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Closed shop versus one stop shop: the battle goes on

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Case: [Wouters v Algemene Raad van de Nederlandse Orde van Advocaten \(C309/99\) \[2002\] E.C.R. I-1577 \(ECJ\)](#)

***E.L. Rev. 618** *The Court of Justice in Wouters has ruled that the Netherlands Bar's prohibition on multidisciplinary partnerships (MDPs) between lawyers and accountants is compatible with Community law. It considered that there was no breach of Article 81 E.C. because any restriction on competition was in the public interest, and that there was no breach of Article 82 E.C. because the Bar did not constitute an undertaking or a group of undertakings. The purpose of this article is to analyse the judgment and its significance for the future of MDPs.*

Although the possibility of MDPs between lawyers and accountants has for some years been at the forefront of debate in Law Societies and Bars across the globe,¹ proponents of MDPs have recently suffered a number of potential setbacks. In July 2000, after a number of pro-MDP reports,² the American Bar Association (ABA) voted to retain its prohibition on MDPs.³ In late 2001, the American corporation Enron collapsed after accounts certified by its auditors, who were part of a firm which provided a range of other services to Enron, proved to be false. This reinforced concerns in some quarters that the independence of professional advisers could be compromised by the financial reliance and close personal relationships resulting from the provision of a comprehensive range of services to a client.⁴ As the Secretary General of the Council of the Bars and Law Societies of the European Union (CCBE) stated:

We're not trying to get glory out of Enron and the poor people affected, but that is exactly what we were warning. The integrity of a service, whether auditing or legal, is undermined if you've got pressure from other professions selling services across yours.⁵

***E.L. Rev. 619** The most recent potential setback to the cause of MDPs is the judgment of the Court of Justice in *Wouters, Savelbergh & Price Waterhouse Belastingadviseurs BV v. Algemene Raad van de Nederlandse Orde van Advocaten (Raad van de Balies van de Europese Gemeenschap, intervening)* (sometimes known as the NOVA case after the defendant, the Nederlandse Orde van Advocaten (Netherlands Bar)).⁶ It ruled that the prohibition by the Netherlands Bar of MDPs was compatible with Community law, and the purpose of this article is to analyse the judgment critically and assess its significance for the future of MDPs.

The national legal framework in the Netherlands

Article 134 of the Constitution of the Netherlands provided for the granting, to bodies governing the professions by or under statute, of statutory power to adopt regulations. Pursuant to this, Article 28 of the Advocatenwet (Law on the Bar) empowered the College van Afgevaardigen (College of Delegates) of the Netherlands Bar, which was elected at meetings of the various District Bars, to adopt regulations. It provided for these to be drafted by the Algemene Raad van de Nederlandse Orde van Advocaten (General Council of the Bar of the Netherlands), which could invite the Raden van Toezicht van de Orden in de Arrondissementen (Supervisory Boards of the District Bars) to submit their views. Pursuant to Article 28, the College of Delegates adopted the Samenwerkingsverordening (Regulation on Joint Professional Activity) 1993 ("the 1993 Regulation").

Article 4 of the 1993 Regulation permitted members of the Bar to enter into "professional partnership"

(defined by Article 1 as "any joint activity in which the participants practice their respective professions for their joint account and at their joint risk or by sharing control or financial responsibility for that purpose") only with members of the Bar registered in the Netherlands, certain other lawyers, and members of another professional category accredited by the General Council under Article 6. Article 6 provided for accreditation subject to three conditions. First, the exercise of the other profession must be conditional upon the possession of a university degree or equivalent. Second, the members of that profession must be subject to disciplinary rules comparable to those of the Bar. Third, entering into partnership with members of that other profession must be compatible with Articles 2 and 3 of the Regulation. Article 2 prohibited members of the Bar from being authorised to assume obligations which might jeopardise the free and independent exercise of their profession, including the partisan defence of clients' interests and the corresponding relationships of trust between lawyer and client. Article 3 prohibited them from being authorised to enter into any professional partnership unless the primary purpose of each partner's profession was the practice of the law. The recitals to the 1993 Regulation stated that members of the Bar had been authorised to enter into partnership with notaries, tax consultants and patent agents, but not accountants.

