



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

Working Party No. 2 on Competition and Regulation

COMPETITION RESTRICTIONS IN LEGAL PROFESSIONS

-- Lithuania --

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The attached document is submitted by the delegation of Lithuania 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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Introduction

1. Over the past three or four years a number of amendments to legal acts regulating the provision of legal services were made: in April 2004, a new Law on the Bar came into effect¹ (nevertheless, quite a few provisions of this law can be criticised in terms of competition); in 2003, private bailiffs started their activities replacing public bailiffs (preliminary results of the bailiff reform show a considerable increase in collection efficiency); and a review of notary fee rates was made. The Competition Council of the Republic of Lithuania (hereinafter referred to as the “Competition Council“) has been pro-actively voicing its opinion on many regulatory issues related to the increasing of competition efficiency, however, not all the proposals have been accepted by the legislator. Below an overview of the main factors influencing competition in the area of legal services is provided, with a focus on the regulation of advocates’ and notaries’ activities in Lithuania.

1. Regulation on entry

1.1 *Quality standards and entry*

2. The laws establish strict requirements for persons wishing to engage in advocate’s practice or to apply for notary’s position. Legal services not exclusively “reserved“ for advocates or notaries (as described in p. 1.2 below) may also be provided by other persons having selected one of the set forms of business organisation (e.g. by forming a limited liability company). In such a case no additional requirements are applied.

3. The Republic of Lithuania Law on the Bar and the Republic of Lithuania Law on Notaries² establish similar basic requirements for persons wishing to work as an advocate or applying for notary’s position³:

4. 1) Citizenship. A person wishing to engage in advocate’s practice must have citizenship of the Republic of Lithuania or another Member State of the European Union. Citizens of other states may not become members of the Lithuanian Bar, however, they are not prohibited from providing legal consulting or other services not “reserved“ for advocates. In such a case general rules of the person’s establishment apply, without providing for any special requirements for lawyers of foreign states. Only persons having Lithuanian citizenship can become notaries.

5. 2) Educational attainment. A degree in law earned at a higher university educational establishment is required. Studies may last from 2.5 to 5 years depending on the degree received on completion of studies (bachelor’s degree, master’s degree, professional qualification degree of a lawyer).

6. 3) Legal practice. Several alternatives are available. A person wishing to become an advocate may either complete a two-year assistant advocate’s practice (in such a case one has to find an advocate who will agree to guide such practice period) or do other legal work during five years (e.g. at public institutions or companies). Each advocate with at least five-year advocate’s practice can have up to three assistants. At present there are around 1,500 advocates in Lithuania, therefore, persons wishing to complete an assistant advocate’s practice have wide opportunities. Analogous alternatives are available for those

¹ Republic of Lithuania Law on the Bar of 18 March 2004, No. IX-2006, Official Gazette, 2004, No. 50-1632.

² Republic of Lithuania Law on Notaries of 15 September 1992, No. I-2882, Official Gazette, 1992, No. 28-810.

³ Requirements applied to bailiffs are substantially the same as those applied to notaries.

who apply for a notary's position; the difference is that the length of the practice period for a candidate to notary's position is one year. The number of candidates is limited and a person wishing to complete such practice must win a public competition. In recent years the number of candidates to notaries has been gradually increased (8 candidates in 2003, 21 candidates in 2006).

7. 4) Qualifications examination. As a general rule, qualifications examination is mandatory for both those wishing to become advocate and a notary, although several exceptions have been provided for in the laws (e. g. for doctors of law). The qualifications examination requirement has not been very consistently applied in Lithuania: during more than one year (from April 2004 till July 2005) all persons having a five-year record of work in the legal field were recognised as advocates without examinations. Those advocates who had passed the examination expressed a rather strong discontent with such changes in regulation. In their opinion, the examination is necessary in order to ensure appropriate quality of legal services. The procedure for the organisation of examinations involves both self-regulatory bodies of notaries and advocates and the Ministry of Justice, therefore, opportunities for a person to enter the legal services market is not dependent exclusively on other advocates or notaries, i. e. potential competitors. The Ministry of Justice draws up a programme for the qualification examination and establishes the procedure for the conduct of the examination. A self-regulatory body (which appoints three of seven members) and the Minister of Justice (who appoints the other four members) take part in the formation of the commission on qualification examinations. The number of re-takings of the examination is not limited.

