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Legal Services Board
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Date 18 April 2010	Email	david.stallibrass@oft.gsi.gov.uk

Dear Emily,

SRA Licensing Authority Application

Thank you for sending us the Solicitors Regulation Authority's (SRA) application to become a Licensing Authority.

As you are aware, the OFT has a statutory duty under the Legal Services Act 2007 (LSA07) to review applications for Licensing Authority designation and to provide the Legal Services Board (LSB) with such advice as we 'think fit' regarding whether the application should be granted. In providing our advice we have to consider whether any given application, if granted, would, (or would be likely to) prevent, restrict or distort competition within the market for reserved legal services to any significant extent¹.

The OFT's default position, in this regard, is that applications to become a Licensing Authority, unless there is compelling evidence to show a significant detriment to competition through foreclosure and/or a substantial degradation of consumer protection, is unlikely to raise any substantive concerns since it is likely to increase choice for consumers and professionals. However, where an application to become a Licensing Authority does include a provision that has the potential to restrict competition, the OFT would expect them to only be permissible when evidently justified by one of the objectives set out in the LSA07.

In this regard, we note that the SRA's application to become a licensing authority includes 'separate business' provisions that exclude the carrying out of unreserved legal activities unless they are performed within the licensed entity and thus captured by regulatory

¹Schedule 4 Part 2 section 6(2) and Schedule 10 Part 1 section 4(2) LSA07



provisions. We understand that the intention of these provisions may be to ensure regulation cannot be avoided by establishing a separate entity to conduct unreserved activities and the desire to provide adequate protection to consumers. However the counterfactual may be the imposition of regulation that is not necessary to protect consumers, and creates a barrier to entry that limits competition.

We further note that the SRA consider that the provisions may have a 'limited negative impact' against the statutory objective of promoting competition. The OFT is of the view that a balance needs to be struck between providing consumers with the necessary levels of protection and ensuring that any protective measures do not restrict competition by lessening choice and flexibility of service. Accordingly, the LSB must be confident that any benefits of the SRA's provisions outweigh any potential costs to consumer choice and competition.

More specifically, we would invite the LSB to consider proposing measures designed to mitigate concerns relating to consumer choice and competition, for instance, by way of making the relevant provisions subject to a "sunset clause". This would allow for their review at a later date with a view to assessing their necessity and proportionality in light of any evidence of a possible detrimental effect on competition. In this respect, the SRA's commitment to work with the LSB on its review of reserved legal activities, and to review the separate business provision in light of the outcomes of this work, could be used as an opportunity to review the separate business provisions for any detrimental effect on competition.

We hope this advice helps.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'David Stallibrass', with a stylized flourish at the end.

David Stallibrass
Director – Services
Office of Fair Trading