WHISTLEBLOWING ON THE LAWYERS CARTEL: AN ANALYSIS OF ANTI-COMPETITIVE TRADE PRACTICES IN THE MALAWIAN LEGAL PROFESSION.

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Abstract

Competition Law is mainly concerned with promoting consumer welfare. Competition Law aims at encouraging competition by prohibiting anti-competitive trade practices. The Competition and Fair-Trading Act prohibits certain horizontal practices i.e., certain arrangements or agreements between firms that are in actual or potential competition. Among other things, the Competition and Fair-Trading Act prohibits price fixing and other arrangements that have a substantial negative impact on competition. This paper argues that there are a number of trade practices in the Malawian Legal Profession which violate provisions of the Competition and Fair-Trading Act. More specifically, the paper argues that The Scale and Minimum Charges Rules are anti-competitive because they prescribe the fee or minimum fee that Legal Practitioners can charge for certain specified services. The paper argues that this is a form of price fixing that affects consumer welfare; therefore, contravenes the Competition and Fair-Trading Act. The paper further argues that the complete prohibition of advertisement and touting in the Malawian Legal Profession is anti-competitive and violates provisions of the Competition and Fair-Trading Act.

Keywords: Competition Law, Competition and Fair-Trading Act, Malawi, Legal Profession, Scale and Minimum Charges, Advertisement, Touting, Competition, Price-Fixing, Anti-competitive

1. Introduction

The advantages of competition cannot be overemphasized. Competition between firms leads to better quality products and services, better prices for the consumers and helps in fostering innovation. The importance of competition has led to the passing of legislation aimed at promoting competition and preventing anti-competitive practices in different countries.

This paper looks at some of the rules, practices and conduct within the Malawian Legal Profession and how they relate to Competition Law. Firstly, the paper looks at the economics behind competition law. Secondly, an exposition of Malawian competition

law principles related to horizontal practices is conducted. Thirdly, the paper provides an exposition of some of the rules in the Legal Profession which have a nexus to Competition Law. Lastly, the paper conducts a critical analysis of the said rules in order to establish whether they violate principles of competition law

2. Understanding the Economics Behind Competition Law

Generally, the aim of Competition Law is to safeguard the process of competition between firms. Firms, in a free market economy, prioritise their self-interest by aiming at making the highest profit possible for their proprietors or shareholders.[1] The presence of competition between the firms leaves them with no option but to be more innovative, improve the quality of the goods or services being offered and/or lower the prices of their products and services so that they can get more business than their competitors.[2]

Competition between firms is important because it promotes 'consumer welfare'. Consumer welfare is the primary goal of Competition Law.[3] "Consumer welfare is a measure of benefits derived from the consumption of goods and services, less the costs incurred in providing them. Consumer welfare increases with lower prices and better quality products. It also increases with a greater variety of products, as more consumers will then have products that more closely match their needs".[4] When, due to competition, goods and services are distributed or allocated to consumers based on the consumers' ability to pay, consumer welfare is maximized. In the long run, what follows is a scenario where the price of a service or good is equal to its marginal cost i.e. the cost of having one additional unit produced. This concept is called allocative efficiency.[5]

Now consider the opposite of the above scenario. A situation where there is no competition in the market. Here is what would most likely follow: higher prices for

[1] Kelly, Luke et al. *Principles of Competition Law in South Africa: Commercial Law*. Cape Town: Oxford University Press, 2017.

[2] Ibid

[3] Ibid

[4] Ibid at page 21

[5] Ibid

goods and services, little to zero innovation, poor quality products and services and fewer choices for the consumers.[6] A market controlled by a monopolist is a perfect example of this scenario. Picture a market where there is only one firm supplying goods or services. The said firm would have no incentive to innovate or improve on service delivery. The firm would raise prices with impunity and the quality of the goods or services would likely be substandard. Good examples of monopolies in Malawi would be the Electricity Supply Corporation of Malawi (ESCOM) and the Blantyre Water Board (BWB). The former being a monopoly in the supply of electricity in Malawi and the latter being a monopoly in the supply of potable water in the city of Blantyre. Consumer complaints concerning increasing tariffs or poor customer service usually fall on deaf ears. These two institutions are aware that they have no competition, therefore, a reduction in market share is very unlikely.

