

**MARKETING LEGAL SERVICES  
TO MEDIUM-SIZED COMPANIES**

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## Abbreviations

B2C	Business-to-Customer
B2B	Business-to-Business
CEO	Chief Executive Officer
CFO	Chief Financial Officer
CIM	Chartered Institute of Marketing
CRM	Customer/client Relationship Management
DTI	Department of Trade and Industry
EU	European Union
FMCG	Fast moving consumer goods
FTSE	Financial Times Stock Exchange
GBP	Great Britain Pound
GATT	General Agreement on Tariffs and Trade
HR	Human Resources
IT	Information Technology
IP	Intellectual Property
KAM	Key Account Management
LDP	Legal Disciplinary Practice
M&A	Mergers and Acquisitions
MC	Interviewee from Medium-sized Company
MD	Interviewed Head of Marketing/Business Development in a law firm
MDP	Multi Disciplinary Practice
MP	Interviewed Managing Partner in a law firm
N.D.	No Date
OECD	Organisation for Economic Cooperation and Development
PLC	Publicly Listed Companies
PR	Public Relations
PSMG	Professional Services Marketing Group
RFP	Request For Proposal
ROI	Return On Investment
RQ	Research Question
SMEs	Small and Medium-Sized Enterprises
VC	Venture Capital
USP	Unique Selling Proposition

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## **Abstract**

This thesis examines marketing and buying of legal services in the context of medium-sized companies from theoretical and empirical perspectives. The theoretical foundations for the market of legal services are laid by studying the particularities of services and their intrinsic challenges for marketing. Different ways to segment the legal market are examined, including client-led segmentation, which includes segmentation by client size, such as medium-sized companies.

After studying the theoretical foundations of legal marketing, this thesis examines forces in the macro- and micro-environment responsible for driving or hindering the development of strategic marketing initiatives in law firms. Taking the standpoint of medium-sized companies as corporate buyers of legal services, the thesis also examines purchasing behaviour in the different stages of the organisational buying process.

The empirical research considers both marketing and buying perspectives. Managing partners and marketing directors were interviewed regarding marketing in their organisations. The interviews covered such matters as marketing organisation, marketing information, policies, as well as strategies and tactics. Mirroring the literature review, the purchasing behaviour of decision-makers in medium-sized companies was also studied empirically.

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Market-leading consumer brands do not just compete  
when obliged to by external forces.  
The good ones don't play catch up,  
largely because they have an almost intrinsic need  
to invent or reinvent.

(Julie Lake)

## CHAPTER 1

### Introduction and research objectives

According to Mayson (1997), the legal sector has undergone greater transformations during the last two decades of the 20<sup>th</sup> century than in the last two centuries. In the 21<sup>st</sup> century, the changes have only continued to take place. Deregulation and liberalisation, in England and Wales particularly due to the Legal Services Act 2007, increasing consumer expectations, new information technology (Susskind, 2008), generational differences as well as a growing global marketplace (Kotler & Connor, 1977) have resulted in a significantly changed, increasingly competitive marketplace (Mayson, 2007; Vickerstaff, 2000).

In the current economic climate most markets are stagnant, shrinking or at best growing more slowly than before and often are significantly more price-sensitive. Many services that were once considered to be highly specialised are being treated today more and more like commodities (Poynton, 2006). “A once elite and learned profession is now operating in a competitive, cut-throat business environment much like any other profession” (Muir & Douglas, 2001: 175). Lawyers no longer have the luxury of waiting for business to come to them. They have to go out and get it (Diamond, 1986). Technical legal competence alone is insufficient or not a guarantee of success in winning new business or keeping existing clients (Roberson, 2003). Traditional conduct and approach no longer ensure the success and survival and force law firms to compete in new ways (Van Egeren & O'Connor, 1998; Vickerstaff, 2000; Young, 2005).

There is general recognition in academia and practice that marketing provides the answers for organisations faced with such challenges and that the implementation of the marketing concept is not only highly recommended, but necessary to ensure an organisation's long-term ability to survive (see chapter 3). Fisk *et al.* (1994) advised organisations to preserve and sustain a systematic marketing relationship with their

clients as a reaction to dramatic change. Marketing is important since organisations need to be aware of their competition and aim to satisfy their customers in order to be successful (Henderson, 1998). This is particularly true for service firms due to the direct interaction with their customers (Hooley *et al.*, 2003). According to Smock and Heintz (1983), in a competitive marketplace the effectiveness of marketing is the primary determinant of a business's success. The increased competition among law firms is making this a fact of life in the legal profession.

While the rationale for marketing might be unquestionable, numerous studies and articles stressed that professional services firms often resist the diffusion of the marketing concept (Kotler *et al.*, 2002) or market(ing) orientation (see also paragraph 3.2.2). While this has changed in the meantime, it appeared to be particularly true for the traditionally conservative legal sector (Harris & Piercy, 1998; Pepels & Steckler, 2003; Vickerstaff, 2000) (see also paragraph 2.2). Now outdated studies noted that little marketing occurred in this sector (O'Malley & Harris, 1999) and that lawyers adopted marketing 'unenthusiastically' or not at all (Harris, 1996). Many lawyers are going to be forced to embrace marketing for the first time (Ellis, 1999).

### **1.1 Rationale for the study**

It has been argued that from a microeconomic point of view a law firm is essentially a service business like any other: it renders services to clients for whom it receives payment (Pepels & Steckler, 2003). Like any other business, in order to produce its services, it combines resources and to ensure its continuation, a law firm needs to adhere to the basic principles of economics: profitability and financial liquidity.

The "growth in the size of the profession, the size of firms, and the volume of the market, has led ... lawyers having to treat the practice of law as a business" (Mayson, 1997: 15). Clementi (2004) believed that access to justice requires not only that the legal advice given is sound, but also "the presence of the business skills necessary to provide a cost-effective service in a consumer-friendly way".

Customers are the lifeblood of any commercial organisation (Gupta & Zeithaml, 2004). Without them, it has no revenues, no profits and therefore no market value. In fact, the basis of a business is its ability to create (Drucker, 1974) and keep (Levitt, 1969) a customer. "[T]he law is a service business, and satisfaction can only be

measured by the client” (Cunningham, 2007: 25). As the satisfaction of customer needs is the main business goal, businesses have only two basic functions: marketing and innovation (Drucker, 1974).

The marketing concept simply holds that the way to corporate success lies in continually meeting customers’ needs. Marketing is linked to a number of benefits, including improved business performance, customer perception, and loyalty (Jaworski & Kohli, 1996). Business strategy clearly demands a marketing perspective, whether or not it is recognised or acknowledged (Gavulic & Quinlan, 2006). Hill (1986) emphasised that lawyers need to keep in mind that clients are the reason for the existence of the legal profession and not vice versa. If one firm cannot or does not supply the services desired, its competition probably will (Day *et al.*, 1988). Since unsatisfactory relationships between professional service providers and clients present problems for both parties, understanding how organisations select and subsequently evaluate professional services is extremely critical.

Marketing is of particular importance in a highly competitive environment. Some have argued that market orientation is necessary to provide an organisation with long-term direction (Felton, 1959; McGee & Spiro, 1988; Narver & Slater, 1990; Webster, 1988) and found that law and other professional services firms have started to adopt marketing strategies similar to other (service) businesses (Sharma & Patterson, 1999). Changed circumstances force firms to “learn to compete in a completely different manner. Those that do not, or that cling tooth and nail to the past, will not survive” (Bogel & Huszty, 1999: 7).

While Kotler (2005: 8) has described marketing as “the most reasonable and voluntary way for people to acquire goods in a civilized society”, lawyers’ feelings towards marketing generally have historically been less keen. Harris (1997) and Harris and Piercy (1998) found that marketing is almost non-existent among lawyers as it was not only ‘disliked’, but considered profoundly ‘unprofessional’ and ‘inappropriate’. Of course, these observations are now dated. However, these authors argued that the strong influence of tradition and history in the legal profession and its consequences in terms of the understanding of the value, the perception of and the attitude towards marketing were substantial barriers to the advance of marketing in this field. This may be in part due to marketing often having been equated to

advertisement among lawyers. As this is not an uncommon misconception, the Chartered Institute of Marketing (CIM, 2007a) stressed in its definition that

*“[m]arketing is sometimes wrongly defined within the narrow context of advertising or selling, but this is not the whole story. Marketing is a key management discipline that enables the producers of goods and services to interpret customer wants, needs and desires and match, or exceed them, in delivery to their target customers”.*

Kotler *et al.* (2002: 20) acknowledged distinctive challenges or barriers to marketing of professional services, but were confident that lawyers “are finding that marketing is not inherently unethical or manipulative nor is it defined by the field of advertising”. Özer *et al.* (2006: 592) believed that ‘enlightened’ professionals consider market orientation “to be a practical tool for the achievement of competitive advantage” (see also paragraph 2.3.3.2). It has to be kept in mind that anyone in the firm who is in touch with clients *is* the service, personifies the organisation in the client’s eyes, therefore is the ‘brand’ (see paragraph 3.1.1), and the marketer (Zeithaml *et al.*, 1991). Thomas *et al.* (2001: 104) cautioned that there “should be little debate that marketing and quality service plays a central role in legal firms’ operations... [o]f concern is the effectiveness of any marketing undertaken”.

### **1.1.1 Practice context**

Developments in recent years have drastically changed the external environment in which law firms operate, the collective legal sector as well as the self-conception of individual lawyers. Increasing numbers of lawyers, international competition and new entrants from outside the traditional legal field have considerably challenged the traditional modes of operations of law firms and the legal sector has become increasingly competitive and market-driven (Maister, 1993; Mayson, 1997, 2007; Vickerstaff, 2000; Young, 2005) (see chapter 4). The legal profession—once driven by the practice itself—today is driven by the clients.

With clients becoming more demanding and less loyal, firms increasingly have to compete to attract and retain clients. Higher client expectations are also manifested in the current legal services reforms in England and Wales (see paragraph 4.1.1):

*“Today’s consumers have higher expectations than ever before. Consumers are right to expect services delivered in ways that suit them, not the providers. This is happening across all sectors, and legal services need to change to keep pace with consumer expectations” (DCA White Paper, 2005: 21).*

Law firms need to be aware that clients seldom feel obligated to inform firms of their reduced status. “Law firms never get fired, ... [t]hey just don’t get more work” (Dahl, 2006: 22). Marketing can potentially help focus attention on service delivery and offerings in chosen market segments.

In addition, professional services are increasingly bought as commodities (Grimshaw & Novarese, 2007). A professional service is considered high or low in importance depending on the relationship of the service to the organisation’s core business activity and substantial exposure to risk if failure occurs.

*“The AA [Automobile Association] and HBOS [Halifax Bank of Scotland] are doing [legal] work on a massive scale. There aren’t that many law firms around that can compete. Are we going to roll over, or think about consolidation? ... The one thing that makes an industry vulnerable is the incumbents not changing. Thinking like lawyers could spell the end” (Mayson quoted by Rothwell, 2008).*

Clients increasingly expect to benefit from a firm’s accumulated experience and methodologies, its efficiencies (and therefore cost advantages) that come from dealing with providers who have solved similar problems before (Maister, 1997).

### **1.1.2 Research context**

The presence of professional managers and marketing departments in law firms has become increasingly common (Mayson, 2007). Marketing in law firms, however, is said to be under-researched and therefore warrants further academic investigation (Day & Barksdale, 2003; Harris, 1997; Hodges & Young, 2009; Mangos *et al.*, 1995; Morgan, 1991; O’Donohoe *et al.*, 1991; O’Malley & Harris, 1999; Vickerstaff, 2000). This call for further research, was not answered. Other studies—which, however, are also now dated and merit a re-examination—suggested that marketing of solicitors’ services is in an ‘embryonic stage’ and generally poorly understood (Vickerstaff, 2000).

O’Malley and Harris (1999) argued that a holistic analysis of legal-market dynamics is lacking. Rather than studying providers and clients in isolation, Wilson (1996) recommended that researchers should simultaneously examine both sides, comparing the marketing of the provider and the buying behaviour of the clients.



Given the large market for legal and other professional services and the perceived complexity and higher risk of services purchases compared to goods, it is surprising to find a small number of studies focus on the purchase process (exceptions include Day & Barksdale, 1994, 2003; Dawes *et al.*, 1992; Lynn, 1987; Parasuraman & Zeithaml, 1983; Stock & Zinszer, 1987; Tinsley & Lewis, 1978). Fitzsimmons *et al.* (1998) and Sheth (1996) argued that more research on organisational buying of services is needed as academic knowledge regarding services procurement appears to be limited. An understanding of organisational buying and the nature of contextual influences on the buyer's decisions and behaviours (Woodside, 2003) is not only important to the selling organisation to be able to influence the buyer's decision process, but also to the buyer to make the decision process more efficient and effective. This is particularly true in business-to-business (B2B) markets, where the two parties interact over extended periods of time. Park and Bunn (2003) considered that such an understanding should be of particular interest for medium-sized companies.

Apart from a commissioned research project conducted by the author of this thesis for LexisNexis (2006) and research for the Law Society by Hall (2004), no studies have focused on the aspect of marketing legal services to medium-sized companies. Their smaller size, different governance, management and ownership structure, however, are likely to necessitate a different marketing approach that legal services providers need to be aware of. Findings of studies among large companies are not necessarily applicable or relevant to the reality of small and medium-sized enterprises (SMEs) and therefore justify a study specific to this target market (Day *et al.*, 1988). As such, current understanding of marketing to medium-sized companies by law firms is at best unclear. This thesis attempts to define the constructs that make up marketing of legal services to medium-sized companies and to lay the foundation for future research by developing a research framework on the factors influencing it. It is anticipated that the findings of this thesis will deepen the understanding and awareness of the importance of legal marketing to medium-sized companies amongst scholars and practitioners alike.

## **1.2 Research framework**

This thesis is exploratory in nature and designed to provide a clearer and more accurate understanding of marketing within the legal profession, in particularly marketing targeted at medium-sized companies.

### 1.2.1 Research subjects

The research subjects, that is, the phenomena studied, are law firms and their medium-sized company clients. The focus of this research is solicitors in the legal system of England and Wales where the roles of barristers and solicitors are separate (see paragraph 2.2.2). Depending on the availability of literature on solicitors, this thesis however, also includes material from other jurisdictions where these roles are subsumed into one (e.g., the U.S.). While this dissertation focuses on medium-sized companies, most available statistical material refers to SMEs. When necessary, this thesis will therefore refer to SMEs instead of more specifically to medium-sized companies. Depending on the availability of information from the Office for National Statistics, some of the numbers relate to England and Wales, the jurisdiction examined in this thesis, while others refer to the United Kingdom (UK) in general.

Due to the scarcity of academic research on the behaviour of buyers of legal services, this thesis will also refer to non-academic studies in the legal market as well as professional services marketing literature when relevant or when no prior work in a legal context appears to exist, as suggested by Ellis and Watterson (2001). Day and Barksdale (1992, 2003) and Kotler *et al.* (2002) pointed to the similarities in choosing an architect, accountant, and a lawyer, stating that the findings may be relevant to various types of professional services in the business sector. The conclusions are therefore likely to be valid for professional services firms and their respective clients.

Ellis (1997), however, questioned the use of the umbrella term ‘professional service’ to describe an extraordinarily diverse set of occupations. Certain general characteristics may be recognisable (Yorke, 1990), but Ellis (1997), Ellis and Watterson (2001) and Morgan (1991) stressed that the unique complexities of individual professions merit separate investigation. In addition, there are some firms in the broader categories of professional services firms that may have started formally embracing marketing years before law firms did and therefore find themselves in a very different situation.

What is more, through the author’s experience as an in-house marketer in law firms and consultant to law firms, there should be a deeper understanding of the nature of the more limited phenomenon under study, with hopefully an increased ability to draw meaningful and robust comparisons and conclusions.

### 1.2.2 Research objective and issues

Given the project context, the principal research objective of this thesis is

**To analyse the marketing of legal services to medium-sized companies and contrast it with the buying behaviour of medium-sized companies.**

The key issues that emerge, and their theoretical frameworks, include:

<i>Issue</i>	<i>Theoretical framework</i>
<i>Organisational buying behaviour</i> (Outline of chapters 5 and 8, and of the Interview guide for legal services providers, see Appendix A)	Buying stages (Day & Barksdale, 1994; Webster & Wind, 1972)
<i>Framework for marketing</i> (Outline of Interview guide for medium-sized companies, see Appendix B)	Marketing framework (Morgan <i>et al.</i> , 1994)

In order to address the research objective the following research questions (RQ) will be considered:

RQ1: How do legal services provider firms market their services to medium-sized companies? Specifically, do they approach marketing to medium-sized companies differently from marketing to large(r) organisations?

RQ2: How do medium-sized companies buy legal services, in the sense of their decision-making process? Specifically, what are their criteria for selection and evaluation?

RQ3: What marketing approaches should legal services providers apply to reach medium-sized companies? Would these be different from marketing to large(r) organisations?

### 1.2.3 Research strategy

A research strategy involves decisions about the way in which the research project is carried out by gathering and processing relevant material to answer the research issues (Verschuren & Doorewaard, 1999). The research strategy used in this thesis is a combination of desk research and a grounded theory approach (see chapter 6). The principal approach to desk research in this thesis is a literature review of the relevant literature on (professional) and legal services (see chapter 2), legal and professional services marketing (see chapters 3 and 4), as well as organisational buying behaviour

(see chapter 5). The main sources include academic literature regarding organisational buying behaviour, services marketing, professional services marketing, and legal marketing; legal marketing trade literature; as well as the researcher's experience in consulting and working with law firms.

In order to gain a current perspective concerning the market for legal service in England and Wales, primary research in the form of in-depth interviews was conducted with medium-sized companies in the roles as clients and law firms as the providers of legal services. Conducting interviews to collect data and applying grounded theory to analyse the findings provide a means through which data-driven theory can emerge from reality, rather than be forced from literature-based deduction (Deshpandé, 1983; Hunt, 1994).

### **1.3 Chapter outline**

This thesis approaches the topic “Marketing legal services to medium-sized companies” from various angles. Chapter 1 starts with an introduction to the thesis, an explanation for the reasons of this study, the research framework, chapter outline and a definition of key concepts.

Chapter 2 sets the theoretical foundations for the market of legal services, as it examines the particularities of services and their intrinsic challenges for marketing. Business services as well as professional services are considered, and legal services are studied both from the point of view of the political and legal literature as well as marketing literature. In addition, chapter 2 discusses the legal sector in the light of different ways that can be used to segment the market, one being client-led segmentation, which includes segmentation by client size, such as medium-sized companies.

Chapter 3 provides the theoretical foundations of legal marketing, based on the theories and insight from marketing, services marketing, as well as relationship marketing and professional services marketing. To understand why firms market their services the way they do, legal marketing is not only looked at from an academic, theoretical point of view, but also from a practical perspective.

Chapter 4 discusses the relevant forces both on the macro and micro-environmental level which determine the factors driving or hindering the development of marketing in law firms. A macro-environmental analysis considers political, legislative and regulatory factors, economic and competitive factors, societal as well as technological factors. At the micro-environmental level, the profession, law firms as well as the behaviour of individual lawyers are examined in terms of catalysts and obstacles for marketing.

Chapter 5 looks at the other side of the coin. Taking the view of the client, it examines the purchasing behaviour of medium-sized companies. Based on organisational buying process models (Day & Barksdale, 1994; Webster & Wind, 1972), each stage in the buying process of legal services is discussed.

Following the extensive literature review, chapter 6 reports on the methodology of the empirical study, the findings of which are then considered in chapters 7 and 8. Chapter 7 reports and analyses the findings relating to legal services providers. Managing partners and marketing directors were interviewed regarding marketing in their organisations, using the framework suggested by Morgan *et al.* (1994), which includes marketing organisation, marketing information, policies, as well as strategies and tactics. Chapter 8 discusses the findings of the empirical research on the client side, the medium-sized companies. Mirroring the literature review in chapter 5, it takes the framework of organisational buying behaviour with its various stages as the basis.

Chapter 9 concludes this thesis by summarising the findings, noting limitations of the research and acknowledging further developments on the topic researched.

#### **1.4 Definition of key concepts**

The key concepts of this research, derived from the research perspective and the research issues, are ‘marketing’, ‘legal services’, and ‘medium-sized companies’. For the purpose of this thesis, the following definitions were adopted:

*Marketing* is a management process responsible for identifying, anticipating and satisfying consumers’ requirements profitably.

*Legal services* are concerned with the advice, assistance and representation required by a person in connection with his/her rights, duties and liabilities.

A *medium-sized company* is any independent legal entity engaged in an economic activity, irrespective of its legal form. This includes, in particular, self-employed persons, family businesses, and partnerships or associations engaged in an economic activity. The maximum headcount of a medium-sized company must not surpass 250. In addition, the annual turnover must not exceed 50 million Euro and/or the annual balance sheet must not exceed 43 million Euro.

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For too long, the practice of law in the United States and Britain  
has been treated with kid gloves,  
as a learned profession  
that must be insulated from the more vulgar mores of the marketplace  
by rules of legal ethics.

(Richard E. Epstein)

## CHAPTER 2

### The market for legal services

#### 2.1 Theoretical foundations

##### 2.1.1 Services

Early definitions of services highlighted intangibility (Regan, 1963) as well as the absence of transfer of ownership (Judd, 1964). The contrast here is with transactions involving goods which are tangible and often involve transfer of title. Some scholars defined services as activities (Bessom, 1973; Blois, 1974) or deeds, performances, or acts offered by one party to another (Berry, 1980).

Recent definitions of services focus on the value creation and the provision of benefits for customers at specific times and places as a result of bringing desired change on behalf of the recipient of the services. Services are characterised by process, consumption and the lack of a pre-produced products (Kotler *et al.*, 2002; Lovelock & Wirtz, 2004; Vargo & Lusch, 2004). Lovelock (2004) emphasised the creation of value through transfer of ownership, rental (of goods; spaces, places; labour and expertise) or access (to shared facilities; networks) as well as the adoption of ideas and social behaviours.

While goods and services were often perceived as dichotomous, Shostack (1977) and Sasser *et al.* (1978) developed the concept of a 'service package' or 'service product bundle', suggesting services and products as a continuum ranging from pure goods or products at one extreme to pure services at the other. These classifications, however, leave ambiguity in the middle. Thus, Solomon *et al.* (1985) suggested determining whether more than half the value of the service package comes from intangible service elements (e.g., when buying legal services, a buyer acquires the actual contract, however, the main value is based on the advice and insight from the consultation with the lawyer). Applying this concept, Muir and Douglas (2001) defined legal services predominantly as services with a small element of goods,

similar to Javalgi and White (2002) who noted the high intangible elements and low physical elements of legal services.

Sasser *et al.* (1978) were the first to cite all four characteristics of services: intangibility, heterogeneity (or non standardisation), inseparability of production and consumption (or simultaneity) and perishability or inability to inventory. Fitzsimmons *et al.* (1998) believed that the additional characteristics arise from the intangibility of services. Being intangible, services are performed rather than owned and cannot be seen, tasted, felt, heard or smelled before they are bought. Since services thus cannot be measured or tested prior to delivery or consumption, it is difficult for the customer to evaluate quality before a purchase. Zeithaml (1981) therefore distinguished (i) 'Search criteria' can be determined before purchasing. They are typical for products, but not for services. (ii) 'Experience criteria' can be discerned only after purchase or during consumption; (iii) 'Credence criteria' includes characteristics that the consumer may find impossible to evaluate even after purchase and consumption. Professional services are believed to tend toward credence and experience attributes.

Clients attempt to reduce uncertainty by looking for 'signals' or 'indicators' of service quality and judge quality by reputation, past experience or some tangible aspect of the service (Muir & Douglas, 2001). They draw conclusions from the physical evidence, equipment used, people involved, or communication they have been exposed to (Kotler *et al.*, 2002). The key to the control of intangible aspects of the service is the control of the service encounter, which happens where the interaction between customer and supplier takes place, the customer interface (Drummond, 1992). Muir and Douglas (2001) cautioned that legal services must manage these tangible aspects because first impressions count.

Services cannot be separated from the process by which the service emerges as a solution to customers' problems (Rathmell, 1974). Production and consumption are typically carried out at the same time. For a service to be created, the source–human or technological–has to be present. The nature of service consumption is in contrast to the type of consumption traditional product-oriented models are built on. Due to the involvement of the consumer in the production of services many challenges occur that rarely, if ever, need to be considered in the production of goods (Hoffman & Bateson, 2006). Such involvement may jeopardise the efficiency of the service operation. In



addition, as services are a shared experience among customers, problems may arise as customers adversely influence one another's service experience. In the production process of highly customised services such as legal services, the customer may be involved (Muir & Douglas, 2001).

The key to good service is seen in the interaction between customer and service provider as each experience creates an impression about the service, known as 'moment of truth'. A service provider must therefore properly manage each moment of truth to provide a consistent message about the quality of service (Kotler *et al.*, 2002). How the individual service provider is perceived, his or her professionalism, appearance, and demeanour, has a major impact on the customers' perception of quality (Kotler *et al.*, 2002; Drummond, 1992). However, there are many separable services, where production precedes consumption and customers do not need to be present during production, as consumers and organisations today outsource activities they do not want to get involved in (Lovelock, 1983). Legal services typically have phases of intense interaction (e.g., in the very early phase when the client instructs the lawyer; or during litigation, in court), while other phases (e.g., while the lawyers prepare the legal due diligence) there may be less interaction.

Various elements of a service rely on individuals delivering them, which causes variation or heterogeneity in the service quality and delivery. The standard can vary between different 'producers' and different customers. In order to reduce the variability of output and attempt to minimise mistakes, some organisations attempt to standardise services with the use of service scripts (Muir & Douglas, 2001). However, despite using preventive systems, mistakes can still occur. Kotler *et al.* (2002) therefore suggested that professional service providers should anticipate where mistakes are most likely to occur and have recovery measures in place to maintain the trust of the client who experiences a mistake. While the paradigm states that services are variable and cannot be standardised, during the last 20 years services in many sectors have been standardised through the replacement of the human element by self-service technology (in the legal sector see also Susskind, 2008). Quality improvement (in the UK, e.g. through Lexcel – Law Society, 1999) efforts have reduced variability, so that today many legal services are relatively homogeneous. According to Mayson (2007: 4) "law has become more proceduralised and commoditised".

Vargo and Lusch (2004) challenged the service paradigm, arguing that it does not distinguish services from goods, but only has meaning from a manufacturing perspective and implies inappropriate normative strategies. Lovelock (1983) distinguished between perishability of productive capacity, of customer experience, and of output, noting that some service effects are durable and stressed the need to recognise the concept of advance inventory (pre-production) as well as post-production. Many information-based services, can be recorded, stored in electronic media and reproduced on demand. This can also help match supply and demand, which is a key issue in service operations. Supply will only match demand by accident. If demand exceeds the maximum available supply, there will be excessive waiting, if demand exceeds the optimal supply level, the service level will potentially be inferior, which, when expectations are not met, is likely to lead to dissatisfaction and negative word-of-mouth. When demand is lower than the optimal supply level, resources are underutilized and operating costs are needlessly increased. Kotler *et al.* (2002) cautioned that it may become more difficult to maintain consistency in quality when demand fluctuates widely. While the appointments system was designed to try and manage this problem, Muir and Douglas (2001) suggested that a website allows (potential) customers to make use of the service without an appointment and has the potential to increase the capacity of legal practices. (See also paragraph 4.1.4.)

### **2.1.2 Business services**

Until the recent downturn in the economy, business services have seen fast growth in terms of number of establishments and sales volume and represent the largest portion of service jobs in many industrialised economies (Fitzsimmons *et al.*, 1998). While in aggregate the key sectors have been growing, each major area divides into mature segments and high-growth segments with very different characteristics (Scott, 1998). The rapid growth reflected a significant tendency to ‘do-versus-buy’, i.e. to outsource business services such as legal and accounting functions (Tschetter, 1987) as opposed to providing them from ‘in-house’ personnel (Wilson & Smith, 1996). Turning to external sources for a variety of services allows an organisation to focus on what it does best. This increases the responsibility of the purchasing function of the organisation” (Fitzsimmons *et al.*, 1998). However, in the current economic climate, there is a counter trend of keeping work in-house as it is seen as a less expensive, more cost-effective solution (Bedlow, 2006a; Connections, 2009).

Fitzsimmons *et al.* (1998) classified business services based on the dimensions of high and low importance and focus of service (property, people, process). Legal services were deemed to be of high importance, with a focus on process. Moving from property to people to process, services become more difficult to evaluate as they involve more 'credence' and fewer 'search' or 'experience' properties (Zeithaml, 1981) (see paragraph 2.1.1). The decision process becomes dominated by surrogate measures such as past performance and professional certification. Purchasers place greater importance on quality for more critical services and other factors, e.g. experience (Fitzsimmons *et al.*, 1998) compared to price when selecting less critical services (Ostrom & Iacobucci, 1995).

Provider selection becomes more uncertain with 'important' services. The specifications may be exacting, but it becomes more difficult to assess and compare the ability of each potential supplier to meet those specifications because multiple criteria are involved in making the judgement (Fitzsimmons *et al.*, 1998). The commitment to the service supplier is substantial. Loyalty to the existing supplier is used as a risk reducing strategy. The difficulty in identifying completed units of service and the time dependency of the evaluation process pushes an organisation to increased trust and a higher level of commitment to the provider (Mitchell, 1990; Puto *et al.*, 1985).

### **2.1.3 Professional services**

'Professional services' is a generic term for a large number of sectors. It appears that a commonly accepted definition does not exist (Jaakkola & Halinen, 2006; Conchar, 1998). Scott (1998) distinguished seven key professional services which account for about 75 percent of their industry on a revenue basis. They include investment banking services; audit, tax, and accounting advisory services; commercial legal advisory services; marketing communications services; management and IT consulting services; recruitment, placement and personnel services; as well as market research services. Gummesson (1978) and McDonald and Stromberger (1969) classified five categories of professional services: accounting, auditing, and bookkeeping services; advertising agencies; business and management consulting services; engineering and architectural services; and legal services. Stock and Zinszer (1987) distinguished consumer professional services, sold to households, and

producer professional services, sold to organizations, and typically bought by industrial buyers. This thesis focuses exclusively on ‘producer’ legal services.

Research has often focused on particular features that distinguish professional services from other services (Brown & Swartz, 1989; Ettenson & Turner, 1997; Jaakkola & Halinen, 2006; Sharma & Patterson, 1999). Professional services are bought due to the need for special skills for a specific reason; the nature of the problem—one-off, sporadic recurrence, long term; legal requirements; the need for total objectivity and freedom from internal pressures; lack of special resources (e.g. laboratories); cross-industry fertilisation; anonymity or confidentiality (Wilson, 1972).

Professional services are commonly associated with specialist knowledge and expertise, high complexity, a high degree of customer participation and customisation, autonomy, altruism, self-regulation (Gummesson, 1978; Harrison, 1990; Hausman, 2003; Hill & Neeley, 1988; Kotler *et al.*, 2002; Larsson & Bowen, 1989; Løwendahl, 2000). Professional services are distinguishable by the special qualifications of the provider to solve problems (Gummesson, 1981). Gummesson (1978), Hill and Neeley (1988) and Hill and Motes (1995) emphasised the lengthy, formal academic preparation instead of technical/on-the-job training of professionals and their recognised group identity (see also paragraph 2.2.1). Jaakkola and Halinen (2006) criticised that apart from a few exceptions (Cunningham *et al.*, 2004; Thakor & Kumar, 2000), characterisations of professional services are mostly based on intuitive thinking or practical experience, rather than any empirical justification. The body of professional services research is based on the assumption that professional services differ from other services in some important respects and that these special features carry implications for the marketing and management of professional services (Ettenson & Turner, 1997; Gummesson, 1978; Løwendahl, 2000; Verma, 2000; Wilson, 1972).

The uniqueness of professional services firms lies in (i) selling and delivering on promises; (ii) intellectual capital; (iii) human capital management; and (iv) relationships (DeLong *et al.*, 2000). Professional services provision principally involves problem solving for the customer (Gummesson, 1978; Ritsema Van Eck-van Peet *et al.*, 1992; Wilson, 1972). Professional services firms are mandated by clients

to help understand and capitalize on opportunities or address challenges. They do this by using their internal expertise, or intellectual capital, i.e. the ability to think, conceptualise, and put those thoughts into action—as opposed to other organizations that create value by machines and tangible resources. The intangible nature makes work in professional services firms hard to reverse-engineer the process as well as difficult to evaluate. The range of possible causes of a problem and alternative solutions is much greater for professional services than other services. As clients contribute a significant input to the service process, there are no standardised solutions, but an obvious need to customise solutions for each client (Larsson & Bowen, 1989; Hill & Neeley, 1988). This notion, however, has been criticised in the meantime as advanced technology now enables better use of existing knowledge (see paragraphs 2.2.1.1, 4.1.4).

Inadequate ‘pools of available information’ concerning the most appropriate evaluative criteria for professional services as well as the inability of (potential) clients to interpret non-search properties of professional services (Hill & Motes, 1995) are therefore typical. Dependency on customer-provided input may have contributed to the conception that professional services are complex and heterogeneous (Ritsema Van Eck-van Peet *et al.*, 1992; Hausman, 2003). As ‘credence goods’ (see paragraph 2.1.1) the client has to rely on a professional because of her ability to better judge than the client what should be done. Many professional services have no concise warranties of performance: unlike goods that can be returned when they do not perform, professional services cannot. Poorly supplied professional services may remain undetected for a longer period of time and as a result, cause greater problems. Not only are professional services more difficult to evaluate than goods due to the lack of objective standards, but providers of professional services are often reluctant to provide benchmarks for testing (West, 1997). Matching payments to the service provided is therefore imprecise.

As clients must depend on the service provider, some level of trust is necessary for exchange to occur in professional services (Halinen, 1996). The constant interaction between service provider and client makes the management of expectations paramount. The assets of professional services firms are also nearly entirely human, and include knowledge, expertise, and reputation of its professionals. This

necessitates a strong recruitment and retention programme as well as knowledge management programme to codify and share project learning (DeLong *et al.*, 2000).

In professional services firms the relationships professionals have within their firms, their profession and their clients are critical to achieving competitive advantage (see also paragraph 2.3.3.2). According to DeLong *et al.* (2000) it is often unclear, until a given professional leaves a professional service firm, whether a client's loyalty is to the individual professional or to the firm. Professional services firms can either succeed by attracting and retaining professionals who have these relationships or by making client relationships 'firm-specific' instead of 'professional-specific'.

The foundation of professional services is the belief in the provider's 'benevolent intent' and the assumption that the service provider can be relied on to act in the client's best interests, rather than interests such as profits or status (Mills *et al.*, 1983; Løwendahl, 2000). It is therefore assumed that a degree of altruism is associated with professional services (Sharma, 1997). This trust is supported by another proposed professional attribute, namely self-regulation (Hill & Neeley, 1988).

Professional services have further distinct challenges that set them apart from other services (Kotler *et al.*, 2002). Third-party accountability means that professionals face limits in how they satisfy their clients' needs in ways that conventional businesses do not. A lawyer cannot offer to overlook certain laws for a client. Professionals not only serve their client, but simultaneously also a wider public to avoid risking a loss of professional trust or a loss of their licence to practise. Another professional feature is the autonomous status that professionals attach to their work (Harte & Dale, 1995). Autonomy refers to professionals' freedom to exercise individual judgement, define problems and the means for their resolution without external pressures from clients, non-members of the professions, or the employing organisation (Ritsema Van Eck-van Peet *et al.*, 1992; Harte & Dale, 1995). Autonomy can also be considered a requirement of objectivity. Professional service providers are expected to be independent of suppliers of other goods and services (Gummesson, 1978).

The professional's prior experience with similar situations is an essential criterion in buying situations of professional services. Professionals need to be able to demonstrate their specific experience to obtain clients' confidence. Unlike in product

marketing, ‘newness’ is not a desirable attribute in most professions. The differentiation of professional services offerings is difficult to achieve both objectively and subjectively. Conventional quality control mechanisms cannot be applied in professional services: statistical sampling cannot be done to ascertain a desired level of quality. Instead, they must emphasise finding good people and insist that they work reliably. The use of salespeople is not advisable in professional services as buyers want to meet and get acquainted with ‘their’ professional. However, many lawyers do not want to have anything to do with selling, and many others do not have personal characteristics that would make them good at selling (Kotler *et al.*, 2002). (See also paragraph 4.2.3.)

## **2.2 Legal services**

### **2.2.1 Definition and characteristics of legal services**

#### **2.2.1.1 Political and legal literature**

While definitions of (professional) services in the marketing literature typically concentrate on the terms of delivery and interaction (see paragraph 2.1), definitions of legal services in the political and legal literature instead focus on the scope, content, and provider of the work. Legal services have been defined as “the work performed by a lawyer for a client” (Law Dictionary) in the most simplistic way. The Royal Commission on Legal Services defined legal services “as any service which a lawyer performs for his client and for which professional responsibility rests on him. (...) Services which are ‘legal’, in the sense that a lawyer would perform them in the ordinary course of practice, may also be performed by nonlawyers” (The Royal Commission on Legal Services, 1979). This definition leaves open the interpretation of the ‘ordinary course of practice’ which, for the purposes of enforcing the Solicitors’ Practice Rules, the Solicitors Regulation Authority determines on a case-by-case basis (Clementi, 2004). The Committee on the Future of the Legal Profession (Marre Committee, 1988) suggested that

*“‘legal services’ is not a phrase which is susceptible of a precise definition. Following the broad approach of the Benson Commission, (paragraph 2.2) we have taken it to include any service which might be available to help people to deal with legal problems regardless of whether payment is to be made from public or private funds. The phrase includes both criminal and civil legal services and also includes legal advice, legal assistance (for example in conveyancing and in the making of wills) and legal representation” (Marre Committee, 1988).*

The Lord Chancellor's Department agreed in the Report of the Review of the Regulatory Framework for Legal Services in England and Wales (Legal Services Review, 2004) that "[a] comprehensive definition of what is meant by legal services is very difficult to frame, but, broadly speaking, legal services are concerned with the advice, assistance and representation required by a person in connection with his rights, duties and liabilities".

Mayson (1997) acknowledged the challenge of defining legal services, stating that in the past, it might have been possible to do so in reference to activities carried out by lawyers and law firms. This is, however, no longer sufficient or practical. The borders between the different professions are being eroded due to financial institutions and accountants now offering services that were once the preserve of lawyers. "[M]ost of the work that lawyers do is not, in truth, legal, and could be done by someone else" (Mayson, 1997: 12). The blur between professional services firms, other service providers, and the advent of multidisciplinary practices has created a highly competitive environment that suggests that law firms perhaps need to consider offering non-legal services in the future.

In the light of recent efforts in England and Wales (see also paragraph 4.1.1) there have been many attempted definitions of legal services to ascertain the range of services for which the regulator is statutorily responsible. The 2004 Report of the Review of the Regulatory Framework for Legal Services in England and Wales ('Clementi Report') stated that while a precise definition of legal services is desirable, it is hard to prescribe the boundaries of any industry, and there are always questions at the margin, particularly as new services arise. Part of the existing definition of legal services for regulatory purposes is set by reference to the type of service itself, and part by reference to the type of provider. Currently, there are seven forms of legal services that are subject to statutory regulatory control: the right to conduct litigation; the right of audience in the courts (advocacy); the provision of immigration services; certain probate services; conveyancing; notarial acts; acting as a commissioner for oaths (DCA White Paper, 2005).

The Legal Services Review (2004) recognised that legal services may change over the years with the prevailing values of society, the legislative will of Parliament and the decisions of the courts. It further stated that the Government agrees that the created



Legal Services Board will need to be able to exercise judgement in drawing the boundaries of ‘legal services’. Legal services are defined as concerned with the advice, assistance and representation required by a person in connection with his rights, duties and liabilities. This would exclude any form of judicial or quasi-judicial function (including mediation); academic work or writing of books on legal issues, and advice which is not given in the course of a business or on which individuals are not intended to rely (DCA White Paper, 2005).

The exclusion of advice ‘on which individuals are not intended to rely’ is in conflict with Susskind, who predicts that many features of legal services and legal processes of today will be replaced by legal information services. He suggested that many lawyers will

*“assume the role of legal information engineer and devote much of their professional lives to the design and development of legal information services and products. (...) The ultimate deliverable will be reusable legal guidance and information services pitched at a level of generality considerably higher than the focused advice which characterises the legal advisory work of today”* (Susskind, 2000: 102).

The client-lawyer relationship characterised by being tailored to the specific situation will change to an information package designed for direct consultation by non-lawyers. According to Susskind (2000, 2008), legal information will be reusable and well suited for repeated consultation. It will be applicable in many circumstances and for many different users. Once it becomes practicable and financially viable for non-lawyers to obtain usable legal guidance, earlier legal input in the life cycle of transactions and disputes will become commonplace. Lawyers will develop suites of legal information products, such as ‘legal health checks’ and ‘legal risk management tools’. The prevalent system of hourly billing, which according to Susskind (2000, 2008) penalises the efficient and rewards the indolent, will be displaced by some form of value-billing which entails charging for the value of some services to the client. Legal information services will be similar to commodities, selling in high volumes for mass consumption at low prices.

This thesis will follow the suggested definition of the ‘Clementi Report’ and define legal services as concerned with the advice, assistance and representation required by a person in connection with his rights, duties and liabilities (see paragraph 1.4). It further regards the actual performance of services to the client, using the underlying

basic and applied knowledge, the application of abstract principles of law to the concrete facts of the client's case to advise the client about what they should do next. This definition includes the different types of benefits clients might look for when consulting a lawyer or law firm. The chosen definition is pragmatic, referring to the provision of business law advice and solutions to medium-sized companies' business problems.

#### **2.2.1.2 Marketing literature**

Marketing literature regards legal services as highly intangible, which accentuates the considerable level of uncertainty that exists among clients, as high contact people-based services exchanges requiring large amounts of expertise (Morgan, 1991; Thomas *et al.*, 2001). Legal services are high in credence qualities, difficult to evaluate (Parasuraman *et al.*, 1985) (see paragraph 2.1.1) and cannot be sampled in advance. They generally occur in a simultaneous production-consumption relational exchange (often over time) that requires considerable amounts of empathy and personal trust depending on the nature of a client's service requirement (Thomas *et al.*, 2001). This intangibility often represents a significant level of uncertainty and risk for clients (Herbig & Milewicz, 1993).

Lovelock (1983) classified legal services as services directed at intangible assets, highly customised and high with regard to the extent to which customer contact personnel exercise judgment in meeting individual customer needs. (This is somewhat in conflict with Maister's and Susskind's legal services definitions, see paragraph 2.3.3.2). Lovelock distinguished the nature of demand relative to supply of legal services as having narrow demand fluctuations over time and assumed that peak demand can usually be met without major delay, which may not universally be true for all areas of practices.

#### **2.2.2 The split profession**

The English legal system employs a 'split profession' (as opposed to a 'fused profession' in civil law countries), which distinguishes between the two separate branches of barristers and solicitors. Each has its governing body, The Bar Council and The Law Society. The barrister-solicitor distinction dates back to the 13th century, when English courts held that only advocates who had regularly come before them could argue a litigant's case (Epstein, 2006). The advocate was allowed to plead

only at the final argument stage, so that the litigant had to make the initial pleadings himself. These advocates were precursors to barristers. By the 15th century, litigants were allowed to hire out-of-court lawyers to submit pleadings in writing, antecedents to solicitors.

As the demand for legal services increased with economic development, so did the need for courtroom advocates. Inns of Court started to train and regulate the advocates drawn exclusively from the upper classes as the only people authorised to appear before high-court judges. In the 16th century, the division between barristers and solicitors became fixed. Clients dealt only with solicitors, and solicitors arranged for barristers. In the 17th century, solicitors gained limited rights to appear in the lower equity courts, but that exception reinforced the rule's vigour (Epstein, 2006). While barristers traditionally had a monopoly of pleading, representing litigants as their advocate before the courts of that jurisdiction, they usually could not be hired directly by clients. The first point of contact is still usually the solicitor, who then engages a barrister on their behalf if it proves to be necessary (Elliott & Quinn, 1999). Their direct contact with clients and expertise in procedure and documentation as 'officers of the court', made the solicitors exclusive gatekeepers to the legal process and to barristers.

Barristers' exclusionary practices had established their status to be superior to the solicitors. However, solicitors built their own monopoly and reached a position near equality with the Bar. In the mid 1980s, when a merger between the two professional bodies, The Law Society and The Bar Council, was proposed, the solicitors turned away (MacDonald, 1995) and are still separate today. The argument for the split profession was that barristers can form more balanced judgments about cases if they are a step removed from the clients and not financially obliged to them. Epstein (2006) argued that this does not explain why the law should mandate a form of doing business to assure an outcome that an efficient market could be expected to provide. Clients increasingly resist having to hire two layers of lawyers, and companies increasingly hire in-house lawyers who can litigate disputes as well as negotiate contracts. By and large, however, this is not the case in medium-sized companies. While acknowledging the split profession in the jurisdiction researched, this thesis focuses exclusively on solicitors.

## **2.3 The legal market**

### **2.3.1 Growth of the legal market**

Legal services have grown considerably since the 1990s and make a substantial contribution to the economy. They generated GBP 19 billion (or 1.73 percent) of the UK's gross domestic product in 2003. This was an increase in real terms of almost 60 percent since 1995. In 2003, the volume of UK legal services exported totalled GBP 1.9 billion, tripling since 1995. Total imports of legal services were worth GBP 403 million over the same period, making the legal services sector a net exporter to the value of GBP 1.5 billion (Regulatory Impact Assessment, 2006).

In the past 15 years the profession has also significantly grown in numbers. In 1990 54,734 solicitors practised in England and Wales, compared to 96,757 in 2004. In 2008 139,666 solicitors were on the Roll (Law Society, 2008). Mayson (2007) warned that the legal profession has twice as many qualified lawyers as will be needed in the new marketplace created by the Legal Services Act 2007. Law firms will be competing with big, established brands such as supermarkets and membership organisations, which would not use qualified lawyers for unreserved work. This is likely to leave firms with a difficult choice whether to get rid of qualified professionals or pay them less (Mayson as cited by Rothwell, 2008).

In contrast, the number of solicitors' firms fell from 10,120 in 1997 to 9,211 in 2004. This number decreased to around 9,000 firms in 2008 which is still deemed not sustainable in the market (Rothwell, 2008). Sole practitioners made up 45.3 percent of solicitors' firms and a further 39.7 percent had four or fewer partners, while 69.2 percent of solicitors worked in firms of five partners or more. The number of large practices (26 or more partners) has increased and in 1999/2000 generated 50.2 percent of the total GBP 10.53 billion generated by the profession (Regulatory Impact Assessment, 2006). In 1986, the largest UK law firm had about 300 lawyers (Mayson 1997 quoting Legal Business, 1996), today the largest UK firm, Clifford Chance, counts over 3,800 lawyers ([www.cliffordchance.com](http://www.cliffordchance.com)). Nevertheless—in contrast to other industries or professional services—no firm has reached a significant market share, dominating the entire legal market (Vaagt, 2005), however, the so-called 'Magic Circle' firms (an informal term for the five leading London-based solicitors firms including, Allen & Overy, Clifford Chance, Freshfields, Linklaters, Slaughter &

May) together dominate certain market segments, such as large M&A, high stakes litigation, complex corporate and financial work.

### **2.3.2 Market segmentation theory**

The activity of marketing and the concept of the market are inextricably linked. If an organisation is to enjoy any level of marketing success, this is through an ability to match its own capacity to the requirements of the marketplace (Jenkins and McDonald, 1997). A market is defined as a set of actual and potential buyers of a product or service who share a particular need or want that can be satisfied through exchange relationships (Kotler & Armstrong, 2008). The process of segmenting a heterogeneous market into distinct homogeneous clusters of buyers is central to this matching process as each might require different products/services or marketing programme (Assael & Roscoe, 1976; Wind, 1978). A market segment consists of consumers who respond in similar ways to a given set of marketing efforts (Kotler & Armstrong, 2008).

Markets have been defined in a number of ways, by reference to factors such as organisational size and resources; interest profile; buying criteria; the buying process; and the degree of local autonomy as bases for segmenting organisational markets (Kotler *et al.*, 2002). Abell (1980) used three dimensions to segment markets: customer groups, customer functions, and technology. Jenkins and McDonald (1997) suggested market segmentation as a function of organisational configuration. Other segmentations are characterised by factual attributes such as industries, competition, or market exit/entry. Market segmentation is a preliminary step in marketing strategy allowing targeting a specific market segment, as in Porter's (1980) basic competitive strategy of niching. Most firms will find it more profitable to focus on some segments of the market.

Market segmentation becomes necessary to balance diverse customer needs with the capabilities and resources as in most markets the breadth of customer requirements is too extreme to allow single organisations to satisfy all customer needs all of the time (Dibb & Simkin, 1997). Literature suggests that market segmentation benefits organisations as it leads to a better understanding of customers' needs and characteristics (Beane & Ennis, 1987), which allows the development of better targeted marketing programme and greater insight into the competitive situation to be

achieved (Frank *et al.*, 1972). It may also help identify new opportunities in underserved customer groups (Dibb & Simkin, 1997), which is particularly valuable in generally mature or declining markets, such as the law, where some segments may still be growing (Hooley & Saunders, 1993). Market segmentation originates from economic pricing theory, suggesting that profits can be maximised by setting prices which discriminate between segments (Frank *et al.*, 1972).

According to Marcus (n.d. a), rather than marketing the organisation itself, law firms market their services and practices to specific market segments. It is impossible to claim ‘We do better audits,’ or ‘We write better briefs’ as it is not only unethical, but certainly not credible. Marcus instead suggested promoting skill and practice areas to the target market segments. While this does not preclude a marketing campaign that enhances name recognition, presence, and firm prestige, segmented marketing designs programmes go straight to target markets and give firms more liberty in promoting individual firm skills.

While market segmentation is often seen as a process, it can also be viewed as a perspective, that is, an attempt to make sense of the organisation’s environment (Jenkins & McDonald, 1997). The idea of markets should be a construct enabling organisations to simplify and therefore observe and predict consumer behaviour. In practice, however, market segmentation too often reflects the organisation’s internal issues and history, and is process- or product-led instead of customer driven segmentation (Knight, 1991; Jenkins & McDonald, 1997). Additional challenges arise when strategies and marketing programmes have been devised with little or poorly structured background marketing analysis in regard to market segmentation.

### **2.3.3 Segmentation in the legal market**

To be of use for law firms, market segments must have substance, be readily identifiable and measurable, they must be accessible to the firm and the firm must be able to build sound marketing plans around them (Gavulic & Quinlan, 2006). A law firm can specialize in serving one type of end user, such as specialising in the criminal, civil or business law market, or specialize in serving small or medium-sized customers who are neglected by the majors (Kotler & Armstrong, 2008). This thesis focuses on the segment of medium-sized companies. While marketing literature typically discusses market segmentation from the buyers’ point of view, in particular

by reference to their needs and wants, in some industries such as legal services, segmentation is often driven by the providers' organisation or the sort of legal work.

### **2.3.3.1 Client-led segmentation**

Marketing theory typically focuses on segmenting markets in groups of consumers with similar behaviour and needs that differ from those of the entire or mass market. By identifying market segments that are similar in their behaviour, legal services providers can develop and tailor their service offering to closely match the preferences and needs of this group. Kotler *et al.* (2002) suggested geographic, demographic, psychographic, and behavioural segmentation with regard to consumer markets, while organisational markets are segmented on the bases of organisational size and resources, interest profile, buying criteria, buying process, and degree of local autonomy. Given that medium-sized companies are organisations, the following discussion of client-led market segmentation will primarily follow the organisational approach and touch on consumer segmentation due to the importance of the human element in such organisations.

Organisations of different sizes are likely to have different needs with regard to legal services due to the different scale and scope of their businesses as well as available resources. This may not only influence the type of legal service bought but also the volume of legal services in absolute and in relative terms (this, in turn, is influenced by whether an organisation has an in-house legal department). In addition, organisation size and resources are likely to influence the probable user status, such as portion of non-, ex-, potential, first time, regular users, as well as their usage rate (e.g., light-, medium-, heavy users), and the level of expertise of the buyer, experienced vs. non-experienced buyer.

The majority of medium-sized companies outsource all their high risk legal matters, defined as high value transactions, matters with potential impact on company and/or personal reputation; company liability related to core product/service; or matters requiring a high level of expertise (LexisNexis, 2006). Low risk matters, defined as involving limited exposure/risk to the company; simple, predictable outcomes of high volume/recurring matters are mostly handled in-house despite the typical lack of in-house lawyers in medium-sized companies. A DTI (2004) study came to similar findings. Just over a third (35.6 percent) of new small business owners (the study

defined small businesses as enterprises with up to 250 employees, which would qualify as a medium-sized company in the definition adopted in this thesis) had not sought advice from anybody before starting up, while a further 17.8 percent had consulted nobody except their friends, family or informal contacts. The business owners who sought advice consulted mainly accountants (22.0 percent) and banks (16.5 percent) rather than lawyers (7.3 percent). When seeking advice on business regulations, the three main sources of advice for small businesses did not even include lawyers: the business's accountant (12.8 percent), trade or business associations (10.7 percent) and public information sources (e.g. the Internet, library or press) (6.3 percent) were typically consulted.

Small and medium-sized companies tend to predominate in some industries. Construction, distribution businesses, hotels and restaurants, real estate, renting, and business activities are rather labour-intense (Eurostat n.d. a) and are often specialised in greatly differentiated goods and services, which require highly skilled labour force and often require investments in human capital rather than capital goods (Günterberg & Kayser, 2004). It is therefore little surprising, that the most common practice areas sought by medium-sized companies were corporate/commercial (76 percent) and employment law (73 percent), in addition to labour and employment law (Nitschke *et al.*, 2004; Müller *et al.*, 2005; DTI, 2004), tax (Müller *et al.*, 2005; Englisch, 2007) and succession (Englisch, 2007). Large medium-sized companies also needed merger and acquisition (M&A), real estate, and financial legal advice (LexisNexis, 2006). The study found differences with regard to the industry sectors. Intellectual property appears to be much more important to the manufacturing/production sector than the retail and services sector. The need for employment law advice is more prevalent in the labour-intensive service and retail sectors than in manufacturing and production (LexisNexis, 2006). While global markets were once primarily the concern of large multinational firms, today global competitors, customers, and suppliers are a fact of life for many businesses independent of their size (Webster & Deshpandé, 1990), which is likely to necessitate international legal services.

Kotler *et al.* (2002) identified the degree of local autonomy as a basis for segmenting organisational markets. Autonomy in decision making is likely to depend on the ownership structure or legal form of client (e.g., privately owned, listed company), as well as size.



### 2.3.3.2 Firm-driven segmentation

Segmentation in the legal market is traditionally based on firm-driven characteristics, such as the size of the firm; the firm's scope, i.e. high street, regional or international law firm; the firm's value position; its focus (boutique, full-service); business structure (traditional law firm, multi disciplinary practice-MDP, legal disciplinary practice-LDP); organisational form ('traditional' law firm, association, bank, supermarket etc.); ownership form (traditional or limited partnership, limited liability partnership, limited company, PLC, or mutual society, available to alternative business structures-ABS). Due to the Legal Services Act 2007, the range of options regarding organisational form and ownership has risen significantly.

Within the legal sector markets are traditionally quite fragmented environments, populated by a large number of small- and medium-sized organisations (Mayson, 2007). Therefore, it appears to be inappropriate to regard the legal market as one homogenous market. There is an "increasing polarisation between the largest and smallest law firms—to the point where it probably no longer makes sense to talk of 'a legal profession'" (Mayson, 1997: 14). Galanter and Palay (1991) noted an intensely stratified profession. Mayson (2007) pointed out that in a fragmented market, a number of firms will usually adopt the same strategic option. However, the difference "lies in how a particular firm seeks its competitive advantage over other firms adopting the same strategic option, and is primarily a function of business strategy" (Mayson, 2007: 119). Competitive advantage, then, is principally derived from the effective combination of resources to deliver value to the client and to the firm. Porter (1985) called it a firm's ability to perform in one or more ways that competitors cannot or will not match. This uniqueness is called USP, or 'Unique Selling Proposition'.

To compete successfully in the fragmented legal marketplace, firms need to achieve competitive advantage. Mayson (2007) lists three key elements for competitive advantage: (i) difference: what the firm does must be different from what its competitors do; (ii) economic value: the difference needs to deliver meaningful value to clients or to the firm; (iii) sustainability: competitors must not be able to copy the difference in the short term. Their position in the market is derived from the configuration of their services, target clients, and geography; their perceived

credibility to offer that configuration, based on its resources and track record; the significance and worth to the client of the services delivered (Mayson, 2007).

In line with the size of a firm in terms of number of partners or fee-earners, the scope of a firm influences which market segment a firm belongs to. A high-street firm will target and attract a different clientele than regional, national, or international law firms. It appears that clients typically prefer to work with firms that correspond with their own size and scope. Studies have shown that medium-sized companies typically prefer to work with medium-sized law firms (LexisNexis, 2006). An exception is large, complex deals, for which clients prefer the deep resources and capability of large(r) firms (Hardcastle, 2004).

