Competition in the legal profession

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Konkurrence- og Forbrugerstyrelsen

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Introduction and summary

1.1 The Danish legal profession is important to the Danish economy

The legal profession plays an important role in ensuring that the Danish community of law functions well and that due process and legal protection of the citizens is maintained. A well-functioning community of law also contributes to economic prosperity by, for example, reducing transaction costs and contributing to a clear set of rules for the economic activities conducted in the market economy.[1]

The Danish legal profession generated revenue of DKK 14.7 billion and employed around 12,200 people in 2018. Since 2000, the revenue generated in the legal profession has increased more than in the rest of the private urban professions.

Many of the assignments performed by law firms can also be offered by other companies outside the legal profession, for example accounting firms. Based on a rough estimate, the revenue generated by the legal profession and other providers of legal services amounted to around DKK 24 billion in 2018, see Figure figure 1.1 and Appendix 1.

Figure 1.1 **The legal profession and other providers of legal services**

Note 1: This is a stylised illustration. There are thus some assignments that only lawyers are allowed to perform, including assistance in certain legal proceedings.

Note: The total revenue generated from legal services is subject to great uncertainty, see Appendix 1.

Source: Own calculations based on Statistics Denmark's registers.

[1] Professor George Yarrow & Dr. Christopher Decker, *Assessing the economic significance of the professional legal services sector in the European Union*, Regulatory Policy Institute, August 2012, pages 4, 5. See also IBA, *Task Force on the Independence of the Legal Profession*, 2016.

The legal profession comprises just over 1,800 active law companies and other law firms.[2] Law firms in Denmark differ widely in terms of their number of employees, the services they sell and their geographical coverage. There are a small number of very large law firms, many smaller law firms and almost 1,000 sole proprietorships. The top five law firms account for approximately 26% of the revenue generated by the legal profession.

The legal profession is in contact with many private individuals and companies. In the past two years, one in four companies and one in six citizens have thus been clients of at least one of the more than 1,800 law firms.

The law firms primarily generate their revenue from business clients. In 2018, this amounted to nearly 67% of the revenue. The price formation and quality of the services are important to a number of factors, including corporate costs and competitiveness. Especially the large law firms generate most of their turnover from business clients. The rest of the revenue is distributed on 22% from sales to private clients and organisations and 11% to public clients. There is a high concentration in a number of specialties in the legal profession, which means that the revenue generated in these specialties is concentrated among a few, relatively large law firms. This applies particularly to specialties aimed at business clients and public clients. For these specialties, the concentration has, moreover, increased considerably in the past 10 years. There is generally a fairly low entry of new law firms, and the new law firms entering the market are small and remain small, although many of the smaller, established law firms want to grow. Growth is often hampered by labour recruitment difficulties and by the clients remaining very passive in relation to exploring the market and rarely changing lawyers.

The legal profession has a profit margin that is estimated to be somewhat higher than in knowledge services in general and around twice as high as in private urban professions. The profit margin is particularly high in large law firms, which especially sell legal services to business clients and public clients. These law firms are only exposed to limited competition from small law firms. The competitive pressure from foreign players for assignments on the Danish market is also relatively limited and concerns only a minor part of the revenue.

The legal profession is today subject to extensive regulation, one reason being the legal protection of the citizens, including their access to justice, and the need to maintain confidence in the legal system. The regulation limits the competitive pressure to which law firms are exposed – both from other law firms internally in the legal profession and from other professions. The assessment is that this regulation restricts competition unnecessarily in several areas, and that it can be eased to the benefit of the clients, while central public interests are still safeguarded.

The competitive intensity in the legal profession is also affected by client behaviour. The clients – private, business and public clients – typically do not explore the market to any significant extent, and they remain very loyal to their chosen law firm. For example, about 93% of the business clients state that they do not compare several law firms when choosing a lawyer. The analysis also shows that the clients are typically not particularly concerned with price

[2] In the rest of the report, both law companies and other law firms will collectively be referred to as law firms. However, the term 'law companies' will be used when reference is made to matters regulated by the Danish Administration of Justice Act (*Retsplejeloven*).

when choosing a lawyer, and it is often difficult to navigate in the market because of the complexity of the services. The transparency of prices and quality is also relatively low.

Competition has been nearly eliminated in certain areas. This applies, for example, to competition for insolvent estates without assets and estates of deceased persons which are administered by an administrator – so-called administrator estates. The lawyers who handle these liquidator and administrator assignments are often appointed from a fixed circle of lawyers without competition on price or quality. The rules of the Danish Insolvency Act (*Konkursloven*) and the Danish Administration of Estates Act (*Dødsboskifteloven*) mean that the price of these assignments is not known in advance when the liquidator or administrator is appointed, and the clients have limited access to ascertaining whether the resources used have been reasonable and whether the price has been fixed at a sensible level. In the final analysis, the bankruptcy court and the probate court are responsible for approving the final fee charged for insolvent estates and administrator estates, respectively. The fee for the assistance is paid by the creditors in the estate, the State or the beneficiaries, and, in some cases, it constitutes a very large share of the assets of the estate.

In the public sector, the State is the largest client. A relatively large part of the State's procurement of legal assistance is made via the so-called Legal Advisor to the Danish Government Agreement *(Kammeradvokataftalen)* This agreement has been entered into with the same law firm since 1936, and the agreement has never been directly exposed to competition. Several of the services covered by the Legal Advisor to the Danish Government Agreement would today be subject to a public procurement procedure in accordance with the light regime of the Danish Public Procurement Act (*Udbudsloven*). However, they are still not being tendered via public procurement procedures as the agreement is without an expiry date. Some of the large municipalities, such as Copenhagen and Aarhus, have exposed their legal advisory services to competition. However, the vast majority of municipalities procure legal assistance on an ad hoc basis according to need.

Box 1.1
About the analysis

This report analyses competition in the legal profession. It contains a market description, an analysis of the competition in and regulation of the profession as well as analyses of the demand and behaviour of private clients and business clients, respectively, competition for public clients' procurement of legal assistance as well as competition for insolvent estates and administrator estates. The report contains a number of recommendations aimed at strengthening competition in the legal profession.

The analyses of competition in the legal profession are based on a number of different data sources and methods, including register data from Statistics Denmark's research database, data received from the Danish Agency for Public Finance and Management, the Association of Danish Law Firms (Danske Advokater), the Danish Bar and Law Society, market players and data collection via three surveys for law firms, business clients and private clients, respectively, as well as national and international research.

The three surveys conducted as part of the analysis were pilot tested before being commenced. For example, the survey for law firms was pilot tested in the legal profession. The methodology, questions and results from the three surveys are discussed in greater detail in three separate appendices to the analysis.

In addition, meetings have been held with a number of players and other stakeholders in the legal profession. Furthermore, technical and professional comments have been received during the external consultation procedure for the analysis, and they have been included in the analysis.

1.2 Key challenges to competition in the legal profession

When clients do not actively explore their options of finding the most effective assistance at the best price, the consequence may be that law firms are not exposed to the competitive pressure from the demand side seen in a well-functioning market. This may contribute to high prices, poor quality and high profits in the legal profession.

The legal profession offers many different services which are not mutually replaceable and which are sold to different types of clients under different market conditions. The revenue in a number of professional specialties shows signs of fairly great concentration. This applies in, for example, the fields of patents and copyrights, public law as well as competition law and public procurement law, see Figure figure 1.2 (on the left).

A joint characteristic feature of these specialities is that they are fields that typically cater for business clients and public clients. Seen in isolation, this points towards competitive challenges in that part of the market which caters for business clients and public clients.

There is a trend towards the specialties characterised by high concentration having become even more concentrated in the past five years. All the specialties which had a concentration index above 1,500 in 2018 have thus become more concentrated since 2013, while specialities with a lower concentration have typically become less concentrated.

However, these indicies do not take into account that, for a number of specialities, there may be competition from other service providers outside the legal profession and possibly from foreign players. For example, in tax consulting, there may be competition from accountants, and, in patents and copyrights, there may be competition from specialised patent and trademark agencies. There is consequently not a demarcated, isolated market for lawyers within each individual specialty. However, the analysis suggests that, from a demand side perspective, an independent market can be demarcated which is not wider than *legal advice from law firms*.[3] This supports the argument that law firms are only exposed to limited competition from other providers of legal advice. However, the competition from other providers of legal advice varies from speciality to speciality.