3. An Exposition of Competition Law Principles Related to Horizontal Practices

Malawi's Competition and Fair-Trading Act, 1998 ('the Act') came into force on 1st April 2000. The Act aims at encouraging competition by prohibiting anti-competitive trade practices, regulating and monitoring monopolies and concentration of economic power, protecting consumer welfare, strengthening the efficiency of the production and distribution of goods and services, securing the best possible conditions for the freedom of trade and to facilitate the expansion of base entrepreneurship.[7] The Act also establishes the competition and fair trading commission ('the Commission'). The general functions of the Commission are to regulate, monitor, control and prevent acts or behaviour which are likely to adversely affect competition and fair trading in Malawi.[8]

The main Competition Law area that this paper is concerned with is horizontal practices i.e. relationships between firms that are in real or potential competition. The Act provides for two different methods of prohibiting certain horizontal practices

[6] Ibid

[7] The chapeau of the Competition and Fair-Trading Act 1998, Laws of Malawi, cap 49:02.

[8] Ibid. Section 8(1).

between competitors. It provides for what can be deemed as a *'per se'* prohibition and a 'rule of reason' prohibition.

The *per se* prohibition is a strict prohibition of certain (usually specified) conduct or agreements by competitors or potential competitors. In dealing with *per se* prohibition cases, there is rarely a need for the party alleging violation to show the impact of the alleged conduct on the economy or competition and neither is the violating party allowed to show the pro-competitive effects of the conduct. The *per se* prohibition was well justified by the Supreme Court of America in *Northern Pacific Railway v United States*[9] as follows:

> *'there are certain agreements or practices which because of their pernicious effect on competition and lack of any redeeming virtue are conclusively presumed to be unreasonable and therefore illegal without elaborate inquiry as to the precise harm they have caused or the business excuse for their use. This principle of per se unreasonableness not only makes the type of restraints which are proscribed by the Sherman Act more certain to the benefit of everyone concerned, but it also avoids the necessity for an incredibly complicated and prolonged economic investigation into the entire history of the industry involved, as well as related industries, in an effort to determine at large whether a particular restraint has been unreasonable - an inquiry so often wholly fruitless when undertaken.'*[10]

The rule of reason prohibition, on the other hand, is where certain practices or agreements between competitors are prohibited if they are capable of having a substantial impact on competition and the economy and they do not have a pro-competitive value that would outweigh their anti-competitive effects. For practices or agreements to be found in contravention of this kind of prohibition, in most cases, the court would have to analyse the pro-competitive and anti-competitive effects of the conduct, agreement or concerted practice, define the market affected by the practice

[9] Northern Pacific Railway v United States 356 US 1 (1958) 5.

[10] Ibid

or agreement, assess the market powers of the parties and assess the justification of the parties for entering into the agreement or engaging in the practice.[11]

Section 33(3) of the Competition and Fair Trading Act provides for a *per se* prohibition of price-fixing by enterprises engaged in rival or potentially rival activities if the said enterprises are monopolies of two or more manufacturers, wholesalers, retailers, contractors or suppliers of services.[12] This provision labels this act of price-fixing by monopolies as an offence.[13] Any form of price-fixing that is aimed at reducing competition done by monopolies in real or potential competition would easily be caught by this provision. This can be contrasted with a rule of reason prohibition found in section 32(2)(g) of the Act. Section 32(2) provides that enterprises are to refrain from trade agreements of fixing prices if that would limit access to markets or otherwise unduly restrain competition or if it would have an adverse effect on trade or the economy in general.[14] Clearly, a case involving this type of price-fixing prohibition would require a deeper inquiry as compared to a case involving the per se price-fixing prohibition.

The Competition and Fair-Trading Act provides for a third form of price-fixing prohibition. This is price-fixing by trade associations. Section 34(1)(b)(i) prohibits "the making of recommendations, directly or indirectly, by a trade association, to its members which relate to setting of the price charged or to be charged by such members or any such class of members or to the margins included or to be included in the prices or to the pricing formula used or to be used in the calculation of those prices".[15] This is another per se prohibition of price-fixing. The Act further provides that any trade association that contravenes the above provision commits an offence.[16]

The reading of the above three provisions points to the conclusion that price-fixing by monopolies as well as price-fixing recommendations by trade associations are per se prohibited and are deemed as offences. On the other hand, price-fixing by non-

[11] Paul Scott, Unresolved Issues in Price Fixing: Market Division, the Meaning of Control and Characterisation, 12 CANTERBURY L. REV. 197 (2006).