The facts and procedure before the national courts

Wouters, a member of the Amsterdam Bar, became a partner in Arthur Anderson & Co. Belastingadviseurs (tax consultants) in 1991. In 1994, he informed the Supervisory Board of the Rotterdam Bar of his intention to enrol at the Rotterdam Bar and to practice in ***E.L. Rev. 620** Rotterdam under the name "Arthur Anderson & Co., advocaten en belastingadviseurs". The Rotterdam Board ruled that Wouters was in breach of Article 4 of the 1993 Regulation because members of his partnership, Arthur Anderson & Co. Belastingadviseurs, were in professional partnership within the meaning of Article 1 of the 1993 Regulation with members of the partnership Arthur Anderson & Co. Accountants which included accountants. The Board also ruled that if Wouters entered into a partnership whose collective name included the name of the natural person "Arthur Anderson" he would be in breach of Article 8, which provided that the collective name of a professional partnership must not be misleading. The administrative appeal by Wouters, Arthur Anderson & Co. Belastingadviseurs and Arthur Anderson & Co. Accountants was dismissed by the General Council.

In 1995, Savelbergh, a member of the Amsterdam Bar, informed its Supervisory Board of his intention to enter into partnership with the private company Price Waterhouse Belastingadviseurs BV, a subsidiary of the international undertaking Price Waterhouse which included both tax consultants and accountants. The Amsterdam Board ruled that the proposed partnership was contrary to Article 4 of the 1993 Regulation. The administrative appeal brought by Savelbergh and Price Waterhouse Belastingadviseurs BV was dismissed by the General Council.

The appellants in both cases appealed to the Rechtbank. It declared inadmissible the appeals bought by Arthur Anderson & Co. Belastingadviseurs and Arthur Anderson & Co. Accountants, and dismissed as unfounded those bought by Wouters, Savelbergh and Price Waterhouse Belastingadviseurs BV. It ruled, first, that the Netherlands Bar was not an association of undertakings under Article 81 (ex 85) E.C. or an undertaking or association of undertakings occupying a collective dominant position contrary to Article 82 (ex 86) E.C. Second, Article 28 of the Advocatenwet was not incompatible with the duty of Member States under Article 10 (ex 5) E.C. to abstain from any measure which could jeopardise the attainment of the objectives of the E.C. Treaty, because it did not transfer any powers to private competitors in such a manner as to undermine the effectiveness of Articles 81 and 82 E.C. Thirdly, the 1993 Regulation was compatible with the right of establishment in Article 43 (ex 52) E.C. and the freedom to provide services in Article 49 (ex 59) E.C. because there was no cross-border element in the present cases and, in any event, the prohibition on lawyer-accountant partnerships was justified by overriding reasons relating to the public interest and was not disproportionately restrictive.

The five appellants appealed to the Raad van State, and the CCBE was granted leave to intervene in support of the Netherlands Bar. The Raad van State confirmed that the appeals by Arthur Anderson & Co. Belastingadviseurs and Arthur Anderson & Co. Accountants were inadmissible, but referred to the Court of Justice a number of questions on the interpretation of Community law.

The judgment of the Court of Justice

The Bar was subject to Article 81 E.C.

The Court ruled that the Bar was an association of undertakings. It was therefore subject to Article 81 E.C., which prohibited, *inter alia*, decisions by associations of undertakings which might affect trade between Member States and which had as their object or effect *E.L. Rev. 621 the prevention, restriction or distortion of competition within the common market. First, members of the Bar were undertakings, a concept which covered any entity engaged in an economic activity, regardless of its legal status and standing.⁷ Since members of the Bar offered legal services for a fee, and bore the related financial risks, they were undertakings for the purposes of Articles 81, 82 and 86 (ex 91) E.C., regardless of the complexity of the services and the regulation of their practice.⁸ Second, the Bar acted as an association of undertakings and not as a public authority in adopting the 1993 Regulations, because it was not exercising typical public authority powers but acting as the regulatory body of a profession. Its governing bodies were elected solely by the profession without government intervention, it was not obliged to consider the public interest, and the prohibition on MDPs in the 1993 Regulation regulated an economic activity.