Relatively few law firms are started each year in the legal profession, which means that entry is limited in relation to comparable professions, see Figure figure 1.2 (middle). Moreover, the new law firms entering the market are relatively small and typically remain small, although nearly 70% of the established law firms with 2-9 employees want to grow.

Overall, the study shows that small law firms find that difficulties in, for example, obtaining manpower (lawyers) can limit their scope for expansion. It may also be difficult to attract new clients because, as mentioned, they are relatively passive and very loyal to their lawyer. Thus, *new* law firms only exert limited actual competitive pressure on the large law firms.

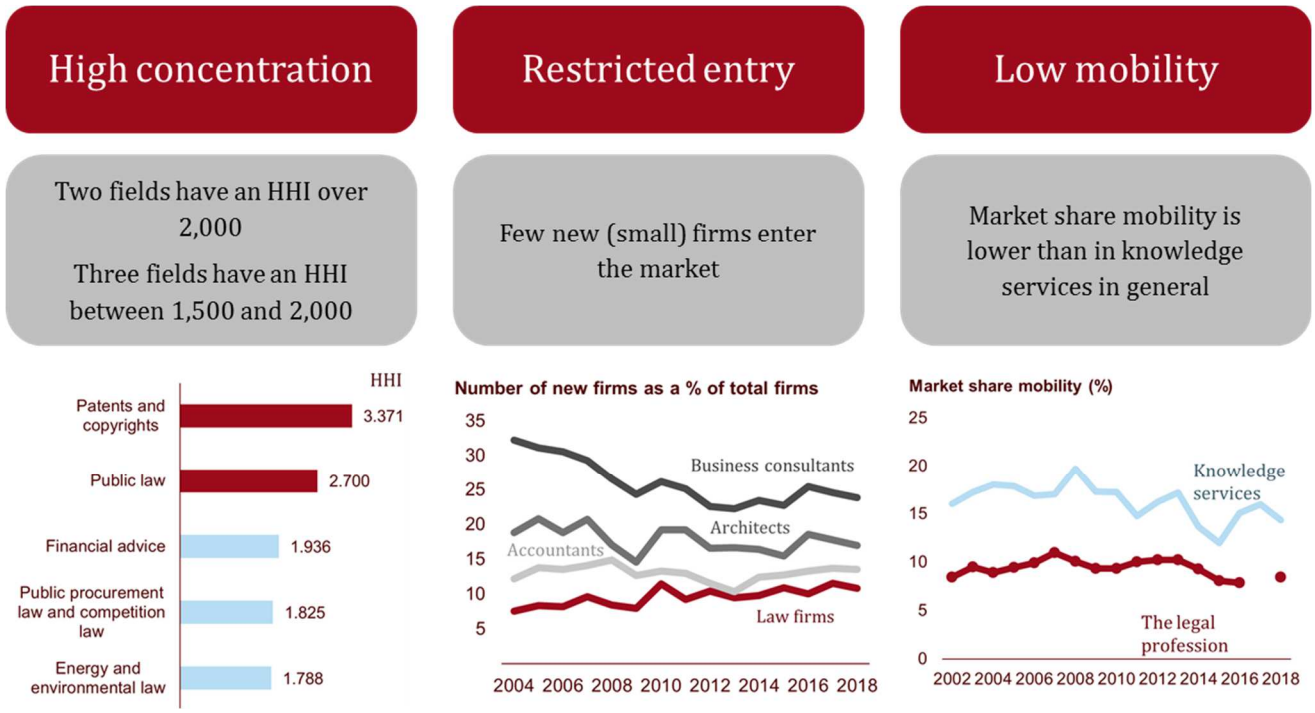
There is a clear tendency towards the large law firms primarily competing against each other and towards small and medium-sized law firms thus not being able to exert competitive pressure on the large law firms. This means that the business clients of the biggest law firms primarily see another large law firm as the relevant alternative. This may, for example, reflect that it is primarily the large law firms that can offer assistance across many specialties (full-service advice) and that many large business clients find it advantageous to gather their as-

[3] Based on calculations from critical loss analysis (CLA), see Box 5.1 and Box 6.1.

signments in one place. When the law firms are themselves to mention their closest competitors, the same picture is seen. The top ten law firms thus largely only state other top ten law firms as their closest competitor in the business client segment, which is their largest client group.

Market share mobility – i.e. the volume of market shares that move between firms from one year to the next – can also give an impression of the dynamics of the sector. Mobility is low relative to knowledge service in general, but at level with, for example, auditing and accounting, see Figure figure 1.2. (to the right). Part of the measured mobility actually reflects that the large law firms' share of the revenue in the legal profession has risen rather markedly and that, as mentioned, the concentration has increased. Labour mobility between law firms is also relatively low. Around 3% of lawyers change firms each year.

Figure 1.2 **Concentration and low dynamics in the legal profession point to competition challenges**



Note: Extracts of figures from the analysis. See **Fejl! Henvisningskilde ikke fundet.**, **Fejl! Henvisningskilde ikke fundet.** and **Fejl! Henvisningskilde ikke fundet.** for further information.

Source: The Danish Competition and Consumer Authority.

The legal profession has a high profit margin

A law firm is owned by one or more partners[4], who also work full time in the firm. The income earned by partners from their law firm thus fundamentally consists of a salary for the work performed and ownership return in the form of a share of the law firm's profit. The law firm's profit, which is shared among its partners, is the part of the revenue that remains once the firm has paid its (ordinary) costs, including salary to the employees and (imputed) salary to the partners, see also Chapter 3.

On this basis, the profit margin in the legal profession is estimated at around 20% in the years 2012 to 2018. The profit margin has increased from around 15% in 2008. The profit margin in the legal profession is somewhat higher than in knowledge services in general and has been more than twice as high as in private urban professions, see Figure 1.3 (left).

The profit margin is significantly higher in the biggest law firms than in the rest of the sector, see Figure 1.3 (middle). The profit margin of the top five law firms remained stable at around 35% in the years 2014-2018. Overall, the profit margin has thus increased significantly from 21% in 2008. As mentioned above, the large firms' revenue is primarily generated from the provision of advisory services to business clients and partly public clients. The increase in profit margins has gone hand in hand with the increasing concentration in the sector within a number of business-oriented specialties.

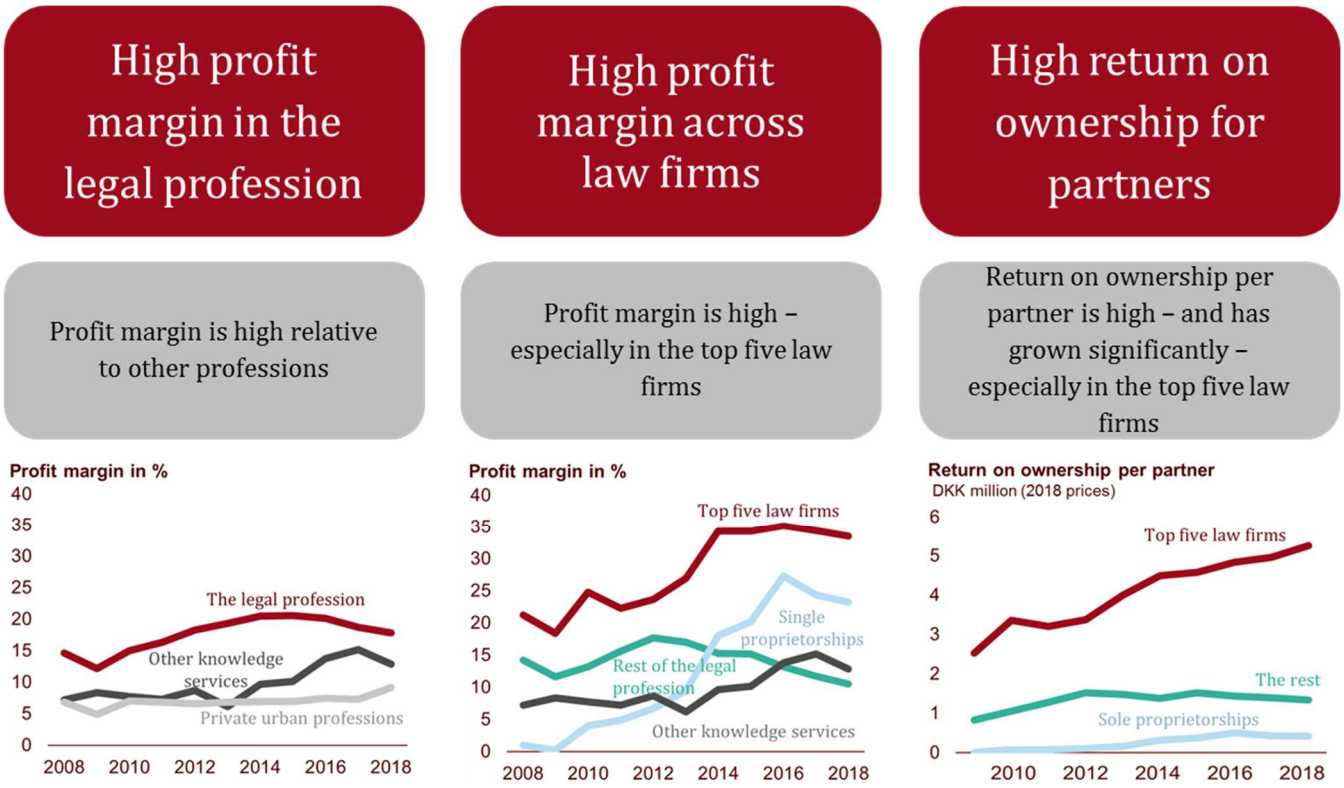
The high and increasing profit margin gives support to the picture of limited competition in the markets in which the large law firms are active. However, the high profit may also be a consequence of other circumstances. Another reason for the high profit margins may, for example, be that, on average, the large firms are relatively more efficient and competent, and that some law firms may be specialised in fields that require a certain scale. Innate or acquired competences, in addition to those that follow from their formal level of education and training, seem to be relatively high for the equity partners in the biggest firms. This can support a high profit level in these firms.