[12] Competition and Fair-Trading Act 1998, Laws of Malawi, cap 49:02., section 33(3)

[13] Ibid

[14] Ibid, section 32(2)

[15] Section 34(1)(b)(i)

[16] Ibid

monopoly entities is only prohibited if it has an adverse impact on competition, the trade or the economy in general. This last form of price-fixing is not considered as an offence and is a rule of reason prohibition.

The Act also covers certain general unspecified horizontal practices that would be deemed as anti-competitive. Section 32(1) of the Act prohibits and deems as anti-competitive trade practice, any category of agreements, decisions and concerted practices which have the potential of preventing, restricting or distorting competition to an appreciable extent in Malawi or any substantial part of Malawi.[17] This is another rule of reason prohibition. Clearly, for an entity to be found in violation of this provision, there is a need to establish that the agreements, decisions or concerted practices have the potential of substantially affecting competition in Malawi or part of Malawi.

The Act further provides for a per se prohibition of the following practices if done by enterprises engaged in rival or potentially rival activities: collusive tendering and bid-rigging; market or customer allocation agreements; allocation by quota as to sale and production; collective action to enforce arrangements; concerted refusals to supply goods or services to potential purchasers; or collective denials of access to an arrangement or association which is crucial to competition.[18]

4. An Exposition of Selected Rules Within the Legal Profession

As is expected of most professions, the Legal Profession in Malawi is heavily regulated. The Legal Education and Legal Practitioners Act of 2017 ("the LELP") is the main statute that regulates the Legal Profession in Malawi. Among other things, The Legal Education and Legal Practitioners Act establishes the Malawi Law Society.[19] The Malawi Law Society has the following mandate: to promote professional standards among legal practitioners and in legal practice; to enhance credibility in the delivery of legal services; to promote integrity, competence and transparency of professional services in legal practice; to protect matters of public interest touching, ancillary or incidental to the law; to promote research towards the development of the law; to regulate the setting up, management and dissolution of legal practice and; to do all

[17] Ibid, Section 32(1)

[18] Ibid, section 33(3)

[19] Section 63 of the Legal Education and Legal Practitioners Act of 2017.

other things that are incidental or conducive to the attainment of the above objectives.[20]

Every Legal Practitioner inscribed on the Roll automatically becomes a member of the Malawi Law Society.[21] The Malawi Law Society has powers to make rules aimed at enhancing its objectives under the Legal Education and Legal Practitioners Act.[22] In exercise of such powers, the Malawi Law Society came up with the Code of Ethics ('the code') which comprises of rules of professional conduct for Legal Practitioners. Chapter 14(1) of the code provides that a lawyer's fee must not exceed a fair and reasonable amount. Chapter 14 (3) provides that a lawyer and client, in persona injury cases, may agree on a contingent fee not exceeding 25%.[23] Chapter 14(11) of the code provides that all lawyers in private practice are supposed to be bound by the Minimum Scale Charges made under the Legal Education and Legal Practitioners Act.

The Scale and Minimum Charges are found under the Legal Practitioners (Scale and Minimum Charges) Rule made under the Legal Education and Legal Practitioners Act. The said rules are aimed at prescribing the amount or minimum amount to be charged by Legal Practitioners in specified matters. For example, table 6 of Part 1 of the first schedule to the Scale and Minimum Charges Rules provides that the amount to be charged in debt collection matters is supposed to be 15% on the first MK500,000, then 10% on the next MK1,000,000 and 3% on the balance collected. Another example is Table 8 of the same Rules which provide that in probate and administration of deceased person's Estate matters, for specified work, what has to be charged by the Legal Practitioner is 5% of the gross value of the property. The Rules prescribe charges or minimum charges for different other matters.

Chapter 5(4) of the code of ethics provides that every lawyer is supposed to abide by the Legal Practitioners Practice Rules. Rule 4 of the Legal Practitioners Practice Rules states that a legal practitioner is not supposed to hold himself out or allow himself to be held out directly or indirectly as prepared to do professional business at less than the scale of charges fixed by the Scale and Minimum Charges Rules or prescribed by

[20] Ibid, section 64.

[21] Ibid, section 67.

[22] Ibid, section 73

[23] Initially, this was 15%. It was raised to 25% through a resolution passed on 3rd July 2015.

any other written law. Rule 3 of the Legal Practitioners Practice Rules also provides that a Legal Practitioner is prohibited from doing anything that can reasonably be regarded as touting or advertising.