The Legal Services Act 2007 (see also paragraph 4.1.1) permits a number of new competitors through alternative business structures (ABS). These ABSs are a new form of business vehicle in which lawyers and individuals from other professions or business backgrounds can form a business together that provides at least one reserved legal activity. Some feared that “[e]xternal ownership of law firms will ‘drive high street firms out of business’” (Rothwell, 2007) and launched a campaign against the introduction of ABS. However, banks, insurance companies, associations etc., have already started to offer legal services, thus competing with traditional law firms. “We have already seen the growth in legal advice lines, often as part of a union or human resources package within firms” (Ashford, 2004). Even supermarket chain Tesco launched its online legal store offering customers legal documents in 2004.

Previously forbidden in England and Wales, the Legal Services Act 2007 permits multi-disciplinary practices (MDPs), professional services firms where lawyers and non-lawyers are in business together, and legal disciplinary practices (LDPs), firms combining solicitors, barristers, licensed conveyancers, legal executives, or patent and trade mark attorneys (Mayson, 2007). While a discussion of the advantages and disadvantages of such firms are outside the scope of this thesis, these new practices may become new market segments in the future.

Finally, the delivery of service is not only vital to strategic thinking in law firms (Mayson, 1997), but influences the market segment of a firm. When clients needed legal help in the past, this was obtained through direct consultation with lawyers, a

fact-to-face, one-to-one, consultative, advisory service, typically delivered on an hourly billing basis. Lawyers were the interface between non-lawyers and the law (Susskind, 2008). However, the Internet has fundamentally changed the delivery of legal services. Clients today have access to sophisticated online facilities that not only allow them to be better informed and potentially more critical clients, but may even make (traditional) legal advice unnecessary.

Dis-intermediation, where demand for lawyers' services diminishes, is said to take place unless lawyers add tangible value to the client or contribute benefits beyond that which can be delivered by an Internet-based service. If clients can obtain a cheaper, quicker, better, or more convenient service through the Internet, then lawyers may find their traditional work to be under threat (Susskind, 2008). 'High-end' legal work, high value, complex and socially significant service, as well as arcane, obscure or esoteric legal work, will still require the services of specialist legal advisers operating in the tradition fashion. This mode of working may be streamlined and improved, and be delivered through the use of client relationship systems. The knowledge created in delivering the advice is likely to be captured and preserved for later use in internal knowledge systems (Susskind, 2008).

Schmenner (1986) categorised services along the two continuums, degree of interaction/customisation and degree of labour intensity. Maister (1997) differentiated professional practice with regard to the degree of customisation necessary to solve the client's problem and the degree of client contact that the client requires in the delivery of the service. 'Pharmacists' practices require a low degree of client contact and value is rendered in the professional's 'back room'. Client focus is on results only. The client wants the service performed to strict technical standards at a minimal cost. 'Nurse' practices require a high degree of client contact. Value is rendered through interaction with the client. The ability to counsel and guide the client through the process is important as the client wants to be nurtured and nursed. 'Brain surgeons' combine high levels of customisation, creativity, and innovation with a low degree of client interaction. Clients seek a professional who is on the leading edge of his/her area of expertise to solve the 'bet-the-company' problems of the client. 'Psychotherapists' also solve 'bet-the-company' issues, only this time the client wants to be intimately involved in the problem-solving process. Clients want the professional to help them to understand the problem and the options. There is a

market for each of these four types of providers or market segments, however each practice represents a profoundly different business model. “Virtually everything from marketing to hiring, from managerial styles to economics, from key skills to performance-appraisal criteria varies significantly, depending on which service [a firm is] trying to provide” (Maister, 1997: 118).

### **2.3.3.3 Matter-driven segmentation**

Rather than focusing on the client, matter-driven segmentation is driven by internal factors. Law firms traditionally organise their practice areas along different services or product lines, such as mergers and acquisitions (M&A), banking law etc. Lowry *et al.* (1995) suggested that it is increasingly difficult to remain knowledgeable about all aspects of law and that lawyers should address the issue of specialisation on certain types of law.

Different market segments also exist in terms of the value position of the services. Henning (2006) stated that until recently, the legal profession operated like a medieval guild. Lawyers were upstream of their clients and could determine the quality of legal services, the pace at which they would be delivered, and the costs. This is no longer the case as different legal services command different market values. In particular full-service firms occupy a mix of value propositions, i.e. market segments, which leads to marketplace confusion, internal cultural frustration etc. (Henning, 2006).

According to Henning (2006), legal services are distinguished according to their value focus, i.e. from high (‘bet-the company’ services, such as major intellectual property (IP) litigation; catastrophic litigation, and major insolvencies which command about 5 percent of the market), to higher than average (‘expertise/reputation’ services, including IP; complex litigation–securities, class actions; larger M&A matters; some product liability; white collar crime, making up 20 percent of the market); to ‘bread and butter’ matters (small to medium-sized M&A; most banking matters; some product liability; environmental matters; general corporate counselling; commercial litigation; most labour & employment matters; commercial real estate) as well as legal ‘commodities’ (residential real estate; worker’s compensation; collections; foreclosures; loan documentation for banks; small employment cases; some patent

prosecution; general negligence; simple tort cases) making up 75 percent of the market. The latter segment appears to be growing.

More and more legal services are bought as generics, due to the trend of commoditisation in legal services (Grimshaw & Novarese, 2007) (see also paragraph 4.1.4). Depending on the value or risk associated with the matter (as perceived from the client), clients will have different price sensitivity for the different value segments. High value of the matter means low(er) price sensitivity, whereas low value associated with the matter will result in high price sensitivity of the clients. To evaluate and assign each matter, some clients use a value matrix that categorises the risk factor, complexity, corporate implications and skills involved to determine how much should be spent and whether the matter is best handled in-house or by outside counsel, differentiating between ‘mission-critical’ and ‘non-critical’ (Herschensohn, 2004). This process is often formalised in larger companies, while medium-sized companies typically use a more intuitive approach based on the decision-makers business acumen.

Mayson’s (2007) matrix recognises the ‘perspective’ dimension. A ‘high value’ service, such as corporate M&A, is “a positive purchase by the client, usually designed to secure a business, competitive or personal benefit, significant enough to justify serious legal fees” (125). An ‘expensive’ service, e.g., defendant litigation, bet-the-company issues, is a negative or ‘grudge’ purchase, typically forced on the client by external circumstances or events. It is serious enough to the continuity/well-being of the client to justify ‘expensive’ legal fees. ‘Routine’ services (commercial contracts etc.), are perceived as “[r]un-of-the-mill transactions or events a necessary consequence of business or personal life and required to secure a (usually) positive benefit” (Mayson, 2007: 126). ‘Necessary evil’ services include property transfers or loan agreements, and are seen as necessary ‘running costs’ of doing business, usually required to ensure compliance with obligations or to protect client’s legal entitlements. They are not seen as adding any value to the underlying transaction or event. Finally, ‘low value’ services such as debt collection, are standardised legal commodities, typically carried out in volume for client and perceived to have a low (unit) value.

Maister (1993) differentiated three key benefits that clients seek with regard to legal/professional services: expertise, experience, and efficiency. The relative priority that a client places on these elements can vary dramatically. ‘Expertise’ or ‘brain surgery’ services are sought when a client has a complex, high-risk and unusual problem. Clients expect creative, innovative solutions to one-of-a-kind problems. While Maister (1993) acknowledged that this would be consistent with the traditional self-image of many professions, clients needing such services represents only a small proportion of the aggregate fees spent in any given practice area. Many more clients seek ‘experience’ or ‘grey hair’, when they realise that their problems probably have been faced and dealt with by other companies before and require less customisation. Therefore, clients “will be shopping less for the sheer brain power of critical individuals and more for an organization that can bring past experience to bear in solving these problems” (Maister, 1993: 21). When clients are faced with low-risk, ‘familiar’ types of problems, clients will seek ‘efficiency’.

Different market segments may also exist with regard to the type of relationship (see paragraph 3.3.3.2) a client might seek, i.e. on-going counselling or ‘distressed’ services as practised e.g. by firms like Wachtell (Lorsch & Graff, 1995). While many law firms seek ways to develop formal, ongoing relations with their clients to ensure repeat business and/or ongoing financial support (Lovelock, 1983), it would be too simplistic to assume that all exchanges within the legal market are based on long-term relationships. Indeed, it has already been accepted that not all service exchanges have the potential to be relational (Crosby *et al.*, 1990). In utilising the conceptualisation of an exchange continuum (Dwyer *et al.*, 1987), it is clear that the legal market is characterised by exchanges of both a transactional (impersonal, discrete, episodic) and relational (close, enduring, interdependent associations) nature.

## **2.4 Conclusions**

The market for legal services clearly shows signs of maturity (Young, 2005) with increasingly disappearing profitable markets due to client defections or promiscuity (Simmons, 1996), overcapacity and the current unfavourable economy. Industry consolidation is likely to continue to take place as rivals compete for a finite number of client accounts (Scott, 1998). Segmentation at the top and lower value ends of the market has led to even higher levels of competition in the mid-value segment of the market (Rubens, 2004).

The attractiveness of different segments varies dramatically, as do the competitive demands placed on the firms. Firms in any given segment need to understand the nature of competition and its key drivers: growth and cyclicalities; entry and exit barriers; client dependency; recruitment and retention patterns; threat of service substitution; and impact of government activity.

*“Good firms will always make money in any segment, but the message is clear. In the mature segments with declining margins and low differentiation, firms either have to consolidate and win scope and scale economies essential for servicing the ever-larger accounts of global clients or they have to specialize, focus and differentiate. The option of doing nothing is no longer a viable one—medium-sized firm will increasingly be in trouble” (Scott, 1998: 33).*

Firms need to differentiate themselves from competitors in their particular sector of the market. Clear and distinct positioning is vital in such markets and will become increasingly so among law firms (Gavulic & Quinlan, 2006).

However, the majority of clients find it difficult to differentiate between firms. They look alike, sound alike, and act alike (Malpas, 2003). Successful firms often build their reputation on one or two core-practices and work to ensure that these stay cutting-edge (Gardner *et al.*, 2007). Tradeoffs between practice areas are needed in order to achieve a distinctive, more focused strategic profile as a firm—one that does not try to cover every competitive base or ‘be all things to all people’. Tradeoffs are often avoided or ignored by the leaders of many firms, either because they do not feel able to carry such a programme through their partnership, or because they are unaware that this route offers the most potential for achieving the sustained higher profitability that accompanies a distinctive strategic position valued by clients (Gavulic & Quinlan, 2006). Firms failing to achieve a significant degree of differentiation that is both of value to clients as well as sustainable, will eventually get swamped by those that do. This phenomenon is a feature of all competitive businesses, and there is no reason to believe that the legal market will not eventually follow the clear segmentation evident in other market sectors.

Segmentation is important in marketing as it helps focus the firm’s marketing (see chapter 3) on the ‘right’ clients and can be done in many ways. What is important is that all marketing efforts are geared to this sector of the market instead of trying to be all things to all clients. It is also a basis to research the needs in that marketplace to ensure that the firm identifies appropriate opportunities. Such an opportunity may be

medium-sized companies (which do not necessarily have to be 'local'): "In the great scuffle for global glory local clients tend to get forgotten, however, they still constitute the bulk of professional services firm activity" (Scott, 1998: 15).



A lawyer once told me that if you're smart enough to be a lawyer,  
 you're smart enough to do your own marketing.  
 To which I replied,  
 True, and if you're smart enough to be a lawyer  
 you're smart enough to be a nuclear physicist  
 but it doesn't make you one.

(Bruce Marcus)

## CHAPTER 3

### The theory and practice of legal marketing

Legal marketing, as the marketing of legal services is commonly called, is the application of the marketing concept to the legal services sector. While it shares many of the same theories, its unique nature poses challenges and offers opportunities that differ from goods-oriented marketing as well as non-professional services and professional services marketing. This chapter discusses both the theoretical foundations and the practice of legal marketing as it has gradually come to embrace strategy (the game plan for reaching a firm's objectives) and tactics (such as specific marketing approaches, see paragraph 3.1.1, the concept of 4 P's).

#### 3.1 Theoretical foundations

##### 3.1.1 Marketing

Bartels (1962) suggested that the term 'marketing' is a mere application of a new name to an old practice. It is a combination of factors which have to be taken into consideration prior to selling or promotional activities, which Carratu (1987) traced back to as far as 7000 B.C. Sellers and buyers in a market have always sought to understand each other's needs, capacities, and psychology, with the goal of getting the exchange of goods or services to take place. Such actions embody many aspects of today's marketing (Sheth & Parvatiyar, 1995b). Following this conceptualisation of marketing, providers of legal services 'automatically'—in the sense of intentionally or not—market their services and have always done so.

Conventional marketing theory, however, suggests that marketing as it is defined today is not an accidental, automatic, but a thoughtfully planned management activity (Grewal & Levy, 2008). It associates the birth of modern marketing with the beginning of the 20<sup>th</sup> century, although Young (2008) suggested that companies started to use 'modern' marketing techniques as early as the 1780s. Marketing grew in importance as an academic discipline and a managerial function in the 1960s. Some

scholars argued that before WW1, production orientation dominated management thought and customers were perceived as not being part of an organisation's operation, and thus of limited economic importance for the management (Coase, 1937). Most organisations believed that a good product or service would sell itself. Legal services providers held on to this view for many years after it was widely rejected as a management maxim.

Between 1920 and 1950 production and distribution techniques became more sophisticated and organisations produced more than the market demanded. Consequently, the focus changed to selling and advertising the goods and services (Kotler & Armstrong, 2008). This may be compared to law firms embracing advertising and the more recent business development orientation of marketing in the legal services sector. In the 1960s organisations started to see marketing as a critical management function which focused on the satisfaction of their customers. This notion became widely accepted as organisations adopted the concept of market orientation (Kotler, 1967), shifting the focus from the organisation (supplier) to the customer (Gummesson, 1996). To satisfy the customer is the mission and purpose of every business (Drucker, 1974). Moorman and Rust (1999) suggested that the role of marketing is to be client facing, as an intermediary between the organisation and its clients. In firms where marketing is well established, the understanding of marketing as a market-oriented management function is often embraced. The aim of marketing is to help the organisation gain an advantage over competitors by offering greater customer value. The particular benefit provided is called the USP (unique selling proposition) (Kotler & Armstrong, 2008).

Marketing has been defined in many ways. It is a business orientation, a guiding philosophy, an ideal, 'state of mind', a 'way to do business' (Baker *et al.*, 1994; Barksdale & Darden, 1971; Felton, 1959; Greenley, 1995a; 1995b; Hooley *et al.*, 1990; Houston, 1986; Hunt & Morgan, 1995; Lusch & Laczniak, 1987; McNamara, 1972; McKenna, 1991) or the whole business seen from the point of view of its final result, the customer's point of view (Drucker, 1954). The Chartered Institute of Marketing (CIM) defined marketing as "the management process responsible for identifying, anticipating and satisfying consumers' requirements profitably" (CIM, 2007b). This definition was adopted for this thesis (see paragraph 1.4).

The basis for such thorough understanding is marketing research, the systematic design, collection, analysis, and reporting of data relevant to a specific marketing situation facing an organisation (Kotler & Armstrong, 2008) (See also paragraph 3.2.3, competitive intelligence).

A number of scholars point out that marketing is not a ‘separate’ business function (e.g. Berry, 1983; Calonius, 1986; Drucker, 1954; Grönroos, 1989; Gummesson, 1987; Hakansson, 1982; Treacy & Wiersema, 1993), but central to modern organisations (Kotler & Clarke, 1987), directly affecting an organisation’s performance (Horng & Chen, 1998). McGee and Spiro (1988) integrated the wide range of definitions and described marketing as a philosophy (culture), a concept (strategy), as well as an implementation (tactic).

Morgan *et al.* (1994) introduced a framework for marketing, which includes the elements organisation for marketing; marketing information; policies; and strategies and tactics. Due to its inclusive nature, this framework was chosen to form the basis for the Interview Guide – Legal services providers (see Appendix A) and chapter 7.

Often referred to as the genesis of modern marketing was the introduction of the concept of the 4 *P*’s (product, price, place, and promotion) by McCarthy (1960). Porter (1980, 1985) introduced the concepts of marketing strategy, competitive advantage, and positioning which have been adopted by legal services providers more recently.

An important aspect of marketing is the concept of a brand as opposed to a generic product or service. Brands are a key element in a firm’s relationship with its clients as they represent clients’ perceptions and feelings about a product or service and its performance, that is, what it means to the clients (Kotler & Armstrong, 2008). Brands often provide the primary points of differentiation between competitive offerings, and as such can be critical to the success of firms. Wood (2000) defined a brand as a mechanism for achieving competitive advantage (see paragraph 2.3.3.2) for firms, through differentiation. The attributes that differentiate a brand provide the customer with satisfaction and benefits for which they are willing to pay. According to Kotler and Keller (2009), brands signal a certain level of quality and are promises to deliver a specific set of features, benefits, and experiences consistently to the buyer and are

often established to give clients a certain level of security. Positioning the firm as a ‘brand’ to differentiate it in the marketplace plays an important role in the marketing efforts of many law firms (see paragraph 3.2.1).

### **3.1.2 Services marketing**

The marketing of services was only recognised as a separate discipline in the 1970s. External factors such as the rising importance of services (the services sector made up an estimated 75 percent of the gross domestic product in the UK in 2006; The World Factbook, UK, n.d.), advances in technology, deregulations of service industries that caused new rivals to enter markets, intensified price competition, and raised consumer expectations shifted service marketing’s role from being modestly important to a core function (Lovelock & Wirtz, 2007). The emergence of marketing among legal services providers was mostly caused by similar external factors (see paragraph 4.1).

Initially, the academic debate centred on the goods vs. services marketing debate and whether services marketing was different from goods marketing. Scholarly literature was mostly conceptual (Blois, 1974; Johnson, 1964; Rathmell, 1966; Regan, 1963), and sought to provide definitions of services (Berry, 1980) as well as an account of the characteristics that differentiate services from goods (Sasser *et al.*, 1978). Shostack (1977) and Grönroos (1983) proposed the need for innovative marketing strategies and organisational structures for service firms. Due to the unique nature of services (Sasser *et al.*, 1978) (see paragraph 2.1.1), it was argued that many challenges occur that rarely, if ever, need to be considered in the production of goods (Hoffman & Bateson, 2006).

Service marketing theory developed a number of classification schemes. Deemed perhaps helpful in understanding what services have in common, they were criticised for failing to provide meaningful managerial recommendations. Booms and Bitner (1981) introduced an expanded marketing mix for services and suggested that the unique characteristics of services require a re-examination of the applicability of marketing strategies and organisation structures developed in the goods sector. Their 7 *P*’s include physical evidence, processes, and people.

With services marketing becoming an established and acknowledged field within the marketing discipline, research became more empirically based and theory-driven,

rather than focused on conceptual discussions. The differences between goods and services appeared to be assumed and scholars began to concentrate on problems stemming from the implications of these basic service differences. The adequacy of the '4P' model for services marketing was questioned altogether, and a new reference model was called for (Grönroos, 1994a, b). Grove *et al.* (2003) and Lovelock (2004) criticised the paradigm of the unique service characteristics. Lovelock (2004) proposed to define services marketing as marketing exchanges that do not involve ownership. In particular, he urged scholars to focus their attention on how value is created and delivered through non-ownership, which certainly applies to legal services.

### 3.1.3 Relationship marketing

Relationship marketing is a customer-centred form of marketing. Berry (1983) was the first scholar in services marketing to coin the phrase 'relationship marketing', emphasising the importance not only of attracting, but also retaining customers. Grönroos (1990a), Christopher *et al.* (1991) and Berry (1995) defined relationship marketing as attracting, developing and retaining customer relationships and emphasised the long-term benefits for the organisation. Sheth (1994) termed relationship marketing as the understanding, explanation, and management of the ongoing collaborative business relationship between suppliers and customers, and Kotler and Armstrong (2008) defined marketing in general as managing profitable customer relationships.

Many theoretical and empirical studies have been conducted to examine exchanges between buyers and sellers as ongoing relationships rather than discrete transactions (e.g. Anderson & Narus, 1984, 1990; Dwyer *et al.*, 1987; Frazier, 1983; Frazier *et al.*, 1988; Heide & John, 1990, 1992). Relationship marketing emphasises the benefits of retaining existing customers, as research has demonstrated that it costs about five times more to attract a new customer than to keep an existing one (Buttle, 1996; Haskett *et al.*, 1990; Holmlund & Kock, 1996; Reichheld & Sasser, 1990; Rosenberg & Czepiel, 1984). Mutual benefit is derived from business relationships beyond commercial interest (Sheth & Parvatiyar, 1995a). Zeithaml and Bitner (1996) identified five benefits an organisation will gain by adopting the concept of relationship marketing, namely: increased purchases; reduced costs; free advertisement through word-of-mouth; employee retention; the lifetime value of the

customer. McKenna (1991) deemed relationship marketing as an essential strategic tool as traditional marketing methods are too slow and unresponsive in a hypercompetitive marketplace. Continuously changing customer needs necessitate organisations to be market-, not marketing-driven. Dalgic (1998) found that the importance of relationship and interaction in buyer-seller situations is particularly important in European markets.

Relationship marketing exploded as a field of marketing enquiry in the late 1980s (Sheth & Parvatiyar, 1995b) due to intensified global competition, the growing importance of the service sector for the economies, and the movement of B2B markets towards supplier consolidation (Sheth, 2002), more demanding and sophisticated customers; increased fragmentation of consumer markets; rapidly changing customer buying patterns; continuously increasing standards in quality; the inadequacy of quality in itself to create sustainable competitive advantages (see paragraph 2.3.3.2); the influence of technology in almost all products and services; the unreliability of traditional marketing (Buttle, 1996; Peppers & Rogers, 1995). Schriver (1997) saw relationship marketing as the remedy for consumers' decreasing loyalty, which was caused by an abundance of choice; availability of information; entitlement; commoditisation; insecurity; and time scarcity and resulted in consumer defections, complaints, cynicism, reduced affiliation, greater price sensitivity, and litigiousness.

While Grönroos (1995) suggested that customer satisfaction becomes the responsibility of everyone in the organisation only under relationship marketing, Christopher *et al.* (1991) stressed the changing character of marketing from transaction-oriented to relationship-oriented, proclaiming relationship marketing not only to be a new paradigm, but the beginning of a new marketing oriented management theory (Gummesson, 1994). They stated that only during the peak of industrialisation did the orientation shift toward a transactional approach.

Relationship marketing may have been practised in various business contexts, but only recently have organisations realised that their success in the marketplace is largely dependent on the network of relationships they maintain. While this approach may appear to be grounded in common sense, many organisations have proved unable to garner the full potential from their relationships (Kandampully & Duddy, 1999).

Relationships are a critical strategic tool, requiring the cooperation of all business functions to realise the benefits. For lawyers, referrals and networking are of central importance for generating work flow. Legal services providers are therefore increasingly integrating this concept by establishing key client teams.

Sheth and Sobel (2000) highlighted the difference between a customer and a client. Customers buy a product or service with well-defined characteristics that match their needs with little or no negotiation and discussion between buyer and seller. A relationship with a customer appears to be desirable, but not critical. Due to the consultative nature of professional services, however, there is the necessity to clarify needs, identify problems, and recommend solutions (Sheth & Sobel, 2000). Susskind's (2000, 2008) view of the future delivery of legal services would dispute this notion.

In professional services, a personal relationship with the client based on a high degree of trust is deemed critical. Sheth (2002) cautioned that relationship marketing should not necessarily be seen as a panacea. He found that empirical evidence is inconclusive despite the beliefs in lifetime value of a customer and share of customer wallet concepts (i.e., how much of a budget is spent on a particular provider), especially in B2B marketing. He argued that the largest revenue accounts are often found not to be the most profitable accounts. Consequently, a strong belief has emerged that a company must be selective in its use of relationship marketing, and must consider segmenting the market into relational and transactional markets.

Relationship marketing is not nor should be a universal philosophy, but just one of several marketing approaches (El-Ansary, 1997). Other scholars (Petrof, 1997; Sheth & Parvatiyar, 1995b) argued that relationship marketing is not a new phenomenon, but the renaissance of an old practice. Sheth and Parvatiyar (1995b) have been similarly critical, suggesting that the focus on relationships with customers is not a recent phenomenon, but retaining customers, influencing repeat purchases, fostering trust and facilitating future marketing were already concerns of marketers in the pre-industrial era. Petrof (1997) argued that implementing the marketing concept involves the efforts of every sector in an organisation, suggesting that the terms 'marketing concept' and 'relationship marketing' are redundant. Expressing the view that marketing was never meant to be a 'one-night stand', Petrof proposed the

abandonment of the term ‘relationship marketing’ since it leads to confusion and misunderstanding.

### 3.1.4 Professional services marketing

Marketing of the professions was first discussed in the 1970s (Kotler & Connor, 1977; Gummesson, 1978; Wilson, 1972), but most of the research that has been undertaken dates from the early 1990s onwards. After initial conceptual publications (e.g. Bloom, 1984; Hill & Neeley, 1988; Van Doren *et al.* 1985; Van Doren & Smith, 1987; Wilson, 1972), empirical research examined the advertising of professional services (Bullard & Snizek, 1988; Bush *et al.*, 1987; Hite *et al.*, 1990; Milliman *et al.*, 1991), the buying behaviour of CEOs (Fisk *et al.*, 1994), the search and selection/referral process (Beltramini, 1989; Day & Barksdale, 1992; Webster, 1993; Wheeler, 1987), the evaluation of service quality (Woodside *et al.*, 1992; Brown & Swartz, 1989) as well as the aspect of risk and risk reduction (Mitchell, 1994; 1995; 1998a, b; 1999; Mitchell & Greatorex, 1993; Mitchell *et al.*, 2003).

Even though professional services marketing is an area of growing interest (Ghose, 1994; Halinen, 1996), the literature in this area is less developed than that of services in general (Day & Barksdale, 2003). Day and Barksdale (1992 and 2003); O’Donohoe *et al.* (1991); Van Doren *et al.* (1985) and Van Doren and Smith (1987) provided recommendations for marketing to clients. Ellis and Watterson (2001) argued that most literature offers little insight into the selection processes of professional services other than in the consideration of information sources. Professional services are commonly portrayed as a subcategory within the service industry, representing the most intangible services, where ‘service production’ involves extensive customer contact, customisation, and a high degree of individual judgment on the part of the service provider (Clemes *et al.*, 2000; Lovelock, 1983; Schmenner, 1986; Verma, 2000).

The challenge in professional services firms is that more general management principles and approaches cannot be translated to professional services without extreme caution; they may not only be inapplicable in the professional services sector, but be dangerously wrong (Barnhoorn, 1995). For example, in contrast to corporations, professional services firms rarely benefit from first mover advantage. Most clients tend to be cautious of new services, the firm and its professional may not



yet have the trust of the clients, and if the service is seen as beneficial, there are few barriers to stop competitors from copying the service offering. According to Nanda (2004), professional services firms therefore often strive to be ‘fast seconds’ rather than be first movers, which opposes the marketing principle of attempting to be first.

Professional services marketing literature mostly focuses on the relationship aspect as well as quality and the perception of quality, which seems relevant and logical considering the complexity and level of risk in particular of B2B professional services. It is therefore important to view marketing as part of a firm’s culture or mode of operation rather than just a series of activities (Fisk *et al.*, 1993). Most professional services have a strong component of face-to-face interaction which implies that quality and service take special meaning and must be managed carefully. Therefore very special skills are required of top performers. Both customisation and client contact demand that professional services firms attract and retain highly skilled individuals as what they ultimately sell to their client is not so much the services of the firm per se, but the services of specific individuals or teams. The professionals themselves are not only the ‘producers’, but deliverers of the services, their own ‘sales force’ and interact with the client. For this reason, ‘people’, as one of the 7 *P*’s play a critical role in professional services marketing (Young, 2005) and doing business by means of attracting developing and retaining customer relationships (Berry & Parasuraman, 1991) has been the traditional approach in many professional services since their inception (Larson, 1977). “In professional services, where the ‘good’ being bought is not only expensive but also intangible and often vague, the seller who succeeds is the seller who can show the buyer just what it feels like to be in a relationship together” (Maister *et al.*, 2000: 168). Professional services firms must thus compete actively in two markets, the output market for services and the input market for their human capital.

According to Kotler and Armstrong (2008) quality is typically judged not only on technical grounds, but also at a functional level. A more comprehensive model on service quality, SERVQUAL, was developed by Parasuraman *et al.* (1988) that also includes reliability, responsiveness, assurance, empathy, and tangibles. Professionals cannot assume they will satisfy clients simply by providing good service in the technical sense; they have to master, amongst other things, interactive marketing skills.

Day and Barksdale (1992) found that due to the lengthy duration of professional services projects, client relationships have to be managed. A relationship begins long before the firm is formally selected for a particular project. Initial and subsequent contacts with the client influence client expectations, which are reflected in the criteria used to select and evaluate a provider. However, professional services firms “have something that most FMCG brands would kill for—a direct, one-on-one relationship with the purchaser and a wealth of rich information about the services they buy” (PSMG, 2005: 12). The critical issue is capturing that information so that it can be fed back in to help refine the process of building both the reputation of the firm and creating relationship building and revenue opportunities. The responsibility for the quality of the relationship lies with everyone who comes in contact with the client. Shaffer and Cochran (1994) argued that Cicero and Hebrew scriptures already stated that we have a special responsibility to provide for the needs of those with whom we have a special relationship, such as a lawyer-client relationship. Day and Barksdale (1992) advised to inform the client what s/he is purchasing, what will be provided, explain the project costs, rather than solely presenting credentials. This is particularly important due to the asymmetry of information (Young, 2005) and to new or ‘naïve’ clients whose expectations may not be well or appropriately formed. Maister (1993) believed that the tactics should move away from broadcasting any general message to a wide audience towards highly individualised face-to-face dialogue. (See also paragraph 3.2.3.)

Because the ‘client’ of professional services in B2B situations is often not just one person, but a group or ‘buying centre’, expectations and evaluation criteria can be varied and dynamic (Day & Barksdale, 1994). It is thus important to understand the needs and expectations of different individuals throughout the process as well as the relative importance of quality cues. Relationships must therefore be managed from the first contacts with clients to follow-up after the project is completed, including managing the cues clients use (Day & Barksdale, 1992). There is a strong need for both technical (outcome) and functional quality (the manner in which the service is delivered) (Grönroos, 1984; Morgan, 1991). However, this approach is often not readily accepted among professional services providers and marketing is misunderstood as advertising, the preparation of promotional material, proposals, and presentation, when it should imply ‘cultivating’ rather than ‘chasing’ clients (Day & Barksdale, 1992). Ironically, professional services providers like lawyers seem to feel

compelled to embrace ‘commercial’ and ‘promotional’ activities that are disliked by the profession when feeling the need to market their services.

West (1997) distinguished two types of relationships between clients and professional services providers: short term ‘project’ and long-term ‘collaborative’. Short term project-based relationships rarely last longer than the specific problem at hand. Once the firm has offered (and possibly implemented) the solution, the relationship is dissolved. West classified this type of relationship as ‘arm’s length’, equating it to the traditional purchasing concept of putting a specific job out to tender and choosing the best bid. Purchasing could provide the commercial framework required for such projects. Collaborative relationships rarely involve purchasing managers although West suggested many potential opportunities for their input. Relationships are particularly important in professional services due to the role of referrals (Crosby *et al.*, 1990). Satisfactory relationships not only can translate into repeat business but are likely to lead to new business (Day & Barksdale, 1992).

While professionals acknowledge that referrals are the primary source of new business for their firm, few have adopted standardised procedures for making their referral generation efforts more effective (Day *et al.*, 1988). Wilson (1984) recommended carefully keeping records of the referral generation system. New clients should be asked how they learned of the firm, the number and frequency of referrals from each source should be noted, as well as the types of clients referred by each source. While these sources can be used to determine how well the referral system is working and which are the most productive sources, it allows the professional to acknowledge and thank referrers, on whom the professional services practice is so dependent (Day *et al.*, 1988). Denney (1983) stated that successful generation of referrals is based on selecting appropriate sources of referrals; cultivating the sources; letting the source know what services the firm offers and what benefits accrue from using that particular firm, providing reasons for making a referral.

The strategy used to cultivate a source depends on whether it is internal or external. Internal sources (e.g., friends, relatives, current clients) are often easiest to cultivate, with only the necessity of reminding them to ‘keep their eyes open’ for potential clients among their acquaintances and business associates. Often they can also take the next step and provide an introduction as well as a referral. While cultivating

external sources (other professionals and businesspeople in the same or different fields) might require considerable effort, this type of ‘networking’ is critical to generating new accounts. The best opportunities for referrals include businesses and professionals in other fields. Because of the nature of the services provided, these sources are often asked to recommend a qualified law firm. At the same time law firms are often asked to recommend qualified professionals in other fields, therefore the basis for establishing reciprocal relationships already exist (Day *et al.*, 1988). Even professionals and business associates offering the same or similar services should not be overlooked as it does not necessarily mean that firms are direct competitors. Larger firms may not find smaller accounts profitable, in which case the client might be referred to the small firm.

In addition to referrals, targeted marketing as opposed to taking a ‘shotgun approach’ is advisable: positioning and differentiating the firm, identifying which projects are worthwhile; getting to know clients and learning about their specific needs and goals, as well as developing a working partnership with clients. Many firms lose out in tenders due to a poor presentation, which results from inadequate preparation, poor ‘people skills’, or the lack of good communications skills. However, where tenders are lost, the variables that contribute to this are often controllable. This suggests that most problems professional service providers have in getting from the short list to the contract can be corrected (Day & Barksdale, 2003).

At the same time, Hodges and Young (2009) have argued that several centuries of high margin service in the professions suggest that in many ways it appears that professionals were better marketers when not intending to market, but become poor(er) marketers when consciously deciding to use marketing as a way to face increasingly competitive markets. Doing so, their focus shifted from serving the client to often mostly promotional marketing communications activities (see also chapter 7).

### **3.2 Marketing in legal services organisations**

It may be argued that successful firms have always ‘marketed’ their services, but until the late 1980s and early 1990s, the legal sector has had limited experience with ‘formalised’ marketing or more comprehensive and strategic marketing in the form being considered in this thesis. While the notion of marketing (orientation) and its implementation in the legal sector (see paragraph 3.2) have received little attention

from academia, practitioners have been active publishers on the application of marketing to the sector.

### **3.2.1 Legal marketing theory**

Legal marketing is the application of the marketing concept to the legal services sector. The Solicitors' Code of Conduct of the Solicitors Regulation Authority controls some aspects of marketing. Rule 2.02–'Client care' and Rule 7– 'Publicity', in line with the profession's former focus on the promotional aspects of marketing, The Law Society's Management Kit for Solicitors, however, defined marketing in a much wider context, as a process of balancing the partnership's need for profit and the benefits required by clients, through the provision of products and services to ensure the maintenance or growth of profitability in the long term (Pannett, 1995). Similarly, Philbin (2000) defined legal marketing as a process of strategic, administrative and operational decision-making, with the objective to maximize shareholder's return on investment.

The special nature of legal services appears to necessitate a broader definition of 'marketing' that also includes the concept of 'business development' as 'sales' in often referred to in the legal services sector. Smith (2001) argued that marketing and selling are equally important for law firms. Marketing is "how firms get found by buyers, become part of their consciousness, and get on the buyer's short list" (113), while selling is how the firms get hired by the buyers.

Legal marketing has rarely been the topic of academic scrutiny despite the growing interest in marketing by legal services providers (O'Malley & Harris, 1999; Morgan 1991). Darden *et al.* (1981) were the first to specifically address law firms in the context of marketing, and only a few other scholars have since shown interest in the topic, mostly since the mid-1990s (e.g. Allen, 1997; Gaedeke & Tootelian, 1988; Harris & Piercy, 1998; Hart & Hogg, 1998; Lowry *et al.*, 1995; Morgan, 1990; O'Malley & Harris, 1999; Rasmusson, 1997; Schimmel & Davis, 1995; Thomas *et al.*, 2001; Triplett, 1994; Vercammen, 1995; Vickerstaff, 2000). O'Malley and Harris (1999) criticised the paucity of existing theory into legal relationships. Research in professional services marketing frequently includes law firms, but as discussed in paragraph 1.2.1, a number of academics stressed that the unique complexities of

individual professions merit separate investigation (Ellis, 1997; Ellis & Watterson, 2001; Morgan, 1991).

A literature review showed that the majority of research on legal marketing is deductive rather than empirical in nature (exceptions include Cutler *et al.*, 2003; Ellis & Watterson, 2001; Thomas *et al.*, 2001; Vickerstaff, 2000) and appeared to focus on general recommendations. Most research does not expressly distinguish between the different scenarios and challenges of B2B (business-to-business) and B2C (business-to-customer) legal services. While marketing literature in new fields has typically aimed to develop robust theoretical models, this has yet to occur in legal marketing. Stevens *et al.* (1998) observed a lack of detailed information and guidance that would be relevant to (the implementation of) legal marketing. Scholarly articles also have not researched business development efforts, which today make up a large portion of ‘marketing’ efforts of law firms.

There is little evidence of mainstream marketing activities formulated in terms of ‘4Ps’ (Gummesson, 1994) in legal marketing. It is based on interaction, relationships, and networks, and is greatly influenced by the necessity of a professional relationship between service provider and client (Andersson & Söderlund, 1988; Ford, 1990), which is not essential between the buyer and seller of a good or non-professional service (Sheth & Sobel, 2000). It is, however, unclear from the literature whether the recommendations refer to corporate as well as private clients.

Ellis and Watterson (2001) found that law firms typically focused on tactics, “preoccupied with marketing as promotion rather than as an underlying philosophy” (Vickerstaff, 1997: 1022), and appeared to concentrate their efforts on specific marketing aspects while neglecting others. Partners seemed preoccupied with the awareness levels revealed in the surveys, and appeared set on improving ‘awareness’ still further, even though Ellis and Watterson (2001) found relatively high levels of awareness amongst all stakeholder groups, and relatively low levels of importance attached to corporate image in firm selection. Vickerstaff (1997) believed that firms appear to be concerned with external marketing, as evidenced by their citing of mainly external rather than internal activities as part of their marketing efforts. Cutler *et al.* (2003) noticed a ‘marketing disorientation’ among lawyers, as they consistently underrate the importance of selection cues and criteria. Although lawyers often stress

the personal nature of the lawyer-client relationship, lawyers are seen to not understand how consumers select a law firm, despite being in the ‘enviable’ position of having direct records of the transactions over time with each individual customer. A firm that understands how potential clients choose a lawyer and integrates this knowledge into its marketing strategy has a strategic advantage over other firms (Cohen, 2007). Peppers and Rogers (1993) argued that firms should use such information for analysis on customer loyalty and possibilities for one-to-one marketing.

Day and Barksdale (1994) emphasised that selecting a professional service provider such as a lawyer may not only be one of the most important decisions and potentially one of the costliest mistakes an organisation can make, but that unsatisfactory relationships present problems for both parties. An understanding of how organisations select and subsequently evaluate professional services is therefore critical as it may have significant impact on the strategic future of the organisation (Fitzsimmons *et al.*, 1998). Cohen (2007) asked that since “clients are getting pickier about their lawyers, shouldn’t firms try to understand their current clients and their prospective clients better?” (24), suggesting competitive intelligence as the ways to gather information on companies. “Law firms are foolish if they are not incorporating it into their work. ... But most firms have yet to unlock the true power of competitive intelligence because they have yet to embrace other tools—like CRM [customer relationship management]—that could better leverage the data” (Cohen, 2007: 24). The lack of congruence between lawyers and consumers in evaluating the importance of the cues and criteria indicates that they cannot be marketing efficiently as they do not place the same importance on the criteria that consumers utilise.

Buyers of legal services frequently face an uncommonly high level of (cognitive) anxiety as they often have difficulty in evaluating the service offering (Kotler *et al.*, 2002). Lawyers need to address this anxiety and assure the client choice, for example, through education, immediate follow-up to relieve the uncertainty, and providing assurances, such as ‘satisfaction guarantees’. It needs to be noted, however, that providing guarantees is forbidden in some jurisdictions, and some corporate clients (such as in-house lawyers) have a legal education.

Advertising is heavily used in the legal sector, but according to Cutler *et al.* (2003), does not appear to be important in the selection of law firms. While legal service firms were (and in some jurisdictions still are) constrained regarding the message and delivery content within their advertisements (Hornsby and Schimmel, 1996), anti-advertising advocates within the legal profession contend that legal advertising is largely responsible for the public's negative opinion of lawyers (Hengstler, 1993). Hite and Fraser (1988) and MacDonald and Raymond (1991), however, found that consumers have positive attitudes toward legal services advertising while lawyers hold negative attitudes, despite regularly using it in their marketing efforts. Cutler *et al.* (2003) advised that lawyers should carefully communicate verbal and nonverbal cues in advertising, including dependability, experience, and possessing a good reputation. Marks and Moon (1994) suggested that while the so-called 'above-the-line' forms of promotion (e.g., newspaper advertising, radio, Yellow Pages) are capable of reaching a wide audience, they are less personal than 'below-the-line' (e.g., brochures, sponsorship, seminars, client newsletters) advertising which can be targeted more efficiently to specific customers.

### **3.2.2 Market(ing) orientation in the legal sector**

While marketing orientation—which has become synonymous with the implementation of the marketing concept (Deshpande *et al.*, 1993; Kohli & Jaworski, 1990; Narver & Slater, 1990) – has received substantial academic attention (Arndt, 1985; Barksdale & Darden, 1971; Day, 1992; Hise, 1965; Houston, 1986; Jaworski & Kohli, 1993; Kohli *et al.*, 1993; Lawton & Parasuraman, 1980; McCarthy & Perreault, 1984; McNamara, 1972; Siguaw *et al.*, 1994; Siguaw *et al.*, 1998; Slater & Narver, 1994), only Vickerstaff (2000) examined the concept in the legal services context.

Traditionally, the emphasis of the concept of marketing orientation was consumer needs and making profits by creating customer satisfaction (Kotler & Armstrong, 2008). Gummesson (1996) argued that a focus on the firm confines management's concern to that of production and internal administration. A customer focus, however, compels it to realise the firm's primary responsibility – to serve the customer – and to recognise that customer knowledge is paramount to achieving market orientation. Legal service firms have been starting to introduce client focus, for example, by changing their organisational structure from (technical expertise) practice groups to industry groups or through the launch of key client teams.



While there has been some differentiation in the literature on the term ‘marketing’ orientation versus ‘market’ orientation (Vickerstaff, 2000), Kohli and Jaworski (1990) stressed the preference for the term ‘market orientation’ since it emphasises the organisation-wide application of marketing instead of suggesting specific activities of the marketing department (‘marketing orientation’) and includes both customers/clients and competitors. The terms ‘market orientation’, ‘marketing orientation’ and ‘customer focus’ are now often used interchangeably in the literature (Vickerstaff, 2000). Narver and Slater (1990) also suggested adding shared employee responsibility, organisational co-ordination, competitor awareness and profitability over time to the concept of customer orientation.

Similarly, Kohli and Jaworski (1990); Kotler (1991); McGee and Spiro (1988) and Runyon (1980) discerned three aspects of market orientation: (i) customer orientation (an understanding of the psychological and social factors which determine a customer’s action, enabling to identify core needs.); (ii) the integration of effort (of the whole organisation enabling it to provide the value to meet customer needs); (iii) organisational objectives (adopting the marketing concept of serving customer needs in order to meet its requirements for achieving objectives/profits, essential for long-term survival). Kohli and Jaworski (1990) also suggested that market orientation relates to the generation of market intelligence and its dissemination and responsiveness across the organisation. Perhaps an interesting aspect for legal services providers, Slater and Narver (1994) found that to create superior value for buyers, organisations need to have a comprehensive understanding of the buyer’s entire value chain, not only as it is today, but as it evolves over time. In fact, the competitive advantage (see paragraph 2.3.3.2) of an organisation derives from its ability to nurture long-term relationships with customers and engender customer loyalty.

A curiosity of the legal sector is firms that deny ‘doing’ marketing (Lorsch & Graff, 1995; O’Malley & Harris, 1999) but who, in effect, have implemented manifold aspects of the marketing concept. “Marketing is and always will be primarily the responsibility of the partners and lawyers, but I’m a little dubious when firms say they don’t have a marketing department” (Maiden, 1999: 29).

Cutler *et al.* (2003) found a degree of ‘marketing disorientation’ among lawyers: lawyers consistently underrated the importance of selection cues and criteria,

concluding that lawyers do not know their clients. Although lawyers often stress the personal nature of the lawyer-client relationship, their study demonstrated that lawyers do not understand how consumers select a law firm. The lack of congruence between lawyers and consumers in evaluating the importance of the cues and criteria indicates that they cannot be marketing efficiently as they do not place the same importance on the criteria that consumers utilise. Firms that understand how potential clients choose lawyers and integrate this knowledge into their marketing strategy have advantage over competitors. In fact, selecting a professional service provider such as a law firm can be one of the most important decisions and potentially one of the costliest mistakes an organisation can make as for example inappropriate legal advice can lead to major setbacks (Day & Barksdale, 1994). Unsatisfactory relationships between professional service provider and clients present problems for both parties, therefore understanding how organisations select and subsequently evaluate professional services is extremely critical. Furthermore, since characteristics or nuances of the relationship can lead to misunderstanding, conflict and dissatisfaction, the substantial costs related to purchasing professional services can be reduced if client and service providers each understand what the other is looking for in a relationship (Cagley, 1986).

### **3.2.3 Legal marketing practice**

Dahut (2004) stated that legal marketing should not be reduced to the single goal of client acquisition, but seen as the foundation and driving force behind the law firm's entire business. Business development programmes in fact, are the most recent development evolving within law firms for the past few years. Business development departments are typically housed within the marketing departments of large firms (Daisley, 2005). While frequently discussed in trade magazine, business development has not yet received attention from academia.

#### **3.2.3.1 Strategic aspects**

Instead of approaching marketing strategically, solicitors often wrongly assume they can begin marketing 'straight away', jump right to (tactical) marketing activities instead of gathering and analysing relevant information about the marketplace and to discover unmet specialists need (Pannett, 1995). The issue is that too many firms probably approach their marketing in a relatively unplanned fashion which may be a consequence of them being unsure about their own strategic direction and what they

want to be known for in the market. According to PSMG (2005), instead they make a lot of noise about a range of topics to a wide range of potential purchasers in the hope that some of it sticks. A focus on core practice areas, combined with issues and topics that are of crucial importance to the clients the firm has and wants to attract, instead would provide a better, more coherent platform from which marketing and business development could operate.

However, the value of a strategic marketing plan is that it forces lawyers to look beyond short-term outcomes and focus on issues and activities that will result in long-term results (Lowry *et al.*, 1995). Firms need to decide what type of client they require to become the firm they wish to be (Hodgart & Temporal, 1997). Without a strategic plan lawyers may be tempted to accept a variety of cases that may boost short-term earnings, but may reduce long-term benefits. Since the partners have constructed the plan, they have made a mental commitment to it and are motivated to ensure its success. However, for a strategic marketing plan to succeed the planner must ascertain that all elements of the plan are understood, communicated and acted upon by all members of the firm. Emphasising ‘benefits’ that clients do not want or need, may lead clients to believe that law firms have a ‘one size fits all’ marketing approach (Nightingale, 2004a). Firms need to articulate clearly why they are able to better serve the clients’ needs than their competitors to avoid competing primarily on price (Hodgart & Temporal, 1997).

Marketing needs to become part of the culture of the firm as anyone who has contact with a client is involved in marketing the firm whether they realise it or not.

*“[T]he better that people in organisations are able to discuss their firm’s direction, the preferred client types, their needs, how the firm meets those needs and the reasons their firm meets those needs better than the competitors, the more likely it is that the firm has a successful marketing strategy. An effective marketing strategy is one that is embedded in the way people think about ‘their’ business. Clarity about marketing starts with clear thinking about the business direction” (Hodgart and Temporal, 1997: 3).*

Firms cannot claim to ‘care more than competitors’ if even one partner demonstrates that he (or she) does not care about the client at all. If ‘caring for clients’ is part of the competitive edge, it must be demonstrated everywhere in the firm, not by a few people only. Firms constantly should ask themselves what it is that they provide greater value to clients and target client than their competitors. Marketing is being successful only when specific prospective clients have been identified and the benefits

they receive from using legal services have been understood (Hodgart & Temporal, 1997). Law firms should learn through client service interviews and post-completion debriefings what clients and prospects value most in an outside law firm, improve the firm's positioning of the most-desired traits, identify all the ways in which the firm differentiates itself from its competitors, make those most-desired traits that clearly differentiate the firm easily visible on the website and in lawyer directory listings, highlight the most-desirable traits in new business proposals and marketing collateral as well as the web site, and incorporate these traits into the public relations programme by making them key messages (Gibson, 2003).

Hoover (2007) recommended 'competitive intelligence' as one of the most valuable strategic instruments for a law firm as it helps analyse the business issues and competitive landscape surrounding key clients. Different from marketing research that is said to be more tactical, competitive intelligence draws on a wider variety of both primary and secondary sources, from a wider range of stakeholders, and seeks to not just answer existing questions, but raise new ones and guide action.

The desired market position is the goal: (a) Where does the firm want to be in the market over the next five years? (b) Who are the competition? What are they doing? (c) What are the key influences in the legal marketplace?	>	How will the firm compete in that position? (a) On what basis should the firm choose to compete? (b) What are the needs of clients? (c) How do competitors compete? (d) What are critical factors?	>	What are the operational and organisational issues which need to be addressed? (a) What is the best structure for the firm to achieve its objectives? (b) What skills and capabilities does the firm need? (c) What type of approach is necessary?	>	The targets and action plans for the firm are: (a) Profitability (b) Growth (c) Enhanced capability (d) Professional development (e) Recruitment
↑		↑		↑		↑
Where is the firm now?		What is the present basis of competition?		What are the firm's existing skills and capabilities?		Where are the gaps that need to be closed?

**Figure 3-1**  
**Marketing Planning Checklist**  
**From: Pannett (1995: 85)**

The key differentiator for many clients when selecting legal services providers is the lawyer (or lawyers) they work with, and the strength of the relationships (Clifton, 2007). Roberson (2003) advised law firms to aim for developing strong relationships

with individuals in the client's organisation. "[T]he more tentacles you can put firmly in the client's organisation, the greater your chance of retaining them long into the future when competitors will be attempting to woo your client with new ideas" (Roberson, 2003: 15). Firms should have client relationship partners that must be true ambassadors of the firm, embodying its core values, client-centred and commercially astute.

*"This contact person must manage the [client] team to ensure that it is performing constantly, delivering real service excellence and is always aware of cross-selling opportunities that would benefit the client. This means devoting time and resource to thoroughly understanding the client's business and the markets in which they operate in order to be able to anticipate threats and identify opportunities of benefit" (Roberson, 2003: 15).*

Law firms need not only to execute the plan, but also to have an element of control (Horstschäfer, 2005). While the evaluation of the return on investment (ROI) of marketing is recommended in the literature, measuring non-financial performance indicators is still rare (PSMG, 2005). 40 percent of the firms in a UK study did not use any of the most effective measures of assessing ROI, and few firms measured performance indicators such as success rates when pitching or tendering for new work, levels of client retention, client satisfaction ratings, volumes of potential sales leads, levels of cross selling, and the number of opportunities to pitch for new work. The last point, however, is open to question. One could also argue that if a relationship is so good, the very idea of going out to tender might not have crossed the client's mind.

Lambreth and Loder (1999) cautioned that firms need to more closely align marketing resources with their strategic goals to get a greater and more visible return on the firm's marketing investment, an enhanced ability to hire and retain marketing staff, and an increased ability to manage and satisfy partner expectations. Greene (2004) stated that while it is possible and very useful to track the many probable effects of a law firm's marketing efforts, it is not possible to precisely measure the monetary return on investment of any discrete marketing activity by a law firm, or to measure the ROI of a complete marketing function as there are too many influences occurring at the same time and it is not possible to tease out the incremental impact of this 'noise'. Greene cautioned that even if it were possible to precisely measure the impact of law firm marketing, firms would need more sophisticated accounting systems if they were to measure the ROI of such impacts.

### 3.2.3.2 Tactical aspects

Two models describe the evolution of tactical marketing in a firm: Greenwood *et al.*'s (1997) three stage model of marketing development and Lambreth and Loder's (1999) four-phase evolution of marketing model. In Greenwood *et al.*'s model, stage 1 is centred on promoting the individual lawyers through personal relationships (personal networking and sponsorships), in stage 2 the focus is on promoting the firm through adding focused advertising, seminars and brochures as well as client information lists. Only in stage 3 do firms start to position the firm by introducing client management systems, adding market analysis and client databases. A similar, but more detailed model by Lambreth and Loder (1999) confirmed that the early focus on marketing communications of law firms, including event planning, collateral material, directory listings in phase 1 changes to include basic public relations, marketing training for partners and support of practice group activities in phase 2. Phase 3 marketing comprises practice group and office marketing plans, targeted trade associations involvement, coordination of and coaching for RFPs, contact management databases and sales and client services training. The most sophisticated marketing is used in phase 4 as it includes significant research and development efforts to identify trends and market opportunities, extensive client service training, key client relationship planning, individual and team selling and sophisticated market positioning. Apart from becoming increasingly proactive, the model also appears to suggest that the focus changes from marketing activities focused on individual professionals to the organisation as an entity.

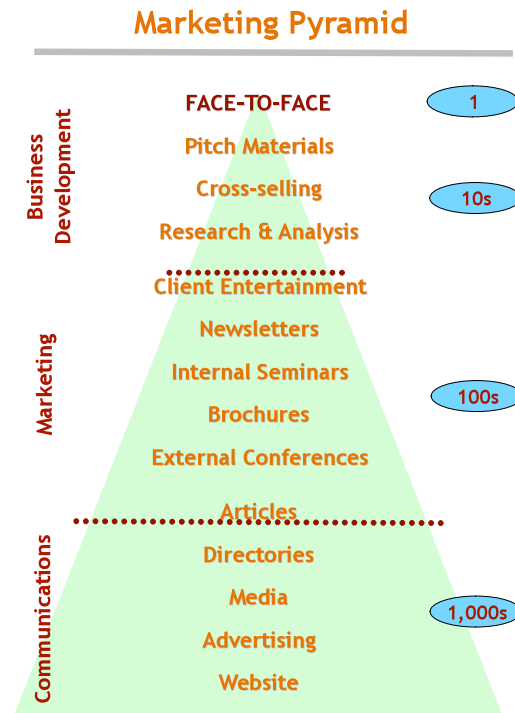
While law firms in the UK today spend significantly more than they used to, marketing budgets are still small compared to double-digit marketing spending in other industries. Different studies set the range between 2-3 percent of annual turnover (PSMG, 2005), 2.5-5 percent of their fee income (Maiden, 1999), and 3-5 percent of the annual turnover, with 10 percent of respondents spending at least 5 percent or more (Stanley, 2007). Some leading firms in London spend more than £10m per year on marketing (Stanley, 2007).

To ensure effective marketing, strategy needs to be at the centre of legal marketing efforts. If the tactics do not grow out of the strategy, a firm will not succeed (Bodine, 2000). Individual marketing tactics and instruments need to support one another with relevance to the needs of the prospective client. Tarlton and Werthman (1989)

cautioned that the successful implementation of a marketing programme requires the involvement and support of the entire firm. “Marketing is a team sport. Every person in your firm should be part of the marketing team, or at least should not hinder your marketing efforts” (Foonberg, 1986: 93).

A number of practitioners have developed outlines of the different marketing instruments for law firms. Lambreth and Loder (1999) distinguished four categories of marketing activities: (i) Communication/promotional: seminars, public relations, newsletters, internal communication; (ii) Business development support (supporting individual lawyers, practice groups or offices through coaching, training, research assistance, database maintenance, proposal/presentation assistance); (iii) Service development (trend research, determining client needs, developing services or packages of services designed to profitably meet those needs); (iv) Service delivery (measuring client satisfaction, developing ways to improve client service and build stronger client relationships). The marketing programmes of many firms typically focus initially on the first two categories of activities. Only the need for firms to differentiate themselves in the marketplace pushes firms toward more sophisticated types of marketing, after firms realise relying on ‘different’ slogans and taglines must be replaced by something more substantive.

The ‘Marketing Pyramid’ (Figure 3-2) distinguished reach and focus of different marketing instruments. It suggests that ‘communications’ tools (which include directories, media, advertising, web site) reach many people in a rather untailored manner, while marketing instruments (client entertainment, newsletters, internal seminars, brochures, external conferences, articles) are more tailored to specific (smaller) target segments, and business development instruments (pitch material, cross-selling, research and analysis) are the most bespoke. The instruments are not necessarily interpreted as hierarchical in their significance. Depending on the objective of the firm—e.g. raise awareness of the firm’s brand name (see paragraph 3.1.1) in the general business community vs. winning a specific work, different instruments can be valuable.



