

Paul Greening
Regulatory Associate
Legal Service Board
One Kemble Street
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WC2B 4AN

18 October 2016

Dear Mr Greening

Applications by the Institute of Chartered Accountants in England and Wales (ICAEW) to become an approved regulator and licensing authority for reserved legal activities (conduct of litigation, rights of audience and reserved instrument activities relating to the service area of taxation; and the reserved legal activities of notarial services and oaths of administration (together, the ‘further reserved activities’))

1. Thank you for sending us the above applications and formally requesting our advice in accordance with the Legal Services Act 2007 (the Act).
2. The CMA has a statutory duty under the Act to review applications for approved regulator and licensing authority status and provide the Legal Services Board (LSB) with such advice as we ‘think fit’ regarding whether the applications should be granted. In providing our advice we have to consider whether any given application, if granted, would, (or would be likely to) prevent, restrict or distort competition within the market for reserved legal services to any significant extent.
3. The CMA’s default position is that applications to become an approved regulator and/or a licensing authority are unlikely to raise any substantive concerns unless there is compelling evidence to show a significant detriment to competition,¹ since they are likely to increase choice for consumers and professionals. Where an application to become an approved regulator and/or licensing authority includes a provision that has the potential to restrict competition, this would need to be justified by one of the objectives set out in the Act.
4. We have considered the application by the ICAEW and find no evidence to suggest that the ICAEW becoming an approved regulator and licensing authority for the further reserved activities under the Act would (or would be likely to) prevent, restrict or distort competition within the market, provided that ICAEW’s regulatory framework (as set out in Annex 1 of the application²) provides sufficient consumer protections.

¹ For example, through the imposition of disproportionate restrictions or where the new arrangements might result in a substantial degradation of consumer protection.

² i.e. ICAEW Legal Services Regulations.

5. The CMA considers that allowing ICAEW to authorise and license (as Alternative Business Structures) firms to undertake the further reserved legal activities may strengthen competition for these services. For example, firms authorised by the ICAEW could act as an alternative to traditional suppliers (such as solicitors and barristers) in the conduct of these reserved activities.³ This could place competitive pressure on the pricing of these services and broaden access to justice.
6. Furthermore, accountancy firms authorised by the ICAEW to undertake the further reserved activities would be able to offer a more integrated service to customers, complementing the tax services which accountancy firms are already providing. This could reduce the cost of legal services and reduce delays for consumers.
7. As part of the application package provided to the CMA, we note concerns expressed by other parties which relate to the potential for confusion about the scope of taxation services and certain specific queries about the appropriateness of the ICAEW's qualification requirements and proposed minimum amount of professional indemnity insurance cover. The ICAEW has explained to us how its regulatory scheme and intended approach should address these concerns. While the LSB is best placed to evaluate the ICAEW's assurances on these matters, the CMA considers that the positive effects of new entry into the market are likely to outweigh these concerns.
8. The only circumstances in which the CMA might take a different view is if the ICAEW's regulatory scheme distorted competition between ICAEW-regulated providers and other regulated legal providers (if, for example, it failed to secure adequate consumer protections). Provided that the LSB is satisfied that the ICAEW's proposed regulatory scheme is appropriate and adequately protects consumers, the CMA believes that such a distortion of competition is unlikely to arise in practice.

Yours sincerely

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³ The CMA understands that ICAEW's authorisation and licensing would not be limited to ICAEW members only, but could also apply to individuals who can demonstrate compliance with ICAEW qualification requirements.