While sole proprietorships also show a relatively high and sharply increasing profit margin, the other law firms' profit has been at around 10-15% of their revenue. There are quite large differences in the return on the partners' ownership in the different law firms, and, for quite a large number of partners in the legal profession, the calculated return on their ownership is actually negative.

Another method for assessing whether the earnings can be described as 'supernormal' is to measure whether the return on the invested capital exceeds the return on capital that an external investor can reasonably expect in a well-functioning market. The stated return on equity in the legal profession is very high for the profession as a whole and much higher than a (highly set) estimate of the expected demand for a return on investment that an investor could expect by making capital available with the risk that this will entail. This supports the view that competition does not function well and that it is, moreover, not unlikely that external investors would see an advantage of injecting capital into the profession if given an opportunity for this.

[4] In a number of law firms, it is possible to hold the title of partner without having an ownership interest in the law firm. A distinction is thus made between partners with an ownership interest (so-called 'equity partners') and partners without an ownership interest. In the analysis, the term partner is used when referring to equity partners, and it will thus be explicitly stated if the lawyers mentioned are partners without an ownership interest in the law firm.

Figure 1.3 **High earnings, profit margin and salary premium in the biggest law firms**



Note: Based on the analysis figures and estimate results. See **Fejl! Henvisningskilde ikke fundet.**, **Fejl! Henvisningskilde ikke fundet.** and **Fejl! Henvisningskilde ikke fundet.**.

Note: Return on ownership has been arrived at by correcting the owners' total earnings for an estimated salary for their work performance in the law firm. See Chapter **Fejl! Henvisningskilde ikke fundet.** for a more detailed description of the method.

Source: The Danish Competition and Consumer Authority.

The return on the partners' ownership must be seen in conjunction with the risk connected with the partnership. This applies to the risk of losing (any) capital invested by a partner in the law firm. But it also includes the risk that a lawyer may incur personal liability in connection with, for example, claims from customers not covered by insurance. In an ordinary market, this type of uncertainty will also require a return.

As an owner group, the partners' total income from their firm, i.e. both salary and return on ownership, is relatively high compared with owners in other knowledge services professions who hold a Master's degree. For example, the proportion of owners (partners) in the legal profession who earn more than DKK 5 million is more than twice as high relative to owners holding a Master's degree in accountancy, where the owners typically also work in their own firm. The partners in the top five law firms are predominantly those who have a total income of more than DKK 5 million. The owners in the legal profession have a higher grade average from upper secondary school than the owners with comparable higher education diplomas from other knowledge services professions. This may support the view that there may be a 'compe-

tence premium' for the owners in the legal profession and that this premium may be persistent even in a well-functioning market. However, there is no indication that this possible 'competence merit' has increased since the mid-00s.

Limited competition between firms in an industry can also be reflected in a higher level of pay for employees in the industry in question. This is the case if the employees and owners of companies 'share' the supernormal earnings to which limited competition may give rise, so-called *rent sharing*. The analysis finds that there is a salary premium in the legal profession, which may, at a rough estimate, be set at 8%, relative to the median industry, that is the industry compared to which exactly 50% of the industries have a lower and a higher salary premium, respectively. The salary premium is the part of the salary in an industry which is not immediately explainable by, for example, education, grade average in upper secondary school and certain other measurable conditions. The calculation includes salary for all employees, while the partners are not included, although part of their income should be seen as salary. This may affect the estimate. The existence of a salary premium may indicate that competition in the industry can be strengthened.

1.3 The legal profession's clients do not support effective competition

Asymmetric information may lead to challenges in the legal profession

The legal profession sells services that are of great importance to its clients. For many clients – especially private clients – legal assistance is a complex service, and clients often find it difficult to assess the quality of the lawyer's work both before the service is purchased and after the assistance has been provided. The relationship between client and lawyer is therefore often based on trust. The lawyer is consequently often in a relatively strong negotiating position vis-à-vis his or her clients, especially when it comes to more specialised legal services.

In industries with complicated credence goods, the clients are often less active in exploring the market and changing suppliers. This hampers competition and generally results in an increase in prices. In addition, the advantages (for service providers) of being effective and developing good products may be impaired.

In markets with complex, trust-based products characterised by asymmetric information, there is consequently a risk that the service providers may exploit their strong position to charge a high price or sell more or other (more expensive) services than those needed by the client, at least for a period of time.[5] Lawyers' ethics etc. and the supervision thereof, including a balanced code of ethics for lawyers, may limit the market errors arising from information asymmetry. Good and comparable information about lawyers' fees and quality may, as mentioned, also be a help when clients need to navigate the market.

Private clients find it difficult to navigate the market, and they explore it to a limited extent

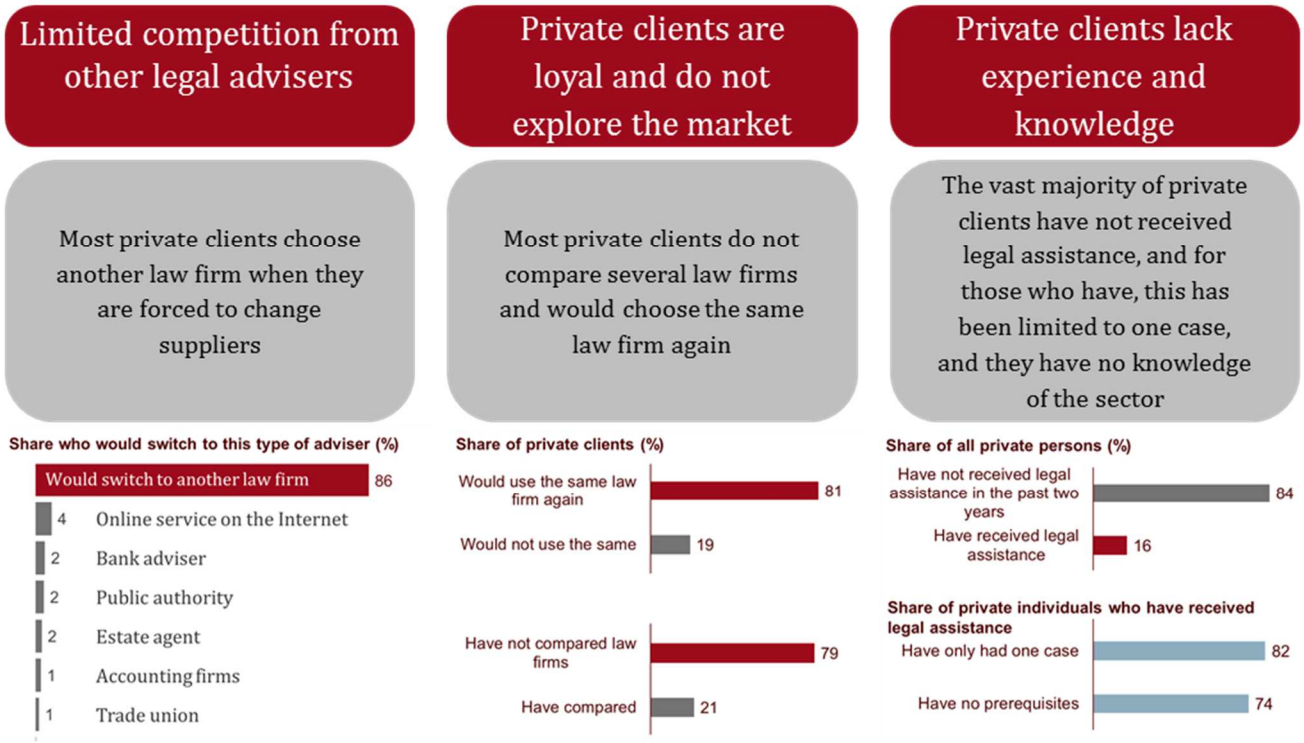
Private clients especially use law firms for advice on home ownership (purchase agreements) and deaths (wills), but also for more complicated advisory assignments and actions for damages. The need for a lawyer is often associated with rarely occurring events in life. In addition, most private clients do not have any special competence in relation to purchasing legal advice, for example experience from their work or educational background.

