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COMPETITION COMMITTEE**

Working Party No. 2 on Competition and Regulation

COMPETITION RESTRICTIONS IN LEGAL PROFESSIONS

-- Brazil --

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The attached document is submitted by the delegation of Brazil to Working Party No. 2 of the Competition Committee FOR DISCUSSION under item III of the agenda at its forthcoming meeting on 4 June 2007.

Please contact Mr Sean Ennis if you have any questions regarding this document [phone number: +33 1 45 24 96 55; Email address: sean.ennis@oecd.org].

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1. Introduction

1. The Brazilian experience in improving competition in liberal professions is quite recent and becomes even more incipient when it comes to legal professions. The relatively low revenue owned by Brazilian legal firms, the common sense shared on the availability of options amongst these service providers, the traditional association of market with trade businesses only and the historic motivation for antitrust legislation (which have initially targeted huge conglomerates) – have contributed to leave aside such services from competition analyses for years. Such understanding that law firms belong to a world apart and are subject to peculiar provisions has led to the explicit prohibition to bear mercantile characteristics or to adopt a trade name. However, besides old-fashioned, the so-called dissociation from the aim to profit must not mislead the application of the antitrust principles to such ordinary economic activities.

2. Aware of that, the Brazilian antitrust authority – the Administrative Council for Economic Defense (“CADE”) – is keen on the debate about competition restrictions in the legal professions promoted by the OECD so as to improve its pro-competitive mechanisms.

2. Overview

3. The Brazilian Constitution regards lawyers as essential to the administration of justice and their work is deemed a public service with a social role or a *munus publicum*. As case laws are built, their task creates positive externalities, since third parties will not be charged for the benefits they will harvest from a solid precedent. In this sense, there is an overall interest in that lawyers deliver good work in court.

4. There are 547.037 lawyers in Brazil. Like other liberal professions, the legal one is regulated so as to guarantee the quality of the service. Such regulation can take different aspects, but price fixing, educational requirements and compliance with a code of conduct are certainly the most relevant for our analysis. The need for regulation in legal practice and other services alike is usually attributed to a market failure known as asymmetric information. Asymmetric information is characterized by the existence of privileged information, which is essential to the dealing but accessible to one party only. Such failure can inhibit transactions if consumers believe that lawyers behave in an opportunistic fashion.

5. In this sense, in order to avoid misleading advertisements, the bar gives little room for self-promotion, prohibiting (i) collective mailing, (ii) announcements on TV, radio and outdoors, (iii) mentioning firms that the lawyer has held or favor rulings accomplished. Moreover, it is expressly forbidden to make explicit or implicit reference to the fees. The rules are so restrictive that however expensive the announcement, it might become innocuous.

6. A certain degree of knowledge in this scenario is attained by area-specific publications and individual assessment, which are only feasible to individuals and corporations that regularly make use of these services. Such corporations usually have access to preferred provider lists, which, narrowing their lists of outside providers, lead them to a much shorter learning curve, lower negotiated fees and shorten negotiation costs. But even regular clients do not possess the thorough insight into how attorney fees are stipulated. Regulation aims at avoiding that such asymmetry may lead to an abuse from the professional.

7. Although regulation is needed, independence is the quintessence of the practice. Hence why regulation is carried out by a private association with public ends.

8. Legal practice in Brazil is generally disciplined by a federal law – Law 8906/94 – and regulated by rules that the national bar association – the OAB – issues with legally ensured exclusivity rights. According to the law, it is a precondition for the validity of bylaws and social contracts that they be

executed by a regular lawyer. Even some public firms can only be performed by acting lawyers who, nonetheless, must have also been approved in a particular entrance exam for that specific public career. Moreover, legal advisory as well as the right to plea in court – except for the *habeas corpus* – are legal monopoly of attorneys regularly enrolled in the bar. Therefore, there should be no competition between Brazilian and foreign lawyers.

9. Yet this is not entirely true. International firms compete in some degree with Brazilian lawyers in legal advisory and are not subject to the enforcement of the Brazilian bar disciplinary sanctions. The truth is that especially in financial matters, advisory does not respect the boundaries established by each country's bar associations¹.