In a nutshell, the above exposition is of some of the rules and practices in the legal profession which are relevant for this paper. Some of the rules are setting a maximum of what can be charged by legal practitioners (for example, the 25% contingency fee under the code of ethics). Some are prescribing the amount to be charged or the minimum amount to be charged for certain work (for example, the Scale and Minimum Charges Rules). And lastly, some of the rules are simply prohibiting lawyers from touting or advertising (for example, rule 3 of the Legal Practitioners Practice Rules).

5. Are Some of These Rules Enabling a Cartel of Legal Practitioners?

As indicated above, this paper is only concerned with some of the rules and practices which affect the horizontal relationship between legal practitioners i.e. the relationship between Legal Practitioners in actual or potential competition as service providers. The South African case of *Johan Venter vs The Law Society of the Cape of Good Hope*[24] held that rules intended to regulate the legal profession are capable of being subjected to competition law principles. The author of this paper sees no reason why the situation would be any different in Malawi.

(a) Rules on Minimum Scale Charges and Contingency fee

For matters that are covered by the Scale and Minimum Charges Rules, Legal Practitioners are prohibited from charging any amount other than what is specifically prescribed or from charging an amount less than what the rules prescribe. What this means is that the prices to be paid for those specific services are fixed. In the author's view, this amounts to price-fixing. The question is whether this is the kind of price-fixing that the Competition and Fair-Trading Act prohibits.

Section 34(1)(b)(i) of the Competition and Fair-Trading Act prohibits trade associations from making recommendations which relate to price charged or to be charged by the members or to the margins included in the prices or the pricing formula to be used in

[24] Johan Venter vs The Law Society of the Cape of Good Hope, case No 24/CR/Mar12 (014688)

the calculation of those prices. Section 2 of the Competition and Fair-Trading Act defines a trade association as “a body of persons, whether incorporated or not, which is formed for the purpose of furthering the trade interest of its members.”[25] In the author’s view, the Malawi Law Society qualifies as a trade association. Among other purposes, the Malawi Law Society is undoubtedly concerned with furthering the trade interests of its members. For example, it was the Malawi Law Society that increased the contingency fee in personal injury matters from 15% to 25% on 3rd July 2015. This was done after its members had complained that 15% was too low.

As a trade association, the Malawi Law Society makes it mandatory for all lawyers in private practice to follow the Scale and Minimum Charges Rules.[26] The Scale and Minimum Charges Rules sets out the prices to be charged or the price formula to be used in coming up with the prices for specified legal services. A mere recommendation of prices or price formula by a trade association is prohibited by the Competition and Fair-Trading Act. What the Malawi Law Society does is actually going beyond a recommendation. The Malawi Law Society makes all its members bound by the prices fixed or minimum prices set by the Scale and Minimum Charges Rules. The same thing applies to the contingency fee in personal injury matters. The only difference with the latter is that a maximum percentage is what is prescribed.

It is a known fact that most professions are allowed to self-regulate. Section 3(g) of the Competition and Fair-Trading Act recognises the special status afforded to Professions. The said section provides that nothing in the Act “shall apply to those activities of professional associations which relate exclusively to the development and enforcement of professional standards of competence reasonably necessary for the protection of the public”.[27] Section 3(h) also provides that the Minister, by a notice published in the gazette, can specify businesses or activities exempted from the application of the Act. At the time of writing this paper, there was no notice exempting activities of the legal profession.

Professions are not completely exempted from the application of the Competition and Fair-Trading Act. According to the Act, the only time the activities of the Malawi Law

[25] Section 2 of the Act

[26] Chapter 14(11) of the Malawi Law Society Code of Ethics.

[27] Section 3(g) of the Competition and Fair-Trading Act.

Society would be exempted is if they exclusively relate to developing and enforcing professional standards of competence reasonably necessary for the protection of the public. A good example of an activity in the legal profession that would perfectly fit the exemption under section 3(g) of the Competition and Fair-Trading Act is the regulation of the requirements and minimum qualification for one to be admitted as a Legal Practitioner. This would clearly be setting standards of competence necessary for the protection of the public. Letting unfit and unqualified individuals practice law would be contrary to the interests of the public.