[5] See, for example, Dulleck, Uwe, Rudolf Kerschbamer & Matthias Sutter, *The Economics of credence goods: the role of liability, verifiability, reputation and competition*, American Economic Review, Vol. 101, no. 2, April 2011.

Law firms are the most widely used advisers when private clients seek legal advice, followed by bank advisers, real estate agents and trade unions. However, the vast majority of private clients do not see providers outside the legal profession as a alternative to their regular lawyer, see figure 1.4 (to the left). The clients are thus loyal to their lawyer, and the legal services provided by lawyers are often of a different nature to those provided by other service providers.

Many private clients find it difficult to navigate the legal profession, and they typically do not compare the different options before choosing a law firm. For example, eight in ten private clients have not compared different law firms before choosing the law firm from which they want to buy assistance, see figure 1.4 (middle). Private clients often seek advice from, for example, family and friends when choosing a lawyer. It represents a form of market exploration, which may be suitable if the recommendations provide qualified guidance.

Figure 1.4 **Competition for private clients and private clients' behaviour**



Note: Extracts of figures from the analysis. See **Fejl! Henvisningskilde ikke fundet.**, **Fejl! Henvisningskilde ikke fundet.**, **Fejl! Henvisningskilde ikke fundet.** and **Fejl! Henvisningskilde ikke fundet.** for further information.

Source: The Danish Competition and Consumer Authority

When private clients purchase assistance from a lawyer, the private client must receive *written* information in connection with the conclusion of the agreement containing the main elements of the expected assistance, how the price is set and the costs associated with the assistance. If the assistance is provided at a fixed price, this must be disclosed, and if it is not possible to calculate the expected price in advance, the lawyer must either state the way in which the price will be calculated or provide a reasoned price estimate. Just over two thirds of private clients have stated that they have received a price estimate – either in writing or orally.

The Competition and Markets Authority (CMA) in the United Kingdom has performed a similar study on the behaviour of private clients and small business clients. One of the conclusions was that the market did not work well for these client groups and that a lack of available information about prices and quality can reinforce the challenges posed by asymmetric information.[6] Against this background, the CMA recommended that the transparency of the UK market was to be increased, for example by legal advisers having to publish their prices and service information, including complaint information, on their websites. The recommendation was implemented at the end of 2018.

Business clients typically have more knowledge, but show the same inactivity, when buying legal assistance.

Business clients' behaviour also shows that competition between law firms in the market is segmented and limited. The biggest law firms generate most of their revenue from large business clients, and the competition they face from small law firms appears to be very limited. The large law firms holds at strong position in specialties in which the revenue is concentrated on a few firms, and they charge a significantly higher hourly rate than small law firms. This may reflect higher productivity, but also higher profit margins in that part of the market in which the large firms operate.

Business clients cover a wide range in terms of industry, business models and size. There is consequently also great differences between business clients' needs and competence when buying legal assistance. Large business clients have more knowledge in relation to buying legal assistance than small business clients.

Business clients primarily receive their legal advice from law firms, but they also use other legal advisers, however, typically as a supplement. More than 80% of the business clients state that they would choose another law firm if they could no longer receive assistance from the law firm they used on the last occasion, see figure 1.5 (to the left).

The analysis finds that, from a demand side perspective, an independent market can be demarcated which is not wider than legal advice from law firms. This supports the argument that law firms are only exposed to minor competition from other providers of legal advice. Within certain specialties, however, there is some competition, for example in tax law, employment law and certain other fields. Only one in ten business clients believes that law firms compete actively for the clients to a high or very high degree.

The business clients (and law firms) are focused on quality and the ability to provide quick assistance as competitive parameters. Furthermore, the reputation of law firms (including, for example, ratings), is a significant competitive parameter. In turn, price plays a less prominent role.

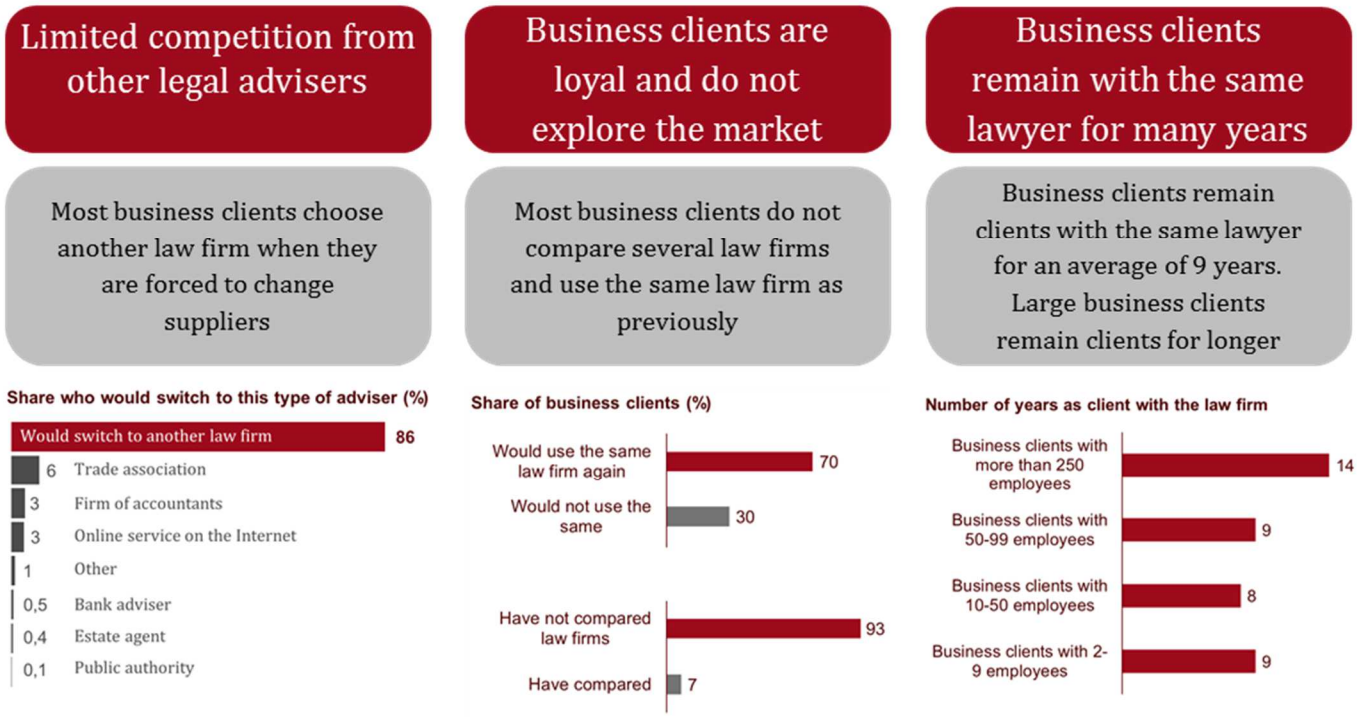
Many business clients are loyal to their lawyer, and they have often used the same law firm for many years, see figure 1.5 (to the right). A relationship of trust has consequently been built up, with which it may be difficult to compete for new players entering the market.