10. Legal exclusive rights are justifiable when, due to the asymmetry of information, it is mandatory to guarantee a minimum level of quality in legal services. In some circumstances professionals from other areas can be even more skilled than attorneys-at-law to provide the defense of a party in the lawsuit. Actually, in such cases, acting simply as experts may be more costly than allowing them litigate *in lieu* of lawyers.

11. It is highly recommended that other professionals could advise in areas whose knowledge would demand from the lawyer another graduation, specialization or constant appeal to outside experts. In such cases, entry barriers are even deeper and the market, more concentrated. Not less important, more than a quantitative restriction, entry barriers might create qualitative deficit, since other professionals are able to provide more effective defense in their areas of expertise. In countries where such competition already exists, like Denmark²: “(...) lawyers compete against other advisers. Lawyers meet competition from other advisers in the 85 percent of their turnover that is not subject to the monopoly of representation. Accountants advise on tax legislation, business establishment etc., estate agents advise on legal matters regarding property, and a number of organisations such as e.g. the Danish Federation of Motorists offer standard contracts. In particular, lawyers meet competition from other advisers when the clients have low willingness to pay and when the task is not too complex. In the area of tax legislation, it is possible to calculate market shares for various advisers in complaints cases where the state offers full or partial cost redemption¹⁴. Lawyers have a market share of 20 percent while accountants have a market share of 65 percent in the administrative part of the complaints system, i.e. before the cases reach High Court or Supreme Court. There is clearly competition between lawyers and accountants in tax complaints cases.”

12. Figures brought by the report prepared by Copenhagen Economics also show preference for non-legal experts when the service demanded is limited to advisory and does not include court proceedings:

Table 1. Market Shares For Different Advisers On The Tax Area

| TYPE OF ADVICE | LAWYER | ACCOUNTANT | OTHERS |
|--|-----------|------------|-------------|
| General tax advice | Almost 0% | | Almost 100% |
| Complaints (administrative part, not representation monopoly) | 20% | 65% | 15% |
| Disputes (High Court and Supreme Court, representation monopoly) | 100% | 0% | 0% |

Source: http://www.copenhageneconomics.com/publications/The_legal_profession.pdf.

¹ <http://conjur.estadao.com.br/static/text/49231,1>

² http://www.copenhageneconomics.com/publications/The_legal_profession.pdf.

13. Surmounting existing restrictions should follow very strict rules, though. The unreasoned absence of a law graduate lawyer may lead to wrong rulings and thus jeopardize the positive externalities caused by the good work delivered by lawyers today.

14. Legal firms in Brazil can have no other object than the legal practice and cannot allow a non-lawyer partner. As already mentioned, such firms are expressly forbidden to bear mercantile characteristics or adopt trade name. Since legal practice does not demand prohibitive costs, the presence of an expert in administration is not relevant for a firm to be functional.

15. Copenhagen Economics enlists lawyer's independence and confidentiality as two reasons of utmost importance for keeping lawyers as the sole owners of legal firms. Under oath privileges and professional morals could be jeopardized by the access of other professional to classified information they had no obligation to safeguard. Confidentiality obligations are set forth in the conduct code lawyers should stand by.

16. In Brazil, the practice is subject to quasi-regulation. Quasi-regulation means that the regulating authority is a class disciplinary body where lawyers elected by their peers are in charge of it. Quasi-regulation is also a prerequisite for independence, since it prevents conflicts of interest in cases where the Administration is a party to the lawsuit.

17. In relation to the "lack of enforcement" that is usually associated with quasi-regulation, such disadvantage is not applied to the legal professions, where enforcement is achieved by means of the compliance with the code of conduct. Non compliance would affect directly the lawyer's main asset, his reputation. In this sense, coercion plays a very important preemptive function.

18. Liberalization of legal practice to other professionals should include the regulation of their conduct by the same principles and organization that discipline current lawyers, thus creating two different qualifications for the same genre of professional. Ownership exclusivity should be extended to those who would be allowed to advise in legal concerns and be subject to the lawyers' code of conduct.

