



**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS  
COMPETITION COMMITTEE**

**Working Party No. 2 on Competition and Regulation**

**COMPETITION RESTRICTIONS IN LEGAL PROFESSIONS**

**-- Portugal --**

**4 June 2007**

*The attached document is submitted by the delegation of Portugal 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.*

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## **1. Regulation of entry**

### **1.1 Quality Standards and entry**

1. A MA in law (typically a five-year university degree) is required as basic qualification for both lawyers and notaries. For the so called “solicitadores” (herewith called *solicitors*), only a BA in law (typically a three-year university degree) is required. There are limitations to the number of admissions in law schools, but they are not a serious barrier to entry as the number of law graduates is reported to be above market needs.

2. Nevertheless, additional training is required for law graduates to qualify as legal professionals. For lawyers, a further 24 month training program is a prerequisite, whereas an 18 month program is required for notaries and *solicitors*.

3. The law provides for the general requirements of the additional training, although the specific content and form of the program is decided by each professional body (*Ordem dos Advogados*, *Ordem dos Notários* and *Câmara dos Solicitadores*). A final exam is required for all categories of legal professionals, upon completion of the training program. Specifically, in the case of lawyers should a candidate fail twice in the concluding exam then it has to go through the training program again.

4. There are no legal specific requirements for on-going education for any of the legal professions. Nevertheless, Portuguese law entrusts the professional bodies – *Ordem dos Advogados e Câmara dos Solicitadores* – with the provision of on-going training programs for their members.

5. Although quality standards are not specifically set-up, a certain element of quality guarantee is implicit in the so-called professional duties set-up by law and enforced primarily by the professional bodies. The violation of deontology rules may lead to the license to practice as a lawyer, solicitor or notary being revoked.

6. Membership of a professional association is a prerequisite to practice as a legal professional. The self-regulatory bodies are the Professional bodies, e.g., *Ordem dos Advogados*, *Ordem dos Notários* and *Câmara dos Solicitadores*. In addition, for notaries a territorial based license is required. This license is competitively awarded by the Ministry of Justice.

7. There are no quantitative limits regarding entry as far as lawyers and solicitors are concerned. For notaries, *numerus clausus* is set by law according to territorial criteria (judicial district), the number of notaries licensed to practice in each district being established following demographic and economic characteristics.

8. The Portuguese Competition Authority is in the process of preparing a Recommendation to Government on the reform of notary services covering, *inter-alia*, the suppression of *numerus clausus* and the removal of other restrictions to competition, as indicated below

### **1.2 Exclusive Rights**

9. Under Portuguese law both lawyers and notaries enjoy exclusive rights. Lawyers are exclusively entitled to represent litigants in court, but for tax actions and for civil actions for which there is no appeal. Indeed, for these actions *solicitors* are also entitled to represent litigants in court. As to notaries, they are the sole legal professionals entitled to elaborate public deeds and certain forms of wills.

10. It is worth noticing that the Government is legislating towards making public deeds optional for an increasing number of acts. Indeed, under a “cutting the red tape” program being implemented, the need for public deeds in the area of commercial law has already been phased out. It is expected that this trend will be extended in the near future to buying and selling property, as well as to pre-nuptial agreements and inheritances. As a result, notaries will retain exclusive rights for public deeds, but these will be made optional at the choice of the parties.

## **2. Regulation of market conduct**

### **2.1 Fees**

11. In general, fees are freely agreed between the parties, except for notary services in which they remain largely regulated following a fixed schedule. However, the Government has recently liberalized fees for some notary services, following its decision to allow other legal professionals, as well as other private and public entities, to provide such services.

12. There is also no fee schedule for legal services purchased either by the Government or the public administration. The purchase of legal services by public entities is subjected to the rules of public procurement, the final fees depending on the bid offers.

13. Self-regulatory bodies for the legal professions are not legally entrusted to set fees for services provided by their members. However, the articles of association of professional bodies, which are approved by law, specify the criteria upon which the fee structure should be based.

14. For instance, in the case of lawyers these criteria include number of hours worked; value of the litigation; qualifications of the lawyer; complexity of the case; and outcome of the case. However *quota litis* is not permitted, e.g. fees depending entirely on the outcome of the case are forbidden.

15. Access to justice is provided by the Ministry of Justice in cooperation with *Ordem dos Advogados* and *Câmara dos Solicitadores*. Legal aid includes legal advice, representation before the courts, and financial support to other expenses related to the litigation. This support is granted to those providing evidence that they can not afford the reasonable costs of litigation, as per information provided by the social security.