Business clients typically do not explore their options when choosing a lawyer, and they are often very loyal to their chosen law firm, see figure 1.5 (middle). Business clients' demand for legal services generally does not appear to be particularly price sensitive.

[6] Competition and Markets Authority (CMA), *Legal Services Market Study Final Report*, 2016.

Large business clients often need legal assistance within a number of different specialties. If they want to have their demand covered by a single law firm, they consequently need to go to one of the large law firms which have specialised competences in all the specialities of relevance to business clients. This may also make it difficult for new players to compete. However, there is also a significant proportion of large companies that use more than one law firm.

Figure 1.5 **Competition for business clients and business clients' behaviour**



Note: Extracts of figures from the analysis. See **Fejl! Henvisningskilde ikke fundet.**, **Fejl! Henvisningskilde ikke fundet.**, **Fejl! Henvisningskilde ikke fundet.** and **Fejl! Henvisningskilde ikke fundet.** for further information.

Source: The Danish Competition and Consumer Authority.

1.4 A large proportion of public clients' procurement of legal assistance does not contribute to supporting well-functioning competition

Public clients procured legal assistance from law firms for just over DKK 1.5 billion in 2018, equal to 11% of the revenue generated in the legal profession. The State is the largest public client and accounted for two thirds of public procurement of legal assistance.

Overall, public clients do not contribute to supporting well-functioning competition in the legal profession.

The Legal Advisor to the Danish Government Agreement (*Kammeradvokataftalen*) sets the framework for the State's procurement of legal assistance. The agreement has been entered into with the same law firm since 1936 and basically requires the State to procure its external legal advice from the same private law firm. There is no knowledge of other countries with such a model.

The object of the agreement is to ensure that the Legal Advisor to the Danish Government acts as the State's attorney, and it can also support interdisciplinary knowledge building, economies of scale and uniform case handling, as the main part of the State's procurement is gathered with one single supplier. In addition, Advokatfirmaet Poul Schmith (the Legal Advisor to the Danish Government) is subject to extended requirements for prevention of conflicts of interest due to the service provision obligation in the Legal Advisor to the Danish Government Agreement. However, the assessment is that these considerations could also be taken into account even if a significantly larger part of the procurement was exposed to competition. The State's procurement of legal assistance from the Legal Advisor to the Danish Government has grown significantly in recent years and amounted to over DKK 0.5 billion in 2019.

The Legal Advisor to the Danish Government Agreement runs for an indefinite term and is not covered by the State's obligation to award contracts through public procurement procedures as long as the agreement remains in force. The State's procurement of legal assistance has thus only been exposed to competition to a very limited extent and thus does not contribute to strengthening competition in the market.

In several of the large municipalities and regions, legal assistance is procured via typically four-year framework agreements, which have been exposed to competition through public procurement procedures where several bids have been received for the assignments. However, the vast majority of municipalities procure legal assistance on an ad hoc basis according to need. In many municipalities and regions, more competition on public procurement can be created, for example through the conclusion of framework agreements, either intermunicipal/regional or within the individual municipality/region. Rigsrevisionen (the National Audit Office) has pointed out that, in several cases, the regions' procurement of consultancy services such as legal assistance has not been satisfactory and that, in some cases, the established practice may be contrary to the existing legislation and good public administration practice.

1.5 Significant parts of the regulation unduly restrict competition

Due to the central role played by lawyers in the legal system – and the community of law – lawyers and law firms are subject to extensive sectoral legislation and an extensive code of ethics for lawyers' conduct. The main object of the regulation is to contribute to maintaining a well-functioning legal system as well as due process and legal protection of the citizens. These are vital public interests.

It is also important to design the regulation so that the market for legal services functions satisfactorily, with effective competition, to the benefit of the clients.

The analysis shows that the current regulation restricts competition in the legal profession and the competitive pressure that lawyers face from other sectors. This applies not least to legal assistance to business clients and to public clients, which constitutes by far the largest part of the total revenue generated by the legal profession. The rules make it more difficult for new players – including from other sectors – to compete with the established law firms, and they hamper competition internally between the law firms. The assessment is that an adjustment of a number of rules can mitigate these competitive problems, while key public interests are still safeguarded. Some of the challenges are mentioned in the following.

The rules of the Danish Administration of Justice Act on law companies' ownership, management and objects, lawyers' use of the title of lawyer as well as their education and training

The independence of lawyers from third-party interests is an essential consideration. In the Danish Administration of Justice Act, this consideration is safeguarded through a number of measures, including regulation of law companies' ownership, management and objects as well as lawyer's use of the title of lawyer ('advokat').

The Danish Administration of Justice Act regulates who are allowed to *own and manage* a law company. 90% of a law company must be owned by persons with a Danish practising certificate who are also employed in the law company. 10% of a law company may be owned by employees of the firm who are not lawyers. Furthermore, law companies may, as a general rule, only be managed by the owners of the firm.

The regulation of ownership and management limits competition by hampering the possibilities for bringing other competence profiles into the firm's management which can benefit the clients. The access to capital may also be weakened. This limits the market entry opportunities for new players and existing players' growth opportunities. The analysis shows that three in ten of the biggest law firms with a revenue of more than DKK 200 million find that the limited access to capital and the rules on management in the Danish Administration of Justice Act hamper their growth opportunities. In small law firms, however, there are no signs that the limited access to capital is experienced as any particular barrier to expansion.

The Danish Administration of Justice Act regulates the services which a law company is permitted to sell. A law company is only permitted to have as its *object* to practise law and must not sell other services than those that today fall under 'the practising of law'.

The restriction on the services that a law company is permitted to sell prevents law companies from entering into so-called multidisciplinary partnerships with other professions and from selling, for example, LegalTech solutions as an isolated service. The opportunities to develop new business models are thus also weakened. One in six law firms finds that the objects provision restricts their growth opportunities. For the biggest law firms, which generate a revenue of more than DKK 600 million, this applies to two in five. Moreover, just over one in ten of the law firms that have been established in the past five years have experienced that the rules of the Danish Administration of Justice Act on the objects of law companies have had a negative impact on their ability to establish themselves on the market.

It follows from the Danish Administration of Justice Act that a lawyer is only allowed to sell legal assistance to external clients using the '*title of lawyer*' if the person works in a law firm. Obligations etc. are attached to the title of lawyer, including compliance with the established code of conduct and that the lawyer has third-party liability insurance. In addition, there is supervision of lawyers' practising of law. This means that the title of lawyer can be used for marketing purposes to signal quality and protection of clients in a profession which the clients otherwise find lacks transparency.

The provision on the use of the title of lawyer may therefore make it difficult for competitors of the legal profession to attract clients who need legal advice in relation to the client protection that the title of lawyer can provide. It may also make it difficult for competitors in other sectors to recruit the best qualified lawyers. A number of market players outside the legal profession have thus stated that they experience the rules on the use of the title of lawyer as a barrier to competition.

The Danish Administration of Justice Act also lays down requirements for lawyers' professional standards. To obtain a practising certificate, lawyers must have *graduated with the Danish title* 'cand.jur.' (Master of Laws), have minimum three years' experience in practising law and have completed the continuing legal education programme known as 'Advokatuddannelsen'. It is essential that lawyers have sufficient competences and professional qualifications to perform their duties responsibly. However, experience from other countries indicates that quality can also be maintained under more inclusive systems. The formal requirement for a Master of Laws degree thus constitutes a barrier to entry for other graduates to acquire the necessary competences, and thus become lawyers and have the possibility of setting up a law firm themselves. The formal requirement for a Master of Laws degree thus limits the influx of new lawyers and may result in upward pressure on prices and salaries in the profession.

Code of ethics for lawyers regarding conflicts of interest, fee sharing, performance-linked agreements and client fishing, respectively

In addition to being dealt with in the Danish Administration of Justice Act, the independence of lawyers is addressed in the code of ethics for lawyers, which contains rules on conflicts of interest, fee sharing and performance-linked agreements.