19. The aforementioned notwithstanding, there are problems that could easily arise from such multi-professional partnerships, even if non-legal graduates could only work with legal area-specific advisory. Bad reputation from one specific career could contaminate the other. KPMG and Ernst & Young have lived such experience in 2000 and 2001, when both tried to integrate with law firms. In 2000 and 2001, KPMG Legal and Ernst & Young Law were set up with 15 and 60-70 lawyers respectively. These investments were however not successful and had to close again after a couple of years.³

20. In the aforementioned case, conflicts of interest could be prevented because lawyers are bound by a moral code and so would be non-law graduate lawyers. But even then, non-law graduate lawyers would never be for the public in general as close to law-graduate lawyers as they would be to their natural careers. In this sense, contamination would be unavoidable. Due to that, the ownership of a law firm is better suited for lawyers who do not hold firms in different activities, so that clients would not feel that confidentiality could be hazarded by the goals pursued in the parallel activity.

³ *The previous head of KPMG, Lars Isacson, explains that the clients, especially after the Enron scandal, were very sceptical of the accounting firm offering legal services. The interest in multi-disciplinary advice was also less than expected. At the same time, there were large company cultural differences that made it difficult to run legal business and accounting in the same company. (The Law Society of Sweden (Sveriges Advokatsamfund) (2003), printed in the magazine: "Advokaten 2003 nr. 3., Reasons why the targetting of the accounting firms in the legal profession did not work (Därför fungerade intervisionsbolagens juristsatsningar)" (in Swedish), apud Copenhagen Economics, op. cit..)*

21. Regulatory measures, on the other hand, might create entry barriers by means of educational requirements and, since liberal professionals tend to compete more on quality than on price, the lack of competitors may lead to a price boost.

22. Enrollment in the Brazilian bar association demands both the graduation from a Ministry of Education approved law school (or a validated foreign legal education) and the approval in the bar examination. The registry allows the lawyer to the practice within the jurisdiction of a certain state, but the performance of regular practice within another jurisdiction is still allowed under the payment of an additional fee.

23. Law schools in Brazil are very common – there are 1,004 conceding the law degree to nearly 120 thousand new graduates each year, 212 only in São Paulo⁴. Nonetheless, only 16,6% of those who took the bar examination last year were approved and many of them have chosen not to become acting lawyers, staying only as potential competitors. Therefore, a great deal of the above mentioned 547.037 lawyers enrolled in bar are not acting lawyers. Even then, there is still a great deal of acting lawyers in Brazil.

24. The Brazilian priority lies at improving the quality of education, eventually decreasing the number of institutions legitimated to teach Law. It is important to mention that most courses recently approved by the Ministry of Education are not recommended by the bar association, which means that the method used by many countries of assigning the task of approval of new law schools to the bar could be of good use in Brazil. Therefore, in Brazil entry barriers create above all qualitative deficit.

25. It is also Law 8906/94 that ensures the right of the bar to fix the attorneys' fees and establish them on a regional basis, by means of each OAB regional office. Due to Law 8906/94 the OAB is the only Brazilian professional association to be legally entitled to issue a charter defining minimum prices. Actually, the OAB charter is not as effective as wished by the entity. Attorney's fees are often deemed too expensive for the simplest legal acts. Nevertheless, non compliance with the law is still punishable by the bar.

26. Price fixing tends to be defined as illegal in current most advanced antitrust legislations. Suggested price practices, on the other hand, could partially counterbalance the lack of information caused by asymmetric information and would also leave enough room for professionals to provide their services at more accessible fees. In this sense, charters would be deemed pro-competitive when they standardize reasonable values to be paid for the legal procedures, enabling the negotiation of fees from objective criteria.

27. In this very sense, advertising on price can be pro-competitive, but could also increase the judicial costs burdened by the Administration. Lower prices for the individuals may be costly for society as a whole. It happens because the collected court fees cover less than the total costs incurred in a lawsuit: the exceeding and most significant part is afforded by the state. In other words, the society pays for almost all the proceeding. In this sense, lower fees may lead to a lawsuit boom and lay a heavier burden on the state. This issue clearly involves the dilemma of the commons, where individual choices are not optimal for society as a whole.