The Court was clearly correct to examine the substance rather than the form of the Netherlands Bar and the 1993 Regulation, and to reject the argument that the public law framework in which the Bar was constituted and the possibility of it acting in the public interest rendered Article 81 E.C. inapplicable. Since any restrictions on competition could undermine the single market, the ambit of competition law should be construed widely and exemptions from it correspondingly narrowly.⁹ As the Court acknowledged, rules made by a professional association under delegated powers would remain State measures and hence outside Article 81 E.C. where that State required the rules to comply with the public interest, defined the public interest criteria, and retained State power to adopt decisions in the final instance. Member States thus have the option of retaining competence in regulating professional conduct, an option exercised by Germany.

The 1993 Regulation did not breach Article 81(1) E.C.

The Court held that the 1993 Regulation adversely affected competition contrary to Article 81(1) E.C. because the prohibition on MDPs between members of the Bar and accountants was liable to limit production and technical development. First, legal services frequently required recourse to an accountant, MDPs would make it possible to offer a wider range of services, and clients would be able to take advantage of a “one-stop shop” for a large part of the services necessary to their business. Second, MDPs would be capable of meeting the need for continuous adaptation to national and international legislation resulting from increasing globalisation. Third, economies of scale resulting from MDPs might have positive effects on the cost of services. Although unlimited authorisation of MDPs between the generally decentralised legal profession and the highly concentrated accountancy profession¹⁰ could decrease competition in legal services, the preservation of sufficient competition could be guaranteed by measures less restrictive than the 1993 Regulation, which prohibited any form of MDP between lawyers and accountants regardless of the size of firms involved.

*E.L. Rev. 622 The Court also held that the 1993 Regulation was capable of affecting trade between Member States, because a decision applicable to the whole of a Member State inevitably reinforced the partition of markets on national lines.¹¹ This effect was particularly appreciable because the 1993 Regulation applied equally to visiting lawyers, the legal regulation of transnational transactions had increased, and the firms of accountants seeking to form MDPs with lawyers were generally international groups present in several Member States.

It is scarcely surprising that the Court concluded that a ban on a particular type of business organisation was liable adversely to affect competition and trade between Member States. What is surprising is that it proceeded to conclude that the ban did not breach Article 81(1) E.C. because the Netherlands Bar was entitled to conclude that its members might be unable to advise and represent their clients independently and confidentially if they belonged to an organisation which also produced and certified the accounts of transactions in respect of which their services were provided. The Court noted that MDPs were permitted in Germany because accountants there were subject to a rule of professional secrecy equivalent to that imposed on lawyers.¹² However, in the Netherlands, lawyers were subject to duties to act for clients in complete independence and in their sole interest, to avoid all risk of conflict of interest, and to observe strict professional secrecy, whereas accountants were not bound by a rule of comparable professional secrecy because they had to examine and audit clients' accounts objectively in order to inform third parties of the reliability of those accounts.¹³

This reasoning does not justify the conclusion that the ban did not breach Article 81(1) E.C. Article 81(1) E.C. prohibits, *inter alia*, decisions of associations which adversely affect competition and which might affect trade between Member States. Therefore, once the Court had concluded that the 1993 Regulation was such a decision, Article 81(1) E.C. gave no scope for a finding that there had been no breach. Questions of justification could arise only under Article 81(3) E.C. As Advocate General Léger stated, consideration under Article 81(1) E.C. not only of whether competition was restricted, but also of whether the restriction might be justified was "liable to negate a great part of the effectiveness of [Articles 81(3) and 86(2)]".¹⁴ Even if the public interest was relevant to the application of Article 81(1) E.C., it would be disproportionate to prohibit all partnerships between lawyers and accountants on this ground.