The object of the *rules on conflicts of interest* in the code of ethics for lawyers is to ensure the independence of lawyers and contribute to maintaining trust in the legal system. These rules stipulate that a lawyer must not assist a client in situations in which a conflict of interest has arisen or where there is an obvious risk of such a conflict arising.

The analysis indicates that these rules restrict competition, especially among large firms, where the main part of the revenue is generated from legal assistance outside the legal system. This may result in higher prices and a less active demand side. The rules mean that the clients have fewer law firms to choose between, including fewer law firms with experience. This reduces the actual supply of lawyers in the profession. This restricts competition *unnecessarily* if the refusal of assignments and the limited options resulting from the rules on conflicts of interest extend beyond the client's actual need for protection. It is therefore important to strike the right balance between the scope of the rules and the need to protect the client's interests.

The analysis also suggests that the rules on conflicts of interest may have prevented a number of large law firms from recruiting specific employees, thus limiting their growth opportunities. Two in five of the biggest law firms have often or several times chosen not to appoint a specific partner because of the rules on conflicts of interest. At the same time, 80% of the second largest law firms (which generate revenue of between DKK 200-600 million) point to 'recruitment of employees' as one of the main barriers to growth. It may hamper the dynamics of a market when it is difficult for the most competitive firms to capture clients and thus grow larger.

The current code of ethics for lawyers also stipulates that a lawyer must not enter into a fixed cooperation agreement on *sharing his or her fee* with someone who is not a lawyer. The prohibition on fee sharing restricts the possibilities of law firms to enter into cooperation agreements and sell services to clients together with a non-lawyer and then settle jointly with the client. This could, for example, be a service on which both a lawyer and an accountant – or a lawyer and a debt collection agency – worked together.

In addition, the code of ethics for lawyers prohibits a lawyer from entering into an agreement under which the lawyer's fee will be a share of the amount that the lawyer may obtain for the client by handling the case (*pactum de quota litis*). The prohibition of performance-linked price agreements limits the possibility for competing on attracting clients via price agreements in which the lawyer is compensated with a share of the financial result of the case. The rule may thus also prevent clients who would otherwise not be able to afford to pay a lawyer from obtaining assistance for a case (as, under such an agreement, the client would be able to offer the lawyer part of a future gain). The prohibition also limits the possibility of new business models, based on, for example, consumer actions or 'class actions', from gaining a foothold in the market.

Finally, the current code of ethics for lawyers contains a prohibition against a lawyer displacing a competitor from a case. This is referred to in the profession as a prohibition of client fishing. There is no corresponding prohibition in the European equivalent of the code of ethics for lawyers or in other professions in Denmark. The prohibition applies not only to legal actions, but also comprises advisory assignments, and it is not limited to vulnerable clients. The Danish Minister for Justice has decided that the prohibition is a direct and necessary consequence of Section 126(1) on the code of conduct for lawyers in the Danish Administration of Justice Act. This decision means that the competition authorities are prevented from interfering against the rule in those cases in which it has been applied to the detriment of competition

and clients. For example, the prohibition prevents a lawyer from offering to take on the case for the client for a lower fee or by providing specialised advice. The rule does not prevent lawyers from engaging in general marketing. There is also uncertainty about how broad the scope of the prohibition is, which hampers competition.

The analysis shows that, in the past five years, just over one in five law firms have experienced that the prohibition of client fishing in the code of ethics for lawyers has affected their ability to attract, win or retain clients.

1.6 Regulation and practice restrict competition for insolvent estates and administrator estates

The field of insolvent estates and estates of deceased persons is characterised by a number of mechanisms which restrict competition on, in particular, insolvent estates without assets and administrator estates. The elements that restrict competition include the regulation, the competent authorities' practice and the nature of the assignments.

Insolvent estates
An estimated 7% of the revenue in the legal profession in 2018 came from assistance in connection with liquidations, reorganisations and insolvency law (around DKK 1 billion). Especially for the biggest law firms, the field of insolvency law is one of the (three) fields that generate the highest revenue. On average, the revenue generated in the field of insolvency law constituted 9% of the total revenue of the top ten law firms.

An insolvent estate is an estate of a company which can no longer pay its bills as they fall due and for which liquidation proceedings have subsequently been instituted. There were an average of 7,250 liquidations per year in the period 2016-2019. In just under 90% of the liquidations, there were no or only limited assets in the estate. In insolvent estates without assets, the bankruptcy court most often appoints the liquidator. The situation is different for insolvent estates with assets, where the liquidator is most often appointed based on a recommendation from the creditors. The assignments in insolvent estates with assets are typically of a significant extent and more extensive than for estates without assets. Insolvent estates with assets therefore constitute a higher share of the revenue than the 10% that their share of the estates would indicate.

The analysis suggests that several elements in the current rules and framework for liquidators restrict competition for insolvent estates, especially for estates without assets. One reason for the limited competition is the permanent panels of liquidators used by the Danish Maritime and Commercial High Court, several bankruptcy courts and the Danish Debt Collection Agency. Cases involving insolvent estates without assets are generally assigned automatically within the panel. The analysis shows that in the six judicial districts and the Danish Maritime and Commercial High Court which use a panel, eight in ten insolvent estates without assets are handled by a law firm represented on the permanent panel of the court in question.

In practice, the selection of liquidators for estates without assets is therefore made from among the appointed members of the permanent liquidator panels. Competition to be appointed to the panels is very limited. The appointment requires applicants to meet different quality criteria. However, there is no competition on parameters such as price and performance in relation to appointment to the panels. The permanent panels are, in effect, reserved for lawyers, and other qualified players therefore find themselves excluded from handling these assignments.

For insolvent estates with assets, the creditors play a greater role in the assignment of the administration of the estates. However, law firms' possibility of being nominated (by creditors) to administer an insolvent estate with assets may also be influenced by whether the law firm is represented on the permanent panel of a judicial district. The analysis shows, for example,

that the administration of insolvent estates with assets in the Danish Maritime and Commercial High Court is primarily handled either by a law firm represented on the panel or by Advokatfirmaet Poul Schmith, which is engaged in formalised cooperation with the public authorities. In several of the other judicial districts which use permanent panels, liquidation proceedings for insolvent estates with assets are also primarily handled by a law firm represented on the panel.

Together with the current rules and framework for liquidators' fees, the nature of the liquidator's role contributes to restricting competition between liquidators and makes it more difficult for clients to navigate in insolvency cases. The client who pays for the service has extremely limited options for influencing the process of fixing the fee before the liquidator is appointed. This applies to both insolvent estates with assets and without assets. This is, for example, reflected in the rules on the liquidator's fees, which means that the total price – and typically also the hourly rate – is not known before the choice of liquidator is made. This reduces the possibility of price competition for the assignments. The challenges of navigating as clients in insolvency cases are enhanced by an insolvent estate often having multiple creditors – and thus several clients – who may also have conflicting interests.

Estates of deceased persons administered as administrator estates
The task of administrators is to administer estates of deceased persons, i.e. the estates left by persons when they die. There were just under 54,000 deaths in Denmark in 2019.

Approximately 12% of all estates of deceased persons in Denmark are administered as a so-called 'administrator estate', where the probate court appoints an administrator. Approximately 2% of the revenue generated in the legal profession is estimated to come from assistance to the estates of deceased persons which are administered as so-called 'administrator estates' in accordance with the Danish Administration of Estates Act. The estate of a deceased person is, for example, administered as an administrator estate if the deceased has appointed an executor as administrator in his or her will, if one of the beneficiaries requests the appointment of an administrator, if there are no beneficiaries or if the probate court regards the estate as being insolvent. If an estate is insolvent, the administrator's fee is maximum DKK 30,000.

Especially for small administrator estates, the payment of the administrator's fee constitutes a large share of the estate. For the smallest estates with gross assets of up to DKK 200,000, the share of the expenses for the administrator thus amounted to approximately 40% of the assets of the estate. The price of having an estate administered by an administrator varies significantly between the judicial districts in Denmark. For example, for the smallest estates (with gross assets below DKK 200,000), there is a difference of approximately DKK 20,000 between the judicial district with the lowest and the highest average fees, respectively.