28. Nevertheless, it is not a public function of the bar to define the judicial policy towards the access to justice. The fee should not be seen as a means to reduce the access to the court, which is guaranteed by the Brazilian Federal Constitution and cannot be restrained by ordinary law. Such observation is also valid

⁴ Valor Econômico, *apud*: <http://www.senado.gov.br/sf/noticia/senamidia/principaisJornais/verNoticia1.asp?ud=20061124&datNoticia=20061124&codNoticia=209367&nomeOrgao=&nomeJornal=Valor+Econ%F4mico&codOrgao=47>

in relation to attorney's fees, since raising prices, in as much as such practice curbs universal access to justice, must not be deemed as a means to achieve financial balance in the process.

3. Considerations on the Brazilian relevant market for legal professions

29. The first step in order to verify the existence of potential competition problems is to determine the relevant market – comprising, naturally, the geographic and the product perspectives.

30. Lawyers are not usually generalists. They litigate or advise in a specific area. Nevertheless, it is a fact that the most important entry barrier is establishing a client basis and that building the reputation of a lawyer takes time. It is not for other reason that it is often more attractive to become an associate in an existing law firm and only eventually, after building his reputation, open a new one. For instance, the largest Brazilian law firm in number of lawyers has approximately 380 attorneys-at-law and 1,800 clients⁵. Another expressive firm has 230 legal lawyers.

31. Reputation leads to fidelity, which means that most clients do not change their regular lawyers. Such loyalty is also a result of the personal relationship which naturally arises between a good attorney and his habitual client.

32. Such reputation, nevertheless, is not automatically extended to every field of work. The reputation is specific for each area and the decision of changing from one to another must take into consideration opportunity costs. In the incoming market he will be a new player regardless his expertise in the outgoing. In this terms, since the maturity date for reputation is long, each segment cannot be contested by another in the long run and therefore constitute a different market.

33. In fact, legal practice involves not only one activity, but a myriad of specialized fields with different demands and degrees of complexity. But the legal education on most of the universities is concentrated on some traditional topics. Civil and penal law are the quintessence of the above mentioned. In such areas, the number of acting lawyers is greater, as well as the amplitude of the ratings involving professionals working in the area.

34. Other subjects are not even contemplated in the schedule of most law schools or are not given much room to evolve. In these areas, the need for specialization leads to the lack of professionals available to teach and narrows the number of attorneys capable of rendering services with the required efficiency. Therefore, since those who venture in such areas must at least major in the correspondent discipline, acting professional in such fields are in general more prepared than other lawyers.

35. If it is true for individual lawyers that specialization prevents the prompt change from one area to another, it is also true that legal firms can change their focus and count on new and qualified personnel in the short run. Nevertheless, there is no sense in believing that there is one sole market for legal firms and as many as the legal areas for individual lawyers. The broader or different expertise of a firm cannot be assessed as a mathematical operation. Lawyers have a period of adaptation inside a firm and their clients are aware of that. No other reason would make so many clients stay in the original firm instead of following their original consultants.

36. On the other hand, the delimitation of the relevant market depends on the client's economic status. In this sense, adopting this approach – and once excluded those who cannot afford private lawyers and make use of public *pro bono* services -, there are essentially four different markets: (1) premium corporate, (2) premium individual, (3) regular and (4) occasional.

⁵ <http://conjur.estadao.com.br/static/text/49231,1>

37. Premium corporate lawyers (1) are usually more expensive, since their activity usually demands further education in economics, accountancy or statistics and is rather specific for huge corporations. Wealthier individuals demand a second group of professionals (2) who excel at their areas and can add comfort to the client. Their clients have specific demands, including highly complicated divorces, financial advisory and usually hire on a regular basis. Demanding regular lawyers with specific corporate knowledge but unable to afford expensive professionals, smaller companies and businessmen are supplied by a third group (3), while attorneys occasionally hired for punctual cases by those who cannot afford to pay for the premium market are a fourth group (4).

38. Despite the fact that groups (3) and (4) are commonly supplied by the same lawyers, the significant gap between the needs of their clients has refrained us from identifying one with the other. However, competition is clearly more vigorous in the third and fourth groups, where individual lawyers are even more common than large legal firms – which prevail on the former two markets.