**Figure 3-2**

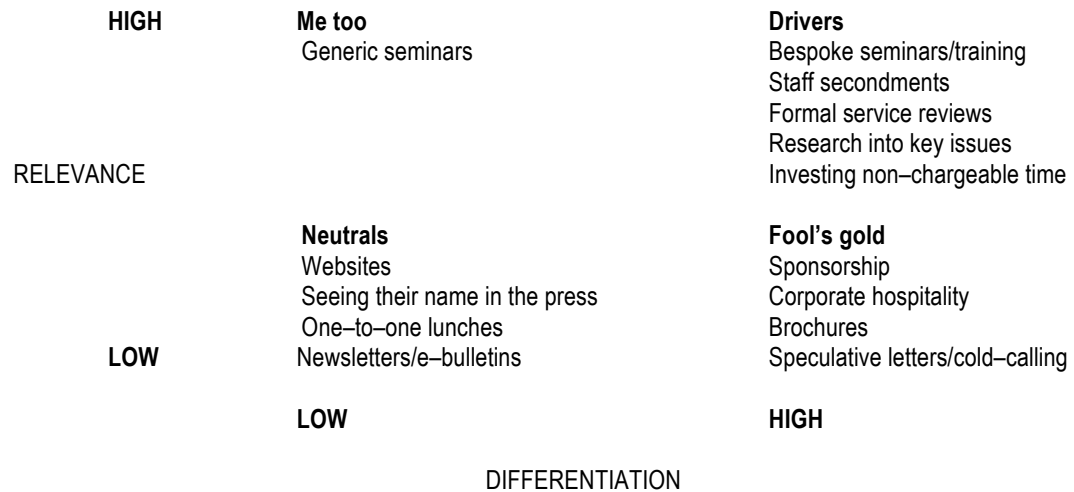
**Legal Marketing Pyramid**

**Developed by Chris Scoble**

**From: Hodges and Picchi (2007: 93)**

Maister (1993), on the other hand, distinguished marketing instruments according to their efficiency, judging small-scale seminars, speeches at client industry meetings, articles in client-oriented trade press, and proprietary research very effective marketing tactics, community/civic activities, networking with potential referral sources and newsletters ‘second tier’ in their significance, while publicity, brochures, ballroom scale seminars, direct mail, cold calls, sponsorship of cultural/sports events, advertising and video brochures are ‘clutching at straws’ tactics. Similarly, Nightingale (2004b) (see Figure 3-3) classified instruments by their relevance to target clients and prospects, as well as by their ability to help differentiate the firm from its competitors. Firms should focus their efforts on the very efficient instruments or the ‘drivers’ and avoid/spend less resources on the less efficient tools, ‘me-too’s’, ‘fool’s gold’, and ‘neutrals’.





**Figure 3-3**

**Legal Marketing Instruments**

**Nightingale (2004b: 7)**

**Adaptation from McKinsey (2004) “What really matters in branding”**

Bachman as cited in Smith-Pike (2003) links individual marketing activities with the degree of difficulty in measuring ROI, the appropriate measurement method, primary benefits, strategic importance and the instruments’ impact on the ‘bottom line’ for the firm. Business development, as the pro-active sales process is called in the legal services sector, has started to gain importance in the 2000s. Increasingly large portions of the marketing budget are dedicated to business development. Nevertheless, business development in law firms has not received attention from academia (see paragraph 3.2.1). Similarly, the growing use and importance of competitive intelligence as a ‘marketing’ tool is reflected in the trade press, but not in academic publications. Competitive intelligence analysis equips and encourages lawyers “to have insightful conversations with clients and prospects about their business opportunities and evolving legal needs, which in turn deepens client engagement and increases the firm’s share of client spend” (Hoover, 2007: 1).

Measurable marketing activity or initiative	Degree of difficulty in measuring ROI	Measurement method	Primary benefits of marketing activity	Strategic importance	Impact on the Bottom Line
Advertising	High	Market research/ benchmarking	Increased name recognition/ awareness	Varies	Indirect
Client Feedback Programme	Low	Revenue analysis pre/post survey	Uncovers opportunities for work; creates good will; pinpoints strengths/areas to improve	High	Direct, especially if survey conducted in person
Client Teams/ Target Companies	Low	Revenue analysis pre/post client team visits	Additional business from existing clients	High	Direct
External Communications (e.g. legal alerts)	Low	Relationship Management System (CRM)	Reminds clients that the firm is expert in a subject matter; affirms that the firm is on top of legal developments	Medium/Low	Indirect
Proposals/Pitches	Medium – need to determine (a) if have decent chance of winning and (b) making money	Win/lose	New business	High	Direct
Public Relations	High	Benchmarking	Increased name recognition; third party endorsement; affirms to clients they made the right choice	Medium	Indirect
Sales Training	Low	Track individual lawyer's business origination	Lawyers gain new skill set that will enable them to develop business	High	Direct (over time)
Seminars/ conferences/ events	Low	CRM System	Opportunity to demonstrate expertise to targeted audience; face time with clients/prospects	High if attendees are key decision-makers	Direct, if there is good follow-up
Website	Low	Software to track volume and nature of traffic	Serves as online brochure; draws traffic to site; possibly resulting in business	Low	Indirect

**Table 3-1**  
**Linking Marketing to Profitability**  
**Developed by William Bachman**  
**From: Smith–Pike (2003)**

While a detailed discussion of individual marketing instruments is outside the scope of this thesis, a number of instruments will be mentioned that are frequently discussed in trade publications, but receive no attention from academia. Directories (e.g., Legal 500, Which Lawyer?) rank law firms according to their importance in a given field and provide a platform for firms to showcase their expertise to potential clients. League tables (e.g., Bloomberg, Thomson, MergerMarket) categorise law firms according to their deals and transactions (e.g., M&A) in a certain period of time.

League tables and other rankings have grown in importance in the decision-making process of clients (McKenna, 2007) as the convergence process causes the most lucrative work to go to fewer and fewer firms, most of which appear to be chosen based on the number of (published) deals they have handled in a particular area. However, directory rankings and league tables carry no importance in the buying decisions of medium-sized companies since the decision-makers typically are not aware of them (LexisNexis, 2006).

Internet technology has created new ways for law firms and (potential) clients to communicate (Susskind, 2000, 2008). Hambourger (2001) suggested that clients today demand extranets to have relevant information on transactions and cases available. Specialised, customised extranet applications can help create a stronger link between clients and law firms and a deeper sense of partnership. With this kind of integration and sharing of common information, counsel and clients have a better chance to develop a long-term, mutually beneficial relationship. Blogs ('web logs', when written by lawyers, also referred to as 'blawgs') provide commentary or news on a particular subject and were uncommon in B2B markets until recently. Bell (2007) stated that they are still considered an unconventional way to market a lawyer as an articulate expert, but expects this to change over the next five years. "Marketing directors at large law firms who use blogs rave about the instantaneous communication that bloggers have with their audience – and the fact that the [lawyers] themselves, not the marketing department, are the ones who keep the blog going" (Bell, 2007: 12). Blogs are deemed an effective way to boost the firm's reputation as a leader in a certain field. Loyal readers like how quickly bloggers post case summaries and news. "Blogs are an especially potent marketing tool because their readers subscribe, so the blog does not become trapped in spam filters, like many law firm newsletters" (Bell, 2007). Similarly, social media such as Facebook or LinkedIn have only recently started to be discussed in legal marketing trade publications.

Due to the increasing commoditisation in the legal market, the standardisation of buying processes and the growing importance of the procurement department in the selection of law firms (see paragraph 2.1.2), requests for proposal (RFPs) (De Forte and Jones, 1994) have significantly increased in importance. Some companies have recently begun to introduce e-tendering, electronic bidding to choose their panel firms

(Legal Week, 2006). Procurement departments are more and more involved to ensure that best value is being achieved in the selection. As companies seek to create greater cost efficiencies and stronger partnerships with their law firms, by consolidating the number of firms they work with and creating formalised lists for legal matters. A study found that 80 percent of legal departments keep a list of law firms they rely on for high stakes matters and 82 percent for low stakes matters (LexisNexis, 2005b). Law firms compete to be on these lists, understanding that while companies will go off-list to find the right lawyer, being on these lists enables them to build long-term relationships with their clients. According to the same research, for high stakes matters, 63 percent have fewer than six law firms on their preferred lists and for commodity work, 47 percent keep no more than 10 law firms.

64 percent of law firms currently employ key account management (KAM) for their best clients (PSMG, 2007). After an analysis of the organisation, firms develop a strategy for an initial approach to the target client as well as a plan of the services the client is likely to buy. To be effective, KAM needs to be based on client relationship management (CRM) programme. CRM is a frequently discussed topic in legal marketing trade publications and has become widely adopted in the UK. According to the same study, 75 percent of respondents have some form of CRM programme. CRM has the potential to not only foster relationships between the firm and the client, but to flag up issues early before they become problems, therefore enable the firm to deal with them more efficiently (Clifton, 2007). However, “[i]f you go at CRM with the view that you are going to create client relationship management by rolling out technology for people to share contacts, it’s not going to work. You have to attach CRM to an initiative that they really understand; You have to attack it through a business development process, beginning with research on the needs and wants of your clients” (Overbeck, 2007). Cohen (2007) cautioned that all large firms struggle with CRM. The main problem is the upkeep of the data. Lawyers have to be encouraged to continually update their contact information while they are busy trying to practise law. Also not discussed in scholarly literature, but regularly covered as topics in trade journals are alumni relations (i.e. encouraging and building networks with former collaborators for marketing/business development as well as knowledge sharing) and pro-bono work (voluntary legal services for non-profit organisations or individuals in need).

### 3.3 Conclusions

Like other industries before, the legal sector has started to embrace ‘modern’, planned marketing activities due to a number of reasons that are discussed in chapter 4. Marketing is a means of helping a firm to achieve its business goals. It is not an end in itself—there is nothing intrinsically good or useful about marketing. How much and what type of marketing it needs depends on what it wants to achieve (Lambreth & Loder, 1999).

Cordeau (2000) has argued that many law firms have some form of marketing programme in place, but a vast majority of these are incomplete. While some firms and professionals appear to have ‘intuitively’ marketed their services successfully (Hodges & Young, 2009), literature in general, assumes that it is clear that law firms need to market strategically. As competitive intelligence suggests (Hoover, 2007), they need to evaluate their marketplace, track trends and new developments in the law, identify and confirm client needs and expectations to understand what businesses they are really in and to be able to set organisational objectives from which they construct their marketing strategy. However, it is unclear which marketing efforts should be made to which target clients and whether firms should focus on marketing the firm’s individual professionals or the firm in its entirety (see paragraph 9.2.1.2).

Research has indicated that many law firms operate in reverse mode by spending most of their time on the promotional aspects of marketing, such as advertising and print communications, to the detriment of other elements of the marketing mix. Instead, marketing programme are required that are based on a complete service delivery and promotional model (Cordeau, 2000). Marketing resources often appear to be poorly allocated, suggesting that law firms “have embraced marketing with misplaced zeal, regarding it as a tool to be used almost indiscriminately across the client base and beyond in the misguided hope that it will magically generated additional revenue. The opposite is true. In high value service relationships, marketing should be discreet and tailored. It should directly address clients’ needs and not the firm’s desire for self-aggrandisement” (Nisus, 2007: 25). Doing less, better, is more likely to lead to more impressed clients, reinforcing loyalty and attracting new clients. According to Nisus (2007), it is therefore not surprising that most clients regard law firms as poor marketers. Some recognise that marketing is often driven by partners’ views on the

subject rather than the professionals they employ and whose job it is to bring more professionalism and rigour to their firm's promotions and communications.

After winning business from a new client, Roberson (2003) urged firms to re-visit the promises made to the client and deliver what the firm promised. Lawyers might have short memories, but clients do not. Subsequently, firms should learn as much about the client's business and approach as possible. Hambourger (2001) argued that the corporate legal marketplace has become notorious for the constant and sometimes questionable courting and wooing of business clients. But as many corporate practices have become increasingly scrutinized by regulators, business firms are advised to partner with their clients to find that their established relationships and shared business goals speak volumes over unnecessarily having to repeatedly go through a courting ritual half a dozen times a year.

Roberson (2003) recommended letting the client mark the firm against a set of benchmark standards in order to be able to develop a client care programme that has real value to the client. This way, firms are able to 'fine-tune' their relationship with the client and aim at receiving 100 percent 'unreserved recommendations'. Law firms are also advised to regularly seek feedback from their clients. Failing to do so, firms may not know when work 'fades away' due to some minor matters that could be easily corrected. Firms need to assure their clients that the feedback is taken to heart and not lost in denial or inattentiveness (Herschensohn, 2004). Law firms "need to look much harder at what their clients want and whether their firm is delivering it. Otherwise our marketing and sales efforts—bombarding our clients with endless mailings and invitations to events—becomes less like wooing and more like stalking" (PSMG, 2007: 6).

Similarly, Hackett (2005) argued that lawyers often make the mistake of presuming to know what clients need, instead of listening to what they really want. Clients' "in-trays and in-boxes are jammed with newsletters and e-bulletins. Invitations to seminars abound; invitations to events they do not want to go to, from firms they may or may not instruct, are binned as soon as they see daylight" (Nightingale, 2004a: 7). Such untailored marketing does not meet the clients' needs. What is worse, according to Nightingale (2004a), is that many law firms appear to offer too much of the same – unwanted – marketing. Law firms are seen as being great at the things in-house

counsel are less interested in (e.g., events), but poor at the things they value. What clients valued, law firms under delivered on and what clients did not value, law firms over delivered on (Nisus, 2007).

Added value from the point of view of the client can be e.g. early warning systems for recurring issues, training and support for the client's management, creative or alternative fee arrangements (Herschensohn, 2004). Lawyers also need to be aware of the difference between client service and client care. Exceptional service could mean to be open 24 hours a day, 365 days a year, the problem is not understanding what the clients really value and charging them for an overall service they do not need or want (Clifton, 2007). According to Herschensohn (2004), law firms also need to resist the temptation to oversell, wanting to offer expertise in excess of what the firm actually possesses. Clients prefer law firms that are honest about their capabilities and admit when the firm does not have the expertise in a particular field. Herschensohn (2004) found that clients strongly discourage law firms from too pro-active marketing and selling, in particular cold-calling, and mass marketing: 'We know where you are. If we want you, we'll call you'.

Continuously changing markets require organisational and managerial flexibility and differentiation as well as establishing relationships with the clients that marketing can provide. McKenna (1988) and Dalgic (1998) advised firms to focus on niche markets to concentrate their marketing efforts. Medium-sized companies might represent such a niche, if they are expanding, competitor-free markets firms or 'blue oceans' (Kim and Mauborgne, 2005), instead of 'red oceans' which are crowded by competitors and provide little opportunity for profitable growth no matter what marketing the firms apply.

Is there ever any particular spot  
where one can put one's finger and say  
"It all began that day,  
at such a time and such a place,  
with such an incident"?

(Agatha Christie)

## CHAPTER 4

### The development of marketing (orientation) in law firms

This chapter examines the underlying reasons for the advent of marketing among law firms. To understand why an industry such as the law starts to embrace marketing, both barriers and drivers need to be explored. While barriers to a market(ing) orientation are somewhat poorly understood (Harris & Piercy, 1998), the birth of marketing is explained by reference to macro-environmental factors or the underlying implications of micro-environmental factors (Dalgic, 1994). Slater and Narver's findings (1992) supported the environmental influence on marketing development and Greenley (1995a, 1995b) identified environmental factors as influences on marketing orientation. Determinants of market orientation are related to factors influencing the development of attitudes and practices that shape companies' efforts, which have been classified as either company-specific (in the legal services market, law firms) or market-specific (lawyers in private practice) (Avlontis & Gounaris, 1999).

#### 4.1 Forces in the macro-environment

Demographic, economic, social, technological, legal, and political forces create significant changes in the fabric of our society (Lowry *et al.*, 1995). The 'open system' school of thought explained the significance of the environment for the advent of marketing with the constant interaction between an organisation and its environment (Bourgeois, 1980; Galbraith & Schendel, 1983; Kotler, 1972). Mayson (1997) confirmed law firms as 'open' organisations, fundamentally affected by their environment.

Macro-environmental forces have great influence on the level of competition in a market (Dalgic, 1998) and can force organisations to adopt a market(ing) orientation (Kotler, 1991; Pride & Ferrell, 1989; Furrer *et al.*, 2004; Van Egeren & O'Connor, 1998). Critical shifts in the traditional business environment have driven firms to develop strategic marketing programme (Mangos *et al.*, 1995). De-regulation and



increased competition have created pressure for firms to seriously consider the role that marketing can play (Morgan & Piercy, 1991) as the ways firms can now compete with each other have increased. In addition, changing professional standards, such as changes in the advertising regulations or codes of ethics (Kotler & Conner, 1977; Hague, 1989; Lovelock, 1996; O'Donohoe *et al.*, 1991; Sample, 1991), a downturn in the economy, increased expectations of clients (Kotler & Connor, 1977), new information technology (Susskind 2000, 2008) and a growing global marketplace (Lovelock, 1996) together with decreasing client loyalty make marketing increasingly important (Ahmed & Hopson, 1990; Crane, 1991). These factors contribute to more competition in the marketplace, as for example, they allow new ways to compete with one another.

#### **4.1.1 Political, legal, and regulatory forces**

Political, legal, and regulatory forces are closely interconnected and affect marketing-related decisions and activities (Dibb *et al.*, 1991). The legal services sector has a long history of self-regulation (see also paragraph 2.1.3) that had been largely untouched until recent revisions of the legal and ethical framework.

Since the 1980s European nations have started to shift their respective stances towards more open competition (Bangemann, 1997). Restrictions against the use of advertising, solicitations, competitive bids, and other promotional tools have essentially disappeared in the last 20 years (Kotler *et al.*, 2002). Pro-competitive legislation is enacted to preserve competition and end practices deemed unacceptable by society, such as monopolies or restrictive trade practices (Dibb *et al.*, 1991). Deregulation advocates argued that by removing, reducing or simplifying restrictions, efficient operation of markets was encouraged. The rationale is that fewer and simpler regulations will lead to a raised level of competitiveness, therefore higher productivity, more efficiency and lower prices overall (Love & Stephen, 1997; Stephen *et al.*, 1994). They may also lead to new competition from outside the traditional law firm world (Kotler *et al.*, 2002). Such liberalisations 'blur' the boundaries among professionals and other commercial businesses. According to Keat (1991), the logic of the market continuously spreads due to governmental efforts to render markets more competitive and not only allows, but endorses marketing.

While many marketing activities were never forbidden by professional codes and legal restrictions (O'Malley & Harris, 1999), in the legal services sector, marketing was often confused with advertising or sales (see also paragraph 1.1). It is unclear whether the restrictions typically refer to advertising because of this misunderstanding, or vice versa. Advertising has only been permitted since 1986 when The Law Society first allowed solicitors to advertise their services. (Client care is regulated in the Solicitors' Code of Conduct 2007, Professional Ethics, dated 10 March 2007, commencing 1 July 2007). As argued in paragraph 3.2.3, advertising constitutes only a fraction of the possible marketing activities of any organisation, and as is examined in paragraph 8.1.2.3, typically has little to no influence on the buying decision of (corporate) clients. However, allowing advertising represented eradicating a barrier to marketing in law firms (Harris, 1997; Harris & Piercy, 1998). In many ways, the reform promises to fundamentally alter the shape of the legal market (Young, 2007), heralding further change (Poynton, 2006) caused by taking away aspects of the profession's self-regulation powers.

#### **4.1.2 Economic and competitive forces**

Economic and competitive forces influence decisions and activities on both the demand and supply side. Changes in economic and competitive conditions have a broad impact on the success of an organisation (Dibb *et al.*, 1991) and are considered the main reason for the advent of marketing in an organisation (Berkowitz *et al.*, 1989; Kohli & Jaworski, 1990; Kotler, 1991; Lusch & Laczniak, 1987; McCarthy & Perreault, 1990; Pride & Ferrell, 1989; Dalgic, 1998). They affect how easy or difficult it is to be successful and profitable at any time since they affect capital availability, cost and demand, which are ultimately crucial for the probability of marketing activity (Thompson, 2002). Market turbulence, technological turbulence, competitive intensity, and performance of an economy are the factors impacting market orientation (Kohli & Jaworski, 1990). In uncertain environments, a pro-active and innovative marketing conduct is more likely (Miles & Snow, 1978) or at least, recommendable.

Competition in an industry is neither a matter of coincidence nor bad luck (Porter, 1980) nor does it only depend on the immediate competitors, but the collective strength of '5 Forces'. These forces determine the profit potential in an industry and thus the attractiveness of a market, which in turn, contributes to the likelihood of

marketing. Changes in any of the forces require an organisation to re-assess its position. The forces comprise (i) Rivalry; (ii) Threat of substitutes; (iii) Buyer power; (iv) Supplier power; and (v) Barriers to entry. Each of these forces will be discussed individually as they apply to the legal services sector.

*Force 1 (rivalry/industry concentration):* The legal services sector has seen tremendous increase in rivalry within the profession (O'Malley & Harris, 1999), which goes beyond firms failing to demonstrate their unique value to clients (Malpas, 2003). Oversupply conditions are prevalent in terms of increased number of practising lawyers in most Western countries and per capita numbers. When supply exceeds demand, there will be more competition for customers. Insufficient demand for their services is leading many professionals to intensify their marketing efforts to attract clients (Kotler *et al.*, 2002). The number of newly qualified lawyers in England and Wales multiplied during the last 30 years and is fuelled by the continuously increasing output of law schools (Cipalla, 1994). This trend persisted with 6,303 training contracts being registered with the Law Society in the year that ended on the 31 July 2008. It is the highest number of annual registrations recorded to date (Law Society, 2008). Among English and Welsh solicitors most of the growth in the profession is attributable to the number of women qualifying as lawyers (Mayson, 1997).

At the same time, the size of firms increased consolidation is taking place in the legal sector (Lewis, 1996; Mayson, 1997). The size of individual firms has contributed to lawyers having to treat the practice of law as a business (Mayson, 1997, 2007), which is likely to increase the probability of marketing. While the growth in firm's fee income has been impressive for many years (Mayson, 1997, 2007), the volume and nature of legal work is increasingly retained in-house (Bedlow, 2006a; Connections, 2009). Since the downturn in the economy, many firms have seen their fee income decrease (Hodges, 2009). In addition, other aspects of concentration are present in the legal services sector, such as high fixed cost, low switching cost and as low levels of service differentiation, and therefore present high probabilities for marketing to occur.

The continuing trend towards globalisation could be seen as a force that increases 'rivalry'. The magnitude of this contributor to competition necessitates a separate discussion. Globalisation is described as the increasing interdependence, integration, and interaction among people and corporations around the world (Levitt, 1983).

During the last two decades of the 20th century a global marketplace had been created. By reducing barriers to trade, the Uruguay Round of the General Agreement on Tariffs and Trade (GATT) paved the way for globalisation (Fieleke, 1995). Although this globalisation of world markets has increased opportunities for marketing services internationally, at the same time it significantly increased competition, with the legal sector being no exception (Ekeledo & Sivakumar, 1998; Hassan & Kaynal, 1994; Mayson, 1997).

For law firms, globalisation had several consequences. Clients are likely to have new needs for international legal advice, which might result in additional work if the firm is able to provide and communicate such international legal skills. At the same time, these clients might be under additional competition due to globalisation (in particular due to the bad economic situation in many countries) and thus need to closely monitor or even cut legal costs. Another consequence of globalisation is that just as domestic law firms advise companies abroad, new competitors from other countries—foreign law firms—start advising clients in the domestic market, open offices and offer services to domestic clients, thus increase competition. The combination of globalisation and technology can be the basis of new, possibly more competitive or profitable, models of business, such as online legal services. Finally, globalisation may affect the organisation of law firms, which also potentially influences a firm's competitive advantage (see paragraph 2.3.3.2) and profitability. Just like other businesses, law firms can outsource (parts of) their operations abroad. A number of UK firms have started to outsource their IT (information technology) and other back office operations. Susskind (2008) predicts much further-reaching development in regards to technology influencing the delivery of legal services. While lawyers have traditionally lagged behind their professional services counterparts in their use of outsourcing in core services, some firms are increasingly moving towards a leaner business model. Law firms have also experimented with outsourcing support work to India. "In 2003, Allen & Overy agreed a deal with Office Tiger to outsource half of its document production abroad" (Mitchell, 2006).

*Force 2 (threat of substitutes):* The legal sector has seen increasing competition from outside its immediate core. A further intensification is possible due to the addition of paraprofessionals into the fields (e.g., paralegals) who are able to provide services that in the past were only provided by licensed professionals (Kotler *et al.*, 2002). Modern

technology and recent regulatory changes are also the reasons for the further blurring of boundaries among professionals and other commercial businesses (O'Malley & Harris, 1999). Susskind (2000, 2008) speaks about a likely disintermediation of legal services, where for a number of legal services, lawyers are no longer needed. In addition, not only are certain professions competing heavily internally, they are also facing new sources of competition from outside their traditional boundaries. E.g., some accounting firms employ more lawyers than the largest law firms (Kotler *et al.*, 2002). Bird (1984) criticised that it might be the lawyers themselves who are to blame for accountants having taken much company work away from solicitors as they show more client-centricity in their approach, a characteristic of marketing: "[Accountants] are accustomed to the smooth management of company meetings, submission of forms and so on, which are unfamiliar to some solicitors" (Bird, 1984: 122). New competitors to traditional law firms are law firm franchises, national chains providing low cost legal services for an annual fee, other professions, such as tax advisors and chartered accountants, which market themselves as 'one-stop-shops' to clients, and new competitors from outside the legal sector's traditional boundaries, such as banks, insurance companies, consumer interest associations etc., and online legal services. As will be discussed in *Force 3*, rising cost pressure in companies has increased the inclination of many clients to accept such substitutes and to shop for price (e.g., even experimenting with e-tendering). Again, due to the increase in competition, these factors are powerful drivers of marketing in law firms.

*Force 3 (buyer power)*: Ever-increasing cost pressure in companies has shifted the power from the law firms to the clients. Lawyers today no longer receive cases from their former college-friends (Lichter & Tödtmann, 2004) and often no longer have 'cosy' relationships as they used to: "Senior corporate managers and senior partners belonged to the same country clubs, and the legal bills that the firms submitted were seldom subjected to close scrutiny" (Dahl, 2006: 1). Clients today 'shop around' and want more value for their legal budget and demand greater financial accountability from the law firms they hire. Long-term relationships marked by mutual loyalty between lawyers and clients have broken down (McArdle, 2006). Clients have become customers, expecting and demanding quality service delivered on time. Their main driver is price. Since clients are dynamic and do not stand still, it is essential for law firms to understand their business and help them with the challenges they face (Thornton, 2006).

While relationship marketing (see paragraph 3.1.3) argues the importance and rationale of close collaboration and key client teams, and some practitioners see the return of strong lawyer-client relationships (Stickel, 2006), others see a breakdown, as more clients are treating outside professionals as vendors. The rising influence of procurement (Nisus, 2007) among large(r), but not among medium-sized companies, to negotiate billing rates is contradictory to clients wanting law firms as ‘partners’ (McKenna, 2007). “We’ve moved from a model where ... the law firm was housed in the building of its major corporate client and the senior partner’s daughter was married to the CEO’s son, all the way to a new ethos that says, ‘We hire lawyers, not law firms’, and where companies assemble virtual teams from various law firms” (McArdle, 2006: 6).

In addition, clients have become more sophisticated buyers who clearly understand their needs (Maister, 1997; Newholm *et al.*, 2006, Young, 2005). This is due to increasingly widely available comprehensive legal information on the Internet (see paragraph 4.1.4), as well as companies increasingly employing former private practice lawyers (Poynton, 2006), even though in-house lawyers are still rare in medium-sized companies (LexisNexis, 2006). Over the past 25 years, the legal market has matured from a relatively inefficient market with great asymmetry of information, little information regarding price or quality or efficiency of service to an increasingly robust and efficient market with lots of information and sophisticated clients, which results in diminished client loyalty, increasing use of formal competitive processes and changed expectations in terms of service (Jones, 2006). With clients becoming more demanding and less loyal (although this may not be the case with medium-sized companies, see paragraphs 5.3.6, 8.1.4.3, 8.1.6), firms increasingly have to compete to attract and retain clients. Marketing can help focus attention on service delivery and offerings in chosen market segments.

Other elements of demand and therefore buyer power, include government interventions (for example, Legal Aid, which, however, will not be discussed in this thesis) as well as the stage of economic development that may drive or hinder the development of marketing in a given industry. A school of thought among marketing scholars agrees that market orientation represents the ultimate stage of economic development, drawing a parallel to the economic development of a country, based on the assumption that market orientation develops through certain phases of orientation,

that is, production, sales, and market orientation. Market orientation reflects an advanced stage of economic development. When basic production needs are satisfied, consumer income has risen parallel to the increased number of competing companies, and consumers have reached a level at which they require a variety of goods and services to satisfy their needs in a given industry (Dalgic, 1998). Similarly, market orientation has also been linked to the maturity of an industrialisation process. Only when a society reaches the phase of having satisfied production and sales needs, it passes into a market(ing)-oriented stage. The focus shifts from a general desire to buy goods to a desire for variety and volume. New market segments develop, tastes become more varied, and marketing appears (Seglin, 1990). Although plausible as explanatory theories, Dalgic (1998) has criticised both ‘evolutionary’ approaches for their lack of empirical proof, being based solely on logical reasoning.

Mayson (1997) suggested looking at economic forces in the sense of level of employment, average income, and incorporation of businesses, as they might influence the size of the market for legal services. Such economic conditions or the stage of an economy in the economic cycle, affect whether and how participants in the marketplace will market their products and services. The strength of buying power and spending behaviour are two economic factors related to the economic cycle concept that may drive or hinder marketing in organisations (Dibb *et al.*, 1991). The special nature of legal services (see paragraph 2.2) signifies that the effects of the economic cycles are not unequivocal in the legal services sector (Robinson *et al.*, 1978; Thompson, 2002). Some legal services such as transactional M&A work or employment contracts generally move with the economic cycle. Other legal services, e.g., insolvency law and redundancies, tend to be counter-cyclical: they are required more during a recession or depression. Thirdly, there are legal services which demonstrate a relatively constant pattern of demand, such as environmental law. Consequently, the phase of the economy combined with the type of legal service might act as a driver or barrier for marketing in law firms.

However, it needs to be taken into account that there is a difference to ‘normal’ consumer products in the sense that demand for legal services cannot easily be stimulated by increased marketing activity during adverse economic times as today. Law firms have limited possibility to motivate their current clients to buy more legal services of a certain kind to capture a larger market share (see also paragraph 2.3.3.3),

although Susskind's (2000, 2008) notion of latent legal markets: A latent market for legal services is commercial clients who could benefit from legal services, but are not presently being served. These clients could be reached with automated 'expert systems' that do not necessarily replace lawyers, but supplement them, and bring new business and new profits to a law firm. The empirical findings in this study confirm that some medium-sized clients could be interested in such expert systems as they are already using web-based legal services (see also paragraph 8.1.1.1). A second 'latent legal market' is consumers of moderate-to-low income who could benefit from legal services, but presently avoid lawyers for a variety of reasons, including high fees and fear of high fees.

*Force 4 (supplier power):* Due to the nature of services (see paragraph 2.1), supplier power, i.e., the influence of the suppliers of resources or raw material, does not play the same role in the legal sector as it would in other industries, such as manufacturing. However, since the primary resource in (legal) services is human talent, supplier power may be seen as the market for legal talent for which firms are competing. Mayson (2007) spoke about the phenomenon that while there seem to be too many qualified lawyers for the volume and value of work available, which is likely to have increased since the downturn of the economy, law firms found it difficult to attract and retain 'good' people. Despite the increasing numbers of law school graduates, 'good' lawyers were spread among too many law firms and were often out of the price range for many firms. This resulted in a 'war for talent' that may be seen as a driver for marketing among firms competing for new hires. In addition, there was also competition for talent from outside the legal market that intensified the competitive situation. This vested significant 'power' for the 'suppliers' of legal talent. The reverse is true now in the current economic climate.

*Force 5 (barriers to entry):* Recent regulatory changes (see paragraph 4.1.1) significantly intensify the competitive situation for legal services providers by removing many of the former barriers. Such changes are likely to be a driver for marketing. In highly competitive markets, building mutually beneficial relationships, 'win/win situations', needs to be the objective as it may erect barriers of entry for potential competitors and help maintain long-term profitability and customer retention (Davis & Davidson, 1991). While some believe that the relationships between law firms and their clients are disintegrating, for example, a relatively higher turnover



among in-house counsel is seen as presenting a challenge to the building of long-term relationships between firm and client (Coleman, 2007), others feel that relationships have become closer, increasingly emphasising teamwork. Partnering with a client is the key to a successful service relationship (Cunningham, 2007).

Switching costs can also act as barriers to entry as clients may face a number of barriers that make it difficult to leave one legal services provider and begin a relationship with another (Burnham *et al.*, 2003). Switching costs include investments of time, money, or effort, such as setup costs, search costs, learning and contractual costs (Guiltinan, 1989).

#### **4.1.3 Societal forces**

Societal forces can significantly impact not only the need for legal services (Mayson, 1997) and thus potentially drive marketing, but the clients' expectations regarding the delivery of the services. Law firms must be aware of changes in society to be able to adapt, react and anticipate new needs and expectations. These forces encompass non-economic criteria and demographics such as structures and dynamics of individuals and groups, the issues that engage them, their priorities, the long-term interests of a society, as well as living standards/quality of life (Dibb *et al.*, 1991; Elliot, 1990; Handerman & Arnold, 1999). Changing demographics typically affect the demand for services in consumer markets (Javalgi & White, 2002). Population numbers give a rough idea of the size and development trend of a market, thus indicate its attractiveness (Dibb *et al.*, 1991).

Over the last few decades, the UK population has been continuously increasing, which is likely to translate into more transactions, more litigation, more clients, and ultimately, more business for law firms as more people mean more potential issues, more potential conflicts, more potential commercial activity. Consequently, one would expect the market for legal services to gradually increase in England and Wales. A larger market typically means a reduced level of competition (Porter, 1980), however, although not a barrier to marketing activity, such a situation most certainly would not 'drive' marketing.

Although this may be a less important factor in the current economic climate, affluence as a societal factor affects what people do in terms of health care,

investment, and leisure activity. The ability to move home more often, to acquire second homes, to make more (expensive) holidays, or to spend money on consumer goods affect potential needs for legal services (Mayson, 1997). ‘Affluent’ activity can directly lead to the need for legal services (e.g. international conveyances) or to new needs for legal services (e.g. traffic or vacation related litigation). In addition, if only incrementally, increased affluence also possibly influences the expectance towards the way services are provided, the level of service. Marketing might help law firms find ways to reach such a clientele, understanding and anticipating their needs to best cater to this group.

Services require that cultural influences and variations are well understood (Donthu & Yoo, 1998; Sudharshan & Furrer, 2001). In terms of cultural values, England and Wales (as parts of Great Britain) would classify as societies with small power distance, individualism, masculinity, low uncertainty avoidance, and short term orientation (Hofstede, 1991). This means its citizens assume equality between people, have a preference for ‘accessibility’ of others, generally welcome innovation, and expect quick results. Wanting to be ‘best’ is considered normal. Expressing disagreement and criticism is not unusual. Task usually prevails over personal relationships and relationships of trust should be established with the business.

Translating Hofstede’s findings into a lawyer-medium-sized company client relationship context, this might suggest that clients demand an open and steady flow of communication and close involvement in the decision-making regarding their legal issues. Trust may be embodied in the professional who links the client to the firm (a personal relationship between lawyer and client, or the lawyer as a ‘trusted advisor’, see also paragraph 8.1.1.1), while in other situations, trust is embodied in the organisation itself (Zeithaml *et al.*, 2009). Only if clients develop trust in organisations, law firm ‘brands’ can be established (see also paragraphs 5.3.3.3, 7.1.1.1). An individual professional does not necessarily receive respect owing to her position, but must earn the client’s respect by demonstrating expertise and at the same time show trustworthiness by knowing and admitting limits when not possessing the requested knowledge. Competitiveness and a certain aggression (albeit not openly emotional) when promoting ones services are likely to be accepted as normal in such achievement-oriented societies. Business contracts in individualist cultures tend to be longer than in collectivist cultures as they have a strong preference for spelling out in

detail rules between businesses and individuals. This suggests comparatively huge demand for law firms. The masculine tendency to ‘fight things out’ might suggest a predisposition towards litigation, which again can translate into relatively high demand.

The level of diversity of a market may affect likely marketing orientation. If something works in one culture, it does not mean that it will work in another (Trompenaars, 1993). According to the 2001 Census, the UK population is becoming increasingly diverse, 4.6 million people (or 7.9 percent) belonged to non-White British ethnic groups (Indians, Pakistanis, those of mixed ethnic backgrounds, Black Caribbean, Black Africans, and Bangladeshis) and grew at an estimated annual rate of 3.8 percent between 2001 and 2003 compared to a rate of -0.1 percent for the White British group (Large & Ghosh, 2006; Office for National Statistics, 2007a; Office for National Statistics, 2007b). Such diversity evokes that cultural societal factors could become significant in the domestic market. Mayson (1997) stressed that a more diverse population influences the expectations clients have of the delivery of legal services. Within the scope of this thesis, this would become particularly important when the clients, owners and/or managers of medium-sized companies belong to a ‘diverse’ group.

To illustrate the point—being aware of the concern to transfer Hofstede’s cultural dimensions from a society to a perhaps acculturated group in another country—Hofstede describes Indian society as having a larger power distance, low uncertainty avoidance, long-term orientation, as well as being moderately individualist and moderately masculine. In terms of client-lawyer relationships this suggests more ‘respect’ for the professional position with expertise more likely to be assumed. As relationships tend to be with individuals rather than an organisation, this contradicts the idea of a law firm as a brand and suggests stronger relationships between individual lawyers and clients. Since conflicts tend to be more likely to be resolved by compromise and negotiation instead of litigation, this might lead to less litigation and more mediation work. These factors tend to suggest a lesser perceived need for legal services and therefore may drive the need for marketing.

A higher level of education of society is likely to influence the expectations clients have of the delivery of legal services (Mayson, 1997). In the past clients tended to

look to the learned professions for help and assistance in an unquestioning way. The barriers created by years of training made the public dependent and unquestioning (Young, 2005). Mayson (1997) found that clients generally have become less tolerant of the air of mystery with which professional advisers historically sought to “cloak their craft” (4). Their new expectancy of open communications drives the need for marketing as a means of communication with existing and prospective clients. In particular, corporate clients have become more sophisticated buyers and consumers during the last decades, often having received the same training as external legal services providers. Such clients increasingly question and challenge the views of outside providers (Young, 2005). They want to be involved in the process, understand what is going on and why, be kept informed of their options, up-to-date on the progress, and tend to be relatively less loyal (Ahmed & Hopson, 1990; Headley & Choi, 1992; Maister, 1993; Mangos *et al.*, 1995). Since firms need to pro-actively address this new situation, once they are aware of the issue, it is likely that it will have to be addressed through marketing.

The rise of the knowledge society on the back of the information revolution has impacted the consumption and provision of knowledge-based services (Laing *et al.*, 2005). It has also impacted the behaviour and role of consumers/clients and changed the nature of the consumer/client-professional relationship by having created a more sophisticated and ‘empowered’, as well as less loyal clientele. The knowledge gap has started to decline as would be expected in modern societies that are increasingly knowledge-based (MacDonald, 1995) and value is created by productivity, innovation, and application of knowledge to work (Bean & Robinson, 2002; Kim & Mauborgne, 1999; Mayson, 1997, 2007).

Such ‘professionalisation’ of clients has contributed to fewer services being bought as if they were ‘unique’, suggesting an increasing commoditisation of legal knowledge (Maister, 1997; Mayson, 2007). This has led to the creation of volume businesses. Procurement departments are increasingly in charge of buying legal services and ask firms to participate in formal (or even electronic) tendering. At the same time, firms manage legal work in bulk through IT systems where the work is carried out by paralegals, legal executives and chartered insurers and only overseen by qualified solicitors (Poynton, 2006). Such structural change moves legal services away from the core profession to services businesses, therefore likely to drive marketing.

#### 4.1.4 Technological forces

Skinner (1990) argued that technology is at the root of market orientation since it enabled efficient production, which then shifted the focus away from manufacturing and paved the way for marketing. The Internet-driven information revolution is widely perceived as having transformed the way businesses and consumers operate (Doherty *et al.*, 1999). The changes due to the Legal Services Act 2007 (see paragraph 4.1.1) combined with technological advancements are likely to have an even greater impact on the legal services sector (Susskind, 2008). However, some law firms have already started modifying their traditional approach to legal advice. It is likely that it has not reached its full potential in the legal services sector as Malpas (2000) suggested that most lawyers admit that their knowledge of IT is weak but that law firms are increasingly taking new technology very seriously. However, advances in (information) technology so profoundly affect the practice of law to cause a ‘shift in paradigm’, transforming both supply and demand side (Susskind, 2000). Technology has revolutionised lawyer’s communication and information-seeking habits and created greater efficiency and lower costs. “[I]f you took away a firm’s accounting, knowledge management, billing and word processing systems, the firm ‘would die within a day’” (Ganz, 2007: 38).

In professional services, and legal services in particular, the Internet was viewed primarily as an information resource rather than a distribution channel. Web sites allow law firms to provide information online and promote their services, and can grant clients the opportunity for immediate access to the firms’ resources (John, 1996). The widespread use of the Internet fundamentally changed the way in which clients interact and communicate with their legal services providers (Laing *et al.*, 2002), through emailing, instant messaging, wireless emailing. While in 1987 two-thirds of the profession did not use computers, less than 40 percent had word processors and just over four percent a fax (Ganz, 2007), by the turn of the millennium, the internet had firmly established itself as the main form of communication between lawyers and their clients, and by 2004, every partner and big City firm associate had a BlackBerry to ensure availability. “You’re never off-duty now, never off-call” (Ganz, 2007: 38). Technology therefore provides lawyers with new ways to (better) serve their clients (Kotler *et al.*, 2002) and has driven marketing into firms.

Technology also potentially enhances client relationship management through sophisticated contact management systems that enable lawyers to leverage relationship held by other lawyers in the firm as well as to monitor the satisfaction of key accounts and leverage the firm's knowledge about its client relationships. However, changing lawyer attitudes about sharing contact information is critical (Overbeck, 2002). Given that a law firm's business is essentially concerned with the retrieval and dissemination of information, electronic technology offers an opportunity to improve service provision. Any form of technological advancement that enhances these key components is an essential part of a lawyer's toolkit (Muir & Douglas, 2001). A number of City firms have launched extranets for their clients with online 'deal rooms', where lawyers from both sides of a deal can exchange and manage documents and conduct secure, private conferences, in particular, in major merger and acquisition and corporate finance matters.

'Virtual lawyers' or legal advice systems of modern web sites contain the knowledge of lawyers without needing to be accessed exclusively by traditional human consultation. Muir and Douglas (2001) found that larger firms typically are more advanced integrating new technologies and working methods than smaller firms. An example would be Magic Circle firm Linklaters which utilises the Internet by offering standardised legal services. The firm introduced a second brand, Blue Flag®, to avoid confusion with the main brand. "Using technology and the Internet, the legal expertise of Linklaters can now be accessed at the touch of a button, wherever you are and whenever you need it" ([www.blueflag.com](http://www.blueflag.com)). The firm promotes scope (in-depth legal advice and information), quality (Linklaters' expertise, constantly updated), consistency (all users across the clients' organisations can draw on the same source of legal expertise), and efficiency (cost effective access across the clients' organisations, for unlimited users; using technology to improve the clients' business process). Such offers are likely to be attractive to medium-sized companies as well and pose significant competition to other law firms and may therefore drive marketing.

Also e-commerce (or 'e-lawyering') has the potential to fundamentally change the way in which lawyers operate and compete, and how they deliver their services (Muir & Douglas, 2001; Susskind, 2000, 2008). The information available online (e.g. articles, 'do-it-yourself' books, and 'legal kits') as well as the scope for interaction (e.g. virtual discussion forums and consumer communities) have impacted former

informational asymmetries, and empowered clients by increasing their knowledge (Jadad, 1998; Laing *et al.*, 2002; Wilson, 1994). Online legal advice such as the do-it-yourself legal solutions at great value prices of the online legal store of UK supermarket chain TESCO appeals to the cost-conscious. The legal forms, letters, and agreements, as well as Power of Attorney Kits not only target individual consumers, but also businesses. The web site offers e.g., a ‘Limited Company Kit’ as well as templates of Sales Representative Agreements and Share Certificates ([www.tescolegalstore.com/business.asp](http://www.tescolegalstore.com/business.asp)). As they may appeal to medium-sized companies, such online services clearly target the same clients as High Street or smaller commercial law firms, and reduce or even eliminate the client’s need to pay for the same information or services from a law firm (Susskind, 2000). Online technology is therefore likely to drive marketing activity by law firms as a way to ensure their survival (Kotler *et al.*, 2002), e.g. through emphasising the added value of tailor-made solutions and individual care.

Technology that enables firms to ‘export’ their services (Cicic *et al.*, 2002) has had divergent effects on law firms. While some firms send aspects of their legal work (e.g. due diligence) to UK-law trained lawyers overseas, large companies also increasingly outsource legal services to low-cost providers in India, China, South Korea, or similar locations (McKenna, 2007). Today, this is not the case among medium-sized companies. However, Mayson (1997) cautioned that lawyers should reflect on how much of their work is or could be conducted through a screen and a telephone, as technology has the potential to substitute people and places. What is worse, the increased use of technology can lead to a substitution of capital for labour, thus potentially increasing the output of each lawyer, which again might raise the level of competition (Mayson, 1997). On the other hand, IT platforms might bring efficiencies to firms that could enable these new players to significantly out-perform the market (Young, 2007) as transactions now run at unimaginable speeds and complexity compared with 20 year ago (Ganz, 2007).

Dibb *et al.* (1991) has been critical of firms for putting off applying new technology as long as their competitors do not try to use it. The typical response from the legal profession is to view e-commerce as another fad that would run its course and disappear (Muir & Douglas, 2001). However, despite law firms’ hope to the contrary, they will not be immune to this new way of conducting business. The competition is

only ‘a click away’ (Tsang, 1999). Given the exponential increase in the value of Internet based purchases, failure to adopt e-commerce may result in loss of competitiveness (Fraser et al., 2000). However, Susskind (2000, 2008) and Muir and Douglas (2001) have cautioned that the adoption of e-commerce is unlikely to provide a sustainable competitive advantage (see paragraph 2.3.3.2). Due to the rapid adoption of competitors, it will not remain a ‘winning’ criterion, but only a ‘qualifying’ criterion. Failure to adopt e-commerce and poor decisions with regards to the adoption process are likely to affect profitability by requiring “expensive corrective actions” or drive firms out of business (Dibb *et al.*, 1991).

## **4.2 Forces in the micro-environment**

The ‘outside-in’ approach of macro-environmental factors has been criticised for being based on historical observation and the experience of marketing practitioners instead of rigorous empirical research (Dalgic, 1998) (with few exceptions, such as Greenley, 1995 a, b). Douglas and Wind (1973) found no direct relationship between macro-environmental factors and marketing practices, while Jaworski and Kohli (1993) discovered evidence that market orientation of an organisation did not necessarily only depend on macro-environmental factors, but (also) on organisational factors. Studies in the legal sector (e.g. Morgan 1990; Harris & Piercy 1998; Vickerstaff, 2000) came to similar conclusions, identifying micro-environment factors as barriers or drivers for marketing.

Barriers to the development of a marketing orientation are not isolated, discrete problems which can be ‘tackled’ individually (Vickerstaff, 2000). They are by nature complex and interrelated and need to be dealt with concurrently to increase support for marketing. It is difficult to distinguish cause and effect of barriers to and drivers of marketing. To ensure a more complete theoretical discussion, micro-environmental drivers and barriers in the legal sector will be examined on three levels following Handy’s (1993) framework of organisational variables (as adapted for the legal services sector by Mayson, 1997) and include drivers and barriers on the level of the legal profession, the firms as organisations, as well as individual lawyers.

On the organisational level, McKinsey’s 7S model serves as the framework, which identifies a range of factors that influence cultural and behavioural change within an organisation (Peters & Waterman, 1982). Since many law firms have started to



embrace marketing in the last decades, it appears safe to say that most barriers eventually do not act as complete impediments to marketing, but rather delay the marketing orientation in a firm or hinder 'effective', strategic marketing once a firm has decided to embrace marketing.

#### **4.2.1 Forces specific to the legal profession**

The professional culture of lawyers may create a barrier to the acceptance of marketing (Vickerstaff, 2000): According to Kotler *et al.* (2002), lawyers have always been eager to defend their position by developing and promoting attributes that they felt set them apart. Some lawyers see a conflict between lawyers as professionals and lawyers as business people (Clementi, 2004). It was often argued that the legal sector was dissimilar from conventional businesses due to the fact of being one of the three 'historic' professions (the other two being medicine and the clergy), therefore it is one of the few occupations socially acceptable by the aristocracy (Kotler *et al.*, 2002; Matthews *et al.*, 1998). Grimshaw (2001) stated that the Latin word 'professio' refers to the taking of vows upon entering a religious order. Lawyers traditionally do not see themselves as 'vendors' of legal services (Pepels & Steckler, 2003; Harris & Piercy, 1998) and have a strong dislike of competition, advertising, and the profit-focus of other sectors (Beltramini, 1989; Freiden & Goldsmith, 1989; Hill & Neeley, 1988; Stock & Zinszer, 1987; Webster, 1988).

The notion of marketing professional services used to be seen as unacceptable (Marks & Moon, 1994). In fact, lawyers used to deny that marketing occurs (Lorsch & Graff, 1995; O'Malley & Harris, 1999). A number of practitioners have been critical of the legal profession for rejecting marketing due to a lack of understanding of what marketing is and what it entails. For example, advertising is a synonym for marketing in the legal profession (Marks & Moon, 1994) and responsible for equating marketing the practice of law to the selling of cars and dog food (Diamond, 1986).

A marketing challenge specific to the legal profession is the tendency to apply legal practice standards to marketing. An example is the treatment of complaints. In marketing theory, complaints are an opportunity to learn from mistakes in order to improve the service offering and to show clients how much a firm cares and therefore strengthen relationships. The legal profession, however, typically does not attempt to provide redress for complainants (this criticism formed the basis for the changes in

the Legal Services Act 2007). The Lord Chancellor was quoted as saying that it is rather common to try to “knock out a complaint by a detailed analysis of the facts,” or regard a complainant as “someone who doesn’t quite understand the process, and therefore must be wrong” (Bedlow, 2006b).

There also appears to be a cultural difference leading to a clash between the careful ‘precedent-driven’ nature of the profession (‘Who’s done it before?’; ‘How do we know it has worked?’) and the ‘we should be the first to do this’, ‘let’s try it out’ drive of marketers (Cohen, 2007; Riskin, n.d.). The profession seems to be driven by the fear of “if you don’t do it you are likely to be left behind” (Vickerstaff, 2000: 359) instead of embracing marketing out of conviction. ‘Me-too’ is a frequent approach in the legal profession as marketing has typically meant ‘let’s see what everyone else is doing, and do that, too’. Not knowing how to market legal services, lawyers presumed that their competitors did, so they copied the competition (Fishman, 2005).

Other factors that might drive marketing in the legal profession include the transparency of lawyers’ salaries. With the advent of legal publications, lawyer salaries were published and lawyers migrated to the money, which increased competition among and within the firms. Firms understood that they needed an advantage, a way to connect to clients and attract more prospects (Fishman, 2005), typical applications of marketing.

A decline in the public esteem of lawyers that has taken place in recent years (Kotler *et al.*, 2002) is also likely to have impacted the competitive situation and the demand for legal services (Bedlow, 2006b). Clients have become more aggressive in challenging lawyers through negligence claims. In fact, professional negligence is among the greatest risks a firm has to be prepared for (Maher, 2007). In such a comparatively hostile environment, marketing is more likely to commence as it can help create more understanding and good-will.

#### **4.2.2 Forces specific to law firms**

Literature suggests marketing as the logical step or strategic option for organisations when former business practices are no longer possible to rely on to sustain prosperity (Kotler, 1999; Sen, 2006) or to emerge as a business philosophy out of the realisation of the inadequacies of alternative approaches (Sharp, 1991). Whether marketing is

‘driven’ or ‘hindered’ by an organisation depends on top management’s emphasis on market orientation; calculated risk taking and willingness by top management to accept occasional failure of new products and services; inter-departmental dynamics, connectedness and conflicts; market-based rewards system and centralisation; formalisation and departmentalisation within the organisation (Jaworski & Kohli, 1993).

Rather than being good at change, most professional services firms are quite the opposite. They are resistant to it (Maister, 1997). A literature review identified a number of barriers to the diffusion of marketing within firms (e.g. Kotler & Connor, 1977; Kotler *et al.*, 2002; Lovelock, 1996; Mayson, 1997; Vickerstaff, 2000). Vickerstaff’s (2000) research, however, could not discern a single common denominator to explain marketing orientation in law firms.

To analyse firms in their entirety, this thesis applies McKinsey’s ‘7S’ framework (Peters & Waterman, 1982) to law firms. The model describes organisations in three ‘hard’ S’s: strategy (direction and scope of the firm over the long term); structure (basic organisation of the firm, its departments, reporting lines, areas of expertise, and responsibility); systems (formal and informal procedures that govern everyday activity), in addition to four less tangible, ‘cultural’ ‘soft’ S’s: skills (capabilities and competencies that exist within the firm); shared values (values and beliefs of the company); staff (how people are developed, trained, and motivated); style (leadership and operating approach). The ‘7S’ framework can be used to explore the extent to which an organisation is working coherently towards a distinctive place in the mind of clients, in other words, to what extent it encourages effective marketing.

*Strategy:* To be effective, marketing needs to be based on an organisation’s business strategy. Law firms, however, traditionally are not known for their strong strategic orientation (Marcus, n.d. c). Ellis and Watterson (2001) found that firms have trouble embracing strategic marketing planning even after realising that strategic change was necessary. While strategic planning is the logical approach to defining appropriate business actions (Smock & Heintz, 1983), law firms are said to believe that it requires an onerous effort and substantial written documents, and therefore do not conduct effective marketing planning.

In addition, strategy execution is different. Top-down delegation work in the hierarchical structures of corporations, but in professional services firms such as law firms that are organized as partnerships, the subordinates of practice leaders are also the owners, whose approval is necessary before leaders can make strategic decisions. For strategy to be effective in such firms, it must be understood by the professionals and they must be prepared to execute it (Nanda, 2004). The necessary process however, takes time, and creates tension as lawyers have to ‘produce’ as well as manage (Lorsch & Mathias, 1987). The result is that professional services firms leaders often find it difficult to either push through strategic action or get professionals in their firm to focus on developing and executing strategy (Nanda, 2004).

However, with the increasing acceptability of new ownership possibilities (in the UK the Legal Services Act 2007, see paragraph 4.1.1), “there has been greater acceptance of the need to manage law firms professionally, and to adopt accepted business techniques” (Mayson, 2007: 8), including effective management of marketing.

*Structure:* Kohli and Jaworski (1990) found structural aspects, such as high levels of interdepartmental connectedness to have a positive effect on market orientation and Kohli and Jaworski (1990) and Narver and Slater (1990) identified the gathering of market intelligence as the basis for any marketing activity, while Söderlund (1991) suggested that it is not the existence and availability of information, but the diffusion of such information. Successful marketing in law firms is often impeded by a lack of inter-departmental cooperation, a team approach and partners having trust in other partners which raises important organisational issues outside the marketing function (Hodgart & Temporal, 1997), or by a lack of internal communications and sharing of information (Vickerstaff, 2000). Marcus (n.d. c) judged that law firms have ‘antiquated’ structures that impede marketing, including fee structures and the partnership form itself. Marketing depends on the firm’s general structural framework, in the sense of whether it is a professional partnership or a managed professional business (Cooper *et al.*, 1996). Managed professional businesses are likely to drive marketing to increase profitability while partnerships frequently resist marketing (Vaagt, 2007).

Law firms are traditionally not governed like ‘normal businesses’ in terms of management power and authority. This is due to the ownership structure of a firm which is currently undergoing radical change in England and Wales. At the most basic level, the need of publicly traded firms to report results to the financial markets means that leaders must be more disciplined about forecasting and reporting revenues than those operating in private partnership. These public companies tend to use more systematic marketing (Young, 2005) than professional partnerships. Once a course of action has been identified, the CEO can make it happen (Maister, 1993). Decision making in law firms, however, is compared to the consensus decision making in ancient Grecian (Athenian) democracies. Law firms tend to be federal structures where partners are their own masters (Nisus, 2006). A corporate, hierarchical approach is uncommon and individual partners can be barriers to or drivers of marketing (Marcus, n.d. c). “Law firms are loosely-tied groups of over-achievers. All want to speak and be heard. Sarcastic, critical commentary about anything and everything is second nature and entertainment” (Overbeck, 2006: 17).

