

# **Application to amend the solicitors' practice rules and the solicitors' overseas practice rules**

February 2003

**A report by the Director General of Fair Trading  
to the Lord Chancellor on the application by the Law Society to  
amend Rule 16 of the Solicitors' Practice Rules 1990 and Rule 4 of  
the Solicitors' Overseas Practice Rules 1990**

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# 1 GENERAL SUMMARY

- 1.1 The advice below concerns alterations by the Law Society to the 'Guide to the Professional Conduct of Solicitors' supplied to the Director General by the Lord Chancellor's Department on 24 January 2003.
- 1.2 Under section 29 and Schedule 4 to the Courts and Legal Services Act 1990 ('the CLSA') (as amended), if a body authorised to grant rights of audience or rights to conduct litigation makes an alteration to its qualification rules or rules of conduct, the alteration shall not have effect unless approved by the Lord Chancellor. The Lord Chancellor may seek the advice of the Director General who shall consider whether the proposed alterations would have, or be likely to have, any significant effect on competition.
- 1.3 I am authorised by the Director General, under paragraph 7 of Schedule 1 to the Fair Trading Act 1973, to carry out competition scrutiny of the proposed alterations as required by the provisions of the CLSA (as amended) set out above.
- 1.4 The Law Society's proposed amendment to Rule 16 of the Solicitors' Practice Rules 1990 and Rule 4 of the Solicitors' Overseas Practice Rules 1990 will apply the amended Code of Conduct of the CCBE (the Council of the Bars and Law Societies of the European Union) relating to solicitors' European cross-border activities.
- 1.5 For the reasons discussed in the following paragraphs, I believe that the proposed amendment to the Code of Conduct is not likely to have any significant effect on competition.

## 2 THE AMENDMENT TO THE CODE OF CONDUCT AND ITS LIKELY COMPETITIVE EFFECT

- 2.1 Rule 16 of the Solicitors' Practice Rules 1990 and rule 4 of the Solicitor's Overseas Practice Rules 1990 apply the Code of Conduct ('the Code') of the CCBE in relation to European cross-border activities. The rules oblige solicitors to comply with the Code in relation to such activities.
- 2.2 European cross-border activity is defined as:
- (i) all professional contacts with lawyers of member states other than the United Kingdom; and
  - (ii) the professional activities of the solicitor in a member state other than the United Kingdom, whether or not the solicitor is physically present in that member state.
- 2.3 The Law Society's rules currently apply the Code adopted by the CCBE in October 1988. The CCBE revised the Code in November 1998. These revisions were relatively minor and cause no incompatibility with the current ethical obligations of solicitors in England and Wales. Nevertheless, the revisions necessitate changes to the Law Society's rules.
- 2.4 The majority of the amendments do not appear to raise any competition issues. We note, however, that there are rules on advertising and fee-sharing with non-lawyers which have the potential to effect competition.
- 2.5 Rule 2.6 of the revised Code concerns advertising by solicitors. We are of the opinion that restrictions on advertising may restrict competition for the business of individuals and small businesses. However, rule 2.6 permits lawyers to advertise 'to the extent and in the manner permitted by the rules to which he is subject'. Therefore solicitors in England and Wales would be entitled to advertise in compliance with the Law Society's rules which we do not believe to be unduly restrictive. As such, rule 2.6 does not appear to have a significant effect on competition.
- 2.6 Rule 3.6 concerns fee sharing with non-lawyers. The revised Code amends rule 3.6.1 by introducing an exception to the Code's ban on fee-sharing with non-lawyers. The revised wording reads:

'Subject as after-mentioned a lawyer may not share his fees with a person who is not a lawyer except where an association between the lawyer and the other person is permitted by the laws of the Member State to which the lawyer belongs.'

- 2.7 Our view is that a ban on fee-sharing and the formation of Multi-Disciplinary Partnerships (MDPs) can have the effect of inhibiting new entrants to the market for legal (and other) services, prevent cost efficiencies arising from economies of scale and scope and increase clients' search and transaction costs. We believe that such bans inhibit competition and consumer choice.
- 2.8 Given that the amended rule 3.6.1 allows fee-sharing agreements permitted by the laws of individual member states it does not appear in itself to have any significant anti-competitive effects.

### **3 CONCLUSIONS**

- 3.1 In summary, the proposed amendments to Rule 16 of the Solicitors' Practice Rules 1990 and Rule 4 of the Solicitors' Overseas practice Rules 1990 are not likely to have any significant effect on competition in the market for the supply of legal services.

**Margaret Bloom**  
**Director of Competition Enforcement**  
**Office of Fair Trading, February 2003**