39. According to the newspaper Valor Econômico⁶, in São Paulo's regular and occasional markets, competition seems to be so ferocious that 20% of the total number of lawyers are out of the private market and must live on what they can earn from *pro bono* services subsidized by the state. Further, in the end of 2006 there were already 7.324 firms registered only in São Paulo⁷. In this sense, allowing new professionals would be unnecessary in quantitative terms. Nevertheless, in a qualitative outlook, more professionals with specific qualifications would imply efficiency gains, which is certainly pro-competitive.

40. Competition could be sharply enhanced in the premium markets by the entrance of new professionals. Figures show that the largest law firms in Brazil have grown by 35% per year since privatizations and that, even now, when growth is expected to be modest, analyses estimate that those firms will grow 2% above the GDP variation⁸. A partner from the big Brazilian firm, stresses that: “[I]n the past, law firms have grown in line with the economy, but in recent years that growth has become exponential, with new areas such as mining, oil, gas and other forms of energy being opened up to the private sector.”⁹

41. Growth, nonetheless, is intimately associated with privatizations and the subsequent creation of brand new areas targeting specific regulatory and investment issues arising thereof.

42. But even in this particular area competition is increasingly fierce. International firms – times larger than Brazilian ones – clearly compete with local firms in consultancy matters. And it should be said that advisory is usually the key area of most Brazilian premium corporate firms. In the larger firms, 65% of the service supplied lies on this field¹⁰.

⁶ *Apud*: <http://www.senado.gov.br/sf/noticia/senamidia/principaisJornais/verNoticia1.asp?ud=20061124&datNoticia=20061124&codNoticia=209367&nomeOrgao=&nomeJornal=Valor+Econ%F4mico&codOrgao=47>

⁷ *Idem. Ibidem.*

⁸ http://www.cesa.org.br/eventos_clip020320.asp and <http://conjur.estadao.com.br/static/text/49231,1>

⁹ The Internacional Law Office 2007 Client Choice Guide, *apud* http://www.demarest.com.br/anexos/Size_matters.pdf

¹⁰ <http://conjur.estadao.com.br/static/text/49231,1>. The same can be identified in other legal systems, such as the Danish one:

| Turnover and competitors in the three steps of a case history | | | |
|---|---------------------|-------------------|---|
| | CONTENT | SHARE OF TURNOVER | COMPETITORS |
| Step 1 | General information | 5 | Information services, interest groups, public authorities |

43. International competition has been one of Brazilian firms main concerns. Many firms, especially in the United Kingdom, have come to Brazil because their clients want their legal advisors to follow them abroad. Associations with large international firms have become a natural phenomenon as well.

44. It is also in groups (1) and (2) that information asymmetry is not an absolute barrier to assess the counselor's work. In this sense, regular use of lawyers (experience) and access to preferred lists and area-specific publications can make competition on quality more effective in the premium market than in sectors (3) and (4) – which increases bargaining power and lowers the fees. Sectors (3) and (4) cannot benefit from experience or from such specific publications. First, because even using legal services on a regular basis, sector (3) hires locally; on the other hand, experience is an unheard-of element for the occasional market. Second, due to the fact that such reviews do not assess smaller firms, the only source of supply both can afford.

45. Geographic boundaries are not important for the first two segments, mainly when the service to be rendered consists of a consultation. But even when it comes to litigation, the most relevant firms of the country usually assign their representation to a local firm, whose lawyers are enrolled in the local section of the bar. For the third and fourth groups, services are hired locally, due to transportation and representation costs.

46. Asymmetry of information can be bad even for good lawyers. Working for large firms with steady reputations, Brazilian best lawyers usually fill their time-sheet programs with parsimony, since they do not have how to charge for every time spent on a case. Besides negotiating the whole hours spent by lawyers, clients usually negotiate a ceiling for the service. In this sense, the lawyer should not work on that case more than the necessary hours to reach the budget. But since the reputation of the firm depends on providing in full every single service they accept to undertake, very often lawyers do not charge what they have effectively worked. This is especially true in less complex cases, when less renowned lawyers could have accomplished a satisfactory result charging cheaper instead.

47. Actually, asymmetry affects mostly good lawyers by means of two distinct situations called by economists 'adverse selection' and 'moral hazard'.