***E.L. Rev. 623** The Advocate General reached the same ultimate conclusion as the Court, but by a different route. He concluded that Article 81(1) E.C. did not apply because of Article 86(2) E.C., which provided that undertakings entrusted with the operation of a service of general economic interest were subject to the competition rules of the E.C. Treaty only in so far as those rules did not obstruct the performance of their tasks. He argued that lawyers performed services essential to a State governed by a rule of law, and that these would be threatened if lawyers' independence was not guaranteed by the prohibition on MDPs. However, it is submitted that it would be lack of independence from the State rather than from other professionals which would threaten the rule of law, and therefore the application of competition law would not prejudice the provision of legal services. As the Court accepted, Article 81 E.C. should be capable of being applied to the provision of legal services.

The Bar of the Netherlands was not subject to Article 82 E.C.

The Court of Justice ruled that Article 82 E.C. was inapplicable to the Bar because, although the 1993 Regulation regulated economic activity, the Bar itself did not carry out an economic activity and was therefore not an undertaking within the meaning of Article 82 E.C. Nor could it be categorised as a group of undertakings, because its members were not sufficiently linked to each other to adopt the same conduct on the market and thereby eliminate competition between them.¹⁵ In any event, since the members of the Bar accounted for only 60 per cent of turnover in the legal services sector in the Netherlands, and that figure was made up of a large number of law firms, they could not be regarded as occupying a collective dominant position under Article 82 E.C.¹⁶

While it is indisputable that the Bar did not carry out an economic activity, the conclusion that its members were insufficiently linked to constitute a group of undertakings merits further consideration. It could be argued that the members of the Bar adopted the same conduct in that they all complied with the 1993 Regulation and therefore did not form MDPs, and that as a result competition between law firms and MDPs was eliminated. However, as the relevant market must be the provision of legal advice, and members of the Bar continued to compete in these, the conclusion of the Court is correct.

The 1993 Regulation did not breach Articles 43 or 49 E.C.

The Court ruled that the prohibition on MDPs in the 1993 Regulation was, in principle, contrary to the right of establishment in Article 42 E.C. and the freedom to provide services in Article 49 E.C. However, it was justified under these Articles as under Article 81 E.C., as being necessary for the practice of the legal profession as organised in the Netherlands. The same criticisms of this approach apply as outlined above.

****E.L. Rev. 624 The significance of the judgment for the existence of MDPs***

While a ruling that the Netherlands Bar's rules were incompatible with Community law would have obliged it and potentially many other European Bars¹⁷ to repeal their prohibition on MDPs, the only immediate significance of the judgment is that these prohibitions need not be repealed and the status quo can continue. Countries such as Germany which currently permit MDPs between lawyers and accountants can therefore continue to do so. However, although countries such as the Netherlands can continue to prohibit them, the CCBE, which declared its opposition to MDPs long before this judgment,¹⁸ has recommended that all bars and law societies review their professional rules because of the confirmation in the judgment that these rules can be subject to competition law.¹⁹

It is unlikely that the judgment will significantly reduce the pressure for MDPs to be permitted. First, it will not affect the views of those lawyers and accountants who regard MDPs as a promising business

opportunity.²⁰ Although lawyers whose predominant motivation is fear of the threat from accountants may feel this threat to be less immediate, it has certainly not disappeared. Andersen Legal worldwide managing partner Tony Williams has been quoted as saying that:

[The judgment] will not stop us practising law in the Netherlands, or anywhere else around the world.²¹

Second, the judgment is unlikely to influence those jurisdictions outside Europe where MDPs are permitted (for example, Washington DC,²² Ontario²³ and New South Wales²⁴) or are being considered (for example, Canada,²⁵ Australia²⁶ and New Zealand²⁷).