However, it is difficult to see how the Scale and Minimum Charges can be justified as 'exclusively relating to the development and enforcement of professional standards of competence reasonably necessary for the protection of the public'. It is doubtful that a rule setting a minimum charge or prescribing a specific charge can be beneficial to the public. In fact, the Scale and Minimum Charges have resulted in Legal Practitioners being entitled to sums of money that would otherwise be unreasonable when the actual work done is considered. For example, in 2013, the High Court of Malawi entered Judgment on behalf of a private practice lawyer who was claiming the sum of K3.5 billion (about US$7,478,632 at the then prevailing exchange rate) as his legal fees, for merely obtaining letters of administration.[28] The said legal fees came about because of the prescription under table 8 of part 1 of the first schedule to the Scale and Minimum Charges Rules (which provides that a Legal Practitioner is entitled to 5% of the total value of the Deceased Person's Estate).[29] K3.5 billion is a lot of money as legal fees for simply obtaining letters of administration. Without a doubt, other lawyers would have been willing to do the work for a fraction of the said amount. This would have worked to the advantage of the client/consumer.

It is difficult to see how such an arrangement of prescribing a fixed percentage as fees to be charged would be beneficial to the public. If the idea is to protect the public from excessive pricing, then a maximum percentage would make more sense. As shown above, a prescription of a maximum percentage is what is applicable to contingency

[28] The Judgment was later on overturned by the Supreme Court of Malawi. The grounds for overturning the High Court Judgment are not related to this paper and do not negate the relevance of the example.

[29] The Estate belonged to the former President of Malawi and its estimate value was around K61,350,437,237.62.

fees in personal injury matters. This arrangement can at least be provisionally justified by a public interest argument. It can be argued that the Malawi Law Society prescribes a maximum percentage to avoid overcharging in personal injury matters. The other argument can be the fact that Legal Practitioners can still compete by charging less percentage than their competitors. However, in practice, almost all lawyers in personal injury matters use the maximum percentage of 25%. This results in uniform pricing and can arguably be considered as price-fixing.

The maximum percentage contingency fee arrangement does not meet the exemption under section 3(g) of the Competition and Fair-Trading Act. Even though the said arrangement can be said to benefit the consumers/public, it is not an activity done 'exclusively relating to the development and enforcement of professional standards of competence reasonably necessary for the protection of the public'.

However, the maximum percentage contingency fee arrangement does not violate section 34(1)(b)(i) of the Competition and Fair-Trading Act and cannot be regarded as anti-competitive. What is required is proper characterisation. As indicated by the Supreme Court of South Africa in *American Natural Soda Ash Corporation v the Competition Commission and Others*[30], in 'per se' horizontal practice prohibition cases, there is a need for an inquiry to establish whether the character of the conduct complained of coincides with the character of the prohibited conduct. What section 34(1)(b)(i) prohibits is a form of price-fixing initiated by trade associations. In the author's view, for a section 34(1)(b)(i) violation, the direct effect of the activity or recommendation by a trade association is supposed to be price-fixing. This is not the case with the contingency fee arrangement. The fact that most lawyers end up charging the maximum percentage, resulting in uniform prices, is just coincidental. There is no doubt that the maximum percentage was set to prevent lawyers from overcharging in personal injury matters. Therefore, with proper characterisation, the contingency fee arrangement would be found not to be in violation of section 34(1)(b)(i) nor any of the provisions of the Competition and Fair-Trading Act. On the other hand, the author is of the view that the Scale and Minimum Charges Rules violate section 34(1)(b)(i) of the Competition and Fair-Trading Act. Considering that this is a per se

[30] American Natural Soda Ash Corporation v the Competition Commission and Others [2005] 3 All SA 1 (SCA)

prohibition, any justification for coming up with the Scale and Minimum Charges would be irrelevant.

Alternatively, in the author's view, the Scale and Minimum Charges Rules are in violation of section 32(1) of the Competition and Fair-Trading Act. The said section prohibits any category of agreements, decisions and concerted practices which prevent, restrict or distort competition to an appreciable extent in Malawi or part of Malawi. The passing of the Scale and Minimum Charges Rules or the passing of the code of ethics, which makes it mandatory for all lawyers to follow the Rules, amounts to a decision or agreement by Legal Practitioners. There is no doubt that this form of decision or agreement was aimed at price-fixing and the same restricts competition to an appreciable extent within the Legal Profession in Malawi.

