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DISRUPTIVE INNOVATIONS IN LEGAL SERVICES

-- Chinese Taipei --

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

Please contact Ms. Ania Thiemann if you have any questions regarding this document
Ania.THIEMANN@oecd.org

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-- CHINESE TAIPEI --

1. This report mainly introduces the overall situation of the legal services market and regulatory measures in Chinese Taipei, and presents the position and cases of the Fair Trade Commission (FTC) and other regulatory authorities that oversee the legal services industry.

1. Legal Services Market and its Regulatory Framework in Chinese Taipei

2. Broadly speaking, legal services refer to “providing legal advice” or “taking legal action on behalf of clients” based on the analysis of facts in a specific case, as well as applicable provisions of the law. The latter has to do with what legal services refer to in the narrow sense, i.e., handling civil, criminal, and administrative cases that are currently under investigation by a prosecutor or being tried in court. This also includes the preparation of legal documents before the court. Pursuant to Article 48 of the Attorney Regulation Act of Chinese Taipei, one who practices as an attorney for profit without being licensed as an attorney shall, unless permitted by law, be subject to imprisonment of up to a maximum of one year and, in addition thereto, a fine of not less than NT\$30,000 but not more than NT\$150,000. In other words, only those who are licensed as an attorney may provide the “narrow definition of legal services” for profit. Generally speaking, the law does not limit the provision of legal counseling services to only those who are licensed as an attorney. Hence, various organizations (e.g., local government, social welfare institutions, public welfare organizations, and legal service clubs of universities) all provide free legal advice, but only attorneys are allowed to provide legal services in court. The overall situation and regulatory framework of attorneys in Chinese Taipei are summarized below.

3. According to statistics of the Ministry of Justice (MOJ), a total of 15,284 people had acquired an attorney’s license as of April 14th, 2016, but only 9,198 were registered with a court, accounting for 60% of people with an attorney’s license. At present, local bar associations have been established in 16 counties/cities, and together they have formed the Taiwan Bar Association (TBA).

4. According to the Attorney Regulation Act, the regulatory authority over bar associations is the MOJ. The legal system generally stipulates that professionals, such as attorneys, may not practice without joining a professional association. This is equivalent to making it mandatory to join a professional association. The provisions of the law are set forth to guide the establishment and operation of professional associations, and provide the associations with autonomy, a penalty system, and authority over professional ethics. In Chinese Taipei, the conduct of attorneys is mainly regulated by the “Attorney Regulation Act, Attorney Code of Ethics, and Attorney Disciplinary Rules.” The Attorney Regulation Act not only includes provisions on attorney licensing and bar associations, but also regulates the practices of attorneys, including:

- Protecting the reputation of attorneys: An attorney shall not engage in acts that may harm the attorney’s reputation or credibility. An attorney shall not engage in businesses that damage the dignity and reputation of the attorney profession.
- Prohibiting soliciting suits by improper means: An attorney shall not instigate or solicit suits by improper means or barratry. An attorney shall not, in his name or the name of another, post or

publish notices amounting to deception or threats. An attorney shall not engage in court procedures, appeals or defenses on behalf of his client based on obviously groundless reasons.

- Prohibiting conflicts of interest and relationships: An attorney is prohibited from accepting representation for a respondent party to his/her client, or if the case was handled by the attorney when acting as a judge or arbitrator. An attorney shall not engage in suits in any court where they are related as husband and wife, or blood relations within the judge or prosecutor.
- Prohibiting inappropriate compensation: An attorney shall not have improper social activity with any judicial officers, and shall not demand in advance or receive fees beyond those specified in relevant regulations. In addition, an attorney shall not take by assignment rights at issue, to which his client is a party.
- Requirements on organization and membership: Attorneys are required to establish a law firm, join the law firm, and join the local bar association in that jurisdiction.

5. Contents of the Attorney Code of Ethics can be divided as follows:

- Professional conduct of attorneys: Includes the moral character of individual attorneys, how to operate their practice (e.g., the selection and supervision of employees and partners of their law firm), expanding business and advertisements (e.g., prohibiting attorneys from soliciting suits by improper means or marketing methods that damage the reputation and credibility of attorneys), public service, and on-the-job training.
- Interpersonal interactions of attorneys: Principles for handling conflicts of interest between attorneys and their clients, other attorneys, and judicial agencies or personnel.

6. If an attorney commits a severe violation of the Attorney Regulation Act or Attorney Code of Ethics, the High Court, the prosecutor's office or local bar association will send the attorney to the Attorney Disciplinary Committee; penalties include a warning, reprimand, suspension of the right to practice law for a period of no more than 2 years, or disbarment. Attorneys may apply for a second review if they refuse to accept the penalty.

2. **Application of Competition Law to Disruptive Innovation in Legal Services – The Case of Lifelaw Company**

7. Innovation can roughly be divided into “*continuous* innovation” and “disruptive innovation.” Scholars clearly describe the difference between the two types of innovation. “*Continuous* innovation” refers to modifications made to a certain product, and does not affect the market shares of the product, but “disruptive innovation” is entirely different as it creates a new product, process or business model, and redefines the market while replacing existing products or companies.