8. Entry to the market of notary services is more limited than entry to the market of legal services provided by advocates. In Lithuania, the number of notaries is limited following the *numerus clausus* principle of the Latin notary, therefore, a person wishing to occupy a notary's position and complying with all the set requirements must, in addition, win a public competition. Winner of the competition is appointed to perform duties of a notary in a specific administration unit (municipal office) by an order of the Minister of Justice. The number of notaries and the areas covered by their activities are established by the Ministry of Justice taking account of population of administration units, the number of notary actions performed by a notary, and income earned by a notary. The number of notaries in Lithuania is being gradually increased (from 199 notaries in 2003 to 248 notaries in 2006); the notary quota is to be increased up to 300 in the nearest future. The Competition Council recognises that regulation may be useful in order to secure access to services throughout Lithuania, nevertheless, it has presented its opinion to the Ministry of Justice stating that liberalisation in the areas of increasing the number of notaries, setting up of notary offices, and territorial distribution should be continued.

1.2 *Exclusive rights*

9. The new Code of Civil Procedure came into effect in Lithuanian in 2003⁴; it establishes the advocates' monopolistic right to represent clients before courts. The Code provides for several possible exceptions, e. g. a company can be represented before court by its employee with higher university educational attainment, however, such exceptions do not change the situation in substance. Such legal regulation has resulted in significant confrontation among advocates and lawyers engaged in private practice. Lawyers have united into the Association of Firms Providing Legal Services and have been lobbying pro-actively in order to change the regulation unfavourable to them. The problem has been solved, at least temporarily, by amendments to the Law on the Bar. As it has already been mentioned, for more than one year (from April 2004 till July 2005) all persons having a five-year record of work in the legal field were recognised as advocates without examinations. As a result of this many lawyers engaged in private legal practice have shifted to advocacy, the opportunity to enter the Bar without qualification

⁴ Republic of Lithuania Law on the Approval, Coming into Effect and Implementation of the Code of Civil Procedure of the Republic of Lithuania, 28 February 2002, No. IX-743, Official Gazette, 06-04-2002 04 No. 36-1340.

examinations was abolished again, and pro-active fighting of lawyers for the possibility to represent clients before courts has stopped. The Competition Council has expressed an opinion against the granting of the monopolistic right of representation before courts to advocates, stating that prohibiting lawyers working with legal service firms from representing clients before courts would mean restriction of competition in the market. Irrespective of this position, situation so far remains the same. The laws do not grant any other exclusive rights to advocates. Other persons having relevant knowledge may also engage both in different consulting activities in the legal area and in representation before different administrative bodies. It should be noted that the draft new Law on the Bar contained a provision granting advocates monopolistic rights both in representation before courts and in provision of other legal services. The Competition Council has expressed strong negative opinion on such intentions. Such draft provisions were not included in the final version of the law.

10. The number of reserved functions performed by notaries in Lithuania is much larger than those performed by advocates: they certify different transactions (a mandatory notary form has been established for all transactions related to the transfer of title to immovable objects as well as to the encumbrance of immovable objects, e. g. sale – purchase, donation and mortgage) and powers of attorney for which a notary form has been established; certify marriage contracts; certify that transcripts of documents and signatures in documents are true; note bills and cheques; certify documents of formation of legal persons; certify wills. It should be noted that specific service territories have been defined for notaries for cases of bequest and bequest files are kept by the notary based on the last place of residence of testator. A person wishing to have his/her bequest matters to be handled by another notary must obtain a separate permission from the Notary Chamber.

2. Regulation of market conduct

2.1 Fees

11. The levels of regulation of fees for the legal services provided vary considerably between notary and advocate services. In case of legal services provided by advocates, free agreement of the parties is the basic principle underlying the setting of a fee. Whereas prices for notary services are regulated by the Ministry of Justice upon agreement with the Ministry of Finance. Therefore, an examination of the fee regulation issue should be split into two parts – advocates fees and notary fees.