16. As to legal advice, it is provided by legal offices, established by *Ordem dos Advogados* in cooperation with Municipalities and operating under the overview of the Ministry of Justice. Legal representation before the courts is provided either by lawyers or solicitors, depending on the specific proceeding. The corresponding fee amount is set by a regulation jointly approved by the Minister of Justice and the Minister of Social Security.

17. It is worth noticing that regulated notary fees are expected to be phased out, should the Government adopt into policy the Recommendation being finalized by the Portuguese Competition Authority. Accordingly, notaries would be able to competitively set out their fees as soon as the current *numerus clausus* rule is eliminated.

### **2.2 Advertising**

18. Advertising of legal services is subject to the same constraints as any other business, e.g. prohibition of misleading advertising. But further legal restrictions are imposed on legal professionals.

19. Lawyers are not allowed to advertise their fees. However, special expertise can be advertised, as well as cooperative arrangements with other lawyers, including with foreign lawyers. In any case, comparative advertisement is not permitted.

20. As to *solicitors*, the law entrusts *Câmara dos Solicitadores* to impose limitations on advertising to their members, but it does not specify the restrictions. To this extent, the *Câmara dos Solicitadores* has issued internal regulations broadly in line with the ones legislated for lawyers.

21. With respect to notaries, advertising is forbidden. Notaries are only allowed to publicize information on the location of their premises and working hours, as well as on their curricula and academic background.

22. In all cases, the self-regulatory professional bodies are legally entrusted to initiate disciplinary proceedings and to apply sanctions whenever advertising rules are violated.

23. Changes in the advertising legal framework are likely to occur in notary services. Indeed, the Recommendation of the Portuguese Competition Authority advocates that notary advertising restrictions should be relaxed towards bringing them more in line with the ones applicable to lawyers.

### **2.3 Partnerships and business organization**

24. Legal disciplinary partnerships are allowed for lawyers and *solicitors* but not for notaries. Multidisciplinary partnerships are not permitted.

25. Legal professions can incorporate, except for notaries. But there are restrictions with respect to the legal form of incorporation. Lawyer firms have to take the form of civil corporations with limited or unlimited liability. Furthermore, law firms cannot be either owned or managed by non-lawyers. The same rules are applicable to *solicitors*.

26. The Recommendation of the Portuguese Competition Authority on notary services includes a proposal for the elimination of the legal rules that prevent notaries either to integrate a disciplinary partnership or to incorporate, thus bringing the regime applicable to notaries in line with the one for the remaining legal professions.

## **3. Institutional framework for self-regulation**

### **3.1 Application of competition law**

27. The rules enacted by self-regulatory bodies are covered by the prohibitions of the competition legislation as far as the adoption of these rules is not imposed by law. The exemption for some self-regulatory rules may always be granted under the Portuguese competition law, if these rules would ever be deemed necessary for the proper practice of the legal professions.

28. To date, the only specific experience of the Portuguese Competition Authority has been related to price fixing by professional bodies. For instance, the medical and veterinary professional bodies (*Ordem dos Médicos, Ordem dos Médicos Dentistas e Ordem dos Veterinários*) as well as the accountants' association - *Câmara dos Técnicos Oficiais de Contas* - have already been sanctioned by the Competition Authority for price fixing practices. With respect to legal professionals, the Competition Authority is currently handling a case on potential price fixing, but a final decision has not yet been reached.

### 3.2 *Regulatory oversight*

29. The decisions of self-regulatory bodies are not subject to approval by the State but they are subjected to antitrust scrutiny.
30. There is no independent Complaints Office for handling malpractices cases. As a matter of fact, tort or criminal liability for malpractice falls under the jurisdiction of ordinary courts for all legal professions.
31. Disciplinary sanctions for lawyers and solicitors are under the exclusive jurisdiction of their professional bodies, which apply the sanctions provided by law, including expulsion. As to notaries, disciplinary powers are discharged by *Ordem dos Notários* and by the Ministry of Justice. This is the result of notaries' double status, both as liberal professionals and as public officials. Notary expulsion remains the prerogative of the Minister of Justice. All disciplinary decisions applied to legal professionals are subject to judicial appeal.
32. There is no independent Ombudsman for legal services that handles complaints not relating to malpractices cases. Likewise, there is no independent Regulatory Authority for the legal professions.
33. In the near future, no major intuitional and legal change is anticipated in the above arrangements.