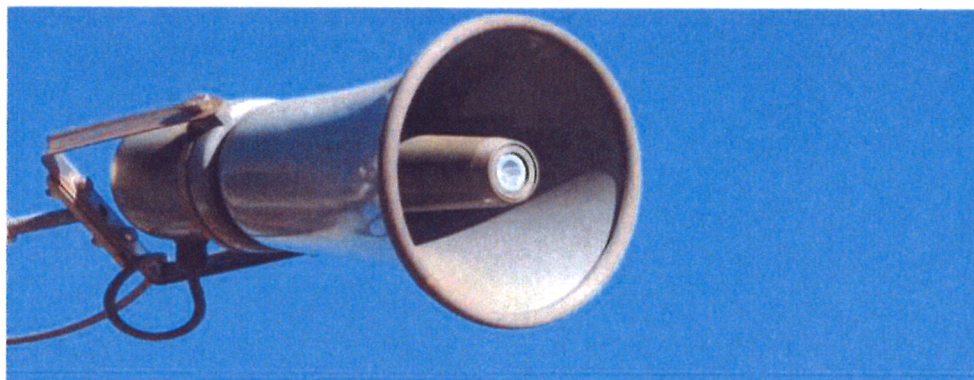




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## Legal services under the competition spotlight

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Suzanne Rab of Serle Court looks at the recent announcement by the Competition and Markets Authority that it will carry out a market study of the legal services market.

The **Competition and Markets Authority** (CMA) study, announced on 13 January 2016, was prompted by concerns about the standards and affordability of legal services, access to redress, low consumer empowerment and possible barriers to entry due to a complex and uneven regulatory framework.

### MARKET STUDIES EXPLAINED

Market studies are examinations into the reasons why particular markets may not be working well, taking account of regulation and other economic drivers, as well as business and consumer behaviour.

The CMA can choose to carry out a market study as part of its general function to obtain, compile and keep under review sufficient information to make informed decisions, including in relation to competition law and consumer protection matters.

Prior to 1 April 2014, when the CMA became fully operational, there was a split in functions between the Office of Fair Trading (OFT) (the then first stage competition authority) and the Competition Commission (the then second stage competition authority).

The OFT was responsible for first stage market studies, whereas the Competition Commission would conduct market investigation references if a further and more in-depth investigation was necessary. Currently, the CMA is responsible for both stages.

During the study, the CMA will seek information from interested parties to gain a better understanding of how the legal services market works and how any concerns might be addressed. At the end of the study, the CMA will publish its findings.

There are a number of potential outcomes of a market study ranging from: a full market investigation reference lasting potentially up to a further 18 months; investigation and action under consumer protection or other laws; recommendations on changes to laws or regulations; regulatory guidance; improved consumer information; or even a clean bill of health.

## REVIEWING LEGAL SERVICES

In announcing this study, the CMA has explained that its aim is to ensure that those sectors that play a significant role in the economy are subject to healthy competition. Legal services are significant in their own right with a UK turnover of about £30 billion. The CMA notes that the provision of legal services to both businesses and consumers underpins the UK economy by enabling such persons to understand and assert their rights.

The current regulatory landscape for the legal services sector is shaped by the Legal Services Act 2007 (LSA) which aimed to address concerns about the pre-existing regulatory framework. The LSA provides for an independent oversight regulator – the Legal Services Board – which has a number of regulatory objectives including promoting competition and promoting and protecting the interests of consumers.

The LSA also put a duty on approved regulators to establish separate regulatory limbs such as the **Solicitors Regulation Authority** and the Bar Standards Board, which must be independent of the relevant professional representative bodies such as the Law Society of England & Wales or the Bar Council of England & Wales. One particular innovation arising from the reforms was the introduction of alternative business structures (ABS) which allow non-lawyers to invest in and own law firms.

Research by the OFT and ongoing monitoring by the CMA has found that the reforms have had beneficial effects in removing barriers to entry but the CMA considers that concerns remain and that a full examination of the sector is now necessary.

The study will examine legal services in the broad sense. It will cover the six legal services that are 'reserved' in that they can only be carried out by persons who are authorised and therefore regulated by the relevant regulator under the LSA (i.e., the right to conduct litigation; the right of audience in the courts; probate services; reserved instrument activities; notarial services; and acting as a commissioner for oaths).

It will also cover legal services provided by unregulated providers. Legal services relating to criminal law are out of scope of the study.

Of these, the right to conduct litigation is the most important to *CDR's* readers. The CMA proposes to carry out limited case studies to examine key issues, and, notably, commercial law services are included, the scope of which will cover trading issues including advice relating to commercial contracts, which would also include dispute resolution options.



Exempt from the survey will be consideration of the market experiences of medium-sized and large businesses, as the CMA considers that they “are more likely to be repeat purchasers of legal services and to have access to expert advice, including in-house legal advice”.

## **NEXT STEPS**

The CMA invited representations including on whether to make a market investigation reference by 3 February 2016. If it proposes to make a market investigation reference (or has been urged to make one and proposes not to do so) it must begin a consultation no later than 12 July 2016. The CMA must publish its market study report detailing the action it proposes to take, if any, no later than 12 January 2017.

In the meantime, the legal services sector is facing regulatory scrutiny from multiple sources. In November 2015 the government announced that it intended to consult on the removal of barriers to entry for ABS and on the relationship between regulators and representative bodies. The CMA will liaise closely with other bodies including government departments in the course of its study.

### *About the author*

*Suzanne Rab is a barrister specialising in competition law and regulation at Serle Court Chambers in London. Suzanne has wide experience of advising on competition and regulatory matters in the professional services sector, including legal services. She will be speaking at CDR's Spring Litigation Symposium on 3<sup>rd</sup> March 2016.*