12. Neither the Government (or a body authorised by the Government) nor advocates' self-regulatory bodies have established minimum, maximum or fixed fees for legal services provided by advocates. The Law on the Bar establishes just the main criteria for the determination of the amount of fee such as complexity of the case, qualifications and experience of the advocate, and financial position of the client. The law also permits agreement on the fee whereby the amount of the fee depends on the outcome of the case. The Ministry of Justice has established recommended upper ceilings of fees for representation before courts in civil cases. The recommendations are applied for the award of payment for legal services to the party that has lost its case. In substance, they are just a guideline for the advocate's client in order to know what share of the fee paid to the advocate could be recovered in case of winning of the case and what share he/she will have to pay. Recommendatory fee ceilings are set for individual actions (for example, drawing up of a claim or appeal) and per hour of representation before court. Minimal monthly pay established by the Government is taken as a basis for the setting of such fees. It should be noted that in practice (particularly in case of business clients) the recommended fees rarely influence the service price agreed by the client and the advocate.

13. In Lithuania there also exists regulation of the amount of fees paid to advocates for legal aid⁵ provided in the course of representation before courts. Legal aid is provided on two levels: primary legal aid (legal consulting, drawing up of documents except procedural documents) is rendered free of charge to all citizens of Lithuania and other EU Member States; secondary legal aid (representation before courts) is only provided to low-income persons and may be paid for by the State either fully or partially depending on the person's assets and income. Advocates are selected for the provision of secondary legal aid on competition basis. Rates of fees for advocates providing legal aid are fixed based on coefficients calculated on the basis of the minimum monthly pay established by the Government.

14. New notary fee rates came into effect in Lithuania in April 2007. Just as before, the Ministry of Justice has established minimum and maximum rates, although the original purpose of the changes (actively promoted also by the Competition Council) was the setting of just the ceilings for the rates. Evaluation of the new fee rates cannot be unequivocal. In some cases, the fee rates were liberalised leaving more room for the client and the notary to agree on the fee for certain notarial actions. For example, before the introduction of new fees, the fees for many transactions related to immovable and movable objects, money, shares and bonds were fixed at set percentage rates not subject to change by agreement of the client and the notary. Now, brackets of percentage rates have been set, within which agreement on specific rate will be possible. However, one must note that in some cases the brackets have been narrowed as the lower limit was raised upon lowering of the upper ceiling. Furthermore, another change – differentiation of fees for notary actions between natural and legal persons – is subject to discussion. In most cases, notary services will become more expensive for legal persons as the lower limit has been raised. Although the Ministry of Justice asserts that the new fee rates will provide more room from competing in prices, however, certain doubts arise concerning more active competition in terms of price. The official position of the Notary Chamber is that notaries should compete by quality of their services and not by prices. Such position is based on the Notaries' Code of Conduct, which establishes that luring of clients by rates that are lower, on either one-off or constant basis, than those offered by other notaries is unfair competition. Disciplinary penalties may be imposed on notaries for violations of the Notaries' Code of Conduct. Thus, even though efforts are put forth in Lithuania to gradually liberalise the regulation of notary fees in Lithuania, a number of obstacles to competition by prices still remain.

15. It should also be noted that a review of fees to bailiffs for legal acts performed in the execution process is underway in Lithuania⁶. The aim is to provide a most exact economic justification and detailing of the bailiff fee rates, which are established by the Ministry of Justice. It should be mentioned that although private bailiffs have been operating in Lithuania for over four years only, this has produced obvious positive effects upon collection efficiency (now up to 30% of debts are recovered compared with below 10% in previous years). Bailiff activities are restricted by many requirements (such as limited number of bailiffs, established territories of operation, fixed service prices), which are perhaps most strict compared with representatives of other legal professions. However, one must recognise that this service is specific both by its nature (the aim is to ensure proper execution of effective court decisions) and by peculiarities of payment for the services. The Code of Civil Procedure establishes that all execution costs are paid by the executor, however, upon execution of the decision these costs are recovered from the debtor. Advance payments are quite rare in practice, furthermore, in all cases when a decision is executed the bailiff's services must be paid by the debtor, i. e. not the person who has selected a service provider. Therefore, in this case large variations in prices for the same services may evoke undesired effects, e. g. it will be in the interests of the person recovering the debt to select, in order to punish the debtor, a bailiff offering more expensive services. So positive effects usually produced by competition by prices would not

⁵ Legal aid guaranteed by the State is provided only to natural persons.