In many law firms marketers have a great deal of responsibility with limited authority, which makes it hard for them to succeed (Cohen, 2007). Due to decisions and revisions being made in large committees, in which every lawyer has complete veto power over every plan, proposal and period, “[t]he lowest common denominator prevailed, as the most conservative lawyers volunteered to marketing committee duties, to make sure the image and integrity of the firm wasn’t sullied and nothing was tried that might actually work” (Fishman, 2005: 5). The situation would be vastly improved if the law firms were run more like ordinary corporations, with a vertical, top-down management structure, instead of a horizontal, multi-headed one. Marketers have too many very demanding ‘masters’ in a law firm. “You have to be able to juggle the egos and personalities and produce ideas that are pretty darn near perfect” (Cohen, 2007: 25). All wanting to make their voice heard and making changes to marketing material independent of everyone else’s changes, is an ‘exasperatingly inefficient’ way to get out the news and therefore hinder effective marketing.

However, while this might be true in some firms, it has to be taken into consideration that some firms might be managed less top-down than others. Liu (1995) argued that marketing orientation and firm size were positively correlated, and Smith (2001) noticed a connection between the larger size of law firms and the presence of a

marketing department. This may be due to ‘professionalisation’ or ‘institutionalisation’ of law firms that increase in size (Maister, 1993; Sheth & Sobel, 2000). Large firms generally not only generate more total fee income, but also significantly more fee income per fee-earner, which impacts available resources that can be used for marketing (Mayson, 1997). Similarly, marketing is likely to become more sophisticated due to increased corporate decision-making and centralisation of management within firms, which has been a recent trend (PSMG, 2005). However, Vickerstaff (2000) did not identify a significant relationship between the level of marketing orientation and firm size or the age of firm, and suggested that other variables may be influencing the level of marketing orientation.

*Systems:* Legal services are delivered to clients through systems, i.e. formal and informal procedures that govern everyday activity. Munneke (2007) defines a system as an organised method of completing a recurring set of tasks that helps to solve problems by providing a method for resolving the problem the same way every time. Systems give life to institutional memory and can be communicated to others, replicated for others to use, taught, reviewed, analysed, and modified. A good system builds quality into the process, eliminates redundancy by leveraging knowledge and reducing error costs, as well as identifies critical dates and times (Munneke, 2007). Systems are therefore able to contribute to the (marketing) aspect of service delivery.

Ramo (1975) noted that systems have three components: forms, instructions, and information. The process of creating a system begins with the recognition that the firm is handling repetitive tasks. Once a system is in place, it needs to be adopted and implemented. If a firm does not have a system for marketing, it might examine what other firms do, refer to books and articles on the subject, or simply brainstorm about what they need to (Munneke, 2007). However, people are often fearful of and resistant to change, so modifications to ‘the way we have always done things’, such as not having marketed the firm’s services in a strategic manner, is likely to be met with some resistance and are therefore a barrier to the development of marketing. In order to gain commitment to change, Munneke (2007) recommended attempting to change systems by giving professionals and staff an opportunity to provide input during the planning stage as buy-in at every level of the organisation is critical.

*“Firm leadership should introduce the new system in a positive way. Schedule meetings to explain how the system, or at least the changes, will work. Explain*

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*the rationale for system changes; describe how the system will make people's lives better, not more difficult" (Munneke, 2007: 289).*

*Skills:* Morgan (1991) believed that marketing may be the management function that causes professionals more problems than any other. Misconceptions about what marketing involves—as it is typically equated with advertising and selling—have resulted in the formation of significant barriers to the development of marketing. A lack of marketing skills, capabilities and competencies, in particular at the structural level, are likely to impede marketing in law firms (Marcus, n.d. c; Philbin, 2000). Future business is often taken for granted (Maister, 1993) and firms count on their

*“rainmakers—the partner who could go into a telephone booth alone and come out arm in arm with a new client—but in today's competitive marketplace, one or two rainmakers are not enough. The firms themselves must be turned into marketing machines—to have a culture that understands and supports a marketing effort. ... For people in professional firms, the relationship between what they do and the outreach to the marketplace is rarely understood, and is tenuous at best” (Marcus, n.d. a).*

Without the understanding and active participation of the lawyers, marketing will not be able to progress to a shared organisational culture. Piercy and Morgan (1989) found that the majority of professional services firms have problems in understanding and handling their marketing activities, which Vickerstaff (2000) confirmed for the law firm sector. While businesses typically understand that the purpose of a company is to create a customer and that they are involved in marketing even though it may not be their specific job, there is no comparable attitude in traditional law firms (Marcus, n.d. a). Without a better understanding of marketing and a more supportive culture, it is unlikely that there would be any increase in the resources directed to marketing activities (Vickerstaff, 2000). Magretta (2002) believed that law firms do not (yet) apply Drucker's (1974) crucial reasoning: What is our business?, Who is the customer?, What does the customer value? Rather, they apply their own version of the early manufacturing mindset, defining their products as 'hours of advice', 'relationships', or 'studies', however, this is not what (corporate) clients value.

The effective implementation of the marketing concept throughout the organisation comprises an understanding of and concern for delivering customer satisfaction, which is shared by all employees and informed by market and competitor awareness, with a view to generating long term profitability (Vickerstaff, 2000). Even after law firms have started 'marketing', the level and quality of the marketing professionals brought in to advise law firms influences the implementation of effective marketing.

Law firms “must be the only large-scale business sector in the world run by untrained managers” (Malpas, 2003: 2). Initially, many firms promoted secretaries, who had no training in marketing disciplines, or recruited marketers from industries so different that consultant and marketer and lawyer simply could not understand one another. Such bad experiences have hindered marketing, as law firms experienced marketers who understood neither the business of law, nor the unusual management and partnership structure of law firms (Emm, 2000).

*Shared values:* The distinctive culture of law firms, defined in terms of shared values and ways of working appear to be a barrier to marketing (Morgan, 1990; Vickerstaff, 2000; Webster & Deshpandé, 1990). A firm’s normative environment may be more difficult to identify, articulate and discuss, but will often be as real as its physical appearance (Mayson, 2007).

Vickerstaff (2000) identified six key barriers which operate both at the organisational and the individual lawyer level: (i) ‘Culture’: comprising financial orientation, attitudes and lack of financial incentives, general insecurities and lack of team culture; (ii) ‘Time’: fee earners saying they are ‘too busy’ doing legal work to be involved in marketing initiatives; (iii) ‘Resources’: the view of marketing as an expense not an investment, spending money; (iv) Internal communication: spreading of client information across departments and offices, as well as interdepartmental communications; (v) Awareness and understanding: general understanding of concepts, historical misconception of what marketing is; and (vi) Expertise and skills: lack of individual skills, solicitors having no experience or aptitude for marketing.

Ruekert (1992) argued that market orientation is dependent on managerial choice and resource allocation—influencing individual lawyer’s behaviour by setting expectations and providing support with compensation and evaluation tools. Remuneration systems of partnerships have often been cited as a barrier to the development of marketing (Maiden, 1999). The desired marketing behaviour will only be accomplished with the right reward systems (Maister, 1993). Reward mechanisms reflect a firm’s priorities and in turn influence behaviours to affect change. A strict focus on a certain amount of billable hours hinders marketing as fee earners see billing hours and developing business as to opposing activities (Wesemann, 2004; Maraia, 2003). The lack of procedures to track involvement in marketing or business development projects imply



a lack of tracking marketing expenditure and effectiveness, which are likely to impede the implementation of more sophisticated marketing (PSMG, 2005).

Mayson (2007) distinguished between what *ought* to happen in a firm (culture) and what actually *does* happen (climate). “[A]cceptable (or at least tolerated) attitudes and behaviour are the result of many influences, and how people actually behave will not necessarily be consistent with how they are expected to behave” (Mayson, 2007: 61). Therefore, the climate, he argued, will always be more influential than culture. It can be concluded that rather than culture, climate will determine whether there will be obstacles or drivers for the development of marketing in a firm. This may also be influenced by the purpose, for which lawyers are in business together, which Mayson (2007) describes as the 3Cs: for convenience, to complement each other, and to combine together. There is no role for business strategy or management in a convenience firm, which would hence be a barrier for the development of marketing. In a complementing firm, management provides infrastructure support. However, normative and corporate strategies are more often accidental, which is unlikely to drive a (planned and intentional) marketing orientation. In combination firms, investments are made in and benefits are realised from people and practice areas, new offices, training, etc. The role of management is to provide leadership and direction as well as ensuring effective use of infrastructure. While Mayson (2007) does not explicitly mention that a combination firm drives the development of marketing, the combined purpose is likely to provide the necessary preconditions for the development of marketing in a firm.

*Staff:* The development, training, and motivation of lawyers and staff to market are closely related to the culture of a firm and depend on the resources made available by management. Often seen as a cost rather than an investment with limited financial support available (Nightingale, 2003), a lack of resources is a significant barrier to marketing (Vickerstaff, 2000). “[M]arketing is all too often seen as an expensive overhead, rather than an investment that can bring real commercial benefits to the practice. It should not be viewed as a twee luxury, superfluous to the real activity of solving legal matters and racking up bills” (Cainer, 2004).

*Style:* Instead of appointing the person most capable of managing a practice group (or the whole firm), firms tend to see such appointments as a ‘reward’ for the most

eminent, most senior partner, who might not necessarily be the most able to manage (Marcus, n.d. c). However, management and leadership should be seen as a role or a responsibility, not a title, a promotion, or a reward (Maister, 1993). The leader of a firm or practice must be a good professional, but not necessarily the best ‘player’ in order to coach well. Jones (2006) criticised that most firms might have put in place the right management structures, but failed to provide the necessary leadership to empower, encourage and enable people to adopt marketing’s client-focused view. At the same time, being in charge of marketing (as a partner) is almost seen as punishment. According to Ellis (1999) marketing partners are sometimes chosen “simply because he was the only one to miss the meeting that was discussing the issue” (339), and was therefore unable to ‘wriggle out’ of it (Morgan, 1991).

#### **4.2.3 Individual fee earners**

Some of the influences on marketing appear to be motivational, others are linked to the individual fee earner’s role and/or motivation similar to Handy’s (1993) framework of organisational variables (as adapted by Mayson, 1997). Values and beliefs embedded in the lawyers hinder the implementation of market orientation (Harris & Piercy, 1998; Rexha *et al.*, 2000). While laws may change, “the attitudes of the purveyors of the law hardly ever do” (Marcus, n.d. b). Many lawyers resist change and try to find excuses why they cannot or should not do marketing. “Lawyers by their very nature are predisposed to being sceptics and most, if not all, try to be logical and conform to a traditional *modus operandi*. It is then easy to understand the anxiety and apprehension that many lawyers face when confronted with a new, untraditional, ‘business’ concept that risks taking them beyond their comfort zones” (Brzakala, 2004).

Lawyers typically view marketing as unprofessional, unethical (Maraia, 2003), an ‘offence’ (Thomas *et al.*, 2001) and incompatible with the (dignity) of the profession, as well as not able to add value to the profession (Harris & Piercy, 1998) (see also paragraphs 3.2 and 4.2.1). Lawyers have described marketing as “a zero-sum game, adding no value to humans or society” and working “against the public interest” (Vickerstaff, 2000: 359). It was deemed appropriate for consumer goods, but not for lawyers: “We don’t need to attract people—they need us” (Harris & Piercy, 1998: 28). Some lawyers were convinced that marketing a firm will downgrade it and not enhance a good reputation (Cainer, 2004). Kotler and Connor (1977) identified a

‘disdain’ for commercialism and the equating of marketing with selling as barriers to the adoption of market orientation among professionals. Some lawyers were uncomfortable with marketing’s ‘intrusive’ and at times commercialising aspects (Ferguson, 1996; Philbin, 2000; Wesemann, 2004). “I didn’t go to law school to become a salesperson” appeared to be a typical statement among lawyers (Wesemann, 2004: 69). “[F]or some lawyers, selling their services simply isn’t a part of their self-image as a learned professional” (Daisley, 2005: 2).

Unclear perception and historic (mis)understanding of the marketing concept (see also paragraphs 1.1, 4.1.1) are a barrier preventing lawyers from marketing (Harris & Piercy, 1998; Bamossy, 1988; Kotler *et al.*, 2002; Maraia, 2003; Vickerstaff, 2000). Among lawyers, the term ‘marketing’ was often equated with advertising, hard-selling and price wars (Bamossy, 1988; Harris & Piercy, 1998; Kotler *et al.*, 2002; Pannett, 1995; Philbin, 2000) or ‘going out to lunch’ (Vickerstaff, 2000). “[T]he frequent misperception that marketing equals advertising or cold calling sales leads lawyers to reject it as something too commercial and hence unacceptable” (Marcus, n.d. a). Many lawyers still believe that their knowledge and expertise speaks for itself and it would be a sign of defeat to start marketing. Few lawyers have yet to grasp Drucker’s (1974) concept that the purpose of a company is to create a customer (Marcus, 2002) and that general business acumen applies to law firms as well. Bird (1984) wrote that the client should be able to feel free to call the lawyer with ‘all sorts of queries’ and have them answered quickly and sympathetically, adding that “[t]his may well become a nuisance but it is the price one has to pay for doing this kind of work” (Bird, 1984: 120). This is a strange remark considering that clients *are* the business, and that without them, there is no business. Viewing them and serving them as a nuisance seems to miss the point of the rationale for why lawyers are doing the work.

Due to the lack of a marketing tradition in the professions and marketing not being a part of their university curriculum, lawyers mature in their professions without marketing training (Maraia, 2003; Marcus, 2002) and therefore are often ill prepared to handle both the business and the professional part of their profession simultaneously (Maraia, 2003). Consequently, they must be taught to be marketers. Before marketing programmes can be successful, there must be a behaviour modification of sorts, and a marketing culture must be engendered. Charles O’Donnell, COO of Duane Morris confirmed:

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*“One of the biggest issues in a law firm is that most of the professionals are not formally trained business people. Most partners were not business majors in college and don’t have advanced degrees other than law degrees. And one day they become partners because they do a good job of practicing law and being bright, but they really don’t know what’s involved running the business of law” (Groysberg and Abrahams, 2006: 3).*

While lawyers are consummate professionals in their chosen field, business skills are not always directly linked to those abilities (Young, 2007). Due to their ‘marketing disorientation’, lawyers also consistently underrate the importance of clients’ selection cues and criteria (Cutler *et al.*, 2003). Although lawyers often stress the personal nature of the lawyer-client relationship, lawyers are said to not understand how consumers select law firms. The lack of congruence between lawyers and consumers in evaluating the importance of the cues and criteria indicates that they cannot be marketing efficiently as they do not place the same importance on the criteria that consumers utilise.

It appears that profound cultural differences between lawyers and marketers form a barrier to marketing. Lawyers take pride in their formal education, professional qualifications and certifications, and see being a lawyer as a virtue unto itself. In marketing, however, “a B.A. is often sufficient, and the ease of entry, particularly when you’re likely to be hired by someone to whom marketing is opaque, is astonishing” Marcus (n.d. b). Consequently, lawyers tend to think of marketing as a ‘lightweight’ activity anybody can do (Marcus, n.d. b) and lawyers resist being consulted by non-lawyer marketers that they do not perceive as peers (Horstschäfer, 2005). It is little surprising that a common complaint among marketers in law firms is that they are not given sufficient authority and respect (Maiden, 1999). In fact, firms frequently employ professional marketers, then elect not to take their advice. Partners believe they know best when it comes to marketing and pulling rank on their marketing advisers, instructing them to do what they feel is best, even when the marketer recommend otherwise. This is akin to consulting your doctor and then telling them both what the diagnosis of your illness is and what the treatment should be (Nightingale, 2003).

Perhaps the difference in the thinking and reasoning between successful marketing and successful ‘lawyering’ may be too different (Dahut, 2004). While most lawyers like to think of themselves as “open-minded and objective people, more often than not

it is precisely the type of thinking that makes lawyers highly effective at practicing law that can make them ineffective at marketing” (Dahut, 2004: 75). The discrepancy between the qualities necessary for marketing and for the provision of legal services (Nightingale & Traynor, 2003) appears to be one of the biggest challenges. Effective marketing is about identifying assets, not liabilities. However, lawyers are trained to find what is wrong with something, not what is right (Overbeck, 2006). In addition, while client satisfaction is of utmost importance in marketing, instead of making a sincere effort to satisfy the clients, lawyers are said to have trouble apologising for mistakes they might have made, get defensive, patronising, and often deny that they are in the wrong (Bedlow, 2006b).

In addition, there appear to be discrepancies between the nature of professional services and the professionals (see paragraph 2.2). When a company sells a product to a customer, the product remains with the customer, the company however is no longer directly in touch with the customer. When a lawyer sells her services, lawyer and client inevitably stay in contact. Products are manufactured and distributed by people who normally stay anonymous. The product thus is the interface between the customer and its producers. The interface between the law firm and the client is the lawyer herself who performs the service. Marketing for companies involves a marketing department. While marketers in law firms can build and run programmes, no legal marketing programme can be run without the active participation of the lawyers involved (Marcus, n.d. a).

Another characteristic is lawyers’ fear of having to move outside their ‘comfort zones’. Lawyers typically preferred practising their trade to undertaking marketing (Maraia, 2003). Many lawyers hoped that ‘glossy’ brochures and seminars would do the marketing for them (Ferguson, 1996). Wesemann (2004) found that some lawyers perceived a personality mismatch for marketing, claiming to be too introverted to market in a face-to-face manner. This often results in lawyers spending their time on more remote marketing activities that they are most comfortable with, such as speaking at conferences, issuing press releases, and participating in/hosting in-house events. But to bring in new business, firms must focus on getting lawyers to leave the office, meet with prospects, and advance their relationships (Hassett, 2007). In addition, due to their lack of (formal) marketing knowledge, lawyers focus on the practical experience which may not always be sufficient. Instead, marketers who

(ideally) also refer to marketing theory (Vaagt, 2007) should lead to more sophisticated marketing.

Lack of time acts as a barrier to marketing among lawyers (Kotler *et al.*, 2002; Maister, 1993; Maraia, 2003; Vickerstaff, 2000; Wesemann, 2004). “[A]s marketing is typically not embedded in the fee earner’s daily work, marketing is perceived as an additional ‘option’, that due to a lack of time can not be committed to on a regular basis” (Marcus, n.d. a). Many marketing activities necessitate lawyers’ involvement, but are frequently viewed as a time consuming exercise, an additional task that is not part of the scope of ‘normal’ work of a lawyer. The need to bill time and market their practice creates time-management problems (Kotler *et al.*, 2002; Wesemann, 2004). However, this may be a ‘widespread avoidance reaction’ and used as an excuse rather than a real reason (Maraia, 2003). Asking lawyers what they would do if the biggest client gave them another project, typically, they would make time for the project. Lawyers often state that “if I get paid for doing other things, I’m not going to give much attention to these new [marketing] topics” (Maister, 1993: 256). This confirms the notion in paragraph 4.2.2, that what gets measured and remunerated gets done.

On a similar note, lawyers were found to lack a long-term perspective and patience for marketing to produce results: “[M]arketing is about positioning. You’ll get work, but it may be three years down the road. Lawyers don’t understand that” (Cohen, 2007: 21). This impatience also shows with regard to the tenure of the heads of marketing in law firms. Since crucial relationships take time to develop, short tenure keeps marketing officers from obtaining a critical mass of trust and buy-in from partners (Cohen, 2007).

According to research by ‘Lawyers for Change’ (<http://www.lawyersforchange.org>), low levels of morale in parts of the profession might act as a barrier to marketing. 40 percent of lawyers are not happy with their career choice and consequently are likely to have little motivation to market themselves or their firms.

While individual fee earners’ characteristics more often than not appear to act as barriers to marketing, this seems to be changing. “The arrogant partner waiting for deferential client to dutifully hand over work is a thing of the past, according to research that shows that more than nine out of 10 lawyers back the need for formal

business development” (Thornton, 2006: 10). Vickerstaff (2000) found that the adoption of marketing was cited as a particular problem for older professionals, most likely reflecting historical attitudes towards marketing within the profession, and possibly suggesting age as a barrier. Similarly, Harris and Piercy (1998) and Overbeck (2002) identified age as a barrier to marketing development. Once a lawyer has reached ‘senior partner’, ‘mentor’ or ‘ambassador’ (Sveiby & Lloyd, 1987) in his or her professional life-cycle, there is likely to be more of a self-interest to maintain the status quo. Fresh approaches to marketing get stopped by: ‘We have never done that before/it will not work with our clients/it is different in law/I know what my clients like’ (Cohen, 2007).

Mayson (2007) cited generational differences as one of the important influences on the legal sector. Younger lawyers see growth and attracting new clients as the key to the future and a benefit to ‘jump start’ their careers with the help of marketing. They consider marketing as a critical component of the firm and are driven to marketing by the very real fear that clients will disappear with retiring seniors (Cainer, 2004). Young lawyers are aware that “[c]lients always have a choice of solicitor—they don’t have to come back to you—and don’t have to recommend you. It is part of your job, however, to ensure that they do” (Hill, 1986: 55). Vickerstaff (2000) empirically confirmed the threat of job losses to be a possible driver for marketing.

Some argue that lawyers’ vanity might propel marketing in law firms. Once law firms started to hire publicists to get their names in the paper, they wanted to be in “any paper, on any subject. It wasn’t strategic, but PR firms discovered that lawyers loved seeing their names in print” (Fishman, 2005: 5). The success of law firm directories and rankings and the legal press may as well be an indicator for this phenomenon.

### **4.3 Conclusions**

Lawyers used to practise the law without having to worry about a steady flow of business. Typically, a lawyer or two of the firm who were known in the marketplace brought in enough business for the entire firm. Dramatic changes in the macro-environment have significantly influenced the legal services sector, both on the demand as well as the supply side. Few legal services providers have the luxury to ignore the changes.

While many marketing instruments were never forbidden, an increasing number of lawyers realise that what the changes mean is that they can compete with one another and pursue each other's clients. Clients today have many choices, and they are aware of it. Lawyers' advice is critically questioned, fees are under close scrutiny. The lawyer who thinks that marketing is a waste of time for her practice has not understood what marketing means, nor has she grasped the power of effective communication to promote the services to existing and potential clients. Assumptions that clients will return for more and that new clients will walk through the door are both naïve and dangerous. There is a clear need for solicitors to actively market the services which they offer (Pannett, 1995). While personal contacts still have an important role to play, there is no question that proactive marketing offers more opportunities than the limited 'old school tie' network that has hindered innovative marketing ideas, and in some cases has meant that many firms are without a dedicated marketing person at all (Cainer, 2004).

There are many signs that law firms are increasingly accepting marketing as a fundamental cultural change worthy of serious investment and capable of impacting positively on the bottom line (Roberson, 2003). While most legal services firms in the UK today have embraced some sort of marketing, drivers of legal marketing appear to typically to stem from outside forces, rather than being a proactive choice, made out of true understanding of and conviction about the potentials of marketing. With marketing becoming accepted in the profession, lawyers, however, are starting to realise they would be better off if they started to market their practice (Maister, 1993). A basic notion of marketing is that perceptions drive choices, and perceptions can be influenced, which would be unwise to ignore. A failure to be able to articulate clearly why one's services are better in terms of client needs than the competitors hinders the application of marketing and means that one will end up competing primarily on price (Hodgart & Temporal, 1997).

As discussed in paragraph 2.1.4, there appears to be a paradox that merits investigation and needs to be better understood, namely that professionals appeared to be better 'marketers' when not intending to market, but poorer 'marketers' when consciously deciding to use 'marketing' as a way to operate in increasing competitive markets (Hodges & Young, 2009). However, the literature generally suggests that in order to market effectively, firms need to aspire to have a marketing culture



embedded in the values of their firm culture, independent of whether the firm is a professional partnership or a managed professional business. Ideally, a firm may be said to have a marketing culture when the lawyers (i) understand and recognise the role that marketing disciplines play in firm management and development; (ii) understand and respect the professionalism of the marketing professional and the marketing staff; (iii) recognise the relationship between what they do and the needs of the marketplace; (iv) understand and accept their role in the marketing process; (v) understand and accept that non-billable hours spent on marketing are an investment in the future of the firm, and are not simply non-billable hours; (vi) participate in specific marketing activities; (vii) retain and support competent professional marketing staff; (viii) structure the firm to develop and pursue a marketing programme; (ix) are managed by people who understand and enthusiastically support the marketing effort. A firm that meets these criteria is one that will compete successfully, function profitably, and grow (Marcus, n.d. a).

Such an ‘ideal’ marketing orientation requires top management support; good marketing professionals; education; and a marketing structure within the firm (see also chapter 7). In addition, it also requires a measure of behaviour modification in the sense of an understanding that for marketing to succeed in a professional firm, every professional must participate and every professional must understand the competitive advantages (see paragraph 2.3.3.2) of participating. Kennie (1999) emphasised the importance of effective measurement processes to help drive behavioural change. Marketing can excel in law firms when management provides the right framework. ‘What gets measured get done’ and ‘what gets measured and rewarded gets done even more’, particularly when the measures are directly related to the firm’s strategy (Fitzgerald, 1997). A serious challenge appears to link specific outcomes to specific marketing activity and therefore be able to demonstrate marketing return on investment (Lowry *et al.*, 2005; PSMG, 2005).

### A Client's Poem

If only you'd ask, I'd be happy to say,  
I wish you would do things more often my way.

If only you'd ask, I'd be happy to say  
I don't like that new partner that calls every day.

If only you'd ask, I'd be happy to say  
I'd like you to bill me in an alternative way.

If only you'd ask, I'd be happy to say  
We have four new matters that came in just today.

If only you'd ask, I'd be happy to say  
Being responsive to me means you call back the same day.

If only you'd ask, I'd be happy to say  
There are three other law firms we're considering today.

If only you'd ask, I'd be happy to say  
I expect your budget to reflect what I'll pay.

If only you'd ask, I'd be happy to say  
When you go over budget, I see my career slip away.

If only you'd ask, I'd be happy to say  
I wish you would do things more often my way.

(Felice C. Wagner)

## CHAPTER 5

### The buying behaviour of medium-sized companies

The marketing concept implies more than merely delivering a service, it requires a thorough understanding of the clients' needs and wants and a knowledge of what factors impact their decisions (Sheth, 1996). Only when looking at the firm from the client's perspective and understanding the decision making process of buying legal services, is it possible to predict a client's choice of law firm and develop a competitive edge essential for long-term success (Cutler *et al.*, 2003; Day *et al.*, 1988).

While it may be tempting to forgo such analysis, assuming knowledge of what clients expect or value is wrong since "assumptions don't make effective ... strategies" (Davidow & Uttal, 1991: 513). Studies have found significant differences regarding the importance of attributes of selection and evaluation between users and providers of professional services (Cutler *et al.*, 2003; Darden *et al.*, 1981). "Many law firm lawyers are woefully ignorant of what corporate counsel do, what their clients

demand from them, how they operate, and what drives their buying decisions. (...) most law firm lawyers aren't even aware of this knowledge gap" (Hackett, 2005: 18). In-house lawyers stated to not appreciate being sold to, in the sense law firms pushing pre-selected services, whether a client needs them or not, rather than learning about and providing relevant insight to clients. The dislikes include cold-calls, unsolicited sending of newsletters, primers and bulletins, calling about the latest litigation filed against a company. By the time a claim is issued, they already have outside counsel (Herschensohn, 2004).

Law firms need to understand the entire buying process by which their target clients identify, evaluate and ultimately select (Day & Barksdale, 1994) as different segments of clients might have distinct preferences (Hill, 1986). In addition, clients' behaviour is dynamic, changing and evolving, thus requires continuous monitoring. Only through careful analysis and better understanding the challenges, needs, and expectations of prospective buyers can firms be confident that they are engaging with the clients on their terms (Dibb *et al.*, 1991).

### **5.1 Medium-sized companies as buyers of legal services**

The size of a company is likely to have significant impact on its organisational buying behaviour (Buonanno *et al.*, 2005; Howard & Hine, 1997; Yasai-Ardekani & Haug, 1997). However, the majority of existing—mostly non-academic—studies in the legal sector focus on the high value, multi-jurisdictional buying activity involving Global/European 500, FTSE-100 or Fortune 500 companies.

Although some of the findings might be pertinent to medium-sized companies, Buonanno *et al.* (2005) cautioned that small and medium-sized enterprises (SMEs) are different, and follow other rules. Medium-sized companies have unique characteristics, determined by the inherent characteristics and behaviours of the entrepreneur or owner/manager as well as the size and stage of development of the enterprise (Carson, 1990). An empirical study by Ellis and Watterson (2001) which examined purchase criteria utilised by individuals and SMEs when buying legal services and a market research study on how medium-sized companies in the UK, Germany, France, and Italy select and review their legal services providers (LexisNexis, 2006) appear to be the only studies on the purchasing behaviour of medium-sized companies in the context of legal services.

### 5.1.1 Definition of medium-sized companies

There is no universally accepted definition for ‘medium-sized company’, but a number of official definitions. Countries typically classify companies for economic analyses and political discussions, competition rules, funding, and promotional programme. Some definitions are based on quantitative criteria, while others are a combination of quantitative and qualitative criteria.

Quantitative criteria include data such as employment, turnover, and asset size. While they are relatively easy to obtain and measure, they vary significantly by industry and country (DTI, 2007a). It is therefore necessary to apply different approaches depending on the industry to which an organisation belongs to (Kimberly, 1976). The number of employees might be a better ‘fit’ for services, while for manufacturing the turnover may be a better match. Hauser (2005) warned that the balance sheet total is not a good measure as it can be increased for reasons which are not connected to the size of the enterprise. He also cautioned that quantitative measures need to be seen in relation to the economic activities which the enterprise carries out, as e.g., some industries tend to be labour-intensive, while others are not. The 1971 Report by the Bolton Committee stressed the relativity of size in terms of a company’s market share. A firm of a given size could be small in relation to one sector where the market is large and there are many competitors, whereas a firm of similar proportions could be considered large in another sector with fewer players and/or generally smaller firms (DTI, 2007b). The limits set by a quantitative feature should not be too strict. An enterprise with more than 500 employees may have the character of an SME and an enterprise with 200 employees might have the character of, and be managed like, a big enterprise (Hauser, 2005).

Due to these limitations a number of definitions take into account qualitative measures such as ownership, management or autonomy, the control of the business or beliefs and behavioural aspects that differentiate SMEs from large firms (Glancey & McQuaid, 2000). Hauser (2005) defined companies in qualitative terms, distinguishing three types of enterprises. In type 1 or ‘family enterprises’ the manager is also the owner or a member of the owner family and decides short and long-term issues in the interest of the enterprise. In type 2 enterprises the manager makes the short-term strategic decisions and prepares the ground for long-term decisions. The owners then decide in their own interest, typically aiming to maximise their profit and

thus the profit of the enterprise. Type 3 enterprises belong to enterprise groups where strategic issues are decided in the interest of the group and in the headquarters of the group. It is possible that profits are not maximised within that enterprise but elsewhere, e.g. by setting internal prices deviating from market prices. The main differences between SMEs and enterprises belonging to such enterprise groups are to be found in qualitative features and not primarily in their size (Hauser, 2005), therefore the main purpose for a definition of SMEs is to describe enterprises of type 1 and 2 up to a certain size and to distinguish them from the rest of the enterprise population because their character is completely different.

The EU definition for SMEs is based on both quantitative and qualitative measures. According to EU Recommendation 2003/361/EC an SME is “any legal entity engaged in an economic activity, irrespective of its legal form. This includes, in particular, self-employed persons and family businesses engaged in craft or other activities, and partnerships or associations engaged in an economic activity” (Article 1) and has to satisfy the criteria for the number of employees and one of two financial criteria:

Enterprise category	Headcount	and	Annual turnover (in €)	Or	Annual balance sheet total (in €)
Micro	< 10		up to 2 million		up to 2 million
Small	< 50		up to 10 million		up to 10 million
Medium-sized	< 250		up to 50 million		up to 43 million

**Table 5-1**

**Staff Headcount and Financial Ceilings determining Enterprise**

**Categories**

**(2003/361/EC, Article 2)**

**[http://ec.europa.eu/enterprise/enterprise\\_policy/sme\\_definition/index\\_en.htm](http://ec.europa.eu/enterprise/enterprise_policy/sme_definition/index_en.htm)**

In addition, it must be independent, which means less than 25 percent owned by one enterprise or jointly by several enterprises falling outside the definition of an SME (European Commission, 2003b). Recommendation 2003/361/EC regarding the SME definition was adopted on 6 May 2003, replacing Recommendation 96/280/EC as of 1 January 2005 (European Commission, n.d. b). While the definition applies to all EU member states, the Department of Business, Enterprise and Regulatory Reform (formerly the DTI) describes that a medium-sized company consists of the following

criteria: (i) turnover of not more than £22.8 million; (ii) balance sheet total of not more than £11.4 million; (iii) not more than 250 employees. Rödl (2003) criticised the size limit of 250 employees of the EU definition as too limiting. Many European enterprises which consider themselves ‘medium-sized’ companies would not fit in the given bandwidth.

Based on Hauser (2005) and the EU definition, this dissertation defines a medium-sized company as any independent legal entity engaged in an economic activity, irrespective of its legal form. This includes, in particular, self-employed persons, family businesses, and partnerships or associations engaged in an economic activity. The maximum headcount of a medium-sized company must not surpass 250. In addition, the annual turnover must not exceed 50 million Euro and/or the annual balance sheet must stay not exceed 43 million Euro.

### **5.1.2 Importance of medium-sized companies as buyers of legal services**

Medium-sized companies are an interesting clientele for law firms due to their economic significance. Often called the ‘backbone of the European economy’ or ‘engines of economic and social development’, they generate employment, economic growth and international competitiveness (Eurostat, n.d. b). In numerous countries they are the driving force for growth and future economic prosperity (Gupta, 1989). A number of empirical studies in Europe suggest that SMEs play a large and growing role as job creators (Baldwin & Picot, 1995; Fumagalli & Mussati, 1993). In the enlarged European Community of 25 countries, some 23 million SMEs represent 99 percent of all enterprises, provide around 75 million jobs by employing about two thirds of the workforce and generate more than half (57.3 percent) of its value added (European Commission, n.d. a, b; Eurostat, n.d. a). The DTI estimated that of the 4.3 million business enterprises in the UK in 2004 99.9 percent were small- to medium-sized. SMEs accounted for 58 percent of all UK employment (medium-sized companies accounted for 11.7 percent) and 51.3 percent of the UK’s estimated business turnover of £2,400 billion (medium-sized companies accounted for 14.3%) (Statistical Press Release URN 05/92, DTI, 2005).

The large number of SMEs is not only of interest because of the pure volume of potential business, but due also to additional advantages specific to the legal sector. A widely dispersed client base reduces the source of potential conflicts of interest

compared to a more concentrated client base and thus potentially reduces situations under which law firms would have to turn down business. Medium-sized companies typically do not have an internal legal department as they appear to prefer outsourcing activities that are not directly related to their non-core processes (Buonanno *et al.*, 2005). According to a study, only 12 percent of medium-sized companies with 50 to 100 employees and 33 percent of medium-sized companies with 101 to 250 employees have an in-house legal department. The typical size of the in-house team is small, with one to two staff members (LexisNexis, 2006). Thus medium-sized companies typically lack legal expertise which causes them to buy legal services disproportional to their size, outsourcing a wide range of legal services instead of handling the work internally (Gilmore *et al.*, 2001).

While medium-sized companies historically have not been associated with international business activity, according to a study from the Organisation for Economic Cooperation and Development (OECD), they account for about a quarter of the exports in most industrialised nations (OECD, 1997). Technological advances have stimulated the trend towards globalisation of business and trade (see also paragraph 4.1.2), in which they have begun to play a critical role (Knight, 2001). Downes (1997) identified globalisation as a major driver in business: technological progress in logistics and distribution enables nearly every business to buy, sell and cooperate on a global scale. As a result, even smaller and locally oriented businesses today work in a global context, collaborating with partners, suppliers or customers in other countries. This wider market area requires the management of more differentiated legal and cultural issues, thus introducing a higher level of complexity (Davenport, 1998; Hamel & Prahalad, 1994, Prahalad, 1990, Sanders & Carpenter, 1998) as well as facing competitive pressures which characterise international markets (Roth & O'Donnell, 1996; Rumelt, 1974) and potentially necessitate a greater need for legal services (Maiti, 2001).

## **5.2 Theoretical foundation of organisational buying behaviour**

The conceptual foundation of organisational buying behaviour was laid by Robinson *et al.* (1967), Howard and Sheth (1969), and Webster and Wind (1972). Under the traditional model, organisational buying behaviour was not viewed as a value-adding function. Buying activity was largely clerical with purchasing agents being evaluated on their negotiation skills. Purchasing performance was typically measured by the

levels of price discounts obtained from suppliers (Dobler *et al.*, 1990). This ‘reward’ system fostered an adversarial climate between buyers and sellers since their goals are in direct competition. The model was characterised by a short term orientation, buying based on lowest price and very little interaction with suppliers other than the initial negotiations and to express post-purchase dissatisfaction when performance was poor (Wilson, 1994).

Newer models of organisational buying behaviour imply that buyers and sellers take a longer-term perspective of their business activities. The satisfaction of joint goals (“win-win”) is the desired outcome. To achieve efficiencies, many organisations started to reduce the number of their suppliers in order to build vendor loyalty/supplier partnerships (Wilson, 1996). Suppliers get a larger share of the business and in return must provide high quality products and services (Bertrand, 1993).

### **5.2.1 Decision-making models**

The nature of organisational buying typically requires extensive decision-making. Howard and Sheth’s (1969) consumer buying behaviour models, and Robinson *et al.* (1967) and Webster and Wind’s (1972) organisational buying models suggested that buying is a complex process rather than a single act, consisting of a multistage decision-making or problem-solving process that involves both buyers and users. The individual buying decision process includes the stages of identification of needs, search for information, evaluation of alternative, purchase, and post-purchase evaluation, while the organisational buying process comprises of problem recognition, general need description, service specification, supplier search, proposal solicitation, supplier selection, order routine specification, and performance review. These models provide the framework for high-involvement decision making, applicable to the purchase of services as well as products, individual consumers as well as organisational customers.

The decision making process was seen to differ depending on the service to be purchased (Fitzsimmons *et al.*, 1998) or the psychology of the organism and the structure of the environment (Goldstein *et al.*, 2002). Organisational characteristics include the size of the organisation (Dholakia *et al.*, 1993; Verhallen *et al.*, 1998), culture (Qualls & Puto, 1989; Berthon *et al.*, 2001), structure (Kauffman, 1996), prior



purchase experience (Weiss & Heide, 1993) as well as power and control (Bunn, 1994; Draper, 1994). Size and prior purchase experience are related to the amount and level of organisational memory: organisational structure is related to accessibility and dispersion of organisational memory.

Wilson (1996) rejected linear decision making models that treat buying and selling as two separate functions and lack feedback loops, in favour of frameworks where the activities of both buying and selling organisation are represented in circular flows. Both organisations may benefit from integrated systems as involvement in new product/service development efforts allows the provider to gain better understanding of the client's needs. Selling efforts may then be accomplished with more efficiency and effectiveness. Day and Barksdale (1994, 2003) argued that many models oversimplify the complex decision making process and urged discrimination between the criteria for 'selection' and 'evaluation', rather than using the terms interchangeably (Cravens *et al.*, 1985) in order to make findings more readily interpretable. Day and Barksdale (1994) pointed out that some studies fail to report how criteria were selected (e.g. Hill *et al.*, 1989; Saleh & Sarkar, 1973), criticising such quantitative research as reflecting the researchers' assumptions and working hypotheses. As a result, respondents are constrained to certain types of response categories and formats.

The consumer decision making process model comprises the steps need recognition; search for information; pre-purchase evaluation of alternatives; purchase; consumption; post-purchase consumption evaluation; and divestment (Blackwell *et al.*, 2006). Similarly, Day and Barksdale's (1994) model comprises the steps: (i) recognition of a need or problem; (ii) identification of the initial consideration set; (iii) refinement of the consideration set; (iv) evaluation of the consideration set; (v) selection of the service provider (first cut and final selection); (vi) evaluation of the quality of service delivery; (vii) evaluation of the quality of the outcomes ('product'); (viii) satisfaction/dissatisfaction. Stages (iii) and (iv) may be repeated in other elimination rounds (Day & Barksdale, 1994).

This thesis combines the two models. Mainly following Day and Barksdale's model, it jointly discusses steps ii and iii ('Identification of the initial consideration set' and 'Refinement of the consideration') similar to Blackwell's 'Search for information',

and vi and vii ('Evaluation of the quality of service delivery' and 'Evaluation of the quality of the outcomes'), which corresponds to Blackwell's 'Post-purchase consumption evaluation', when examining the organisational buying behaviour process of legal services by medium-sized companies.

### 5.2.2 Decision-making heuristics

People do not seem to have all-purpose algorithms for deciding how to behave. Instead, they appear to behave according to a two-stage process in which they first attempt to figure out what kind of situation they are in and then adopt choice rules that seem appropriate for that situation (Loewenstein, 2001). Literature suggests that situational factors have strong links to time pressure (Dholakia *et al.*, 1993; Kohli, 1989; Lau *et al.*, 1999), novelty (Lau *et al.*, 1999; McQuiston, 1989), complexity (McQuiston, 1989; Yeoh, 2000), importance (Bunn, 1993; Kohli, 1989; Wilson *et al.*, 1991), and technical uncertainty (Wilson *et al.*, 1991). Qualls and Puto (1989) and Wilson *et al.* (2001) argued that buyers 'frame' the purchase problem based on the perceived context associated with the purchase decision, which affects the outcome of the decision-making process. Woodside (2003) distinguished different buying situations, depending on the expenditure level, specifications as well as amount and type of competition.

A basic assumption is that human instinct makes buyers attempt to reduce their efforts to make a decision. The type of judgment depends heavily on the purchasing situations and the individual's existing knowledge. Sujan (1985) differentiated judgment processes as 'category'-based and 'piecemeal'-based. Category-based judgment applies overall attitude based on previous 'categories', which evaluates incoming information against current information. A simpler decision can be made when the current information matches established categories. An organisation that lacks the organisational memory or the ability to analyse information sources in a systematic manner is likely to use smaller amounts of information to evaluate their buying situation. In the absence of comprehensive search experience or know-how, the decision will be based on a simple matching process (Park & Bunn, 2003). Park and Bunn (2003) believed the reliance on decision rules (Johnston & Lewin, 1996; Wilson *et al.*, 2001) to be related to the amount, content and accessibility of existing organisational memory. This implies that decision-making in medium-sized

companies (which are likely to be less complex due to their smaller size) should be less complex.

While some buying decisions may appear to have been taken at random, Simon (1955) pointed out that instead of working to find the ‘best’ or ‘right’ decision, human beings typically seek solutions that they consider ‘good enough’ for a given situation. This ‘satisficing’ behaviour requires making assessments, often with little information to base these judgments on. However, ‘good enough’ decisions may not be the choice when buying legal services. Gigerenzer and Todd (1999) identified ‘fast and frugal heuristics’, simple decision-making schemes people use when faced with complex, high-stakes decisions. As the stakes get higher and the stress levels elevate, humans reduce their mental classification and regression trees and discard cues they have observed, correctly or incorrectly, to be ambiguous. Regardless of how multifaceted a person might reason under normal circumstances, the judgment tends to become binary under stress. Such elemental approaches to decision-making seem to be inconsistent with data-intensive, knowledge-based information systems that exist today.

Woodside (2003) confirmed that buying organisations did not apply game theory, critical path analysis or other management science methods. Discussions on how decisions should be made were not found to occur, e.g. what provider attributes and product features should and should not be considered and what decision rules should be used were not determined before the decision were made. The buying decision processes were simplified and segmented into a series of small options with a clear preference for evaluating a few choices observed. Requesting three or four providers for bid proposals were preferred, not five, six or ten providers; a limited number (three to five) of choice criteria were used in making selections; and phased, two-staged, decision rules were used, e.g. conjunctive followed by disjunctive heuristics (Woodside, 2003). Gibson (2003) confirmed such gut-level decisions among corporate clients when selecting outside legal counsel. They are discarding information so they can devote more energy and attention to evaluating the key information correctly. This approach may be seen as efficient—rather than non-analytical. The challenge is that humans do not appear to focus on the same kinds of information, even in identical situations.

### 5.2.3 The role of the buying centre

Organisational buying behaviour tends to involve connecting individuals who share purchasing information among departments. The literature of organisational buying behaviour supports the notion that the 'client' is not just one person, but members of a selection committee or buying centre (Brand, 1972; Day & Barksdale, 1992; Gronhaug, 1975; Johnston & Bonoma, 1981; McMillan, 1973, Stock & Zinszer, 1987). Buying centres are thought to be informal, cross-sectional decision units whose membership compositions can change through time and by phases in the buying process (Spekman & Stern, 1979; Stock & Zinszer, 1987; Webster & Wind, 1972; Woodside & Vyas, 1983). The type and degree of involvement varies depending upon the type of decision being made, with more individuals and functional areas appearing to be involved in the decision-making process during the problem-recognition and evaluation stages than other stages (Stock & Zinszer, 1987).

Factors related to the buying centre include its size (Dholakia *et al.*, 1993), structure (Spekman and Stern, 1979), communication (Spekman & Gronhaug, 1986) and interpersonal influence (Kohli, 1989) and are related to the amount, accessibility and dispersion of organisational memory. If more people than the specialised employees are involved, the specialised executive will usually be the decision maker and those in other functional areas will be decision influencers (Stock & Zinszer, 1987). West's (1997) explanation of the potential role of purchasing in professional services used the traditional model of buying (Webster & Wind, 1972) and can be modified for legal services as follows: Users: individuals who use the services of the law firm(s) on a regular basis; Buyers: individuals authorised to negotiate with the law firm(s); Influencers: individuals who influence the selection process (e.g. define selection criteria); Deciders: individuals who determine and approve the final selection of the law firm(s); Gatekeepers: individuals who guide the flow of information regarding the selection of the law firm(s).

In a study among European medium-sized companies (the study was conducted in France, Germany, Italy, and the UK and distinguished 'small' medium-sized companies with 50 to 100 employees, 'medium' medium-sized companies: 101 to 250 employees, and 'large' medium-sized companies: 251 to 600 employees; to make comparisons possible and meaningful, references will be made to 'small'/'medium' medium-sized companies only), the managing director or owner/entrepreneur was

directly involved in the buying process for legal services in 83/84 percent of respondent companies, 71 percent in the UK (LexisNexis, 2006). The second most common person to be involved in the process was the head of finance (41/54 percent). Among UK medium-sized companies this number was even higher with 64 percent. Interestingly, while 36 percent of the UK medium-sized companies stated that they had an in-house legal department, in only 26 percent was the in-house lawyer involved in the buying process of external legal services. These numbers varied between 'small'/'medium' medium-sized companies: only 12 percent of 'small' medium-sized companies had an in-house legal department, compared to 33 'medium' 'small'/'medium' medium-sized companies. The in-house lawyer was involved in the buying process in 27 percent of the 'small' medium-sized companies, but curiously, only in 8 percent of the 'medium' medium-sized companies. The study does not explain the finding, but generally concludes that

*“law firms should not assume that an in-house lawyer is the most important contact in mid-sized companies. In reality, the in-house lawyer is not always the final arbiter of which law firms obtain a share of the company’s external legal budget” (LexisNexis, 2006: 15).*

This reinforces the view that the director or owner/entrepreneur other departmental heads may play a key role in purchasing specific types of legal advice. The head of human resources typically appears to be involved with regard to labour and employment law matters and operations managers are involved in the decision making of 'small' medium-sized companies as well as manufacturing companies according to the study.

### **5.3 The process of organisational buying behaviour**

Multi-stage decision-making models (see paragraph 5.2.1) force organisations to consider the whole buying process rather than just the purchase decision. Day and Barksdale (1992, 1994) emphasised the importance for professional services firms to be aware of the entire process, its various phases and the relationship among the phases by which firms are selected and evaluated. Simply comparing snapshot findings that focus on selection criteria or evaluation criteria does not adequately capture the dynamic of the selection and performance evaluation process or relational process which may span weeks, months or even years.

However, organisational buying may progress in a particular sequence as the models may imply, passing through all stages, skip or reverse some of the stages (Stock &

LaLonde, 1977; Stock & Zinszer, 1987; Witte, 1972). Olshavsky and Granbois (1979) found that many purchases did not involve decision making, even for first purchases. Day and Barksdale (1992) found that quality assessment progresses in the sense of service outcome progressing from product to process to product. The quality of previous projects is considered during the selection stage, then the delivery process is appraised, and finally the completed project is evaluated. During the process, different criteria will be employed to facilitate selection and evaluation to reduce risk and uncertainty (Mitchell, 1994). Expectations and evaluation criteria largely depend on the people involved in the buying process and the types of decisions to be taken. Law firms should therefore attempt to identify the specific criteria used in each stage, understand how needs and expectations vary across client selection committee members, and change over time as well as monitor the service delivery process (Day & Barksdale, 1994).

Day and Barksdale (2003) emphasised the particular challenge that professional services cannot be evaluated prior to purchase and only some can be evaluated during and after service delivery (see paragraph 2.1.1—credence quality). As a result, intangible, subjective factors are likely to greatly influence the selection. The differences between stages of the process lie not in the underlying dimensions but rather in the cues used. One would expect specific cues or indicators to be diverse as different persons are involved in different stages of the process and different information is available to the client.

### **5.3.1 Need recognition**

The purchase process begins when the client recognises or identifies a need (Blackwell *et al.*, 2006) that can potentially be met by the purchase of a professional service. In the pre-purchase search phase the buyer's options for meeting this need typically include using in-house personnel, contracting the services of another firm or ignoring the problem (Day & Barksdale, 1994; Fitzsimmons *et al.*, 1998).

While acknowledged as an important step in the purchasing process, need identification (problem definition and specification definition) and setting of purchasing goals is rarely discussed or examined in the literature on professional services buying behaviour (Day & Barksdale, 1994).

### **5.3.1.1 Client needs and expectations**

Clients will have expectations and purchase goals. Without knowing them, making sense of the process of selection and evaluation is difficult, if not impossible. The criteria used in every subsequent stage of the selection and performance evaluation process derive from these purchase goals. Spekman (1977) emphasised the importance of understanding the needs, related purchase goals and expectations of the different individuals involved, which may change in the purchase process and therefore would lead to changes in selection criteria (Kotler & Bloom, 1984).

Explicit expectations are conscious assumptions or wishes about the service in the client's mind. Clients pay attention to whether these expectations are met even if they are not necessarily expressed openly (Ojasalo, 2001). Implicit expectations are associated with situations in which some characteristics or elements of the service are so self-evident that clients do not actively or consciously think about them, or consider the possibility that they will not materialise. The existence of implicit expectations becomes obvious when they are not met. Clients may expect the service provider to know them so well from earlier assignments that they feel there is hardly any need for the definition phase at the beginning of the project (Ojasalo, 2001). Law firms also face the challenge that clients do not always have a clear understanding of their own needs. They may feel that something is wrong or wish for an improvement in their situation, but do not have a precise picture of what this change should be. Ojasalo (2001) called this 'fuzzy expectations'. If these expectations do not materialize, clients feel that the service was unsatisfactory, but they do not understand exactly why. Ideally, lawyer and client together define unclear problems and needs. If the fuzzy expectation is not identified, the wrong problem may be solved, which means that the experience will not match the expectation.

### **5.3.1.2 Decision makers**

Due to the strategic importance of professional services, top management should be involved from the very beginning of the process (Fitzsimmons *et al.*, 1998). Key decisions regarding the hiring, firing, and monitoring of professional service providers are typically made by top management in conjunction with the respective department, with little involvement of purchasing (Brand, 1972; Doyle *et al.*, 1980). Services important to the core business will attract higher level management involvement. Johnston and Bonoma (1981) found that senior management had the most influence

on the purchase of certain types of industrial services, often ratifying or rejecting the recommendations of other members of the buying centre, that is, mostly near the beginning and end of the buying process (Woodside, 2003). In medium-sized companies, due to the smaller size, owners/entrepreneurs and managers are typically well informed about the enterprise and its needs and are closely involved in the decision-making.

### **5.3.2 Identification of the initial consideration set**

The purchasing process involves ‘prequalification’ of potential providers during which the client assesses their capability to meet her needs. Firms that are considered in this stage comprise service providers of which the client is aware, the ‘evoked set’ (Howard & Sheth, 1969) rather than the market in its entirety. Hill and Motes (1995) found that more than 60 percent of respondents in their study reported an evoked set consisting of two to three choices of professional services providers. Ellis and Watterson (2001) confirmed the US findings regarding the size of evoked sets in the UK. Over 90 percent of organisational respondents in their study of SMEs (defined in their study as companies with a maximum of 250 employees) were able to name one or more solicitors unprompted, 75 percent two, and 65 percent three or more.

While the marketing efforts of many law firms aim at building their respective brands, the literature review provided no specific answers as to whether clients look for individual lawyers or law firms.

#### **5.3.2.1 Information search**

The greater the perceived risk of making a wrong decision, the greater the inclination to engage in information search (Mitchell, 1994). Search effort also appears related to prior experience: the lower the buyers’ prior experience, the greater the search efforts (Park & Bunn, 2003). The amount of effort devoted to searching for new information and the types of sources examined was found to be related to the amount, content and accessibility of existing organisational memory (Park & Bunn, 2003), while the consideration set and criteria used to choose the provider is impacted by the amount and accessibility of organisational memory (Weiss & Heide, 1993). If an organisation has a well-organised memory, then the buying decision process will be more structured, because there are established criteria for buying (Park & Bunn, 2003). Hill and Motes (1995) found that the search effort for professional services in terms of



length of search and number of sources used to be a combination of 'brief' and 'moderate' effort. Length of search rarely extended beyond one week and was often restricted to less than one day.

Information sources are likely to vary in their importance depending on the stage of the decision-making process (Martilla, 1971; Rogers, 1983; Webster, 1970). In the early stages, non-personal sources are more important, while personal sources increase in importance as the process continues (Stock & Zinszer, 1987). The isolated use of non-personal sources is highly unlikely compared to the use of personal sources. Clients rarely rely exclusively on a single information source (such as their own memory), but a combination of external/internal (Park & Bunn, 2003), personal/non-personal (Hill & Motes, 1995) and commercial/non-commercial (Spekman *et al.*, 1995), personal/ professional documented sources (Peters & Brush, 1996), informal/formal network sources (Birley, 1985) as well as objective/experiential sources (Kotabe & Czinkota, 1992).

The information search can be either cumulative, i.e. involving a variety of personal and non-personal sources, occurring over time; or sequential, i.e. involving the use of information sources at various states (Rogers, 1983). Lang *et al.* (1997) stated that SMEs differ from large companies in their information-seeking practices in terms of: (i) lack of (or substantially less sophisticated) information system management (Kagan *et al.*, 1990); (ii) frequent concentration of information-gathering responsibilities into one or two individuals, rather than the specialisation of scanning activities among top executives (Hambrick, 1981); (iii) lower levels of resource available for information-gathering; and (iv) quantity and quality of available environmental information (Pearce *et al.*, 1982). The search is affected by beliefs about which variables are reliable cues for evaluation (Duncan & Olshavsky, 1982). In those cases where variables are difficult to judge, less search has been found to occur when one's belief is strong regarding the value of a surrogate cue (Murray, 1991).

### **5.3.2.2 Personal information sources**

Decision makers rely heavily on information sources with high expertise and credibility and low or no intention to influence (Hansen, 1972). A number of studies confirm the significance of word-of-mouth recommendations over other marketing

tools in professional services (Kotler & Connor, 1977; Lehmann & O'Shaughnessy, 1974; Martilla, 1971; Stock & Zinszer, 1987; Webster, 1970; Zeithaml, 1981). When services are thought to require expertise, comprise credence qualities, be heterogeneous, or be critical, recommendations are considered important (Thakor & Kumar, 2000). It is understandable that subjects would be more inclined to go to the trouble of obtaining a recommendation when the results delivered are thought to depend on the expertise of the service provider, or are not felt to be such as can be judged even after the service is performed. The perceived importance of recommendations increases as services are seen as being more professional in nature.

Hill and Motes (1995) acknowledged referral services and direct visit/call as the most extensively used sources of information for professional services. A referral from another professional or a trusted, personal source is often not only the surrogate, but often the only criterion used in making the decision (Hill & Motes, 1995). A dramatic reduction in continuous information gathering and the use of fewer evaluative criteria was found for professional services compared to other services. There is less propensity to search when the buyer knows the information needed can be readily acquired from accessible external sources (Engel *et al.*, 1986). Gould (1988) identified the 'endorsement of peers' and positive word-of-mouth as a compensation for the higher perceived risk of professional services. File *et al.* (1994) confirmed the importance of word-of-mouth recommendations for the purchase of legal services among CEOs in the US, and Day *et al.* (1988), Ellis and Watterson (2001) and Hill and Motes (1995) among small businesses when seeking a professional services firm. Ellis and Watterson (2001) and File and Prince (1992) believed that due to their limited expertise and smaller buying centres, SMEs are likely to filter information through their business advisors and buying communities.