Third, moves by the Law Society of England and Wales ("the Law Society") towards a *E.L. Rev. 625 lifting of its prohibition on MDPs²⁸ also seem unlikely to be checked, not least because the Office of Fair Trading in the United Kingdom supports MDPs as a method of stimulating competition, and believes that their prohibition restricts competition.²⁹ Janet Paraskeva, Law Society chief executive, has been quoted as saying

[The Netherlands Bar] is not required by statute to take its decisions in the public interest. We support the principle of MDPs as part of our commitment to improve access to legal services and choice for customers.³⁰

Finally, the World Trade Organisation (WTO), which is examining whether the advantages of MDPs are offset by their risks for ethics and the competitive structure of the legal market,³¹ is likely to focus on how, rather than whether, MDPs can be regulated so as to balance ethical rules with the effective enforcement of competition. The secretary to the WTO's Council on Trade in Services has suggested that bans on MDPs are "slightly unrealistic".³²

The significance of the judgments for the regulation of MDPs

The potential problems with MDPs highlighted by the Court of Justice must be addressed by any jurisdiction which permits them. First, there is the issue of confidentiality. In an MDP, the duty of confidentiality could vary among partners according to their profession. Complete harmonisation is unlikely to be possible because of the inherent conflict between lawyers' duties of secrecy and legal privilege on the one hand and, for example, the duty of accountants to disclose to the authorities information relating to tax evasion on the other. However, a duty on all MDP members in relation to legal work appears to be feasible; in *HRH Prince Jefri Bolkiah v. KPMG (a firm)*³³ the House of Lords ruled that accountants offering litigation support services incurred similar obligations of confidentiality to those imposed on solicitors.³⁴ In relation to enforcement, the Paris Court of Appeal has held that the Paris Bar cannot require the non-lawyers in an accountancy firm with a legal arm to comply with its ethics rules,³⁵ and the Law Society has received Counsel's Opinion indicating a similar problem in relation to its powers.³⁶ It may therefore be necessary for the powers of the relevant Law Society or Bar to be amended to encompass *E.L. Rev. 626 all member of an MDP, or for such duties to be enforced by a dedicated MDP regulator.

A particular problem with confidentiality is that MDPs could threaten legal privilege, which affords complete confidentiality to certain communications with lawyers. For example, in England and Wales, privilege covers all communications between a client and his solicitor which are for the purpose of giving or receiving legal advice³⁷ or for the predominant purpose of litigation.³⁸ The extent of privilege varies from jurisdiction to jurisdiction³⁹; for example, the Union Internationale des Avocats has called for privilege to override any obligations to report criminal activity,⁴⁰ a position not possible in the United Kingdom because of legislation designed to outlaw money laundering.⁴¹ However, it is likely to be the case in most jurisdictions that communications between a client or a solicitor and a non-lawyer member of an MDP would be privileged in far fewer circumstances, and both clients and non-lawyer members must be made aware of the position.

Secondly, there is the issue of independence. However, this is a problem for single disciplinary partnerships and there is no evidence that pressure to refer a client to fellow partners rather than a third party has compromised lawyers' independence in such partnerships. The rules developed in the context of such partnerships where there is a conflict of interest between clients can also be applied to MDPs. Members of an MDP should therefore not act for a client whose interests conflict with those of another client, unless one is no longer a client and either that former client consents or there is no real risk of confidential information relating to it being communicated to MDP members advising the current client.⁴²

In addition to threats to confidentiality and independence, MDPs could also threaten clients' financial protection. For example, in England and Wales, solicitors' clients are protected financially by stringent rules applicable to client money held by a solicitor,⁴³ schemes of compulsory insurance and compensation to protect clients in the event of a solicitor's negligence or dishonesty⁴⁴ and the review of solicitors' costs.⁴⁵ The protection *E.L. Rev. 627 afforded to clients of other professions is often less and would therefore need to be increased where an MDP is involved.

In England and Wales, the Law Society has approved MDPs in principle, provided that the necessary safeguards to protect the public interest are put in place. As an interim model it proposes "Legal Practice Plus" which would allow solicitors' firms to have a minority of non-solicitor partners who would be registered through a contract with the Law Society designed to ensure that they are fit and proper people, and would have to agree to submit to the Law Society's regulatory powers and observe the rules of conduct. There would be additional Multi-Disciplinary Practice Rules, but the Law Society has not yet indicated their content. The solicitor partners would be required to supervise the other partners and ensure their compliance with these obligations. The solicitors must have ultimate control and must be in a numerical majority except in the case of two partner firms.⁴⁶ This would provide certain of the client safeguards relating to confidentiality, conflicts and finance discussed above. The exact nature of the safeguards remains to be clarified, but it appears that they will be "satisfactory" rather than full⁴⁷ and, in respect of privilege, "unlikely [to] result in a cast iron guarantee".⁴⁸ Although the exact level of protection in MDPs will inevitably vary between jurisdictions, it is evident that some lessening of overall protection is likely. The question is whether this loss is offset by the gain for clients in being able to use a one-stop shop service.