8. In Chinese Taipei, legal services provided by Lifelaw Company have never been seen before, and can be considered to a certain extent to be a form of disruptive innovation. The company was founded in 2000 and established an online legal consultation platform, recruiting common members (the public) and specialist members (attorneys-at-law). When clients face legal problems, they can find suitable attorneys on Lifelaw Company's website or through its cellphone service. Attorneys and Lifelaw Company share fees paid by clients on a percentage basis. The service process, business model, and transparency of prices offered by the platform is a breakthrough from the legal counseling services provided face-to-face by traditional law firms, as well as the process of negotiating fees. Even though the platform will not entirely

replace traditional law firms, Lifelaw Company has set a precedent for using an online platform to reduce the cost of providing legal services.

9. However, at the time the TBA believed that attorneys allowing Lifelaw Company to share legal counseling fees was a violation of Article 12 of the Attorney Code of Ethics, which states: “Attorneys shall not solicit cases by paying brokers.” Therefore, the TBA sent letters to local bar associations to notify their members that they should immediately withdraw from the platform, so as to avoid being penalized. Lifelaw Company was dissatisfied with the action of the TBA and reported the case to the FTC.

10. After examining the evidence, the FTC determined that the TBA’s conduct restrained business activities and was sufficient to impact the market function with respect to the supply of and demand for services. The conduct violated the provision of the Fair Trade Act that prohibits concerted actions, and the FTC imposed a fine of NT\$500,000. The grounds for the disposition were as follows:

- The Attorney Regulation Act does not restrict the channels through which attorneys may provide legal counseling. The conduct of the TBA has restrained the freedom of attorneys to provide services through an online platform.
- The conduct of the TBA, which was in accordance with the Attorney Code of Ethics, is still within the purview of the Fair Trade Act if it involves any enterprise’s conduct in respect of competition.
- The Attorney Code of Ethics is not a law or legal order, and the TBA cannot claim that “an act performed in accordance with law or order is not punishable” as stipulated in Article 11 of the Administrative Penalty Act.
- Self-discipline and the autonomy of organizations must still comply with laws and regulations.
- The conduct of the TBA restricts the channels through which attorney members may provide legal counseling services. Adding restrictions not stipulated by the law has exceeded the scope of self-discipline in the Attorney Code of Ethics.
- Diverse channels for providing legal services are necessary to ensure competition, and the regulatory authority, the MOJ, has not set forth any clear and definite rules to replace or eliminate competition. Hence, it is hard to justify exemption from stipulations of the Fair Trade Act.

11. The TBA refused to accept the disposition of the FTC and appealed to the Executive Yuan. The Executive Yuan Administrative Appeal Review Committee revoked the FTC’s disposition on the following grounds:

- The TBA is authorized by the Attorney Regulation Act to establish and interpret the Attorney Code of Ethics. The TBA, using its right to interpret, determined that the fee-sharing agreement between attorneys and Lifelaw Company for providing legal counseling services was a violation of Article 12 of the Attorney Code of Ethics.
- According to the Attorney Regulation Act, bar associations have the right to refer an attorney for disciplinary proceedings to the Attorney Disciplinary Committee. Based on the position to prevent members from being punished, the TBA sent warning letters to local bar associations using the authority provided by the Attorney Regulation Act and in compliance with the Attorney Code of Ethics. Hence, an act performed in accordance with law or order is not punishable in accordance with Article 11 of the Administrative Penalty Act.

- The disposition of the FTC did not consider that the conduct of the TBA to regulate the behavior of its members is in accordance with the law and legal order, and is justified as it prevents members from violating the law. Hence, the conduct does not exceed the scope of the Attorney Code of Ethics.

4. The Course of the FTC's Competition Advocacy Regarding Attorney Regulations

4.1 *Restrictions of fees standard*

12. According to Article 16 of the Attorney Regulation Act, the articles of incorporation of bar associations shall include standards for attorney service fees. This provision indirectly restricts the amount of attorney service fees, and may possibly restrict price competition. Therefore, the FTC consulted several times with the MOJ, the competent authority of the Attorney Regulation Act, in the hope of amending or even deleting the provision. The MOJ's attitude was vague at first, but recently came to support the idea, and it was learned that the "Amendment to the Attorney Regulation Act" drafted by the MOJ has deleted the provision. After the Executive Yuan reviews the amendment, it will be sent to the Legislative Yuan for deliberation.

13. The FTC's position on this issue: Letting bar associations set fee standards obviously eliminates competition, and there is not enough evidence to prove that this is necessary for ensuring quality. The effective enforcement of a mandatory fee standard, regardless of whether it may be in accordance with the law or for self-discipline, is gradually being questioned and considered anti-competitive behavior or contrary to the public interest. Even if they only serve as "recommendations," fee standards remain an important means for maintaining the profitability of professionals like attorneys while sacrificing consumer interests. Hence, the FTC contends that professional associations like bar associations should not be allowed to set fee standards, regardless of whether they are mandatory or recommendations, to avoid restricting price competition and harming consumer rights.

