice to consumers of its legal services. Any adverse publicity received from poor performance in the market for legal services not only impairs the organisation's reputation in that market but also in its other markets. Thus the losses generated from poor or inadequate service have the potential to generate losses beyond the legal service part of the organisation.

The multi-market consumer service organisation not only benefits from its brand reputation when it moves into new markets but its behaviour is constrained by the potential impact of its performance in the new market on the brand's reputation. The overall brand reputation provides, in Oliver Williamson's terminology<sup>17</sup>, the consumer with a 'hostage' which is valuable to the consumer service organisation. Thus there are powerful incentives to dissuade a consumer service businesses which become an ABSs from behaving opportunistically when providing legal services. Indeed, it can be argued that their incentives are stronger than those faced by monopolistic self regulators in legal markets. Furthermore, evidence gathered by the Consumer Panel of LSB suggests that consumers trust supermarkets more than they trust lawyers<sup>18</sup>.

Looked at from a regulatory perspective LSA 2007 protects consumers of legal services provided by an ABS which carries the brand name of a multi-market provider of consumer services not only through competition between regulators of those providing regulated legal services but through the self-interest of the owners of the ABS's brand name.

#### **Other liberalised jurisdictions**

*To be added: A discussion of the extent to which there has been innovation in lawyering in jurisdictions where there is a similar liberalisation of ownership of legal service firms such as Finland and New South Wales, Australia.*

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17. See Williamson (1983) on hostages against opportunistic behaviour.

18. See Legal Services Consumer Panel (2011).

## **Conclusion**

*To be added.*

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