Referrals often help define the initial consideration set in pre-purchase situations by anticipating credence and experience criteria (Day & Barksdale, 1994) (see paragraph 2.1.1). In the absence of prior direct experience with potential providers and in attempting to compensate for the high level of uncertainty (Mitchell, 1994; Mitchell & Greathorex, 1993), there is a tendency for organisational clients to use an evoked set largely determined by personal referrals (Crane, 1989). Recommendations may substitute for past experience when the decision is a 'new buy' (Stock & Zinszer, 1987). Stock and Zinszer (1987) found positive correlation between the importance of

personal sources and the cost of the item purchased. Information sources today may also include social networking through legal ‘forums’ to meet and exchange information (Stickel, 2004).

### **5.3.2.3 Non-personal information sources**

Non-personal information sources, such as publications, directories, and advertisement appear to be important only in creating initial awareness of a law firm (Crane, 1989; Fitzsimmons *et al.*, 1998). Once the firms have been identified, personal information sources become most important and useful (Stock & Zinzser, 1987).

Cutler *et al.* (2003) found neither advertising nor other traditional promotional methods such as sponsoring of cultural or community events important in the selection of a law firm. Hill and Motes (1995) confirmed the low importance of TV and radio, print or Yellow Pages advertisement. Darden *et al.* (1981) and Smith and Meyer (1980), however, pointed out that commercial sources such as advertising are significantly more important for clients without prior experience using a lawyer, while personal contact was more important for those with prior experience.

In the last decade, the significantly changed nature and availability of information sources such as the Internet and B2B e-commerce have had important implications for the acquisition and use of information in the organisational buying process (Deeter-Schmelz *et al.*, 2001). New technology such as online bidding has made it easy for companies to diversify the search and find firms that may not be on their radar screen before. While Day and Barksdale (2003) noted the use of RFPs (requests for proposal, see paragraph 3.2.3.2) as a means to obtain information from potential professional services providers, a study found that medium-sized companies typically do not issue requests for proposals (LexisNexis, 2006). Clients sometimes also find law firms observing opposing counsel for their potential to handle future work and treating junior in-house associates with respect (Herschensohn, 2004).

### **5.3.3 Evaluation of the consideration set**

Iacobucci (1992) suggested that services are more difficult to evaluate than goods and are therefore likely to be seen as riskier (see paragraph 5.3.2.1). Evaluation strategies suggest objective decision-making (see paragraph 5.3.3.1).

The screening phase is completed when purchasers have established a 'short list' or initial consideration set (Day & Barksdale, 1994). Day and Barksdale (2003) and Patton (1996) criticised the paucity of research focussing on the organisational selection process that initiates the provider-client relationship, i.e. going from the short list to winning the contract. A number of studies examined evaluation criteria, but apart from Harvey and Rupert (1988) suggesting that during the alternative evaluation stage the main contribution of the procurement department should be the establishment of guidelines for commercial arrangements, no studies seem to examine the participants in the evaluation stage in the professional services context.

### **5.3.3.1 Managing evaluation**

Gathering and sorting through information are key management activities in the evaluation stage (Bunn & Clopton, 1993; Moriarty & Spekman, 1984; Spekman *et al.*, 1995). Day and Barksdale (1992) found that while short-listed firms may or may not all be viewed as totally 'equal' in their ability and competence to perform the desired service(s), they were considered to meet minimum requirements, that is, all were assumed (generally) qualified to perform the needed services. To then reduce the number of short-listed firms, buyers need to find reasons to eliminate/disqualify firms. Criteria therefore will be similar, but more rigorous (applying non-compensatory decision rules) than before.

In contrast to other sources that emphasised the importance of credence criteria (see paragraph 2.1.1), Cutler *et al.* (2003) found a predominance of experiential criteria over search or credence criteria. Due to the lack of 'search properties' intrinsic to professional services, clients cannot evaluate or verify the experiential and credence criteria prior to hiring the lawyer. Instead, they use other information sources to derive proxy measures, 'cues', regarding these criteria (Taylor, 1994). Crane (1989), Day and Barksdale (1994) and Lewis and Klein (1985) emphasised the importance of not only identifying and specifying required or desired attributes for the design of marketing plans, but also identifying and understanding the particular indicators or cues which buyers use to assess those criteria. These surrogate indicators emanate from factual information about a provider or from vicarious experience (e.g. a client's own prior experience or other clients' experience with that provider) (Day & Barksdale, 1994, 2003). Cues determine perception of the service and therefore

ultimately influence choice. For example, 'competence' may be a criterion in the selection of a lawyer, and the cue being a friend's recommendation.

Selection criteria and quality indicators used in evaluation are similar. Distinctions are virtually non-existent since clients attempt to evaluate the quality of service before the selection decision to maximise the anticipated satisfaction of the completed project (Day & Barksdale, 1992).

Participants in a study by Day and Barksdale (2003) emphasised the objectivity of their decision-making, appearing careful not to give the impression that personal chemistry was more important than capability. They indicated that if evaluation of personal chemistry took place, it followed an assessment of characteristics such as experience, knowledge, professionalism, and a thorough understanding of the job. Gardner's (2004) findings confirmed that companies state that their purchases of legal services were driven by analysis and data, devoid of emotion. Day and Barksdale (2003) challenged claims of objectivity since the participants would mention factors such as firm capabilities, staff qualifications, experience on similar projects, and project understanding, which require some judgment calls. Buyers will apply more subjective factors (using compensatory rules) to evaluate how much of a particular required attribute a firm possesses: all things equal, soft factors are very important. Hill and Motes (1995) found 80 percent of respondents indicating to use more than three factors in their assessment of their evoked set, typically a combination of personal and non-personal factors and not likely to be used in detached isolation. Similarly, Cogan (2004) suggested that buyers like to think of their choices as objective, when in fact, they are a mix of objective and emotional factors.

The main task of the procurement department at this search stage is to evaluate the market and the relationship with the current provider. It may also be appropriate to survey other companies' practices including pricing (West, 1997).

#### **5.3.3.2 Evaluation of personal factors**

Buyers prefer personal sources rather than non-personal sources when evaluating services prior to purchase since non-personal sources may convey information about search qualities but communicate little about their experience. Non-personal sources may not be available; and buyers may experience high levels of perceived risk

associated with the services purchase because fewer attributes of the source can be identified prior to acquisition of the service (Zeithaml, 1981).

Day and Barksdale (2003) believed that clients want trust and commitment from the professional service firm. Trying to evaluate trustworthiness involves ‘hard’ criteria (e.g. prior experience and past performance) as well as ‘soft’ criteria (e.g. body language or demeanour), while evaluation of the level of commitment leads to the use of primarily soft criteria (such as enthusiasm and responsiveness). The selection process is a combination of technical ability, experience on similar projects and chemistry (Day & Barksdale, 2003). Gaedeke and Tootelian (1988) identified ‘overall professionalism and integrity’ key criteria in the selection of a law firm. A number of (now arguably dated) studies confirm the importance of relationship marketing regarding the importance of trust in the professional services firm and its commitment to the client’s project (Doney & Cannon, 1997; Morgan & Hunt, 1994). While perhaps due to the typically long-term nature of client-provider firm relationships, clients seek a professional service provider with which they feel comfortable and compatible, in recent years, clients have become increasingly less loyal (see paragraph 4.1.2).

When there is very little difference between qualifications of firms, personal chemistry and people skills are often the deciding factor (Day & Barksdale, 2003). Once considered competent, clients will want to know if they can work with a firm, in the sense of a style fit. People want to work with others who think, act and respond as they do (Herschensohn, 2004). “Given the hours we spend on deals, interpersonal skills are hugely important. ... you’re going to spend an enormous percentage of your working life with the lawyers—you have to enjoy it” (Hardcastle, 2004: 19). Potential clients expect the demonstration of a clear understanding of their needs and how the firm’s services and resources can meet those needs, enthusiasm for project and the willingness to listen (Day & Barksdale, 1992; Herschensohn, 2004). The client should be able to feel free to call with ‘all sorts of queries’ and have them answered quickly and sympathetically (Bird, 1984). George and Solomon (1980) identified personal friendship with members of the firm as influential factors among upper and middle management. Day *et al.* (1988) found personality of a professional services provider (accountant) to be of greater importance to small businesses than qualification.

Crane (1989) found competence, courtesy, and credibility to be the most important criteria in lawyer selection. Day and Barksdale (2003) identified competence, personal chemistry, and client-orientation to be critical criteria for clients when evaluating professional services providers: clients buy people and their genius. Crane (1989) suggested that personal contact experiential criteria (e.g., personality of the lawyer, and reception received) account for over 62 percent of unaided responses when selecting a lawyer. Personal reputation was identified as a very important personal source of information (Lehmann & O'Shaughnessy, 1974; Stock & Zinszer, 1987). A highly esteemed professional in a good firm appears to be the preferred choice, according to Evans (2005), who found that if a key individual were to leave a panel firm, 41 percent of the respondents in the study would move with the individual to the new firm.

Capability and competence are primarily assessed by 'hard' criteria, such as prior experience and past performance (Day & Barksdale, 2003). However imperfect, past performance usually is used as the predictor of future performance. A number of studies found that organisational decision makers value past experience as the most important criterion in the selection of a professional services provider (Cunningham & White, 1974; Fitzsimmons *et al.*, 1998; Frankenhuis, 1977; Gaedeke & Tootelian, 1988; Rooks & Shanklin, 1988; Smith & Meyer, 1980; Stock & Zinszer, 1987; West, 1997; Wilson, 1972). Cutler *et al.* (2003) advised that law firms should communicate verbal and nonverbal cues in the advertising, including dependability, experience, and possessing a good reputation: "[U]sing an older attorney as a spokesperson can indicate experience. Compassion and courtesy can be conveyed through the delivery of the message and the physical mannerisms utilized" (8).

Seen as cues by some (Crane, 1989), by others as criteria (in addition to their arguable role as sources of information), recommendations of other clients or third party or third party referrals (professional recommendation and personal recommendation) were identified by a number of researchers (Crane, 1989; Ellis & Watterson, 2001; Fitzsimmons *et al.*, 1998; George & Solomon, 1980; West, 1997). Day *et al.* (1988) found referrals particularly important in the selection of professional services providers by small businesses. Due to the critical importance of referrals, Ellis and Watterson (2001) examined the reasons why sources recommended a particular professional services firm. It appeared that people giving referrals have a larger list

than organisational clients choosing a professional services firm. Expertise in the client's area of need, approachability, qualifications of personnel, personal acquaintance, ability to meet deadlines, size relative to client, reasonableness of fees, range of services, ethics, accessibility of senior partners, as well as office location. Wheeler (1987) found that great importance is placed on the qualifications, expertise and ethics of personnel, as well as personal acquaintance, while fee, size and location were seen as less important.

### **5.3.3.3 Evaluation of non-personal factors**

The reputation of a firm was an important criterion when evaluating firms (Cravens *et al.*, 1994; Fitzsimmons *et al.*, 1998; Gaedeke & Tootelian, 1988; Rooks & Shanklin, 1988; West, 1997). The selection of suppliers with a good reputation and high credibility is explained by the clients' desire to reduce their risk of making a bad choice (Mitchell, 1994). 52 percent of the respondents stated the firm's general reputation to be the most important evaluation criterion when hiring a law firm (File *et al.*, 1994). Beatty (1989) suggested that the brand name of professional services firms as well as the reputation of the individual professional play a significant role in a client's selection decision. Since trust in the provider becomes a primary factor, provider reputation and experience are perhaps the only important selection criteria (Fitzsimmons *et al.*, 1998).

Herschensohn (2004) believed that a criterion such as prestige, expresses whether the firm is a safe choice, i.e. should a major case be lost, the choice will not reflect badly on the purchasing party. In-house lawyers often turn to lawyers they already know and not only find comfort in the safety of choosing 'big names' (i.e. brands; see also paragraph 3.1.1), but feel they burnish their own reputation by associating with such firms (Paonita, 2004). Other clients, however, favour small firms where they work directly with the senior partner(s). They appear to be reluctant to use big name firms as they are uncertain which lawyer will act for them, fearing that they will be delegated to more junior lawyers. These clients want to know the lawyers personally and want them to be involved (Nelson, 2005).

Individual consumers attached greater importance to a law firm being long-established, possess a traditional image than organisational clients and referral sources. This seems to support the literature in terms of consumers' need for the



reassurance that tradition may bring, as well as organisational clients' desire for high levels of specialist expertise. A modern corporate image did not appear to appeal to clients. Organisational clients want specialists who can deliver specific benefits required by the specific job at hand (Maister, 1997). Industry specialisation gives professionals competitive advantage (Eichenseher & Danos, 1981; see also paragraph 2.3.3.2). Although concentration in an industry implies expertise or experience and thus might suggest the ability to render quality work and may be viewed as a reputation-enhancing component, Cravens *et al.* (1994) found industry concentration not to influence the client's selection process. However, 80 percent of respondents in a study on SMEs stated that they had no idea which local solicitor would offer the best service in different specialisations (Ellis & Watterson, 2001) and Stock and Zinszer (1987) found that when an organisation had a specific problem, the buyers would not care whether the firm had areas of expertise other than those needed for this specific problem. Only if the problem involved a variety of issues or required a multidimensional perspective, was the full range of services important. Related services (e.g. management consulting offered by accounting firm) were found to be important among upper and middle management (Day *et al.*, 1988; George & Solomon, 1980).

McKenna (2007) cited a managing partner who believed that firms are chosen based on their standing with respect to how many deals they have handled in a particular area over the past year. It is seen as critically important to get a firm onto key deal lists. Similarly, George and Solomon (1980) identified the firm's current client list as influential factors, while Cravens *et al.* (1985) recognised the national prestige (or brand, see also paragraph 3.1.1) of a firm as an important evaluation factor.

Competitive fees, ability to meet schedule, and efficiency are seen as cues for the likelihood of the provider conforming to contractual and administrative requirements (Day & Barksdale, 1992). Price/cost (Fitzsimmons *et al.*, 1998; West, 1997) and realistic fee estimates (Day *et al.*, 1988; George & Solomon, 1980) are important criteria. Non-users considered low fees significantly more important than users (Darden *et al.*, 1981). Stock and Zinszer (1987) found price/cost to be of less importance when professional services were being acquired. "It was surprising that participants rarely spoke of price (fees), even in the discussion about selection criteria" (Day & Barksdale, 1992: 88). Possible explanations are that the participants in the study were

atypical or that price plays a more critical role in determining which firms make the short list. A study found that despite being under pressure from senior management to reduce cost for outside legal counsel, in-house counsel did not shop around for the least expensive law firm, especially for big lawsuits and acquisitions. According to Paonita (2004), law is not a price-sensitive kind of buy. Instead, clients buy the brand name (see paragraph 3.1.1) and the perceived experience. Ellis and Watterson (2001) noted a lack of knowledge among organisational clients over the level of fees. Respondents seemed to believe that practices with shorter names would charge less. Firms with one partner name were typically perceived as cheapest, firms with two partner names were rated next, and those with three or more names in their practice title were consistently viewed as likely to be the most expensive.

Day *et al.* (1988), George and Solomon (1980) and Fitzsimmons *et al.* (1998), found that clients use the size of a firm as an evaluation criterion, while Jackson *et al.* (1985) identified size to be of relatively little importance. Clients also tend to seek professional services firms which parallel their own organisational structure and management style, (Cravens *et al.* 1994; Eichenseher & Danos, 1986; Lawrence & Lorsch, 1967; Newton & Ashton, 1989). Jackson *et al.* (1985) identified location as a relatively less important factor and Day *et al.* (1988) found location (in the sense of physical accessibility) important to both smaller and large(r) businesses. However, they warn to draw conclusions about the importance of location of small versus large companies, pointing out that the respondents in their sample were located in a medium-sized city in which all business was quite accessible and thus not a real concern for the respondents. Other studies found conveniently located offices because of ease of access to legal premises to be clearly important to some market segments (Ellis & Watterson, 2001; Fitzsimmons *et al.*, 1998; George & Solomon, 1980; Hughes & Kasulis, 1985; Mitchell, 1994).

Buyers also evaluated the appearance of the physical facilities (Crane, 1989). Tangible cues can convey unintended messages to clients, in particular new or potential clients. If the office

*“appears in disarray, the client may well become concerned that records may be lost or difficult to find, that crucial reports are not likely to be completed on time. ... tangible cues must match the standards that are set for the service itself” (Day et al., 1988: 291).*

### 5.3.4 Selection of the service provider

Selecting a professional service provider can be one of the most important decisions and potentially one of the costliest mistakes an organisation can make as inappropriate legal advice can lead to major setbacks (Day & Barksdale, 1994). Financial risk includes value for money (Garner & Garner, 1985), time risk involves the amount of time required for the purchase (Peter & Ryan, 1976) and psychosocial risk regards concerns about the negative thoughts of oneself or of others if a poor choice is made (Dunn *et al.*, 1986; Horton, 1976).

Law firms must know clients as well as legal matters to win business. Getting work takes time. Lawyers need to be willing to invest time, treat the prospective client like an existing client, trying to learn about a client's business operations, objectives, challenges, pressures, and working styles (Herschensohn, 2004).

Competing firms are not necessarily rejected, but rather not selected. This suggests that there is a qualitative difference between being rejected and not being selected. Day and Barksdale (2003) concluded that not being selected reflects a failure to (positively) differentiate the firm (in the sense of not being viewed as the best choice among candidates), whereas being rejected is more likely to be due to some blunder (likely due to being disqualified because of a failure to demonstrate understanding of project, an inability to instil trust, or an apparent lack of commitment to the job).

#### 5.3.4.1 Managing selection

The selection results from an assessment of how well each firm rates regarding each of the determinant attributes. Since firms in the final rounds have been judged to have met minimum requirements, the selection is based on the criteria on which providers are thought to differ. Day and Barksdale (1994) raised doubts regarding the findings of many studies where the selection and evaluation appear to be carefully considered, rational choices, free of favouritism and 'politics'. Park and Bunn (2003) were cautious of this approach, aiming to see the organisational process as entirely cognitive. The buying process may be highly emotional:

*"This is perhaps particularly true for large-ticket, highly differentiated, complex purchases like professional services. In such an environment, both sides find it easy to kid themselves that logic must prevail" (Maister et al., 2000: 145-146).*

It is not uncommon that decisions are taken without conscious evaluation or limited information and ‘rationalised’ afterwards (Zajonc & Markus, 1985).

The number of qualified providers may affect the selection process (Day & Barksdale, 1994). In markets with very few providers that are viewed as virtually equally capable, clients may have the ethic of turn-taking. Woodside (2003) suggested that the competition in a market influences the buying behaviour in professional services selection processes.

#### **5.3.4.2 Justification of selection**

In-house counsel are under increasing pressure as companies seek to create greater cost efficiencies, more control over law firms, a predictable budget and stronger partnerships with their law firms, added value and avoid conflict of interest. Combined with the pressure to justify their selection (Paonita, 2004, see also paragraph 5.3.3.2) and as a means to achieve the desired control, companies seem to tend towards consolidation and formalised lists or ‘panels’ of preferred legal services providers (Evans, 2005; Gardner, 2004, LexisNexis, 2005b). Many companies keep a tight lock on the number of firms they consider for outsourced work. ‘Go-to’ lists for legal matters means that they are working with fewer law firms (Cunningham, 2007; Cutler *et al.*, 2003; Dahl, 2006; Ellis & Watterson, 2001; Gardner, 2004; McKenna, 2007; Viola, 2003).

An example of such convergence, an effort to reduce cost and receive more value is the ‘DuPont Legal Model’ (DuPont, n.d.), introduced by the legal department of the DuPont Corporation in 1992, and since then replicated by many other companies (Smith, 2001). By applying business discipline to the practice of law, this legal model focuses the client’s resources and makes strategic partnering, or convergence, information technology, metrics, diversity, and other initiatives the cornerstones of its approach, thus strengthening the buyer power. DuPont claimed that

*“as a result, we’ve cut costs, increased productivity, improved the quality of our services and seized new opportunities like never before. But perhaps most important, the model has solidified relationships among our staff members, primary law firms and service providers, and today we are all members of a network with a common vision and a unifying goal” (DuPont, n.d.).*

Firms that know the client’s company thoroughly, its mode of operations, culture and tolerance for risk makes the relationships the most productive as the client will not lose time and money explaining the business and their preferences again and again.

Knowing the client and sharing information is the essence of efficiency because of the growing complexity of business. Only then will law firms be able to pro-actively develop solutions for industry or business problems before a client recognises it (Cunningham, 2007). Part of the rationale for having lists is identifying appropriate firms and organising the selection process to avoid wasting time for the selection process. For high stakes matters, 63 percent of companies in a study have fewer than six law firms on their preferred lists. For commodity work, 47 percent keep no more than 10 law firms (LexisNexis, 2005b).

While panels are commonplace among larger companies, they appear to be the exception among medium-sized companies. In a the LexisNexis (2006) study among European medium-sized companies, none of the companies used such formalised 'preferred' provider lists. However, medium-sized company clients have a tendency to work with a small number of law firms. According to the study, 44 percent of 'small' medium-sized companies and 21 percent of 'medium' medium-sized companies worked with only one law firm, 29 ('small')/30 ('medium' medium-sized companies) percent with two, 18/26 percent with three, and 3/8 with four law firms. Only 4/7 percent worked with four or more law firms in a given year, but do not have formalised panels.

#### **5.3.4.3 Decision makers**

Organisational buying behaviour literature appears to assume that the client is not just one person, but is instead composed of (several) members of a selection committee (Day & Barksdale, 1992). Day and Barksdale (2003) emphasised that the composition of this decision-making unit may change over the course of a multistage selection process as different individuals enter or exit the client-professional services firm relationship. Their respective selection criteria are a consequence both of corporate and individual goals (Kotler & Bloom, 1984). Each person on a selection team brings his/her own background and values to the process, underscoring the uniqueness of each selection, and information available will vary in addition to learning that will occur (Day & Barksdale, 1994). Complications may arise when dealing with top management and/or intermediaries (such as procurement) as opposed to the final client since the needs and expectations can vary substantially. Several academic researches found senior management participation in the final approval of all large purchases (Spekman & Stern, 1979; Lilien & Wong, 1984; Woodside, 2003).

While there appears to be a recent trend towards involving procurement in the decision-making process of buying legal services (see paragraphs 4.1.2 and 4.1.3), the frequent assumption of a buying centre taking decisions in organisations has not been confirmed by non-academic studies in the legal market. In a recent study, 39 percent of US legal counsel claim to have sole decision-making authority when hiring international outside legal services providers (ALM, 2007). Top management, in particular in SMEs, were found to involve themselves personally when the company purchases legal services. The LexisNexis (2006) study among medium-sized companies suggested that managing directors or owners were directly involved in the buying process for legal services in 83 percent of respondents among ‘small’ European medium-sized companies (84 percent for ‘medium’ medium-sized companies) followed by the head of finance (41, respectively 54 percent). Fitzsimmons *et al.* (1998) explained the involvement of top management with the importance and risk of purchasing professional services. Due to their involvement the role of the purchasing department may be significantly diminished for services purchases with *ad hoc* management groups and department heads controlling the decision.

In contrast to other – more recent – findings (see paragraphs 4.1.2 and 4.1.3), Fearon and Bales (1995) found that purchasing is rarely involved with buying services, in particular professional services. The purchasing department was involved in only 13 percent of legal services purchases. Purchasing managers think that top management generally perceive service purchases to be less complex than material purchases and therefore are more inclined to bypass purchasing when buying services than when buying material. Many people within the organisation believe they are experts in buying services and that they must be personally involved in the buying process” (Smeltzer & Ogden, 2002). Purchasing managers, however, deem the process of purchasing services as more complex than the process of purchasing materials, due to their lack of experience. “They understand that this is a major expenditure, but do not have a clear understanding of how to best manage the buying process for these services” (Smeltzer & Odgen, 2002: 68). Cost analysis and negotiation are much more difficult with services than with materials since less emphasis has traditionally been placed on analysing the costs and prices of services; no formal training exists in service cost analysis; few cost of ownership models exist for services while many exists for materials. At the same time, procurement is increasingly assuming a larger role in the purchase decisions related to service because of their knowledge of the

purchasing process (Smeltzer & Ogden, 2002). Professional services have higher risks and profit opportunities and the potential for purchasing to add value is consequently much higher. West (1997) supported the involvement of procurement since top management and the respective department might develop very close ties with the professionals at the firm,

*“haggling over price and contracts can be embarrassing for both sides. Purchasing managers have the freedom to act, ask awkward questions, and be unpopular. Whatever their actions, they will rarely affect the day-to-day relationships between [the professional service providers] and clients” (West, 1997: 8).*

The growing importance of the purchasing department in legal service has not been confirmed among European mid-sized companies (LexisNexis, 2006).

### **5.3.5 Evaluation of the service outcome and delivery**

Clients evaluate the service according to whether purchase goals were realised through the purchase (Oliver, 1980). The buyer's primary aim of the selection process is to ensure the desired level of quality and greatest satisfaction for the money. By comparing pre-purchase selection expectations to the actual service, clients evaluate process quality during service performance and output quality after the service is performed (Berry *et al.*, 1985). The methods for evaluation can be formal or informal and the criteria both objective as well as subjective (Stock & Zinszer, 1987). While performance quality is typically evaluated along specific objective criteria, clients are more likely to form some overall perception of quality, which might be rather subjective. Day and Barksdale (1994) emphasised that additional research is needed to understand how clients evaluate performance and what criteria ultimately lead to an overall positive or negative evaluation. Wycoff (1992) found that quality is perceived and measured more subjectively with services than with materials.

#### **5.3.5.1 Evaluation of quality**

Professional service providers typically understand quality in the sense of technical quality, such as expertise in specific areas and quality of written product (Henning, 1992). There is also a widespread belief among lawyers to view quality as related to technical excellence and that technical excellence is sufficient (Henning, 1992). Professional firms commonly tend to focus on technical excellence and neglect the functional aspects of how the service is delivered (O'Malley & Harris, 1999; Morgan, 1991). Technical quality may be difficult to quantify and might take time to recognise,

but was also found to be very important to organisational buyers (Stock & Zinszer, 1987) and rated most important by CEOs when evaluating legal services (Jackson *et al.*, 1985; Hughes & Kasulis, 1985). Politano (2003) confirmed that in-house counsel prefer outside law firms with subject matter expertise and related ‘technical’ abilities giving them commercial confidence to make pragmatic decisions (Hardcastle, 2004).

Outcome quality appears to be particularly important for clients of professional services and differs from technical quality in the sense that the provider may perform excellently in the technical area and still not achieve the desired goal (Szmigin, 1993). Despite excellent technical work, a piece of litigation may still be lost. Other studies found that clients evaluate outcome quality as a result of the relationship between the client organisation and the professional services provider (Ellis & Watterson, 2001; Szmigin, 1993) and consider it a significant determinant of the overall service quality (Baker & Lamb, 1993; Ellis & Watterson, 2001; Jackson *et al.*, 1985). However, assessing outcome quality is difficult as professional services lack credence qualities (see paragraph 2.1.1), i.e. attributes that client may find impossible to evaluate even after the service has been rendered. Bowen and Jones (1986) refer to the inability of a client to measure or assess the performance as ‘performance ambiguity’.

In addition, Grönroos (1984) differentiated between technical (what is delivered) and functional (how it is delivered) quality. Producing technically superb legal services is not the same as delivering quality legal services. While competence is essential, many factors contribute to a quality image of a professional services firm (Parasuraman *et al.*, 1985). Service delivery or functional quality plays an important part in the evaluation of the performance as it typically yields predictions about the quality of the final product (Day & Barksdale, 1994).

A major responsibility for maintaining and projecting a quality image falls on the professional and support personnel. All members of a professional services firm must be people-oriented, in addition to performance-oriented (Day *et al.*, 1988). In organisational professional service, the strength of the relationship between the service firm and the client company potentially has a considerable impact on service evaluation, and each service performance is a complex process where different components are distinguished and evaluated (Halinen, 1996). While lawyer expertise ranked as the most important criterion when looking for providers of high stakes legal



matters, in ongoing relationships—once a client feels confident with the knowledge and experience—clients take expertise for granted. The service, as well as the relationship itself, increases in importance (Stickel, 2005).

When considering service quality, it is important to remember that the only criteria that are relevant are those defined by the clients. All other judgments, including those by the lawyers themselves, are irrelevant. Quality is what the client says or believes it to be (Henning, 1992). The appropriate definition of quality for legal services is meeting or exceeding buyers' expectations (Muir & Douglas, 2001). Since professional projects often take months, if not years, there is ample opportunity for the client to evaluate the quality of the service being delivered (Day & Barksdale, 1992). Performance evaluation criteria and expectations can change or evolve during this time as people enter and exit the relationship and clients becoming more experienced and knowledgeable. The challenge is that during the duration of the service, the different counterparts from the client side may have encounters and relationships with different people from the supplier side, so the result may be different quality assessments by different persons in the client firm.

Grönroos (1978) points out that the nature of service exchange 'forces' buyers and sellers into intimate contact and thereby facilitates the development of relationships. Since professional services are provided by people for people, Day *et al.* (1988) deem interpersonal skills as as essential as technical competency. Most determinants of service quality are related to the notion of impression management. Long delays in returning phone calls or brusque responses by a staff member may be interpreted by the client as indifference toward the client and the performance of services. Clients may evaluate the quality of the firm along many intangible dimensions, even those that do not directly relate to the quality of the services rendered (e.g. courteousness or friendliness of contact personnel). Intangibles such as more personal interest in and attention to clients can help a firm develop a competitive advantage over other firms offering basically the same services (Day *et al.*, 1988; see also paragraph 2.3.3.2). Clients also prefer dealing with the same people when working with professional services firm, especially due to the amount of proprietary information a client must disclose. With turnover of personnel, clients can become frustrated in having to explain their problems and needs to new persons. Moreover, clients are likely to

become concerned about competency, trustworthiness, and other factors critical to the relationship (Day *et al.*, 1988).

### 5.3.5.2 Evaluation cues

In professional services firms, quality of service with its different components of outcome, technical and functional aspects are difficult to measure. Clients attempt to reduce uncertainty by looking for ‘signals’ or ‘indicators’ of service quality and judge quality by reputation, past experience or some tangible aspect of the service (Muir & Douglas, 2001). They draw conclusions from the physical evidence, equipment used, people involved, or communication they have been exposed to (Kotler *et al.*, 2002). The key to the control of intangible aspects of the service is the control of the service encounter, which happens where the interaction between customer and supplier takes place, the customer interface (Drummond, 1992). Muir and Douglas (2001) cautioned that legal services must manage these tangible aspects because first impressions count.

The level of client expertise regarding the service being purchased is an important factor. Novice buyers are likely to have different criteria from experienced buyers since quality expectations and perceptions depend on the sophistication and experience of the client. Cougar (1995) found that individuals who are more experienced with a particular issue are better able to identify differences among the items of interest. Prior experience influences the way in which purchase-relevant information is processed, previous conceptualisations oversimplify how the knowledge is stored, retrieved and shared (Park & Bunn, 2003). Since novice buyers are often unrealistic (Day & Barksdale, 1992) clients need education by the professional services firm, such as e.g. regarding budget and time (Day & Barksdale, 1994). Most clients without legal knowledge are not able to pass comment on the quality of the legal advice they receive (Muir & Douglas, 2001). However, they can expect fast, efficient and effective service.

Functional factors such as lawyer-client relationship are equally valued by CEOs when evaluating legal services (Jackson *et al.*, 1985). Buyers evaluate not the firm as a whole, but individuals with whom they had contact on criteria such as communication skills, and ‘chemistry’ (Day & Barksdale, 1992). Clients’ assessment of personal chemistry and what factors indicate ‘good chemistry’ include: confidence,

dependability, likeability, cooperative attitude, shared values, rapport, and trust. Behavioural cues or indicators of good chemistry include: “honesty, responsiveness, courteous. ... enthusiasm, pleasant and not overbearing. ... no overt sucking up” (Stock & Zinszer, 1987: 573), in addition to mutual respect, good listening skills, and no hidden agendas. Research suggests that clients do not perceive quality in a one-dimensional way but judge it based on multiple factors relevant to the context. Parasuraman *et al.* (1988) identified reliability (perform the service dependably and accurately), responsiveness (help clients and provide prompt service), assurance (providers’ knowledge and courtesy and their ability to inspire trust and confidence), empathy (caring, individualised attention), tangibles (appearance of physical facilities, personnel and written materials) as the important dimensions. Client perceptions of the quality of service received can lead to important actions such as switching behaviour (Ellis, 1997).

While personality factors have little to do with quality of performance, the attitudes and demeanour of the personnel influence the client’s opinion of the firm (Day *et al.*, 1988). Most complaints against solicitors are concerned with the manner in which clients are dealt with rather than the quality of advice received (Croft, 2000). Whether the client feels that her business is valued by the firm and feels confident that the job will be done accurately and on time depends largely on the interpersonal skills of the contact personnel. Lawyers should not adopt a patronising, overly-academic, know-it-all attitude, but have good ‘bedside manners’ (Cogan, 2004).

#### **5.3.5.2.1 Importance of cost and value**

Clients may seek different benefits from legal services providers (see also paragraph 2.3.3.3 for Maister’s 3Es), however, according to Mayson (2007), this does not provide sufficient distinction between the benefits or use to clients. He proposes nine ways of delivering value to clients, including: (i) personal relationships: ‘they know me’ or ‘they’re easy to get on with’; (ii) location or proximity: ‘they are close’ or ‘they’re easy to get to’; (iii) local knowledge: ‘they know people in this place and how to get things done’; (iv) high level of specialisation: ‘they really know their stuff’, ‘they are the experts’, or ‘they really understand my industry’; (v) coordinated services: ‘they are able to pull everything together so that I don’t have to deal with too many people’; (vi) resources (including absolute mass): ‘they had the capacity when we needed it’; (vii) reputation: ‘their name means something’, ‘I knew they’d fight hard for me’, or ‘we knew

their style wouldn't upset the other side of the deal'; (viii) processing: 'they have the systems and technology to deliver consistently, on time, every time', or 'they can cope with our volume', and (ix) legal information engineering: 'we can access some really helpful information on-line'.

Mayson (2007) pointed out that he did not regard 'they were cheaper than anyone else' as a value proposition, even though it may be a potential difference and therefore source of competitive advantage (see paragraph 2.3.3.2).

However, many studies centre on the cost/value and 'value for money' debate and discuss to cost as a factor in the decision-making process. Earlier studies found cost to be of relatively less importance in the evaluation of organisational buyers of professional services (Stock & Zinszer, 1987; Wilson, 1972), although Mayer (1966) cites a corporate counsel that legal advice "is probably the only service we buy without some kind of survey of alternate cost. I don't know how much longer lawyers can operate in this way" (Mayer, 1966: 337). Later studies found that cost/price plays a role in the client's quality expectations, as well in the ultimate evaluation of the firm's services (Day & Barksdale, 1992; Fitzsimmons *et al.*, 1998). When considering whether or not to give a firm additional work, budgeting increasingly becomes an issue (Stickel, 2005).

Recent non-academic studies give cost significant importance. Companies aim to reduce cost in general and legal spending is no exception (LexisNexis, 2003). Lawyers must not forget that in-house counsel clients do not operate in a 'vacuum', but that their actions have tangible impacts on the company's earnings (Belcher, 2009). They work for and are evaluated by their company's management who are interested only in achieving the best outcomes and staying within a budget (Hackett, 2005). Mayson (1997) argued that in-house counsel reflect some of the pressures they are facing in their dealings with their legal advisors. "Maybe the legal department was once off the radar screen of the CFO ... [but] those days are over" (Beck, 2005: 22). In-house counsel appear to feel under increasing pressure from management to deliver value (doing more work for the same cost) and closely watch legal spending and express frustration with their law firms not being supportive (Cunningham, 2007; LexisNexis, 2005a, b; Nightingale, 2004b). "[C]lients are less than happy with the price they are paying for [legal services]. They do not always think they are getting value for money and they are now under pressure to make sure they get it" (Nightingale, 2004b: 12).

However, the bigger law firms get, the more insensitive they might become to clients' needs (Beck, 2005). Clients expect effective pricing structures such as cost containment, not re-inventing the wheel, synergistic effects/collaboration (Politano, 2003).

#### **5.3.5.2.2 Importance of commercial sense**

Commercial sense and lawyers who understand the client's concern with cost are particularly valued by clients. Lawyers who can end negotiations at a reasonable time and close the deal are preferred. Considering that most lawyers are paid by the hour that means the lawyers will have to act against their own best interest (Hardcastle, 2004).

Roberson (2003) identified commerciality (lawyers who provide advice with well thought-out options and recommendations for action, not just legal judgments or technical explanations), pro-activity (lawyers who generate ideas, provide potential solutions and keep them ahead on legal issues that impact their business) and responsiveness (lawyers who understand the need for quality and speedily delivered responses, not just on important deadlines or projects, but also on day-to-day issues) as important factors. Clients appreciate lawyers who bring them ideas and solutions that change the way they think about their business. Business clients look for efficiency and speed in their legal services providers:

*"Normally he does not want to be concerned about the minutiae of the legal problems involved; he has more than enough to think about his own business problems and he expects [the lawyer] to carry the load as far as possible"*  
(Bird, 1984: 119/120).

Therefore, the ideal solicitor for a business person is one who knows what his client wants without having to ask him all the time and who can discuss business problems without lengthy explanations about what some terms mean (Bird, 1984). Commercial sense for clients also means that the lawyers understand what lies beneath what they are presented with, what motivates the various parties, and what tactics are they likely to adopt (Nelson, 2005).

*"It's annoying when lawyers try to argue for the sake of being clever. Very often you see lawyers spend an hour debating a very small point. It's almost a point-scoring issue as to who's a better debater, which hurts all parties"*  
(Hardcastle, 2004: 17).

What is worse, clients often oppose an antagonistic approach, in favour of more amicable agreements.

### 5.3.6 Satisfaction/dissatisfaction

Helson's (1964) adaptation-level theory suggests that states of satisfaction/dissatisfaction result from a comparison between one's perception of product performance and one's expectation level. Satisfaction results from how a service performance – the service process and outcome – matches the buyer's expectations. Thus, expectations and their management are of great significance to perceived service quality and satisfaction. Research by Bitner (1990), Bitner *et al.* (1990), Crosby *et al.* (1990), Oliva *et al.* (1992) as well as Rust and Oliver (1993) considered service quality almost impossible to distinguish from service satisfaction. Thakor and Kumar (2000) and Day and Barksdale (1992) confirmed the similarity of the concepts of quality and overall client satisfaction/dissatisfaction.

After project completion, clients evaluate the performance of the professional services provider in a more holistic way in the sense of their overall feelings of satisfaction/dissatisfaction regarding the client-provider relationship and the final product. Carlzon (1987) called service encounters and experiences 'moments of truth'. Customer perceptions of service encounters are important elements of customer satisfaction, perceptions of quality and long-term loyalty. In such a market-driven environment, the key to profitability growth is client loyalty, and that depends on client satisfaction. Thus, maintaining strong and close relationship with clients in a way that adds value beyond the basic services provided is critical to achieving long-term client satisfaction, loyalty, and ultimately, profitability (Church *et al.*, 1995). By explaining what a particular service entails, how much it will cost, and when it can be done, the professional can help insure that the client has realistic expectations (Day *et al.*, 1988). The likelihood of client satisfaction can be greatly increased by providing adequate information to the client in a language the client can understand. Confidence may be seen as a hybrid of Parasuraman *et al.*'s (1985) credibility and competence, and individual attention as empathy, concluding that professional marketers should focus on improving the communication skills of client contact and service provision staff and the interactive client service systems of the firm rather than the current marketing agenda in law firms which consists largely of brochure production and PR (Morgan, 1990).

Cagley (1986) warned that criteria used by a client may differ from those which the firm believes that client is using, thus creating the potential for conflict and ultimately, client dissatisfaction. Day *et al.* (1988) identified recommendation of the firm to another individual or business as an indicator for client satisfaction. Due to the importance of referrals in the selection of a professional services firm (Day *et al.*, 1988), a satisfactory relationship with a client can not only translate into repeat business but is also likely to lead to new business.

Morgan (1990) found a clear correlation between client-perceived service quality and willingness to consider alternative services, as well as support for quality perceptions and executives' feelings of confidence in their lawyers.

The discussions on reasons for dissatisfaction mirrored the discussions on satisfaction. When asked about the warning signals that indicate 'things are in trouble', the absence of quality cues were cited (Day & Barksdale, 1992). Woodruff *et al.* (1983) suggested that if expectations do not materialise, the client feels a discord or dissonance due to a clash between anticipation and actuality. The level of dissonance will depend on: (i) the degree of divergence between the expected outcome and actual outcome; (ii) the importance of the discrepancy to the purchaser; (iii) the degree to which the discrepancy can be corrected; and (iv) the cost of purchase in terms of time and money. Dahl (2006) cautioned that clients often are neither dissatisfied nor satisfied with their firms. "Law firms do just what we tell them to do. No more and no less" (Dahl, 2006: 22). This ambivalence, however, leaves firms in a weak competitive position.

## 5.4 Conclusions

Findings on the buying of legal services show the simultaneous development of two seemingly conflicting trends (Park & Bunn, 2003). On the one hand, an increasing transaction-based exchange appears to encourage more distant and 'arm's length' dealings, evident in the growing involvement of the corporate procurement department in the purchasing process, the popularity of RFPs as an instrument for evaluation and selection, the advent of legal 'e-commerce' for the delivery, search and selection (Sicaras, 2000; Susskind 2000) as well as commoditisation, i.e. more and more legal services are bought as generics based on price (Grimshaw & Novarese, 2007). In fact, McKenna (2007) noted a breakdown in the lawyer-client relationship:

more clients, especially large companies, are treating outside professionals as vendors. At the same time, there appears to be a trend towards convergence, preferred provider lists/panels and integration of systems (e.g. extranets and deal rooms) may initiate closer and intensely linked buyer-seller collaboration in line with the idea of relationship marketing (Sheth, 1996).

McKenna (2007) considers that the negotiating of billing rates by procurement departments runs counter to the 'lip service' that has been given by general counsel who say that they want to 'partner' with their outside law firms. While these trends have not been confirmed for medium-sized companies, and thus merit an in-depth examination, Buonanno *et al.* (2005) cautioned that the traditional focus of SMEs is on operations and day-by-day management. They are therefore assumed to prefer to continue doing business as they are used to, refusing solutions that could change their course.

There appears to be a disconnection between lawyers and their clients. Clients seem to perceive law firms as typically acting short term (Nightingale, 2004b), slow and lacking commercial acumen (Hackett, 2005). Law firms appear to fail to understand the company or industry; talk down to clients, fail to communicate as needed, provide inefficiently trained associates and have a high turnover of associates (Cunningham, 2007). Law firms' approach is to seek perfect answers in every minor point (Hardcastle, 2004) while clients' objectives are often to resolve legal issues quickly, reach quick settlements to cap and quantify costs, rather than win at all cost. Medium-sized companies in particular pride themselves on their pragmatism, efficiency, effectiveness and flexibility, characteristics they also expect, but rarely experience, from their legal services providers (LexisNexis, 2006).

Law firms also need to be aware that cost for legal services is under the same close scrutiny as other company spending. Hackett (2005), however, believes that while law firms think that clients simply want them to reduce hourly rates, clients are less interested in cost as they are in value, i.e. a good resolution for the cost paid. Clients also expect law firms to develop enough financial management skills to be able to budget matters: "Of course no one can predict legal costs without error, but those who are interested in doing it get pretty darned good at it over time" (Hackett, 2005: 20). Since clients complain that the whole industry is grounded in inefficiencies (Beck,



2005), some clients have started to find their own solutions, such as introducing alternative billing systems where the company holds back a certain percentage of billed amounts which outside counsel can only recoup when they achieved prior determined success and efficiency targets (Beck, 2005). Other measures to leverage control over legal services providers and cost, apart from the inclusion of procurement in the buying process, is performance ratings of legal services providers (Cunningham, 2007). Even more drastically, clients are increasingly investigating and experimenting with outsourcing legal services to low-cost providers in India, China, South Korea, and similar locations (McKenna, 2007). Lawyers there have started carrying out the due diligence work for large corporate acquisition. Such due diligence work was typically handled by junior lawyers with starting salaries of \$125,000, compared to lawyers in India who are qualified to UK law practice standards and are paid only \$12,200 to \$21,000 per year. Not surprisingly, clients are enjoying substantial saving as a result (McKenna, 2007). These findings, however, are unlikely to apply to medium-sized companies.

Mayson (2007) emphasises that there is a wide range of benefits a client may be seeking when buying a legal service, and that a firm's value proposition should not be focused on cost.

Although lawyers often stress the personal nature of the lawyer-client relationship, Cutler *et al.* (2003) found that lawyers do not understand how consumers select a law firm. The lack of congruence between lawyers and consumers in evaluating the importance of the cues and criteria indicates that they cannot be marketing efficiently as they do not place the same importance on the criteria that consumers utilise. With so much at stake, it appears critical to find out the factors that act as 'satisfiers' or 'dissatisfiers' for medium-sized company clients, analogue to Herzberg *et al.*'s (1959) distinction of 'motivation' and 'hygiene' factors. Firms that understand how potential clients choose lawyers and integrate this knowledge into their marketing strategy have a strategic advantage over other firms (Cutler *et al.*, 2003).

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Not everything that can be counted counts,  
and not everything that counts can be counted.

(Albert Einstein)

## CHAPTER 6

### Methodology

#### 6.1 Purpose of the study

The purpose of this study is to examine how law firms market their services to medium-sized companies compared to how medium-sized companies purchase legal services. The study employed the qualitative practice of in-depth interviewing as its central data-gathering mechanism. To reflect the buying of medium-sized company clients rather than one-sidedly studying the marketing employed by legal services providers, this thesis attempted to develop an appreciation of the perspectives and interpretations of both providers and buyers of legal services. Therefore, this research aimed at gaining a deep understanding of the dynamics and characteristics of interaction with regard to the underlying buying process, which was then compared to the marketing of law firms in England and Wales. It was also intended to analyse the marketing material (on- and off-line) targeting medium-sized companies of participating legal services providers.

Three research questions motivated the study:

RQ1: How do legal services provider firms market their services to medium-sized companies? Specifically, do they approach marketing to medium-sized companies differently from marketing to large(r) organisations?

RQ2: How do medium-sized companies buy legal services, in the sense of their decision-making process? Specifically, what are their criteria for selection and evaluation?

RQ3: What marketing approaches should legal services providers apply to reach medium-sized companies? Would these be different from marketing to large(r) organisations?

To answer these complex questions, additional questions needed to be answered as set out in the interview guides (see Appendices A and B).

## 6.2 Qualitative research approach

Due to the novelty of the topic, the research is exploratory in nature and essentially heuristic, i.e. it is concerned with discovering ideas and patterns and the variables related to it (Malhotra, 1993; Smith & Albaum, 2005; Tull & Hawkins, 1990), which is characteristic of qualitative research.

Qualitative research permits inquiry in great depth with careful attention to detail, context, and nuance, and helps gain understanding of the underlying reasons and motivations (Malhotra, 1993), that is ‘meaning’ rather than ‘frequency’ (Van Maanen, 1983) as in quantitative research. Qualitative research methods are less intrusive and less structured than quantitative research techniques (Jarratt, 1996) and the target population itself can generate the important research issues (Simon, 1994). Beginning with specific observations, it builds towards general patterns. Categories or dimensions of analysis emerge from open-ended observations as the inquirer comes to understand patterns that exist in the phenomenon being investigated without presupposing in advance what the important dimensions was. Data collection thus need not be constrained by predetermined analytical categories thus contributing to its potential breadth (Patton, 2002). The aim is to understand the multiple interrelationships among dimensions without making prior assumptions or specifying hypothesis about the linear or correlative relationships narrowly defined, operationalised variables (Patton, 2002).

Qualitative research is often considered the most appropriate method for generating hypothesis and identifying variables when studying human behaviour in sensitive situations (Malhotra, 1993) as it focuses on the world from the point of view of the subjects who participate in it (Bryman, 1989). Gilmore and Carson (1996) considered that qualitative research is particularly well suited to the characteristics of services and the nature of the service product due to its inherent adaptability and flexibility: For most services, delivery occurs through human interactions and is therefore difficult to study through traditional research methods (Bateson, 1989; Shostack, 1977) as it only exist while being rendered and as living processes cannot be disassembled (Kingman-Brundage, 1991) (see also paragraph 2.1).

Day and Barksdale (2003) pointed out that previous (quantitative) studies on professional services marketing reflect the researchers’ assumptions and working

hypotheses. As a result, respondents are constrained to certain types of response categories and formats. They therefore recommended evaluating assumptions and clarifying knowledge, which qualitative research helps accomplishing. Qualitative studies thus represent an extension of prior research relating to organisational selection and evaluation of professional service providers. Furthermore, qualitative research not only takes account of what is learned throughout the process as well as research outcomes and results, but has a holistic outlook on the research to gain a comprehensive and complete picture of the whole research context (Gilmore & Carson, 1996). Quantitative research, on the other hand, would be preferable when seeking to quantify data, describe a phenomenon or show cause-and-effect (Creswell, 1994). While qualitative and quantitative research should be seen as complementary, rather than in competition with one another, quantitative research must be preceded by appropriate qualitative research (Malhotra, 1993).

Therefore, qualitative research was deemed appropriate for this study as it aims to elicit the view of legal service firms (managing partners and head of marketing) as well as clients without imposing preconceptions.

### **6.3 Data collection method**

Since the marketing to clients and the client selection process are not directly observable, the study chose a proxy for the process in the form of interviews (Cravens *et al.*, 1994) with both providers and buyers of legal services.

Qualitative methods commonly include indirect (disguised) research procedures, i.e. projective techniques as well as direct (non-disguised) procedures, such as focus groups and depth interviews (Malhotra, 1993). Due to the non-sensitive nature of the research for the individual, a direct approach that disclosed the purpose of the project to the respondents or are otherwise obvious to them from the questions asked, was preferred (Tull & Hawkins, 1990).

Interviewing is a qualitative method generally considered a key method of data collection (Barry, 1999) and may be the least problematic and most beneficial form of data gathering as an interview is simply a conversation between two or more people where one or more of the participants takes the responsibility for reporting the substance of what is said (Powney & Watts, 1984). At the same time, significant

weight is placed on the role of the interviewer in these apparently simple and natural interactions. In providing guidelines for interviewing, researchers place themselves in the position of defending a particular vision of the nature of society and of the measures worth taking in order to reproduce a moral system (Bergmann & Luckmann, 1999). Fontana and Frey (2000) therefore argued that asking questions and getting answers is a much harder task than it may seem at first.

Focus groups are the most important and most commonly used qualitative research procedures (Malhotra, 1993). Three different focus groups (one comprising of medium-sized company clients, one legal service firm management, and one legal marketer) could lead to interesting insights. For a number of mostly practical reasons, however, such a composition is deemed unrealistic for this thesis, such as finding a timeslot to fit the schedules of several busy executives and professionals, having them available for up to three hours, and in the case of legal services provider firms, openly discussing potentially sensitive topics in the presence of (potential) competitors.

In qualitative research, questions can be formatted in different ways. Patton (2002) distinguishes three basic approaches to collecting qualitative data through open-ended interviews: informational conversational interview, the general interview guide approach, and the standardised open-ended interview. The general interview guide approach serves as a basic checklist during the interview to make sure that all relevant topics are covered. This thesis applies the general interview guide approach, which follows an outline (see Appendices A and B) and prompts, but lets interviewee responses open up further lines of possible questioning. It gives more flexibility than the standardised open-ended interview approach while ensuring that the same basic lines of inquiry are pursued compared to the informational conversational interview (Patton, 2002). This approach also allowed the researcher to cover a specific list of topic areas with the time allocated to each area being left to the discretion of the interviewer allowing to obtain the 'richest' and 'complete' data within the prescribed limits of the research (Easterby-Smith *et al.*, 1991).

In order to obtain quality data, Berry (1999) suggested specific questioning techniques: clear, single, truly open-ended questions, experience questions before opinion questions, sequencing the questions in a logical order, probing and follow-up questions, interpreting questions, avoiding sensitive questions, controlling the

interaction, as well as establishing a rapport with interviewees. Cohen and Manion (1994) emphasised that the atmosphere of the interview should be open and clear and the interviewer should try to make the interviewee feel at ease. The interviewer should clearly state the purpose of the interview in order to not create bias and remember throughout the interview that as a data-gathering instrument, interviewers should make every effort to keep their own biases from tainting the interview. Questions should be asked in an informative manner; no brief 'yes' or 'no' answers accepted (Malhotra, 1993). Such probing, or 'laddering' however, should not cause bias in responses, but instead allow the researcher to tap into the interviewee's network of meanings, hidden issues questioning, and symbolic analysis (Reynolds & Gutman, 1988). The interviewer must be able to guide the session back to the topic being explored when the interviewee digresses or exploration of a particular area becomes fruitless (Jarrat, 1996).

#### **6.4 Design of the study**

As described by Kvale (1996), the present study began with a series of informal telephone calls and e-mail contacts in the legal market known to the researcher to informally discuss the study and to ask for assistance in identifying additional respondents for the formal study. This first phase was conducted from April through May 2008. Concurrently, as additional participants were identified, these too, were contacted in this fashion requesting their participation in the present study.

During the second phase of the interview specific questions were asked addressing the purpose of the interview. Once contact was established and participation confirmed, arrangements were made to schedule an interview. These interviews were conducted in person (30 interviews in total, of which two were joint interviews of managing partner and head of marketing at the request of the relevant firms) or via telephone (four interviews). Different guides were developed for (i) medium-sized company clients and (ii) legal services providers (see Appendices A and B). The interview guides were piloted to ensure common understanding of the terminology used.

Phase three in the data gathering process served to further probe specific aspects of responses received and to follow up on other issues where further detail was desired. Respondents were coded (see paragraph 6.5), as Kvale (1996) outlined, so that further

clarity, detail, and intended meaning could be determined. During this phase questions born of phase two responses were posed and followed-up.

### **6.5 Participants in study and sample size**

34 decision makers representing buyers and providers of legal services in England and Wales were interviewed for this study. Interviewees had extensive experience with marketing or buying of legal services in the sense of either using marketing as a means to attract and attain clients or as target groups of legal marketing.

Purposeful sampling in the sense of ‘snowball sampling’ was used to ensure information-rich cases (Patton, 2002). The sample was taken from an extensive range of contacts through the supervisory team and the student’s own professional experience. The samples were selected to capture a broad representation of medium-sized company clients as well as legal services providers. This approach supports the robustness of emerging themes from individuals with diverse attitudes and approaches in terms of marketing (Jarratt, 1996).

The typical difficulty in gaining access to business markets, perhaps due to confidentiality of sensitive information (Tyler & Stanley, 1999) was overcome by the personal contact of the researcher and the supervisory team, which explains the high response number.

Interviewees had to meet predetermined criteria. The medium-sized companies had to satisfy the size requirements as defined in paragraphs 1.4, 5.1.1. Two companies (MC 2 and 3) had a headcount between 250 and 500, but fit into the category with regard to the other size requirements. In addition, the decision-makers in the medium-sized companies had to have purchased legal services in the last 12 months, thus ensuring prior experience in the selection-decision process. Ferguson (1979) and Stock and Zinszer (1987) suggested that the senior executive would be the primary decision maker and therefore the key informant when buying professional services. Seidler (1974) recommended that some of the problems associated with using informants (e.g. representativeness and standardisation) can be overcome by selecting people who occupy the same positions in each structural unit of analysis. Thus, from the client side, interviewees chosen occupied the position of general manager/CEO, manager-owner or director.

The medium-sized companies comprised of retail, services, manufacturing, and biotech companies. 9 interviewees were males, 1 female. The types of legal services bought within the time frame of 12 months included corporate and commercial, litigation, employment, intellectual property, property, M&A and finance. Buyers typically had no formal budget.

Interviews were conducted in July 2008, varied in length between 45 minutes and 1½ hours, and were typically conducted in the office of the interviewee or a meeting room on the premises of the medium-sized company. After agreeing to the interview, interviewees the interview date was scheduled via telephone or email.

The second sample group, legal services providers, was also chosen through snowball sampling. To qualify, firms had to have a legal practice servicing medium-sized companies as well as a marketing department. (There was no data available regarding what percentage of law firms in England and Wales focus on medium-sized companies as clients, as opposed to firms focussing on particular areas of practice.) Both law firm management (senior and managing partners or practice area heads) and the head of marketing of the respective firms were interviewed to represent different points of view within firms. All 12 managing partners were male, while 8 heads of marketing were males and 4 females. As before, the typical difficulty in gaining access to business markets was overcome by the personal contacts of both the research and the supervisory team. Interviews were conducted in July 2008, varied in length between 45 minutes and 1½ hours, and were typically conducted in the office of the interviewee or a meeting room on the premises of firm. After agreeing to the interview, interviewees the interview date was scheduled via telephone or email.