Conclusion

Although the *Wouters* judgment makes the introduction of MDPs across Europe unlikely in the short term, it will do nothing to discourage them elsewhere, and indeed the threat of professional regulation being subjected to competition law may result in less wideranging prohibitions being introduced in Europe. If the Law Society lifts its prohibition on MDPs in England and Wales, the large number of English law firms with a pan-European reach may also begin to exert pressure on other European Law Societies and Bars to relax their bans.

The question in the long term is therefore likely to be not whether MDPs should be allowed, but how the regulatory issues should be handled. On the basis of the models adopted in Washington DC, Ontario and New South Wales, compulsory compliance by all MDP members with all or some of the lawyers' practice rules would seem the most popular option. The battleground between lawyers and accountants therefore looks set to move to the discrepancies between their respective practice rules.

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E.L. Rev. 2002, 27(5), 618-627

^{1.} See, for example, the Canadian Bar Association *Resolution 00-03-A Multi-Disciplinary Practices*, (2000) August and *Resolution 00-01-M Multi-Disciplinary Practices* (2001) February, both at <http://www.cba.org/>; The Law Society of England and Wales *Multi-Disciplinary Partnerships: Why? Why not?* (1998) October, http://www.lawsociety.org.uk/dcs/third_tier.asp?section_id=893; The Association of Corporate Counsel of America *Policy Statement of the Board of Directors on Multidisciplinary Partnerships* (1999) 6 February <http://www.acca.com/gcadvocate/multi.html> and the Law Council of Australia (1999) *Policy Statement on Multi-Disciplinary Partnerships* <http://www.lawcouncil.asn.au/mdppol.htm>.

^{2.} See, for example, ABA Commission on Multidisciplinary Practice *Recommendations and Report* (1999) August: <http://www.abanet.org/cpr/mdpfinalreport.html>.

^{3.} ABA Commission on Multidisciplinary Practice *Recommendations and Report* (2000) July: <http://www.abanet.org/cpr/mdpfinalrep2000.html>.

^{4.} See, for example, the Disney Corporation's rejection of a proposal to use the same firm to provide its auditing and consulting services (AccountingWEB "Disney to Split Audit and Consulting Firms Despite Shareholder OK" (2002) 21 February: www.accountingweb.co.uk).

^{5.} Jonathan Goldsmith quoted in J. Cahill "MDPs suffer European setback" (2002) 16(9) *The Lawyer* 2. See also the Note for the informal Ecofin Council at Oviedo 12 & 13 April 2002 and Accounting WEB "Audit Survey Enron--UK reactions and remedies" (2002) May <http://www.accountingweb.co.uk> which indicated that 49% of auditors and 54% of accountants in practice thought that the Enron collapse proved that auditors were too involved with their clients.