The current rules and framework for administrator estates restrict competition. As a general rule, the probate courts thus only assignestates to the *authorised* administrators who have been appointed in the judicial district in question for typically 10 years. Authorised administrators administer approximately 80% of the estates of deceased persons administered as administrator estates (equal to 9.5% of all estates of deceased persons), while non-authorised administrators administer the remainder. The assignment of these estates of deceased persons to an administrator means that the administrator has a limited incentive to compete on price and quality. A non-authorised administrator of an estate may be chosen by the beneficiaries or may have been appointed by the deceased person as executor in the deceased person's will.

Authorisation as administrator of estates requires a practising certificate. This excludes other professions from competing for such services even if they have sufficient qualifications to perform the duties as administrator. In many cases, the beneficiaries may themselves appoint an

authorised administrator, but they have limited access to information about the administrators, their prices or other price elements, case processing time etc. Such lack of knowledge about the final price contributes to restricting price competition on administrator assignments. This is partly related to the nature of the assignment, where it can be difficult to predict the content and extent of the tasks to be performed in the estate.

After the administrator has been appointed, the administrator can only be replaced following a complaint from the beneficiaries, and if the court subsequently permits a replacement of the administrator.

1.7 More competitive regulation and more active clients will strengthen competition in the legal profession

Most private clients and business clients find it difficult to navigate when buying services from a law firm. They find it difficult to assess the quality of the lawyers' work, they do not always receive a price estimate of the assistance and they do not examine the options available when buying legal assistance. Such client behaviour may contribute to restricting competition in the legal profession.

If the legal profession is made more transparent, it may become easier and less time-consuming for the clients to explore their options of getting the best price for the assistance that meets the client's needs. If it becomes easier for the clients to make informed decisions, this will contribute to strengthening competition in the legal profession. This analysis therefore contains a number of recommendations aimed at creating greater transparency in the profession, thus enabling clients to be more active, see Box 1.2.

A large share of public clients' purchases of legal assistance does not support effective competition. The biggest public client, the Danish State, buys a large part of its legal assistance under the Legal Advisor to the Danish Government Agreement (*Kammeradvokataftalen*). This agreement has been entered into with the same private law firm since 1936, it runs for an indefinite term and, while it remains in force, it is not covered by the obligation to award contracts through public procurement procedures. Regions and municipalities often buy legal assistance on an ad hoc basis and not through, for example, framework agreements that are exposed to competition. Rigsrevisionen (the National Audit Office) has pointed out that, in several cases, the regions' procurement of consultancy services such as legal assistance has not been satisfactory and that, in some cases, the established practice may be contrary to the existing legislation and good public administration practice. The analysis therefore contains recommendations aimed at strengthening competition for public clients' – and especially the State's – procurement of legal assistance, see Box 1.2.

At the same time, the regulation of the legal profession in the Danish Administration of Justice Act and the code of ethics for layers can also be adjusted to strengthen competition, while still maintaining the key regulatory objectives.

The regulation of the legal profession has been adjusted a few times in the past decades, but it has roots that actually go back hundreds of years. However, the core business of the legal profession has changed significantly and differs from the activities conducted by attorneys long ago, as an increasingly large share of the revenue comes from legal assistance provided to, in particular, business enterprises and which does not directly concern the legal system. At the same time, digitalisation and globalisation are gradually changing the requirements made for the legal services sector.

In the countries with which Denmark is normally compared, there are several examples of how the regulation of the legal profession has been arranged in a manner that is more conducive to competition in a number of areas than in Denmark. An analysis from 2017 of a number

of countries' experience with multidisciplinary partnerships (MDPs) and in allowing ownership by non-lawyers suggests that, in several countries that allow MDPs, the legislators are increasingly working towards achieving the necessary protection of clients and maintaining professional principles and standards through individual regulation of the individual lawyer rather than through general regulation of the framework for practising law or of the profession.

The recommendations below are primarily aimed at regulating law companies, while the regulation of the individual lawyer's conduct is maintained to a great extent. The central rules for lawyers will thus remain in force, for example lawyers' professional secrecy and the rules on each lawyer's individual independence. The lawyer is also still covered by the current complaints procedures and rules on supervision and sanctions in the disciplinary system. The lawyer will also still have to meet the applicable duties of a lawyer, for example the obligation to take out guarantee insurance and third-party liability insurance. Some of these rules may also need to be made more rigorous in connection with any implementation of the recommendations.

The recommendations for changed regulation must be seen holistically and may, in particular, be of great importance to the market for professional clients (e.g. business enterprises). For example, the easing of ownership restrictions (1.1), a revision of the objects clause of law companies (1.2), and certain adjustments of the rules on conflicts of interest (1.5) will have a significantly greater effect on the competition in the market and for clients than the sum of each individual proposal separately.

Overall, the proposals will also open up for the establishment of new business models which can strengthen Danish export of complicated advisory services and improve opportunities for the development of large, internationally oriented consultancy firms. These potentials must be balanced against the need still to ensure high confidence in the independence of lawyers. The proposals indicate some possible paths to this, but it is also recognised that this issue will require further consideration.

The regulatory provisions laid down in the Danish Insolvency Act and the Danish Administration of Estates Act as well as the established practice in this field contribute to restricting competition for insolvent estates and administrator estates. Firstly, these areas are reserved for lawyers – either as a result of the legislation or the established practice – thus effectively excluding other qualified players from performing the assignments. Secondly, the areas are characterised by a situation in which the lawyers who provide legal assistance are, to a large extent, appointed from a permanent circle of lawyers who have been selected without competition and without the price of the assignment performance being a factor. In addition, the specific assignments are allocated within the permanent circle of lawyers without competition and without the price of the assignment being known in advance. The nature of the assignments also means that there is typically great uncertainty about the content and scope of the assignment. There are good opportunities for strengthening the competitive element in the administration of insolvent estates (without assets) and administrator estates, respectively, to the benefit of the clients, see Box 1.2.

The recommendations for strengthening competition in the legal profession are set out in Box 1.2. and are described in greater detail in Chapter 9 of this report.

Box 1.2

Recommendations for strengthened competition in the legal profession

1. Recommendations aimed at more competition-friendly regulation

1.1 Easing the rules governing the ownership and management of law companies

It is recommended that Section 124c of the Danish Administration of Justice Act be amended so that, in future, law companies are permitted to have external owners that may also exercise active influence on the business model and overall operations of the firm. It is also recommended that Section 124e of the Danish Administration of Justice Act be amended so that a law company can be managed by persons who do not have an ownership interest in the firm. New owners and external managers must be subject to appropriate supervision, restrictions and requirements for compliance with a code of conduct, so that the independence of employed lawyers is safeguarded.

1.2 Expanding law companies' possible 'objects', including permitting multidisciplinary partnerships in Denmark

It is recommended that Section 124 of the Danish Administration of Justice Act be amended to allow that a law company – in addition to being engaged in practising law – may also carry on activities closely related with the practising of law and that a law company may form part of multidisciplinary partnerships together with other closely related professions.

1.3 Allowing employed lawyers to sell external legal advice using their title of lawyer from other companies than law firms, subject to compliance with the code of ethics for lawyers

It is recommended that Section 124 of the Danish Administration of Justice Act be amended so that employees in other consultancy firms than law firms are allowed to use their title of lawyer when selling legal advice to external clients. Based on this recommendation, the lawyer must still meet the requirements and obligations that the title of lawyer otherwise entails, including professional secrecy and the code of ethics for lawyers.

1.4 Setting up a working group on the admission of other graduates than holders of a Master of Laws (cand.jur.) degree to the continuing legal education programme

It is recommended that a working group examine the possibility of allowing other graduates than holders of a Master of Laws (cand.jur.) degree to be admitted to the continuing legal education programme ('Advokatuddannelsen') A wider possibility of admission of other graduates (than holders of a Master of Laws degree) obviously requires that the graduates in question can obtain a basic and sufficient legal competence level and knowledge of Danish law, so that they can act as lawyers at a satisfactory level after they have completed the continuing legal education programme. The working group must therefore consider the mandatory course elements that must be required for admission to the continuing legal education programme. The working group must also consider whether a supplementary and qualifying diploma programme for admission to the continuing legal education programme is to be established for other graduates than holders of a Master of Laws degree.