Confidentiality was ensured as the names, locations, and other details regarding the interviewees were changed. Each individual was coded based on their role as a decision maker from a medium-sized company “MC”, a managing partner in a law firm “MP”, or head of marketing/business development in a law firm “MD”. A numeric designation indicates the order in which they were contacted.

MC 1: Managing director in a retail company.

MC 2: Managing director in a retail company.

MC 3: CEO/entrepreneur of a media/business services company.



- MC 4: CEO/entrepreneur of a services company in the utility sector.
- MC 5: CEO/entrepreneur of an internationally operating business services company.
- MC 6: CEO/entrepreneur of a group of companies.
- MC 7: CEO/entrepreneur of a business services company.
- MC 8: Managing director of a manufacturing and retail company.
- MC 9: Director of Human Resources in a high-tech business services company.
- MC 10: CEO/entrepreneur of a biotech company.

- MP 1: Managing partner of an intellectual property firm in London. The firm is intending to hire a marketing or PR manager.
- MP 2: Managing director of a smaller, conservative London firm that recently hired a marketing executive.
- MP 3: Managing partner of a mid-level London firm with an established marketing department.
- MP 4: Managing partner of a regional firm in the north of England which uses an active business development approach.
- MP 5: Managing partner of a regional firm in the north of England that uses a more conservative marketing approach.
- MP 6: Managing partner of a national firm with an established marketing department.
- MP 7: Managing partner of a national firm with a more recently established marketing department.
- MP 8: Managing partner of a Silver Circle firm (the term 'Silver Circle' refers to elite England-based law firms which fall outside the traditional Magic Circle, see paragraph 2.3.1; the term was first mentioned by Westacott, 2005) firm with a large marketing department.
- MP 9: Managing partner of a regional firm in the south of England with a small marketing department.
- MP 10: Managing partner of a boutique City firm known for its embrace of marketing.
- MP 11: Managing partner of a regional firm in the west of England with an active business development approach.
- MP 12: Managing partner of a regional firm in the west of England with a recently hired marketing department.

- MD 1: Marketing director of a regional firm north-east of London.
- MD 2: Director of business development and marketing in a City firm.
- MD 3: Director of business development in a Silver Circle firm.
- MD 4: Marketing director of a mid-level London firm.
- MD 5: Head of business development at a smaller London firm.
- MD 6: Director of business development in a regional firm in the north of England.

- MD 7: Marketing director in a regional firm in the north of England.  
 MD 8: Director of business development in a national firm.  
 MD 9: Marketing director in a Silver Circle firm.  
 MD 10: Director of business development in a boutique City firm.  
 MD 11: Marketing director in a regional firm in West London.  
 MD 12: International director of business development in a European law firm.

Compared to quantitative studies, the sample size of this research was small. This can be justified by reference to literature suggesting that qualitative research is based on a small number of non-representative cases. Data collection (see paragraph 6.3) is unstructured and data analysis (see paragraph 6.7) is non-statistical (Malhotra, 1993). Patton (2002) pointed out that the size of the sample depends on what the researcher wants to find out, how the findings are to be used, and the resources available. The validity, meaningfulness, and insights generated from qualitative inquiry have more to do with the information richness of the cases selected. Having a small but rich set of data is a trade-off that researchers and reviewers should be willing to consider and make for meaningful research production (Wilson, 1996). However, the objective of a grounded theory approach is not necessarily to produce generalisable or representative data, but instead to generate new theoretical insight. Small samples are recommended so that greater care can be taken to increase the usable response rate and so both sides of a dyad can respond sufficiently.

While Lincoln and Guba (1985) recommended sample selection to the point of redundancy, i.e. until no new information is forthcoming from new sampled units, Patton (2002) deemed this to be unpractical and suggested specifying a minimum sample based on expected reasonable coverage. The point of redundancy may be reached after interviewing seven to nine interviewees in each group. In this research, the minimum sample size is therefore determined as a total of 21 to 27 interviews (7 to 9 interviews for each of the three groups). In total, 30 interviews were conducted, 12 with managing partners and heads of marketing respectively, as well as 10 decision-makers in medium-sized companies (two interviews were conducted jointly with both managing partner and head of marketing as requested by the firms). While the point of redundancy was typically reached after seven to nine interviews as expected, the research was continued as the interviews had been set up beforehand.

## 6.6 Data collection

In contrast to previous studies of the marketing activities of law firms, this research examined marketing not only from the buyers' or the providers' point of view in a separate fashion, but both sides involved. Wilson (1996) noted that examining either side in isolation may not offer a unique contribution to the knowledge base and recommended empirical studies to strive to collect data from both sides of the dyad. This research also followed Ellis and Watterson's (2001) call for qualitative, dyadic studies to obtain a clearer picture of professional service quality evaluation.

The primary data collection instruments employed for the present study were recorded personal interviews, telephone interviews, select transcriptions of these interviews, and the notes taken during these interviews. Two interview guides were crafted for the purposes of guiding these interviews (see Appendices A and B). The interview guides were based on the research questions and constructed as templates for the interviews, allowing for further inquiry during the interviews, as well as during follow-ups.

A series of questions in the interview guides was designed to provide an open discussion concerning the marketing of legal services to medium-sized companies. The questions themselves were designed to be foundational rather than guiding in the sense that they would establish a basis for discussion, yet not confine respondents' comments. This permitted specific, yet individualised exploration of the issues related to the study. Allowing decision makers to describe and explain the selection process, criteria, and determinant attributes in their own words led to meaningful findings. Previous research employing conventional closed-ended questionnaires did not provide the richness of data that can be generated from responses to open-ended questions. The use of open-ended questions was preferable in the research context as it allows for the interviewer to probe deeper concerning the specifics of a respondent's replies. (Probing questions were intended to better understand what respondents meant. E.g., what does a medium-sized company client mean when she mentions 'quality' as an important criterion for selecting a law firm? Does this refer to quality of outcome, quality of service delivery?) This process, when combined with a thoughtful examination of the interaction, can result in a more practical understanding of what is meant by the response by capturing the essence of an account (Miles & Huberman, 1994).

All interviews were recorded and transcribed subject to the data subjects' consent. In those instances where the data subjects withheld consent, data in the interviews were gathered through note taking.

### **6.6.1 Legal services provider firms**

RQ1 concerned legal services provider firms, asking how legal services provider firms market their services to medium-sized companies; specifically, do they approach marketing to medium-sized companies differently from marketing to large(r) companies?

To understand marketing from the perspective of the providers, Morgan *et al.*'s (1994) comprehensive framework was chosen which comprises (i) marketing organisation; (ii) marketing information; (iii) marketing policies; (iv) marketing strategies and tactics/instruments (see Appendix A).

Marketing organisation was operationalised via inquiries to examine the existence of an organisational entity charged with various marketing responsibilities. Questions centred on whether the firm has a specific group dedicated to medium-sized companies principal areas of marketing effort in regards to medium-sized companies, internal support, targets in regards to the marketing and business development of fee-earners in regards to medium-sized companies.

Marketing information comprises the means by which analysts and decision-makers in legal service firms obtain their marketing information and their use of such intelligence. Interviewees were asked if the firm researched marketing potential in regards to medium-sized companies, conducted market share analysis in regards to medium-sized companies, proactively assessed medium-sized company clients' problems and attempted to help them find solutions.

The traditional reliance on informal information systems and personal contacts leaves legal services providers vulnerable to competitors in what has become a dynamic, competitive, and volatile environment (see chapter 3). In this environment, information should be considered to be an asset; it helps to enhance legal services providers' understanding of existing clients and their needs, and provides an insight into future opportunities. This situation may be particularly challenging due to the

potentially less available and accessible information on medium-sized companies. It needs to be considered whether market research is done in a formalised or ‘intuitive’ style or in a paternalistic ‘we know what the customer wants’-style. In addition, firms need to consider the composition of demand, cost data to help measure the profitability of clients/utilisation, customer attitudes and opinions of the service and its delivery and, more importantly, the ability to understand cyclical fluctuations and thereby plan for subsequent changes in demand. In sum, firms need to obtain more objective information which is accurate, timely and reliable. This research examined whether legal services providers do, should, and can practise this approach with regard to medium-sized companies.

Subsequently, marketing policy towards medium-sized companies was analysed. Policies are guidelines which form the basis of the attitude towards marketing and strategy formulation within the firm. The research was intended to discover firms’ attitudes towards marketing to medium-sized companies and their associated practices. Interviewees were asked about the selection criteria for prospective fee-earners and staff, and the training provided in regards to medium-sized companies.

Marketing strategy and tactics comprise typologies of marketing strategies being pursued and their main tactical ingredients, with regard to medium-sized companies. They concern a set of issues involving missions, aspects of market definition, market segmentation, competitive differentiation sources and relative positioning. The research intended to discover the firms’ marketing goals regarding medium-sized companies. The emphasis legal services providers place on marketing, either strategic or operational, has a direct impact on their approach to medium-sized company clients. This research intended to find out whether firms realise the importance of marketing strategy in assisting them to achieve their major marketing goals when targeting medium-sized companies. So, for example, attempts to increase market share by entering new client markets with existing services (market development) or developing new services for their existing markets (service development) would indicate more aggressive goals in a competitive marketplace compared to the defending, holding and maintaining of one’s share of the market. In addition, the relative importance of tactical elements was researched when targeting medium-sized companies. As on the client side, the different stages in the buying process were examined with regard to whether and if so, which particular tactics the firms apply. In

order to comprehensively answer RQ1 what approaches they utilise, interviewees were asked about the marketing instruments they use.

During the interviews some respondents reflected on how the firm currently markets its services to medium-sized companies, compared to what they ought to do (see also paragraph 7.2).

### **6.6.2 Medium-sized companies**

RQ2 concerned how medium-sized companies buy legal services. What is their decision-making process? Specifically, what are their criteria for selection and evaluation? To answer this research question, the interview guide for medium-sized companies used the same framework of the buying process that was used for the literature review in chapter 5. The phases in this process included (i) need recognition; (ii) identification of the initial consideration set/information search; (iii) evaluation of the consideration set; (iv) selection of the service provider; (v) evaluation of the service; (vi) satisfaction/dissatisfaction. (See Appendix B.)

In each phase, the internal process was examined in terms of what criteria are the basis of the decision, who is involved in the decision making process in this phase, when decision making takes place, and how the decision making process is conducted within the medium-sized companies. In addition, marketing instruments were examined in terms of their (external) influence: which marketing instruments influence the decision making of medium-sized companies in each respective phase, and which marketing instruments are wanted/welcome or unwanted/unwelcome. Decision makers in medium-sized companies were probed regarding their preferences in relation to marketing instruments used by law firms in order to be able to judge current marketing practice by legal services providers.

Questions centred on (i) how decision-makers in medium-sized companies recognise their company's need for legal services: is such need awareness raised by external or internal stimuli, and how could a firm influence them in this phase. (ii) How do they identify potential providers that could help them solve their legal problems, specifically, where do they look for information; is the information search process structured and formalised or do they rely on instinct and accidental fit. Do they distinguish between legal services needs with greater or smaller perceived risk or do

they have other criteria among which they distinguish. (iii) The evaluation of different options was examined in regards to a number of potentially influential criteria and their relative importance. Decision-makers were also asked whether the purchase of legal services was driven by analysis and data or emotional factors. When they perceived little difference between firms, which factors become decisive? (iv) In regards to the selection of the legal services providers, what criteria do they apply, and which are the most important in their opinion? What were the reasons for selecting their current legal services providers? How do they define quality? Do they select a firm as an organisation or do they choose individual lawyers? How do they come to their selection decision and what do they actively seek for in a firm? How important are cost efficiencies for them, or value for money? In fact, what is ‘added value’? What is their relationship with their legal services providers, are the lawyers their ‘trusted advisors’? Which marketing instruments influence them in their selection? (v) When working with a firm, how do they evaluate the service received? What criteria ultimately lead to an overall positive or negative evaluation? Are the criteria in this stage the same as in the previous stages or do they change? What do they expect from an ‘ideal’ legal services provider? Again, which marketing instruments influence them during this phase? (vi) Finally, what determines whether the decision-maker and the organisation is eventually satisfied or dissatisfied with the legal services provider, how do they determine satisfaction/dissatisfaction? What makes them go back to their legal services provider and which marketing instruments influence them in this stage?

## **6.7 Basis for data analysis**

While the answers to RQ1 and RQ2 could be answered directly through the analysis of the interviews (see chapters 7 and 8), RQ3 required comparing the findings and drawing conclusions. RQ3 asked what marketing approaches legal services providers should apply to reach medium-sized companies, and would these be different from marketing to large(r) companies?

Analysis of qualitative studies consists of three concurrent areas of activity: data reduction, data display, and conclusion drawing/verification (Miles & Huberman, 1994). Data reduction refers to the process of selecting, focusing, simplifying, abstracting, and transforming data that appear in notes and transcriptions. It occurs continuously throughout the process of the qualitative study, and can begin before any

data is actually collected. This practice is called anticipatory data reduction and is conducted by the researcher, likely unaware of all emergent themes in a study, as a means of providing a conceptual framework for ongoing data analysis. Ongoing data reduction or data condensation is not separate from analysis, it is a function of analysis that sharpens, sorts, focuses, discards, and organises data in such a way that conclusions can be drawn and meaning determined. In this research, notes were taken from the start, which gradually formed the bases for the analyses in chapters 7 and 8.

Data display is an organised, compressed assembly of information that permits examination for the purpose of conclusion drawing. Conclusion drawing is paired with verification, which is the confirmation of an emerging theme and is essential where data is gathered through a qualitative study if the study is to be taken beyond a narrative and transformed into knowledge that can be utilised (Miles & Huberman, 1994). Several processes can be applied to test and confirm findings in a qualitative study. Checking for representativeness, which is asking if the findings can be generalised to a population, is the first step. The present study sought to minimize the effects of non-representative respondents by creating a respondent base of individuals who have significant experience with marketing to medium-sized companies, as well as an equal distribution of respondents among each of the three interviewee groups (see paragraph 6.5). The tendency to generalise from non-representative responses is another pitfall identified that can be caused by a researcher's unfamiliarity with a research topic, lack of presence in the process of data collection, or personal misconception (Miles & Huberman, 1994). This study sought to minimise the effects of generalising results through the structure of the respondent base, openness of the questioning, and a familiarity of the researcher with the processes being examined. Certainly research effects come to play and these was discussed in greater detail in the limitation of the present study section in paragraph 9.2.

Strauss (1987) recommended that coding of data should be done early and frequently within the research timeframe and that interpretative memos should be attached to the coded data. Coding is an attempt to fix meaning to concepts. "[C]oding that fixes meaning too early in the analytic process may stultify creative thought, blocking the analyst's capacity for seeing new things" (Seale, 1999). Seale therefore recommended that the early stages of coding should involve 'indexing', i.e. a process of signposting interesting bits of data rather than representing some final argument about meaning.



In this research, indexing was started with the first interviews, while data analysis was undertaken immediately after all interviews for one of the three groups were completed.

Grounded theory (Glaser & Strauss, 1967) was applied as the underlying approach. It entails that no hypothesis was formed beforehand and the focus is on the process of generating theory, in the sense of building theory rather than testing it (Strauss & Corbin, 1998). Grounded theory emphasises inductive theory development in contrast to theory generated by logical deduction from a priori assumptions (Patton, 2002) which is typical for quantitative research. Inductive analysis involves discovering patterns, themes, and categories in the data. Findings emerge out of the data, through the researcher's interactions with the data, in contrast to deductive analysis where the data are analysed according to an existing framework (Patton, 2002). Grounded theory helps to uncover phenomena by getting close to the area studied and by studying it thoroughly (Blumer, 1978). It attempts to help researchers consider alternative meanings of phenomena, is simultaneously systematic and creative and reveals the concepts that help build theory (Strauss & Corbin, 1998).

Grounded theory is often used in doctoral dissertations due to its quest for objectivity (Patton, 2002). Strauss and Corbin (1998), however, point out that complete objectivity is impossible and in every piece of research, quantitative or qualitative, elements of subjectivity are inevitably present. In that light, Charmaz (2000) underlined the fact that grounded theory aims to generate meaning, not necessarily 'truth'. It is important to recognise that subjectivity is an issue and researchers should take appropriate measures to minimise its intrusion into their analyses (Strauss & Corbin, 1998). Grounded theory begins with basic description, moves to conceptual ordering, i.e. organising data into discrete categories and uses descriptions to elucidate those categories and concludes with further theorising, i.e. conceiving ideas or concepts by formulating them into a logical, systematic and explanatory scheme (Patton, 2002; Strauss & Corbin, 1998).

## **6.8 Verification and interpretation**

In qualitative research, the researcher must be able to keep the data, the interpretations, the data reductions (see paragraph 6.7), and the resulting conclusions closely linked to the reality from which they came (McKay, 2001). Data should

therefore be acquired from a variety of audience sources and stakeholders related to the research questions. Accordingly, this study chose respondents from both the buyer as well as the legal services provider side to create a balanced inquiry.

Qualitative analysis must establish the validity and reliability of the research. These quantitative terms equate to the credibility of the data gathered in qualitative research, in the sense of whether the data is acquired from credible, plausible, believable, and truthful sources. Trochim (2002) equated qualitative credibility with internal validity, while transferability refers to the degree to which the results of qualitative research can be generalised or transferred to other contexts or settings (McKay, 2001) and equated to the quantitative notion of external validity. Though in some cases replication of a qualitative study may not be possible, the present study represents information gathered from both buyers and providers of legal services in the context of medium-sized companies and from a cross section of credible respondents providing for a higher degree of transferability.

Reliability, in quantitative research the ability to replicate a study, equates to dependability in qualitative research (Trochim, 2002). Were another researcher to attempt to replicate the study through interviews regarding the marketing of legal services to medium-sized companies along the same topic lines, the results anticipated would likely be similar as the respondents represented both buyers and providers of legal services in the context of medium-sized companies. Qualitative research tends to assume that each researcher brings a unique perspective to the study (Lindlof, 1995). An important point with qualitative research is that validity and reliability are difficult to measure as they are both the product of the interaction with the researcher and the subjects. Accordingly, both validity and reliability lie in the qualification of the researcher (Felding & Felding, 1986).

Confirmability refers to the degree to which the results could be confirmed by others and corresponds to the quantitative concept of objectivity (Trochim, 2002). To enhance confirmability and reduce the potential for bias or distortion, data collected in this research was checked and rechecked throughout the process of surveying and interviewing participants and the researcher actively sought to identify anomalies that seem to contradict other observations gathered during the study, as well as those acquired through prior experience.

## **6.9 The role of the researcher and the conduct of the research for this thesis**

The interviewer's role is critical to the success of the depth interview. It is important that a relaxed, sympathetic relationship develops between the interviewer and the interviewee. The interviewer should avoid appearing superior and put the respondent at ease; be detached and objective, yet personable (Patton, 2002).

The author of this study has extensive knowledge of the marketing of legal services, which can be viewed as a positive bias in that the interviewees were discussing a very complex topic with someone who has sufficient expertise and experience to be able to discuss legal services marketing in some detail and at their level. To this end every effort was made to provide an atmosphere of engagement and trust, which allows participants to develop ideas and to share attitudes and feelings.

Anticipating that interviewees might wish to introduce additional question or issues, or that they might even be sceptical about the intent of the interview, perhaps wondering if the interview might become a sales presentation, the researcher openly shared information concerning the progress of the study. As issues were likely to emerge as a by-product of the interview process, the researcher also requested an open line of communication to interviewees' post-interview to ask additional questions or gain additional input and encouraged interviewees to contact the researcher directly if any additional comments or questions came to mind.

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Mid-sized companies buy at Marks & Spencer's,  
not at Harrods.

(Managing Partner of medium-sized company, MP7)

## CHAPTER 7

### Discussion of findings with legal services provider firms

This chapter discusses the empirical research carried out among marketing directors and managing partners of legal services provider firms as it aims to answer RQ1: How do legal services provider firms market their services to medium-sized companies? Specifically, do they approach marketing to medium-sized companies differently from marketing to large(r) organisations?

The distilled responses to questions asked (see Appendix A) and representative quotations from participants are provided. As suggested by Day and Barksdale (2003), this question-and-answer format best demonstrates the richness of the data collected through the open-ended questions (see paragraphs 6.3 and 6.6). Although some overarching themes emerged, this type of presentation ensures that the analysis stays close to the raw data and provides answers to the research questions (see paragraph 1.2.2).

The interviewees were selected based on the legal services provider firms' expressed engagement with and interest in medium-sized companies as current and potential clients. As explained in paragraph 6.5, heads of marketing/business development as well as managing partners of firms were selected. The two groups, representing the marketing department and the firms' management, were chosen to detect possible divergence in their approach to, and opinion of marketing.

All interview partners from legal services provider firms confirmed the importance of medium-sized companies for their respective firms' current and future economic success. Marketing directors are referred to as 'MD' and numbered 1 through 12, managing partners are referred to as 'MP' and are also numbered 1 through 12 (see paragraph 6.5).

To assess the marketing in professional services firms, Morgan *et al.*'s (1994) framework was selected. It includes: (i) marketing organisation; (ii) marketing information; (iii) marketing policies; (iv) marketing strategies and tactic. The structure of the interview guide for legal services providers (see Appendix A) reflects this framework.

## **7.1 Interviews with marketing directors and managing partners**

The literature suggests stark differences between lawyers and non-lawyers in a firm with regard to their view of 'marketing' (see paragraph 3.2). The empirical research could not confirm this view. While marketing directors and managing partners did not always give equal importance to the aspects examined, largely deviating trends could not be identified. This may be because marketing has been widely accepted today and the firms by and large find themselves in advanced stages of the evolution of marketing in law firms.

The size of the law firm the interviewees represented appeared to make little difference in the general approach to marketing, the most notable difference being resources available, budgets and manpower. No noteworthy differences could be found with regard to location of the law firm in terms of marketing orientation. London-based firms did not appear more or less marketing-oriented than firms based in Manchester, Liverpool, Bristol, York, or Kent.

### **7.1.1 Marketing organisation**

Interviewees were asked to describe the firms' marketing organisation within the structural configuration of the firm intended to understand the importance of marketing and integration in the firm.

#### **7.1.1.1 Department organisation**

The organisation for marketing varied widely in the different firms interviewed. While marketing was generally deemed important to the firms' success, there was little agreement on the differences between marketing and business development. This was relatively consistent with the literature review that provided a number of views of how marketing and business development complement each other or overlap (see paragraph 3.2.3). The majority of interviewees distinguished between the two concepts. Marketing was said to include typical communications functions such as

media and public relations, events, and hospitality. The purpose of ‘marketing’ was seen to involve communication and positioning: raising profile and awareness, developing the firm’s brand, protecting reputation, and getting the firm’s message across. This was consistent with the Marketing Pyramid (Figure 3-2). Marketing was said to be about “*people liking you*” (MP4), “*being a trusted advisor*” (MD3), while MD2 described the purpose of marketing as “*glitz*”.

Business development, on the other hand, was seen as knowing what clients want, growing the client base and managing client key accounts, some of which arguably ‘marketing’ functions as laid out in paragraph 3.2.3. MD1 and MP7 described business development as a separate function under the umbrella of marketing, and MD4, 6, 11 did not formally divide marketing and business development due to lots of overlap between marketing and business development. MD11 stated that marketing in the firm used to be marketing communication, i.e., the visual brand, advertising, PR, and sponsoring, but the new (marketing) focus is business development and marketing strategy. This confirmed the literature review that business development follows in later stages of the process in which marketing is embraced in a firm (paragraph 3.2.3).

The research among legal services providers did not detect different marketing approaches depending on the buyers’ experience or autonomy, which both literature review and empirical research suggest (see paragraphs 2.3.3.1, 5.2.1, 5.3.2.1, 8.1.5).

While not all of the firms had a head of marketing as well as a head of business development, all but one (MP1) claimed to have senior marketing and/or business development roles in their organisation. This appears to confirm that marketing was relatively well established in the firms as the literature suggests (see Table 3-1).

Their advanced evolution of marketing was also confirmed by their internal structure. Marketing organisation by practice groups is embraced only in later stages of development (see paragraph 3.2.3.2). The findings showed that the marketing departments of MD1, 2, 4, 5, 9, 10, 12; MP2, 10, 11 were organised by area of practice. In addition, MD2, 12; MP2, 10, 11 used a matrix structure of area of practice and industry. MD1, 6; MP1 were organised by geography or office. In addition, a structure by discipline suggests a more developed marketing approach due to the more

specialised roles it comprises. The firms of MD1, 6; MP1, 2 were structured by marketing disciplines, with marketing communications staffed at the firms' headquarters and business development marketers in regional offices and/or servicing particular practice areas or industries.

However, in line with not having a specific marketing strategy for medium-sized companies, and despite their reported interest in medium-sized companies and recognition of the difference between medium-sized and large companies, none of the interviewees had a specific marketing group for medium-sized companies.

#### **7.1.1.2 Marketing tracking and decision-making power**

The literature recommends measuring the ROI of marketing efforts (paragraph 4.2.4 and table 3-3). This is also true for individual lawyer's marketing activities since typically what gets measured and remunerated gets done (paragraphs 4.2.3 and 4.3.2). This research found that while some firms measure marketing efforts, it is not necessarily aligned with the remuneration system, which might suggest a disconnection.

MD1, 2, 5; MP1 reported that their firms expected individual lawyers to track their commitment to and involvement in marketing activities, without requiring specific goals. However, only in the firms of MD4 and MP2 did lawyers record time and had marketing time goals, and it was also considered important in the promotion process to partner and the annual bonus.

One of the key notions of marketing is to be the interface between the organisation and the client (paragraph 3.1.1). Consequently, in that role marketers should be involved in the marketing decision-making process. However, this research found that decision-making power with regard to marketing was typically in the hands of the managing partner (MD4; MP11), the board or committee (MD5, 10; MP1, 2). Only in the firms of MD1, 9 did the head of marketing share decision-making power with the managing partner. In none of the firms had the marketing director sole marketing decision-making power as s/he would in other organisations.

Similarly problematic was the finding that only MP11 stated that budget responsibility for marketing was in the hands of the head of marketing/business

development. The firms of MD1, 4, 5; MP2 gave budget responsibility to individual practices and MD2; MP7 to the board or partnership rather than marketing. MP9 stated that the financial director has budget responsibility for marketing. What is more, the firm of MP1 had no marketing budget for the firm as expenditures were *ad hoc* decided by the partnership. All of this leads to assume a relatively weak and limited role for marketing typical for earlier phases in the marketing.

This was in line with the finding that in most firms (MD1, 2, 4, 10, 12; MP2, 7, 12) marketers had a supportive, ‘behind the scenes’ role. They were mostly engaged in analysing opportunities, preparing pitch material and collateral, but did not attend pitches or ‘close deals’. On the other hand, MD5, 6, 9; MP9, 11 stated that marketers in their firms occupied very ‘client-facing’ roles and were actively involved in pitches.

While the literature review suggested that the majority of law firms in the UK employ key account management (KAM) for their best clients (paragraph 3.2.3.2), none of the interviewed firms had a KAM system for medium-sized companies, again contradicting the notion of an advanced marketing approach for medium-sized companies.

### **7.1.2 Marketing information**

The literature also suggests that marketing should encompass comprehensive marketing information research and competitive intelligence (paragraph 3.2.3) as a basis for marketing planning (see Figure 3-1). While interviewees acknowledged the importance of marketing information, firms had various anecdotal approaches to marketing research.

MD1, 5, 12; MP11, 12 had a formal marketing research unit, with MP12 stating that the firm has “*one person spending most of her time on client relationship research*” and MD12 having an information centre staffed by information scientists. MD1; MP7 regularly outsourced and commissioned marketing research. MD5, 9, 10 reported that marketing research was part of the library function. MD2, 4, 11; MP1, 2, 9 did not have marketing research functions, but MD11; MP2, 9 were planning to create such a function within the near future. Despite the growing recognisance of the importance



of ‘competitive intelligence’ (see also paragraph 3.2.3), unprompted, no interviewee brought it up as an area of focus.

Most marketing directors, but not managing partners, stated that they researched potential marketing opportunities related to medium-sized companies for their existing offices (MD1, 2, 4, 5, 6, 9, 10, 11; MP11). MP2, 7 did not yet systematically conduct such research, but intended to do so. MD1 emphasised that information on marketing opportunities with medium-sized companies is “*hard to get*”. Similarly, MD1, 2, 6, 11; MP11 stated that market share analysis with regard to medium-sized companies was “*challenging*” as information and data were hard to obtain. MD5 and MP2 said that the market share analysis of medium-sized companies in their firms is “*embryonic*” and not done in a systematic way. MD4, 6, 9, 10, 12; MD1, 9, 12 did not conduct any market share analysis with regard to medium-sized companies.

Market characteristics were researched by MD1, 4, 5, 6; MP2, 12 and client characteristics by MD1, 2, 4, 6; MP2. MD1, 2, 6, 9, 11; MP9 regularly conducted studies of competitors, and MP4, 5; MP1, 2, 10, 12 researched competitors *ad hoc* or “*very loosely*”, or claimed to be “*generally aware*” of the marketplace and respective competitors.

Only MD1, 6, 10, 11 conducted pricing studies. The challenges of obtaining the data typically prevented other interviewees from doing it. MD1, 6, 10 also conducted studies on business trends, while others did not do it in a systematic way or did not see it as necessary. While firms repeatedly pointed out the importance of solving clients’ problems, only MD6, 10; MP1 stated that they proactively assess medium-sized company client’s problems and attempt to help them find solutions.

Even though some firms advertise their services, none of the interviewees researched advertising effectiveness, conducted media research, or copy research. This type of research is considered standard practice in other industries, such as fast-moving consumer goods. This lack of significant and comprehensive research is highly problematic and contradicts the generally accepted importance of marketing research as a basis for marketing (paragraph 3.1.1).

### 7.1.3 Marketing policies

Interviewees were asked about their firm's marketing policies, that is their firm's attitude and practice in marketing.

Marketing and business development were considered 'very important' or 'increasingly important' by the fee earners in most interviewees' firms. However, according to MD5, the importance varied with the fee earners' age. This confirmed a finding in the literature, according to which younger fee earners tended to see marketing and business development as more important than older fee earners (see paragraph 4.3.3).

#### 7.1.3.1 The concept of added value

Interviewees concurred that it was an important objective of their respective firms to provide high value-added service to its medium-sized company clientele. The literature refers to added value services as services where buyers are able to recognise the value of the base service and thus willing to pay extra for added value service features (see paragraphs 3.3, 4.1.4, 5.3.4.2). Interviewees from service providers firms, however, referred to added value as a way of delivering the service (better) *without* charging extra. This view was shared by medium-sized companies (paragraphs 8.1.4.1 and 8.1.5.2.1), who, however, mostly doubted that law firms actually provide any added value, as they typically charge for every aspect of the work.

To add further to the confusion about the concept of added value, interviewees differed widely in their opinion on what 'value added' meant for medium-sized companies and brought up concepts that were indistinguishable from the notion of superior quality (see paragraph 7.1.3.2).

Answers varied widely, but were consistent with the SERVQUAL dimensions (see paragraph 3.1.4) of reliability, responsiveness, assurance, empathy, and tangibles. Reliability-related concepts include 'living up to expectations' (MD6) in the sense of 'do what you say, when you say, get it right the first time' (MD8) and 'avoiding surprises' (MD8). Responsiveness was expressed in being accessible and responsive (MP9, 12), having direct access to partners (MD5), working off the clock for clients (MD4). Assurance included being 'trusted advisors' (MD6, 11), 'experience' (MD2),

‘expertise’, ‘knowledge’, ‘ability to give best advice’ (MD2, 4, 6, 8, 9; MP2, 3, 10), having the right people (MP8), ‘someone who understand business’ and does not speak ‘legalese’, is commercial (MD2, 6, 7, 8, 9, 11; MP5, 6), as well as assists in decision making, has a point of view, judges and gives direction (MD8). Some answers pertained to the notion of empathy and the relationship between lawyer and client, the personal connection (MD2, 5, 6, 7, 8; MP2, 3, 5, 12), ‘make clients feel special’ (MP5, 12). And finally, to tangibles such as offering medium-sized companies access to training seminars, workshops, and secondments (MD4; MP10), and being local (MP3).

Interestingly, some interviewees defined added value in terms of the general approach to the client-provider relationship, others referred to added value as particular features and work approaches. Nevertheless, the list is somewhat perplexing as the examples do not differ markedly from what one would expect to be a ‘normal’ approach to professional work, which is, in fact, what medium-sized companies criticised (7.1.3.2). Therefore, the aspect of what is ‘added’ to the value is not easily recognisable and differs from how added value is understood in the literature.

### **7.1.3.2 The concept of ‘superior’ service**

As noted in paragraph 7.1.3.1, the research found little difference between the concepts of added value and superior service from the providers’ point of view. According to the literature (see paragraphs 3.1.4, 3.2.2), clients perceive the level of service by comparing technical and functional quality to their expectations. ‘Superior’ is then a relative, subjective concept compared to one’s expectations and experience with competitors. While the literature distinguished service quality in terms of functional quality or process of the service delivery, and technical or outcome quality (see paragraphs 3.1.4, 5.3.5.1), without probing, none of the interviewees made such a distinction.

Interviewees in legal services provider firms, widely agreed that technical service excellence is ‘very important’, but acknowledged that it was expected by the clients. This was confirmed in the interviews with medium-sized companies (see paragraph 8.1.5.1).

*“Clients take service quality as a given. ... many mid-sized companies don’t challenge us on it. They assume technical excellence. For them, it is*

*responding to their time frame, and the relationship. It is understanding their business, their company” (MP3).*

The challenge legal services providers face, however, is that technical excellence is not only assumed, but that it may be difficult to assess by non-lawyer clients, such as most decision-makers in medium-sized companies. MP3 suggested that medium-sized company clients “*aren’t able to judge how good your advice is. They take it for granted. They see it straight from the result and whether you are easy to do business with*”. As was confirmed in the interviews with medium-sized companies, clients typically apply their business judgment when assessing the quality of a legal services provider (paragraph 8.1.5.1) and refer to functional quality. “*They see speed, commerciality, staying within budget. That’s what you are judged on*” (MD1). In fact, when probing, most of the attributes mentioned referred to attributes of functional quality. Interestingly, interviewees when speaking about ‘superior’ quality for medium-sized companies, gave answers that largely confirm the SERVQUAL dimensions (see paragraph 3.1.4 and 7.1.3.1). These include ‘reliability’: flexibility and reliability (MD2, 6); ‘responsiveness’: solving clients’ problems and ‘*sorting out the clients’ mess*’ (MD2; MP6), the quality of the lawyer-client relationship (MD9; MP3, 6); ‘assurance’: understanding the clients’ business context (MD1; MP1, 3), managing expectations (MP11); as well as ‘empathy’: caring about the clients’ business (MD6). “*My idea of client service excellence is that clients need to feel that they are the only client or the most precious one*” (MD11). Only the factor ‘tangibles’ (appearance of physical elements) was typically not mentioned when discussing quality for medium-sized companies.

*“Superior quality is nothing complicated. It has to be right: Do you do it when you say you do it, consistent, the same people provide the service, price/value are right. It’s about managing expectations. Clients had to subsidise inefficiencies in law firms for too long” (MP11).*

MP9 even referred to ‘value added’ to define ‘superior’ quality and service. It is somewhat surprising that unlike in the literature which suggests that providers aim to find ways to ‘delight the customer’ (Peters & Waterman, 1982) and differentiate between adequate and desired service (Zeithaml *et al.*, 1991), the descriptions of the interviewees regarding ‘superior’ legal service quality for medium-sized companies do not suggest significant differences to what could be expected generally when buying such professional services.

It is thus unclear how such a vague concept can help differentiate the firm in the marketplace and develop a competitive advantage or USP, as the literature suggests (see paragraphs 2.3.3.2, 3.1.1).

### **7.1.3.3 Recruitment and training**

When recruiting future fee earners, interviewees suggest that technical excellence in the sense of technical competence in their chosen professional field is assumed. That is why according to the findings other attributes come into play in the selection process. These attributes point towards a more functional quality and marketing orientation. They include commercial sense (MD1, 6; MP2), service attitude (MD5, 6, 12), flexible approach (MP12) and personality in the sense of a well-rounded character (MD4; MP1, 2, 3, 12).

Acknowledging that a good professional service no longer sells itself, firms appeared to train fee earners in a variety of marketing and business development skills, including individual coaching (MD1), tendering, networking, presentations skills (MD4, 6).

### **7.1.4 Marketing strategies**

As the literature review suggest (paragraph 5.1.2), medium-sized companies are an important economic factor for many organisations. This was also true for the firms interviewed. Medium-sized companies are the economic “*bread and butter*” (MD5) for the firms researched and have always been of great business interest for them. Some firms (MD1, 2; MP1) expressed greater than ever interest in medium-sized companies. Due to the current economic crisis, this may have even gained in importance.

MD2 mentioned that medium-sized companies were interesting for the firm, as they do not use the DuPont model (see paragraph 5.3.4.2) and therefore do not aim to achieve more control over firms. Most firms were interested in increasing their market share with medium-sized companies through market development, serving new clients with the firms’ existing services and product development, offering new services to existing clients. However, despite the strong interest and noted difference in the needs of medium-sized companies (see paragraphs 7.1.1.1, 7.1.1.2), none of the firms had a dedicated strategic plan or budget. It was more common to have budgets for areas of

practice and/or industry sectors than to differentiate by the client organisations' size as is suggested in the literature (see paragraph 2.3.3).

Legal services provider firms rarely used different marketing approaches in the different stages of the buying process of medium-sized companies. The concept of decision-making models for buying (see paragraph 5.2.1) did not appear to be applied and practised in law firms. While an important concept in the literature, none of the interviewees brought up different buying stages. This was consistent with the findings among decision-makers in medium-sized companies, who did not appear to distinguish between different phases in their buying behaviour, but had a rather quick and informal approach to it (see paragraph 8.1). Only MD1 confirmed to use different approaches in the different stages as the firms trains "*our lawyers to understand how to build trust, rapport and when it's time to sell, ask for business*". A number of firms (MD5, 6; MP2, 3, 9, 11) suggested that their respective firms are not yet at that level of marketing sophistication to take different stages in the buying process into account. MD12 typically took a "*snapshot picture where the relationship is. With tenders, the stage in the buying process is quite clear. The challenge is that lawyers are used infrequently by mid-size companies*". MD12 also cautioned that needing legal services was often a 'painful' experience for clients and relationships are relatively transactional. Therefore, lawyers have to think out reasons for staying in touch with their clients. This is in line with Mayson's (2007) concept of e.g., 'necessary evil' matters (see paragraph 2.3.3.3).

Branding of the firm (see paragraph 3.1.1) was mentioned as a marketing strategy, but it was not seen as particularly important when targeting medium-sized companies, as the relationships between the clients and individual lawyers have so much importance with this target group. This was consistent with the findings among medium-sized companies (see paragraph 8.1.4.2), and to some extent inconsistent with the notion of non-academic sources (paragraphs 3.2.3) that point at promoting the firm. Academic literature has yet to provide an answer to whether branding a law firm as an organisation is to be preferred over promoting individual lawyers (paragraphs 3.2.1).

Another finding was that the marketing department is typically not involved in product and price-related strategy as it would be the case in other industries, such as fast-moving consumer goods. As pointed out in paragraphs 3.1.1 and 3.1.2, pricing is

one of the 4 or 7P's, the elements of the marketing mix. Instead, these decisions are made by the management committee and/or partnership.

#### 7.1.4.1 Identification of decision-makers

The majority of interviewees believed that identifying the decision-makers in medium-sized companies was a relatively easy task due to the organisations' smaller size. *"[I]n mid-sized companies, it's usually very evident who the buyer is. In mid-sized companies, it's typically the owner" (MD4)*. The study confirmed the findings in the literature review (see paragraphs 5.3.1.2, 5.3.4.3) that medium-sized companies are typically controlled by one or two people, the company's managing director or CEO (Chef Executive Officer), or their head of finance or CFO (Chief Financial Officer). Therefore, decision-makers in medium-sized companies are identified without difficulty.

*"Medium-sized companies are easier, they are typically controlled by one or two people, so it's easy to spot the decision-maker. In larger companies it is often not very clear, so you court hierarchically" (MD2)*.

The notion of individual decision-makers or (small) buying centres that may include the head of finance or HR was consistent with both the literature review (paragraphs 5.3.1.2, 5.3.4.3) and the empirical research among medium-sized companies (see paragraphs 8.1.1.2, 8.1.4.3). This may confirm the suggestion (see paragraph 7.1) that the buying behaviour of medium-sized companies more closely resembles individual rather than organisational buying behaviour.

However, MD1, 5, 6; MP2, 9, 11 stated that they attempt to identify decision makers and other members of the buying centre within medium-sized companies. *"We spend lots of time to get to know them. We have pursuit plans that map out relationships, identify the next steps" (MD1)*. Also MD2 believes in getting in touch with all potential buying centre members: *"You need the buy-in from all of them. We establish contacts with both at the same time, always trying to get a balance, try to make it as easy as possible for them"*.

Interviewees believed that in medium-sized companies, the decision making is more instinctive than buying centres in large(r) companies.

*"There is less of an overall skills set, it's a less rigorous decision. Different members of the buying centre [in medium-sized companies] are not very sophisticated. We do it in a more pragmatic way, such as, would we approach*

*CEO at all? We might work directly with the HR director for employment law” (MP10).*

MD2 pointed out that the

*“way you talk [with medium-sized companies] is different. There’s no need to work through the structure and you don’t have to make in-house counsel look good to their bosses. They are typically more interested in their own career path rather than the business. This is not the case with mid-sized companies”.*

Interestingly, only MD11 raised the issue of the increasing influence and involvement of procurement when buying legal services (see paragraph 2.2) without being prompted in the interview.

*“The rise of the procurement function will be interesting in the next few years. It’s very different from marketing to a legal department or HR function”.*

This may be because procurement is less common or has a less strategic role in medium-sized companies than in large(r) companies.

MP11 approached the management of relationship in a very sophisticated manner. The firm creates a matrix with the dimensions of clients’ knowledge of the firm (knows–does not know the firm) and their level of preference for the firm (supportive–opposing the firm). The firm then attempts to map the matrix location of each member of the buying centre to assess the appropriate marketing efforts for each person. None of the other firms mentioned such a comprehensive approach.

Some firms used different marketing tactics on different participants in the buying process. MD4 used the information to determine the amount of marketing budget spent on clients.

*“It depends on how important the person is, how much money we spend on hospitality. Do we spend £70 or £500 for them? For an HR person, they might feel uncomfortable if we invite them to a £500 event, but a business owner might expect it since he pays us a lot in fees”.*

MD1 set up specific events for in-house counsel and invited heads of finance to networking events or sent them high-level newsletters. This is in line with the marketing notion of using different strategies for different members of the buying centre (paragraph 5.2.3). MD6’s firm had

*“a ladies’ marketing programme, with special events [targeting female decision makers]: They go golfing or spa visits, women-only dinners. Or we just target HR people for employment law, or construction seminars for construction seminars. Or for financial advisors”.*



Similarly, MP 10's firm used different marketing tactics on members of the buying centre. The firm's sophisticated approach was based on distinguishing between 'power', 'part', and 'preference': Decision making power within the organisation was determined by the hierarchy; part describes the role of the person such as gatekeeper, final decision maker, advisor etc.; and preference refers to the person being an enemy or friend of the firm.

#### 7.1.4.2 Fees and value

The interviewees in legal services firms varied in their opinion regarding the importance of the level of fees for medium-sized company clients.

Most interviewees believed fees to be 'very important' or at least 'increasingly important' for medium-sized companies. *"Cost is becoming more important. We meet more fee resistance than before"* (MP2). A number of them admitted that law firms find themselves under increasing pressure regarding fees.

*"They [clients] are squeezing us more and more in pitches. In conversations, they are looking for blended rates, question partner rates and look for discounts"* (MD5).

Others suggested value for money to be more important than absolute fees (MD7, 9, 12).

*"Mid-size companies don't typically shop around for a fee, but at the end of transaction, if they don't feel they got good value, they'll go somewhere else next time"* (MD7).

*"Unprompted, fees come pretty down on their [the medium-sized company clients'] list. Prompted, they are high on the list"* (MD12).

By contrast, MD2; MP1, 9 did not see fees as being important to medium-sized companies. *"We don't feel any pressure yet"* (MP9). And MP3 did not make out a particular trend as fee sensitivity *"depends on the relationship"*.

In fact, medium-sized companies' focus on fees received little sympathy with some interviewees:

*"We're unhappy when our client ask accountants to get quotes from more lawyers to put us in a competitive position. That is why we make effort to avoid. We focus on a non-price competitive side"* (MP5).

On the other hand of the spectrum, MP11 suggested pricing actions such as risk-sharing, money-back guarantees, '2 for the price of 1' offers etc., while not unheard of

(paragraph 3.2.1) relatively revolutionary for the legal sector. Unprompted, none of the interviewees in medium-sized companies had brought up such pricing strategies. Prompted, decision-makers in medium-sized companies appeared somewhat apprehensive (paragraph 8.1.3.1). As this research found that pricing decisions are not decided in the marketing department (paragraph 7.1.4), but by management and the partnership, it will be interesting to see if such strategies will be embraced in the future.

As the interviews were conducted before the downturn of the economy, it is likely that the medium-sized companies are under more economic pressure and perhaps demand whole new approaches to pricing structure.

In fact, the literature suggests that both cost and value are increasingly important (see paragraph 5.3.5.2.1) and that cost is becoming increasingly important, which was confirmed by the interviews with decision-makers in medium-sized companies (see paragraph 8.1.5.2.1).

Compared to large(r) companies, medium-sized companies were perceived as having different challenges and more cost constraints, and therefore demanding better value overall. MD3, 12; MP4, 8 suggested that for medium-sized companies price, excellent work, and being entrepreneurial is critical. MD1 believed that the higher fee sensitivity of medium-sized companies was due to their lack of know-how and information to judge the value of services, or lower buyer confidence as the reason. Similarly, MD12 assumed that the challenge with medium-sized companies is their lack of knowing how to value legal work.

Interestingly, no interviewee mentioned value or speed of delivery, which the medium-sized companies referred to when speaking about cost and value (see paragraph 8.1.5.2.1), but agreed that medium-sized companies generally demand a more ‘commercial’ approach, which was confirmed (see paragraph 8.1.5.2.2).

#### **7.1.4.3 Specialists and ‘trusted advisors’**

Interviewees were divided on the importance of the range of services offered by legal services providers. Some suggested that full service offering, ‘one-stop-shopping’ was important for medium-sized companies (MD8; MP1, 12) since this is sufficient for

their “*less complicated*” business (MD1). On the other hand, MD4; MP9 noted that medium-sized company clients do not demand full service from firms, but instead ‘cherry-pick’ specialist legal services providers. This was confirmed by both literature as well as interviews with medium-sized companies (paragraphs 5.3.3.3, 8.1.3.1).

*“Four to five years ago the trend was to one-stop-shops, now it’s specialists. But mid-sized companies still have the trusted advisor. The trusted advisor is also a filter for buying specific services” (MD2).*

This suggests that the individual, rather than the firm, becomes important as a ‘trusted advisor’ is defined as the *person* rather than the firm a client turns to when an issue first arises (Maister *et al.*, 2000). Interestingly, becoming and being the trusted advisor to medium-sized companies was referred to as an important goal for which to strive by the majority of interviewees among legal services providers. The concept of trusted advisor describes that a professional’s relationship can develop from a basic service offer to trust-based through various stages. In a trusted advisor relationship, issues are no longer merely seen as organisational problems, but involve a personal dimension. The empirical research among medium-sized companies, however, did not confirm the notion of lawyers as trusted advisors (see paragraph 8.1.1.1).

Personal contacts between fee earners/staff and clients are seen as absolutely essential and while the professional reputation of both of the firm and the individual lawyer is very important, interviewees considered the personal relationship between lawyer and client to be even more important. The importance of the personal relationship between lawyer and client was confirmed in the empirical research (see paragraph 8.1.3.2), however, empathy rather than friendship appeared to be preferred by the clients.

*“[B]ecause the relationship is so important, unless you cross-sell and delegate the work so that a number of lawyers are closely working with the client, the client will go with the lawyer if he leaves the firm” (MP3).*  
*“It’s the personal relationship that’s more important than the corporate relationship. Our lawyers know the [clients’] children’s birthdates not because it’s fed into a system, but because they have known them since the day they were born” (MD4).*

Legal services providers need to be part of their clients’ world, understand their sector and talk the clients’ language (MD1). What is more,

*“most clients want you to be interested in them, to be a good listener. It’s important to put friendly faces in front of them. They want to know if the lawyer speaks the niche industry language” (MD8).*

#### 7.1.4.4 Other strategic approaches

Some interviewees from law firms acknowledged a trend towards packaged services believing that medium-sized companies increasingly buy legal services as commodities, rather than ‘tailored’ services. MD8 thought that it would be promising to produce standardised legal ‘products’ for medium-sized companies:

*“The market will develop sets of products for SMEs. We want to be at the forefront of this development”.*

However, the majority of interviewees in law firms emphasised the importance of ‘tailoring’ legal services. MP6 even insisted that medium-sized companies do not want legal commodities, but continue to demand tailored solutions. This is in contrast to both literature as well as findings among medium-sized companies. Both suggest that legal commodities and packaged solutions are increasingly in demand (see paragraphs 3.2.3.2, 4.1.3, 4.1.4, 8.1.1.1).

The location of the law firm was relatively important, as “[m]id-sized companies are more parochial. They want their lawyers near them” (MD1), even though most believed that the importance of locations was decreasing due to new means of communication enabled by technology. While literature also suggests that the importance of location continues to be less important (paragraph 5.3.3.3), the empirical research among medium-sized companies could not identify a clear trend as some clearly preferred to have their legal services providers close by (paragraph 8.1.3.3).

Most interviewees agreed on the increasing importance of technology as

*“[y]ounger people grow up with IT. They want to find similarities between firms and themselves. Firms and clients need to match” (MD2),*

or due to expected efficiencies:

*“It’s becoming increasingly important to take the cost out of service delivery” (MD10),*

which can be reached through utilisation of technology. In fact, the use of technology to take advantage of already existing knowledge and to be passed on as cost savings for clients or to provide relevant information on extranets is consistent with the literature and the interviews among medium-sized companies (see paragraphs 3.2.3.1, 4.1.4, 8.1.1.1). Only MD1, 8; MP1 deemed the utilization of technology to not be particularly important when working with medium-sized companies

*“unless they [the medium-sized company clients] are particularly sophisticated. This is more important for large companies who need you to be able to integrate into their systems” (MD1).*

### **7.1.5 Marketing instruments**

Marketing instruments were discussed within the Legal Marketing Pyramid framework (see Figure 3-2), which distinguished communications, ‘marketing’, and business development instruments according to their reach.

#### **7.1.5.1 Communications instruments**

Communications instruments typically are less targeted towards specific market segments than the other instruments, but instead give firms the ability to reach thousands of (potential) clients. These instruments include web sites, advertising, media and public relations, as well as legal directories (see paragraph 3.2.3.2).

In line with the literature (see paragraphs 3.2.3.2, 5.3.2.3), web sites were commonly seen as a must-have marketing instrument. They are particularly important in the early stages of the buying process, when clients search for information see paragraphs (see paragraph 5.3.2.1). MD5 believed that web sites have replaced brochures, but MP1, 2 cautioned that a good web site does not help a firm to be chosen, although a bad web site may make potential clients doubt the firm, or prevent clients from using the firm. The empirical research among medium-sized companies suggests that the Internet is largely used to confirm recommendations from peers (paragraph 8.1.2.1), which may confirm the notion to doubt a recommendation if the web site does not project the desired professional image.

Modern internet applications such as blogs are not widely used, only MD1’s firm has *“a technology blog and wiki pages. They are good to demonstrate interest and expertise”*. MD5, 6, 8, 9, 10, 12; MP6 said that blogs are ‘increasingly important’, which is in line with the literature review (see paragraph 3.2.3.2). Their firms are looking into blogs as they might be the future to communicate with current and potential clients. On the other hand, MD2, 4; MP1, 2, 3, 9 believed that blogs are not important and/or do not fit their firm. Unprompted, none of the interviewees in medium-sized companies brought up blogs as means to stay informed about the law. Decision-makers in medium-sized companies view being kept up-to-date by their lawyers as a cue for commercial sense (paragraph 8.1.5.2.2).

Advertising is widely discussed in the literature (see paragraphs 4.2.1, 3.2.3.2, 5.3.2.3), typically as a ‘communications’ instrument with the potential reach of many people (Figure 3-2). With regard to medium-sized companies, literature suggests advertising to be only important initially, as a means of making potential buyers aware of the firm. This may be particularly true for inexperienced buyers or when buying a legal service for the first time (‘new task’). Other authors (paragraph 5.3.2.3) do not deem advertisement to be of any importance or described it as a ‘clutching the straw’ tactic (see paragraph 3.2.3.2) which is consistent with the interviewees’ highly critical view of advertising. MD1, 4, 5, 10; MP1, 2, 11 stated that advertising is not important when targeting medium-sized companies as it has no effect. Only MP9 deemed it as ‘important’. *“You need to do it because everyone does it. It helps raise the general profile of the firm”*. MP3 believed advertising to work on some level, e.g., when a firm opens a new office to put the firm’s name around town, but *“board advertising doesn’t add to visibility if the name of the firm has been around”*. In the empirical research among medium-sized companies, none of the interviewees brought up advertisements as a means of information. When prompted, only recommendations were acknowledged, but not being influenced by advertising (see paragraph 8.1.2.3).

Media relations were seen as ‘important’, when targeting medium-sized companies, in particular relations with general (business) press and trade journals that are read by the decision makers. *“If you’re then quoted in the Times, that’s worthwhile”* (MD2). The legal trade press is significant only to companies with legal departments. *“Legal Week, The Lawyer are important for in-house counsel. Mid-sized companies read the FT and the Times. They don’t know Legal Week or The Lawyer”* (MD1). These findings were largely consistent with the empirical research among medium-sized companies which suggests that articles in the business press may have influence on decision-makers. On the other hand, views in the literature vary widely from describing ‘media’ as a relatively untargeted communications tool with wide reach (Figure 3-2), and critical classification as ‘seeing their [the lawyers] name in the press’ as a low relevance/low differentiation instrument (Figure 3-3), others see press articles as a valuable tool in the initial awareness stage (paragraph 5.3.2.3), in particular when published in client-oriented trade press (paragraph 3.2.3.2). None of the interviewees in medium-sized companies confirmed the importance of trade press articles, however.

Collaborating with legal directories to achieve a favourable ranking in specific categories such as areas of practice is generally seen as important and marketers typically spend a considerable amount of time, effort and marketing budget on the task. It is often embraced in the very early stages of legal marketing (see paragraph 3.2.3.2), and deemed appropriate to reach a large audience (Figure 3-2) and to increase initial awareness (paragraph 5.3.2.3). Some said that directories and league tables are increasingly important (paragraph 3.2.3.2). However, most interviewees (MD1, 2, 5, 6, 9, 10, 12; MP2, 3,12) believed that directories are not important for medium-sized companies as they are not aware of them. This was confirmed by the empirical research among medium-sized companies (paragraph 8.1.2.3). Directories were seen as useful for recruitment and internally *“to make firms feel good about themselves, to see how well firms are perceived by their peers”* (MD6). According to MD10, directories are a *“complete waste of time. People rely on their own network”*.

#### **7.1.5.2 Marketing instruments**

‘Marketing’ instruments as defined in Figure 3-2 are more targeted than communications instruments and enable firms to direct their efforts to more specific market segments, typically reaching hundreds of clients instead of thousands. Marketing instruments include internal and external conferences, client entertainment as well as brochures and newsletters. Not mentioned in the model as it has only emerged recently, is social media.

Firm events are typically one of the first marketing instruments embraced by law firms (see paragraph 3.2.3.2) as lawyers usually feel comfortable doing them (paragraph 4.2.3). While the interviewees viewed events as ‘important’ or ‘very important’, in particular when they are targeted, the views in literature vary widely. Dubbed ‘fools gold’ as they are high in terms of differentiation, but low in terms of relevance for the buying decision of potential clients (Figure 3-3), or ‘clutching the straw’ instruments with little effect (paragraph 3.2.3.2), they are said to have little importance (paragraph 5.3.2.3). Other sources, however, suggest that events may have high strategic relevance and direct effect on the firm’s bottom line, if the events are attended by key decision makers and there is good follow-up. The empirical research among legal services providers confirms this, as interviewees pointed out that events such as seminars, dinners etc. need to have a purpose, lead to introductions and networking with interesting potential clients and referrals. While seminars were

generally seen as positive, interviewees stated that it is a challenge to find topics that appeal to a large enough group to make it worthwhile for the firm. Interviews among decision-makers in medium-sized companies confirmed the potential importance and usefulness of events as long as they provide a new angle or perspective, or help clients get in touch with potential customers themselves (paragraphs 8.1.2.3, 8.1.6). The focus should therefore not be too commercial in the sense of aiming to directly sell new services to clients, and too many events would be perceived as ‘stalking’. Corporate hospitality is seen less favourably by legal services providers as firms judged to spend

*“far too much money on hospitality. But I don’t think it lends itself well to develop new business. It doesn’t help to engage people in communication. Too often, we focus on how many people attend rather than go deep with them” (MP2).*

Medium-sized companies enjoy them if they are special or bring them in touch with potential customers.