- 6. Case C-309/99, judgment of February 19, 2002.
- 7. Case C-41/90, *Höfner and Elsner v. Macrotron* [1991] E.C.R. I-1979; [1993] 4 C.M.L.R. 306, para. 21.
- 8. Joined Cases C 180-184/98, *Pavlov and others v. Stichting Pensioenfonds Medische Specialisten* [2000] E.C.R. I-6451; [2001] 4 C.M.L.R. 30, para. 77.
- 9. See, for example, Joined Cases 56 and 58/64, *Établissements Consten SA and Grundig GmbH v. Commission* [1966] E.C.R. 299; [1966] C.M.L.R. 418.
- 10. See, for example, Decision 1999/152 [2000] O.J. L93/1, as amended by Regulation 1310/97 [1997] O.J. L180/1.
- 11. See, for example, Case 8/72, *Vereeniging van Cementhandelaren v. Commission* [1972] E.C.R. 977; [1973] C.M.L.R. 7, para. 29.
- 12. See further Heike Lorcher, international director of the German Federal Bar, quoted in J. Cahill, *op. cit.* n. 5 and the Note for the informal Ecofin Council, *op. cit.* n. 5 identifying the conflicts raised when other services were provided concurrently with audit services (at 2) or investment advice (at 5). The Accounting WEB survey, *op. cit.* n. 5, indicated that 20 per cent of auditors strongly supported a ban on the provision of audit and non-audit services and 45 per cent strongly supported the separation of the audit function from other services offered by a firm.
- 13. See also Commission Recommendation 2001/6942 on Statutory Auditors' Independence in the EU: A Set of Fundamental Principles, not yet published, which states that an auditor may not act if this independence is compromised by other relationships with the client, including the provision of non-audit services; and the Commission Green Paper "The role, the position and the liability of the statutory auditor within the European Union" [1996] O.J. C321/1.
- 14. At paras 104-5.
- 15. Case C-96/94, *Centro Servizi Spediporto v. Spedizioni Marittima del Golfo* [1995] E.C.R. I-2883; [1996] 4 C.M.L.R. 613, paras 33 and 34.
- 16. See also Joined Cases C-68/94 and C-30/95, *France and Others v. Commission* [1998] E.C.R. I-1375; [1998] 4 C.M.L.R. 829, para. 226.
- 17. See CCBE *Internal working document*; National Situations regarding Multidisciplinary Partnerships--Table based on information given by the CCBE national delegations, 6 December 1999.
- 18. CCBE *Position on Integrated Forms of Co-operation between Lawyers and Persons outside the Legal Profession*, adopted in Athens on 12 November 1999, <http://www.ccbe.org/uk/homeuk.htm>.
- 19. CCBE *Analysis of the NOVA 1 judgments and guidance to Bars on professional rules following the NOVA 1 judgments*, May 2002, http://www.ccbe.org/Documents/En/analysisguidance_en.pdf.
- 20. See, for example, A. Darnill "Ignore them at your peril" (1997) 120 (1248) *Accountancy* 40; N. Rose "Meeting with the enemy" (1998) 26 May *Law Society Gazette* 10; and J. Bloom "The one-stop shop service" (1998) 19 February *Accountancy Age* 15.
- 21. J. Cahill *op. cit.* n. 5.
- 22. Rule 5 of the Rules of Professional Conduct of the District of Columbia Bar http://www.dcbar.org/attorney_resources/Rule5.pdf.
- 23. By-law 25 of Law Society of Upper Canada http://www.lsuc.on.ca/services/bylaw_25.jsp.
- 24. Canadian Bar Association *Resolution 00-03-A Multi-Disciplinary Practices* and *00-01-M Multi-Disciplinary Practices*, *op. cit.* n. 1.
- 25. New South Wales Law Society "solicitors' rules: changes provide more opportunities for MDPs" (1999) 37(11) *Law Society Journal* (NSW) 86.
- 26. Law Council of Australia, (1999) *Policy Statement on Multi-Disciplinary Partnerships*, <http://www.lawcouncil.asn.au/mdppol.htm> and Law Council of Australia National Profession Taskforce Multidisciplinary Practice Working Group, (2000) *Multi-Disciplinary Partnerships: Legal Professional Privilege and Conflict of Interest*, September, <http://www.lawcouncil.asn.au/finaloc.pdf>.
- 27. New Zealand Law Society Multi-disciplinary Practices Committee, (2000) *Multi-Disciplinary practices and other related matters*, April.