1.5 Easing the rules on conflicts of interest regarding identification with the interests of colleagues, for the use of informed consent as well as in connection with change of firms and mergers

It is recommended that the rules on conflicts of interest in the code of ethics for lawyers be amended, so that the determination of a conflict of interest will solely involve an assessment of the employees involved in the case in question. In specific terms, this means that the rules in section 12.4 of the code of ethics for lawyers that a lawyer is infected by his or her lawyer colleagues are no longer to apply. However – in the same way as today – a lawyer will still have to avoid possible conflicts of interest in relation to his or her superiors (based on the armour bearer principle not to serve several masters). At the same time, 'Chinese walls' should be established in the law firm when this is relevant.

It is further recommended that the rules in the code of ethics for lawyers be amended so that, in certain cases, increased use of informed consent becomes possible in connection with the provision of advisory services to large business clients.

Finally, it is recommended that section 12 of the rules in the code of ethics for lawyers be clarified with the specification of a trifle threshold and a cooling-off period for how long a conflict of interest connected with a client affects the possibility of an employee switching to another law firm or a merger between law firms. The specification of a trifle threshold and a cooling-off period must be clarified, and may possibly vary depending on the nature of the case as well as the employee's involvement and position. The maximum duration of the cooling-off period could possibly be based on the period of limitation of five years in claims for damages.

1.6 Abolishing the prohibition of so-called 'client fishing', however, not in criminal proceedings or cases involving particularly exposed or vulnerable persons
It is recommended to abolish section 8.2 (first sentence) of the rules in the code of ethics for lawyers which stipulates that "The lawyer must not displace a lawyer from a case".

1.*7 Abolishing the prohibition of fee sharing with non-lawyers*
It is recommended to abolish the prohibition of agreements on fee sharing with non-lawyers in section 16.7 of the rules in the code of ethics for lawyers.

1.8 Abolishing the prohibition of performance-linked price agreements, however, not in criminal proceedings
It is recommended that the prohibition of performance-based price agreements in section 16.2 of the rules in the code of ethics for lawyers be abolished, however, so that the prohibition may specifically be applied in certain types of cases or in certain circumstances, including in criminal proceedings. Law firms must still comply with Section 126(2) on fair prices in the Danish Administration of Justice Act.

2. Recommendations aimed at more active clients in the legal profession

2.1 All clients will receive a quotation in a fixed 'standard template' before an agreement is entered into
It is recommended that lawyers undertake – when they submit quotations to clients – to prepare the quotation in accordance with a uniform 'standard template' with some relevant information, including price information. Lawyers must submit this quotation before an agreement on legal assistance is entered into. In relation to business clients, the requirement for a standard template must also apply when lawyers submit quotations to small and medium-sized enterprises when the information is not already *apparent from the context*. The quotation to the client must include a *price* for legal assistance. If legal assistance is provided at a fixed price, this must be disclosed.

2.2 The law firms must disclose their prices for services at a standard price and hourly rates on their own website
It is recommended that law firms must provide information about standard prices on their own website within a number of further specified areas for more simple services if these areas are both part of the law firm's usual business and the law firm provides information on the website that the firm offers services in the areas in question.

It is also recommended that law firms be encouraged to disclose their prices for services at standard prices and hourly rates within the areas in which an actual requirement is not recommended. Depending on the law firm's price structure, the prices are shown as a range, an average price or a specific hourly rate/standard price.

3. Recommendations to strengthen the competition on public clients' – especially the State's – procurement of legal assistance

3.1 Increased competition for the State's procurement of legal assistance
It is recommended that all or parts of the State's overall portfolio of assignments, which today falls under the Legal Advisor to the Danish Government Agreement, be exposed to competition

In this connection, a first step will be to examine how large a share of the State's procurement of legal assistance under the Legal Advisor to the Danish Government Agreement concerns assignments that are not required to be awarded under a public procurement procedure in accordance with the Danish Public Procurement Act. The assignments which are assessed as falling under the obligation to award contracts under public procurement procedures can be divided into meaningful sub-contracts, for example according to professional area. The sub-contracts can be offered as framework contracts. The public procurement procedures in question may be organised so that various considerations are shown. This includes uniformity of processing, exploitation of professional synergies and knowledge building across the State, stable access to qualified legal assistance and handling of conflicts of interest. The assignments which are not subject to public procurement procedures under the Danish Public Procurement Act may possibly be gathered in one single agreement, which constitutes a new, less extensive 'Legal Advisor to the Danish Government Agreement' with an expiry date. The new, less extensive and fixed-term Legal Advisor to the Danish Government Agreement can either be renegotiated with Advokatfirmaet Poul Schmith or be offered under a public procurement procedure as an overall contract.

It can also be considered whether, with such a new model, several law firms can use the title of Legal Advisor to the Danish Government or whether such a title is relevant if there are several suppliers.

3.2 Increased competition for municipalities' and regions' procurement of legal assistance

As part of the initiatives that are already being implemented in the regions and municipalities, it is recommended that the municipalities' and regions' exposure of legal assignments to competition be mapped, and that municipalities and regions should be encouraged to expose a greater part of their procurement of legal assistance to competition, for example via framework agreements or by establishing public procurement partnerships that use joint framework agreements.

4. Recommendations for strengthening competition for insolvent estates and administrator estates

4.1 Establishment of a sector-neutral authorisation scheme for liquidators

It is recommended that a sector-neutral authorisation scheme be established for liquidators. In specific terms, this means that anyone who meets a number of centrally defined professional criteria has the right to be authorised as a liquidator. The criteria must reflect the competences which are regarded as necessary to be able to perform the duties of liquidator adequately and thus to handle the interests of the estate. The decision on the formal appointment of a liquidator to administer a specific insolvent estate will still rest with the bankruptcy court (possibly based on a recommendation from the creditors).

4.2 Permanent liquidator panels must be appointed regularly on the basis of competition between the applicants, and the appointment of liquidators for insolvent estates without assets must be done in accordance with transparent allocation criteria

It is recommended that the permanent liquidators and liquidator panels which are currently used by many bankruptcy courts, the Danish Maritime and Commercial High Court and the Danish Debt Collection Agency should not be automatically reappointed and that the positions should thus be advertised on an ongoing basis. This creates a kind of ongoing competition for the positions and makes it easier for other persons than lawyers to be considered. In addition, it is proposed that liquidator positions be exposed to competition more frequently, for example after four years, i.e. significantly more frequently than is currently the case in the Danish Maritime and Commercial High Court. It may be considered whether the selection of liquidators should be done centrally – for example under the auspices of the Danish Court Administration – and whether there should be a national panel rather than local panels.

It is also recommended that the practice for nomination of liquidators for these insolvent estates without assets be changed so that, in future, this is done based on transparent allocation criteria and procedures that reflect quality, performance and price elements. In the bankruptcy courts that use a permanent panel as well as in the Danish Debt Collection Agency and the Danish Maritime and Commercial High Court, the liquidator must, in future, be appointed based on the provisions and objective criteria laid down in connection with the appointment of liquidators to the panel (similar to a public procurement model with 'direct awarding procedure' where the public procurement material for the framework agreement (here: appointment to the panel) lays down the objective criteria for the direct awarding of a supply contract (here: the insolvent estate in question)). For the bankruptcy courts which do not use permanent liquidator panels or permanent liquidators, the nomination to the specific insolvent estates without assets can also be done based on a procurement procedure with transparent awarding criteria reflecting quality, performance and price elements. The formal appointment of the liquidator to administer the insolvent estate will – like today – subsequently take place at a hearing in the bankruptcy court.

4.3 Working group on strengthened competition and greater predictability, transparency and efficiency in the administration of large insolvent estates with assets

It is recommended that a working group should examine the possibilities for strengthening competition and for creating greater predictability and transparency in the administration of large insolvent estates with assets.

4.4 The competition for administrator estates must be strengthened

It is recommended that the competition for administrator estates be strengthened through the following four measures:

a. Authorisation as administrator is made sector neutral and is granted to all those who meet the requirements.
b. The circle of authorised administrators is appointed more frequently and on the basis of competition between the applicants, and the administrators of the administrator estates in question are appointed in accordance with transparent awarding criteria – and, as a general rule, by the beneficiaries.
c. The administrator's fee must be disclosed before the choice of administrator.
d. Examination of the need to change the rules for when an estate is to be handed over to an administrator for administration as an administrator estate.