There are a number of Jurisdictions that have rejected attempts by law societies to prescribe legal fees. The rejections have been based on the fact that a prescription of fees amounts to price-fixing. For example, through notice 113 of 2011, the Competition Commission of South Africa rejected an application by South African law societies to have some of its rules exempted from the application of the South African Competition Act.[31] Some of these rejected rules were prescribing fees that lawyers were mandated to charge. The South African Competition Commission held that the prescription of fees by an association of firms that are in a horizontal relationship was prohibited by section 4(1) of the South African Competition Act. The Commission further held that the restriction on pricing contained in the said rules was not reasonably required to maintain professional standards or the ordinary function of the profession since there are other ways of preventing excessive pricing or overreaching other than through a guideline of fees.[32]

(b) <u>Rules on advertisement and Touting</u>

According to Rule 3 of the Legal Practitioners Practice Rules, a Legal Practitioner is prohibited from doing anything that can reasonably be regarded as touting or advertising. This means that any form of Touting and advertisement by Legal Practitioners is prohibited. Economic theory points to the fact that advertisement

[31] Notice 113 of 2011 published by the South African Competition Commission. Notice in Terms Item (4)(c) of Part A of Schedule 1 of the Competition Act 89 of 1998.

[32] Ibid

facilitates competition by ensuring that consumers are aware of different products which results in better-informed purchasing decisions.[33] Restricting advertisement has the potential of reducing competition because the costs of gaining information about different products becomes higher. This makes it difficult for consumers to find the quality and price that is most suitable for their needs.[34] Advertisement also promotes competition by helping new firms entering the market to be known by consumers or for existing firms to launch new products.[35] This means that restricting advertisement makes it harder for new firms to enter the market or for existing firms to introduce new products.

According to the preamble of the Competition and Fair-Trading Act, among other reasons, the Act was enacted to encourage competition in the economy by prohibiting anti-competitive trade practices. The prohibition of advertisement and touting in the Legal Profession makes it hard for consumers to find Legal Practitioners, or Legal Firms, most suitable for their matters. It also makes it harder for Legal Practitioners or Legal Firms, that are new in the market to get established. Clearly, advertisement is good for competition and its restriction is anti-competitive. In the author's view, the rule against advertisement and Touting amounts to a decision or agreement that prevents or restricts competition to an appreciable extent in Malawi. The prohibition of advertisement and touting is not only against the general spirit of the Competition and Fair-Trading Act, but it also violates section 32(1) of the Act.

The general and complete prohibition of advertisement by Legal Practitioners cannot be saved by the exemption under section 3(g) of the Competition and Fair-Trading Act. It would make more sense if the rules were aimed at restricting certain forms of advertisement and not a general prohibition. In denying an exemption to rules prohibiting advertisement in the South African Legal Profession, the Competition Commission of South Africa held that advertising and marketing should be subject to the following restrictions: the advertising to fall in line with general advertising laws of South Africa; the advertising was not to be misleading or false and; the advertising

[33] Communication from the Commission of the European Communities**,** *Report on Competition in Professional Services*, Brussels, 9.2.2004, COM (2004) 83.

[34] Ibid

[35] Ibid

was not to bring the administration of justice into disrepute.[36] In the author's view, the said restrictions on advertisement or marketing restrictions are capable of maintaining the integrity and special character of the legal profession without entirely hindering competition. A rule that reasonably restricts advertisement in the Legal Profession cannot be anti-competitive. However, a rule providing for a general and complete prohibition of advertisement is definitely anti-competitive.

6. Conclusion

Promotion of consumer welfare is one of the objectives of the Competition and Fair-Trading Act and arguably the main goal of Competition Law. The prohibition of certain agreements or arrangements between competitors is one way of promoting competition. The promotion of competition leads to the promotion of consumer welfare. 20 years after the coming into force of the Competition and Fair-Trading Act, nothing has been done to the lawyers cartel that has existed in Malawi for decades. Through the Scale and Minimum Charges Rules, lawyers in Malawi have fixed prices of legal services in selected matters. The Malawi Law Society endorses this price-fixing arrangement by making it mandatory for all its members to follow the said 'price-fixing' rules. The lawyers have even gone further to restrict competition in the legal profession by completely prohibiting any form of advertisement or touting. Lawyers are fixing prices and restricting competition by prohibiting advertisement. Consumers are complaining about the high cost of legal services. Coincidence? There is no doubt that the arrangements existing in the Legal Profession have a negative impact on consumer welfare.

The Scale and Minimum Charges Rules are anti-competitive. The rules violate a number of provisions of the Competition and Fair-Trading Act. It is high time that these rules were completely abolished. The rules which completely prohibit advertisement in the Legal Profession are also anti-competitive and should as well be discarded. Advertisement would promote competition in the Legal Profession; therefore, it should be allowed with reasonable restrictions put in place.

[36] Supra, note 31.