28. See the Law Society, *op.cit.* n. 1 and *Multi-Disciplinary Partnerships: Proposals for the way forward* (1999) 13 October, and the Law Society Multi Disciplinary Practice Working Party *Multi-Disciplinary Practices: Interim Report* (2000) 23 June, *Multi-Disciplinary Practices: Third Interim Report* (2000) 7 December, and *Multi-Disciplinary Practices: Fourth Interim Report* (2001) 15 March, all at http://www.lawsociety.org.uk/dcs/thirdtier.asp?section_id=3169&Caller_ID.
29. Director General of Fair Trading *Competition in professions* (2001) March (London, OFT), <http://www.oft.gov.uk/html/research/reports/oft328.htm> and the Office of Fair Trading *A Review of Competition Restrictions in the Professions: A Consultation Document* (2000) May <http://www.oft.gov.uk/html/new/professions5-00.htm>.
30. J. Cahill, *op. cit.* n. 5.
31. WTO Secretariat of the Council for Trade in Services (1998) *Legal Services: Background Note*, 6 July, http://www.wto.org/english/tratop_e/serv_e/w43.doc.
32. N. Rose "Trade official clears MDP path" (1998) 23 September *Law Society Gazette* 6.
33. [1999] 2 A.C. 222.
34. See further Institute of Chartered Accountants in England and Wales (2000) *Conflicts of Interest and Confidentiality* TECH 4/00, <http://www.icaewmembers.co.uk/documents/techpdf/2000/tech/tech04-00.pdf>.
35. V. Pawsey "PwC triumphs against Paris bar in landmark MDP ruling" (2001) 15(5) *The Lawyer* 2.
36. Law Society Multi-Disciplinary Practice Working Party *Multi-Disciplinary Partnerships: Fourth Interim Report*, *op. cit.* n. 28.
37. See, for example, *Hellenic Mutual War Risks Association (Bermuda) Ltd v. Harission (The Sagheera)* [1997] 1 Lloyd's Rep. 160 and *Guinness Peat Properties v. Fitzroy Robinson Partnership* [1987] 1 W.L.R. 1027.
38. See, for example, *Waugh v. British Railways Board* [1980] A.C. 521; [1979] 2 All E.R. 1169.
39. See further Case 155/79, *Australian Mining and Smelting Europe Limited v. Commission* [1982] E.C.R. 1575; [1982] 2 C.M.L.R. 264, paras 19-21.
40. J. Ames "Charter conflicts with UK regulations on privilege issues" (2001) 6 September *Law Society Gazette* 4.
41. However, see *R v. Special Commissioner ex parte Morgan Grenfell and Co.* [2002] UKHL 21; [2002] 3 All E.R. 1 in which the House of Lords ruled that privilege applied not only to documents held by a taxpayer's legal advisers, but also to originals or copies of the same documents held by the taxpayer.
42. See, for example, *Re a Firm of Solicitors* (1995) [1997] Ch. 1; [1995] 3 All E.R. 482; *Re a Firm of Solicitors* (1992) [1992] Q.B. 959; [1992] 1 All E.R. 353 and *Carindale v. Astill* (1993) 115 A.L.R. 112. Chinese Walls may be effective to prevent such communication, particularly where they are part of the fabric of the organisation, rather than created ad hoc (*HRH Prince Jefri Bolkiah v. KPMG (a firm)*, *op. cit.* n. 33) and result in those possessing information as a result of acting for a former client being physically separated from those acting against the former client (*Young and others v. Robson Rhodes* [1999] 3 All E.R. 524).
43. ss.32-34 of the Solicitors' Act 1974 and the Solicitors' Account Rules 1998.
44. The Solicitor's Indemnity Insurance Rules 2000 and s.36 and Sched. 2 of the Solicitors Act 1974.
45. The Solicitors' (Non-Contentious Business) Remuneration Order 1994 S.I. 1994/2616 and ss.64-72 of the Solicitors' Act 1974.
46. Law Society Multi Disciplinary Practice Working Party *Multi-Disciplinary Practices: Interim Report* and *Multi-Disciplinary Practices: Third Interim Report*, *op. cit.* n. 28.
47. Law Society Multi Disciplinary Practice Working Party *Multi-Disciplinary Practices: Third Interim Report*, *op. cit.* n. 28 at 4.21.
48. Law Society Multi Disciplinary Practice Working Party *Multi-Disciplinary Practices: Third Interim Report*, *op. cit.* n. 28 at 4.24.