Focused targeting is also of importance for speaking engagements, which were deemed good to achieve credibility and profile raising. Like seminars, they can lead to valuable networking opportunities, but only if *“people know why they are doing it and do the follow-up”* (MD1) and are encouraged by the firms. This was consistent with the literature review that found that lawyers are typically comfortable doing them and can be very effective when targeted right. However, ballroom-size seminars are seen as not very effective (paragraph 3.2.3.2).

Sponsoring of third-party events was seen to be of less importance, only perhaps useful as an introduction to e.g., a sector (MD10). This was consistent with the literature review that considered sponsoring as ‘fool’s gold’, to be of little relevance (Figure 3-3), or a ‘clutching the straw’ instrument (paragraph 3.2.3.2) that does not influence decision-making (paragraph 5.3.2.3). Only one article (paragraph 3.2.1) saw sponsoring as a useful marketing instrument. Unprompted, decision-makers in medium-sized companies did not mention to be influenced by or even attend sponsored events.

Generally also perceived as being of little importance are pro-bono activities. In the literature these were referred to as ‘second tier’ instruments (paragraph 3.2.3.2). Law



firms provide them as long as they provide a point of contact to potential clients (MD1).

*“A little free advice at the beginning of a relationship [for a start-up company] is good, rather than real pro-bono” (MP1).*

Newsletters, such as regularly issued news sheets, are among the first instruments to be adopted in Phase 1 (see paragraph 3.2.3.2). Consistent with the literature that deemed them to be ‘second tier (paragraph 3.2.3.2) or ‘neutrals’, i.e. low differentiation, low relevance, interviewees in law firms attributed little importance to them. Interviewees believe them to be mainly appropriate for building awareness and suggested that newsletters *“are not important, but lawyers love doing them. Gives them an opportunity to write”* (MD2). In order to not get thrown out, newsletters have to be properly focused (MP3). With too much information that is too difficult to convey, they are not useful (MD10). While traditional (hardcopy) newsletter *“are falling by the wayside”*, MD5 suggested that e-bulletins are more flexible and have become widely accepted. MP11 cautioned that simple personal emails with a relevant piece of information from the legal services provider to the client ‘I found this interesting for you...’ are more powerful than general newsletters. This was confirmed by the empirical research among medium-sized companies.

Collateral material, i.e. brochures, or publicity booklets, were viewed even more critically. Most interviewees believed that while firms have to have a brochure, brochures are ‘less important’ or ‘not important’. This was consistent with the literature, which classified brochures as a ‘clutching the straw’ instrument (paragraph 3.2.3.2). Unprompted, none of the decision-makers in medium-sized companies mentioned brochures. According to MP1, UK clients do not want brochures, and send them *“straight to the bin”*. The challenge is that according to MD2, brochures *“have a 30-second life”*. The legal services provider issuing the brochure must therefore be able to get the message across in 30 seconds. MD2 believed that brochures make it easier for lawyers to talk with their clients, as they can refer to the brochure ‘As you can see...’. MD1 cautioned that

*“brochures are out of date when you get them. I hate them. You can’t tailor them. They give lawyers an excuse not to talk to clients. They think the brochure does the job for them”.*

MP2 disagreed with the notion that brochures cannot be tailored, stating that only tailored brochures make any sense. Similarly, MD10 believed that only sector or issue brochures (e.g. on TUPE or age discrimination) are sensible.

Legal services providers were split over social media, such as LinkedIn, Facebook and other networking platforms. A very recent tool for marketing and business development, MD7, 8, 10, 11, 12; MP5, 6, 8, 10, 11, 12 had not yet embraced social media, but encouraged it. Only MP7, 9 believed it inappropriate for their firms. “[Facebook] is too funky for us” (MP9). This may have to do as much with the culture of the firm as with the age of the lawyers (see paragraph 4.3.3). This was confirmed by the empirical research (paragraph 8.1.2.3), that found that none of the decision-makers—none of whom were in their twenties or thirties—believed social media to be appropriate for law firms. Typical for their generation, young lawyers appear to be regular users of social media, while old(er) lawyers by and large have not embraced it and do not see it fit for business purposes.

*“So far, two partners use it [social networking for business development], media/entertainment lawyers. Right now, most try to keep work and life separate, but this is not how Gen Y thinks. Maybe there’ll be pay back in the future with social media” (MP10).*

It appears that social media is an interesting tool for recruitment marketing, however, but currently of less relevance when targeting medium-sized companies.

*“We have used some social media, but few mid-size companies got excited. It might work in the high-tech sector. There is pressure built up through the legal media, but it is irrespective of the clients’ needs” (MP12).*

None of the interviewees believed that give-aways and gifts had any importance when targeting medium-sized companies. Unprompted, none of the decision-makers in medium-sized companies brought up give-aways or gifts.

### **7.1.5.3 Business development instruments**

Business development instruments include research and analysis, such as competitive intelligence analysis of client opportunities etc. In addition, they include pitch material for requests for proposal and cross-selling. Business development instruments are highly targeted, customised instruments. Not expressly mentioned in the framework, but also intended to be highly targeted are referrals and CRM.

While interviewees by and large acknowledged the importance of research, not enough appears to be conducted at present (see paragraph 7.1.2 for a discussion of the importance). Literature confirms the importance and suggests that significant research efforts to identify trends and market opportunities are more advanced marketing tools (Table 3-2). Research into key issues was seen as a high relevance, high differentiation instrument (Figure 3-3). In addition, literature refers to research/competitive intelligence (e.g., on issues that are of relevance for clients) as a very effective marketing instrument (paragraph 3.2.3.2).

Interviewees disagreed on the importance of RFP with regard to medium-sized companies. While RFP are common among large companies, few medium-sized companies issue RFP when buying legal services (see paragraphs 3.2.3.2, 5.3.2.3). Medium-sized companies typically have a less formal approach (paragraph 5.3.4), only perhaps seeking more than one quote from a firm (MD7; MP5). On the other hand, MD1, MD4, MP3 believed that medium-sized companies, however, increasingly use RFPs.

*“Companies want to cut cost. Some use it to keep their existing advisors on their toes” (MP3).*

MP1 opposed RFPs:

*“We don’t get requests very often. We normally don’t get chosen based on that. We may or may not do it [participate in a tender]. The idea of being chosen from an RFP is not a good start for a business relationship”.*

Widely discussed in the literature as an important marketing tool (paragraphs 3.2.1, 3.2.3.2), CRM was also deemed important by MD1, 2, 5, 10; MP1, 2, 9 even though it may not always be used properly in the sense that fee earners and staff manage the information regularly, feed, and update the system. MD2 cautioned that the firm uses CRM, but clients do not like cross-selling, which is often one of the intentions of CRM programmes. Cross-selling was seen as a very sensitive matter that many medium-sized companies oppose. Before being able to do so, trust must be established between service providers and medium-sized companies. The empirical research among medium-sized companies confirmed the client’s apprehension and aversion again cross-selling activities that may be the objective of many CRM efforts (paragraph 8.1.4.3).

The necessary trust, however, can be reached through social contacts between service providers and medium-sized company clients. MP11 suggested creating communities through introducing clients to each other as this is of particular value to medium-sized companies. In the same line, referrals were seen as very important, if not the most important marketing tool. Accountants, bankers and the peers of medium-sized company decision-makers were typically named as sources of referrals.

*“We try to have good relationships with them [accountants]. We spend lots of time with them, explain what we do, where we have expertise. We don’t reward them, but we refer business back to them” (MD1).*

MD5 emphasised the importance of having

*“contact with other lawyers from larger firms. They refer business when they are conflicted out. Also accountants, surveyors, barristers. We have a slightly more formalised analysis, we do a scorecard: Who do we owe? Who owes us? We hold networking events with a range of people from that referral and tell them what we do. We try to keep the relationship going”.*

MD4 suggested clients as important sources of referrals.

*“Our current clients are the biggest source. We ask them [if they refer to us]. We are quite upfront about it. We also refer back to them, principle of reciprocity. We also ask them if we can quote them in our pitches”.*

The empirical research among medium-sized companies suggests referrals as the most important marketing instrument (see paragraphs 8.1.2.1, 8.1.2.2).

## 7.2 Conclusions

In terms of marketing strategy and tactics, the findings appear to show that a large number of firms focus on tactical and/or promotional aspects of the marketing mix. Some managing partners interviewed spoke only about the tactical aspects of marketing when referring to the firm’s marketing. In all interviews, there was a lot of discussion of visibility, branding, Internet/web strategy, collateral material etc. A number of marketing directors openly complained that large parts of their or their department’s job consists of ‘prettifying’ things as this is how many partners (mis)understood marketing. The trouble is that promotional elements have only limited influence on the buying decisions according to the findings among medium-sized companies (see chapter 8). Hospitality, ‘wining and dining’ of clients which is also practised in all firms, is helpful only when it makes business sense for the medium-sized company clients, e.g., through bringing clients together, stimulating and solidifying relationships between them through networking events, and may thus increase the client’s cost of switching legal services providers. In some of the firms,

considerable marketing effort was also concentrated on winning new clients rather than tending to current clients.

Law firm interviewees believed firm brands to be of less importance to medium-sized companies than to large(r) companies as relationships with individual lawyers play an important role. This was confirmed in the interviews with decision-makers in medium-sized companies who conceded that while both firms as well as individual lawyers are important, the relationship with the individual lawyer appears to be critical (see paragraph 8.1.2). Interviewees also suggested that medium-sized companies preferred less formal relationships with their legal services providers than large companies. In order to appeal to medium-sized companies, interviewees said that their lawyers needed to become part of the team of the client company as the decision maker embodies the business and befriend the client company's team members. The literature confirms the importance of lawyers and clients as a team (see paragraph 2.1.2), but also acknowledges that there is an opposing trend towards keeping lawyers at arm's length (paragraph 5.4). The empirical findings among medium-sized companies appear to suggest that personal relationships are important if not sufficient. In contrast to legal services providers that brought up development of 'friendship', medium-sized companies understood this more in the sense of truly making efforts to understand the client and having empathy (see paragraph 8.1.5.1). However, despite acknowledging the importance of individual relationships and the less importance of brands, the majority of firms mentioned branding activities on the organisational level among their central marketing efforts.

Marketing may not have been used to its full strategic potential due to a broad lack of market research and systematic competitive intelligence (see paragraph 3.2.3). In addition, marketing policy and the larger business policies did not seem to be closely enough aligned to make a significant impact. An example is the tracking and measuring of lawyers' time spent on marketing activities, which is typically not supported by the appropriate remuneration system. This causes marketing efforts to be seen as an extra activity that can be chosen instead of seeing it as a necessary basis for business. Other problems appear to be the disconnect between marketing and the firm's management in terms of decision-making power and budget power. The role of marketing in most firms seems to be of a supportive role, rather than being the strategic interface between the clients and the firm. The intermediary role that

marketing typically assumes in companies, is taken on by the lawyers instead. Unlike in product marketing, the lawyers in fact, *must* participate in the marketing process. However, with little influence on strategic decision making and limited to no budget power, marketers in many law firms appear to be somewhat disempowered.

This study also found that despite the expressed interest in medium-sized companies (which was one of the key criteria to be chosen) and the acknowledgment that medium-sized companies differ from large companies in a number of ways, the majority of interviewees stated that they did not market differently to medium-sized companies compared to large companies. In general, legal services providers did not have strategies to address their special issues and challenges. Marketing strategies and tactics used by the interviewed firms to reach medium-sized companies were found to be almost identical to the marketing to large companies. This contradicts the basic marketing notion of dividing the market into homogeneous segments of clients and selecting which segments to target with a distinct marketing strategy (see paragraphs 2.3.2 and 2.3.3). In addition, it is also inconsistent with the literature review with regard to the buying behaviour of medium-sized companies (paragraph 5.3) and the findings in the empirical study of medium-sized companies (chapter 8) that suggest that the particular characteristics of medium-sized companies necessitate a different marketing approach.

When bringing up issues such as medium-sized companies' flatter hierarchy, smaller number of decision makers, types of legal services needed etc., interviewees explained that these characteristics justified a somewhat less complex and costly approach for medium-sized companies compared to larger companies. The scaled-down marketing version was also explained with the lower fee volume of medium-sized companies which did not justify the same marketing efforts and expenditures as the more substantive fee volume of larger companies.

*“We don't market differently to them [medium-sized companies]. We generally try to see what appeals to our clients, catches their attention. We look at what makes sense commercially. .... We do more scaled down, less expensive hospitality for mid-sized companies. We look at the client's overall fee volume” (MP3).*

If anything, it was hoped and expected that the general marketing approach to organisation should also take care of medium-sized companies. Having said that, some of the firms in the study appeared to very much be aware of these issues and

have introduced sophisticated methods of strategic marketing planning in terms of identifying decision-makers (see paragraph 7.1.4.1) or acknowledged the importance of cost and value for clients by offering innovative pricing strategies (see paragraph 7.1.4.2). Others appeared to understand that a different marketing strategy would be beneficial: *“We like to say that we have a different approach [to market to medium-sized companies], but we probably don’t”* (MP8). However, the gap between benefits from such extra efforts as opposed to potential benefits gained may have been perceived as too small by the majority.

This thesis intended to conduct a content analysis to research the participating legal services providers’ marketing material targeted towards medium-sized companies. As was pointed out, even though the interviewees in the legal services provider firms were chosen based on their expressed interest in medium-sized companies (paragraph 6.5), only two firms had specific marketing material for this target group. This was consistent with the majority of the firms not having specific strategies for medium-sized companies (see paragraph 7.1.1.1). In addition, the material for analysis was limited not only in terms of number of firms, but also the existing material comprised of few web pages addressed to medium-sized companies and one brochure. While a content analysis was carried out, such a small basis does not allow to draw conclusions beyond speculation. It was therefore decided to not include the content analysis in this thesis.

In addition, rather than marketing differently to medium-sized companies compared to larger companies, MD1, 11; MP2 pointed out the difference between marketing to individuals as opposed to commercial clients. Medium-sized companies were seen to not necessitate the more personal, one-on-one approach of individual clients.

*“There is a larger difference between individuals and corporate clients. Individual clients require a more one-to-one approach. It is more about the reputation of individual lawyers [than the firm as an organisation]. Large or mid-sized companies are much more similar. ... referrals are important, mostly from bankers and accountants. The only difference is really that mid-sized companies may not have an in-house legal department or team, which means that the type of conversations change”* (MD1).

While the literature review does not provide a clear answer as to whether the buying behaviour of medium-sized companies differs greatly from the buying behaviour of individuals (see paragraph 5.3), the findings in the empirical research among medium-sized companies seems to suggest that as individuals that have a vested interest in the

company's well-being-and without a need to justify their choices, their decision-making seems to closely resemble that of individuals.



Play is for play,  
work is for work.  
I don't want my professional advisors to be my friend,  
but have empathy for me.

(Entrepreneur/Owner of medium-sized company, MC6)

## CHAPTER 8

### Discussion of findings with medium-sized companies

This chapter discusses the empirical research carried out among the buyers of legal services in medium-sized companies and aims to answer RQ2: How do medium-sized companies buy legal services, in the sense of their decision-making process? Specifically, what are their criteria for selection and evaluation?

As in chapter 7, questions asked of participants and their distilled responses are provided in addition to representative quotations from participants. This question-and-answer format best demonstrates the richness of the data collected through the open-ended questions (Day and Barksdale, 2003) (see also paragraphs 6.3, 6.6, and Appendix B). Although some overarching themes emerged, this type of presentation ensures that the analysis stays close to the raw data and provides answers to the research questions (see paragraph 1.2.2). The interviews were also intended to provide the basis to answer RQ3: What marketing approaches should legal services providers apply to reach medium-sized companies? Would these be different from marketing to large(r) organisations?

The interviewees were selected in their role as decision-makers in medium-sized companies (see paragraph 5.1.1. for the criteria for medium-sized companies). All had significant experience with buying legal services. Decision-makers in medium-sized companies are referred to “MC” and numbered 1 through 10 (see paragraph 6.5).

To assess the organisational buying behaviour of decision-makers in medium-sized companies, the same modified version of the organisational buying process models (Day and Barksdale, 1994; Webster and Wind, 1972) (see paragraph 5.3) was used as the framework for the interviews (see Appendix B). As in the literature review, the framework comprises of the stages: (i) need recognition; (ii) identification of the initial consideration set; (iii) evaluation of the consideration set; (iv) selection of the

service provider; (v) evaluation of the service outcome and delivery; (vi) satisfaction/dissatisfaction.

### **8.1 Interviews with decision-makers in medium-sized companies**

While the application of the decision-making process approach appeared to be a logical choice, the empirical research showed that the interviewees had difficulty answering the questions in the highly structured manner that was suggested in the literature review. It was evident that the processual approach did not reflect the interviewees' highly fluid, rather informal and personal decision-making approach. This is not to say that the decision-making was a entirely unstructured and emotional matter. Decision-makers in medium-sized companies approached their decision-making process similarly, and based their buying decisions on a combination of objective and emotional criteria, without a rigorous formalised approach more common in large companies.

As will be discussed in this chapter, there appears to be some disconnect with regard to marketing and buying as it was found that the emphasis and importance of individual criteria was different. The criteria the buyers of legal services in medium-sized companies based their decisions on were not necessarily the same criteria marketed to them, even though most of the legal services providers had a good understanding of the clients' wishes and needs.

To reflect these findings, further probing questions were added during the research period which is one of the advantages of in-depth interviewing in the grounded theory. For example, the concept of being and becoming a 'trusted advisor', which legal services providers continued to refer to as an important goal of their marketing efforts, was added. To understand the deeper meaning of the term, it was examined who medium-sized company clients turn to when (business) problems with their company arise, and whether and how frequently (their) lawyers attend board meetings.

Opposing the legal services providers' emphasis on the necessity of 'tailored' solutions for medium-sized company clients, but in line with Susskind's (2000) proposition that legal services are increasingly becoming 'commodities' due to technological advancement, questions were asked to probe how interviewees believed

they would go about buying legal services in the future. Are legal services becoming ‘commodities’ or do medium-sized companies (continue to) buy legal services as tailored solutions? For the most part, the research showed great agreement among the medium-sized companies, but significant differences between them and the providers of legal services.

### 8.1.1 Need recognition

#### 8.1.1.1 Client needs and expectations

In contrast to the findings in the literature, decision-makers in medium-sized companies did not have ‘fuzzy expectations’ (see paragraph 5.3.1.1) with regard to their needs for legal services, but instead claimed to be able to anticipate their present and future legal needs due to their business experience. Medium-sized companies need a wide variety of legal advice. For day-to-day business matters, internal stimuli, i.e. their familiarity with business conduct and implying legal issues were deemed sufficient. *“We have enough knowledge and experience that we know when we have a legal problem”* (MC2).

However, external stimuli such as updates by their lawyers (MC2) or the Internet (MC9), e.g., on new legislation that affects their business, are necessary in situation of change in the law. Also newsletters—in their role as external stimuli to indicate changes in the law that affect the company—were seen as useful.

*“I expect my [law] firm to keep me abreast of developments. If there is new legislation affecting me, I want to know about it. They need to inform me. Newsletters work, but they have to be brief. But if there’s something really important, I expect them to call me and inform me”* (MC2).

*“What would interest me would be an email saying ‘We worked for [competitor of company]. We thought about your company and could help you, etc.’ I need to see the relevance. [The problem is that] Most emails [from law firms] are too generic to get my attention”* (MC1).

Even though none of the medium-sized companies in which interviews were conducted had an in-house legal department, many day-to-day legal matters were taken care of internally. *“9 out of 10 times, it’s just basics we know ourselves”* (MC1). Only when a legal issue became more complicated, or the decision-makers were concerned about running into trouble, did they buy legal services from external sources.

*“We normally solve our problems internally. That’s always the first step. If we see we can’t handle it, we go to our lawyers and let them take care of it”* (MC2).

In contrast to large companies that routinely use external consultants (Bennett, 1990), medium-sized companies appeared to have a tendency to resolve even legal matters internally, and sometimes call for help almost too late. Since medium-sized companies have a tendency to not immediately turn to lawyers even when it would be advisable, as stated before, marketing efforts should aim to raise awareness of their need and educate about the potential risks of ‘self-made solutions’. Similar to the marketing of unsought products, advertising and personal selling effort might be suitable. It seems that there is opportunity for efficient law firms to create streamlined packaged service.

When probed, the interviewees stated that the motivation for solving legal matters internally was cost.

*“[In recent negotiations] I didn’t get lawyers involved right away. We negotiated for 6 weeks without lawyers. That didn’t cost us any money. Before, we would have involved lawyers early on, only to rack up fees, but not add value” (MC4).*

*“Cost can build up very quickly when working with law firms, so sometimes we don’t go to lawyers. We use the Internet and books [to solve our legal issues]” (MC10).*

*“I can’t afford to run up £10,000, 20,000 in legal fees. I have to manage it very closely. We try to do as much as we can [ourselves]. We always draft our own documents first, then have the lawyers check our drafts, rather than [say to them]: Hey - can you draft this document for us?” (MC9).*

Not all firms were seen as competitors in the sense of being considered for pending legal work. Medium-sized companies distinguish between law firms. They hired different law firms in different situations and different practice areas, according to the nature of the issues or the benefits they sought (see paragraph 2.3.3.2).

*“We work with a firm in London for [important] negotiations, we work with [name of a lawyer] for employment law, and with a local firm in Andover for low risk matters to make sure we’re not doing anything illegal” (MC8).*

Medium-sized companies also assumed that as their firms grow, they may have more needs for legal services (MC10) and may therefore need ‘different’ lawyers (MC5).

*“It’s important to choose the right lawyers. Use them according to the appropriate expertise and balance cost” (MC10).*

The type of work and relationship also appeared to determine the role lawyers played and their importance.

*“Our [primary] lawyers are our strategic partners, other lawyers [we have to hire], if they [the primary law firm] don’t have the specific knowledge we need, are hired guns. They are definitely not a strategic partner” (MC2).*

Since the interviewees from legal services provider firms frequently brought up the lawyers' role as 'trusted advisors' (see paragraph 7.1.4.3), interviewees in medium-sized companies were asked to examine whether they see lawyers as such. A robust indication to determine the status of 'trusted advisor' was deemed to ask who decision-makers turn to first when they have a problem with their company. While the majority of decision-makers in medium-sized companies answered that it depends on the nature of the issue, e.g., financial, technical, or legal, none of the interviewees answered that they typically first turn to their lawyers. Some acknowledged that they turn to a number of advisors depending on their area of expertise. *"We use the skills of people in the right area"* (MC4). Most interviewees explained that lawyers are not commercial enough to understand the wider business context of upcoming issues in their business. MC5, 7, 10 said to typically turn to their accountant(s) first. *"He's not just an accountant, but has a commercial head on his shoulders"* (MC5). MC6, 7 turned to their bankers, and MC8, 9 to colleagues and peers within their business network and trade associations. By and large, decision-makers in medium-sized companies turned to lawyers only for pending legal problems.

Another question to examine the 'trusted advisors' notion was whether and how frequently lawyers attended the company's board meetings. Only MC9 indicated that he occasionally invited the firm's commercial lawyers, but never lawyers from other areas of practice, to their board meetings. All other interviewees stated that they 'never' had lawyers at their board meetings.

*"No, they [lawyers] never attend board meetings. Accountants, yes, occasionally. [Having lawyers attend board meetings] maybe appropriate only when we have a company acquisition"* (MC10).

Therefore the notion to be seen as general trusted advisor appears to be overly optimistic. The findings seem to suggest that lawyers are mostly seen as trusted experts for legal advice on particular matters and at best as trusted trouble shooters.

While legal services providers continuously emphasised the aspect of tailored solutions, unprompted, medium-sized companies placed no emphasis on it. This may perhaps be because medium-sized companies assumed that the legal services they bought were 'automatically' tailored to their needs and situation, or because it was not important to them. To find out, interviewees were asked if medium-sized companies believed that legal services are becoming 'commodities' and if so, if they increasingly

buy legal services as commodities. This research found that decision-makers in medium-sized companies varied in their opinions, but leaned towards the notion of commoditisation. The majority of interviewees welcomed the idea of more efficiency in the provision of legal services which they saw as a consequence of commoditisation with cost savings being passed on to clients. Commoditisation appeared to be particularly logical for what medium-sized companies deemed ‘lower-expertise’ matters, such as debt collection, starting up companies etc.

*“I could imagine buying legal commodities. It’s hard to justify so much money [for legal services]. £44K for negotiations—they couldn’t have worked for more than a few weeks. If there are more efficient ways to do things, it should be done! Law firms must have standards, templates, and so on. They have it pretty much off the shelf. But you never get it reflected in your bills. They always act like they made it just for you, when, in fact, they just cut and paste it. [Especially] mid-sized companies are looking for this sort of Tesco law” (MC10).*

Pre-packaged solutions, combined with support, are deemed to make business sense. Matters have to be matched to the expertise needed. *“In some cases, you don’t want the doctor, you want the nurse” (MC7).* Again, it appears that these clients distinguish between different types or levels of work and firms.

Medium-sized companies brought up that other providers, such as accountants, banks, and associations already offer such packages, some even with legal content.

*“You can buy accounting standards. There must be a way to do that in the law. [Clients] should use lawyers for tricky work only! [I believe that in the future] People will do first draft themselves and only ask lawyers to look over it. We did that with our contracts. The person [one employee] went online for free advice from the association. Then we agreed on a fixed fee with a lawyer to look over it. It cost us £500 to 600 compared to the £10K more if we had it done by lawyers. If lawyers talk with angel investors it costs over £20K. That’s what the lawyer charges. The bank gives us a standard 4 page contract for free” (MC10).*

Several interviewees mentioned that they subscribe to expert legal web sites.

*“We could use standard contracts, web based legal commodities such as document assembly. We subscribed to web sites like [name of site]. You can download material. There are really intelligent databases. They cost less for a 1 year subscription than 1 hour partner rate. 90 percent is routine legal work. I can get the info from the Internet. I don’t need a lawyer” (MC9).*

Only MC8 rejected the idea of commoditised legal services.

*“No commoditisation. High volume legal service where you have no personal relationship, can’t get hold of anyone, are a recipe for disaster. I wouldn’t go*

*for that. Can't imagine that at all to use that. Lawyers need to have a personal understanding of us".*

#### **8.1.1.2 Decision makers**

As suggested in the literature, this research found that buying decisions of legal services in medium-sized companies were made by top management, i.e. the entrepreneur/owner or managing director him- or herself. This person typically did not have to justify his/her buying decision to anyone in the company. In the need recognition phase other directors of the company were also involved according to their area of responsibility—e.g., the human resources (HR) director would be involved for employment law matters.

#### **8.1.2 Identification of the initial consideration set**

Interviewees somewhat disagreed over whether medium-sized companies look for individual lawyers or law firms. Only MC2 stated to look for law firms, MC4, 7 to look for individual lawyers, while MC3, 5, 8, 9 initially conceded that both are important, however, stated that if they had to pick, it would be the individual lawyer.

*"My relationship is with my lawyer, not with the firm. If he moves to another firm, I'd go with him" (MC8).*

*"The firm needs to give me a nice feel, the firm needs to appeal to me. But if I hadn't liked the people [of the law firm I chose], the brand wouldn't keep me there. The lack of a brand wouldn't stop me. The [right] person is a must, the brand is a nice to have" (MC5).*

This could perhaps be interpreted as suggesting that by and large, using Herzberg's theory as an analogy, law firm brands are 'hygiene factors', while individuals would be 'motivators'.

According to MC9, the choice between seeking a law firm or an individual lawyer is

*"the classic chicken and egg dilemma. Top law firms are top because they employ the brightest and best, and that's why they are top law firms. You associate a brand with the quality of the people [working there]. Whether we would go with a partner [if he leaves the firm] depends on who else would leave. If the team leaves, yes, we would go, if only one person leaves, even if it's the lead partner, it's unlikely, unless they are particular experts. Unless you do very complex work [you know that] your work is done by juniors, not by senior lead partners".*

The firm vs. lawyer question may also depend on the situation in which the legal advice is needed or the type of legal advice sought. MC10 suggested a mental two-tier decision:

*“[i]nitially, you buy firms, than the individual. With the law you have to be seen to have done the right thing. For example, if you do a flotation. Having used City lawyers seems to make investors relax. But it wouldn't be necessary for an office lease or employment law. It's more about the peace of mind for investors to have bought certain 'brand' City lawyers”.*

High-stakes litigation and major negotiations, ‘bet-the company’ cases, appeared to be other areas where firms are more important than individual lawyers. *“In litigation you want the big hitters on your team. No soft targets”* (MC6). Having a well-known, ‘important’ law firm on their side is a way to scare off the other side and avoid experiments.

*“Only litigation is different. You have one chance to get it right, so the brand is important”* (MC5).

*“London based large firms carry more weight because of their power of representation. Gives you great clout. Support the issues you are pursuing”* (MC8).

MC9 suggested that rather than the individual law firm brand, it is important to use a certain ‘tier’ of law firm.

*“For commercial law, we want a City firm. The VC [venture capital] company suggested which firm to use. Magic Circle firms are very similar The firms are similar within each band [tier]. There are certain types of people working in each band and clients they attract. You choose the level, then its all about chemistry”* (MC9).

The notion of a hierarchy among law firms in the sense that certain ‘tiers’ exist were confirmed by a number of interviewees.

#### **8.1.2.1 Information search**

The information-gathering process is concentrated in the person of the final decision-maker, the owner/entrepreneur or managing director. This process, if it can be so called, is very informal in nature and mainly consists of decision-makers consulting personal information sources, such as peers and other members in their network regarding which firms they have successfully worked with in the past. There appeared to be no formal ‘short list’ of firms. The initial consideration set consists of the legal services providers their peers recommended.

Typical for services and as suggested by literature (see paragraph 5.3.2), the evoked set of alternatives was relatively small (and may have even included the self-provision of the service, i.e. the medium-sized company considers to solve the problem internally). Despite the typical relatively high risk nature of legal services, clients did



not engage in intense information search as literature suggests and consulted several sources (paragraph 5.3.2.1). Instead, clients often simply selected the first acceptable alternative suggested by their personal sources, rather than searching many alternatives. This finding suggests that medium-sized companies may not perceive the purchase of legal services quite as risky as assumed as they would spend more time and effort in this phase. Explained by mostly a lack of time, medium-sized companies stated that their approach to information gathering must be quick and uncomplicated, therefore referrals are preferred. Referrals and recommendations are ‘entrance tickets’ to new clients that significantly lower the threshold to a new client.

### 8.1.2.2 Personal information sources

The empirical findings confirm the literature review that in the identification stage, recommendations from peers, clients, and customers, as well as other professional advisors such as accountants, bankers, HR consultants etc. are the most important information sources. When purchasing legal services, clients sought and relied to a greater extent on personal sources as they were able to communicate experience qualities, which reduced their perceived risk. If a peer was satisfied with the service provided, it is more likely that the buyer will be satisfied as well. *“Only referrals. Nothing else”* (MC2).

*“When I get referrals, I ask them for people they have worked for. I call them, and ask how it was to work with the firm. This helps me build my own network for the future. If people are not happy [with a law firm], they don’t like to give you a name. They rather say: Yes, we used someone, but don’t give you the name. In the end, it reflects bad on them”* (MC1).

The personal connection was most important to medium-sized companies, but being able to provide credentials was also seen very positively. MC7 suggested that highly targeted information material from firms that were recommended would be very helpful.

*“Target me, provide me information that is relevant for me. Use a language I understand rather than ‘Need a lawyer? We [do it all, we] are generalists’”* (MC7).

### 8.1.2.3 Non-personal information sources

Decision makers in medium-sized companies stated that they did not rely on advertisements or other non-personal information sources. Unprompted, advertisements were not brought up by any of the interviewees. Prompted, the

influence of advertisement as a means to become aware of law firms was not confirmed by a single decision-maker.

There appeared to be general awareness of the legal market. Their information source for this was mostly the business press, but not the specialised legal press. Interviewees knew which firms were ‘Magic Circle’, ‘City’ firms, or regional and local law firms (no interviewee used the term ‘Silver Circle’ firms). When lacking knowledge regarding a particular specialisation, they turned to their network instead of non-personal information sources. An exception was the Internet, which some interviewees consulted when looking for lawyers. Online searches, however, were typically conducted to research the recommended firm(s) rather than as a first point of information source.

Other non-personal sources, such as articles in magazines appeared not to work as marketing instruments either. According to MC1 articles would not give the necessary confidence in the professional as the medium is too impersonal. Medium-sized companies also lacked the time to read articles on the law.

Newsletters may only work if they come from firms that were recommended by personal sources, whereas newsletters from random (not recommended) firms were ignored. Seminars or events may be successful as long as they are not too ‘commercial’ and provide a new angle or experience.

*“It’s got to be something ‘different’ if a new law firm wants to catch my attention. I get lots of invitations [by law firms]. The difference is how it is presented. The theme or maybe an interesting location, interesting speakers, or the material is really interesting. [Recently] We had an HR Directors club event. We went to a famous Michelin star restaurant. It was fantastic! They had a focussed topic. The speakers were from 3 or 4 companies, recruitment firms and law firms that I hadn’t used before. They are now on my radar. I’m prepared to take calls from them in the future” (MC9).*

As the interviewees in legal services provider firms assumed (paragraph 7.1.5.1), the majority was not aware of legal rankings and directories. Even after explaining and further probing, directories did not seem to convey the necessary trust that personal recommendations from peers carry. In fact, surprisingly, for many medium-sized companies, the mere recommendation of a peer seemed to be sufficient to not make them feel the need to further check on the lawyers.

Apparently too new to be discussed in the existing literature as a potential information source, when asked about introductions through social media such as LinkedIn or Facebook, most interviewees appeared rather sceptical. This, however, may have to do with the age of the interviewees (none of the interviewees in medium-sized companies was in their twenties or thirties). In fact, some acknowledged that the generational factor may come into play, and stated that they might change their opinion in the future and embrace new ways of networking.

### 8.1.3 Evaluation of the consideration set

Theory suggests that services are more difficult to evaluate than goods (see paragraph 5.3.3), which was not confirmed by the findings. Decision-makers in medium-sized companies do not consider purchasing legal services neither more, nor less complicated than material purchases as they are used to making complex organisational purchases.

*“It’s about people, but it’s not that much more complex than say, buying a photocopier. You expect the photocopier to do what it says, and you expect the lawyer to do what he says. You buy different level of service with different photocopiers. Can it scan, print etc. [It’s the s]ame thing with lawyers” (MC1).*

The evaluation of the consideration set by medium-sized companies was based on a wide variety of criteria, both personal and non-personal as well as objective and emotional. It appears that the decision to purchase is typically neither purely objective, driven solely by analysis and data, nor purely emotional. Although, when probed, some interviewees called their decision mostly objective. *“[I ask myself] Who can do the job? What is their experience? What are the examples, case studies? I want to see they have done it before” (MC7).* MC2 indicated a hierarchy of objective factors over emotional ones. First buyers choose which firms are capable, then who they want to work with:

*“We have a selection process. It’s objective. First, technical experience: I want to see live examples of what they’ve done. Case studies of similar work. I want thought leadership. How many [similar operations] have you done? How successful? Second, I want the infrastructure, depth of backup. How many people do they have? How do they manage the account? Can we get the service level we need? Third, location. The firm has to match in geographic proximity. There is also an emotional part [in the decision]. Who would be the team leader? Is the style compatible with the company?” (MC10).*

The majority suggested that there is an emotional part in the mostly objective decision. MC8 suggested that the

*“emotional side of the decision-making is underestimated. If two quotes are identical, you go with the one [lawyer] you like. Of course, it needs to be someone who gets the job done, this is the objective side”.*

MC4, 5 believed the decision to be mostly emotional.

*“[The decision] is more emotional [than objective]. It’s very personal. I’m the business. I need to trust people. Do I like them? Trust them? Feel comfortable with them?” (MC4).*

*“It’s gut feel. It’s quite an emotional decision. I have to be happy with the source” (MC5).*

### **8.1.3.1 Managing evaluation**

The interviewees evaluated law firms based on criteria they deem important. The interviewees were in broad agreement regarding the criteria for evaluation of legal services providers. Answers of decision-makers in medium-sized companies could be distilled in four criteria: (i) reasonableness of fees and flexibility in terms of pricing, (ii) experience in similar matters (not necessarily experience in the same industry), (iii) speed of delivery and ability to meet deadlines, and (iv) the relationship between legal services provider and buyer.

Since professional services cannot be experienced before the purchase, literature suggests that cues act as surrogates for buyers (see paragraph 5.3.3.1). This was confirmed in the empirical research. As a cue for the above criteria, MC1 suggested credentials to be particularly important. *“We want a snap look at their experience. A brief case study, leave some material”.* Similarly, MC4 looked up recommendations on the Internet. *“I always want to confirm my beliefs about things with other people”.* Others mentioned to *“google lawyers, but not to check on them. Just compare what my friends recommend” (MC5).* However, a surprising number of interviewees (MC2, 7, 8) admitted that they did not check recommendations, but trusted their sources. The cue is then purely about the lawyer’s initial behaviour towards the future client. When having arrived at this stage, the conduct of the lawyers, every touch point between client and firm potentially influences the evaluation. Firms need to provide ‘evidence’ of how they measure up on the clients’ criteria. MC7 judged it negatively if

*“you left a message, but the lawyer doesn’t ring you back. You have to chase them. Or if they are too sales-y”.*

Similarly critical was MC6:

*“Professional sales managers are the worst thing they can do. I don’t want to talk to salesmen. I want results”.*

Experience in similar matters and perhaps flexibility in terms of pricing can be classified as possessing ‘search qualities’ (see paragraph 2.1.1), i.e. they can be determined before the client buys the legal advice. They can also be relatively easily be demonstrated through marketing means and influenced should the firm deem the criteria important to its target group. For example, comparison shopping will give clients an idea of different fee levels. The other criteria, including reasonableness of fees, qualify as ‘experience’ or ‘credence qualities’ (see also paragraph 2.1.1), which can be determined during the service delivery or will be hard to determine even after the completion of the services delivery.

*“We don’t like to waste our money. When we got three totally different bids for a project [7K, 70K, 170K], you ask yourself what’s going on? We went to the ones that cost 7K, then went to the one that cost 70K and just cherry-picked some of the services that the other offer did not include” (MC1).*

*“Of course, cost is an issue. With law firms you always worry about cost” (MC3).*

*“Cost is one of our biggest frustrations. Even a quick email is itemised as 12 minutes! Cost can build up very quickly” (MC 10).*

MC2 associated reasonableness of fees with trust. *“If they take advantage of you, you lose trust. It’s the basis for everything”*. MC6, 8, 9 emphasised the importance of value for money. While interviewees agreed that cost is generally more important for medium-sized companies than for FTSE-100 companies, more than absolute cost, medium-sized companies attached importance to value. MC6 gave an example of having worked with a lawyer who charged extremely high fees, but because his advice saved the company a significantly higher amount of money, *“[i]t was the best money I ever spent. His advice made me more money than I spent”*. MC1 emphasised the notion of value as it *“is the overall job rather than the hourly rate. [But] we usually want caps”*. Inflexibility in terms of pricing practices was deemed a reason for frustration. Medium-sized companies perceived legal services providers to resist fixed price arrangements and caps (MC10). *“[But] I don’t like hourly fees. I want fixed fees. They have to stay within budget” (MC2).*

Experience on similar matters can be showcased in case studies or examples or seen in rankings, such as of M&A. Medium-sized companies wanted law firms to be specialists that understand the legal issues needed. *“I want to see they have done it before” (MC7).* *“I hate trailblazers. It’s a recipe for disaster” (MC1).* Medium-sized companies did not want to be guinea pigs nor pay for the education of lawyers. They expected legal services providers to already be experienced in the field of need.

*“Solicitors must give answers, not say ‘I’ll look into that’. That shows me they don’t know [the matter well enough]” (MC4).*

In cases where lawyers did have to study the background because they were lacking the specific knowledge, medium-sized companies did not want to be charged for the time. Specialists gave medium-sized companies confidence, in particular in litigation and made them feel in control. Experience not only related to a particular area of practice, but also to the type of companies they have worked with in the past. Legal services providers that had experience of working with companies the same size were welcomed as medium-sized companies not only saw themselves as belonging to a particular industry, but also defined themselves by their size. *“I am more trusting if they have worked with companies of similar size, similar values” (MC2).*

‘Experience qualities’ are attributes that can be discerned only after purchase and during consumption (paragraph 2.1.1). Since buyers cannot experience them before the purchase, the experience of other parties, e.g., recommendations from peers, becomes so important. Speed of delivery/ability to meet deadlines are such experience qualities.

*“Response speed is important. When I send an email with an important matter, don’t say I’ll come back in 3 days” (MC 4).*

### **8.1.3.2 Evaluation of personal factors**

As suggested in the literature (see paragraph 5.3.3.2), the relationship with the lawyers has great importance in the evaluation. The relationship in terms of ‘chemistry’ between legal services provider and buyer is influenced by the professionals’ friendliness and ‘bedside manners’. Highly personal, individual, and emotional, it forms an important part of the basis for recommendations. The relationship determines how the two parties collaborate and communicate.

*“Chemistry is very important. You just know. They understand you” (MC2).*  
*“You need people you can work with. It’s all about trust” (MC7).*

MC6 emphasised the importance of personal empathy. MC3 suggested that not only do the top decision-makers need to get along with the lawyers, but also other members of their staff. Friendliness and good ‘bedside manners’ were described as being approachable, having a down-to-earth attitude, and not talking down to their clients.

While many medium-sized companies felt comfortable taking care of some of their legal issues in-house without the help of legal experts, few actually possessed sufficient legal skills to evaluate whether some of the services were necessary or were performed properly. Again, trust was critical, which explains why recommendation of other (trusted) professionals and advisors became necessary.

In addition, without prompting, commercial sense, a practical approach and feeling taken care of were mentioned by the majority of interviewees as the most important characteristics. These factors were not among the criteria mentioned in the literature.

*“They [the lawyers] need to be practical, help me get the anger out, tell me ‘I don’t think you should do that’. I don’t want to be an item for them, I want them to support me” (MC4).*

Service is expressed through client orientation, enthusiasm, willingness to listen.

*“Solicitors must be available, give you the attention like you are the only person there” (MC4).*

*“I want to find professional advisors to whom we mean something” (MC3).*

*“They need to display it [the service attitude] in the first meeting. For example, they need to be on time, not chew gum, look around like they’re bored in the first meeting. Otherwise, they’re out right away” (MC1).*

Willingness to listen helps lawyers to understand the medium-sized companies as businesses (MC6), and gives them the ability to interpret what the client wants to reach through legal means (MC8).

### **8.1.3.3 Evaluation of non-personal factors**

A number of criteria were deemed significant by the interviewees, but taken for granted rather than actively sought. These include ethics, as well as technical quality. In contrast to what literature suggested (see paragraph 5.3.3.3), interviewees did not talk about choosing prestigious ‘big name’ law firms to reduce their perceived level of risk. In addition, they took technical excellence for granted, which was seen as credibility, professionalism, and knowledge.

Nevertheless, not all firms were perceived as offering the same level of expertise. MC9 referred to the concept of law firm tiers. *“You expect any law firm on the same level to have the same level of expertise”.*

Management style ‘fit’ was believed to be important in the sense that the styles have to be compatible. Similarly, the size of the firm relative to the client was deemed

rather important as is it was seen as an indication as to how the firm treats them as clients.

*“A similar size makes things easier. We want to be a worthwhile account for them. We are here for the long-term and want to be important to them” (MC3).*

*“If they give us the feeling we are a little tiddly company for them, sorry, you won’t do it for us, mate. We want to be respected as a client, not depend on size. The problem with small firms is that they can be too small and don’t have the depth” (MC1).*

Accessibility of (senior) partners was perceived as important in the sense of stability rather than constant access to the most senior person.

*“I don’t want to have difficulty to make contact with the partner. If I get passed around quite a few times - no, not with me!” (MC6).*

MC1 stressed to want *“hands-on partners, [but] not necessarily senior partners”*.

Opinions varied somewhat regarding the proximity of offices. MC3, 6 deemed location to be very important. *“I don’t want to drive too far” (MC6).* *“We want them not far away from us” (MC3).* MC1 expressed to want relative proximity to the medium-sized company’s headquarters. *“Outside London is ok, like Surrey, but I wouldn’t use a Birmingham firm”*. MC10 *“wouldn’t use London corporate lawyers if we could use local lawyers. That’s why we split up the work [between local and London firms]”*. However, this may also be partially due to the level of cost. Only MC2 stated that proximity used to be important, but due to technological advances, it no longer is.

Appearance of the physical facilities mattered to the medium-sized companies to some extent. MC5 stated that a

*“stylish [office] is nice, a nice package. But not too ostentatious. We want lawyers that are similar to ourselves”*.

However, MC1 remarked critically that law *“firms are more likely too look ostentatious. I prefer a firm that doesn’t look too well off, but doesn’t look shabby either”*. An overly rich ambience reminds medium-sized companies that they pay for it with (high) fees.

In contrast to what some legal services provider firms assumed (see paragraph 7.1.4.3), the range of services was generally low on the priority list. Instead, specialisation was sought after. Generally, it appeared that medium-sized companies



appeared to prefer depth rather than breadth. Not deemed important to the medium-sized companies were diversity and the provision of related services such as accounting consulting etc.

## 8.1.4 Selection of the service provider

### 8.1.4.1 Managing selection

The interviewees named the same criteria for the selection as for the evaluation (see paragraph 5.3.3). Cost, in the sense of greater cost efficiency, and value were named as particularly important. Once again, interviewees linked cost with trust and honesty, a connection that did not come up in the interviews with the legal services providers.

Medium-sized companies also set cost in relation to the importance of the legal issue for the company as well as the outcome. This notion was typically not mentioned by the legal services providers (see paragraph 7.1.4.2).

*“Cost is important, but it depends on the level of the problem. Mid-size company are very cost conscious. Large bills are painful” (MC7).*

Discounts, a typical risk-reduction tactic in services marketing, were also not mentioned unprompted. When prompted, interviewees emphasised that they did not want to ‘experiment’ when they had legal issues. They stated not to pick firms based on special initial offers, but hoped to get value and flexibility in terms of pricing from the firms they chose. In the same line, medium-sized companies expected predictability to calculate their cost. While legal services provider firms spoke about cost and value, the aspect of predictability did not come up in the interviews with them. However, this clearly seemed to be an important aspect for medium-sized companies.

*“Charges need to be pretty transparent. If you have no idea what the end result is, you feel uncomfortable. Cost can rack up pretty fast. Give a sensible price range within £50K makes me feel more comfortable” (MC4).*

*“It is very frustrating when you ask for an estimate and then they went 200 percent over estimate! We didn’t pay that. I could never do this with my customers. We give an estimate. It’s not always simple, but that’s part of business conduct” (MC6).*

Interviewees also emphasised open communication, taking an interest in the medium-sized company’s business and deliver. *“We don’t want much from them [our lawyers] except for when we want them and what we want” (MC3).*

The majority of interviewees stated that they look for the ‘best quality’ they can afford for the problem they have, rather than seeking ‘sufficient’ quality (the notion that clients look for ‘good enough’ solutions, see paragraph 5.2.2, was therefore not confirmed). Quality cues reflected the criteria on which they base their evaluation and selection decisions and included ways that showcase the sought criteria ‘experience’ and ‘competence’.

*“Lots of firms that present themselves state that they’re experts, but I want proof. What do they give us for our chequebook?” (MC3).*

When firms did not appear to differ on the desired criteria, the selection was based on fees or chemistry. *“We have use firms against each other to drive down fees” (MC1).*

Unlike large(r) companies, medium-sized companies did not experience a trend towards convergence as they typically did not work with a large number of firms to begin with.

The selection process was rather informal. Firms did not have formalised lists or panels of preferred legal services providers. The small(er) size of the organisation did not make such a formalised approach necessary, and relationships were still personal and with the top decision-makers involvement.

*“We don’t have a formal panel, but we try to build up long-term relationships [with law firms]. They get to know you and you know them” (MC9).*

Interviewees were generally rather critical of the concept of ‘added value’ in the context of legal services. Some interviewees questioned whether legal services providers do or actually can add value to their businesses, perhaps even suggesting it to be a marketing ploy. What is more, it appeared that it is not really clear what added value means for both legal services providers and buyers alike.

*“Law firms don’t offer added value apart from good legal advice, but that’s what you’re paying for. Lawyers charge for everything” (MC7).*

*“I don’t believe in it. It doesn’t exist. Value added means that they just try to sell you more services” (MC1).*

Similar to the findings in the interviews with legal services provider firms, the research among medium-sized company clients found little difference between ‘added value’ and ‘service excellence’. Rather than repeating the criteria in the initial evaluation stage, medium-sized companies brought up mostly service-related attributes to describe what added value meant to them. This included being pro-active

and keeping clients informed, suggesting solutions, as well as investing time and resources in further developing and intensifying the client-provider relationship.

*“They [lawyers] don’t spend enough time with us” (MC10).*

*“Service excellence. Don’t charge for small advice, quick phone calls, behaving more like a friend” (MC4).*

*“Added value is suggesting things, even if I don’t use them. It shows me they’re thinking about me” (MC3).*

*“Talk in simple language, no legalese. Use 10 words, not 100. No one has time, I just want the brief summary” (MC2).*

Lack of time was the most likely influence on decision-making in medium-sized companies. This was not only due to the fact that legal matters were only one of the issues decision-makers had to take care of, but also due to the urgent nature of legal services.

*“We don’t have the luxury of time. When we have a problem, everything needs to be quick! I need a lawyer NOW” (MC7).*

#### **8.1.4.2 Justification of selection**

In contrast to large(r) companies, convergence did not appear to be a trend among medium-sized companies as they typically never worked with a large number of firms to begin with. So the DuPont model (paragraph 5.3.4.1) does not appear to apply.

According to the interviewees, law firm ‘brands’ in the sense of well-known, highly respected firms, mattered only marginally to them, with few exceptions, such as high-stakes litigation and major negotiations. They appeared to differ here from large organisations, where in-house counsel have been found to buy top ‘brands’ of law firms as a safe choice, in the sense that if the engagement does not work out, they can justify their choice by having picked an unquestionable, leading firm (LexisNexis, 2003; Paonita, 2004; Morral, 2004; see also paragraphs 5.3.3.2). The notion of having to justify their selection did not apply to the decision-makers in medium-sized companies. As owners and/or top managers, their autonomy did not require them to report and explain their choices. While in-house counsel’s focus is perhaps more on (saving) their own career (Paonita, 2004), the research found that for decision-makers in medium-sized companies, it is typically the (wellbeing) of the business as it is closely connected to their financial wellbeing in general. Their job security did not depend on being able to justify themselves, but to make the right choices for the company from a business point of view. This decision might not necessarily appear to be the ‘safest’ choice to third parties.

As mentioned before, brands become important for critical litigation and important negotiations. The brand then gives an extra sense of security, an assurance to have made the right choice when they only have one chance to solve their legal issues.

*“I don’t care about brands. [Reflects.] Well, in litigation situations, I have chosen a particularly reputable, large firm. I don’t want the other side to come with [name of a leading firm] and I only have this small law firm on my side” (MC2).*

Another exception is when medium-sized companies are financed by venture capital (VC) firms or are not independent in other ways. *“Because we are backed by a VC firm, we need a brand” (MC9).* This situation is comparable to the before mentioned in-house counsel in large companies having to defend and justify their choice.

Different explanations may be that law firm brands may not be perceived as particularly strong or different from each other, so choice is less brand-focussed, or that interviewees did not want to admit that associating themselves and their companies with an important brand was important to them.

#### **8.1.4.3 Decision makers**

In contrast to large companies that increasingly have larger decision-making units, i.e. buying centres (see paragraph 5.3.4.3), or even the procurement department involved in the purchasing decision, in medium-sized companies buying legal services is the decision of an individual. This was typically the owner/entrepreneur, who did not have to report to others or justify his/her buying decision to others within the company.

Decision-makers in medium-sized companies pointed at their (individual) relationships with lawyers. Trust in the sense of a trusting relationship, is key as the interviewees typically select the legal services providers by themselves.

*“I decide alone. [Only] If it’s some minor legal advice, someone lower down the management chain can decide, e.g. for debt collection” (MC7).*

This may also explain why medium-sized companies appeared to be rather loyal clients. Few claimed to have (ever) switched legal services providers. Medium-sized companies typically have an ongoing relationship with one or two legal services providers. Only when their primary firm did not have the expertise required, or the company terminated the relationship with the firm for a particular reason, such as significantly going over budget, not taking the client seriously, and having made mistakes, did they feel the need to actively look for another legal services provider.

*“It [the firm] failed to alert me to important facts. They didn’t mention them during negotiations at the time. They should have raised the issue. Saying ‘we’re not property lawyers’ is not an excuse” (MC5).*

Marketing instruments that are helpful in the selection phase are aligned with the desired service attributes mentioned: open communication, and keeping clients abreast of changes in the law. Medium-sized companies welcome marketing efforts that have a pro-active client-centred approach, showing them that they are important to them as clients.

*“Do some serious research on my company. It must be really relevant to the way we run our company, our products” (MC3).*

Due to the importance of legal matters to medium-sized companies, ‘test-runs’ or trials at lower rates to entice new clients are typically not advisable marketing instruments with this target group. Decision makers in medium-sized companies also dislike hard selling. Several mentioned that recent ‘business development’ cross-selling efforts of law firms give them the feeling of being ‘milked’ rather than taken care of.

### **8.1.5 Evaluation of the service outcome and delivery**

Following the service experience, clients form an evaluation that determines to a large degree whether they will return to the firm and recommend it to their peers. Post purchase and post experience evaluation are typically the most important predictors of subsequent behaviour (Zeithaml *et al.*, 2009).

During consumption of the legal service when clients have started to experience the service firsthand, value and trust were typically named as the most important criteria rather than having to rely on other parties’ recommendations.

#### **8.1.5.1 Evaluation of quality**

According to the research among decision makers in medium-sized companies, the ideal legal services provider lives up to the clients’ expectations in the various interactions with them. Technical quality, which was discussed in the literature (see paragraph 5.3.5.1), was assumed.

As in the first evaluation stage, reasonable fees and value, experience, speed of delivery and a positive working relationship are important. In contrast to large

companies, medium-sized companies typically do not conduct formal evaluations of the legal services delivered. Warning signals that indicated that the firm did not provide high quality were ‘quietness’, an interrupted stream of communications and not being serviced by the same person. While neither criteria were expressed before in the literature or by the professional services firms (see paragraph 5.3.5.1 and 7.1.3.2), perhaps they can be seen as part of the relationship: In a strong relationship between legal services provider and client, one would expect ongoing contact with the same people.

*“Often you have an initial contact and start to develop a relationship [with the lawyer]. Then you get passed around in the firm to their minions. They have no knowledge of you or your business” (MC8).*

Interestingly, while the interviewees in legal services provider firms emphasised personal and social contacts as important (see paragraph 7.1.5.3), medium-sized companies did not necessarily seek friendship with their lawyers. They preferred empathic work relationship that demonstrated that their professional advisors cared for them and their business.

*“Play is for play, work is for work. You can have a mix, but I could play golf [with professional advisors offering themselves] every day. But I don’t do more than one or two per year. I want people I want to be with. I don’t want my professional advisors to be my friend, but have empathy for me. I have a lawyer friend, but I only use him for silly, unimportant things. He is a lovely person, but incompetent” (MC6).*

Therefore, personal relationships may act as extra glue between the provider and client, but do not influence the decision sufficiently. In fact, the personal relation characterisation seems inconsistent with some of the core values of providing legal services. Perhaps the most basic of these tasks is advising clients about their legal rights and powers and helping them enforce and make use of these rights and powers. This does not imply an intimate personal relation. Empathy would require that the lawyer try to take the client’s view of the situation and identify with the client’s feelings. Similarly, Simon (1998) argued that lawyer relations with individuals are often brief and impersonal. Most lawyer-client relations are substantially commercial, the lawyer insists that the clients pays for the loyalty, trust and empathy. Unlike friendship, the relation is not reciprocal, the client is not supposed to show loyalty and empathy to the lawyer.

### 8.1.5.2 Evaluation cues

#### 8.1.5.2.1 Importance of cost and value

The empirical research confirmed the findings in the literature research with regard to the importance of cost. While some professional services providers assumed that value, but not cost in absolute terms was of importance to medium-sized company clients (paragraph 7.1.4.2), according to the research, for the interviewed decision makers in medium-sized companies, both absolute cost and value were crucial factors. Even unprompted, cost and value were mentioned by all interviewees in medium-sized companies and confirmed in their importance.