⁶ In addition to performing execution functions, bailiffs may provide legal consulting, state factual circumstances, mediate in discharging property liabilities, and provide certain other legal services. The fee charged for the service is established by agreement between the bailiff and the client.

be achieved in this case. A working group formed by the Ministry of Justice aims to establish the principles for recalculation of present fee rates and also considers the extent to which the rates could be liberalised (e. g. is it possible to separate out certain execution actions to be paid exclusively by the person recovering the debt, at a price agreed with the bailiff). Up until now the group has produced no specific projects.

2.2 Advertising

16. Advertising of services provided by advocates and notaries is completely prohibited in Lithuania. The prohibition does not apply when details of a notary or an advocate are specified in information publications, official letterheads or business cards. The advocates self-regulatory bodies have established in detail which information is not considered to be advertising and placing of which is permitted for advocates. It should be noted that advocates tend to provide more and more information about themselves and their services and a certain new form of information is being gradually accepted, e. g., law firms do not hesitate to inform about their cooperation or merging with foreign law firms, moving into new premises etc. When a major law firm takes such a step for the first time (sometimes agreeing on their intentions with the advocates self-regulatory body), this becomes an acceptable and permissible standard of advocates' activities. Thus, the Lithuanian Bar has established that the following is permitted for advocates and not considered to be advertising: presentation of details of an advocate/law firm in different publications of legal nature, information statements, on objects intended for representation, in books and monographs written or compiled by advocates, various publications sponsored by the advocate/law firm; provision of details of an advocate/law firm while expressing opinions in the press and other mass media and at seminars/ conferences; in additions, details on a law firm may be presented, in different forms, at the events sponsored by the law firm. The Lithuanian Bar has explicitly established that the following is considered to be advertising and therefore prohibited: any direct or indirect comparisons with another advocate/law firm specifying one's advantages and shortcoming of another advocate/law firm; publication of information which is untrue is also prohibited.

17. The Competition Council has expressed an unequivocal opinion on prohibition on advertising. Both during consideration of the new version of the Law on the Bar and while changing the regulation of notaries activities, it has stated that advertising is one of the means of competition enabling consumers to collect more detailed information on the goods/services available in the market and meeting a specific demand and on the price and quality differences as well as to adopt decisions on acquisition of the goods/services. Considering that prohibition on advertising of services could produce a considerable impact upon competition in legal services markets, the Competition Council has come out in favour of provision of opportunities for notaries and advocates to inform consumers about service prices and other related aspects. Up until now the legislator has not implemented these proposals in the legal acts in force.

2.3 Partnership and business organization

18. Only three forms of advocates' activities are permitted in Lithuania: individual practice; partnership without establishing a legal person; and establishing of a legal person – a professional association of advocates. All other forms of activities are strictly prohibited. An advocate may engage in individual practice upon establishing an advocate's place of business. In such case the advocate himself/herself is a subject of legal relations. Cooperation of advocates is permitted by concluding an agreement on joint activities (partnership) without establishing a legal person; each participating advocate is a subject of legal relations. Since 2004 advocates may establish a private legal person, with its legal form being a professional association of advocates. Only advocates can be members of such an association, furthermore, activities of the association are limited to the provision of legal services. A professional association of advocates is not a limited liability legal person as the advocate that has provided legal services is liable for the responsibilities arising under agreements on provision of legal services (where assets of the association are not sufficient). Law firms often hire specialists in different fields (e. g.

accountancy and audit) to assist them in providing consulting on legal matters (e. g. in the area of tax law), however, the association may not engage in activities other than the provision of legal services. Major law firms set up their divisions in the largest cities of Lithuania. Cooperation with foreign law firms is also permitted. Civil liability insurance is mandatory for advocates.