4.2 *Restrictions of practice areas*

14. Article 7 of the Attorney Regulation Act originally stated that an attorney may apply for registration with 4 local courts. In other words, attorneys at the time could only register with 4 local courts, and could only practice in the 4 areas. After the FTC's competition advocacy and consultations with the MOJ, Article 7 of the Attorney Regulation Act was deregulated so that it stated: "an attorney may apply for registration with a court." According to related provisions of the Attorney Regulation Act, however, attorneys still need to join the local bar association in order to practice in that area, which is different from accountants being able to practice anywhere once they join any accountants' association. Because of this, the Taipei Bar Association in April 2016 requested an amendment that would read "attorneys to practice anywhere in the State only need to join one bar association." The MOJ is currently conducting a public opinion survey regarding this issue.

15. The FTC's position on this issue: From the perspective of market competition, restricting the areas of practice for attorneys to protect attorneys in non-urban areas is completely unjustifiable. The geographic scope of Chinese Taipei is limited while the number of attorneys continuously increases. It is hard to say that this restriction is materially in the public interest, as it already infringes on the attorneys' freedom to work that is protected by the Constitution. Therefore, the restriction goes against the purpose of the Fair Trade Act to ensure free and fair competition.

4.3 *Restrictions on expanding business through advertisements*

16. Article 12 of the Attorney Code of Ethics established by the TBA stipulates that attorneys shall not use false or misleading advertisements, pay fees to brokers, use judicial officers or hire salespersons, or use other improper means to expand their business. The position of the TBA on this provision is to “protect the autonomy of consumers” and “maintain the independence of attorneys”:

- The work of attorneys involves a high level of professional knowledge, and information asymmetry exists between attorneys and clients. If attorneys use false advertisements to solicit cases, consumers might not be able to distinguish between what is true and what is false in the content of their advertisements, or might be misled into believing that filing a lawsuit is the best way to settle a dispute, and further make a relatively disadvantageous decision.
- If attorneys pay brokers or hire salespersons to solicit cases, since the fees or other forms of compensation of brokers and salespersons are mainly calculated based on the number of clients they bring in, there is a strong incentive for the broker or salesperson to make the attorney and client sign an appointment agreement. Brokers and salespersons may make false claims to the client or even defraud or threaten them to sign the agreement. The autonomy of consumers is severely impacted as they are unable to make a fully-informed decision.
- Brokers or salespersons may also do whatever they can to persuade attorneys to take a case, and even though attorneys are able to make an independent judgment, they still have to a certain extent the pressure of maintaining personal relationships. Therefore, any possible influence from non-attorneys should be eliminated to maintain the independence of attorneys.

17. The FTC’s position on this issue: Advertisements play an important role in most economic activities. Advertisements can be used to notify consumers of the latest information, ensuring that new products, services and the provider can attract the attention of users, and can also encourage innovation and new market participants. If advertisements of professionals are strictly restricted, consumers will not know where to access their professional services, and will not be able to determine the amount of the fees they will need to pay. Therefore, abolishing restrictions on advertisements will benefit consumers. Professionals such as attorneys must still abide by the code of conduct prohibiting false, misleading or deceptive advertisements, so as to protect the public interest.

5. Conclusion

18. In the legal services market, if law firms are no longer the sole provider of “legal services in a narrow sense,” and platforms, e.g., websites and APPs, established by new businesses are allowed to provide legal services, foreseeable business models include:

- Collaborating with attorneys and periodically collecting a platform service fee from attorneys or a brokerage fee when a match is successfully made.
- Users join the website set up by an enterprise and pay a fee based on the type and number of legal questions asked online, as well as responses from the attorney. The enterprise then shares profits with the attorneys it works with.
- Providing an online platform or space for legal discussions free of charge. Attorneys, individuals with legal knowledge, and general users or enterprises can engage in discussions on the platform. The main source of profit for the platform is the advertisements put up by attorneys, government agencies, or other enterprises.

19. The business models listed above all require the participation of attorneys to operate. Therefore, discussions on competition issues of disruptive innovation in the legal services market cannot be separated from discussions on attorney regulations and the role of bar associations. In summarizing the above introductions to attorney regulations, competition advocacy, coordination with administrative agencies, and dispositions of the FTC, the difficulties encountered in enforcing the competition law arise due to the following two reasons:

- Bar associations and the MOJ still lack consideration for competition law.
- The Executive Yuan Administrative Appeal Review Committee and administrative court do not fully support the FTC's deregulation policy for attorneys, and still reject competition law when it comes to regulations for professionals such as attorneys.

20. 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. In other words, neither can be neglected. After actively coordinating with the legislature and the MOJ, which is the regulatory authority, over the years, 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 MOJ 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.