*“Manage cost is [the] #1 [criterion]. Understand the value [they are contributing]. Lawyers focus too much on tiny details that are not important for the business. They are not commercially realistic. It’s probably the personality. They love arguing details. They don’t necessarily help. I’d like lawyers say to me ‘Don’t worry about it - you don’t need a lawyer for this’. I’d like them to craft simple solutions that don’t need fine details. [Ideal lawyers] Help us save money. They help us do the right thing. There is a time to go into nitty-gritty’s and other times you don’t. Lawyers should save the company work, time, money, but often they create more work” (MC10).*

Cost was not only viewed in absolute terms, but seen as an evaluation criterion for the lawyer’s professional approach and care for the client.

*“Focus is important. Keep it directed. Tell me: If we take this way, it’ll cost you more money. He [the ideal lawyer] tries to save you money. Be professional, amiable, approachable, able to instil confidence” (MC 4).*

Interestingly, in addition to value in terms of money, value in terms of time was mentioned by the medium-sized companies. Rather than dragging work out, excellent service at a fast pace is an evaluation cue for value, whereas slowness and a lack of urgency is seen as the opposite.

*“Lawyers are missing a sense of urgency. This is because they are remunerated based on the length of time they’re used. I want quick decisions, [so the ideal lawyers] minimise my cost and my exposure. Lawyers often take a long time to go through little points that are not necessary to us. Of course we are paying them to be thorough, but expertise is to not have to study every detail and charge for it” (MC8).*

#### 8.1.5.2.2 Importance of commercial sense

Interviewees in medium-sized companies confirmed the importance of commercial sense in the literature (paragraph 5.3.5.2.2). Unprompted, MC8 stated that the ideal lawyers are commercial and understand the larger business context. MC9 expected pro-activeness from the ideal lawyer.

*“[Do they] not just wait for you to come? Do they keep you up to date [on legal matters]? If there are changes in your business and the marketplace that affect you, do they stay close?” (MC9).*

Prompted, all interviewed decision makers in medium-sized companies confirmed the importance of commercial sense. They preferred lawyers that make judgment calls, in the sense of whether a legal action is likely to make commercial sense or not.

Ideal lawyers not only solve their legal problems, but help them run their business better, such as help improve processes, and provide them with contacts to potential customers. A positive evaluation cue among medium-sized companies was legal services providers' attitude 'We are in business, the business happens to be law'. Ideal legal services providers help their clients focus on the important parts that have to be dealt with with regard to legal matters (MC4, 5) and demonstrate effectiveness in their work (MC7).

MC6 complained that lawyers usually did not take the time to find out the clients' requirements, expectations, and intentions.

*“Lawyers don't usually connect to them [their clients]. They couldn't survive in my firm for a week. They don't understand clients. They don't see clients as customers. They see them as clients” (MC6).*

Also negative evaluation cues in terms of commercial sense were playing it safe, hiding behind the law. While they said this was a typical approach of lawyers, legal compliance is just one of many other business issues facing a decision-maker in a medium-sized company.

*“If lawyers had their way, we'd spend every penny to make ourselves legally watertight. We'd never make any money! Lawyers need to understand that businesses have risks. Legal [risk] is just one of them. [As a business person] you have to make a judgement” (MC10).*

In addition to living up to the clients' expectations, the most useful evaluation cues and therefore marketing instruments appeared to be ways to keep the clients abreast of changes in the law that affect them and their business. This can be done through newsletters and seminars, but one-on-one contact by person or through electronic means were preferred.

*“It would be a big advantage to explain what [a new legislation] means for you as a business. I don't want to sit and listen to generic things. Tell me what it means for me! If I want generic stuff, I go to a website myself and google it” (MC8).*



Interviewees stated that they judge it negatively when lawyers did a bad job, but then rang them up and asked for the next job, or ‘invited’ the client for lunch or dinner, only to then send them an invoice for it.

*“She [the lawyer] then asked me if I wanted to have lunch with her for which I paid. We had a social chat, we talked about her boyfriend, and three weeks later she sent me a bill which included the lunch time!” (MC10).*

### 8.1.6 Satisfaction/dissatisfaction

Finally, what determined whether the medium-sized company clients were ultimately satisfied or dissatisfied after having purchased and consumed the legal services? This aspect is key as it is a good predictor of whether a client is likely to come back to the firm. The findings suggest outcome and service aspects to be of highest importance for medium-sized company clients. Apart from e.g. winning a case for a client, outcome is also to deliver what is important to the clients, understanding their priorities.

*“Lawyers [we worked with] tried to score points. They thought they do me a favour. But they didn’t really get it. It [what they focused on] wasn’t relevant at all to me. [They should] Stay focused on what’s important for the client. But often, lawyers just go off on their own” (MC1).*

Business acumen, lawyers who think like business people, that are partners rather than mere technical advisors, appeared to be motivators with regard to satisfaction. This included understanding the importance of a case for a client from a business point of view. Price sensitivity appeared to be closely tied to the importance and value of the matter.

In addition to getting the outcome for the client, i.e., ensuring technical quality, clients determined their satisfaction based on how the legal services were provided—and when.

*“If they work hard, get back to me with answers as soon as possible, provide quality of work and expertise that satisfies me. If they don’t deliver, we get rid of them” (MC10).*

*“Delivery is important. What do they deliver when they say they deliver. Their internal management process, how they allocate work and prioritise. They send you the same bill whether they delivered it on time or not. I never had a law firm that said ‘I’m sorry, we’re late, we won’t charge you for it’” (MC9).*

MC6 pointed out that “time is money”. In fact, while ‘time’ was brought up as an important factor by all medium-sized companies (see also paragraph 8.1.5.2.1), it was not emphasised by the legal services providers. Time was important in the delivery in

terms of speed, reliability, and convenience. Interviewees expressed dissatisfaction with lawyers coming late to meetings; not having a sense of urgency; wasting the client's time by not making working with them quick and easy, speaking legalese instead of normal business English, providing too much detail. This was partially blamed on lawyers' lack of business acumen, part on the remuneration system that rewards legal services providers for dragging matters on and diving into detail rather than demonstrating 'efficiency' independent of the benefit sought. In addition, the time aspect was expressed by legal services providers' reluctance to invest time in the relationship with the client, the client's business and industry.

Great service was also expressed in making medium-sized company clients feel important and well taken care of. Interviewees expressed satisfaction when professional services providers demonstrated the importance through investing time and resources in the relationship.

*"[My accountants] take me out for lunch every three months. They pay the bill, don't charge for it and [they] ask about how my business is doing. Our US lawyers do it [too], our UK lawyers don't. I am dissatisfied when they're not available, when I feel like we're a [too] small [of a] company [for them to bother and] we are squeezed out by bigger companies, get the time at the end of the day or first thing in the morning. They don't make me feel important" (MC10).*

Taking care is also expressed through 'generosity' with regard to time which could perhaps be resolved through flexibility in terms of pricing and fixed fee arrangements.

*"You constantly feel like you need to watch your time with them [the lawyers], count every minute because you know you'll be billed. By contrast, I can call my accountants any time. [I can] ask a question and I won't be billed for every little thing" (MC10).*

Interviewees stated that only lawyers, but not other professional services providers charge them for lunch, when in fact, they only have social chats, but do not discuss business matters. The aspect of time also shows with regard to speed. Not only do medium-sized companies expect legal services providers to keep deadlines, but speed of delivery generally appears to be important to medium-sized companies.

*"I expect them to do what they said they'd do. A good experience is faster. It's about speed. Get it right the first time, don't ask 1,000,000 questions, be a business partner" (MC1).*

*"What frustrates me is the response time, 48 to 72 hours. If I don't go back to my clients within a day, I'm dead! Most lawyers are not able to juggle 50 balls in the air [like business people]. They are one-horse ponies. We have to work very hard for our money. We earn 5-6 percent. If our customers say: 'Jump!', I jump. Lawyers don't" (MC6).*

Apart from lawyers making mistakes, or not having the appropriate resources, interviewees stated that they tended to terminate working relationships with legal services providers due to cost-related issues.

*“If we need a new firm, the reasons to move would be dissatisfaction with the service and cost, [when they are] too expensive. We know what we paid in recent years. So we have a good feeling for how much legal services should cost” (MC3).*

Also the relationship aspect came into play as interviewees stated that turnover of counsel, not having the same counterparts, made or would make them switch legal services providers. MC3 changed professional service providers because

*“[t]he customer service was lousy, the principals changed, they kept us waiting in the reception for 45 minutes. They told us that they have to go [to another appointment], someone will look after you, but we said no, thanks!”*

Perhaps due to a lack of time to look for new counsel, a lack of awareness of possibilities due to limited understanding of the law and interest in the legal marketplace, ‘laziness’ or because, as was suggested earlier, medium-sized companies are (more) loyal clients, medium-sized companies do not switch law firms due to a desire for fresh legal strategies and new approaches. *“You don’t give up something you’re happy with for something you don’t know”* (MC4). It appeared that medium-sized companies stay with law firms until they let them down. This leads to an assumption that as long as legal services providers get the basics right, they do not have to fear losing medium-sized companies as clients as much as (the more likely to be fickle) large companies. Therefore, in the final decision-making phase marketing should focus on managing the aspects that are important for the judgment of satisfaction or dissatisfaction, such as the delivery of services (service excellence), cost (staying within the budget), and time management (keeping deadlines).

Seminars, newsletters, and hospitality were important and useful when they contributed to the above points, showcasing clients how well the firm performs. Examples include newsletters or seminars that save medium-sized companies time and money by giving updates on legal changes, or events that deepen the client-provider relationship without the immediate intention to try to sell further services. Medium-sized companies welcomed marketing activities that help them run their business better such as networking at hospitality events that bring them in contact with potential customers or business partners.

*“We don’t want mass entertainment. ... We want signs of life. ... For me the effect of newsletters is not from the content, but from their existence. I get lots of emails [from soliciting law firms]. I never open them, no thank you. I don’t have time. Some send [loaded] iPods. That’s very trendy [but it doesn’t necessarily work]. What I want from marketing is that they [the law firm] do something to show me they’re alive. Once a year they [my lawyers] invite me to a sandwich. I go there, but I try to leave early. But if they didn’t do it, it would be bad. I want to feel that they are interested [in me, my company]. Occasionally, they should invite me to a seminar. I like to see them doing something. But it shouldn’t be too hard of a sell. I would want to learn something that is important to me but it shouldn’t be too complicated. Just tell me what are the changes in employment law and how does this affect you. Have a high profile speaker. If it’s just someone from the firm, I normally don’t go. There was a talk by Bill Clinton [at a firm’s seminar]. I wasn’t going to say no to that! Firms need to remember that even if few clients come to seminars etc., they are pleased to be invited. I like them also to call me up and say I have tickets for ... but they should make an effort to know what I’m interested in. Take me for lunch occasionally, to talk with me. Show me that I am important to you” (MC3).*

Only MC1 stated that he did not want any ‘marketing’: *“I know where you are. I’ll come to you. You don’t need to stay in touch”*. A number of interviewees also indicated that they dislike ostentatious spending of money on hospitality which they deem inappropriate. Medium-sized companies believed that such marketing money could be used better.

## **8.2 Conclusions**

This research gained insights into how medium-sized companies buy legal services, the process and their criteria in terms of selection and evaluation, helping to answer RQ2. Many findings in the literature review (chapter 5) were confirmed. However, medium-sized companies do not seem to perceive buying legal services as more challenging and complex than buying other goods or services. Rather than using the formalised process suggested by the literature, medium-sized companies mostly rely on word-of-mouth recommendations of their peers and look for professionals as partners that can help them run their business better, understanding their cost-constraints and the importance of value.

The findings suggest that medium-sized companies buying process is two-tiered with both objective and subjective elements. Based on the situation and type of legal issue, they first assess the level or ‘tier’ of firm needed, in the sense of which firms are ‘objectively’ capable of helping them solve their problem. Not all firms were seen as

equal in this regard. In a second step, they look into which individual lawyer(s) they would prefer working with, adding a subjective element to the process.

In terms of selection criteria, cost, in terms of overall fees and value, as well as flexibility in terms of fee arrangements seem to be most important. Experience in similar matters and speed also seem to be critical elements during the selection process. In addition, relationship aspects in the sense of personal ‘chemistry’ played a part in the selection.

After having worked with a legal services provider firm, the evaluation criteria of medium-sized companies were the service itself in terms of outcome reached and service delivery, and cost in terms of value and staying within the agreed budget. Time management, in the sense of respecting the client’s time and respecting deadlines was also a key evaluation criterion. Finally, ‘empathy’ for the client (rather than ‘friendship’) and his/her legal problems was rarely mentioned by legal services providers, but appeared to be an important criterion for medium-sized companies.

While it was seen as advantageous if legal services providers had in-depth knowledge of a medium-sized company’s industry and/or experience with working with clients of similar size, it was more important to have business acumen, understand how business people work in general. While medium-sized companies pride themselves for their business acumen, they are frustrated with law firms’ lack of business understanding and behaviour. What makes it worse is that medium-sized companies deemed law firms behaving as if normal business conduct did not apply to them. Seen as arrogant or ignorant for resisting it, it was clear that they expected law firms to behave more normal businesses. They used business reasoning and measured law firms by how they would measure other business providers. This is in contrast to in-house counsel in large companies that may resist ‘demeaning’ the value of their profession by measuring it with corporate or worse, procurement standards. Medium-sized companies want business-minded lawyers, not mere technical experts. Being a good technical lawyer is deemed insufficient as it does not mean that s/he has the skills to help clients come to sound business decisions. Legal services providers intending to focus on medium-sized companies need to not only solve the legal problem, but see it in a wider business context, understand what clients are worried about and be aware of their pressure points. So while many legal services providers claimed to be

commercially minded, there appeared to be a gap between what lawyers perceive as commercial and what medium-sized companies perceive as such. Legal services providers may be commercial from the point of view of an in-house counsel (who is also a lawyer), but not from an entrepreneurial decision-maker. Therefore, the benchmark for what is commercial is much higher when working with medium-sized companies.

One of the challenges is that legal services are high in credence qualities (see paragraph 2.1.1), i.e. even after the consumption of the service, clients may have difficulty or not be able to judge the quality and to appraise whether the offering satisfied their needs. For example, only when running into trouble, possibly years after drafting the contract, will it be clear if it is of high technical quality. Clients may be less knowledgeable in the legal field and unable to judge ‘technical quality’, but they are very able to judge business approach. They approach buying legal services like they conduct their business, by combining data and information, ‘experience’ and ‘gut feeling’.

Comparing the findings of this research to the literature review also appears to suggest that clients make their decision not only depending on their experience with buying legal services, but that it is also influenced by the need (or not) to justify of a selection. Medium-sized companies differ here from in-house counsel in large(r) companies in terms of their status as independent (autonomous) or dependent decision makers and related job security.

What was also found and needs to be looked into in more detail is that being seen as ‘trusted advisors’ appears to be overly optimistic. Do lawyers really have intensive ongoing relationships with the medium-sized company clients or is the relationship more ephemeral, more comparable to that of a taxi driver. The client gets the service when in the car, but then pays and leaves? As providers of legal advice, they often act as bad weather trusted advisors, ‘trouble shooters’, but are not general good weather trusted business advisors and can usually only earn the status of trusted advisors in their distinct area of expertise.

Brian: You're all different!

Crowd: Yes, we ARE all different!

(Monthly Python's Life of Brian, 1979)

## CHAPTER 9

### Conclusions

#### 9.1 Meeting the research objective

Many insights have been gleaned from this study which help fill knowledge gaps regarding the marketing and selection of legal services providers by medium-sized companies. This thesis addressed the principal research objective of analysing the marketing of legal services to medium-sized companies and contrasting it to the buying behaviour of medium-sized companies by answering the questions outlined in paragraph 1.2.2.

The literature reviews in chapters 2 and 3 and the empirical research discussed in chapter 7 aimed to answer RQ1: How do legal services provider firms market their services to medium-sized companies? Specifically, do they approach marketing to medium-sized companies differently from marketing to large(r) organisations? The literature review in chapter 5 and the empirical research discussed in chapter 8 aimed to answer RQ2: How do medium-sized companies buy legal services, in the sense of their decision-making process? Specifically, what are their criteria for selection and evaluation? These combined answers helped answer RQ3: What marketing approaches should legal services providers apply to reach medium-sized companies? Would these be different from marketing to large(r) organisations?

The questions, and summary answers, are:

**1. How do legal services provider firms market their services to medium-sized companies? Specifically, do they approach marketing to medium-sized companies differently from marketing to large(r) organisations?**

This research found that while all firms in the study emphasised the importance of medium-sized companies as clients and claimed to be interested in and focused on medium-sized companies, they typically did not market their services to medium-sized companies differently from marketing to large(r) organisations. Marketing to medium-sized companies appears to be almost identical to marketing to large(r) clients, which does not seem to be the best choice. Legal services providers did not

have strategies to address their special issues and challenges. If anything, it was hoped and expected that a more general, less complex or costly marketing approach to organisation should also take care of the medium-sized companies.

For example, firms typically do not segment clients by size, as the marketing literature would have suggested. Also, few legal service provider firms appear to base their marketing on systematic, robust marketing research. Regular research (marketing research and/or competitive intelligence) on medium-sized company clients is almost inexistent.

The findings appear to suggest that marketing policy and the larger business policies are not always closely enough aligned, as for example, the tracking and measuring of lawyers time spent on marketing activities is typically not supported by an appropriate remuneration system. This causes marketing efforts (not only to medium-sized companies) be seen as an option rather than a necessary basis for business.

Other problems seem to be the disconnect between marketing and the firm's management in terms of decision-making power and budget power. While there are exceptions, the role of marketing is often a supportive role, rather than the strategic interface between the clients and the firm. The typical role of marketing as an intermediary is taken on by the lawyers. Unlike in product marketing, the lawyers in fact, *must* participate in the marketing process. However, with little influence on strategic decision making and limited to no budget power, marketers in many law firms appear to be somewhat disempowered.

In terms of marketing strategy and tactics, the findings show that many firms spend the majority of time and effort on promotional aspects of the marketing mix. Few firms actively employ robust, ongoing marketing research and competitive intelligence analyses, creative pricing/billing concepts or other advanced marketing and management tools to market to medium-sized companies, which were seen as important by the clients. In the interviews, there was a lot of discussion of visibility, branding, Internet/web strategy, collateral material etc. Some marketing directors openly complained that large parts of their own and/or their department's job consisted of 'prettifying' things as this is how many partners (mis)understood marketing. The trouble is that promotional elements have only limited influence on



the buying decisions according to the findings among medium-sized companies (see also RQ2). Hospitality, ‘wining and dining’ of clients which is also practised in all firms, is helpful only when it makes business sense for the medium-sized company clients, e.g., through bringing clients together, stimulating and solidifying relationships between them through networking events, and may thus increase the client’s cost of switching legal services providers. In some of the firms, considerable marketing effort was also concentrated on winning new clients rather than tending to current clients.

Having said that, some of the firms in the study appeared to very much be aware of these issues and have introduced sophisticated methods of strategic marketing planning in terms of identifying decision-makers or acknowledged the importance of cost and value for clients by offering innovative pricing strategies.

In sum, while legal services providers recognised differences between medium-sized companies and large(r) company clients in terms of their expectations and needs, surprisingly, it was assumed that medium-sized companies were similar enough to large(r) company clients to not necessitate a considerably different marketing approach. Legal services provider firms by and large use the same marketing approaches to medium-sized companies as they would to large(r) companies, albeit in a less complex, less expensive version, when in fact, their buying behaviour more closely resembles consumer’s buying behaviour.

## **2. How do medium-sized companies buy legal services, in the sense of their decision-making process? Specifically, what are their criteria for selection and evaluation?**

Theory suggests that organisational clients go through a relatively formal multi-tiered decision-making process when buying services to face and reduce risk. The empirical study did not confirm the formal, lengthy risk-reduction strategy of a multi-tiered decision-making process. Instead, decision-making in medium-sized companies was found to be mostly based on informal word-of-mouth recommendation and perceived ‘chemistry’ with a particular professional.

While decision-makers in medium-sized companies certainly use their business acumen to make such buying decisions, the relative informality of the process was

significant to the point that clients often do not even check on the firms that were recommended to them by their peers. The positive experience of their peers with a firm appears to suffice for most decision-makers in medium-sized companies. However, this also means that firms that are not part of the consideration set or ‘evoked set’ of clients and referrals, i.e., alternatives considered during decision-making, have little chance to be chosen, independent of other marketing instruments such as newsletters, brochures, hospitality, or advertising.

The findings in the empirical research appear to suggest that medium-sized company clients first judge the importance, scope and scale of a legal issue situation in a business context. Depending on this judgment, decision-makers choose the appropriate level or ‘tier’ of firm. Similar to short-listed firms, those firms in a particular tier may or may not all be viewed as totally ‘equal’ in their ability and competence to perform the desired service, but are considered to have a certain market position and offer the appropriate value proposition, therefore assumed to (generally) qualified to perform the needed service.

When there is very little difference between qualifications of firms, the relationship—in the sense of the personal chemistry—is often the deciding factor. Once considered competent, clients will want to work with others who think, act and respond as they do. In a second step, clients select individual lawyers within the ‘tier’. This selection is typically based on personal experience with a service provider or the substitute of personal experience, word-of-mouth recommendations through peers that may have faced similar legal issues in the past. While the buying process contains both ‘objective’ and ‘subjective’ elements, the first step is likely to contain more objective elements, such as evaluations whether a firm has expertise or experience in a certain area of practice, while the second step is to be expected to be more subjective, as personal factors are decisive.

The research also found that clients in medium-sized companies are particularly motivated by cost (and not just value as the legal services providers believed) when selecting legal services providers, unless the issue was deemed to be a high-stakes matter, when cost became less important than expertise. As the research was conducted before the downturn in the economy, it is likely that cost has gained even more in importance. Clients generally disapprove of what they deem to be

inefficiencies of law firms and expect them to pass cost savings (e.g., through using templates, etc.) on to clients. Many medium-sized company clients expressed that they “*had to subsidise inefficiencies in law firms for too long*” (MP11). Medium-sized companies expect law firms and lawyers to be cost-conscious in addition to having and displaying business acumen in their work approach. Quality does not seem to be a criterion, as it is assumed.

Ideally, law firms behave like esteemed business partners, flexible, trustworthy, providing timely quality services without negative billing surprises. In brief, clients appreciate characteristics in their legal services providers they typically pride themselves with.

### **3. What marketing approaches should legal services providers apply to reach medium-sized companies? Would these be different from marketing to large(r) organisations?**

This study found discrepancies between the marketing used by legal services provider firms and the buying behaviour of medium-sized companies. For example, the incomplete and *ad hoc* nature of marketing information is likely to prevent firms from having a clear understanding of the psychological and social factors, which determine a client’s action, enabling them to identify core needs. Secondly, marketing does not seem to be fully integrated into the management of law firms, e.g., as noted in the disconnect between marketing and remuneration (see paragraph 7.1.1.2), which is likely to prevent integrating efforts of the whole firm to provide the value to meet client needs.

While firms seem to understand the importance of service as a dimension of quality, technical quality in the sense of expertise or experience still dominates the legal sector when it is largely assumed by clients. While in the past excellent service outcome was sufficient to secure clients’ satisfaction, this no longer appears to be the case. This necessitates client-facing lawyers and staff to embrace their role as service quality experience providers rather than technical experts (paragraph 2.2).

The observations in paragraph 7.2 suggest that medium-sized companies place less importance on law firm brands than in-house legal counsel in larger companies. As business people rather than legal experts, purchasing legal services is only one of the—

many—decisions they have to take in their day-to-day work. Decision-makers in medium-sized companies apply their business acumen to their decision making, which may differ from the reasoning of in-house counsel. In addition, their typically more autonomous status and lack of having to internally ‘defend’ or justify their choice is likely to influence their choice. In-house counsel typically have to report within their hierarchy, justify decisions, and have therefore less autonomy in their choice.

*“[Y]ou have to make in-house counsel look good to their bosses. They are typically more interested in their own career path rather than the business. This is not the case with mid-sized companies” (MD2).*

As a result, the marketing to medium-sized companies needs to reflect this. In addition to autonomy and job security, the literature also suggests that the buyer’s experience influences his/her decision-making (paragraph 5.3). For example, search effort appears related to prior experience: the lower the buyer’s prior experience, the greater the search efforts. Non-personal information sources such as publications, directories, and advertisement appear to be important only in creating initial awareness of a law firm. Once the firms have been identified, personal information sources become most important and useful. Commercial sources such as advertising are significantly more important for clients without prior experience of using a lawyer, while personal contact was more important for those with prior experience. Novice buyers are also likely to have different criteria from experienced buyers since quality expectations and perceptions depend on the sophistication and experience of the client.

When comparing the findings with the analysis of the marketing approach of legal services providers (chapter 7), there appears to be a gap between how legal services providers market their services and how clients purchase. It was found that it is not uncommon that providers of professional services focus on different aspects than the buyers. For example, findings suggested that the importance of having one consistent contact person medium-sized companies can talk to that has intimate knowledge of their business is not sufficiently reflected in the marketing.

Decision-makers in medium-sized companies appear to rely mostly on word-of-mouth peer recommendations and personal experience with individual lawyers. In order to stimulate such recommendations, the marketing of legal services to medium-sized

companies should focus on current clients' experience with the legal services provider, aiming to exceed the clients' expectations, rather than, for example, seeking to attract new clients.

The research also found that with its focus on personal recommendations the buying behaviour of medium-sized companies appears to be close to the more informal process of individual buying behaviour rather than the formalised buying behaviour of large companies. Yet, the majority of legal services providers do not differentiate between the marketing to large companies and medium-sized companies. It is very concerning that while all the firms interviewed expressed a strong interest in medium-sized companies, the majority did not have specific marketing strategies or tactics for medium-sized companies. In fact, it was rather unusual for legal services providers to segment by size, and more normal to distinguish between commercial and private clients or segment by industry. However, medium-sized companies typically see their needs as clearly different. Therefore, in order to reach this target group, legal services providers are strongly advised to approach this target groups strategically, with a plan and a budget, rather than basing it on chance and expect medium-sized companies to come to them automatically.

In order to really understand the client, his/her needs, specific situation and challenges, and to know which marketing tools would fit best, it is advisable for firms to conduct more research/competitive intelligence (see paragraph 3.2.3.2) than the empirical findings currently suggest.

## **9.2 Limitations of the research and principal implications for further research**

Although this research is believed to contribute to a better understanding of the marketing in professional services, no study is without shortcomings. As explained in paragraph 9.1, this research answered the principal research questions posed. Further research should explore the generalisability of the framework beyond the context of medium-sized companies or the research object of law firms. The findings of qualitative research are misused when they are regarded as conclusive and are used to make generalisations to the population of interest (Colwell, 1990). The limitations include the limited amount of sample data, problems of access, and limiting of the

sample to law firms and medium-sized companies in England and Wales. Many of the problems are common in exploratory case-based research.

While the interviewees in the medium-sized companies were typically the sole decision-makers, where appropriate, research should involve the entire buying centre/committee, or at least multiple members, instead of one decision-maker in each of the client companies as it has been done for practical reasons and limited resources. Also, research should further explore the potential effects of firm size, experience of the decision-maker, location, and other characteristics on the selection process. Because the present study relied almost entirely on data from in-depth interviews, it is recommendable that other methods, such as focus groups or observation, are employed in the future to achieve a better understanding of inherent dynamics, including the influential if subtle role of politics, in addition to quantitative research (see also paragraph 9.2.1).

The purpose of this thesis, however, was not to test theory, but to achieve a deeper understanding of the marketing in the legal service sector compared to the buying behaviour of medium-sized companies. This enhanced understanding not only leads to implications for professional service providers whose success depends on getting the contract, but also the themes emerging from this study may be useful in explicating the trust or other constructs in future research on B2B relationships.

Despite the assertion that qualitative research is well-suited for addressing the ‘why’ of behaviour whereas quantitative research is more useful in ascertaining the ‘who’, ‘what’, ‘where’, and ‘when’ of such behaviour, a caveat is in order: Managers and professionals often appear to prefer numbers, even when qualitative research has yielded critical insights. Moreover, oral responses from interviews can be easily mis- or re-interpreted for self-serving purposes. The literature therefore advocates complementing qualitative studies with quantitative assessments (Day & Barksdale, 2003; Sherry & Kozinets, 2001). According to Jarratt (1996), a combination of qualitative and quantitative approaches combined discovery and verification, understanding and prediction, validity and reliability, should therefore be the next step in the research.

Despite its limitations, the research has added to the knowledge of the buying behaviour of medium-sized companies when selecting and evaluating legal services providers, a little researched topic in the academic field. In addition, as the research was conducted before the downturn in the economy, it would be interesting to see how the new economic situation is affecting both marketing as well as buying in the context of legal services and medium-sized companies.

## 9.2.1 Quantitative investigations

### 9.2.1.1 The choice process

The empirical findings suggest that clients go through an informal two-tiered choice process. They appear to first choose a particular tier depending on the value proposition sought for their legal issue, and then to choose an individual lawyer from one of the firms within the tier. This two-tier choice process basically suggests that rather than focusing on individual law firm brands, belonging to a certain tier is critical in addition to a perhaps more subjective judgment based on personality, chemistry, relationship, and trust.

*“[I]f you do a floatation... [h]aving used City lawyers seems to make investors relax. But it wouldn't be necessary for an office lease or employment law. It's more about the peace of mind for investors to have bought certain 'brand' City lawyers” (MC10).*

*“For commercial law, we want a City firm. The VC [venture capital] company suggested which firm to use. Magic Circle firms are very similar. The firms are similar within each band [tier]. There are certain types of people working in each band and clients they attract. You choose the level, then it's all about chemistry” (MC9).*

The hypothesis could be tested in different ways: a quantitative study could be carried out among clients researching their buying behaviour. An interesting research would be their reaction when the partner they have worked with leaves the firm. Would the clients leave the firm and follow the partner to another firm? Or would they stay with the firm and work with another partner instead? An interesting aspect would be to examine the type of firm the partner laterally moves to. Will she work for another firm within the same tier or does the new firm belong to a higher/lower tier? How does this influence the client's buying behaviour?

Another quantitative research approach could be taken studying recent partner moves as documented in publicly available databases (such as LexisNexis or Thomson Reuters). The laterally moving partners' transactions or litigation could be studied

before the move, and then compared to the partners' transaction or litigation projects after the move. Allowing a longer timeframe, perhaps two to four years prior to the lateral move and two to four years after the move is likely to give a realistic picture of the situation, the clients retained, as well as types of matters undertaken.

#### **9.2.1.2 Appropriateness of marketing instruments depending on the type of client**

The findings suggest that clients' choice depends to some extent on the decision-maker's job security and autonomy as well as experience in buying legal services. Depending on which group a client belongs to, different factors are likely to be important in the decision-making process, and different marketing instruments will be appropriate.

A quantitative study could research a sufficient number of clients belonging to each of the four possible combinations: inexperienced decision-makers with high job security/autonomy, experienced decision-makers with high job security/autonomy, inexperienced decision-makers with low job security/autonomy, and experienced decision-makers with low job security/autonomy. The research should examine the factors that are important to these heterogeneous groups of clients and marketing instruments that influence their choice.

### **9.2.2 Generalisability beyond research context**

#### **9.2.2.1 Medium-sized companies**

The investigation purposely focused on medium-sized companies as most (non-) academic studies have researched large(r) companies buying legal services (see paragraph 5.1). However, a quantitative academic study that integrates buying as well as marketing to these large(r) companies could be of interest. Would large(r) companies have similar or very different factors influencing their choice?

It is also plausible to suggest that clients may vary in their buying behaviour depending on the industry to which they belong. The medium-sized companies researched in this thesis come from a variety of industries including manufacturing, retail, media, business services, high-tech, and biotech. However, there may be significant differences with regard to the buying-behaviour between clients in the various sectors. This was suggested by a non-academic study on the buying behaviour



of medium-sized companies, conducted by the author of this study for LexisNexis (2006).

#### **9.2.2.2 Law firms**

The investigation was deliberately confined to law firms on the grounds that this research object is more consistent with the author's own background and experience, and that to do so would avoid introducing possible complicating factors (paragraph 1.2.1). However, it is likely that the findings would translate very easily to other professional services industries. Further research—qualitative as well as quantitative—would confirm this.

#### **9.2.2.3 England and Wales**

The research was also limited to legal services providers and medium-sized companies in England and Wales. It would be interesting to broaden the research context to include firms and companies beyond England and Wales to be able to make comparisons based on cultural differences.

### **9.3 Originality and contribution**

The claimed originality and contribution of this thesis lies in being the first research examining the buying behaviour of medium-sized companies with regard to legal services that analysed both the client as well as the provider of legal services.

### **9.4 Final thoughts**

It needs to be understood that marketing is a profession with its own practices, experiences, skills, and techniques. The good marketing professional is trained in the tools and mechanics of marketing, in its ideas and concepts, in its highly focused point of view. It is not uncommon that even when marketing is embraced, lawyers do not find the time or possess the patience or skill needed to market their services effectively. However, if the intention is to optimise the firm's financial return and/or market position, it is critical that partners understand the principles of marketing as a management tool and work with experienced marketers, listen to their recommendations.

“Promoting a secretary to the role of marketing manager is missing the point” as Cainer (2004) pointed out. At the same time, paying someone to produce a plan, but

never giving it the chance to succeed—which law firms are notorious for—often results in a high turnover of marketing staff. Little surprising, legal marketing “is perceived as one of the last areas where a good quality marketing person can really make their mark” (Maiden, 1999: 30). It is my sincere hope that I can contribute to changing this situation.

## **APPENDIX A**

### **Interview Guide for Legal services providers**

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## INTERVIEW GUIDE FOR LEGAL SERVICES PROVIDERS

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**Interviewer: Silvia Hodges**

**Date:**

**Respondent Code:**

This guide was designed for interviews to be conducted with representatives from legal services provider firms, in their positions as heads of marketing, and managing partners respectively, concerning their marketing towards medium-sized companies.

“Thank you for your time today (INTERVIEWEE). I wanted to visit with you today concerning how you market your services to medium-sized companies.”

“I am especially interested in the marketing organisation within the structural configuration of the firm, marketing information, policies, as well as strategy and tactics. All the questions are intended to research your marketing targeted at medium-sized companies. With your permission I would like to record this interview for accuracy. I will also be taking notes along the way so that I might be able to address any other issues that may present themselves during the course of our interview.”

“Once again I wanted to assure you that all your comments from our conversation today are for the purposes of this study only. You do understand that I will be referencing specific comments made in the final report, my dissertation? You do understand this and agree to proceed with this interview?”

(RESPONDED IN AFFIRMATIVE/RESPONDED IN NEGATIVE) (*Note: If “Affirmative:” Thank you again for your willingness to be interviewed” proceed to questions. If “Negative” end interview and thank for consideration.*)

“I would like to start by asking you if you approach the marketing to medium-sized companies differently from other clients, such as larger companies (or individuals – if appropriate)?”

(*Note: Probe for areas where interviewee sees differences, if they believe that such an approach would be beneficial even if they do not currently do it.*)

“Please describe your firms’ marketing organisation within the structural configuration of the firm.”

(*Note: Probe for specific information –whenever possible with regard to medium-sized companies- such as:*

- *Since when does your firm have a (formal) marketing organisation?*
- *Does the firm distinguish between marketing and business development? How?*
- *How is it organised – e.g. by geographic area, key clients, areas of practice?*
- *Is there a specific group dedicated to medium-sized company clients?*
- *How many people work in marketing?*
- *Who in the firm has marketing responsibility - e.g. partners, professional marketers, secretaries etc.?*
- *What are their roles, e.g. in terms of different areas of marketing?*
- *Are marketers also involved in business development, “closing deals”?*
- *What are the different professional backgrounds of people responsible for marketing?*

- *Who has the final decision-making power with regard to marketing?*
- *To whom do marketers report?*
- *Who has budget responsibility?*
- *What are the principal areas of marketing efforts?*
- *Do marketing considerations impact on more strategic areas of the business, such as service selection and development, new service launches, fee determinants and corporate planning?*
- *Does the firm provide internal support systems for fee-earners with regard to marketing/business development? What are they?*
- *Do fee-earners keep track of their marketing efforts/time spent on marketing? How?*
- *Do fee-earners have targets with regard to their marketing and business development time or efforts? Explain.*
- *Is marketing/business development considered for appraisals and compensation? Time or results?*
- *How do fee-earners/staff get rewarded for marketing/business development?*

“I am now going to ask you some questions regarding the marketing information of your firm with regard to medium-sized companies.”

*(Note: Probe for specific information such as:*

- *Does the firm have a formal marketing research unit?*
  - *Does the firm have information systems? In particular, check different aspects of marketing research activities:*
    - *Does the firm research marketing potential (with regard to medium-sized companies) - for existing offices?*
    - *Does the firm research marketing potential for new offices?*
    - *Does the firm conduct market share analysis with regard to medium-sized companies?*
    - *Does it research market characteristics?*
    - *Does it research client characteristics?*
    - *Does the firm research advertising effectiveness?*
    - *Does the firm research advertising media research?*
    - *Does the firm research advertising copy research?*
    - *Does it study new service acceptance and potential?*
    - *Does the firm conduct studies of competitors?*
    - *Does the firm conduct pricing studies?*
    - *Does the firm conduct studies on business trends?*
    - *Does the firm proactively assess medium-sized company clients' problems and attempts to help them find solutions?*
- If so, what/how do they do it?*

“What are your marketing policies with regard to medium-sized companies?”

*(Note: Probe the firm's attitude and practice in marketing:*

- *How important do fee-earners consider marketing/business development?*
- *How much time are fee earners/staff expected to spend on marketing and business development to current clients –e.g. finding client solutions? Potential clients?*
- *Would fee earners/staff of the firm take a quality complaint as a personal insult?*
- *Does the firm constantly seek to improve its total offering defined in terms of more value for its medium-sized company clients?*

- *Is it an important objective of the firm to provide a reliable high value-added service to its medium-sized company clients?*
- *Does the firm encourage feedback from its medium-sized company clients?*

*Probe the firm's posture towards its marketing policy towards medium-sized companies:*

- *What does it believe are superior quality and service to medium-sized companies?*
- *Who is involved in marketing/whose responsibility is marketing to medium-sized companies?*
- *Are prospective fee earners/staff selected on the basis of technical excellence only or also in terms of their marketing skills, service attitude?*
- *Are fee earners/staff in this firm are trained in communication, marketing, business development skills?*
- *Does the firm believe that the function of marketing is to sell the services that the firm produces or that a good professional service will sell itself?*
- *Does it believe that marketing can be damaging to a firm's professional reputation? Is marketing inconsistent with professional ethics?*

*Probe: Does firm provide marketing, business development training to fee earners/staff? How often? Who? Initially only or ongoing?*

*"Finally, I would like to ask you about your firm's marketing strategy and tactics when targeting medium-sized companies."*

*(Note: Probe for the following:*

- *Does the firm have a specific strategic plan and budget for targeting medium-sized companies? How large is the budget for medium-sized companies in comparison to the total budget?*

*Probe for the typology of marketing goals:*

- *Is the firm more or less interested in medium-sized companies than before? Why?*
- *Does the firm aim to defend and hold its current market share with medium-sized companies or to increase its market share?*
- *Does the firm intend to enter new medium-sized company client markets with the firm's existing services?*
- *Does it intend to develop new services for firm's existing market(s)?*
- *Does it intend to diversify into new areas involving both new services and new medium-sized company clients?*

*Probe the importance of tactical elements in marketing strategy:*

- *How important is the level of fees for medium-sized company clients?*
- *How important is technical services excellence?*
- *How important is the range of services provided?*
- *How important is the location and distribution of firms' offices?*
- *How important is professional reputation?*
- *How important is utilization of technology?*
- *How important are personal contacts of fee earners/staff?*
- *How important is the image of the firm?*
- *How important are specialist services for defined segments?*
- *What else do you deem important for medium-sized companies?*

*Probe the firm's marketing in the different stages of the buying process:*

- *Check if firm is aware of the buying process. If so:*
- *Does the firm use different marketing tactics in different stages of the medium-sized company buying process? How so?*
- *Does the firm attempt to identify the decision-makers and other members of the buying centre within medium-sized companies?*
- *Does the firm use different marketing tactics to different participants in the buying process?*

*Probe the firm's marketing instruments:*

- *What importance do the following instruments have for the firm with regard to medium-sized companies? (in the sense of effectiveness)*
- *Social contacts of fee earners/staff to medium-sized companies?*
- *Referrals? If so, who?*
- *Newsletters?*
- *Brochures?*
- *Directories? If so, which?*
- *Advertisements? If so, where?*
- *Web site?*
- *Blog(s)? If so, which?*
- *CRM (Client Relationship Management)? If so, how?*
- *Media relations? If so, which publications?*
- *Sponsoring of third-party events? If so, which events?*
- *Firm events (seminars, dinners etc.)?*
- *Speaking engagements? If so, where?*
- *Networking? If so, where?*
- *Pro-bono activities? If so, which?*
- *Give-aways/gifts? If so, what?*
- *RFPs (Requests for Proposals)? If so, how? Do they track wins?*
- *Internal communications/marketing? If so, how?*
- *Marketing/sales training of lawyers? If so, what? How often? Who?*
- *Marketing research/competitive intelligence? If so, which programmes?*
- *Client satisfaction surveys? If so, how?*

## **APPENDIX B**

### **Interview Guide for Medium-sized Company Clients**



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## INTERVIEW GUIDE FOR MEDIUM-SIZED COMPANY CLIENTS

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**Interviewer:** Silvia Hodges

**Date:**

**Respondent Code:**

This guide was designed for interviews to be conducted with decision makers in medium-sized companies, concerning buying legal services and being marketed to by legal services providers.

“Thank you for your time today (INTERVIEWEE). I wanted to visit with you today concerning how you purchase of legal services. In particular, I am interested how you are currently being marketed compared to how you would prefer to be marketed to by legal services provider firms.”

“I am especially interested in your behaviour in the different stages of the purchasing process and your expectations as well as likes/dislikes when it comes to being marketed to by legal services providers. With your permission I would like to record this interview for accuracy. I will also be taking notes along the way so that I might be able to address any other issues that may present themselves during the course of our interview.”

“Once again I wanted to assure you that all your comments from our conversation today are for the purposes of this study only. You do understand that I will be referencing specific comments made in the final report, my dissertation? You do understand this and agree to proceed with this interview?”

(RESPONDED IN AFFIRMATIVE/RESPONDED IN NEGATIVE) *(Note: If “Affirmative:” Thank you again for your willingness to be interviewed” proceed to questions. If “Negative” end interview and thank for consideration.)*

“I would like to start by asking you how you recognise your need for legal services.”  
(Note: Probe with regard to the process:

- *How do you become aware of legal needs? Is it more external or internal stimuli?*
- *How do you decide whether to solve the legal problem internally or buy legal services*
- *Do you want different things in different situations (hired gun, strategic partner etc.)? What? When?*
- *Do you frequently buy professional services - have some ‘expertise’ buying?*
- *Do you believe to have a clear understanding of their needs, i.e. what you want from their legal services provider?*
- *Who is typically involved in the need recognition? Top management? Purchasing? Other departments? Buying centre? One person alone? Does this change –e.g. more/less people involved in the beginning?*
- *Do you have expectations (conscious assumptions) and purchase goals when purchasing professional services? Do you expressed them openly to their legal services providers?*
- *Does the time you have available influence your behaviour in this stage?*
- *Does the type of service needed (e.g. in terms of risk, novelty for organisation – e.g. new task, modified rebuy, straight rebuy) influence your behaviour in*

*this stage?*

*Probe with regard to the wanted/helpful or unwanted/disturbing marketing activities in this phase:*

- *Which marketing instruments by legal services providers influence you in this phase? E.g. Newsletters, brochures, advertisement, directories, web sites, blogs, press articles (which type of publications), sponsoring at events, firm events (seminars, dinners etc.), speaking engagements, networking, pro-bono activities, give-aways/gifts, RFPs (Requests for Proposals), monitoring of opposing counsel?*
- *Which marketing instruments do you think are particularly wanted/helpful?*
- *Which ones do you find disturbing?*

*“Let me now ask you how you identify potential providers that could help you solve your legal problems.”*

*(Note: Probe with regard to the process:*

- *Do you look for (individual) lawyers or law firm?*
- *How do you identify individual lawyers or law firms?*
- *Where do you look for information?*
- *What kinds of lawyers or law firms do you consider initially?*

*Check:*

- *How many potential providers are you able to name unprompted (recall)?*
- *Are you aware of the specialisations of legal services providers? If not, how would you find out?*
- *How many top law firms (national/international) are you able to recognise?*
- *How many lawyers or law firms (=size of evoked set) do you take into consideration? Based on which criteria?*
- *Do you typically establish a ‘short list’ or initial consideration set?*
- *Who/how many people is/are involved in the information-gathering process?*
- *Who/how many people has/have information-gathering responsibilities?*
- *Who ratifies or rejects recommendations of others?*
- *Is the information search process structure/formalised or do you rely on instinct or accidental fit?*
- *Do you distinguish between legal service needs with greater/smaller perceived risk? Does the type of service needed (e.g. in terms of risk, novelty for organisation) influence your behaviour in this stage?*
- *Does this influence your likelihood to engage in information search?*
- *How long does the information search typically take? (Days? Weeks? Months?)*
- *Does time (available) influence your behaviour in this stage?*

*Probe with regard to the wanted/helpful or unwanted/disturbing marketing activities in this phase:*

- *Which marketing instruments by legal services providers influence you in this phase? E.g. Newsletters, brochures, advertisement, directories, web sites, blogs, press articles (which type of publications), sponsoring at events, firm events (seminars, dinners etc.), speaking engagements, networking, pro-bono activities, give-aways/gifts, RFPs (Requests for Proposals), monitoring of opposing counsel?*
- *Which marketing instruments do you think are particularly wanted/helpful?*

- Which ones do you find useless or uselessly intrusive?

“After identifying potential legal services providers, how do you evaluate the different options?”

(Note: Probe specifically:

- What are your criteria for evaluation?
- How important are the following possible criteria for you?
  - Management style fit (e.g. a centralised client company would seek a professional services provider with a structured approach for conducting the work)?
  - Size relative to client?
  - Accessibility of senior partners?
  - ‘Reasonableness’ of fees (what does that mean for them)?
  - Flexibility in terms of pricing practices (hourly rates, results-based etc.)?
  - Personal chemistry? (How do clients know if “chemistry is right”?)
  - ‘Bedside manners’/friendliness?
  - Ethics?
  - Diversity?
  - Credibility?
  - Professionalism?
  - Client-orientation?
  - Enthusiasm?
  - Willingness to listen?
  - Ability to meet deadlines?
  - Experience on similar projects? Industry? Medium-sized companies?
  - Knowledge (industry, area of practice, else)?
  - Firm capabilities?
  - Range of services (narrow or wide)?
  - Providing related services (e.g. accounting consulting offered in addition to legal services)?
  - Staff qualifications?
  - Reputation (“high esteem” – determined by whom?) Are reputation and quality different/the same?
  - Proximity/office location?
  - Appearance of the physical facilities?
  - What else?
- Which characteristics are most important?
  - Are the criteria similar to finding/identifying legal services providers, but (just) more rigorous (applying non-compensatory decision rule)?
  - Which are determinant, and which are ‘merely desirable’ attributes?
  - How many factors do you use in their assessment of their evoked set?
  - How do you assess criteria (e.g., quality, capability/competence by ‘hard’ criteria, such as prior experience and past performance)? What are ‘tangible cues’?
  - Are evaluation criteria and quality indicators similar?
- Do you consider short-listed firms as totally ‘equal’ in their ability and competence to perform the desired service(s), or rather to (just) meet minimum requirements, i.e. assumed them to be (generally) qualified to perform the required services?

- *Is the purchase of legal services driven by analysis and data, devoid of emotion? So, is objectivity paramount? Or more a mix of objective and emotional factors?*
- *When there is very little difference between qualifications of firms, are soft factors (e.g. personal chemistry) the deciding factor? Do you apply more subjective factors (using compensatory rules) to evaluate how much of a particular required attribute a firm possesses? How do you find reasons to eliminate/disqualify firms?*
- *Who in the company evaluates the market and the relationship with the current provider?*
- *Who is involved in establishing the evaluation criteria? Is the procurement department involved to establish guidelines for commercial arrangements?*
- *Does time (available) influence your behaviour in this stage?*
- *Does the type of service needed (e.g. in terms of risk, novelty for organisation) influence your behaviour in this stage?*

*Probe with regard to the wanted/helpful or unwanted/disturbing marketing activities in this phase:*

- *Which marketing instruments by legal services providers influence you in this phase? E.g. Newsletters, brochures, advertisement, directories, web sites, blogs, press articles (which type of publications), sponsoring at events, firm events (seminars, dinners etc.), speaking engagements, networking, pro-bono activities, give-aways/gifts, RFPs (Requests for Proposals), monitoring of opposing counsel?*
- *Which marketing instruments do you think are particularly wanted/helpful?*
- *Which ones do you find useless or intrusive?*

*“Then how do you select your legal services provider?”*

*(Note: Probe:*

- *Are legal service purchases more or less complex than material purchases? Why/why not?*
- *What criteria do you base the selection of service providers on?*
- *What was the primary reason for choosing the law firm you currently use?*
  - *How many/which criteria do you take into account when selecting a legal services provider?*
  - *Do you always look for ‘best quality’ or may ‘sufficient quality’ be sought?*
  - *What are quality cues?*
  - *What do base your selection upon when firms do not appear to differ?*
  - *How do you go about the selection when you have limited information only?*
  - *In markets with very few providers that are viewed as virtually equally capable, do you tend to take turns when selecting the firm?*
  - *Do you maintain formalised lists or ‘panels’ of preferred legal services providers?*
  - *Do you have ‘go to’ lists for certain legal matters?*
  - *How many legal services providers have you worked with in the last 12 months? Do you aim to work with fewer or more legal services providers? Why?*
- *How do you perceive risk involved when selecting a legal services provider? (financial risk, e.g. value for money; time risk, e.g. amount of time required for the purchase; psychosocial risk regards concerns about the negative*

- thoughts of oneself or of others if a poor choice is made)?*
- *How important is a safe choice (such as a top 'brand') for you in the sense that if the engagement does not work out, you can justify their choice?*
  - *How do you come to a selection decision? Does the selection result from an assessment of how well each firm rates on each of the determinant attributes? Does logic always prevail in your selections, free of favouritism and 'politics'?*
  - *Do you actively seek:*
    - *greater cost efficiencies (including discounts)?*
    - *a predictable budget?*
    - *more control over law firms?*
    - *stronger partnerships with your legal services providers or prefer to keep them at arms length?*
    - *What else?*
  - *What does 'added value' from a legal services provider mean? Do you negotiate price with legal services providers? Do you discuss "efficiency" with legal services providers? How do you define "efficiency"?*
  - *Have you switched legal services providers? If so, why?*
    - *What would make you decide to switch to another firm?*
    - *When you replaced or demoted one of their primary firms do you feel obligated to inform the firms of their reduced status?*
    - *Do you ever fire firms? When? How?*
  - *Do you select different firms for high stakes matters than for commodity work?*
  - *Do you distinguish between primary and secondary legal services providers? How?*
  - *Do you spend more money with primary than secondary legal services providers?*
  - *Is there a difference between firms that were not being rejected, but simply not being selected?*
  - *Who takes the selection decision?*
    - *Is it typically one person having sole decision-making authority (who?) or are decisions made by (several) members of a selection committee/buying centre (who?)? E.g. head of finance; head of accounting; head of legal department/in-house lawyer(s); head of purchasing?*
    - *Does the composition of this decision-making unit change over the course of a multistage selection process? Who is a buyer? Who an influencer? Who a gatekeeper?*
    - *Does senior management always participate in the final approval of legal services provider selection? Or just for high stakes matters?*
    - *Do people have different selection criteria? Which?*
    - *Who takes the ultimate decision?*
    - *Does the makeup of the decision-making unit differ according to the type of service being purchased?*
  - *Does time (available) influence your behaviour in this stage?*
  - *Does the type of service needed (e.g. in terms of risk, novelty for organisation) influence your behaviour in this stage?*

*Probe with regard to the wanted/helpful or unwanted/disturbing marketing activities in this phase:*

- *Which marketing instruments by legal services providers influence you in this phase? E.g. Newsletters, brochures, advertisement, directories, web sites, blogs, press articles (which type of publications), sponsoring at events, firm*

*events (seminars, dinners etc.), speaking engagements, networking, pro-bono activities, give-aways/gifts, RFPs (Requests for Proposals), monitoring of opposing counsel?*

- *Which marketing instruments do you think are particularly wanted/helpful?*
- *Which ones do you find useless or intrusive?*

“When already working with a firm, how do you evaluate the service?”

*(Note: Probe the following:*

- *Do you use objective as well as subjective criteria (what seems more important)?*
- *What criteria ultimately lead to an overall positive or negative evaluation?*
- *Are the criteria typically the same or do you change?*
- *What factors contribute to a quality image of a legal services firm?*
- *What do you expect from the ‘ideal’ legal services provider?*
- *Do you differentiate between ‘technical’ (what is delivered) and ‘functional’ (how it is delivered) quality? How do you assess quality of the outcome? How do you assess process quality?*
- *What are the key thing you expect from your legal services provider?*
- *What are the warning signals that indicate ‘things are in trouble’?*
- *How do you evaluate the service you received with regard to whether purchase goals were realised?*
- *What kind of relationship do clients seek with law firms?*
- *What do you want from their lawyers/that relationship?*
- *Do you evaluate law firms formally and/or informally? Who evaluates the service delivered?*
- *Does the type of service needed (e.g. in terms of risk, novelty for organisation) influence your behaviour in this stage?*

*Probe with regard to the wanted/helpful or unwanted/disturbing marketing activities in this phase:*

- *Which marketing instruments by legal services providers influence you in this phase? E.g. Newsletters, brochures, advertisement, directories, web sites, blogs, press articles (which type of publications), sponsoring at events, firm events (seminars, dinners etc.), speaking engagements, networking, pro-bono activities, give-aways/gifts, RFPs (Requests for Proposals), monitoring of opposing counsel?*
- *Which marketing instruments do you think are particularly wanted/helpful?*
- *Which ones do you find useless or intrusive?*

“Finally, what determines whether you and your organisation is eventually satisfied or dissatisfied with the legal services provider?”

*(Note: Probe:*

- *How do you determine satisfaction/dissatisfaction?*
- *What factors contribute to clients’ feelings of satisfaction or dissatisfaction with the service provided?*
- *Considering that professional services often lack “credence qualities” (i.e. attributes that you may find impossible to evaluate even after the service has been rendered, e.g. if a lawyer loses a lawsuit does that mean that the client was not well-represented?) also referred to as “performance ambiguity” = inability of client to measure the performance of a service product or inability to assess accurately the service product -how do you evaluate performance?*
- *Does satisfaction result from how well the actual service performance, i.e. the*

- service process and outcome, matches your expectations?*
- *Do you distinguish between:*
  - *equitable performance, which is a judgment regarding the performance one could reasonably expect given the cost and effort of obtaining the service?*
  - *ideal performance, which is what you really hoped the service would be?*
  - *expected performance, which is what the service would reasonably be?*
- *When you are satisfied with the service of a legal service firm, how likely/unlikely are you to recommend the firm/use the service again?*
- *What makes you go back to your legal services provider?*
- *What does your level of satisfaction/dissatisfaction depend on:*
  - *the degree of divergence between the expected outcome and actual outcome?*
  - *the importance of the discrepancy to the purchaser?*
  - *the degree to which the discrepancy can be corrected?*
  - *the cost of purchase in terms of time and money?*
  - *What else?*
- *Is it possible that you are not dissatisfied with your firms, but not satisfied either? What are 'satisfiers' ('motivators') and/or 'dissatisfiers' ('hygiene' factors) with regard to legal services?*
- *If you terminate contact with a law firms is it typically due to:*
  - *Budget pressures?*
  - *Consolidation of firms?*
  - *Desire for fresh legal strategies and new approaches?*
  - *Turnover of counsel (outside, inside or both)?*
  - *What else?*
- *Who determines satisfaction/dissatisfaction?*
- *Does the type of service needed (e.g. in terms of risk, novelty for organisation) influence your behaviour in this stage?*

*Probe with regard to the wanted/helpful or unwanted/disturbing marketing activities in this phase:*

- *Which marketing instruments by legal services providers influence you in this phase? E.g. Newsletters, brochures, advertisement, directories, web sites, blogs, press articles (which type of publications), sponsoring at events, firm events (seminars, dinners etc.), speaking engagements, networking, pro-bono activities, give-aways/gifts, RFPs (Requests for Proposals), monitoring of opposing counsel?*
- *Which marketing instruments do you think are particularly wanted/helpful?*
- *Which ones do you find useless or intrusive?*

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