48. When clients are not able to assess in advance the excellence of an attorney, which happens with particular frequency in markets (3) and (4), the bad service performed by an agent affects the trust in legal service as a whole, preventing good lawyers from entering into a market notoriously known for its service providers' bad reputation.

49. Actually, knowledge is so shallow that consumers usually do not know whether another lawyer could have done better, even after the service has been provided. Said situation prevents such consumers from trying to hire other lawyers. In this sense, good professionals avoid entering such a market where their reputation would be contaminated in advance by a general feeling that clients would cultivate for the class as a whole. That is adverse selection. Adverse selection is impaired by means of educational requirements and could decrease with the acceptance of non law graduate advisory in their specific fields of knowledge, sometimes inaccessible to law graduate lawyers.

50. Similarly, clients must believe that their counselors are advising on their behalf only and that their interests will be accomplished by the least costly means. The dependence on the counselor's moral standards lead to the classic economic dilemma named moral hazard. As confidence decreases, the search

| | | | |
|--------|-----------------|----|----------------------------|
| Step 2 | Specific advise | 80 | Accountants, estate agents |
| Step 3 | Disputes | 15 | None |

Source: http://www.copenhageneconomics.com/publications/The_legal_profession.pdf.

for legal services falls as well, which means that bad lawyers can cause negative externalities upon good lawyers. Moral issues can be tackled by means of a rigid application of the code of ethics.

4. Learned professions and CADE's decisions

51. Since the first half of the 1990's the Brazilian antitrust system has been handling price fixing cases involving learned professions. Most cases analyzed so far pertain to the health sector, more specifically to the issuance of fee tables by medical associations (especially the Brazilian Medical Association – AMB) divulging minimum prices. Even if legal professions have not been directly involved, the rulings of CADE have been setting a path towards general considerations which will be of great help when dealing with attorney's fees.

52. The understanding of the Council is not already consolidated. In fact, it is constantly evolving. Nevertheless, it is a fact that the administrative court understands that under the rule of reason price fixing would only be regarded as anti-competitive if there were means to compel the professionals to abide by the fees.

53. Sharing the same view that the Portuguese antitrust authority expressed in the condemnation of the national dentist's association for price fixing, the Brazilian council acknowledged that price fixing in general (i) lays limits to the associates to determine price according to the laws of the market; (ii) helps price uniformity and then cartelization; (iii) creates a barrier to the entry of new professionals, who cannot compete with the reputation of established professionals unless they offer lower fees; (iv) prevents bargains and price negotiations; (v) as a result, impairs general welfare.

54. There already are leading cases¹¹ issued by the Brazilian antitrust body regarding the condemnation of the use of price tables. Such jurisprudence was almost entirely built on cases involving the medical sector and currently faces three major issues:

- whether physicians could gather in associations and discuss prices to be negotiated with healthcare institutions or corporations. Such assumption arises from the power asymmetry between individual doctors and corporations;
- whether prices issued by the association could bind doctors in their relations with individual clients, where there is no power asymmetry; and
- whether price fixing was legal where there was a labor relationship between the doctor and the association.

55. The Administrative Process 08000.020294/1996-03 deals precisely with the first two matters. Taken place in 2006, in this particular case the council discussed power asymmetry. Firstly, the Council found that physicians had no power to bargain individually with health plans. The deterioration of labor relations could lead to an eventual lack of interest in the profession, which would be bad for the society as a whole. Due to power asymmetry, collective bargaining would be pro-competitive in this particular case.

¹¹ Administrative Process 08000.011520/94-40: in 1998 the Alagoas regional medicine association and other regional health institutes were condemned for price fixing and cartelization. This was one of the many cases brought to the administrative court due to the boom of charges which took place in the health sector between 1992/1994. Relying on leading cases (PA 53/92, PA 61/92, PA 62/92), the Council believed that price fixing curbed the freedom of choice, the chance to bargain and impaired the willingness to seize technical and economic efficiency. Therefore, following precedents, the Council fined the associations the minimum value with an educative purpose.

This position expressed in the winning-vote represented a turnover in the understanding of the Council. On the other hand, the Council stated that since there was no asymmetry in the relationship with clients, associations to fix price should be deemed anti-competitive when dealing with final consumers.