19. There are strictly established forms of notaries' activities. Notaries may not establish private legal persons or limited liability partnerships. The law provides an opportunity for two or more notaries performing their duties within the same administrative unit to run a common notary office. However, in such a case each of the notaries working in such common office must take notarial actions in his/her own name and is personally liable for the performance of his/her duties. As the number of notaries is limited in Lithuania, notary offices are not allowed to set up divisions. Civil liability insurance is mandatory for notaries.

3. Institutional framework of self-regulation

3.1 Application of competition law

20. The Law on the Bar and the Law on Notaries explicitly state that activities of an advocate are not economic/commercial activities and a notary office is not a subject of civil legal relations including economic/commercial activities. Due to such regulation, application of the competition law to representatives of these legal professions is questionable. As the new version of the Law on Bar was considered at the Lithuanian Parliament quite recently (2004), the Competition Council had presented relevant comments providing for the deletion of such provision. It has stated that, in accordance with the European Union law, activities of persons providing legal services are treated as economic activities, while persons providing such services are considered to be undertakings. The legislator did not take this comment into account. The Notary Chamber has expressed an official opinion to the effect that notaries are officials authorised by the State providing services of preventive justice, which are intended for securing public interests. Therefore, standards of the competition law cannot be applied to notaries' activities. It should be noted that the Law on Competition establishes that professional activities (and not only commercial activities) are one of the types of economic activities, therefore, persons engaged in professional activities of an advocate or a notary should be treated as undertakings. The Competition Council is of the opinion that current regulation does not prevent the application of the competition law to notaries and advocates or associations thereof (e. g., in case of agreement on fixed prices). No judicial practice has formed in this area up until now. The Competition Council is putting forth efforts to influence the legal acts' adoption process to the largest extent possible by pro-actively voicing its opinion on the necessity to gradually liberalise the market of legal services as far as possible.

3.2 Regulatory oversight

21. Activities of the Lithuanian Bar and the Notary Chamber (self-regulatory bodies) are influenced, in some respects, by the Ministry of Justice, however, the law does not directly provide for the approval of self-regulatory bodies' decisions by government authorities. As it has already been mentioned, the application of the competition law to decisions adopted by self-regulatory bodies is questionable.

22. There are no specific independent bodies responsible for the examination of cases of malpractice by advocates or notaries in Lithuania. Disputes over the provision of legal services arising between an advocate and his/her client may be considered both by the Lithuanian Bar and Lithuanian courts, however, decisions adopted by the Lithuanian Bar in such disputes are of a recommendatory nature. Disciplinary proceedings may be instituted against an advocate for violations in advocate's practice. The Court of Honour of Advocates may also impose disciplinary penalties such as expelling from the Bar. Disciplinary cases is not a very rare phenomenon, however, there are practically no judicial disputes concerning

inappropriate provision of legal services by an advocate. Substantially the same principles of liability apply to notaries. In addition, it should be mentioned that a notary is a person performing functions entrusted by the State, therefore, notary's actions can be appealed against to the Ombudsmen (an appeal concerning bureaucratic treatment or abuse).

23. To sum up the regulation of legal services in Lithuania one may state that the level of regulation is different for advocates and for notaries. Although quite stringent qualifications requirements and prohibition on advertising apply to advocates, the operation of competition by prices is sufficiently effective in practice. The price setting is not completely transparent as no law firm publishes its service fee rates, however, advocates recognise that clients (business clients in particular) increasingly tend to negotiate over prices upon comparison of rates offered by different law firms. Prices for legal services provided by advocates vary extensively depending on the quality of legal services and the name and qualifications of an advocate, therefore, no regulation can result in fixed market prices. There are much more restrictions on activities of notaries. Prices are being regulated quite stringently, the number of notaries is limited, while prices for analogous notarial actions are very similar at different notary offices. So far it is still difficult to predict how market prices will be affected by newly approved rates, which have recently come into effect and which provide for wider competition opportunities in some cases. Nevertheless one may assume that there may be no significant changes in the market as the prohibition on competition by prices established in the Code of Conduct of Notaries remains in force. Furthermore, the new fee rates show that there can be an increase in prices for companies. Thus there is still much room for liberalisation in the market for notary services.