56. The last issue is tackled by the administrative Processes 08000.005351/97-42, judged on 2005 and 08012.003664/2001-92, judged on 2004. In both, the Council understood that there was no actual illicit practice when the association does not fix the prices of services rendered by third parties, but only the prices of those services that the association itself provides by means of hired physicians. In this situation, two conditions must concur:

- the association must not prevent physicians from performing their activity outside the association; and
- the association must not intervene in the price established by the doctors in their activities outside the association.

57. It is of utmost importance to stress that such understanding is very recent and has not been ratified by enough subsequent rulings. It is perceivable that the understanding of CADE is under a process of solidification and that resorting to the rule of reason implies constant revaluation of precedent decisions.

58. Such revaluation notwithstanding, the transposition of antitrust principles to the legal professions faces a very peculiar obstacle: when it comes to legal professions, it is a fact that the OAB is entitled by law to issue a charter defining minimum prices. In this sense, any decision of the bar towards liberalization is, firstly, an illegal conduct. Further, the law is so clear that there is no room for CADE to rule against price fixing in the legal profession, since *contra legem* ruling from an administrative tribunal is not an option in Brazil. On the other hand, CADE is entitled to promote competition advocacy and by its means arouse the political interest necessary to curb pernicious price fixing.

6. Conclusion

59. In view of the above, we have seen that the Brazilian legal market can be divided in accordance with the demand needs into four different relevant markets, the premium corporate (1), the premium individual (2), the regular (3) and the occasional (4) ones.

60. We have also seen that all the segments might have efficiency gains if other professionals were allowed to compete with law graduates in their areas of expertise and be subject to OAB's regulation.

61. Allowing non-legal graduates to become legal advisers on some issues and, therefore, be subject to the rulings of the bar – including obedience to the code of ethics – might not only increase the number of agents, but also boost the quality of the service. Legal services would be provided in a more efficient way, diminishing transaction costs incurred when economics or other professionals are hired exclusively to deliver punctual expert services.

62. Allowing other professionals enrolled in the bar become legal advisers would also increase the economic potential of the firms, as they would be providing a service they used to hire from professionals who could not be partners in as much as they could not be lawyers. New services would imply extra revenue and help make competition with foreign firms more viable. This alternative which spares time and negotiation costs is what economists use to call “one-stop-shopping”.

63. On the other hand, such professionals could act only in advisory services and specifically in their areas of expertise in order not to lower the quality of services rendered where law graduate lawyers are experts.

64. It seems that the bar examinations could be exceptionally suppressed in cases where a person has renown in a specific area, too. The bar registration would allow practice in that specific area of knowledge only. This is the case of public attorneys, commissioners and administrative authorities as well as other experts whose expertise could have been proved by relevant work in that specific field.

65. People tend to associate good service with higher prices and it would be no surprise if price liberalization offered more transparency and therefore more protection to consumers than price fixing – which is, nonetheless, economically inefficient. Moreover, lower prices would allow more people negotiate with private counselors, which could reduce dramatically the use of public *pro bono* services and help the Administration spare public resources. It is a fact that people are more confident on the work of a private lawyer – not only for their independence, but also because their earnings depend above all on their reputation.

66. In this very sense, advertising on price is pro-competitive. Increase in judicial costs to be burdened by the Administration that could arise from further advertising and lower costs must not be counterbalanced by depriving the individual from his constitutional right to plea in court.

67. As already said, since attorney's fees fixing is provided by law, competition education could be provoked by the Brazilian competition authority, which is entitled to promote competition advocacy and by its means arouse the political interest necessary to curb pernicious price fixing. Price fixing policies could be easily replaced by suggested price practices. Allowing price negotiations by means of objective standards published by the bar, they would diminish asymmetry of information and simultaneously make it legal to charge fair prices, making an essential service – as regarded by the Brazilian Federal Constitution – more accessible to the citizenry.

68. Legal practice is one of those rare situations where monopoly must be discarded by principle. Obviously, one lawyer cannot represent opposite sides and due to such elementary point there will always be some level of competition. A possible increase in competition and a subsequent upgrade in efficiency levels must continue to be pursued by antitrust authorities, though.